1-1-1993

Title 65: State Lands Chapter 05-13 Deposit to Lands Granted - 1993 Replacement Volume

Utah Code Annotated

(b) The balance of state mineral lease revenues from the lands referred to in Subsection (2)(a) shall be deposited in the permanent State School Fund, except the balance of revenues from mineral leases on lands acquired by state agencies through gift or purchase shall be utilized as directed by the agency or donor.

History: C. 1953, 65A-4-3, enacted by L. 1988, ch. 121, § 5; 1988 (2nd S.S.), ch. 1, § 3; 1989, ch. 87, § 1; 1993, ch. 89, § 1.

Amendment Notes. — The 1989 amendment, effective April 24, 1989, deleted former Subsection (3), which read "Notwithstanding Subsection (2), revenues, except lease application fees, from mineral leases on lands administered by the Division of Wildlife Resources and purchased with fish and wildlife restoration federal aid funds shall be deposited in the Wildlife Resources Restricted Account. The lease application fees shall be deposited in the Land Grant Maintenance Account."

The 1993 amendment, effective July 1, 1993, inserted the (a) and (b) designations in Subsection (2), inserted "that are not school or institutional trust lands" in Subsection (2)(a), inserted "from the lands referred to in Subsection (2)(a)" in Subsection (2)(b), deleted former Subsection (2)(a) which distributed revenues from mineral leases to state institutions and a (b) designation before "the balance of revenues," and made stylistic changes.

Sunset. — Laws 1993, ch. 89, which amended this section, provides in § 3 that the act "is subject to sunset on June 30, 1995, unless reenacted."

Cross-References. — Payments from United States, §§ 59-21-1, 59-21-2.

COLLATERAL REFERENCES

Journal of Energy Law and Policy. — The Utah Law of Oil and Gas, 7 J. Energy L. & Pol'y 191 (1986).

A.L.R. — Gas and oil lease force majeure provisions: construction and effect, 46 A.L.R.4th 976.

CHAPTER 5

DEPOSIT AND ALLOCATION OF REVENUES FROM STATE LANDS

65A-5-1. Land Grant Maintenance Account — Creation — Contents — Appropriation to fund division expenses — Balance.

(1) There is created within the General Fund a restricted account known as the Land Grant Maintenance Account.

(2) This account shall consist of the following:

(a) all revenues derived from state school and institutional trust lands except revenues from the sale of these lands; and

(b) 20% of all revenues derived from mineral leases on other lands owned by the state that are not school or institutional trust lands.

(3) All expenditures of the division relating directly to the management of any lands owned by the state shall be funded by appropriation by the Legislature from the Land Grant Maintenance Account or other sources, except that revenues in the account from school and institutional trust lands shall be used to pay for expenditures only related directly to the management of school and institutional trust lands.

(4) (a) The board shall approve all proposed expenditures from the Land Grant Maintenance Account included in the division's proposed annual budget request prior to its submission to the governor.

(b) Any changes in proposed land grant maintenance expenditures in the division's budget request that are made by the department after approval by the board and prior to their submission to the governor shall be acknowledged and justified in writing.

(c) A change by the department under Subsection (b) is not subject to board approval.

(5) In each fiscal year after the revenue in the account exceeds the appropriation required under Subsection (3), the division shall disburse the excess revenue to the various school and institutional trust land beneficiaries on a monthly basis.

(6) The division shall transfer to the various beneficiaries on a prorated basis the remaining balance of the appropriation from the account as of June 30 of each fiscal year.

History: C. 1953, 65A-5-1, enacted by L. 1988, ch. 121, § 6; 1989, ch. 87, § 2; 1992, ch. 137, § 1; 1993, ch. 89, § 2.

Amendment Notes. — The 1989 amendment, effective April 24, 1989, deleted "except lands administered by the Division of Wildlife Resources and purchased with Fish and Wildlife Restoration Federal Aid Funds" at the end of Subsection (1)(c).

The 1992 amendment, effective July 1, 1993, added the Subsection (2) designation to the former second sentence of Subsection (1) and deleted former Subsection (b), which read "20% of the interest generated on the permanent State School Fund and the permanent institutional trust funds managed by the state treasurer," redesignated former Subsection (2)(c) as (2)(b), adding the clause beginning "that" to the end, and redesignated former Subsection (2) as (3) and added the proviso at the end; deleted former Subsection (3), authorizing the division to spend money beyond its appropriation to fund university research programs; substituted "unappropriated" for "unobligated" and deleted "plus any lapsing funds from the prior fiscal year" after "that calendar year" in Subsection (4); and made a stylistic change in Subsection (2).

The 1993 amendment, effective July 1, 1993, deleted "20% of" before "all revenues" and inserted "school and institutional trust" in Subsection (2)(a), deleted "or sovereign lands" after "trust lands" in Subsection (2)(b), substituted present Subsection (4) for former language transferring the unappropriated portion of the Land Grant Maintenance Account to various land grant institutions, and made stylistic changes.

Sunset. — Laws 1993, ch. 89, which amended this section, provides in § 3 that the act "is subject to sunset on June 30, 1995, unless reenacted."

65A-5-2. Deposit and allocation of money received.

(1) The division shall pay to the state treasurer all money received, accompanied by a statement showing the respective sources of this money. Each source shall be classified as to sales, rentals, royalties, interest, fees, penalties, and forfeitures.

(2) All money received from the sale of lands granted by Section 6 of the Utah Enabling Act for the support of the common schools, all money received from the sale of lands selected in lieu of those lands, all money received from the United States under Section 9 of the Utah Enabling Act, all money re-

ceived from the sale of lands or other securities acquired by the state from the investment of those funds, all sums paid for fees, all forfeitures, and all penalties paid in connection with these sales shall be deposited in the Permanent State School Fund.

(3) All revenues derived from the use of renewable resources on sovereign lands and lands granted for the support of the common and public schools and all sums paid for fees, including grazing fees, all forfeitures, and all penalties received in connection with these leases or rentals shall be deposited in the Uniform School Fund except as provided in Subsection 65A-5-1(1).

(4) All lands acquired by the state through foreclosure of mortgages securing school or institutional trust funds or through deeds from mortgagors or owners of those lands shall become a part of the respective school or institutional trust lands. All money received from these lands shall be treated as monies received from school or institutional trust lands.

(5) All money received from the sale or other disposition of lands granted to the state by the United States under Section 8 of the Utah Enabling Act for university purposes, all money received from the sale or other dispositions of lands granted by the United States under Section 8 of the Utah Enabling Act for the agricultural college, all sums paid for fees, all forfeitures, and all penalties received in connection with these sales or dispositions shall go to the respective permanent funds established for the benefit of those institutions by the provisions of the Utah Enabling Act and the Utah Constitution.

(6) All money received from leases or rentals of lands acquired by the state for the benefit of the university and agricultural college, as described in Section 8 of the Utah Enabling Act, through termination of contracts of purchase, investment of funds, and selection shall be regarded as income and shall be used and expended for the purposes of those institutions except as provided in Subsection 65A-5-1(1).

(7) All money received from the sale or other disposition of lands granted to the state by the United States under Sections 7 and 12 of the Utah Enabling Act and all sums paid for fees, all forfeitures, and all penalties received in connection with those sales or dispositions shall go to the respective permanent funds established for the benefit of the institutions named in those sections.

(8) All money received from leases or rentals of lands acquired by the state for the benefit of the institutions named in Sections 7 and 12 of the Utah Enabling Act through selection, termination of contracts of purchase, and investment of funds shall be regarded as income and shall be used and expended for the purposes of the institutions named in those sections.

(9) All revenues derived from the use of nonrenewable resources on all school and sovereign lands shall be deposited in the Permanent State School Fund except as provided in Subsection 65A-5-1(1).

(10) All money received from the sales of lands acquired by the state through foreclosure of mortgages securing trust funds or through deeds from mortgagors or owners of such lands, whether a profit is realized or a loss sustained on the principal invested, shall be regarded as principal and shall go into the principal or permanent fund from which it was originally taken in reimbursement of that fund, with profits being used to offset losses.

(11) All money received by the division as a first or down payment on applications to purchase, permit, or lease state lands or minerals shall be paid to the state treasurer and held in suspense pending final action on those

applications. After final action these payments shall either be credited to the appropriate fund or account, or refunded to the applicant in accordance with the action taken.

History: C. 1953, 65A-5-2, enacted by L. 1988, ch. 121, § 6.

COLLATERAL REFERENCES

Journal of Energy Law and Policy. — Utah's School Trust Lands: Dilemma in Land Use Management and the Possible Effect of Utah's Trust Land Management Act, 9 J. Energy L. & Pol'y 195 (1989).

65A-5-3. Repealed.

Repeals. — Laws 1992, ch. 137, § 2 repeals this section, as enacted by L. 1988, ch. 121, § 6, providing for the disposition of interest on permanent funds, effective on July 1, 1993.

65A-5-4. Disposition of Reservoir Land Grant revenue.

Money from the sale or management of the 500,000 acres of land selected under the Reservoir Land Grant for the establishment of permanent water reservoirs and water development and conservation projects for irrigation purposes, shall be deposited in the Water Resources Construction Fund created in Section 73-10-8.

History: C. 1953, 65A-5-4, enacted by L. 1988, ch. 121, § 6.

CHAPTER 6
MINERAL LEASES

Section

65A-6-1. Coal and mineral deposits reserved — Exceptions.

(1) (a) Except as otherwise expressly provided by law, coal and mineral deposits in state-owned lands are reserved to the state. Each certificate of sale and patent issued shall contain such a reservation.

(b) The purchaser of any lands belonging to the state:

(i) acquires no right, title, or interest in coal or mineral deposits; and

(ii) is subject to the conditions and limitations prescribed by law providing for the state and any person authorized by it to:

(A) prospect or mine;

(B) remove the deposits; and

(C) occupy and use as much of the surface of the lands as may be required for any purpose reasonably incident to the mining and removal of the deposits.

(c) Improved farm lands acquired by the state through foreclosure proceedings or conveyed to the state by deed in satisfaction of farm loan mortgages may be sold by the state without mineral reservations.

(d) Coal and mineral deposits in state-owned lands may not be sold but may be leased on a rental and royalty basis.

(2) Except as otherwise prohibited by the Jones Act of January 25, 1927, 43 U.S.C. Sections 870-871, mineral interests in state-owned lands may be exchanged for mineral interests of comparable value or otherwise disposed of, if their retention would create a liability exceeding their value.

(3) (a) Salts and other minerals in the waters of navigable lakes and streams are reserved to the state and may be sold by the division only upon a royalty basis.

(b) A contract for the recovery of salts or minerals from navigable waters shall be subject to the use of the waters for public purposes.

(c) Before a contract for the recovery of salts or minerals from navigable waters is executed, the applicant shall provide evidence that:

(i) an application for the appropriation of water for that purpose has been filed with the state engineer; and

(ii) the application is pending or accepted in that office.

(4) Common varieties of sand, gravel, and cinders are not considered to be minerals under this section. Common varieties do not include deposits which are valuable because the deposit contains other materials giving it distinct and special value.

History: C. 1953, 65A-6-1, enacted by L. 1988, ch. 121, § 7; 1990, ch. 168, § 5; 1991, ch. 283, § 5.

Amendment Notes. — The 1990 amendment, effective April 23, 1990, added "Except as otherwise expressly provided by law" at the beginning and added the second sentence in Subsection (1), and rewrote Subsection (2) which read "Mineral interests in state lands may be released in exchange for mineral interests of comparable value."

The 1991 amendment, effective April 29, 1991, rewrote Subsections (1) to (3) to such an extent that a detailed analysis is impracticable.

Cross-References. — Unused highway right-of-way, sale exempt from mineral reservation, § 27-12-97.

NOTES TO DECISIONS

ANALYSIS

Constitutionality.

As the state is the owner of the salt contained in the waters of Great Salt Lake, the former section was not unconstitutional, because it took no right which could have been acquired by the filing of an application for the appropriation of water before its enactment. It merely provided a method by which rights to the salt could be acquired from the board, and thus put an applicant in a position to put the water to a beneficial use, and also provided a check with the state engineer, so that no water could be appropriated from navigable bodies of water, the beds of which belong to the state, for the sole purpose of taking therefrom the minerals which did not belong to the appropriator. Deseret Livestock Co. v. State, 110 Utah 239, 171 P.2d 401 (1946).

No reservation in agreement.

—Effect.

Agreement with board in 1907 to purchase land wherein no mention was made of reservation of mineral rights in state, later approved by United States Department of Interior as being land of nonmineral character and patented with no reservation of mineral rights whatsoever in 1920, fourteen months after effective date of statute reserving coal and mineral rights in state, did not in fact reserve mineral rights in state notwithstanding contentions of board that contract violated statute and that consequently state should nevertheless have mineral rights in land. Spratling v. State Land Bd., 20 Utah 2d 342, 437 P.2d 886 (1968).

Lands exchanged with federal government.

Original statute did not have the effect of reserving mineral rights to the state in lands exchanged with the federal government. State v. Hatch, 9 Utah 2d 288, 342 P.2d 1103 (1959).

Nonexclusive royalty contracts.

—Damages from third party.

Companies extracting from Great Salt Lake under nonexclusive royalty contracts with state could not recover damages from railroad which built causeway across lake that changed the salinity of the two arms of the Lake. Morton Int'l, Inc. v. Southern Pac. Transp. Co., 27 Utah 2d 256, 495 P.2d 31, cert. denied, 409 U.S. 934, 93 S. Ct. 238, 34 L. Ed. 2d 189 (1972); Solar Salt Co. v. Southern Pac. Transp. Co., 555 P.2d 286 (Utah 1976); Hardy Salt Co. v. Southern Pac. Transp. Co., 501 F.2d 1156 (10th Cir.), cert. denied, 419 U.S. 1033, 95 S. Ct. 515, 42 L. Ed. 2d 308 (1974).

Quiet title action by United States.

—Right of intervention.

In an action by the United States against Utah and those claiming under the state to quiet title to school land which on survey was found to be within an Indian reservation, where defeat of the claim of Utah and those claiming under the state was essential to both the United States and to the owners of an unpatented mining claim, the claim owners were not entitled to intervene. Archer v. United States, 268 F.2d 687 (10th Cir. 1959).

COLLATERAL REFERENCES

Am. Jur. 2d. — 54 Am. Jur. 2d Mines and Minerals § 23.

C.J.S. — 58 C.J.S. Mines and Minerals § 5; 73B C.J.S. Public Lands § 178.

Key Numbers. — Mines and Minerals ⇐ 4; Public Lands ⇐ 181.

65A-6-2. Mineral leases — Board to prescribe rules.

The board shall by rules prescribe:

(1) the form of a mineral lease application;
(2) the form of the lease;
(3) the term of the lease;
(4) the annual rental;
(5) the amount of royalty in addition to or in lieu of rental; and
(6) the basis upon which the royalty shall be computed.

History: C. 1953, 65A-6-2, enacted by L. 1988, ch. 121, § 7; 1991, ch. 283, § 6.

Amendment Notes. — The 1991 amendment, effective April 29, 1991, subdivided the section; added "in addition to or in lieu of rental" at the end of Subsection (5); deleted "and any other details as are necessary in the interest of the state" at the end of Subsection (6); and made a stylistic change.

Cross-References. — Administrative rulemaking, Title 63, Chapter 46a.

NOTES TO DECISIONS

Separate mineral leases.

An applicant filed a mineral lease application for "building stone and limestone." The word "limestone" was crossed off by the state and the lease was issued as only a building stone lease. This lease covered "building stone" substance only, and excluded limestone, in keeping with former §§ 65-1-18, 65-1-45 and 65-1-23, and the rules and regulations governing the issuance of mineral leases, providing for separate mineral leases on state lands so as to provide for multiple use. Benton v. State, Div. of State Lands & Forestry, 709 P.2d 362 (Utah 1985).

COLLATERAL REFERENCES

A.L.R. — Meaning of "paying quantities" in oil and gas lease, 43 A.L.R.3d 8.

Validity, construction, and application of entirety clause in oil and gas lease, 48 A.L.R.3d 706.

Meaning of, and proper method for determining, market value or market price in oil and gas lease requiring royalty to be paid on standard measured by such terms, 10 A.L.R.4th 732.

65A-6-3. Applications for mineral leases — Restricted to United States citizens or corporations.

Applicants for mineral leases shall, at both the time of filing an application and at the time of acceptance of the application, be either citizens of the United States, associations of citizens, or corporations organized under the laws of the United States or of any state or territory. An association or corporation must have fully complied with all of the laws of the state relative to qualification to do business within this state and must not be in default under any such laws.

History: C. 1953, 65A-6-3, enacted by L. 1988, ch. 121, § 7.

65A-6-4. Mineral leases — Multiple leases on same land — Rentals and royalties — Lease terms.

(1) (a) Mineral leases, including oil, gas, and hydrocarbon leases, may be issued for prospecting, exploring, developing, and producing minerals covering any portion of state lands or the reserved mineral interests of the state.

(b) (i) Leases may be issued for different types of minerals on the same land.

(ii) If leases are issued for different types of minerals on the same land, the leases shall include stipulations for simultaneous operations.

(c) No more than one lease may be issued for the same resource on the same land.

(2) Each mineral lease issued by the division shall provide for an annual rental of not less than $1 per acre per year. However, a lease may provide for a rental credit, minimum rental, or minimum royalty upon commencement of production, as prescribed by board rules.

(3) The primary term of a mineral lease may not exceed:

(a) 20 years for oil shale and tar sands; and

(b) ten years for oil and gas and any other mineral.

(4) The board shall make rules regarding the continuation of a mineral lease after the primary term has expired, which shall provide that a mineral lease shall continue so long as:

(a) the mineral covered by the lease is being produced in paying quantities from:

(i) the leased premises;

(ii) lands pooled, communitized, or unitized with the leased premises; or

(iii) lands constituting an approved mining or drilling unit with respect to the leased premises; or

(b) (i) the lessee is engaged in diligent operations, exploration, research, or development which is reasonably calculated to advance development or production of the mineral covered by the lease from:

(A) the leased premises;

(B) lands pooled, communitized, or unitized with the leased premises; or

(C) lands constituting an approved mining or drilling unit with respect to the leased premises; and

(ii) the lessee pays a minimum royalty.

(5) For the purposes of Subsection (4), diligent operations with respect to oil, gas, and other hydrocarbon leases may include cessation of operations not in excess of 90 days in duration.

History: C. 1953, 65A-6-4, enacted by L. 1988, ch. 121, § 7; 1991, ch. 283, § 7.

Amendment Notes. — The 1991 amendment, effective April 29, 1991, rewrote Subsections (1) and (2) to such an extent that a detailed analysis is impracticable and added Subsections (3) to (5).

65A-6-5. Board may withdraw lands from leasing — Mineral lease application procedures.

(1) The board may at any time withdraw state lands from leasing.

(2) Lands that are not encumbered by a current mineral lease for the same resource, a withdrawal order, or other board rule prohibiting the lease of the lands, shall be offered for lease as provided in this section.

(3) A notice of the land available for leasing shall be posted in the office of the division. The notice shall:

(a) describe the land;

(b) indicate what mineral interest in each tract is available for leasing; and

(c) state the last date, which shall be no less than 15 days after the notice is posted, on which bids may be received.

(4) (a) Applications for the lease of lands filed before the closing date stated in the notice shall be considered to be filed simultaneously.

(b) The applications shall be:

(i) submitted in sealed envelopes; and

(ii) opened in the office of the division at 10:00 a.m. of the first business day following the last day on which bids may be received.

(c) Leases shall be awarded to the highest responsible, qualified bidder, in terms of the bonus paid in addition to the first year's rental, who submitted a bid in the manner required.

(d) In cases of identical bids of successful bidders, the right to lease shall be determined by drawing. The drawing shall be held in public at the office of the division.

(5) (a) At the discretion of the division, mineral leases may be offered at an oral public auction.

(b) The board may set a minimum bid for a public auction.

(6) The division may award a mineral lease without following the competitive bidding procedures specified in Subsections (3) and (4) or conducting an oral public auction, if the mineral lessee waives or relinquishes to the state a prior mining claim, mineral lease, or other right which in the opinion of the division might otherwise:

(a) defeat or encumber the selection of newly acquired land, either for indemnity or other purposes, or the acquisition by the state of any school land; or

(b) cloud the title to any of those lands.

(7) Following the awarding of a lease to a successful bidder, deposits, except filing fees, made by unsuccessful bidders shall be returned.

(8) Lands acquired through exchange or indemnity selection from the federal government shall be subject to the vested rights of unpatented mining claimants under the Mining Law of 1872, as amended, and other federal vested rights, both surface and minerals. This provision does not prevent the state from negotiating the accommodation of vested rights through any method acceptable to the parties.

(9) The division may lease lands in the order in which applications are filed if:

(a) the division offers newly acquired or existing state lands for lease for mineral purposes according to the procedures in Subsections (3) through (6) and the lands are not leased; or

(b) a period of time of one year or more has elapsed following:

(i) a revocation of a withdrawal; or

(ii) the date an existing mineral lease is canceled, relinquished, surrendered, or for any reason terminated.

History: C. 1953, 65A-6-5, enacted by L. 1988, ch. 121, § 7; 1991, ch. 283, § 8.

Amendment Notes. — The 1991 amendment, effective April 29, 1991, deleted former Subsections (1), (3), and (5), relating to applications, subsequent leasing, and newly acquired or existing state land; added present Subsections (2) and (9); and rewrote the remainder of the section to such an extent that a detailed analysis is impracticable.

Federal Law. — The Mining Law of 1872, cited in Subsection (8), is 30 U.S.C. § 22 et seq.

65A-6-6. Mineral lease covenants.

Each mineral lease shall contain the following covenants:

(1) the lessee shall promptly pay any rent annually in advance;

(2) waste may not be committed on the land;

(3) the premises shall be surrendered at the expiration of the term;

(4) the lessee may not assign or sublet without the written authorization of the director; and

(5) where improvements have been placed on the land by any person other than the lessee, the lessee will allow the owner of the improvements to remove them within 90 days.

History: C. 1953, 65A-6-6, enacted by L. 1988, ch. 121, § 7; 1990, ch. 168, § 6; 1991, ch. 283, § 9.

Amendment Notes. — The 1990 amendment, effective April 23, 1990, inserted "assign or" before "sublet" in Subsection (4).

The 1991 amendment, effective April 29, 1991, deleted former Subsection (5), which provided for forfeiture of a lease for failure to pay rent; redesignated former Subsection (6) as present Subsection (5); and made changes in style and phraseology.

Cross-References. — Right of action for waste, § 78-38-2.

COLLATERAL REFERENCES

C.J.S. — 73B C.J.S. Public Lands § 178.

65A-6-7. Mineral information to be furnished.

The division may require the lessee to furnish any information necessary to carry out the duties of this chapter, including, but not limited to, geological and mine maps, well logs, and assays. Any information submitted to the division which the lessee and the division agree is of a proprietary nature will be kept confidential and will not be released without written permission from the lessee.

History: C. 1953, 65A-6-7, enacted by L. 1988, ch. 121, § 7.

65A-6-8. Mineral leases — Cancellation — Use of surface land — Liability for damage.

(1) Upon violation by the lessee of any lawful provision in a mineral lease, the division may cancel the lease after 30 days' notice by registered or certified return receipt mail, unless the lessee remedies the violation, rectifies the condition, or requests a hearing within the 30 days or within any extension of time the board grants.

(2) (a) A mineral lessee, subject to conditions required by the division, shall have the right at all times to enter upon the leasehold for prospecting, exploring, developing, and producing minerals and shall have reasonable use of the surface.

(b) The lessee shall not injure, damage, or destroy the improvements of the surface owner or lessee.

(c) The lessee is liable to the surface owner or lessee for all damage to the surface of the land and improvements, except for reasonable use.

(3) Any mineral lessee may occupy as much of the surface of the leased land as may be required for all purposes reasonably incident to the exercise of lessee's rights under the lease by:

(a) securing the written consent or waiver of the surface owner or lessee;

(b) payment for the damage to the surface of the land and improvements to the surface owner or lessee where there is agreement as to the amount of the damage; or

(c) upon the execution of a good and sufficient bond to the state for the use and benefit of the surface owner or lessee of the land to secure the payment of damages as may be determined and fixed by agreement or in action brought upon the bond or undertaking in a court of competent jurisdiction against the principal and sureties of the bond. The bond shall be in a form and amount as prescribed by the division and shall be filed with the division.

History: C. 1953, 65A-6-8, enacted by L. 1988, ch. 121, § 7; 1992, ch. 138, § 4.

Amendment Notes. — The 1992 amendment, effective April 27, 1992, added the (a), (b), and (c) designations in Subsection (2) and made stylistic changes in Subsections (2) and (3).

COLLATERAL REFERENCES

A.L.R. — Duty of oil or gas lessee to restore surface of leased premises upon termination of operations, 62 A.L.R.4th 1153.

65A-6-9. Shut-in gas wells.

(1) Under a mineral lease for oil and gas, gas is considered to be produced in paying quantities from a shut-in gas well if the shut-in gas well is capable of producing gas in paying quantities, but the gas cannot be marketed at a reasonable price due to existing marketing or transportation conditions.

(2) (a) The board shall make rules establishing:

(i) a minimum rental or minimum royalty for a shut-in gas well that is considered to be producing gas in paying quantities; and

(ii) the basis upon which the minimum rental or minimum royalty shall be paid.

(b) The minimum rental or minimum royalty may not be less than twice the annual lease rental.

History: C. 1953, 65A-6-9, enacted by L. 1988, ch. 121, § 7; 1991, ch. 283, § 10.

Amendment Notes. — The 1991 amendment, effective April 29, 1991, rewrote and designated the first sentence of the section as Subsection (1); deleted the former second and third sentences, relating to the amount and payment of rental; and added Subsection (2).

65A-6-10. Unitization of mineral leases.

(1) Mineral lessees, upon prior written authorization from the division, may commit leased state lands to unit, cooperative, or other plans of development with other lands.

(2) The division may, with the consent of the mineral lessee, modify any term of a mineral lease for lands that are committed to a unit, cooperative, or other plan of development.

(3) Production allocated to leased state lands under the terms of a unit, cooperative, or other plan of development shall be considered produced from the leased lands whether or not the point of production is located on the leased state lands.

History: C. 1953, 65A-6-10, enacted by L. 1988, ch. 121, § 7; 1991, ch. 283, § 11.

Amendment Notes. — The 1991 amendment, effective April 29, 1991, rewrote and subdivided the section into Subsections (1) and (2) and added Subsection (3).

65A-6-11. Land subject to a federal mineral lease.

(1) With respect to any tract of land in which the state acquires or has acquired any interest subject to an outstanding federal mineral lease or prospecting permit, the lessee or permittee may submit a petition seeking extension of the permit or lease or any other action as may be necessary to give to the lessee or permittee any and all rights, privileges, and benefits which he would have had under the permit or lease had the state not acquired its interest in the tract.

(2) In consideration of the voluntary termination by the federal lessee or permittee of his lease or permit as it relates to that tract, the division may issue to that lessee or permittee a lease of the acquired tract or any portion of that tract for recovery of the same mineral substances upon terms that the lessee shall have all the rights, privileges, and benefits with reference to that tract which he would have had by reason of his lease or permit from the United States had the state not acquired its interest in the tract.

History: C. 1953, 65A-6-11, enacted by L. 1988, ch. 121, § 7.

65A-6-12. Agreements for the administration of mineral leases by a federal agency.

Where this state has succeeded or will succeed to the position of the United States under a federal mineral or prospecting permit in which only a portion of the lands are subject to the permit, agreements may be entered into with the federal agency having jurisdiction over the remaining portion providing for the continued administration by that agency of the entire lease or permit or any lease pursuant to that permit. Consideration for continued administration of the federal agency shall not exceed 10% of the revenue allocable to the state's portion.

History: C. 1953, 65A-6-12, enacted by L. 1988, ch. 121, § 7.

65A-6-13. Lands withdrawn for potash development.

Subject to valid existing rights under any issued oil and gas leases, all state lands in which the mineral ownership is vested in the state and which lie within the exterior boundaries of the following described area, are withdrawn from oil and gas leasing under the laws of the state for the purpose of the preservation and development of potash deposits in these state lands:

SALT LAKE MERIDIAN

Township 24 South, Range 20 East
Section 27: $S^1/_2SW^1/_4$
Section 34: $SW^1/_4NE^1/_4$, $W^1/_2$, $SE^1/_4$
Township 25 South, Range 20 East
Section 1: $NW^1/_4SW^1/_4$, $S^1/_2SW^1/_4$
Section 2: Lots 4 to 6, inclusive; Lots 10 to 16, inclusive; $S^1/_2$
Section 3: Lots 1 to 16, inclusive; $N^1/_2S^1/_2$, $SE^1/_4SW^1/_4$, $S^1/_2SE^1/_4$
Section 10: $NE^1/_4$, $NE^1/_4NW^1/_4$, $NE^1/_4SE^1/_4$
Section 11: All
Section 12: $W^1/_2NE^1/_4$, $W^1/_2$, $SE^1/_4$
Section 13: All
Section 14: $NE^1/_4$, $NE^1/_4NW^1/_4$, $NE^1/_4SE^1/_4$
Section 24: $NE^1/_4$
Township 25 South, Range 21 East
Section 7: Lot 4 ($SW^1/_4SW^1/_4$) $SW^1/_4SE^1/_4$
Section 18: Lots 1 to 4, inclusive; $SE^1/_4NW^1/_4$, $E^1/_2NW^1/_4$
Section 19: Lots 1 to 3, inclusive; $NE^1/_4$, $E^1/_2NW^1/_4$, $NE^1/_4SW^1/_4$, $N^1/_2SE^1/_4$
Township 26 South, Range 20 East; Sections 22, 23, 24, 25, 26, and 27; Section 34, east half; Sections 35 and 36.
Township 27 South, Range 20 East; Section 1; Section 2, Lots 1, 2, 7, 8, and south half of the northeast quarter.
Township 26 South, Range 21 East; Sections 30, 31, and 32.
Township 27 South, Range 21 East; Sections 4, 5, and 6; Section 7, Lots 1, 2, 3, and 4, and northeast quarter; Section 8, north half; Section 9, north half.

History: C. 1953, 65A-6-13, enacted by L. 1988, ch. 121, § 7.

65A-6-14. Other lands subject to withdrawal.

Upon the relinquishment or other termination of any issued oil and gas lease, the lands covered by the lease which lie within the area described in Section 65A-6-13 shall automatically become subject to the withdrawal made by that section.

History: C. 1953, 65A-6-14, enacted by L. 1988, ch. 121, § 7.

65A-6-15. Lands withdrawn for potash development — Changes — Board to make rules.

The withdrawal of lands in Section 65A-6-13 may be amended or rescinded under rules promulgated by the board.

History: C. 1953, 65A-6-15, enacted by L. 1988, ch. 121, § 7.

65A-6-16. Oil shale and tar sands development incentive.

To provide incentive for private enterprise to develop a method of profitably recovering oil from the oil shales and bituminous sands on lands owned by the state, the first lessee of the state to commercially produce oil from the shales or bituminous sands on lands owned by the state is exempted from the payment of any royalty to the state on the first 200,000 barrels of oil commercially produced.

History: C. 1953, 65A-6-16, enacted by L. 1988, ch. 121, § 7.

COLLATERAL REFERENCES

A.L.R. — Construction and application of "Mother Hubbard" or "cover-all" clause in gas and oil lease or deed, 80 A.L.R.4th 205.

65A-6-17. Oil shale development — State participation.

The state may participate with its oil shale lessees in programs for the development of technology for the economic recovery of fuel substances from oil shale.

History: C. 1953, 65A-6-17, enacted by L. 1988, ch. 121, § 7.

65A-6-18. Oil shale leases — Credit against future rentals.

A state oil shale lessee may apply to the board for credit against future rentals by submitting to the board the details of a plan for research, experimentation, or investigation to develop technology for the economic recovery of fuel substances from oil shale. The format of that plan may be prescribed by the board.

History: C. 1953, 65A-6-18, enacted by L. 1988, ch. 121, § 7.

65A-6-19. Oil shale leases — Credit against future rentals — Limits.

If the submitted plan is meritorious and designed to advance oil shale technology, credit may be granted against rentals to become due in the future under any oil shale leases held by the lessee, in accordance with rules promulgated by the board. That credit may not be given in an amount which reduces the actual amount payable by the lessee under any oil shale lease to less than 50 cents per acre per year.

History: C. 1953, 65A-6-19, enacted by L. 1988, ch. 121, § 7.

65A-6-20. Oil shale leases — Records and reporting requirements.

Lessees proceeding under a plan approved for state participation shall maintain accurate books and records which are available for inspection by the board at all reasonable times, and shall submit an accounting to the board at the conclusion of the program and at any other times the division requests.

History: C. 1953, 65A-6-20, enacted by L. 1988, ch. 121, § 7.

CHAPTER 7

SALE, EXCHANGE, AND LEASE OF STATE LANDS

65A-7-1. Board to make rules for the sale, exchange, or lease of state lands.

The board shall establish criteria by rule for the sale, exchange, lease, or other disposition or conveyance of state lands including procedures for determining fair market value of those lands.

History: C. 1953, 65A-7-1, enacted by L. 1988, ch. 121, § 8; 1990, ch. 168, § 7.

Amendment Notes. — The 1990 amendment, effective April 23, 1990, inserted "or other disposition or conveyance."

Cross-References. — Administrative rulemaking, Title 63, Chapter 46a.

COLLATERAL REFERENCES

Journal of Energy Law and Policy. — Utah's School Trust Lands: Dilemma in Land Use Management and the Possible Effect of Utah's Trust Land Management Act, 9 J. Energy L. & Pol'y 195 (1989).

65A-7-2. Repealed.

Repeals. — Laws 1990, ch. 168, § 15 repeals § 65A-7-2, as enacted by Laws 1988, ch. 121, § 8, relating to the reservation to the state of coal and mineral deposits, effective April 23, 1990.

65A-7-3. Sales of land irrigated by federal water projects — Compliance with federal law — Withdrawal of land for federal water projects.

No land belonging to the state, within the areas to be irrigated from works constructed or controlled by the United States, may be sold except in conformity with the classification of farm units by the United States. Title to that land may not pass from the state until the applicant has complied with the provisions of the laws and regulations of the United States concerning the acquisition of the right reserved to use water from those works, produces the evidence of such compliance, and unless the area to be so irrigated is determined by due notice, given by the United States, and filed with the board. After the withdrawal of land by the United States for any irrigation project, no application for the purchase of state land within the limits of that withdrawal may be accepted, except upon the conditions prescribed in this section. Any state lands needed by the United States for irrigation works shall be sold to the United States at private sale at the appraised value.

History: C. 1953, 65A-7-3, enacted by L. 1988, ch. 121, § 8.

COLLATERAL REFERENCES

C.J.S. — 73B C.J.S. Public Lands § 178.
Key Numbers. — Public Lands ⇐ 181.

65A-7-4. Sale of state lands — Geologic hazards to be disclosed — Analysis of sale or retention required — Notice of sale — Sales procedures — Defaults.

(1) State lands may not be sold for less than the fair market value.

(2) The division shall disclose any known geologic hazard affecting property to be sold.

(3) (a) The board shall make rules that require an analysis of whether disposal or retention of all or a portion of a property interest in state lands is in the best interest of the trusts.

(b) When it is determined that the disposal of an interest in state lands is in the best interests of the applicable trust, the transaction shall be accomplished in an orderly and timely manner.

(4) (a) The board shall make rules for notice of sale or exchange of an interest in school or institutional trust lands.

(b) The rules shall require that notice of a proposed sale or exchange of all or a portion of a property interest in a specific parcel is published at least once each week for three consecutive weeks in one or more newspapers of general circulation in the county in which the land is located.

(c) Notice of the proposed sale shall be sent by certified mail, no less than 30 days prior to the sale, to each person who owns property adjoining the land proposed for sale.

(d) The notice shall give a general description of the lands proposed for sale, including the township, range, and section.

(5) (a) Any tract of state land may be subdivided into lots and sold, leased, or exchanged at not less than fair market value in accordance with a management plan or other plan designating the land to be subdivided that is approved by the board.

(b) The division may survey the tract and direct its subdivision.

(c) A plat of the survey shall be filed in the office of the county recorder of the county where the land is located and in the office of the division.

(d) When the land is subdivided for residential purposes, the state's interest shall be offered for disposal.

(6) (a) Down payments for lands sold pursuant to this chapter may not be less than one-tenth of the purchase price.

(b) This sum shall be paid in cash at the time of the sale, and the balance may not exceed 20 yearly payments.

(c) The board shall make rules providing for other specifics of sales, in accordance with accepted real estate practices.

(7) (a) Payments of principal, interest, or rental shall be made to the division, and it shall issue its receipt in duplicate.

(b) The division shall transmit the original receipt to the person making the payment and retain the duplicate.

(8) (a) Any person purchasing land upon which improvements have been made by any other person shall pay to the division, in addition to the amount of principal and interest required to be paid at the time of sale, the full appraised value of those improvements.

(b) The amount paid for improvements shall be paid by the division to the owner of the improvements, unless the owner removes the improvements within 90 days after the sale, for which purpose he has the right to go upon the land.

(c) If the owner removes the improvements within the 90 days, the board shall return the amount paid for improvements to the purchaser.

(9) Upon the sale of land, the division shall issue to the purchaser a certificate of sale which shall:

(a) describe the land purchased; and

(b) state:

(i) the amount paid;

(ii) the amount due; and

(iii) the time when the principal and interest will become due.

(10) Upon payment in full of principal and interest and the surrender of the original certificate of sale for any tract of land sold, or as provided by a rule for the partial release of property, the governor shall issue a patent to the purchaser, heir, assignee, successor in interest, or other appropriate grantee as determined by the division.

(11) (a) If a purchaser of land from the state defaults in the payment of any installment of principal or interest due under the terms of his contract of sale and the default continues for a period of more than 30 days after the due date, then the division shall notify the purchaser of:

(i) the default; and

(ii) any remedy which the division may pursue under the contract of sale.

(b) The notice shall be sent by registered or certified mail to the purchaser at his latest address as shown by the records of the division.

(c) If the default is not corrected by compliance with the requirements of the notice of default within the time provided by the notice, the division may pursue any available remedy under the contract of sale.

(d) In the event forfeited lands are sold again to the same purchaser, the sale may be by a new and independent contract without regard to the forfeited agreement.

History: C. 1953, 65A-7-4, enacted by L. 1988, ch. 121, § 8; 1990, ch. 168, § 8; 1991, ch. 283, § 12; 1993, ch. 90, § 1.

Amendment Notes. — The 1990 amendment, effective April 23, 1990, deleted former Subsection (2), which read "State lands may be sold only to citizens of the United States or those that have declared their intention to become citizens or to political subdivisions or agencies of the state, or the federal government"; designated former Subsections (3) to (13) as present Subsections (2) to (12); substituted "disposal" for "sale" and inserted "all or a portion of a property interest in" in the first sentence in present Subsection (3); substituted "the disposal of an interest in" for "sale of," inserted "applicable" before "trust" and substituted "transaction" for "sale" in the second sentence in present Subsection (3); added "or exchange of an interest in school or institutional trust lands" at the end of the first sentence in present Subsection (4); inserted "or exchange of all or a portion of a property interest in a specific parcel" and deleted "at least 30 days" after "published" in the second sentence in present Subsection (4); substituted "July 1, 1988" for "the effective date of this act" and made a stylistic change in the final sentence in present Subsection (7); substituted "shall issue a patent to the purchaser, heir, assignee, successor in interest, or other appropriate grantee as determined by the division" for "shall, under the great seal of the state, issue a patent to the purchaser, his assignee, or successor in interest" at the end of the first sentence in Subsection (11); and deleted provisions from Subsection (11) relating to sale of land on the death of a purchaser, issuance of a patent to the distributees of an estate, and the attestation and record of patents.

The 1991 amendment, effective April 29, 1991, subdivided Subsections (3), (4), (6), (7), and (10); deleted "prior to the sale in the Utah State Bulletin and" after "is published" in Subsection (4)(b); substituted "give a general description of the lands proposed for sale, including the township, range, and section" for "include a legal description of the lands proposed for sale" in Subsection (4)(d); in Subsection (6)(a), inserted "or other plan designating the land to be subdivided that is" and deleted "however, state land may not be subdivided

and leased for residential purposes" at the end; added Subsection (6)(d); deleted "including partial releases of property sold prior to July 1, 1988" at the end of Subsection (7)(b); rewrote Subsection (12) to such an extent that a detailed analysis is impracticable; and made stylistic changes and changes in phraseology.

The 1993 amendment, effective May 3, 1993, deleted former Subsections (1)(a) to (c), which provided criteria for sale for less than fair market value, deleted former Subsection (5), which allowed sale of determinable fee estates to state agencies without auction, subdivided Subsections (7) and (8), and made designation and stylistic changes.

65A-7-5. Surface leases — Preference rights of homeowners — Procedures for issuing leases.

(1) (a) Except as provided in Subsection (1)(b), the division may issue surface leases of state lands for any period up to 99 years.

(b) The division may not issue or renew surface leases for residential purposes. This restriction does not affect:

(i) residential leases that the division issued prior to July 1, 1988; or

(ii) recreational leases issued in accordance with rules of the board which shall provide that:

(A) the lands will not be disposed of during the lease term; and

(B) the lessee will not acquire a preference right or noncompetitive right to purchase the lands.

(2) This section does not apply to leases for oil and gas, grazing, or mining purposes.

(3) The division shall disclose any known geologic hazard affecting leased property.

(4) (a) A homeowner under a residential subdivision lease or unit development lease issued prior to July 1, 1988 has a noncompetitive right to purchase the surface interest on the property leased from the state for the fair market value of that property.

(b) The homeowner's request for sale shall be approved within 90 days of the request.

(c) Procedures for establishing fair market value shall be determined in accordance with rules promulgated by the board.

(5) (a) Unit development leases issued after July 1, 1988, that anticipate residential development shall contain buy-out provisions as provided by rules of the board.

(b) When unit development leases are subdivided for residential purposes, the state's interest shall be offered for disposal.

(6) (a) Surface leases may be entered into by negotiation, public auction, or other public competitive bidding process as determined by rules of the board. Requests for proposals (RFP) on state lands may be offered by the division after public notice.

(b) (i) A notice of an invitation for bids or a public auction shall, prior to the auction or acceptance of a bid, be published at least once a week for three consecutive weeks in one or more newspapers of general circulation in the county in which the lease is offered.

(ii) The notice shall be sent, by certified mail, at least 30 days prior to the auction or acceptance of a bid, to each person who owns property adjoining the state lands offered for lease.

(c) Thirty days prior to final approval, surface leases entered into through negotiation shall be published in the manner set forth in Subsection (6)(b). The notice shall include, at a minimum, a general description of the lands proposed for lease and the type of lease.

History: C. 1953, 65A-7-5, enacted by L. 1988, ch. 121, § 8; 1989, ch. 87, § 3; 1990, ch. 168, § 9; 1991, ch. 283, § 13.

Amendment Notes. — The 1989 amendment, effective April 24, 1989, substituted "99 years" for "51 years" in the first sentence of Subsection (1)(a).

The 1990 amendment, effective April 23, 1990, added "In accordance with rules adopted by the board" to the first sentence and substituted "July 1, 1988" for "the effective date of this title" in the second sentence in Subsection (1)(a); deleted the subsection designation (i) at the beginning of Subsection (1)(b) and deleted former Subsections (1)(b)(ii) and (1)(b)(iii) relating to purchase of surface interests by lessees of unit development leases and buy-out provisions in unit development leases; added present Subsection (1)(c); designated former Subsection (1)(b)(iv) as present Subsection (1)(d); deleted former Subsection (1)(c) relating to sales arrangements; designated former Subsection (1)(d) as present Subsection (1)(e); and deleted "at least 30 days" before "prior to auction" in the first sentence in Subsection (2)(b).

The 1991 amendment, effective April 29, 1991, added Subsections (1)(b)(ii) and (5); deleted former Subsections (1)(c) and (1)(e), relating to prior leases and the partial release of leased lands; and rewrote the remainder of the section to such an extent that a detailed analysis is impracticable.

65A-7-6. Lease covenants.

Each surface lease shall contain the following covenants:

(1) the lessee will promptly pay the rent annually in advance;

(2) no waste shall be committed on the land;

(3) the premises will be surrendered at the expiration of the term;

(4) the lessee will not sublet or assign without the written consent of the division;

(5) a failure to pay the agreed rent for a period of one month from the time rent is due will result in a forfeiture of the lease after notice; and

(6) where improvements have been placed on the land by any person other than the lessee, the lessee will allow the owner of the improvements to remove them within 90 days.

History: C. 1953, 65A-7-6, enacted by L. 1988, ch. 121, § 8.

Cross-References. — Right of action for waste, § 78-38-2.

COLLATERAL REFERENCES

C.J.S. — 73B C.J.S. Public Lands § 178.

65A-7-7. Exchanges of state lands — Based on equal value — Lands encumbered by a lease.

(1) In accordance with board rules, state lands or other trust assets may be exchanged for other land or other assets of at least equal value within the state held by other proprietors. Upon request of the division, the governor is authorized to execute and deliver the necessary patents to other proprietors and receive proper deeds of the lands so exchanged. No exchange will be made by the division until a deed or patent for the land received in exchange has been issued by the proprietors.

(2) Where the state lands are encumbered by an existing lease, the division, upon approval of an exchange, may with the consent of the lessee terminate the existing lease and issue a lease of the same type, on lands of comparable acreage or value, which may be acquired in the same exchange in which the leased lands are used as base. Upon acceptance of exchanged lands, the state shall honor all vested rights.

History: C. 1953, 65A-7-7, enacted by L. 1988, ch. 121, § 8; 1990, ch. 168, § 10.
Amendment Notes. — The 1990 amendment, effective April 23, 1990, inserted "or other trust assets" and "at least" in the first sentence in Subsection (1).

NOTES TO DECISIONS

Cited in National Parks & Conservation Ass'n v. Board of State Lands, 215 Utah Adv. Rep. 21 (1993).

65A-7-8. Public land grants — Director to request a survey of public lands.

The director of the division shall, with the consent of the executive director of the Department of Natural Resources and the governor, apply to the federal Bureau of Land Management for the survey of public unsurveyed lands for the purpose of satisfying the public land grants to this state, in accordance with the provisions of federal law.

History: C. 1953, 65A-7-8, enacted by L. 1988, ch. 121, § 8.

65A-7-9. Public land grants — Procedures for the selection of additional lands.

All selections of land shall be made in legal subdivisions according to the United States survey. When a selection has been made and approved by the board, it shall take action necessary to secure the approval of the proper officers of the United States and the final transfer of the lands selected to this state. The board may cancel, relinquish, or release the claims of the state to, and may reconvey to the United States, any particular tract of land erroneously listed to the state, or any tract upon which, at the time of selection, a bona fide claim has been initiated by an actual settler.

History: C. 1953, 65A-7-9, enacted by L. 1988, ch. 121, § 8.
Cross-References. — Selection under direction of secretary of interior, Enabling Act, § 13.

NOTES TO DECISIONS

ANALYSIS

Extent of right of selection.
—Rejection of state's selection.

Extent of right of selection.

State's exclusive right under Enabling Act to select unoccupied and unclaimed nonmineral lands carried with it the right to take possession and to continue in such possession, at least until someone with better right claimed lands or until lands were found to be mineral in character; and if state had this right, it could transfer right of possession to another, and person who obtained it could exclude mere intruders who had no right in or to land whatever. McKinney v. Carson, 35 Utah 180, 99 P. 660 (1909).

—Rejection of state's selection.

Where under Enabling Act state had exclusive right to select unoccupied and unclaimed nonmineral lands, and made selection, it was held that secretary of interior could not, by mere rejection of state's election, defeat rights of state, since Enabling Act conferred no such power upon him. McKinney v. Carson, 35 Utah 180, 99 P. 660 (1909).

65A-7-10. Public land grants — Transcripts of selected lands to be transmitted to county recorders.

The division shall receive clear lists to lands in this state from the Department of the Interior. Within 90 days of receipt, the division shall transmit to the county recorders a certified transcript of all lands within their respective counties selected and approved for this state under the provisions of federal law. The county recorder shall immediately, upon receipt of the certified transcripts, enter them in the records of his office.

History: C. 1953, 65A-7-10, enacted by L. 1988, ch. 121, § 8.

65A-7-11. Public land grants — Evidence of conveyance of land by the federal government.

Any certified transcript required by Section 65A-7-10, when recorded, shall be accepted in lieu of the original approved lists, and shall be sufficient evidence of the conveyance of the lands described in it by the United States to the state.

History: C. 1953, 65A-7-11, enacted by L. 1988, ch. 121, § 8.

65A-7-12. Easements on state lands — Board to make rules.

(1) The board shall establish rules for the issuance of easements on, through, and over any state land, and shall establish price schedules.

(2) A patent for state lands is subject to any existing easement or public right-of-way.

History: C. 1953, 65A-7-12, enacted by L. 1988, ch. 121, § 8; 1990, ch. 168, § 11; 1991, ch. 283, § 14.

Amendment Notes. — The 1990 amendment, effective April 23, 1990, added "and shall establisn price schedules" at the end of Subsection (1) and deleted the former second sentence therein which read "Fee schedules for easements shall be based on fair market value and established board rule."

The 1991 amendment, effective April 29, 1991, deleted former Subsection (2), relating to

vested rights of ditches, and various exempt sales and designated former Subsection (3) as present Subsection (2).

CHAPTER 8

MANAGEMENT OF FOREST LANDS AND FIRE CONTROL

65A-8-1. Division of responsibilities for fire control and the preservation of forest, watershed, and other lands — Reciprocal agreements for fire protection.

The division shall be responsible for determining and executing the best methods of protecting private and public property by preventing the origin and spread of fire on nonfederal forest, range, and watershed lands; protecting nonfederal forest and watershed areas on conservation principles; and encouraging private landowners in preserving, protecting, and managing forest and other lands throughout the state. The division shall take action it considers necessary to control wildland fires and protect life and property on the nonfederal forest, range, and watershed lands within the state. The division, under rules of the board, may enter into agreements with public or private agencies, or individuals for the express purpose of protecting, managing, or rehabilitating those lands. The division may also enter into a reciprocal agreement with any fire protection organization, including federal agencies, to provide fire protection for land and improvements for which the organization normally provides fire protection.

History: C. 1953, 65A-8-1, enacted by L. 1988, ch. 121, § 9.

Cross-References. — Preservation of forests, Utah Const., Art. XVIII, Sec. 1.
Fire prevention, Title 53, Chapter 7.

COLLATERAL REFERENCES

Am. Jur. 2d. — 35 Am. Jur. 2d Fires §§ 2 to 4; 52 Am. Jur. 2d Logs and Timber § 64.
C.J.S. — 98 C.J.S. Woods and Forests § 13.

65A-8-1.1. Leaf-It-To-Us Children's Crusade for Trees program created — Purpose — Matching funds.

(1) As used in this section, "program" means the Leaf-It-To-Us Children's Crusade for Trees program.

(2) The Leaf-It-To-Us Children's Crusade for Trees program is created within the division. The purpose of the program is to provide matching funds for the planting of trees on public lands or alongside curbs.

(3) Any student group may submit an application to the division for funds available through the program. To be eligible for the funds, the student group must provide an equal amount of money. Both the program funds and the student group's funds shall be used to plant trees on public lands or alongside curbs.

(4) If funds remain available in the program after June 30, 1992, any civic group may make an application for matching funds to be used for the purposes specified in Subsection (2).

(5) The board shall make rules for the administration of the program and place emphasis on post-planting care.

History: C. 1953, 65A-8-1.1, enacted by L. 1990, ch. 28, § 1.
Effective Dates. — Laws 1990, ch. 28 became effective on April 23, 1990, pursuant to Utah Const., Art. VI, Sec. 25.

65A-8-2. State forester.

There is created the position of state forester to carry out the provisions of this chapter. The state forester shall be a graduate of an accredited school of forestry, technically and professionally competent, and experienced in administration. The state forester shall be responsible to the director of the division. In all matters pertaining to forestry and fire control in which the state recognizes a responsibility, the state forester shall be the official representative of the board and the state.

History: C. 1953, 65A-8-2, enacted by L. 1988, ch. 121, § 9.

65A-8-3. Sales of forest and desert products.

Sales of forest products, desert products, and other products shall be made in accordance with rules adopted by the board. The division may make sales of the products up to the value of $2000 without advertising. Sales of products exceeding $2000 shall be advertised for bid pursuant to the rules of the board.

History: C. 1953, 65A-8-3, enacted by L. 1988, ch. 121, § 9.

65A-8-4. Timber lands — Reservation from sale.

The division, in accordance with rules adopted by the board and consistent with school and institutional trust responsibilities, shall set apart and reserve from sale tracts of timber lands and the timber as may be required to preserve the forests of the state, prevent the diminution of the flow of streams, and aid in the irrigation of the arid lands.

History: C. 1953, 65A-8-4, enacted by L. 1988, ch. 121, § 9; 1990, ch. 168, § 12.
Amendment Notes. — The 1990 amendment, effective April 23, 1990, inserted "and consistent with school and institutional trust responsibilities."

65A-8-5. Forestry and fire control funds.

(1) All funds available to the division to meet the costs of Subsections (a) through (d) are nonlapsing and available to the division until expended:

(a) controlling forest, range, and watershed fires;

(b) controlling insect and disease epidemics;

(c) rehabilitation or reforestation on nonfederal forest, range, and watershed lands; and

(d) for carrying on the purposes of Title 65A, Chapter 8.

(2) The collection and disbursement of all money made available to the division shall be in accordance with the rules of the Division of Finance. Monies collected by the division from fees, rentals, sales, contributions, reimbursements, and other such sources shall be deposited in the appropriate account.

History: C. 1953, 65A-8-5, enacted by L. 1988, ch. 121, § 9.
Cross-References. — Division of Finance, Title 63A, Chapter 3.

65A-8-6. Uncontrolled fires declared a public nuisance.

Any fire on forest, range, or watershed land in the state burning uncontrolled and without proper and adequate action being taken to control or prevent its spread is declared a public nuisance.

History: C. 1953, 65A-8-6, enacted by L. 1988, ch. 121, § 9.
Cross-References. — Nuisances, § 76-10-801 et seq.; Title 78, Chapter 38.

65A-8-7. Fire control — County responsibilities.

It is the duty of the counties to abate the public nuisance occasioned by uncontrolled fire on privately owned or county owned forest, range, and watershed lands. The counties may participate in the wildland fire protection system of the division and become eligible for the assistance of the state by agreement under the provisions of this chapter. The state forester shall ascertain that appropriate action is taken to control wildland fires on nonfederal forest, range, and watershed lands. The actual costs of suppression action taken by the division on privately owned lands shall be a charge against the county in which the lands lie, unless otherwise provided by cooperative agreement.

History: C. 1953, 65A-8-7, enacted by L. 1988, ch. 121, § 9.

Cross-References. — Fire protection districts, § 17A-2-601 et seq.

COLLATERAL REFERENCES

Am. Jur. 2d. — 35 Am. Jur. 2d Fires § 2 et seq.
C.J.S. — 36A C.J.S. Fires § 15.

65A-8-8. Cooperative fire protection agreements with counties.

(1) The board of commissioners of each county may enter into a cooperative agreement with the division to receive financial and supervisory cooperation and assistance of the division. No such cooperation or assistance may be received by a county until a cooperative agreement is executed by the county's board of commissioners and the division. The state forester may execute the agreements and may divide the state into fire protection districts. These districts will provide efficient and economical fire protection within the area defined. These districts may comprise one or more counties, or portions of counties to be specified in the cooperative agreements.

(2) Under the terms of the cooperative agreements, annual budgets for operation of the cooperative districts shall be filed with each participating county by the state forester. If the county approves a budget mutually acceptable to the county and the state forester, and budgets an amount for actual fire suppression costs determined to be normal by the state forester as defined by the board, the agreement shall commit the state to pay one-half those actual suppression costs that exceed the stated normal costs.

History: C. 1953, 65A-8-8, enacted by L. 1988, ch. 121, § 9.

65A-8-9. Responsibilities of county sheriffs and district fire wardens in controlling fires.

(1) In those counties not directly participating in the state wildland fire protection organization by cooperative agreement as provided in this chapter, the county sheriff shall take appropriate action to suppress uncontrolled fires on state or private lands. In all cases the sheriff shall:

(a) report, as prescribed by the state forester, on wildland fire control action;

(b) investigate and report fire causes; and

(c) enforce the provisions of this chapter either independently or in cooperation with the state forester.

(2) In those counties participating in the state wildland fire protection organization by cooperative agreement, the primary responsibility for fire control is delegated to the district fire warden, who is designated by the state forester. The county sheriff and his organization shall maintain cooperative support of the fire control organization.

History: C. 1953, 65A-8-9, enacted by L. 1988, ch. 121, § 9.

65A-8-10. Fire control on state-owned lands — Responsibilities of state agencies.

(1) It is the duty of the division to abate the public nuisance occasioned by uncontrolled fire on state-owned forest, range, and watershed lands.

(2) State agencies responsible for the administration of state-owned lands shall recognize the need for providing wildland fire protection and the responsibility for sharing the costs. Those state agencies shall annually allocate funds to the division in amounts as are determined to be fair and equitable proportionate costs for providing a basic level of fire protection. The amount of these protection costs shall be negotiated by the respective land agencies and the board.

History: C. 1953, 65A-8-10, enacted by L. 1988, ch. 121, § 9.

65A-8-11. Closed fire season — Notice — Violations — Burning permits — Personal liability — Exemptions from burning permits.

(1) The period from June 1 to October 31 of each year is a closed fire season throughout the state. The state forester may advance or extend the closed season wherever and whenever that action is necessary. That alteration of the closed season shall be done by posting the appropriate proclamation in the courthouse of each county seat for at least seven days in advance of the date the change is effective.

(2) During the closed season it is a class B misdemeanor to set on fire, or cause to be set on fire, any inflammable material on any forest, brush, range, grass, grain, stubble, or hay land without first securing a written permit from the state forester or a designated deputy, and complying fully with the terms and conditions prescribed by the permit.

(3) It is the duty of the district fire warden appointed by the state forester, or the county sheriff in nonparticipating counties, to issue burning permits using the form prescribed by the division. The board shall by rule determine the conditions for the issuance of burning permits.

(4) The burning permit shall not relieve an individual from personal liability due to neglect or incompetence. Where a fire escapes control of the permittee and necessitates fire control action or does injury to the property of another, this may be held prima facie evidence that the fire was not safe.

(5) The state forester, his deputies, and the county sheriffs shall have the right to refuse, revoke, postpone, or cancel permits when they find it necessary in the interest of public safety. A burning permit is not required for the burning of fence lines on cultivated lands, canals, or irrigation ditches where the burning will not pose a threat to forest, range, or watershed lands, provided due care is used in the control of the burning and that the individual notifies the nearest fire department of the approximate time the burning will occur. Failure to notify the nearest fire department of the burning as required by this section is a class B misdemeanor.

History: C. 1953, 65A-8-11, enacted by L. 1988, ch. 121, § 9.

Cross-References. — Reckless burning an offense, § 76-6-104.

Sentencing for misdemeanors, §§ 76-3-201, 76-3-204, 76-3-301.

NOTES TO DECISIONS

Effect of violation.

Former section authorizing the establishment of closed seasons, and forbidding the starting of a fire on any grass or range land without first securing a permit and complying fully with its conditions, was a reasonable measure designed to protect life, limb and property. Starting of fire within fire district during closed season without permit constituted negligence and person starting fire was liable for resultant damage even if a sudden wind of hurricane force united or commingled with the negligence as an efficient and concurring proximate cause. Bushnell v. Telluride Power Co., 145 F.2d 950 (10th Cir. 1944).

COLLATERAL REFERENCES

Am. Jur. 2d. — 35 Am. Jur. 2d Fires § 10.

C.J.S. — 98 C.J.S. Woods and Forests §§ 7, 13.

65A-8-12. Power of state forester to close hazardous areas — Violations of an order closing an area.

(1) When the state forester finds conditions in a given area in the state to be extremely hazardous, he is, upon approval by the board, directed to close those areas to any forms of use by the public, or to limit that use. The closure shall include the prohibition of open fires for the period of time he finds necessary.

(2) Nothing in this chapter shall prohibit any resident within the area from full and free access to his home or property, or any legitimate use by the owner or lessee of the property.

(3) The order or proclamation closing or limiting the use in the area shall set forth:

(a) the exact area coming under the order;

(b) the date when the order becomes effective; and

(c) if advisable, the authority from whom permits for entry into the area may be obtained.

(4) Any entry into or use of any area in violation of this section is a class B misdemeanor.

History: C. 1953, 65A-8-12, enacted by L. 1988, ch. 121, § 9; 1989, ch. 87, § 4.

Amendment Notes. — The 1989 amendment, effective April 24, 1989, inserted the subsection designations and made other stylistic changes throughout the section.

Cross-References. — Sentencing for misdemeanors, §§ 76-3-201, 76-3-204, 76-3-301.

CHAPTER 9
MANAGEMENT OF RANGE RESOURCES

65A-9-1. Responsibility of division to manage range resources.

The division is responsible for efficient management of all range resources on lands under their administration. This management shall be based on sound conservation principles, including practices to improve range conditions.

History: C. 1953, 65A-9-1, enacted by L. 1988, ch. 121, § 10.

65A-9-2. Grazing leases — Board to make rules — Maximum term — Treatment of leases on federal lands acquired by the state.

(1) The division may issue grazing leases on state lands under terms and conditions established by rules of the board. Those terms shall be based on the fair market value of the lease. No lease may be for a term in excess of 15 years. The division shall determine the number and kind of stock that may be grazed each year on state land, and regulate the number of days that the land may be grazed.

(2) Upon selecting, exchanging, or otherwise acquiring lands of the United States, the board shall honor all leases, permits, contracts, and terms and conditions of user agreements on United States' lands including permitted stocking rates, grazing fee levels, access rights, and all existing activities that currently or historically have dictated an understanding of usage between the land user and the federal government. Improvements of the permittee or lessee to the land shall be also honored by the state in the acquisition of federal lands.

History: C. 1953, 65A-9-2, enacted by L. 1988, ch. 121, § 10.

NOTES TO DECISIONS

ANALYSIS

Action under lease.

—Necessary parties.

Even though board was a party to a lease made under authority of former section, and had an interest in litigation in respect thereto, it was not a necessary and indispensable party to action to fix rights of parties in and to such leases. Decorso v. Thomas, 89 Utah 179, 57 P.2d 1406 (1936).

Lease of salt beds.

Former section was applied to lease of salt beds by the state land board. Decorso v. Thomas, 89 Utah 160, 50 P.2d 951 (1935), rehearing denied, 89 Utah 179, 57 P.2d 1406 (1936).

65A-9-3. Authority of division to control noxious weeds, plant species, and insects.

The division may enter into agreements with other public agencies and private landowners to cooperate in the control of noxious weeds, new and invading plant species, insects, and disease infestations on state-owned and adjacent lands.

History: C. 1953, 65A-9-3, enacted by L. 1988, ch. 121, § 10; 1989, ch. 121, § 1.

Amendment Notes. — The 1989 amendment, effective April 24, 1989, inserted "new and invading plant species."

Cross-References. — Mosquito abatement districts, § 17A-2-901 et seq.

Noxious weed control, Title 4, Chapter 17.

65A-9-4. Fees.

(1) The division shall collect a fee annually from each grazing lessee for the control of noxious weeds and new and invading plant species on range lands administered by the division.

(2) The fee shall be five cents per animal unit month (AUM).

(3) Fees collected by the division under this section shall be deposited in a restricted account within the General Fund known as the Noxious Weed Account. Monies appropriated from the Noxious Weed Account shall be used by the division for the purposes provided in Subsection (1).

History: C. 1953, 65A-9-4, enacted by L. 1989, ch. 121, § 2; 1990, ch. 168, § 13.

Amendment Notes. — The 1990 amendment, effective April 23, 1990, rewrote Subsection (3), which read "Fees collected by the division under this section shall be deposited in the General Fund as dedicated credits to be used by the division for the purposes provided in Subsection (1)."

Effective Dates. — Laws 1989, ch. 121 became effective on April 24, 1989, pursuant to Utah Const., Art. VI, Sec. 25.

CHAPTER 10
MANAGEMENT OF SOVEREIGN LANDS

65A-10-1. Authority of division to manage sovereign lands.

(1) The division shall be the management authority for sovereign lands, and may sell or lease sovereign lands but only in the quantities and for the purposes as serve the public interest and do not interfere with the public trust.

(2) Nothing in this section shall be construed as asserting state ownership of the beds of nonnavigable lakes, bays, rivers, or streams.

History: C. 1953, 65A-10-1, enacted by L. 1988, ch. 121, § 11.

65A-10-2. Recreational use of sovereign lands.

The board, with the approval of the executive director of the Department of Natural Resources and the governor, may set aside for public or recreational use any part of the lands claimed by the state as the beds of lakes or streams. Management of those lands may be delegated to the Division of Parks and Recreation, the Division of Wildlife Resources, or any other state agency.

History: C. 1953, 65A-10-2, enacted by L. 1988, ch. 121, § 11.

Cross-References. — Department of Natural Resources and subdivisions of department, § 63-34-3.

65A-10-3. Establishment of sovereign land boundaries.

(1) The division, after consultation with the attorney general and affected state agencies and with the approval of the board, shall develop plans for the resolution of disputes over the location of sovereign land boundaries.

(2) The division, after notice to affected state agencies and any person with an ownership interest in the land, may enter into agreements with owners of land adjoining navigable lakes and streams to establish sovereign land boundaries.

History: C. 1953, 65A-10-3, enacted by L. 1988, ch. 121, § 11; 1990, ch. 168, § 14; 1991, ch. 283, § 15.

Amendment Notes. — The 1990 amendment, effective April 23, 1990, rewrote this section, which read "The board may enter into contracts with public and private owners of land adjoining navigable lakes and streams establishing the boundaries between the state and private lands."

The 1991 amendment, effective April 29, 1991, designated the formerly undesignated language as Subsection (1) and rewrote the contents thereof, which read "The division, with the approval of the board, shall develop plans for the resolution of disputes over the location of sovereign land boundaries," and added Subsection (2).

65A-10-4. Advisory councils for sovereign lands.

The board, with the consent of the executive director of the Department of Natural Resources, may create an advisory council for any unit of sovereign lands. These councils shall make recommendations to and advise the board through the division with respect to the division's responsibilities under Section 65A-10-1.

History: C. 1953, 65A-10-4, enacted by L. 1988, ch. 121, § 11.

65A-10-5. Great Salt Lake Advisory Council — Purpose — Members — Chairman.

(1) The Great Salt Lake Advisory Council is created for the purpose of advising the board on establishing and coordinating programs for the development of recreation areas, flood control, wildlife resources, industrial uses, and conservation of the Great Salt Lake including the lake and its environs within the outer perimeter established by the 4217 feet elevation meander line. The council comprises 13 members appointed as follows:

(a) a representative from the Board of Business and Economic Development;

(b) a representative from the Board of Water Resources;

(c) a representative from the Board of the Utah Geological Survey;

(d) a representative from the Wildlife Board;

(e) a representative from the Board of State Lands and Forestry;

(f) a representative from the Board of Parks and Recreation;

(g) a representative from the Water Quality Board;

(h) one representative from each of the following counties: Box Elder, Davis, Salt Lake, Tooele, and Weber.

(2) The director of the division shall serve as chairman and be a nonvoting member, except as may be necessary to break a tie vote. Six members of the council constitute a quorum. Meetings may be called by the chairman or any six members of the council.

History: C. 1953, 65A-10-5, enacted by L. 1988, ch. 121, § 11; 1991, ch. 28, § 7; 1991, ch. 112, § 226; 1992, ch. 30, § 144.

Amendment Notes. — The 1991 amendment by ch. 28, effective April 29, 1991, substituted "the Utah Geological Survey" for "Geological and Mineral Survey" in Subsection (1)(c).

The 1991 amendment by ch. 112, effective July 1, 1991, substituted "comprises" for "is to be comprised of" in the second sentence of Subsection (1), and substituted "Water Quality Board" for "Water Pollution Control Committee" in Subsection (1)(g).

The 1992 amendment, effective April 27, 1992, substituted "Board of Business and Economic Development" for "Board of Industrial Promotion" in Subsection (1)(a).

Sunset Act. — See Sections 63-55-263 and

63-55-265 for the repeal date of the Great Salt Lake Advisory Council.

Cross-References. — Board of Business and Economic Development, § 9-2-202.
Board of Parks and Recreation, § 63-11-12.
Board of Water Resources, § 73-10-1.5.
Geological Survey board, § 63-73-2.
Water Quality Board, § 19-5-103.
Wildlife Board, § 23-14-2.

65A-10-6. Great Salt Lake Advisory Council — Selection of members — Terms of office — Appointment of successors.

(1) Representatives to the Great Salt Lake Advisory Council from boards and committees shall be selected by the members of those boards and committees from their membership. These representatives shall serve two years, or until their successors are appointed.

(2) Representatives from the counties shall be residents of their respective counties and shall be selected by their respective county commissions from the membership of those commissions. These representatives shall serve two years, or until their successors are appointed.

(3) Any vacancy occurring in the council shall be filled by a person having the same qualifications as the person whose office has been vacated. The person appointed to fill the vacancy shall be appointed for the unexpired term by the person or entity who made the appointment of their predecessor.

History: C. 1953, 65A-10-6, enacted by L. 1988, ch. 121, § 11.

65A-10-7. Council to make recommendations.

The council shall make recommendations to and advise the board through the division with respect to the division's responsibilities under Section 65A-10-8.

History: C. 1953, 65A-10-7, enacted by L. 1988, ch. 121, § 11.

65A-10-8. Great Salt Lake — Management responsibilities of the division.

The division has the following powers and duties:

(1) Prepare and maintain a comprehensive plan for the lake which recognizes the following policies:

(a) develop strategies to deal with a fluctuating lake level;

(b) encourage development of the lake in a manner which will preserve the lake, encourage availability of brines to lake extraction industries, protect wildlife, and protect recreational facilities;

(c) maintain the lake's flood plain as a hazard zone;

(d) promote water quality management for the lake and its tributary streams;

(e) promote the development of lake brines, minerals, chemicals, and petro-chemicals to aid the state's economy;

(f) encourage the use of appropriate areas for extraction of brine, minerals, chemicals, and petro-chemicals;

(g) maintain the lake and the marshes as important to the waterfowl flyway system;

(h) encourage the development of an integrated industrial complex;

(i) promote and maintain recreation areas on and surrounding the lake;

(j) encourage safe boating use of the lake;

(k) maintain and protect state, federal, and private marshlands, rookeries, and wildlife refuges;

(l) provide public access to the lake for recreation, hunting, and fishing.

(2) Employ personnel and purchase equipment and supplies which the Legislature authorizes through appropriations for the purposes of this chapter.

(3) Initiate studies of the lake and its related resources.

(4) Publish scientific and technical information concerning the lake.

(5) Define the lake's flood plain.

(6) Qualify for, accept, and administer grants, gifts, or other funds from the federal government and other sources, for carrying out any functions under this chapter.

(7) Determine the need for public works and utilities for the lake area.

(8) Implement the comprehensive plan through state and local entities or agencies.

(9) Coordinate the activities of the various divisions within the Department of Natural Resources with respect to the lake.

(10) Perform all other acts reasonably necessary to carry out the purposes and provisions of this chapter.

(11) Retain and encourage the continued activity of the Great Salt Lake technical team.

History: C. 1953, 65A-10-8, enacted by L. 1988, ch. 121, § 11.

CHAPTER 11

STATE FOREST AND WILDLAND DESIGNATION

Section

65A-11-1. Designation of state forests and wildlands.

Where the public interest may be served by access to and use of state lands for aesthetic or recreational purposes, and this use is found by the board not to be in conflict with the trust responsibility for those lands, the board may designate state-owned forest lands as state forests and state-owned wildlands as state wildlands. The board may authorize improvements and services which are necessary to protect the public health and welfare and the state's trust and sovereign interests. If the board finds that the trust or other state

interests in any of these designated areas are being adversely impacted by this use, the designation of the area may be withdrawn or limited by the board.

History: C. 1953, 65A-11-1, enacted by L. 1988, ch. 121, § 12.

CHAPTER 12
FLOOD CONTROL AND PREVENTION

Section
65A-12-1. Authority of board to control and prevent floods.

65A-12-1. Authority of board to control and prevent floods.

(1) The board may authorize surveys of any state lands or other areas of the state for the purpose of controlling and preventing floods. If after a survey the board concludes that floods are likely to affect any state lands, and will endanger life, health, or property, then the board shall take action necessary to control or to prevent the occurrence of those floods.

(2) For the purpose of controlling and preventing floods, the board may cooperate with public and private entities. The board may authorize construction of necessary control works on a basis of equitable participation and for these purposes may acquire any additional lands, necessary for the control or the prevention of the floods, either by purchase, exchange, lease, condemnation, or gift. The board may transfer these lands to any existing agencies or agencies created to maintain prevention or control works.

(3) The board may cooperate with the federal government in acquiring watershed lands becoming barren and susceptible to flooding.

History: C. 1953, 65A-12-1, enacted by L. 1988, ch. 121, § 13.

CHAPTER 13
LANDS GRANTED UNDER THE CAREY ACT

Section
65A-13-1. Authority of board to manage lands granted under the Carey Act.
65A-13-2. Reclamation Trust Fund — Carey Act Expense Fund.
65A-13-3. Water rights to be appurtenant to land — Lien for purchase price — Foreclosure and redemption.

65A-13-1. Authority of board to manage lands granted under the Carey Act.

The selection, management, and disposal of lands granted by Congress under the Carey Act is vested in the board, which is authorized to make rules and contracts necessary to carry out the provisions of this chapter.

History: C. 1953, 65A-13-1, enacted by L. 1988, ch. 121, § 14.

Federal Law. — The Carey Act is codified as 43 U.S.C. § 641.

Cross-References. — Administrative rulemaking, Title 63, Chapter 46a.

65A-13-2. Reclamation Trust Fund — Carey Act Expense Fund.

(1) All moneys received by the board from the sale of lands selected under the provisions of this chapter shall be deposited with the state treasurer, and any sums necessary shall be available for the payment of the expenses of the board in carrying out the provisions of this chapter.

(2) Any balance remaining over and above the expenses necessary to carry out the provisions of this chapter shall constitute a trust fund to be used only for the reclamation of other arid lands. Until there is sufficient money in the Reclamation Trust Fund, the expenses of the board in carrying out the provisions of this chapter may be paid from a Carey Act Expense Fund to be appropriated by the Legislature, and the Division of Finance shall register claims paid out of the expense fund in the order of their presentation. Whenever, except as provided in this chapter, money in the reclamation trust fund equals a claim which has been paid out of the Carey Act Expense Fund, the Division of Finance shall draw a warrant on the reclamation fund to reimburse the state for sums that have been paid out of the Carey Act Expense Fund.

(3) The board shall draw by requisition on the Division of Finance the sums necessary to pay the United States in order to obtain patent to lands accepted in this chapter, and the Division of Finance shall draw this warrant on the Reclamation Trust Fund giving precedence to sums to be paid to the United States over warrants to reimburse the state for expenses.

History: C. 1953, 65A-13-2, enacted by L. 1988, ch. 121, § 14.

65A-13-3. Water rights to be appurtenant to land — Lien for purchase price — Foreclosure and redemption.

(1) The water rights to all lands acquired under the provisions of this chapter shall attach to and become appurtenant to the land as soon as the title passes from the United States to the state. Any person furnishing water for any tract of land so acquired shall have a first and prior lien on those water rights and land upon which the water is used for all deferred payments for such water rights. That lien is to be in all respects prior to any and all other liens created or attempted to be created by the owner and possessor of the

land. That lien shall remain in force and effect until the last deferred payment for the water rights is fully paid and settled according to the terms of the contract under which such water rights were acquired.

(2) The contract for the water rights upon which the lien is founded shall be recorded in the office of the county recorder of the county where the land is situated. Upon default of any deferred payments secured by any lien under the provisions of this chapter, the person holding the lien may foreclose the lien according to the terms and conditions of the contract granting and selling to the settler the water rights. Foreclosure shall be in the manner in which mortgages are foreclosed in this state. The settler shall have the right, within one year from the date of foreclosure as provided in this section, to redeem the land and water rights, by payment of the sum of deferred payment with interest at not to exceed 12% per annum, with accrued cost of maintenance.

History: C. 1953, 65A-13-3, enacted by L. 1988, ch. 121, § 14.