

R652. Natural Resources; Forestry, Fire and State Lands.

R652-40. Easements.

R652-40-100. Authority.

This rule implements Section 65A-7-8 which authorizes the Division of Forestry, Fire and State Lands to establish rules for the issuance of easements on, through, and over any sovereign land, and to establish price schedules for this use.

R652-40-200. Easements Issued on Sovereign Lands.

1. The division may issue exclusive or non-exclusive easements on sovereign lands when the division deems it consistent with management objectives.

2. A conservation easement may be issued upon satisfaction of the sovereign land management objectives described under Section 65A-1-2 and R652-2.

R652-40-300. Easements Acquired by Application.

1. Easements across sovereign lands may be acquired only by application and grant made in compliance with these rules and the laws applicable thereto. No easement or other interest in sovereign lands may be acquired by prescription, by adverse possession, nor by any other legal doctrine except as provided by statute. All applications shall be made on division forms. The filing of an application form is deemed to constitute the applicant's offer to purchase an easement under the conditions contained in the conveyance document and these rules.

2. Pursuant to Section 72-5-203, applications shall be accepted for easements for roads in existence prior to January 1, 1992 for which easements were not in effect on that date. Easements issued under this section shall be subject to all applicable provisions of R652-40.

R652-40-400. Easement Charges.

1. The charge for any easement granted or renewed under these rules, including those granted to municipal or county governments or agencies of the state or federal government, shall be determined pursuant to R652-40-600.

2. The charge for easements issued to a subdivision of the state pursuant to R652-40-300(2) shall be subtracted from the aggregate pool of value collected from sovereign land receipts and other sources allocated for this purpose by the legislature pursuant to statute. Payments may be made over time.

3. The division may, when issuing easements pursuant to R652-40-300(2), also accept payment from sources other than the aggregate pool and may credit the value of benefits accruing to beneficiaries from continued maintenance of the easement and the value of access against accrued interest.

R652-40-500. Surveys.

Anyone desiring to perform a survey on sovereign land with the intent of filing an application for an easement, shall prior to entry for surveying activities, file with the division written notice of intent to conduct a survey of the proposed location of the easement. The notice, which may be in letter form, shall describe the proposed project, including the purpose, general location, potential resource disturbances of the proposed easement and survey, and projected construction time for any improvements. The notice shall contain

an agreement to indemnify and hold the division harmless and any authorized lessees of the state of Utah harmless against liability and damages for loss of life, personal injury and property damage occurring due to survey activities and caused by applicant, his employees, his agents, his contractors or subcontractors and their employees. In lieu of an agreement the applicant may submit a surety bond in an amount agreeable to the director. The written notice shall be reviewed by the division. The division may require the applicant to obtain a right-of-entry agreement.

R652-40-600. Minimum Charges for Easements.

The division may establish price schedules for easements based on the cost incurred by the division in administering the easement and the fair-market value of the particular use.

R652-40-700. Application Procedures.

1. Time of Filing. Applications for an easement shall be received for filing in the office of the division during office hours. Except as provided, all applications received, whether by U.S. Mail or delivery over the counter, shall be immediately stamped with the exact date of filing.

2. Non-refundable Application Fees and Advertising Deposit. All applications shall be accompanied with a non-refundable application fee as specified in R652-4 and a deposit to cover applicable advertising costs. After review of the application, the division shall notify the applicant of the charges pursuant to R652-40-600. Failure to pay the charges within 60 days of mailing of notification shall cause the denial of the application.

3. Refunds and Withdrawals

(a) If an application for an easement is rejected, all monies tendered by the applicant, except the application fee, shall be refunded.

(b) Should an applicant desire to withdraw the application, the applicant shall make a written request. If the request is received prior to the time that the application is approved, all monies tendered by the applicant, except the application fee, shall be refunded. If the request for withdrawal is received after the application is approved, all monies tendered shall be forfeited to the division, unless otherwise ordered by the director for a good cause shown.

4. Application Review

(a) Upon receipt of an application, the division shall review the application for completeness. Applicants submitting incomplete applications shall be provided written notice of incompleteness and shall be allowed 60 days to cure the deficiency. Incomplete applications not remedied within the 60-day period may be denied.

(b) Application approval by the director constitutes acceptance of the applicant's offer.

(c) The easement shall be executed by the applicant and returned to the division within 60 days from the date of applicant's receipt of the written easement. Failure to execute and return the documents to the division within the 60-day period may result in cancellation of the conveyance and the discharge of any obligation of the division arising from the approval of the application.

R652-40-800. Term of Easements.

Easements granted under these rules shall normally be for no greater than a 30 year term. Longer or shorter terms may be granted upon application if the director determines that such a grant is in the best interest of the beneficiaries.

R652-40-900. Conveyance Documents.

1. Each easement shall contain provisions necessary to ensure responsible surface management, including the following provisions: the rights of the grantee, rights reserved to the grantor; the term of the easement; payment obligations; reporting of technical and financial data; reservation for mineral exploration and development and other compatible uses; operation requirements; grantee's consent to suit in any dispute arising under the terms of the easement or as a result of operations carried on under the easement; procedures of notification; transfers of easement interest by grantee; terms and conditions of easement forfeiture; and protection of the state from liability from all actions of the grantee.

2. In addition to the requirements of R652-40-900(1), conservation easements shall specify the resource(s) which is being protected and the conditions under which the conservation easement may be terminated.

R652-40-1000. Bonding Provisions.

1. Prior to the issuance of an easement, or for good cause shown at any time during the term of the easement, upon 30 days' written notice, the applicant or grantee, as the case may be, 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 easement.

2. All bonds posted on easements may be used for payment of all monies, rentals, and royalties due to the grantor, also for costs of reclamation and for compliance with all other terms and conditions of the easement, and rules pertaining to the easement. The bond shall be in effect even if the grantee has conveyed all or part of the easement interest to a sublessee, assignee, or subsequent operator until the grantee fully satisfies the easement obligations, or until the bond is replaced with a new bond posted by the sublessee or assignee.

3. Bonds may be increased in reasonable amounts, at any time as the division may decide, provided grantor first gives grantee 30 days' written notice stating the increase and the reason(s) for the increase.

4. Bonds may be accepted in any of the following forms at the discretion of the division:

(a) Surety bond with an approved corporate surety registered in Utah.
(b) Cash deposit. However, the state will not be responsible for any investment returns on cash deposits.

(c) Certificate of deposit in the name of "Utah Division of Forestry, Fire and State Lands and Grantee, c/o Grantee's address", with an approved state or federally insured banking institution registered in Utah. The certificate of deposit must have a maturity date no greater than 12 months, be automatically renewable, and be deposited with the division, the grantee will be entitled to and receive the interest payments. All certificates of deposit must be endorsed by the grantee prior to acceptance by the director.

(d) Other forms of surety as may be acceptable to the division.

R652-40-1100. Conflict of Use.

The division reserves the right to issue non-exclusive easements or other leases, or to dispose of the property by sale or exchange, on land encumbered by existing easements when compatible with the original grant.

R652-40-1200. Amendments.

Any holder of an existing easement desiring to change any of the terms of, or the alignment described in the grant shall make application following the same procedure as is used to make an application for a new easement. An amendment fee pursuant to R652-4 must accompany the amendment request.

R652-40-1210. Easement Conversion.

Easements issued for uses or purposes which would more appropriately be authorized by a special use lease shall be converted, whenever possible, to a special use lease. Any application for the conversion of an easement to a special use lease must follow the process outlined in R652-30-500(2)(g).

R652-40-1300. Renewal of Easement.

Prior to the expiration date of any easement heretofore or hereafter granted for a limited term of years, an application may be submitted for a renewal of the grant upon payment of the consideration as may then be required.

R652-40-1400. Removal of Sand and Gravel.

The removal of ordinary sand and gravel or similar materials from the land by grantee is not permitted except when the grantee has applied for and received a materials purchase permit.

R652-40-1500. Removal of Trees.

In the event the easement crosses forested sovereign land, no trees may be cut or removed unless and until a small forest product permit or a timber contract as provided for in division rules has been obtained.

R652-40-1600. Easement Assignments.

1. An easement may be assigned to any person, firm, association, or corporation qualified under R652-3-200, provided that:

- (a) the assignment is approved by the division;
- (b) if the easement term is perpetual, the easement shall be amended so that the term is 30 years beginning as of the original effective date. However, if the remaining number of years on an easement so amended is less than 15 years, the ending date of the easement shall be set so that there will be 15 years remaining in the easement; and
- (c) the assignor agrees to pay the difference between what was originally paid for the easement and what the division would charge for the easement at the time the application for assignment is submitted.

2. An assignment shall take effect the date of the approval of the assignment. On the effective date of any assignment, the assignee is bound by the terms of the easement

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

3. An assignment must be a sufficient legal instrument, properly executed and acknowledged, and should clearly set forth the easement number, land involved, and the name and address of the assignee and, for the purpose of this rule shall include any agreement which transfers control of the easement to a third party.

4. An assignment shall be executed according to division procedures.

5. An assignment is not effective until approval is given by the division. Any assignment made without such approval is void.

R652-40-1700. Termination of Easement.

Any easement granted by the division across sovereign land may be terminated in whole or in part for failure to comply with any term or conditions of the conveyance document or applicable laws or rules. Upon determination by the director that an easement is subject to termination pursuant to the terms of the grant or applicable laws or rules, the director shall issue an appropriate instrument terminating the easement.

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