

Effective 5/1/2024

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

- (1) As used in this section:
- (a) "Great Salt Lake element or mineral" means:
 - (i) a rare earth element;
 - (ii) a trace element or mineral; or
 - (iii) a chemical compound that includes a rare earth element or trace element or mineral.
 - (b) "Operator" means, for purposes of provisions applicable to the extraction of a Great Salt Lake element or mineral, a person qualified to do business in the state who is pursuing the extraction of a Great Salt Lake element or mineral.
 - (c) "Rare earth element" is one of the following ores, minerals, or elements located in the brines or the sovereign lands of the Great Salt Lake:
 - (i) lanthanum;
 - (ii) cerium;
 - (iii) praseodymium;
 - (iv) neodymium;
 - (v) samarium;
 - (vi) europium;
 - (vii) gadolinium;
 - (viii) terbium;
 - (ix) dysprosium;
 - (x) holmium;
 - (xi) erbium;
 - (xii) thulium;
 - (xiii) ytterbium;
 - (xiv) lutetium; and
 - (xv) yttrium.
 - (d) "Trace element or mineral" means an element or mineral that is located in the brines or the sovereign lands of the Great Salt Lake that is not in production by July 1, 2020, and for which the state has not received a royalty payment by July 1, 2020.
- (2)
- (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, except that for leases related to the Great Salt Lake the leases shall include stipulations for simultaneous operations that will not interfere with, impede, limit, or require changes to pre-existing rights.
 - (c) No more than one lease may be issued for the same resource on the same land.
 - (d) The division shall require a separate royalty agreement for extraction of Great Salt Lake elements or minerals from brines of the Great Salt Lake when:
 - (i) a mineral lease, a royalty agreement, or both that are in effect before the operator seeks to extract a particular Great Salt Lake element or mineral do not expressly include the right to extract the particular Great Salt Lake element or mineral; or

- (ii) the proposed operation will use brines from the Great Salt Lake, but will not occupy sovereign lands for the direct production of Great Salt Lake elements or minerals other than for incidental structures such as pumps and intake and outflow pipelines.
- (3)
- (a) Each mineral lease issued by the division shall provide for an annual rental of not less than \$1 per acre per year, except that a mineral lease issued by the division involving the extraction of a Great Salt Lake element or mineral from brines in the Great Salt Lake shall provide for an annual rental of not less than \$100 per acre per year.
 - (b) However, a lease may provide for a rental credit, minimum rental, or minimum royalty upon commencement of production, as prescribed by rule.
- (4) The primary term of a mineral lease may not exceed:
- (a) 20 years for oil shale and tar sands; and
 - (b) 10 years for oil and gas and any other mineral.
- (5)
- (a) In addition to the requirements of Chapter 17, Part 3, Mineral or Element Extraction, and subject to the other provisions of this Subsection (5), for a mineral lease or royalty agreement involving the extraction of Great Salt Lake elements and minerals from brines in the Great Salt Lake, the division shall ensure that the following terms, as applicable, are included:
 - (i) an extraction operation or extraction method shall adhere to commercially viable technologies that minimize water depletion;
 - (ii) a provision authorizing the division to curtail or limit Great Salt Lake element or mineral production at any time the condition of the Great Salt Lake reaches the emergency trigger, as defined in Section 65A-17-101;
 - (iii) a provision authorizing the division to withdraw lands, operations, extraction methods, or technologies from Great Salt Lake element or mineral production or Great Salt Lake element or mineral operations;
 - (iv) a provision allowing the division to require an existing operator to use commercially viable, innovative technologies to minimize water depletions caused by the planned mineral extraction as a condition of continued operations if the technology:
 - (A) has been successfully implemented on a commercial scale in similar circumstances;
 - (B) has been shown to be economically viable; and
 - (C) is reasonably compatible with the operator's overall extraction process; and
 - (v) a provision that provides for the reductions of the following after the primary term of a mineral lease or royalty agreement:
 - (A) the acreage subject to the mineral lease by the acreage the operator does not use to extract a Great Salt Lake element or mineral during the primary term of the mineral lease under conditions that do not constitute waste, as defined in Section 65A-17-101; and
 - (B) the volume of water that the operator may divert from the Great Salt Lake, by the volume of water that the operator does not use during the longer of the primary term of the mineral lease or seven years if the operator fails to use the volume of water for a beneficial use, except if the failure to use the volume of water is as a result of a reduction of water usage under Section 73-33-201 or is excused under Section 73-1-4.
 - (b) If under Subsection (5)(a)(iv) the division requires an existing operator to use a commercially viable, innovative technology, the division may not require use of a technology not yet proven to be commercially viable on the Great Salt Lake and may not require implementation of the technology to begin until after a reasonable period determined by the division that is at least five years but does not exceed seven years.
- (c)

- (i) If the volume of water that the operator may divert from the Great Salt Lake is reduced under Subsection (5)(a)(v), the division shall pursue a judicial action to declare all or a portion of the water right forfeited under Subsection 73-1-4(2).
 - (ii) If the division secures the reduction under this Subsection (5)(c), the division shall petition the state engineer to order a reversal of the application approval in accordance with the terms of the reduction or forfeiture of the water right.
 - (iii) Nothing in this Subsection (5) modifies or otherwise affects Section 73-1-4 or 73-3-30.
- (6)
- (a) Before issuing a royalty agreement under Subsection (2)(d), the division may require an operator to engage in a feasibility assessment and may issue a royalty agreement without compliance of Subsection (5)(a) if the agreement:
 - (i) has a term of 12 months or less; and
 - (ii) limits use of brines from the Great Salt Lake to a maximum of five acre-feet during the term of the agreement.
 - (b) The division may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for implementing this Subsection (6).
- (7)
- (a) Upon nomination from a prospective operator, the division shall by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establish a royalty rate and calculation methodology for a Great Salt Lake element or mineral that:
 - (i) provides for a full and fair return to the state from the production of the Great Salt Lake element or mineral;
 - (ii) is consistent with market royalty rates applicable to the production of the Great Salt Lake element or mineral or of the production of oil and gas;
 - (iii) provides a base royalty rate;
 - (iv) provides a reduced royalty rate from the royalty rate under Subsection (7)(a)(iii) if the royalty agreement:
 - (A) relates to a non-evaporative method of producing the Great Salt Lake element or mineral; or
 - (B) provides an incentive to use commercially viable, innovative technology to minimize water depletion and evaporation as determined by the division;
 - (v) provides a reduced royalty rate from the royalty rate under Subsection (7)(a)(iii) if the prospective operator for the extraction of lithium demonstrates to the satisfaction of the division that the prospective operator has an agreement with a person who will process or manufacture a product in this state, exclusive of any primary or secondary lithium processing or manufacturing, using the lithium extracted by the prospective operator; and
 - (vi) subject to Subsection (7)(e), provides for a royalty rate that is based on the highest market value prevailing at the time of the sale or disposal of the following:
 - (A) the Great Salt Lake element or mineral; or
 - (B) a product the lessee produces from the Great Salt Lake element or mineral.
 - (b) Before entering into a royalty agreement permitting the extraction of Great Salt Lake elements or minerals, the operator shall:
 - (i) demonstrate the proposed operation's commercial viability;
 - (ii) certify before operation begins that the operator is not negatively impacting the biota or chemistry of the Great Salt Lake; and
 - (iii) obtain the approval of the division and the Department of Environmental Quality that the certification supports a finding that the operation will not negatively impact the biota or chemistry of the Great Salt Lake.

- (c) A new mineral lease for a Great Salt Lake element or mineral in production in the Great Salt Lake as of May 3, 2023, is subject to new royalty rates due to emergent technologies.
 - (d) An operator who as of July 1, 2020, had a mineral lease with the division but not a royalty agreement and who is subject to a severance tax under Subsection 59-5-202(5) shall pay a royalty under this section in addition to the severance tax.
 - (e) The royalty rate described in Subsection (7)(a)(vi) may not be reassessed during the primary term of an initial royalty agreement issued under this section, but may be reassessed upon the conclusion of the primary term.
- (8)
- (a) Except as provided in Subsection (8)(b), an operator who extracts a Great Salt Lake element or mineral from tailings from the production of Great Salt Lake elements or minerals from brines in the Great Salt Lake is subject to this section to the same extent as an operator producing a Great Salt Lake element or mineral from brines in the Great Salt Lake.
 - (b) An operator that, as of May 3, 2023, has an agreement to recover a Great Salt Lake element or mineral from existing tailings, discarded material, end-use products, or waste products produced from the evaporation and processing of Great Salt Lake brines is not subject to this section, except as to the payment of royalties set by the division under Subsection (7)(a). The division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, regarding the issuance and termination of a royalty agreement for mineral extraction from tailings, discarded material, end-use products, or waste products produced from the evaporation and processing of Great Salt Lake brines.
 - (c) An operator that, as of May 3, 2023, has an underlying agreement to recover a Great Salt Lake element or mineral shall obtain an additional agreement for any additional Great Salt Lake element or mineral produced from the tailings, discarded material, end-use products, or waste products newly produced under the underlying agreement. The additional agreement is subject to this section.
- (9) The division shall annually report to the Natural Resources, Agriculture, and Environmental Quality Appropriations Subcommittee regarding the amount of money collected under this section from royalties provided for in Subsection (7).
- (10)
- (a) In the issuance of royalty agreements for the extraction of lithium from the Great Salt Lake, the division shall prioritize applicants that do not use evaporative concentration of Great Salt Lake brines in any stage of the extractive process.
 - (b) The division may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, creating a process for implementing this Subsection (10).
- (11) Except in relationship to mineral leases related to the Great Salt Lake, the division 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.
- (12) For the purposes of Subsection (11), diligent operations with respect to oil, gas, and other hydrocarbon leases may include cessation of operations not in excess of 90 days in duration.
- (13)
- (a) The division shall study and analyze each mineral lease and mineral royalty agreement issued on the Great Salt Lake and compare and evaluate whether the mineral leases and royalty agreements are representative of current market conditions. As part of this study, the division shall:
 - (i) make the following determinations for mineral leases:
 - (A) whether the entire surface area described within the mineral lease is being used; and
 - (B) whether the annual lease payments are representative of current market conditions; and
 - (ii) for royalty agreements, perform studies and comparative analyses to determine whether the state is receiving royalty rates consistent with current market conditions.
 - (b) By no later than the 2023 November interim meeting, the division shall report the division's findings of the study required by this Subsection (13) to the Natural Resources, Agriculture, and Environment Interim Committee.
- (14) The division may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for implementing this section.
- (15) The provisions in this section related to extraction of a Great Salt Lake element or mineral under a mineral lease or royalty agreement apply to a mineral lease or royalty agreement in effect on May 1, 2024, and any mineral lease or royalty agreement entered into after May 1, 2024.

Amended by Chapter 25, 2024 General Session