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

**R652-21. Great Salt Lake Mineral Extraction.**

**R652-21-100. Authority.**

Rule R652-21 is promulgated pursuant to Sections 65A-1-4, 65A-6-2, 65A-6-4, 65A-17-102, 65A-17-201, 65A-17-202, 65A-17-203, 65A-17-302, 65A-17-303, 65A-17-304, and 65A-17-306.

**R652-21-100.1. Purpose.**

The purpose of Rule R652-21 is to implement rules consistent with the purpose and intent of the Legislature's amendments to Section 65A-6-4 regarding Great Salt Lake Elements and Minerals and the enactment of Title 65A, Chapter 17, Great Salt Lake Preservation Act.

**R652-21-200. Definitions.**

(1) "Applicant" means any person submitting a Feasibility Application or Operations Application to the division.

(2) "Base Royalty Rate" means the royalty rate established, by the division, for a Great Salt Lake Element or Mineral before any Royalty Rate Reductions are applied.

(3) "Biota" means all plants, fungi, animals, protists, bacteria, and archaea in Great Salt Lake.

(4) "Bond" or "Bonding" means both full-cost bonding over sovereign lands, executed with the division, and reclamation bonding, executed with the Division of Oil, Gas & Mining.

(5) "Brine Depletion" means the volume of Brine Water consumed through processing and operations, calculated by subtracting the volume of Returned Water from the volume of Brine Water.

(6) "Brine Water" means water diverted from Great Salt Lake.

(7) "Chemistry" means the properties, composition, and structure of the elements and compounds, and interactions thereof, making up the waters, brines, and substrate of Great Salt Lake.

(8) "Commercial Viability" means the Applicant:

(a) provides proof of all pending or acquired water rights and related appropriations necessary for operations or a detailed plan demonstrating how the Applicant will acquire water rights necessary for operations once in receipt of an Operations Royalty Agreement;

(b) provides the requisite information to substantiate the efficacy and longevity of the technology selected for operations;

(c) provides the requisite information to substantiate an operation with a Life of Mine of at least 20 years;

(d) provides the requisite financial information to substantiate the Applicant is capable of fulfilling its royalty obligations for the proposed Life of Mine;

(e) has obtained any easements, permits, approvals, agreements, or other documents required for the entirety of operations for the Life of Mine;

(f) has the requisite Bonding in place for upland property and sovereign lands; and

(g) demonstrates the ability to produce, at commercial scale, a First Marketable Product, as defined by Rule R652-21.

(9) "Commercially Viable Technology" means the same as that term is defined in Subsection 65A-17-101(2).

(10) "Common Source of Supply" means the same as that term is defined in Subsection 65A-17-101(3).

(11) "Cooperative Agreement" means an agreement between two or more Operators to coordinate regarding the extraction of Great Salt Lake Elements and Minerals.

(12) "Correlative Right" means the same as that term is defined in Subsection 65A-17-101(4).

(13) "Emergency Trigger" means the same as that term is defined in Subsection 65A-17-101(5).

(14) "Emergent Technology" means a new technology or a new use, modification, or improvement of an existing technology that has not been deployed as an extractive method for mineral recovery on Great Salt Lake before May 3, 2023. For purposes of this definition, "Emergent Technologies" is synonymous with "Innovative Technologies."

(15) "Evaporative Technology" means a mineral operation that partially or wholly utilizes engineered evaporative processes at any stage of the extractive process to develop or extract a Great Salt Lake Element or Mineral from the waters, brines, or substrates of Great Salt Lake.

(16) "Externally Sourced Water" means water diverted from sources upland or above the Great Salt Lake Meander Line and used for processing and operations.

(17) "Feasibility Assessment" means the process, before the execution of an Operations Royalty Agreement with the division, for determining whether a Great Salt Lake Operator can demonstrate Commercial Viability and the proposed operation will have no Negative Impacts to Great Salt Lake Biota and Chemistry.

(18) "Final Royalty Rate" means the royalty established in the Operations Royalty Agreement, by the division, after applying all relevant and proven Royalty Rate Reductions. The Final Royalty Rate shall be a Variable-Rate Royalty.

(19) "First Marketable Product" means the form of a Great Salt Lake Element or Mineral, as determined by the division, to which the Base Royalty Rate attaches.

(20) "Great Salt Lake Element or Mineral" means:

(a) a rare earth element;

(b) a trace element or mineral; or

(c) a chemical compound that includes a rare earth element or trace element or mineral.

(21) "Great Salt Lake Meander Line" means the same as that term is defined in Subsection 65A-17-101(7).

(22) "Great Salt Lake Mineral Resource" means any Great Salt Lake Element or Mineral that can be produced in Paying Quantities.

(23) "Great Salt Lake Natural Resources" means the Biota, water resources and water quality, the fishery and recreational resources, the wetlands and wildlife resources, and any other naturally occurring resource within the Great Salt Lake Meander Line.

(24) "Great Salt Lake Operator" or "Operator" means a person or business entity, qualified to do business in Utah pursuing the extraction of a Great Salt Lake Element or Mineral.

(25) "Healthy Physical and Ecological Condition" means the same as that term is defined in Subsection 65A-17-101(9).

(26) "Life of Mine" means the anticipated duration an Operator can produce a Great Salt Lake Element or Mineral in Paying Quantities.

(27) "Mitigation Water" means the water diverted from sources other than Great Salt Lake and delivered to Great Salt Lake to compensate for Brine Depletion. Mitigation Water may not include wastewater reuse.

(28) "Mitigation Plan" means the same as that term is defined in Subsection 65A-17-101(11).

(29) "Multiple Mineral Development Area" means the same as that term is defined in Subsection 65A-17-101(12).

(30) "Negative Impact" means a substantive and material adverse impact or disturbance in the singular or cumulative instance, caused or created by one or more Operator, to the Biota or Chemistry of Great Salt Lake, as determined by the division.

(31) "Non-Evaporative Technology" means a mineral operation that does not utilize evaporative processes at any stage of the extractive process to develop or extract a Great Salt Lake Element or Mineral from the waters, brines, or substrates of Great Salt Lake.

(32) "Operations Royalty Agreement" means an agreement entered into between an Operator and the division authorizing and governing the extraction of a Great Salt Lake Element or Mineral.

(33) "Operational Waste" means garbage, refuse, sludge, or other similar material, including solid, liquid, semi-solid, or contained gaseous material generated from the extraction or production of Great Salt Lake Elements or Minerals.

(34) "Paying Quantities" means the same as that term is defined in Subsection 65A-17-101(15).

(35) "Returned Water" means any water discharged into Great Salt Lake from operations relating to the extraction of Great Salt Lake Element or Minerals.

(36) "Royalty Rate Deduction" means the percent reduction, contained in Section R652-21-1004, for which an Operator may apply to lower the Base Royalty Rate.

(37) "Sale Price" means the market price to which any royalty attaches, at the point which any Great Salt Lake Element or Mineral is extracted and processed on Great Salt Lake, and is exclusive of any transportation, third-party processing, or other external costs.

(38) "Sampling Royalty Agreement" means a short-term agreement entered into between an Operator and the division, during the Feasibility Assessment, authorizing and governing the extraction of a fixed volume of Great Salt Lake water or brine.

(39) "Secondary Material" means existing tailings, discarded material, end-use products, or waste products produced from the evaporation and processing of Great Salt Lake brines. Products containing Great Salt Lake Elements or Minerals which remain held in suspension or in evaporation ponds are not within the meaning of this definition.

(40) "Secondary Recovery Process" means the process for recovering Great Salt Lake Elements or Minerals from Secondary Material.

(41) "Secondary Recovery Royalty Agreement" means an agreement entered into between an Operator and the division authorizing and governing the production of a First Marketable Product from a Secondary Recovery Process.

(42) "Self-Certification" means a representation by an Operator affirmatively stating the contents provided are correct, in compliance with the Unsworn Declaration Act, Section 78B-18a-101.

(43) "Total Water" means the sum of Externally Sourced Water and Brine Water.

(44) "Variable-Rate Royalty" means a royalty rate that adjusts depending on the value of the commodity being sold.

(45) "Waste" means the same as that term is defined in Subsection 65A-17-101(18).

(46) "Water Depletion" means the volume of Total Water consumed through processing and operations, calculated by subtracting the volume of Returned Water from the volume of Total Water.

(47) All other definitions in Sections 65A-6-4 and 65A-17-101 apply to Rule R652-21.

**R652-21-300. Nomination Process.**

(1) An existing or prospective Operator may, at any time, file a nomination for rulemaking with the division to establish a royalty rate and calculation methodology for any Great Salt Lake Element or Mineral that does not have an established royalty rate and calculation methodology.

(2) Upon such nomination, the division shall, by rule, establish a royalty rate and calculation methodology for the Great Salt Lake Element or Mineral nominated.

**R652-21-400. Secondary Recovery.**

An Operator may enter into a Secondary Recovery Royalty Agreement with the division for the processing and sale of Secondary Material in existence before the enactment of Rule R652-21.

**R652-21-401. Location of Secondary Material.**

Any Secondary Material considered for a Secondary Recovery Process may not be located on sovereign lands or within evaporation ponds associated with Great Salt Lake mineral extraction.

**R652-21-402. Secondary Recovery Application.**

(1) An Operator shall submit a Secondary Recovery Application on the form provided by the division.

(2) The division has the discretion to approve, conditionally approve, deny, or consider incomplete any Secondary Recovery Application.

(3) Applicants shall meet the minimum qualifications set forth in Section R652-3-200.

(4) An Operator shall request a pre-filing meeting with the division at least 30 days before submitting an application for a Secondary Recovery Royalty Agreement.

(5) The division may waive or shorten the requirement for a pre-filing meeting request.

**R652-21-403. Secondary Recovery Royalty Agreement.**

(1) Before any sale occurs, an Operator shall provide a Self-Certification and report the quantity, in existence before the effective date of Rule R652-21, of Secondary Material for which they intend to utilize Secondary Recovery Processes.

(2) A Feasibility Assessment is not required for a Secondary Recovery Royalty Agreement, so long as any Operational Waste, by-products, or discharges associated with the processing are not released onto sovereign lands or other hydrologically connected resources.

(3) An Operator shall enter into a Feasibility Assessment before continuing to extract or process, under a royalty agreement other than a Secondary Recovery Royalty Agreement, a Great Salt Lake Element or Mineral from any tailings, discarded material, end-use products, or waste products beyond those reported in Subsection R652-21-403(1).

(4) A Secondary Recovery Royalty Agreement shall terminate when the last Secondary Material, as reported in Subsection R652-21-403(1), is processed and sold.

(5) Any Great Salt Lake Element or Mineral extracted or evaporated after the effective date of Rule R652-21 is not eligible for processing and sale under a Secondary Recovery Royalty Agreement.

**R652-21-500. Feasibility Assessment.**

To be eligible for an Operations Royalty Agreement, an Operator shall complete a Feasibility Assessment.

**R652-21-501. Purpose.**

The purpose of such Feasibility Assessment is to:

(1) inform the division's continuing assessment and determination of the Commercial Viability of a proposed operation; and

(2) inform the division of impacts the proposed operation would have on the Biota and Chemistry of Great Salt Lake.

**R652-21-502. Feasibility Application.**

(1) An existing or prospective qualified Applicant, as defined in Section R652-3-200, shall submit a Feasibility Application on the form provided by the division.

(2) An Operator shall request a pre-filing meeting with the division and with the Division of Water Quality at least 30 days before submitting an application for a Feasibility Assessment.

(3) The division and Division of Water Quality may jointly waive or shorten the requirement for a pre-filing meeting request.

(4) Before the division and an Operator may enter into a Sampling Royalty Agreement, an Operator shall submit the following information in its Feasibility Application to the division:

(a) applicant information, including:

(i) legal name, permanent address, telephone number, and email address of the Operator;

(ii) name and permanent address of the Operator's registered agent in the Utah;

(iii) name, address, email address, and telephone number of the primary contact, including the person to whom requests for additional information should be addressed;

(iv) signature of the Operator, signed by an officer of the corporation, if applicable; and

(v) a description of the Operator's experience and knowledge predicating the Operator's ability to commercially produce elements or minerals from the brines of Great Salt Lake; and

(vi) information regarding the nature and status of any existing contractual disputes with the State, regulatory actions, or alleged noncompliance, including plans to resolve or remedy such disputes or alleged noncompliance;

(b) the requirements established in Subsection R317-16-3(4);

(c) Self-Certification the Operator's planned Feasibility Assessment operations will have no Negative Impact on the Biota and Chemistry of Great Salt Lake;

(d) additional project information, including:

(i) types of technology to be employed;

(ii) a detailed description of the Operator's plan and operations for extraction during the Feasibility Assessment;

(iii) identification of the Royalty Rate Deduction the Operator intends to pursue, if applicable;

(iv) anticipated surface use occupancy and ownership thereof, including a description of any infrastructure to be placed on Great Salt Lake sovereign land and a description of upland development necessary for operations;

(v) proof of Bonding for any disturbance during the Feasibility Assessment to sovereign land and uplands;

(vi) a description of the Operator's plan for any necessary reclamation action in the Feasibility Assessment area following termination of the Feasibility Assessment;

(vii) a detailed description of the Operator's plan for the location, processing, and storage of Great Salt Lake Elements or Minerals during the Feasibility Assessment;

(viii) copies of any easements, permits, approvals, agreements, applications or other documents which have been or will be submitted to other agencies or have been issued by other agencies for initiation of the Feasibility Assessment operations;

(ix) proof of all pending or acquired water rights and related appropriations necessary to perform the Feasibility Assessment or a detailed plan demonstrating how the Applicant will acquire water rights necessary to perform the Feasibility Assessment once in receipt of a Sampling Royalty Agreement;

(x) a detailed description of any agreements, contracts, options, and other financial arrangements entered into by the Operator and a third-party relating to both the Feasibility Assessment and planned extraction operations;

(xi) all available evidence and supporting documentation establishing Commercial Viability, including an estimated projection of the operation's Life of Mine and Great Salt Lake Element or Mineral production during the Feasibility Assessment; and

(xii) the projected operational recovery rate for the Great Salt Lake Element or Mineral.

(5) If Operator has an existing royalty agreement, it is within the division's discretion to require additional showings regarding the Operator's standing and compliance with any existing division obligations.

(6) At any point during review of a Feasibility Application, the division may request additional relevant information from the Applicant.

(7) To remain in consideration for a Sampling Royalty Agreement, the Applicant shall provide such information in a reasonable time, specified by the division.

(8) Within 60 days of receiving a Feasibility Application, the division shall notify the Applicant in writing of the status of the Application.

(9) The division may issue a written decision:

(a) approving the Feasibility Application as submitted;

(b) denying the Feasibility Application as submitted;

(c) approving the Feasibility Application, with conditions determined by the division; or

(d) considering the Feasibility Application incomplete and providing the Applicant with a list of missing information, at which point the Applicant may either provide the missing information or re-submit the Feasibility Application.

(i) Applicants who submit incomplete Feasibility Applications shall be allowed 60 days to provide the required information.

(ii) Incomplete applications not remedied within the 60 day period may be denied with the application fee forfeited to the division.

(10) Upon submission of a Feasibility Application, any Operator wishing to enter into a Cooperative Agreement shall obtain a list of all existing Operators from the division and notify each existing Operator of its intention to enter into a Cooperative Agreement.

**R652-21-503. Feasibility Assessment Term.**

(1) The Feasibility Assessment term shall be up to nine months, unless otherwise determined by the division.

(a) A three-month extension may be granted by the Director upon good cause shown by the Operator.

(b) A request for extension shall be submitted to the division upon the form provided by the division at least one month before the expiration of the Feasibility Assessment term.

(2) The Feasibility Assessment shall terminate if:

(a) nine months have passed without the Director's approval of an extension, whether or not an Operations Royalty Agreement has been executed;

(b) an Operations Royalty Agreement is executed before the Feasibility Assessment Term expires;

(c) the Director finds there is not good cause shown to grant an extension to the Operator;

(d) the Director finds the Feasibility Assessment has resulted or will imminently result in Negative Impacts to Great Salt Lake; or

(e) the Director finds there is no possibility of the operation substantiating Commercial Viability.

(3) The Director's findings substantiating termination of a Feasibility Assessment shall be documented in a written decision.

**R652-21-504. Feasibility Assessment Surface Use Authorization.**

(1) Before an Operator begins a Feasibility Assessment, an Operator may obtain from the division a non-assignable Right of Entry for the temporary use and occupation of Great Salt Lake sovereign lands for purposes necessary to complete the Feasibility Assessment.

(2) During the term of the Feasibility Assessment, the Operator may not cause any surface disturbance and may only place non-permanent improvements on the surface which are not affixed and do not cause damage to the surface.

(3) The term of a Right of Entry, obtained by an Operator under this section may not exceed the term of the Sampling Royalty Agreement.

(4) A Right of Entry for a Feasibility Assessment shall terminate within one year of issuance or upon termination of a Sampling Royalty Agreement as described in Section R652-21-505, whichever is sooner.

**R652-21-505. Sampling Royalty Agreement.**

(1) Upon the division's approval of a Feasibility Application, the Operator shall obtain a Sampling Royalty Agreement from the division.

(2) Except for an agreement providing for a royalty rate for extraction of a Great Salt Lake Element or Mineral entered into before May 3, 2023, an Applicant shall pay a minimum royalty of $5,000 per month as the Sampling Royalty Rate.

(3) A Sampling Royalty Agreement shall terminate upon the occurrence of any event specified in Section R652-21-503.

(4) Any Great Salt Lake Element or Mineral extracted or produced under a Sampling Royalty Agreement shall be accounted for and not sold until execution of an Operations Royalty Agreement.

(5) Any Great Salt Lake Element or Mineral extracted or produced under a Sampling Royalty Agreement may be utilized by third parties for testing and evaluation.

(6) The Sampling Royalty Rate shall be paid to the state within 30 days of the end of each fiscal quarter.

(7) An Applicant shall, in compliance with Subsection 73-3-8(3), file a copy of its Sampling Royalty Agreement with the Division of Water Rights.

(8) A Sampling Royalty Agreement does not vest an Applicant with any rights pertaining to an Operations Royalty Agreement.

**R652-21-506. Feasibility Assessment Reporting and Record Keeping.**

(1) During the term of the Feasibility Assessment, an Operator shall perform the necessary sampling and testing on at least a monthly basis.

(2) During the term of the Feasibility Assessment, an Operator shall submit a feasibility report to the division within 30 days of the end of each fiscal quarter.

(3) A feasibility report shall include:

(a) a production report, including the volume and weight of any Great Salt Lake Element or Mineral extracted or produced through the Feasibility Assessment;

(b) any new evidence and supporting documentation, beyond submissions provided in the Feasibility Application, establishing Commercial Viability for the Life of Mine;

(c) any new evidence and supporting documentation, beyond submissions provided in the Feasibility Application, supporting the Operator's ongoing ability to provide Self-Certification that Feasibility Operations have no Negative Impact to Biota and Chemistry;

(d) Total Water, Brine Depletion, and Water Depletion data based on metering data;

(e) if applicable, detailed information on the amount and chemistry of all substances added during processing; and

(f) any other relevant information required by the division.

(4) Upon request by the division, an Operator shall provide any additional relevant information to the division in a reasonable amount of time, as determined by the division.

(5) An Operator with a Feasibility Royalty Agreement shall keep accurate records of the volume and weight of any Great Salt Lake Element or Mineral extracted.

(6) Operators shall keep records of the volume and weight of any Great Salt Lake Element or Mineral extracted for at least five years and shall be available for inspection upon request by the division.

(7) Upon either the termination of a Feasibility Assessment or the filing of an Operations Application, whichever occurs first, an Operator shall file a final feasibility report with the division.

(8) The final feasibility report shall include:

(a) the Operator's quantitative and qualitative assessment of successes and limitations encountered by the Operator during the term of the Feasibility Assessment;

(b) the Operator's detailed plan for any necessary reclamation action following termination of the Feasibility Assessment;

(c) any material changes to the Required Showings submitted in the Feasibility Application;

(d) a summary of findings establishing Operator's Feasibility Assessment had no Negative Impact on the Biota and Chemistry of Great Salt Lake; and

(e) any additional relevant information requested by the division, provided the division gave sufficient advance notice of the need for such information.

**R652-21-507. Cost Recovery.**

(1) The division, during the Feasibility Assessment, shall recover reasonable costs incurred for monitoring, inspections, and application processing.

(2) The division may contract with a third party to independently verify any information submitted to the division.

**R652-21-600. Common Source of Supply Designation.**

(1) Pursuant to Section 65A-17-303, and based on the existence of numerous Great Salt Lake Elements or Minerals which can be extracted from Great Salt Lake's water or brine, the division designates the entire mineral estate held in suspension within the water and brines of Great Salt Lake as a Common Source of Supply.

(2) As a Common Source of Supply, the division shall manage and plan for the overall development of Great Salt Lake's Mineral Resources in consideration of each Operator or separate operation on Great Salt Lake.

**R652-21-601. Statement of Public Interest and Establishment of Multiple Mineral Development Principles.**

Pursuant to Section 65A-17-303 and as the executive management authority over the state's sovereign lands under Section 65A-10-1, the division declares it is in the public interest to foster, encourage, promote, and balance the responsible development, production, and utilization of Great Salt Lake Elements or Minerals in such a manner as to:

(1) prevent Waste from arising from concurrent extractive operations;

(2) ensure the greatest ultimate recovery of Great Salt Lake Elements or Minerals is obtained without unduly interfering with other concurrent extractive operations;

(3) establish the equal dignity of rights to the Common Source of Supply while protecting the Correlative Rights of all owners having rights to the Common Source of Supply and preserving the state's fiduciary obligation to manage public trust assets; and

(4) encourage Emergent Technologies to protect Great Salt Lake's overall ecological integrity while simultaneously ensuring the greatest possible economic recovery for Great Salt Lake Operators and the State.

**R652-21-602. Effect of Designation of Great Salt Lake as a Multiple Mineral Development Area.**

(1) Pursuant to Section 65A-17-303, Great Salt Lake is designated as a Multiple Mineral Development Area.

(2) As a Multiple Mineral Development Area, Great Salt Lake Element or Mineral Operations shall comply with all applicable law governing individual operations and Multiple Mineral Development Areas.

**R652-21-603. Cooperative Agreements and Mineral Lease and Royalty Agreement Integration.**

(1) A Great Salt Lake Operator shall enter into and maintain a Cooperative Agreement with existing Operators.

(2) Entering into a Cooperative Agreement with all other Great Salt Lake Operators is a condition precedent to the division issuing an Operations Royalty Agreement and is a condition for continued operations.

(3) In addition to any other negotiated term or condition, each Cooperative Agreement executed by Great Salt Lake Operators shall clearly and conspicuously provide any rights, responsibilities, and obligations contained in the Cooperative Agreement are subject to the public trust as referenced in Section R652-2-200.

(4) A Cooperative Agreement shall define and address the requirements in Subsections 65A-17-303(2) and 65A-17-304(1).

(5) The Director shall review a negotiated Cooperative Agreement under the requirements set forth in Sections 65A-17-303 and 65A-17-304.

(6) The Director may approve the Cooperative Agreement by issuing a written record of decision, under Section R652-9-200.

(7) Upon the Director's approval of the Cooperative Agreement, the division shall be a signatory to the Cooperative Agreement.

(8) No Operator shall obstruct or interfere with the ability of another new or existing Operator from entering into a Cooperative Agreement.

**R652-21-604. Multiple Mineral Development Conflict Resolution.**

(1) When one Operator, either intentionally or unintentionally, interferes with or damages the mineral or element rights or mineral or element interest of another Operator, the division and the Operators shall enter into a Mitigation Plan.

(2) When unreasonable mineral estate interference, Waste, or Negative Impacts to Great Salt Lake Natural Resources occurs, the division and the Operators shall enter into a Mitigation Plan.

(3) To cure a breach of a Mitigation Plan:

(a) the division may issue a notice of violation or cessation order, pursuant to Sections R652-21-1300 through R652-21-1302; or

(b) an Operator may pursue informal administrative remedies pursuant to Sections 63G-4-201 through 63G-4-209, Utah Administrative Procedures Act, and Sections R652-8-100 through R652-8-500.

**R652-21-700. Operations Application.**

The purpose of the Operations Application is to substantiate the information generated through a Feasibility Assessment and to determine the terms which will govern the proposed extraction or production of a nominated Great Salt Lake Element or Mineral.

**R652-21-701. Submission.**

(1) Applications to the division shall be submitted on the form provided by the division.

(2) All information collected by Operator and submitted in support of an Operations Application shall list the collection date of any submitted information.

**R652-21-702. Approval.**

The division's approval of an Operations Application is required to obtain an Operations Royalty Agreement.

**R652-21-703. Pre-Filing Meeting.**

(1) An Operator shall request a pre-filing meeting with the division and with the Division of Water Quality at least 30 days before submitting an application for an Operations Royalty Agreement.

(2) The division and the Division of Water Quality may jointly waive or shorten the requirement for a pre-filing meeting request.

**R652-21-704. Required Showings.**

Before the division and an Operator may enter into an Operations Royalty Agreement permitting the extraction of a nominated Great Salt Lake Element or Mineral, such Operator shall submit the following information in its Operations Application to the division:

(1) applicant information, including:

(a) legal name, permanent address, telephone number, and email address of the Operator;

(b) name and permanent address of the Operator's registered agent in the Utah;

(c) name, address, email address, and telephone number of the primary contact, including the person to whom requests for additional information should be addressed;

(d) signature of the Operator, signed by an officer of the corporation, if applicable;

(e) a description of the Operator's experience and knowledge predicating the Operator's ability to commercially produce elements or minerals from the brines of Great Salt Lake; and

(f) information regarding the nature and status of any existing contractual disputes with the State, regulatory actions, or alleged noncompliance, including plans to resolve or remedy such disputes or alleged noncompliance;

(2) proof of a Sampling Royalty Agreement;

(3) evidence supporting Operator Certification of No Negative Impacts, under Section R652-21-705;

(4) project information, including:

(a) type of Great Salt Lake Element or Mineral to be extracted;

(b) type of operations to be conducted, including the types of technology, and a description of how, including in what sequence, they are to be employed through all stages of operations;

(c) a detailed description of the Operator's plan and operations for extraction, including estimated dates when operations may begin and end and the dates withdrawals or discharges may take place;

(d) identification of the Royalty Rate Deduction the Operator desires to obtain and all data, information, and reporting required for the division's analysis of such Royalty Rate Deduction;

(e) surface use occupancy and ownership thereof, including a description of any infrastructure to be placed on Great Salt Lake sovereign land and upland development necessary for operations;

(f) proof that Bonding is in place with the division and the Division of Oil, Gas & Mining, if applicable;

(g) proof of a reclamation plan negotiated with and approved by the division;

(h) a detailed description of the location, processing, and storage of Great Salt Lake Elements or Minerals;

(i) estimated amounts of Great Salt Lake Element or Mineral to be produced;

(j) the anticipated operational recovery rate for the Great Salt Lake Element or Mineral;

(k) estimated amounts of Operational Waste to be produced;

(l) copies of any easements, permits, approvals, agreements, applications or other documents required for initiation of operations;

(m) proof of all pending or acquired water rights and related appropriations necessary for operations or a detailed plan demonstrating how the Applicant will acquire water rights necessary to perform operations once in receipt of an Operations Royalty Agreement;

(n) a detailed description of any agreements, contracts, options, and other financial arrangements entered into by the Operator and a third-party relating to operations; and

(o) evidence and supporting documentation establishing Commercial Viability for the Life of Mine, including both the method of evaluation and the data used in such evaluation;

(5) proof of an executed Cooperative Agreement;

(6) Self-Certification operations may not violate Subsection 65A-6-1(3);

(7) the information identified in Section R652-21-805; and

(8) any other information the division or Director considers necessary to approve the application, including proprietary information regarding planned technology.

**R652-21-705. Required Showings for Certification of No Negative Impact.**

An Operator filing an Operations Application shall include the following information:

(1) a Self-Certification the proposed project will not Negatively Impact the Biota or Chemistry of Great Salt Lake;

(2) the requirements established in Subsection R317-16-3(4), revised and updated to reflect the scale and design of operations;

(3) all data and data analysis related to Biota and Chemistry derived from the Feasibility Assessment;

(4) information regarding Returned Water, and, if applicable, Mitigation Water, including:

(a) names of the waters where discharge or delivery may occur, including: latitude and longitude to the fifth decimal place in decimal degrees and to the tenth of a degree in degrees-minutes-seconds notation; and

(b) sources, volume, and timing of the discharge or delivery.

(5) any other information required by the division.

**R652-21-706. Operations Surface Use Authorizations.**

(1) Before the division and Operator may enter into an Operations Royalty Agreement, an Operator shall obtain from the division the necessary permits, easements, or other surface use authorizations required for Operations.

(2) An Operator shall apply for a surface use authorization from the division for the extraction of Great Salt Lake Elements or Minerals if the Operator is proposing to utilize Great Salt Lake sovereign lands for evaporation ponds, dikes, pipelines, processing equipment, facilities, roads, or any other improvements or structures requiring surface use or disturbance.

(3) An Operator may not conduct any surface disturbance to Great Salt Lake sovereign lands until the Operator completes a Feasibility Assessment and obtains an Operations Royalty Agreement.

**R652-21-707. Additional Required Information.**

(1) At any point during review of an Operations Application, the division or Director may request additional relevant information from the Applicant.

(2) To remain in consideration for an Operations Royalty Agreement, the Applicant shall provide such information within a reasonable time, specified by the division.

**R652-21-708. Approval of Certification of No Negative Impact.**

(1) After receiving an Operations Application, the division shall confer with the Department of Environmental Quality in reviewing the Operations Application.

(2) Before approving an Operations Application, the division shall review the Application and may approve the Operator's Certification of No Negative Impact supporting a finding:

(a) the operation will not Negatively Impact the Biota of Great Salt Lake; and

(b) the operation will not Negatively Impact the Chemistry of Great Salt Lake.

(3) If the division cannot in good faith approve a certification specified in Section R652-21-708, within forty-five days of receiving the Operations Application, the division shall notify the Applicant and provide a list of missing information to supply.

(4) An Applicant shall submit the additional missing information requested by the division within forty-five days of receipt of notice from the division.

(5) If the Operator does not provide the requested missing information to the division, the division shall deny the Operations Application, at which point the Operator may re-submit the Operations Application.

**R652-21-709. Operations Application Evaluation.**

(1) Within 60 days of receiving an Operations Application, the division shall notify the Operator in writing of the status of the Operations Application.

(2) The division may issue a written decision:

(a) approving the Operations Application;

(b) denying the Operations Application; or

(c) considering the Operations Application incomplete.

(3) If the division determines the operation is incomplete, the division will provide the Applicant with a list of missing information, at which point the Applicant may either provide the missing information or re-submit the Operations Application.

(a) Applicants who submit incomplete Operations Applications shall be allowed 60 days to provide the required information.

(b) Incomplete applications not remedied within the 60 day period may be denied with the application fee forfeited to the division.

(4) The division may contract with a third party to analyze any Application submitted. Applicants shall be responsible for any expense incurred as a result of or associated with this Certification.

**R652-21-710. Multiple Applications for Lithium.**

If the division is in receipt of more than one active Operations Application for extraction of Lithium from Great Salt Lake, the division shall first evaluate Operations Applications which do not use Evaporative Technologies in any stage of the extractive process.

**R652-21-800. Operations Royalty Agreement Required Terms.**

(1) Operations Royalty Agreements shall contain provisions necessary to affect the purposes of Rule R652-21.

(2) In addition to any other negotiated provisions, an Operations Royalty Agreement shall include the terms and conditions in Sections R652-21-801 through R62-21-828.

**R652-21-801. Right to Extract.**

The Operations Royalty Agreement provides the right to extract the Great Salt Lake Element or Mineral suspended in brines of Great Salt Lake. The Operations Royalty Agreement does not give Operator the right to extract any Great Salt Lake Element or Mineral not explicitly referenced in the Agreement.

**R652-21-802. Rights Reserved to the Division as Lessor.**

The division expressly reserves the right to: lease or issue additional royalty agreements for the extraction of Great Salt Lake Elements or Minerals; alter or modify the quantity and rate of Great Salt Lake Operator's production upon invocation of the Emergency Trigger, pursuant to Sections R652-21-1400 through R652-21-1406; withdraw certain Great Salt Lake lands, methods of extraction, operations, or technologies upon invocation of the Emergency Trigger if the division finds these methods, operations, or technologies are directly causing or exacerbating the conditions creating the Emergency Trigger, defined under Section 65A-17-101; contract with a qualified third-party to audit and review Operator's reporting required by Sections R652-21-1100 and R652-21-1101; and contract with a qualified third-party or government entity to monitor the Chemistry and composition of water and brine inputs and outputs and returned water.

**R652-21-803. Term.**

The Operations Royalty Agreement shall remain in effect for a term of ten years commencing on the first day of the month following the execution date, and subject to any existing valid rights in said land, and shall automatically renew for consecutive terms, unless either party gives notice at least six months before the expiration of the Operations Royalty Agreement of their intent to terminate such agreement. The Final Royalty Rate may be renegotiated prior to the lapse of the final year of the term. The Operations Royalty Agreement may not be held by production.

**R652-21-804. Royalties.**

Royalties shall be paid by an Operator to the division pursuant to the applicable royalty rate established in rule.

**R652-21-805. Reporting.**

Within 30 days of the end of each fiscal quarter during the term of the Operations Royalty Agreement, an Operator shall furnish to the division a report providing information required in Sections R652-21-1200 through R652-21-1206.

**R652-21-806. Cost Recovery.**

The division reserves the right to invoice and collect reimbursement from the Operator for the reasonable cost of independent monitoring, review and verification of information or inspection required to obtain and maintain an Operations Royalty Agreement.

**R652-21-807. Reassessment.**

The division reserves the right to review and adjust the provisions of an Operations Royalty Agreement in the event of significant changes or unforeseen circumstances, including: changes in market conditions significantly affecting the demand or pricing of the Great Salt Lake Element or Mineral; implementation of Emergent Technology; Negative Impacts to Great Salt Lake Chemistry or Biota caused by Operator; termination, lapse, or loss of Division of Water Quality Operator certification approval under Rule R317-16; or the reaching of the Great Salt Lake Emergency Trigger, as defined in Section 65A-17-101; and other significant changes or unforeseen circumstances determined by the division. The division may review and adjust the Base Royalty Rate only upon or after the conclusion of the primary term.

**R652-21-808. Shut-in.**

For the state to obtain a full and fair return for its public trust assets, the Parties mutually agree that, if an Operator is unable to produce in Paying Quantities for more than two consecutive fiscal quarters, the division may require an Operator to cease operations until market conditions improve. If operations are ceased under this provision the Operator's royalty obligations shall be suspended.

**R652-21-809. Change in Operations.**

If at any point an Operator adds or intends to add emerging technologies to their existing operation, such Operator shall notify the division. The division may require the Operator to submit any additional information required to evaluate such proposed Emergent Technology. If at any point an Operator adds or intends to add Evaporative Technologies to their existing operation, the Operator shall notify the division. The division may require the Operator to submit any additional information required to evaluate the proposed Evaporative Technology. Upon the occurrence of any such events, the division shall re-evaluate its approval of Operator's Certifications regarding Negative Impacts and adjust the royalty rate and terms of the Operations Royalty Agreement, as necessary.

**R652-21-810. Consent to Suit.**

Operator consents to suit in the courts of the State of Utah in any dispute arising under the terms of the Operations Royalty Agreement or as a result of operations carried on under the Operations Royalty Agreement. Operator agrees for itself, its heirs, successors, and assigns that any suit brought by Operator, its heirs, successors, or assigns concerning the Operations Royalty Agreement may be maintained only in the Utah State District Court in and for Salt Lake County.

**R652-21-811. Assignment.**

Operator may not assign the Operations Royalty Agreement in whole or in part without obtaining the prior written consent of the division, which consent may not be unreasonably withheld. Operator may not be relieved of the responsibilities or liabilities assumed hereunder by virtue of any assignment to a third party unless the division provides written approval as provided herein, the third party is acceptable to the division as an Operator, and the third party assumes, in writing, all obligations of Operator under the terms of the Operations Royalty Agreement. Additionally, Operator shall notify the division of any material changes to Operator's corporate structure altering any contractual or financial obligation with the division within 30 days of the change.

**R652-21-812. Establishment of Water Rights.**

For the term of the Operations Royalty Agreement, the Operator shall maintain an approved and valid water right authorizing the Operator to divert and beneficially use water from Great Salt Lake for extracting the Great Salt Lake Element or Mineral contemplated by this Agreement. The Agreement may not be construed to relieve the Operator from full compliance with Title 73, Water and Irrigation, relative to the administration, appropriation, measurement, apportionment, or distribution of waters of the state.

**R652-21-813. Discovery of Other Minerals.**

In the event the Operator discovers other Great Salt Lake Elements or Minerals which can be extracted and produced economically, a "Discovered Mineral," during its operations under the Operations Royalty Agreement and wishes to produce those Great Salt Lake Elements or Minerals, the Operator shall, at the time of discovery, notify the division and obtain a separate royalty agreement for such Great Salt Lake Elements or Minerals.

**R652-21-814. Research and Development.**

This Operations Royalty Agreement shall give Operator the right to extract water or brine for equipment design, evaluation, and calibration or to transfer such water or brine to a third party for the purposes of testing, research equipment design, evaluation, and calibration, but only if it is for the purposes of designing, commissioning, developing, or optimizing the extraction process that such Operator is currently implementing on Great Salt Lake.

**R652-21-815. Waste.**

The Operator shall conduct operations in a manner that avoids Waste, as that term is defined in Subsection 65A-17-101(18), and maximizes the recovery and utilization Great Salt Lake Elements or Minerals. The Operator shall use methods and techniques which promote maximum and efficient resource recovery, such as proper sorting, separation, stockpiling, and processing of element or mineral-bearing materials.

**R652-21-816. Indemnification.**

The Operator shall be liable for all damage incurred in connection with any activity undertaken or work authorized by the Agreement. The Operator shall indemnify and hold the division harmless against all liability, including attorney's fees, of any nature imposed upon, incurred by, or asserted against the division which in any way relate to or arise out of the activity or presence of the Operator, its servants, employees, agents, sublessees, assignees, or invitees.

**R652-21-817. Force Majeure.**

If either Party is prevented or delayed from completing any obligation under the Operations Royalty Agreement by a Force Majeure Event, herein referred to as the "Affected Obligation," except for the performance of any payment obligation that has accrued prior to the Force Majeure Event, the Affected Obligation shall be suspended and the affected Party may not be considered in default or liable for damages or subject to other remedies as a result thereof for so long as the affected Party is prevented to delayed from completing the Affected Obligation by the Force Majeure Event. For purposes of the Agreement, a "Force Majeure Event" shall mean any matter, foreseeable or unforeseeable, not avoidable or overcome by the exercise of commercially reasonably diligence, and that is beyond the affected Party's reasonable control, including: acts of God, any action after the date hereof by governmental authorities, other than the division, that would prevent, delay, or make unlawful a Party's performance, suspension of activities to remedy or avoid an actual or alleged violation of environmental laws, fires, explosions, epidemics, unusually inclement weather, flood, drought, acts of war, insurrection, revolution, civil commotion, rights or terrorism, strikes, lock-outs or other labor disputes, including: strikes, lock-outs, or other labor disputes by the employees of direct or indirect contractors, suppliers, or agents of Operator; the division's invocation of the Emergency Trigger, as defined in Section 65A-17-101; inability to obtain necessary materials, power or other utilities; inability to obtain permits, approvals, or consents from governmental authorities or private parties within a reasonable time; and significant damage to, substantive destruction of, or unavoidable shutdown of necessary facilities or equipment.

**R652-21-818. Water Depletion and Emergent Technologies.**

The Operator agrees the division has the discretion and power to require an existing Operator to use Emergent Technologies to minimize water depletions caused by the current or planned mineral extraction as a condition of continued operations. Before requiring an Operator to implement any such Emergent Technologies, those technologies must be Commercially Viable Technologies, as defined in Section 65A-17-101, and the Operator shall be given a period of time, that is at least five years but does not exceed seven years from the day on which the division formally determines and communicates in writing that the technology is a Commercially Viable Technology for the given Operator, to implement such Emergent Technologies which minimize water depletion.

The Operator shall accurately report to the division the volume of Brine Depletion and any reductions in the volume of Brine Depletion resulting from the implementation of any Emergent Technology.

**R652-21-819. Water Mitigation.**

If an Operator depletes water during operations, whether that water is extracted from Great Salt Lake or from an external source, the Operator may mitigate such depletion, herein referred to as "Mitigation Water." If applicable, it is the Operator's obligation to ensure the Mitigation Water is delivered to Great Salt Lake in the approximate location and quality where the depletion occurred. Before mitigating such depletion, the Operator shall obtain discharge permits from the Department of Environmental Quality, if necessary.

**R652-21-820. Third Party Monitoring.**

The division reserves the right to hire a qualified third-party to review, audit, or monitor Operator's ongoing reporting and data gathering methodology required by Sections R652-21-1100 and R652-21-1101.

The division reserves the right to require the Operator to install and use monitoring equipment, paid for exclusively by the Operator, within the Operator's leased area. The division may enter the Operator's leased area at any time.

**R652-21-821. Curtailment Framework and Emergency Trigger.**

The Parties agree, in the event the Emergency Trigger is reached, pursuant to Section R652-21-1401, the Operator shall temporarily curtail mineral production as directed by the division. The Parties agree curtailment will not automatically result in the termination of the Operations Royalty Agreement.

**R652-21-822. Subordination.**

The terms and conditions within the Agreement are subordinate and subject to the public trust doctrine and any management decision by the division when exercising its management authority and commensurate obligations with respect to sovereign lands.

**R652-21-823. Conditions for Material Breach.**

Actions amounting to a material breach of this Agreement include: failure to provide ongoing reporting required by Sections R652-21-1100 and R652-21-1101; providing false or misleading information in required reports or certifications; and failure to participate in an audit, or otherwise breaching a substantive obligation. Upon a finding of material breach, the division shall notify Operator of the breach. If the condition causing the material breach is not remedied or fully cured within 30 days of receipt of notice, the division shall issue a cessation order and rescind the Operations Royalty Agreement, at which time, and subject to the Operator's administrative and legal rights to seek review of such cessation order, the Operator shall immediately initiate any applicable reclamation activities.

**R652-21-824. Coordination and Incorporation of Cooperative Agreements.**

This Operations Royalty Agreement acknowledges and incorporates any term and condition negotiated in any fully executed Cooperative Agreement. To the extent there is a conflict, the terms and conditions of the Operations Royalty Agreement shall govern.

**R652-21-825. Severability.**

If any provision of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable.

**R652-21-826. Water Reductions.**

If the Operator does not utilize the entirety of its Great Salt Lake Water Right during the longer of the primary term of the mineral lease, or royalty agreement, or seven years and if the Operator fails to use the water right for a beneficial use, the division shall pursue a judicial action to declare all or a portion of the water right forfeited under Subsection 73-1-4(2), except if the failure to use the volume of water as a result of a reduction of water usage under Section 73-33-201 or is excused under Section 73-1-4.

**R652-21-827. Multiple Mineral Development.**

The Operator shall prevent Waste to the Common Source of Supply or Great Salt Lake Element or Mineral to be extracted while also avoiding Waste to any Great Salt Lake Natural Resource. The Operator shall extract minerals or elements in a manner that avoids negative impacts to any Great Salt Lake Natural Resource. The Operator agrees to preserve and conserve Great Salt Lake Mineral Resources and Great Salt Lake Natural Resources for future mineral extraction and mineral processing operations and to ensure Healthy Physical and Ecological Conditions are preserved and protected. The Operator represents and warrants full compliance, at lessee's sole expense, with all management decisions and instructions of the division and Director for preservation of Great Salt Lake's Mineral and Natural Resources.

**R652-21-828. Term Conflict.**

To the extent there is a conflict between Rule R652-21 and Subsection R652-20-3200(6) and Section R652-20-2200, Rule R652-21 governs.

**R652-21-900. Surface Use Authorizations Required Terms.**

Surface use authorizations, including but not limited to easements, special use lease agreements, or rights of entry, for extracting Great Salt Lake Elements or Minerals from Great Salt Lake shall contain the provisions set forth in Sections R652-21-901 through R652-21-911.

**R652-21-901. Rights Reserved to the Division as Lessor.**

The division expressly reserves the right to issue easements, leases, rights of entry, and other surface use authorizations as needed and use or otherwise manage the surface of Great Salt Lake sovereign lands pursuant to its obligations under the public trust.

**R652-21-902. Rental Adjustment.**

The Operator agrees the division shall have the right to adjust the annual rentals at the end of the first ten-year period, and every ten years thereafter, as the division shall consider reasonably necessary and that serves the best interest of the State.

**R652-21-903. Due Diligence.**

During the term of this Agreement, the Operator shall exercise due diligence in exploring and developing the entire subject area to identify, extract, process and maximize potential mineral resources. The Operator shall use reasonable and prudent methods, techniques, and technologies to fulfill this obligation.

**R652-21-904. Sovereign Lands.**

This Agreement is expressly subject and subordinate to the right of the State of Utah to manage and control the bed of Great Salt Lake and is subject to the public trust. This Lease may be revoked at any time if necessary to fulfill public trust and statutory responsibilities.

**R652-21-905. Bonding.**

The Operator agrees that, for good cause shown, at any time during the term of this Lease, the division may require the Operator to post with the division a bond with an approved corporate surety company authorized to transact business in the State of Utah, or such other surety as may be acceptable to the division, said bond to be conditioned upon full compliance with all terms and conditions of this Lease and the rules relating hereto. The amount of this bond may not be considered to limit any liability of the Operator. The division may, at any time during the term of this Lease, require the Operator to increase the amount of an existing bond.

**R652-21-906. Reclamation Plan.**

Operator shall submit to the division a plan for the reclamation of the subject area at least 60 days prior to any surface disturbance within the lease area. The division must approve the reclamation plan prior to any surface disturbance and reserves the right to request Operator amend the plan at any time during the term of the Agreement to ensure adequate reclamation and restoration of the subject area.

**R652-21-907. Removal of Fixtures and Reclamation.**

Upon termination of this Agreement for any reason, the Operator, upon payment of all amounts due to the division, shall remove all property, including fixtures, machinery, equipment, and supplies, at the Operator's sole cost and expense and shall reclaim the premises according to the terms of a division-approved reclamation plan within a reasonable time, approved by the division. The division shall give at least 30 days' notice of such termination. The subject land shall be surrendered in good usable condition in as near the natural condition of the land as is reasonably practical. All physical improvements attached to the lands and not removed by the Operator shall become the property of the division.

**R652-21-908. Lease Forfeiture.**

This Agreement may be forfeited in whole or in part due to failure to meet the due diligence requirements to utilize the entire subject area.

**R652-21-909. Operational Waste Response.**

In the event Operator's activities within the subject area cause the uncontained release of Operational Waste, as that term is defined in Section R652-21-200, within the subject area, Operator shall promptly notify the division and comply with Department of Environmental Quality requirements for cleanup and remediation of the Operational Waste.

**R652-21-910. Acreage Reductions.**

If the Operator does not utilize all the acreage subject to the mineral lease or surface use authorization during the primary term of the mineral lease or royalty agreement, the division shall amend the mineral lease or surface use authorization to exclude that unused acreage.

**R652-21-911. Term Conflict.**

To the extent there is a conflict between Rule R652-21 and Subsection R652-20-3200(6) and Section R652-20-2200, Rule R652-21 governs.

**R652-21-1000. Lithium Base Royalty Rate.**

(1) Subject to a Royalty Rate Deduction as provided for in Rule R652-21, the Base Royalty Rate for Lithium Carbonate, Lithium Sulfate, and Lithium Hydroxide shall be 5% of gross sale proceeds for each short ton extracted, produced, processed, and sold from Great Salt Lake water or brines.

(2) To provide a full and fair return to the state, as required by Subsection 65A-6-4(6)(a)(i), the division determines Lithium Chloride is not commercially marketable.

(3) Any Operator desiring to produce or process Lithium Carbonate, Lithium Sulfate, and Lithium Hydroxide is not entitled to post-production deductions for any expended capital costs.

(4) The only Royalty Rate Deduction available to Lithium Carbonate, Lithium Sulfate, and Lithium Hydroxide is expressly designated in Section R652-21-1004, Lithium Royalty Rate Deduction.

**R652-21-1001. Lithium First Marketable Product.**

For all lithium related exploration, extraction, processing, production, and sales, the division determines Lithium Carbonate, Lithium Sulfate, and Lithium Hydroxide are the First Marketable Product to which the Base Royalty Rate attaches.

**R652-21-1002. Final Lithium Royalty Rate and Variable Adjustments.**

(1) After applying an applicable Royalty Rate Deduction and verifying an Operator's qualifications for a Royalty Rate Deduction, a Final Royalty Rate shall be provided to the Operator in an Operations Royalty Agreement executed with the division.

(2) An Operations Royalty Agreement is required before the production, processing, and sale of any Great Salt Lake Element or Mineral.

(3) A Final Royalty Rate is further subject to the Variable-Rate Royalty Schedule provided in Section R652-21-1006.

**R652-21-1003. Royalty Rate for Lithium Produced Exclusively Through Secondary Recovery Processes.**

(1) An Operator may submit a Secondary Recovery Royalty Application to the division demonstrating the Operator's Secondary Recovery Process:

(a) will, based on reasonable belief, produce a marketable product; and

(b) will not use water or brine from Great Salt Lake, or any hydrological connection thereto, in the processing and production of a Great Salt Lake Element or Mineral and, therefore, has No Negative Impact to the Biota and Chemistry of Great Salt Lake.

(2) Upon approval of a Secondary Recovery Application, the division shall enter into a Secondary Recovery Royalty Agreement with the Operator.

(3) The royalty rate in a Secondary Recovery Royalty Agreement for Lithium Carbonate, Lithium Sulfate, or Lithium Hydroxide shall be the Non-Evaporative Royalty Rate.

(4) The Secondary Recovery Royalty Rate is further subject to the Variable-Rate Royalty Schedule provided in Section R652-21-1006.

**R652-21-1004. Lithium Royalty Rate Deduction.**

Any Operator that can verifiably demonstrate their operations utilize Non-Evaporative Technologies to produce a Great Salt Lake Element or Mineral shall qualify for a Royalty Rate Deduction of 2.5% and is thus entitled to the Non-Evaporative Royalty Rate.

**R652-21-1005. Proof Requirements to Perfect Lithium Royalty Rate Deduction.**

To qualify for the Royalty Rate Deduction, an Operator shall:

(1) notify the division, at the time of filing the Feasibility Application, the Operator intends to pursue the Royalty Rate Deduction;

(2) comply with each of the requirements specified in the rules governing Feasibility Applications; and

(3) comply with each of the requirements specified in the rules governing Operations Applications.

**R652-21-1006. Lithium Variable-Rate Royalty Schedule.**

(1) The Final Royalty Rate shall be a Variable-Rate Royalty.

(2) A Variable-Rate Royalty applicable to Lithium Carbonate, Lithium Sulfate, or Lithium Hydroxide shall be adjusted quarterly.

(3) The Variable-Rate Royalty Schedule is as follows:

|  |  |  |
| --- | --- | --- |
| TABLE  Final Royalty Rate | | |
| Average Sale Price | Base Rate | Non-Evaporative Rate |
| < $20,000 | 5.0% | 2.5% |
| $20,000 - $35,000 | 7.5% | 5.0% |
| $35,001 - $45,000 | 12.5% | 10.0% |
| $45,001 - $55,000 | 17.5% | 15.0% |
| $55,001 - $65,000 | 22.5% | 20.0% |
| > $65,000 | 27.5% | 25.0% |

**R652-21-1007. Execution of Lithium Operations Royalty Agreement.**

(1) Within 30 days of approval of the Operations Application, the division and the Operator shall execute an Operations Royalty Agreement.

(2) The Royalty Agreement shall govern operations for the full term of the Operations Royalty Agreement.

**R652-21-1008. Lithium Royalty Payment Deadlines and Ongoing Reporting.**

(1) Royalties due and owing under an Operations Royalty Agreement shall be paid to the state within 30 days of the end of each fiscal quarter.

(2) Each Operator shall attach a complete royalty report on a form authorized by the division, that requires the Operator to:

(a) provide Self-Certification of the total amount of product extracted, produced, and sold during the applicable quarter;

(b) if applicable, and to demonstrate ongoing qualification for a Royalty Rate Deduction, provide Self-Certification of the use of Non-Evaporative Technologies to produce the Great Salt Lake Element or Mineral;

(c) identify the Sale Price and Variable-Rate Royalty applied to the commodity sold during the quarter; and

(d) identify any other information required by the division.

(3) During the term of the Operations Royalty Agreement, an Operator shall submit a royalty report to the division within 30 days of the end of each fiscal quarter.

**R652-21-1100. General Ongoing Reporting.**

(1) During the term of the Operations Royalty Agreement, an Operator shall submit an operations report to the division within 30 days of the end of each fiscal quarter.

(2) An operations report shall include:

(a) production information, including:

(i) the volume and weight of any Great Salt Lake Element or Mineral extracted or produced;

(ii) all available evidence and supporting documentation establishing the Operator's continued Commercial Viability, including both the method of evaluation and the data used in such evaluation;

(iii) actual operational recovery rate for the Great Salt Lake Element or Mineral produced; and

(iv) rate of extraction for the targeted and non-targeted minerals or elements and rate of depletion of the targeted and non-targeted minerals or elements in GSL;

(b) if applicable, notification of planned surface disturbances within the lease or easement area prior to Operator undertaking such activity;

(c) project information, including:

(i) Total Water, Brine Depletion, and Water Depletion data based on metering data;

(ii) if applicable, detailed information on the amount and chemistry of all substances added during processing;

(iii) if applicable, notification of planned surface disturbances within the lease or easement area prior to Operator undertaking such activity;

(iv) information on Operational Waste, including Operational Waste production, composition, methods of Operational Waste material disposal, and the management, placement, and disposal of Operational Waste; and

(v) information regarding impacts to salinity;

(d) information regarding Brine Water and Externally Sourced Water, including:

(i) names of the waters where any withdrawals occurred, including latitude and longitude to the fifth decimal place in decimal degrees and to the tenth of a degree in degrees-minutes-seconds notation;

(ii) detailed information on the quantity of any withdrawals;

(iii) volume and timing of any withdrawals; and

(e) information regarding Returned Water and, if applicable, Mitigation Water, including:

(i) names of the waters where any discharges or deliveries occurred, including: latitude and longitude to the fifth decimal place in decimal degrees and to the tenth of a degree in degrees-minutes-seconds notation;

(ii) detailed information on the quantity of any discharges or deliveries; and

(iii) volume and timing of any discharges or deliveries;

(f) discharge information, including a characterization of the physical, chemical, biological, thermal, and other pertinent properties of the discharge;

(i) at a minimum: pH, total alkalinity, total dissolved solids, total suspended solids, sulfate, nitrate, nitrite, carbonate, bicarbonate, chloride, hydroxide, chemical oxygen demand, biological oxygen demand, silica, zinc, magnesium, sodium, calcium, potassium, boron, bromine, aluminum, iron, and silicon; range of temperatures in effluent; and

(ii) density range of effluent discharged; and quantity of foreign materials discharged;

(g) if applicable, information regarding any impacts to habitat and Biota in and around area of operation or discharge; and

(h) any other relevant information required by the division.

(3) Upon request by the division, an Operator shall provide any additional relevant information to the division in a reasonable amount of time, as determined by the division.

**R652-21-1101. Other Ongoing Reporting.**

(1) An Operator shall notify the division of any changes to permitting or certifications from the Department of Environmental Quality.

(2) An Operator shall notify the division of any changes to its water rights or points of diversion during the term of the Operations Royalty Agreement.

(3) The Operator shall provide, within a commercially reasonable period of time, any other reporting of relevant information requested by the division to ensure compliance with the division's management responsibilities over sovereign lands or statutes and rules specific to Great Salt Lake.

**R652-21-1200. Inspection and Enforcement Authority.**

Nothing in Rule R652-21 shall be construed as eliminating any additional enforcement rights, remedies, or actions available under an Operations Royalty Agreement or state law.

**R652-21-1201. Great Salt Lake Element or Mineral Removal Certification.**

(1) Each Operator shall comply with the requirements in Section 65A-17-302.

(2) Upon a violation of Section 65A-17-302, the division shall commence an informal adjudication by filing a notice of agency action as specified under Subsection 63G-4-201(1)(a).

(3) Procedures for informal adjudicative proceedings under this rule are as follows:

(a) After receiving a notice of agency action, any affected Operator shall file a response no later than 20 days following receipt. If a timely response is not properly filed within the 20 day timeframe, the division shall initiate default procedures specifying the default in the informal adjudicative order issued by the division.

(b) The division may hold a hearing pursuant to Subsections 63G-4-203(b) through 63G-4-203(d) if the Operator requests a hearing within30 days of receipt of a notice of agency action, but only upon a showing of good cause by the affected Operator.

(c) If a hearing is granted by the division, notice shall be provided to the Operator at least 15 days prior to the date the hearing is set.

(d) The Operator or any other named party in the notice of agency action shall be permitted to testify, present evidence, and comment on the issues.

(e) All discovery is prohibited, except the division may issue subpoenas or other orders compelling production of necessary or relevant evidence.

(f) To the extent permitted by law, all Parties shall have access to information contained in the division's files and to all materials and information gathered in any investigation. For purposes of Section R652-21-1201, Parties is defined as the Operator to which the notice of agency action is directed, any other entity named in the notice of agency action, and the division.

(g) Intervention is prohibited.

(h) Any hearing set by the division shall be open to all Parties.

(i) Within a reasonable time after the close of any informal adjudicative proceeding, the presiding officer shall issue a signed written order stating the following:

(A) the decision;

(B) the reasons for the decision;

(C) a notice of any right of administrative or judicial review available to the Parties; and

(D) the time limits for filing an appeal or requesting a review.

(j) The presiding officer's order shall be based on the facts appearing in the agency's files, the facts presented in evidence at any hearing, and a copy of the presiding officer's order shall be promptly mailed to each of the Parties.

(k) The division may delegate the role of presiding officer to a qualified hearing examiner, including an assistant attorney general.

(4) Following any appeal, to the extent an Operator remains in violation of Section 65A-17-302, the division may issue a cessation order, under Section R652-21-1302 without first conducting an inspection as would otherwise be required.

**R652-21-1202. Right of Entry.**

(1) The division and its representatives may enter upon and through any Great Salt Lake Element or Mineral operation.

(2) The division and its representatives may inspect any monitoring equipment, water metering equipment, operations method or technology, or reclamation and have full access to and may copy any records required to be maintained by an Operator.

(3) The division and its representatives may take samples from any stage of operations or area of operations.

(4) When the division exercises its right of entry under Rule R652-21, a search warrant is not required, including when an inspection requires entry into a building or facility.

(5) The division and its representatives may exercise these rights at commercially reasonable times, without advance notice, upon presentation of appropriate credentials.

**R652-21-1203. Inspection Program.**

(1) The division shall conduct an average of at least one on-site or aerial inspection per year of each active or inactive Great Salt Lake Element or Mineral operation to ensure effective enforcement.

(2) An inspection is an on-site or aerial review of an Operator's compliance with all permit, surface use, and Operations Royalty Agreement conditions and requirements imposed under Rule R652-21 or applicable statutes, within the entire area disturbed or affected by the Operator's operations.

(3) Aerial inspections shall be conducted in a manner that reasonably ensures the identification and documentation of conditions at each operation, including adjacent conditions and operational input and discharge points.

(4) The division shall investigate any potential violation observed during an aerial inspection by conducting an on-site inspection within three days of the aerial inspection.

(5) The inspections allowed for under Rule R652-21 shall also:

(a) be carried out on an irregular basis, so as to monitor compliance at all operations, including those which operate nights, weekends, or holidays;

(b) occur without prior notice to the Operator or any agent or employee of the Operator, except for necessary on-site meetings; and

(c) include the prompt filings of inspection reports adequate to enforce the requirements of Rule R652-21 and Sections 65A-6-4 and 65A-17.

**R652-21-1204. Availability of Records.**

(1) Subject to applicable law, the division shall make available copies of all documents relating to applications for and approvals of existing, new, or revised operations and all documents relating to inspection and enforcement actions.

(2) Copies of all documents relating to Great Salt Lake Element or Mineral operations which the division classifies as public shall be made available to the public until at least five years after expiration of the period during which the subject operation is active or is covered by any portion of a reclamation bond.

(3) In preparation for any hearings or enforcement proceedings, the division may enter into agreements regarding procedures for the special handling of investigative and enforcement reports and other related materials.

**R652-21-1205. Compliance Conference.**

(1) An Operator may request an on-site compliance conference with an authorized representative of the division to review the compliance status of any condition, methodology, or practice proposed at any Great Salt Lake Element or Mineral Operation.

(2) The division may, in its discretion, accept or deny any request to conduct a compliance conference.

(3) The authorized representative at any compliance conference will review the proposed conditions and practices to advise whether any such condition or practice may become a violation of any requirement of applicable statute, rule, contract, or Operations Royalty Agreement term or condition.

(4) Neither the holding of a compliance conference, nor any opinion given by the authorized representative of the division, shall affect:

(a) any rights or obligations of the division or the Operator with respect to any inspection, notice of violation, or cessation order, whether before or after the compliance conference; or

(b) the validity of any notice of violation or cessation order issued with respect to any condition, methodology, or practice reviewed at the compliance conference.

**R652-21-1300. Notices of Violation.**

(1) The division shall issue a notice of violation if, on the basis of a division inspection, it finds a violation of any condition of operations, applicable statutes, rules, or contractual provisions.

(2) A notice of violation shall be issued to the Operator or its agent setting a reasonable time, not to exceed 60 days, for the abatement of the violation and providing an opportunity for a conference with the division.

(3) A notice of violation shall be in writing, signed by an authorized representative of the division, and will set forth with specificity:

(a) the nature of the violation;

(b) the remedial action required, which may include interim steps;

(c) a time for abatement, which may include time for accomplishment of interim steps; and

(d) a description of the operations to which the notice of violation applies.

(4) After issuance of the notice of violation, and within the 60 day abatement period, if good cause exists, the division may provide the Operator with an opportunity to discuss operational challenges preventing the remedial action and time for abatement.

(5) If, following issuance of a notice of violation, the Operator fails to meet any time set for abatement, fails to completely abate the violation, or fails to accomplish an interim step, the division shall issue a cessation order under Section R652-21-1302.

(6) The division shall terminate a notice of violation by written notice to the Great Salt Lake Operator when the division determines the violation has been abated.

(7) Termination of a notice of violation does not affect the right of the division to pursue any contractual remedies under an Operations Royalty Agreement.

**R652-21-1301. Pattern of Violation.**

(1) The Director or authorized delegate may determine a pattern of violations exists or has existed, based upon two or more division inspections of an operation within a 12 month period, after considering the circumstances, including:

(a) the number of violations attributable to the same or related requirements of applicable statute, regulation, or contractual provision;

(b) the number of violations attributable to separate requirements of applicable statute, regulation, or contractual provision;

(c) the degree of severity of the identified violations; and

(d) the extent to which the violations were isolated departures from lawful conduct.

(2) If, after review, the Director or authorized delegate determines a pattern of violations exists or has existed, and that each violation was caused by the same Operator, the division shall initiate informal adjudicative proceedings under the Utah Administrative Procedures Act or initiate an action in a court of competent jurisdiction for the Operator to show cause why any applicable permit, lease, or Operations Royalty Agreement should not be canceled, revoked, or rescinded.

(3) Any order resulting from an adjudicative proceeding is a notice of agency action and may be challenged or appealed under the Utah Administrative Procedures Act.

**R652-21-1302. Cessation Orders.**

(1) The division shall immediately order a cessation of all operations if it finds, based on any division inspection, that a violation of any condition of operations, applicable statutes, rules, or contractual provisions:

(a) creates an imminent danger to the public's health, safety, or welfare;

(b) causes, or can reasonably be expected to cause, significant, imminent environmental harm to sovereign land or Great Salt Lake Natural Resources; or

(c) consists of any operation or reclamation activity on Great Salt Lake conducted by any person or entity without a valid permit, lease, Operations Royalty Agreement, or Sampling Royalty Agreement.

(2) If a notice of violation has been issued under Section R652-21-1300 and the Operator fails to abate the violation within the abatement period, the division shall immediately issue a cessation order.

(3) A cessation order shall require the Operator to immediately take all steps the division considers necessary to abate the identified violations.

(4) A cessation order shall be issued to the Operator or its agent.

(5) A cessation order shall be in writing, signed by the authorized representative of the division, and will set forth with specificity:

(a) an order mandating the cessation of all operations;

(b) the nature of the violation;

(c) the remedial action or affirmative obligation required, which may include interim steps; and

(d) a time for abatement, which may include time for accomplishment of interim steps.

(6) A cessation order issued by the division shall remain in effect until the violation has been completely abated or until the cessation order is vacated, modified or terminated in writing by the division.

(7) If the cessation order does not completely abate the imminent danger or harm posed in the most expeditious manner possible, the division may pursue further remedies, including filing an action in a court of competent jurisdiction.

(8) Any cessation order is a notice of agency action and may be challenged or appealed under applicable agency review or the Utah Administrative Procedures Act.

(9) Reclamation operations and other activities intended to protect the public health, safety, and the environment shall continue during the period of the cessation order unless otherwise provided in the cessation order.

**R652-21-1400. Emergency Trigger Purpose and Authority.**

Sections R652-21-1400 through R652-21-1406 are promulgated pursuant to Section 65A-17-202 requiring the division to make rules providing the procedures the division shall follow under the Emergency Trigger.

Under the Emergency Trigger, the division shall ensure the emergency management responsibilities in Section 65A-17-202 are met.

**R652-21-1401. Emergency Trigger.**

(1) If salinity concentrations fall below 90 g/L or exceed 150 g/L, measured and reported in accordance with best practices as recommended by the Salinity Advisory Committee, the Salinity Advisory Committee may make a recommendation to the division that the conditions necessary for reaching the Emergency Trigger have been met.

(2) The division may, upon consultation with the Great Salt Lake Commissioner, declare the conditions necessary for reaching the Emergency Trigger have been met.

**R652-21-1402. Emergency Trigger Duties of the Division.**

Upon reaching the Emergency Trigger, and if the division finds the following actions will directly contribute to improved ecological conditions required for healthy brine shrimp and brine fly reproduction:

(1) the division may, in its sole discretion, construct, operate, modify, and maintain the adaptive management berm and any additional berms, dikes, structures, or management systems, if in a manner consistent with Section 65A-17-202 and the public trust;

(2) the division may enter into agreements as necessary to provide for the construction of all or a portion of a berm, dike, system, or structure, if the division finds such agreements are consistent with the public trust;

(3) the division may curtail mineral production for leases containing provisions contemplating curtailment or similar contractual remedies;

(4) the division may, at its sole discretion, withdraw mineral leases over:

(a) portions of Great Salt Lake;

(b) specific methods of extraction; or

(c) specific Great Salt Lake Elements and Minerals.

(5) the division may, at its sole discretion, decline to issue a new permit, authorization, or agreement; and

(6) the division may require Operators to implement extraction methods which do not deplete water or brine, mitigate to offset Brine Depletion, or implement Emergent Technologies.

**R652-21-1403. Emergency Trigger Record of Decision.**

Upon reaching the Emergency Trigger, a record of decision, as described in Section R652-9-200, summarizing the division's action and relevant facts shall be published on the division's website.

**R652-21-1404. Third-Party Claims.**

The division is not liable for a third-party claim resulting from the division's management actions under the Emergency Trigger.

**R652-21-1405. Emergency Trigger Termination.**

Upon consultation with the Great Salt Lake Commissioner and the Salinity Advisory Committee, the Director shall, upon 12 consecutive months of conditions that support a termination of the Emergency Trigger, declare the conditions necessary for termination of the Emergency Trigger have been met.

**R652-21-1406. Force Majeure.**

(1) Upon reaching the Emergency Trigger, the division may invoke force majeure in contracts, mineral leases, and royalty agreements which contain such provisions.

(2) If force majeure is invoked, the parties to any Operations Royalty Agreement shall:

(a) invoke the force majeure provisions within their respective agreements; and

(b) participate in an informal conference with the Director and any other affected Operators to arrive at a plan for the scope and duration of the cessation of operations caused by the Emergency Trigger.

(3) The division shall promptly waive force majeure once salinity conditions improve to levels below the Emergency Trigger threshold.

(4) If force majeure is invoked, the affected Operator is relieved from performance of any contractual provision requiring production to hold any Operations Royalty Agreement for a maximum of two years.

(5) If force majeure is invoked and the Emergency Trigger persists beyond two years, the division shall terminate the Operations Royalty Agreement and require the Operator to engage in new contracts where the Operator represents and warrants future operations will not amount to a net depletion of water.

(6) If force majeure is invoked, an Operator may continue to process brines already extracted and may sell products derived from those brines.

**KEY: mineral extraction; Great Salt Lake.**

**Date of Last Change: October 8, 2024**

**Authorizing, and Implemented or Interpreted Law: 65A-1-4; 65A-6-2; 65A-6-4; 65A-17-102; 65A-17-201; 65A-17-202; 65A-17-203; 65A-17-302; 65A-17-303; 65A-17-304; and 65A-17-306.**