

Form Name:  
Submission Time:

May 2022 RAC Proposals Feedback  
May 3, 2022 3:55 pm

**Which best describes your position  
regarding the landowner rule  
amendments for 2022?**

Strongly disagree

---

**Do you have any additional comments  
about these amendments?**

It's hard enough to get a tag as is now taking 600 tags to landowners who are going to sell them for profit and going to make it impossible for a public land hunter resident to get a tag at all

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Form Name:  
Submission Time:

May 2022 RAC Proposals Feedback  
May 12, 2022 11:01 am

**Which best describes your position** Strongly disagree  
**regarding the landowner rule**  
**amendments for 2022?**

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**Do you have any additional comments about these amendments?**

\*The following comment contains the same text as a letter sent via email to all members of the Southern Regional Advisory Council members. The text is copied and pasted here to be certain that it's content is accepted into the public record.

Dear Southern Regional Advisory Council members:

This law firm represents Diamond Mountain Landowners Association ("DMLA"). DMLA is an association of the owners of 154+ parcels of private property (hereinafter the "Landowners"), who collectively provide 35% of the property area-and a greater percentage of the prime wildlife habitat and access to food and water-within the limited entry big game hunting unit located on the South Slope of Diamond Mountain near Vernal, Utah (hereinafter, the "Diamond Mountain Limited Entry Unit" or "Unit"). We write this letter to explain why DMLA opposes the Proposed Amendments to the Landowner Permits Rule R657-43 (the Proposed Amendments) and urge you to reject the Proposed Amendments. [FN1]

## BACKGROUND

### I. The Existing Landowner Permits Program Is Essential to the Successful Management of the Diamond Mountain Limited Entry Unit.

DMLA has participated in the R657-43 Landowner Permits Program ("Landowner Permits Program") for nearly 30 years. This program is the foundation of a successful collaboration between the Division of Wildlife Resources (DWR) and DMLA to improve and expand big game habitat and access to food and water for deer and elk on both private and public lands in the Diamond Mountain Limited Entry Unit. As a result of this collaborative public-private investment in big game wildlife, the public lands within the Unit progressed from experiencing a crowded general hunting season on public lands that supported only small bucks and bulls to a hunting unit that supports a trophy population of elk and deer. It now provides a highly desired, uncrowded hunting experience that is dispersed throughout private and public lands within the Unit.

The Landowner Permits Program was designed as a free-market incentive to improve wildlife habitat on private lands.[FN2] Similar free-market incentive programs for private land conservation exist in other western states, including in New Mexico and Nevada.[FN3]

DWR's Landowner Permits Program provides DMLA a limited number of vouchers to purchase big game hunting permits in the Diamond Mountain Limited Entry Unit as compensation for providing food and water, for accepting and managing conflicts between the wildlife herds and private cattle ranching operations, and for repairing damages caused by wildlife to fences and water sources. DMLA divides the vouchers it receives among its member Landowners based on acreage owned. Most participating Landowners do not receive a voucher every year. [FN4]

When a Landowner receives a voucher, the Landowner may use the voucher to purchase a DWR permit to hunt on the Landowner's own land or may sell the voucher for compensation and allow the purchasing hunter to purchase a permit from DWR and hunt on the Landowner's land. Many Landowners who receive a voucher sell it and use funds received to keep the lands available for wildlife, pay increasing property taxes, and offset increased maintenance costs of prioritizing wildlife. Elk herds, in particular, frequently concentrate in areas of prime habitat on the Landowners' private lands, where they knock down fences, trample springs, and compete with cattle for food and water.

The existing Landowner Permits Program is an essential contributor to the success of the Diamond Mountain Limited Entry Unit. In addition to compensating landowners for impacts of increasing big game herds on their private lands, the incentives have also encouraged Landowners to proactively invest time, effort and private resources to collaborate with DWR to improve the ranges of deer and elk herds (on both public and private land) and improve public access to the herds. For example, DMLA Landowners have invested more than \$150,000, plus countless hours of volunteer labor, to improve the public range, including by developing springs and watering troughs on state owned lands and funding predator management initiatives. These contributions helped disperse big game populations onto the Unit's public lands for public enjoyment. Under the current rules, the Landowners also allow free walk-in access across their lands to public lands that are landlocked without requiring the state to purchase an access easement. [FN5] Finally, DMLA Landowners have allowed reasonable free landowner-controlled access to private lands by public hunters who draw permits for the Diamond Mountain Limited Entry Unit in DWR's lottery, even though there is no legal requirement for them to do so. [FN6] DMLA Landowners regularly provide free access to certain of the Unit's private lands in response to respectful requests from public hunters. However, allowing DMLA Landowners to control and manage public access to their lands ensures that the access is compatible with existing private uses and provides better assurance that the public hunter will act in a way that respects the Landowner's cattle, homes, cabins, personal property and the land itself. [FN7]

## II. The Proposed Amendments Transform the Landowner Permits Program into a Coercive Program that Will Require Landowners to Hand Over Control of Hunting Access to Private Lands to DWR.

The Proposed Amendments will extensively rewrite key provisions of the Landowner Permits Rule that apply to landowner limited entry permits. Read together, the Proposed Amendments will transform the Landowner Permits Program from a well-functioning and successful free-market incentive program recognizing landowners' participation in wildlife management into a coercive program that requires landowners to hand over control of hunting access on their private lands to the government without fair-market compensation and without necessary landowner

protections that are in place now.

The Proposed Amendments expressly redefine the purpose of the Landowner Permits Program to focus on public access.[FN8] The Proposed Amendments then begin the transformation of the Program to a coercive public access program by making substantial cuts to the number of Landowner Permits available.[FN9] Specifically, the Proposed Amendment calculates the number of landowner permits awarded by applying the percentage of private land acreage in the hunting unit to the number of last year's public draw permits--instead of the existing calculation, which applies the percentage of either private land acreage in the hunting unit or of wildlife use to the total number of unit permits.[FN11] This change disregards the fact that deer and elk concentrate in higher numbers on private lands where there is better access to food and water. Together, these changes will cause a substantial decrease in landowner permits available, even assuming the same conditions exist on the Unit before and after the Proposed Amendments are adopted.[FN12]

Next, the Proposed Amendments add new requirements that all of the Landowners who participate in the Landowner Permits program through a landowners association must allow DWR to control public access to their private lands to allow public hunting--whether or not the impacted landowners receive a hunting permit.[FN13]

The Proposed Amendments do not provide impacted landowners either fair market compensation or necessary access limitation and landowner protections that would be provided if DWR purchased a hunting access easement to the each of the impacted Landowners' lands.[FN14]

For example, the Proposed Amendments do not clearly provide liability protection to landowners under Utah's Limitations on Landowner Liability Act, § 57-14-101 et seq.[FN15] And, the right of public access and limits on landowner control in the Proposed Amendments are very broad, requiring that Landowners "shall provide complete access to hunt all landowner property." [FN16] This rule stands in contrast with the rules applied to walk-in access ("WIA") easements, which preserves the private landowner's right to deny a member of the public access to the walk-in access property for the following causes: "(a) the member of the public being intoxicated; (b) causing property damage or vandalism; (c) violation of property use terms or conditions in the WIA lease agreement or in this rule; (d) failure to possess a WIA authorization; (e) committing any wildlife violation or crime on the WIA property; or (f) any situation reasonably deemed an emergency." [FN17]

Finally, in the event that individual landowners or the landowners association rejects DWR's invasive requirements that it control public access to private lands, and the landowners association landowners instead elect to end their participation in the Landowner Permits Program, the Proposed Amendments remove all other means of wildlife management

on non-participating Landowners' lands. [FN18] The Proposed Amendments are coercive as applied to the DMLA Landowners because they will force the Landowners to choose between (a) retaining their statutory and constitutional rights to control access to their private lands, and (b) proper management of wildlife and wildlife impacts on their lands.

## EXPLANATION OF DMLA'S OPPOSITION

DMLA opposes the Proposed Amendments for two primary reasons: First, good wildlife management public policy strongly favors keeping the existing Landowner Permits Program. Second, the Proposed Amendments will unlawfully invade the Landowners' statutorily and constitutionally protected property rights.

### I. GOOD PUBLIC POLICY SUPPORTS CONTINUING THE EXISTING LANDOWNER PERMITS PROGRAM

The establishment of the Diamond Mountain Limited Entry Area and also the associated Landowners Permit Program for DMLA Landowners has resulted in 30 years of demonstrated improvements to wildlife management and hunting opportunities in the Diamond Mountain Limited Entry Unit. The Unit now provides a highly desired big game hunting experience that benefits hunters on both public and private properties. The Unit's exceptional hunting experience also brings considerable economic development and tourism to Vernal, Utah. These are wildlife management outcomes that DMLA urges the Regional Advisory Councils and Wildlife Board to preserve.[FN19]

It is possible that the Landowner Permits Program has become a victim of its own success. The 30 years of benefits that Landowner collaboration with DWR have provided to the public, and the necessity of continued collaboration, were not adequately considered by the advisory committee that drafted the Proposed Amendments, which only included two landowners associations in their discussions and did not give much weight to the landowners associations' input. There is an apparent presumption by proponents for access to private lands that the landowners receiving landowner permits are unfairly profiting from a wildlife resource that "belongs to the state." This is an oversimplified view of a situation where the wildlife that is managed by the state in the public's interest is dependent upon food, water and habitat on private lands that Utah citizens have a constitutional right to hold and protect. In fact, it is reasonable and good policy for the state to compensate landowners for this support in some manner as a means to collaboratively increase opportunities for everyone to view and hunt wildlife. [FN20]

There are many benefits obtained by the state through the landowners' participation in the Landowners Permit Program that will not be available to support state wildlife management objectives if the program is made to be so burdensome that the landowners exit the program. The state wildlife

managers will lose the time, support, and private resources that have been provided by private landowners. Private landowners will not be incentivized to increase wildlife habitat or avoid conflicting uses of their properties. The State will find management of wildlife across private land boundaries more difficult. In an area with significant habitat on private lands, it is likely that elk and deer will retreat to private lands where they cannot be hunted during hunting seasons. Greater numbers of hunters will be concentrated on public lands and the value of the hunting experiences will decrease. In the event that DWR follows through with its threat to remove the limited entry designation if DMLA Landowners do not accept the Proposed Amendments, the trophy populations of elk and deer will soon be eliminated from public lands by open hunting. On private lands, where DWR prohibits landowners from private hunting, DWR will be asked to manage and compensate for damages caused by increasing concentrations of big game and public hunters who will inevitably be frustrated with sudden limitations on access to private lands.

Conversations between DMLA and members of the advisory committee also illuminated a misperception held by the advisory committee and DWR that DMLA Landowners benefit so much from the Landowner Permits Program and Diamond Mountain's Limited Entry designation that DMLA Landowners will ultimately give up their opposition to these rule changes continue participation in the Landowner Permits Program even if the rule changes are enacted. This is incorrect. As described in further detail below, DMLA Landowners have already unanimously determined that they will not hand the 'gate keys' to all of their private properties to the State in exchange for participating in the Landowner Permits Program. If the Proposed Amendments are adopted and also survive an inevitable legal challenge, DMLA Landowners will certainly end their participation in the Landowners Permit Program.

## II. THE NEW REQUIREMENT THAT LANDOWNERS ALLOW DWR TO CONTROL PUBLIC HUNTING ACCESS TO PRIVATE LANDS VIOLATES THE WILDLIFE BOARD'S AUTHORIZING STATUTES AND UTAH'S CONSTITUTION

The coercive requirement in the Proposed Rules that the Landowners essentially hand over their gate keys to the State and allow it to control public access to their private lands for hunting purposes (without paying individual property owners fair market value for access rights) violates the state statute giving rulemaking authority to the Wildlife Board and also violates the Landowners' constitutional rights.

### A. The Proposed Amendments Exceed the Rulemaking Authority of the Wildlife Board and Impermissibly Infringe on Legislative Policy Decisions Expressed in Governing Statutes

To begin, the Proposed Amendments exceed the authority granted to the Wildlife Board. Administrative agencies only "have the power to create

rules and regulations which conform to the authorizing statute and do not depart from it." [FN21] While the Wildlife Board has broad authority to provide for management of wildlife, there is no grant of authority for it to require private property owners to open private property for public use without entering into an easement agreement and providing fair compensation for the hunting easement. [FN22] Nor is there any grant of authority to the Wildlife Board to dictate who landowners must allow to access private property. [FN23] In fact, and to the contrary, there are express limitations in the Wildlife Board's authorizing statute, Utah Code Section 23-14-18, that prohibit the Wildlife Board from controlling access to lands belonging to private landowners. In relevant part, Section 23-14-18(2) provides as follows:

"The Wildlife Board shall, except as otherwise specified in this code: (i) prescribe rules and regulations as it may consider necessary to control the use and harvest of protected wildlife by private associations, clubs, partnerships, or corporations, provided the rules and regulations do not preclude the landowner from personally controlling trespass upon the owner's properties nor from charging a fee to trespass for purpose of hunting or fishing." [FN24]

The Proposed Amendments exceed the limits of the Wildlife Board's authorizing statute because they contain an improper requirement that each landowner participating in the DMLA association enter into a "written agreement" to "allow free public access onto participating private lands to the extent required by R657-5-5(a)(ii) . . ." [FN25], [FN26]

The Proposed Amendments provide two "voucher" options that may be selected by the entire landowners association. [FN27] If the Landowners Association selects Voucher Option 1, the Proposed Amendments additionally require that for each voucher provided to the landowners association, "[a]n equivalent number of public hunters . . . shall be provided complete access to hunt all landowner association property at no charge . . ." [FN28] In other words, DWR will select the identified number of public hunters through the permit draw, and require they "be given access to [all landowners association] lands." [FN29] This requirement does precisely what the express limitations on the Wildlife Board's authority contained in Section 23-14-18(2) prohibit: it regulates the private landowners' association in a manner that precludes the individual landowners "from personally controlling trespass upon the owner's properties" or from "charging a fee to trespass for purpose of hunting." [FN30] Similarly, if the Landowners Association selects Voucher Option 2, the Proposed Amendments reduce the available vouchers, but still require that for every voucher allocated to the landowner association, "an equivalent number of public hunters to the number of vouchers . . . shall be provided complete access to hunt all landowner association property at no charge . . . ." [FN31] Again, this violates the limitation on the Wildlife Board's authority in Section 23-14-18(2). It precludes the individual landowners in the Landowners Association from "personally controlling trespass upon the



owner's properties" and from "charging a fee to trespass for purpose of hunting." [FN32]

Because the Proposed Rules exceed any authorization for dealing with private property provided by the authorizing statutes and actually infringe on the legislature's express limitations on the Wildlife Board's authority to make rules that govern public hunting on private properties, the Proposed Amendments are unlawful and invalid.

To the extent that the DWR may argue that the Landowners Permit Program is a voluntary agreement to obtain a government benefit, and not a 'take it or leave it' legal mandate, that distinction will not support the Proposed Amendments in this case. The Proposed Rules do not offer a brand new benefit program that the regulated landowners may freely accept or reject without consequence. DWR regulates and manages wildlife on all of the private lands within the boundaries of the limited entry unit. DWR and the Wildlife Board have not only the right but also the obligation to properly manage wildlife and respect impacts on private lands. [FN33] Denying that reality, the Proposed Amendments are drafted to force landowners to choose whether to participate in a wildlife management and hunting access program that they have invested in for 30 years and be required to relinquish fundamental rights to limit and control access to their private properties or, alternatively, to have no identifiable method of wildlife management on the private properties (and suffer any wildlife damage that results from the lack of wildlife management). The variance to public access requirements that was previously granted to DMLA has been eliminated from the Proposed Amendments. [FN34]

#### B. The Coercive Proposed Amendments Violate Utah's Constitution.

Most importantly, the coercive Proposed Amendments violate fundamental constitutional rights under the Utah Constitution, including constitutional guarantees of the Landowners' rights to hold and protect private property and be free from government efforts to intrude into or take those rights without just compensation. First, Article I, Section 1 of the Utah Constitution identifies holding and protecting private property as an inherent inalienable right that must not be infringed by the State. It recognizes that "All persons have the inherent and inalienable right to . . . acquire, possess and protect property . . ." Utah Const Art. I, § 1. The Proposed Amendments infringe on the Landowners Rights to avoid the proposed coercive invasion of the Landowners' property rights. The Proposed Amendments improperly require the Landowners to choose between retaining the right to manage or deny public access to private lands on one hand and protecting their lands from damages from wildlife depredation and lack of wildlife management on the other hand. Article I, Section 1 of the Utah Constitution guarantees the Landowners the right to both possess and protect property from invasion and damage by the State. The same Article I, Section 1 is also unconstitutionally invaded by the State when, due to government regulation, "one is not at liberty to contract with others respecting the use to which he may subject his property . . . or the manner in which he may enjoy

it." [FN35] The Proposed Amendments also invade the landowners' ability to provide how and under what conditions their private property is accessed. The Proposed Amendments do not require hunters that access private lands to do so in a manner that is respectful of and protects private landowners' interests. The Proposed Amendments do not require a waiver of liability or clear expression of agreement that the hunters accept the risk of hunting on the landowners' lands. The Proposed Amendments also invade the Landowners' rights to obtain fair value for the access the landowners would be required to provide.

Second, Article I, Section 22 prohibits the State from taking or damaging private property for public use without "just compensation." This "takings" clause from the Utah Constitution will also be violated by the Proposed Amendments. Utah's takings clause is "broader than its federal counterpart" under the United States Constitution. The Utah Constitution's protection from takings by the State "[i]s triggered when there is any substantial interference with private property which destroys or materially lessens its value, or by which the owner's right to its use and enjoyment is to any substantial degree abridged or destroyed." [FN36] The Proposed Amendments violate the "takings" provision by coercing the Landowners to accept a wildlife management program that imposes unlimited private hunting easements of unknown but potentially unlimited scope on private lands without providing just compensation for the use. Despite substantially increasing the public access requirements and burdens on private lands, the Proposed Amendments make drastic decreases to the compensation that is provided to the Landowners by the Landowner Permits program vouchers.

Third, Article I, Section 24 of the Utah Constitution requires that "all laws of a general nature shall have uniform operation." This clause operates as "a state-law counterpart to the federal Equal Protection Clause." [FN37] This constitutional principle is likely to be violated by the DWR's policy that it will not provide for wildlife management on lands it is obligated to manage except by means of opening the private lands to public access. The purpose of imposing such a requirement is to coerce property owners to open access to lands desired for public hunting to public access, which infringes and discriminates against Landowners who exercise their fundamental rights to limit and control access to their private properties.

## CONCLUSION

As we have described in this letter, and as you will hear in the meetings and public comments from multiple landowners and other interested landowners associations, the Proposed Amendments should be rejected as written because they implement a new and counterproductive public policy and also violate statutory and constitutional limitations that protect private lands from overreach by the State. The RACs and Board should recommend that any potential revisions to the Proposed Amendments be tabled and revisited by a broader advisory committee that receives input

from members of all interested landowners associations.

In the event that the Wildlife Board adopts the Proposed Amendments as written, DMLA is preparing to challenge the legality of Proposed Amendments and to take every legal action available and necessary to preserve and protect the landowners' rights to manage and control access to their private properties while also protecting their private property from harm that would be caused by unmanaged wildlife populations.

Sincerely,  
RAY QUINNEY & NEBEKER, P.C.

Maria E. Windham  
Whitney H. Krogue

Attorneys for Diamond Mountain Landowners Association, In.

cc: Dave Chivers, Chairman DMLA

FOOTNOTES:

[FN1: Alternatively, we request that you table the Proposed Amendments for further discussion and appoint an expanded advisory committee that includes representatives of each of the landowners associations that will be impacted by the Proposed Amendments. We understand that a substantial number of other landowners associations also oppose the Proposed Amendments for many of the same reasons identified by DMLA in this letter, although each landowners association has a unique history and perspective. We anticipate that DWR will receive many additional comments to the Proposed Amendments from other landowners associations.]

[FN2: The purpose of granting landowner permits is stated in Landowner Permits Rule R657-43-1(5) as follows:

"Allowing landowners a restricted number of permits: (a) encourages landowners to manage their land for wildlife; (b) compensates the landowner for providing private land as habitat for wildlife; and (c) allows the division to increase big game numbers on specific units."

Utah Administrative Code R657-43-1(5).]

[FN3: See, e.g., Catherine Semcer and Jack Smith, Conserving Wildlife Habitat with Landowner Hunting Permits: Lessons from western states to enhance voluntary conservation on private lands, PERC Policy Brief, September 2021, <https://www.perc.org/wp-content/uploads/2021/09/PERC-PolicyBrief-2PGS-UMMARY-HuntingPermits-200812-WEB.pdf>.]

[FN4: Because vouchers are allocated based on acreage in ownership, and vouchers cannot be fractionated, it is common for individual DMLA member landowners to be eligible for a single voucher in 10 years.]

[FN5: See Utah Admin Code R657-43-5(6)(e)]

[FN6: Since the time a public hunter access requirement was added to the Landowner Permit program, DWR has consistently been granted DMLA the variance described in R657-43-10(6)(a) ("Landowners receiving vouchers may deny public hunters access to the landowner association's private land for hunting by receiving, through the landowner association, a variance to Subsection (5)(b) from the Wildlife Board.").]

[FN7: DMLA has previously offered to send information to DWR to verify that DMLA Landowners are collectively providing reasonable landowner-controlled access to private lands in good faith. DWR has not formed a system for consistently collecting, recording or tracking this information and, in fact, told DMLA that they did not need to track that information.]

[FN8: The Proposed Amendments R657-43-1(3)(d)-(h) add the following new objectives to the original landowner compensation objectives: "(d) increase big game hunting opportunities; (e) increase and secure public hunting access on participating landowner's private lands; (f) reduce the division's obligations in responding to and compensating for depredation events occurring on participating private lands; (g) use of objective criteria to determine how hunting opportunities are allocated under the programs; and (h) allocate hunting opportunities in a manner that fluctuates in proportion to variations in public draw permit numbers."]

[FN9: See R657-43-2.]

[FN10: See Proposed Amendments R657-43-5(2)(d) ("applying [the percentage of the Unit's acreage represented by the landowner association] to the total number of available public draw permits to determine the number of landowner association permits available that year.")]

[FN11: See R657-43-10(2)-(3) (providing that permit numbers will be based either on the "percent of eligible property within the unit that is enrolled in a landowner association and serves as big game habitat"; or "the percentage of use by wildlife on eligible property enrolled in a landowner association.")]

[FN12: Under the new calculation in the Proposed Amendments, if last year a hypothetical landowners association received exactly 35% of the unit permits and 65% went to public draw permits, then this year the landowners association's 35% share is applied to the 65% that went to

public draw permits last year, not the total number of permits. The resulting percentage of permits available this year to the hypothetical landowners association will be 22.75% of the total permits. Moreover, if last year's percentage was based on AUMs and there is a lower percentage of private acreage, the 35% number applied last year might drop to 25% this year. The hypothetical landowners association's permits would then drop to 25% of the 65% that went to public draw permits last year, which would drop the landowner association's share of the permits to 16.25% of the unit's available permits.

[FN:13 Each landowner participating in a landowner association is required to enter into a "written agreement" to "allow free public access onto participating private lands. . ." Proposed Amendments R657-43-5. The landowners association must then select between two voucher programs, both of which require that the landowner association provide access "to hunt all landowner association property at no charge" to a certain number of public hunters who obtain permits in the public draw. See Proposed Amendments R657-43-5. Voucher Option 1 requires that the Landowners must accept specific public permit holders who have "the lowest draw numbers" onto their private lands where the public hunters "shall be provided complete access to all landowner association property at no charge". See Proposed Amendments R657-43-5(a)(iii). The number of these DWR-selected all-access public hunters will be equivalent to the number of landowner permits provided to the landowner association. This means that if 100 permits total are available for the hunting unit, and the landowner association gets 22.75% (21 permits), it must allow 21 of the 78 public draw permit holders to have "complete access to all landowner association property at no charge." See Proposed Amendments R657-43-5. Participating landowners cannot control where or on which Landowners association lands the 21 public hunters can hunt. Under this scenario a single landowner who has a small but desirable parcel of land could receive a hunting permit only once every 10 years under the Landowners Permit Program, but his lands could be burdened with a substantial number of the public hunters whose access is controlled by the DWR. Voucher Option 2 is not materially more favorable to landowners. If landowners select Option 2, the landowner's allocation of permits is reduced by another 20%. Continuing the scenario in which a landowners association gets 22.75% of 100 permits (or 21 permits, this option reduces the number of landowner permits to 16.8 (rounded up to 17). DMLA must then allow the same number (17) public hunters "complete access to hunt all landowner association property at no charge." Under this scenario a single landowner who has a small but desirable parcel of land could receive a hunting permit only once every 10 years under the revised Landowners Permit Program, but his lands could be burdened with a substantial number of the public hunters whose access is controlled by the DWR.]

[FN14: See, e.g., Utah Admin Code R657-56, Lease of private lands for free public walk-in access.

[FN15: Statutory liability protections are expressly provided in the Utah wildlife statutes that apply to Cooperative Wildlife Management Units (CWMUS), see Utah Code Ann. § 23-23-14 (Landowners who participate in cooperative wildlife management units shall have the full protection afforded under Title 57, Chapter 14, Limitations on Landowner Liability) and in the rules governing access easements that are properly purchased or leased by DWR in compliance with Utah's Walk-In Access Program, see Utah Admin. Code R657-56-10.]

[FN16: See Proposed Amendments R657-43-5.]

[FN17: Additionally, Rule R657-56-14(2) makes it "unlawful to refuse to leave a WIA property when requested by the private landowner, a division representative, or other peace officer."

[FN18: Representatives of the DWR have acknowledged in discussions with DMLA that, if the Proposed Amendments pass, nonparticipating landowners in the Diamond Mountain Limited Entry Unit will have no means of managing wildlife populations and impacts on their private lands within the limited entry unit other than to allow DWR to open their private lands to hunting access by members of the public. No hunting permits will be available to nonparticipating landowners. Alternatively, DWR has suggested that if DMLA refuses to participate in the revised Landowners Permit Program, it will remove the limited entry designation on the South Slope of Diamond Mountain. Doing so would destroy the trophy big game populations on Diamond Mountain that have been cultivated for nearly 30 years, harm local communities and DMLA landowners, and ultimately harm the public in whose interest DWR is obligated to manage Utah's wildlife.]

[FN19: These wildlife management outcomes are the types of outcomes the Wildlife Board is directed by Utah Code 23-17-3 to seek to accomplish and are consistent with DWR's existing herd management plans. DWR's "2016 Elk Herd Unit Management Plan for Elk Herd Unit #9, South Slope" is to "[M]anage for a population of healthy animals capable of providing a broad range of recreational opportunities, including hunting and viewing. Consider impacts of the elk herd on other wildlife and land uses including private property rights, agricultural crops and local economies. Maintain the population at a level that is within the long-term capacity of the available habitat. . . . Critical private property parcels need to be protected from development through conservation easements, acquisitions, etc." (emphases added). The same plan states that factors that impact the ability of this unit to support larger elk populations "include[e] agricultural depredation . . . [and] competition for forage with domestic & ferral livestock." Similarly, DWR's 2020 Deer Herd Management Plan for Deer Herd Unit #9, South Slope provides that "The Diamond Mountain subunit . . . will be managed as a Limited Entry hunting unit." It also identifies as a habitat management strategy: "Continue to improve, protect, and restore sagebrush steppe habitats critical to deer. Cooperate with federal land management agencies and private landowners in carrying out habitat

improvements such as pinion-juniper removal, reseeding, controlled burns, grazing management, water developments, etc. on public and private lands." (emphasis added).]

[FN20: For additional support and discussion of the wildlife management successes of Utah's Landowner Permits Program and similar free-market incentives to private landowners, see Catherine Semcer and Jack Smith, *Conserving Wildlife Habitat with Landowner Hunting Permits: Lessons from western states to enhance voluntary conservation on private lands*, PERC Policy Brief, September 2021, <https://www.perc.org/wp-content/uploads/2021/09/PERC-PolicyBrief-2PGS-UMMARY-HuntingPermits-200812-WEB.pdf>]

[FN21: *State v. Chindgren*, 777 P.2d 527, 529 (Utah Ct. App. 1989).]

[FN22: See Utah Code Ann. § 23-14-18.]

[FN23: *Id.*]

[FN24: Utah Code Ann. § 23-14-18.]

[FN25: Proposed Amendment R657-43-5(3)(xi).]

[FN26: The reference to R657-5-5(a)(ii) appears to be an error. It may refer to R657-43-5(a)(ii). In either case, the requirement violates Section 23-14-18.]

[FN27: See Proposed Amendments R657-4-43-5(5).]

[FN28: *Id.*]

[FN29: Proposed Amendment R657-43-5(5)(a).]

[FN30: See Utah Code Ann. § 23-14-18(2) (The term "trespass" in this provision clearly refers not to the crime of criminal trespass but to entry of persons onto the land into the land without specific express authorization by the landowner).]

[FN31: Proposed Amendment R657-43-5(b).]

[FN32: See Utah Code Ann § 23-14-18(2).]

[FN33: See Utah Code Ann. § 23-14-13(b)(i)-(v).]

[FN34: Compare R657-43-10(6) with Proposed Amendments R657-43.]

[FN35: *Jensen ex rel Jensen v. Cunningham*, 2011 UT 17, ¶ 62, 250 P.3d 465 (quoting *Golding v. Schuback Optical Co.*, 70 P.2d 871, 875 (Utah 1937)).]

[FN36: America West Bank Members, LC v. State, 2014 UT 49, ¶¶30-31, 342 P.3d 224,235-36.]

[FN37: Taylorville City v. Mitchell, 2020 UT 26, ¶ 36, 466 P.3d 148.]



**Which best describes your position regarding the upland game and turkey recommendations for 2022?**

Somewhat agree

**Do you have any additional comments about these recommendations?**

I LOVE this proposal. I have been meaning to bring up tom harvest during the fall hunt for years as it's a huge detriment to our spring hunt opportunity.

That said, what isn't included in the proposal from the division is the harvest statistics based on tag purchases.

I haven't yet received the full data from the division from my GRAMA request, but Heather can provide it for you for your region specifically.

In the northern region, 79% of the hunters that harvest birds only harvest one... (less than 20% harvest two, and 8% harvesting three birds)

That means that at least 79% (and probably closer to 100%) of the toms harvested are the hunter's first fall bird harvested.

If the goal here is to reduce the number of toms in the fall harvest, offering even one either sex tag WILL NOT achieve that goal.

Hunters have proven that they won't self regulate on this, so it's time we do it in rule.

If a landowner is having issues with toms, he can get control vouchers, and control permits from the division to address his specific issue, but a public hunter should not be able to purchase a bearded turkey permit for the fall hunt over the counter.

Thanks for taking the time to read my comment, and feel free to reach out to me if you need more clarification.

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