

Northern Rockies Land Use Agreement Guidance



Points to Consider when entering into a Land Use Agreement (LUA):

- Use of Cadastral tools to determine ownership is a must
 - For example, the States of Montana and Idaho have Trust lands that may be under lease, but the State retains ownership. The States may require a Letter of Authorization (LOA) or an LUA depending on agency ownership and the circumstances. Any LOAs/LUAs must be done through the appropriate State agency and not the lessee. Procurement Officials should contact the local area State office as a starting point.
- Land values differ greatly across the geographic area. Contacting local acquisition, realty or land management staff in determining fair and reasonable rates is expected. When looking at a LOA/LUA with State or Local Government (City, County), review local Cooperative agreements for guidance.
 - Reference the NWCG SIIBM website for Land Use Checklists and General Guidance.
 - LUA rates for Government owned property (taxpayer funded property) should be fair and reasonable to cover operating costs and restoration. They should not be for profit.
- LUAs for use of airports need to be clearly defined. Air Operations and/or local unit aviation staff should provide clarification of how incident use differs from regular commercial use. If there is no difference, a commercial pay agreement may be more appropriate; if incident needs go beyond commercial use, then a LUA may be appropriate. Not all airports have established commercial rates; work with identified aviation point of contact to help determine fair and reasonable rates.
- The relationships the wildland fire agencies have established with local landowners are highly valued here in the Northern Rockies. Maintaining these relationships takes everyone working together. Establishing agreements on a “per-use” basis is highly discouraged. These agreements are difficult, if not impossible to track. Landowners expect the incident to know what they’re doing; they expect the incident to track use. When use is not tracked or not done consistently, it tends to be detrimental to the landowner. The preferred method is a daily rate, which may be less than the per-use rate, but over the course of the incident, will average out.
- The preferred method of compensation for restoration is for the rate to exclude restoration. The landowner is responsible for completing any restoration and compensation is negotiated separately between landowner and contracting officer.
- Procurement Officials are expected to explain the terms and conditions of the LUAs with the landowner at time of negotiation and signature.
- Minimum and Maximum rates. Careful consideration must be given to each. Caution needs to be given to minimum rates; the Federal government cannot pay for goods or services not received. Maximum rates need to be in line with what is fair and reasonable for the duration of the incident. Setting maximum rates on long duration fires could result in multiple modifications to the agreements. This may be problematic for both Procurement Officials and landowners to accomplish in a timely manner. Consider weekly and monthly rates as an alternative.

All BIA/DOI Jurisdictional Lands: For all Dip Sites, Non-Commercial, Municipality Water Sources, State Trust or Endowment Lands, Lands owned by Other State Agencies, Schools and Fairgrounds BIA Jurisdictional Lands fall into several categories Contact:

- BIA Rocky Mountain Region (Montana reservations, excluding Flathead)
 - Contact: Amanda Boatright, 406-247-7949 (o) or 406-696-5069 (c)
- BIA Northwest Region (Idaho Panhandle reservations, including Flathead)
 - Contact: Regina Hoffmann, 503-231-6800 (o) or 503-679-5725 (c)
- BIA Great Plains Region (North Dakota and South Dakota reservations)
 - Contact: Diane Cartney, 605-226-7621 (o) or 605-380-1567 (c)

Dip/Draft Sites Non-Commercial/Municipality Water Sources

Federal Agencies:

- **DOI/BLM** - BLM follows all state and local laws for water use. LUAs may not be written solely for use of irrigation water (i.e. on a price per gallon basis). The BLM DOES NOT pay for non-commercial (irrigation) water, but rather contracts for use of private land to access irrigation water. Temporary use of irrigation water for emergency fire suppression doesn't require a permit or prior approval from the State. Use must cease when water is no longer required to meet the emergency. The agreement must be written to include access to dip/draft sites, diversion of water and specify that rate includes use of water. Compensation rate cannot be based on units of use of water, i.e. per gallon, flow/pump rate, or daily rate for water.
- **DOI/FWS** - USFWS retain all rights, which includes water, whenever a permit is issued for grazing on USFWS lands. Any agreement written to an individual to utilize their private property follows MT State code for water use and emergency fire suppression.
- **DOI/NPS** - Potable water sources are typically provided by the NPS from hydrants on-site. No agreements are needed but volume pumped from the hydrants should be calculated for an internal water-use recording, and state reporting process. Dip/Draft sites are also frequently available inside the park boundaries. Helitack personnel should track volume withdrawn. If private dip sites are used, LUA for access only, not for gallons of water withdrawn.
- **FOREST SERVICE** - FS follows all state and local laws for water use. LUAs may not be written solely for use of irrigation water (i.e. on a price per gallon basis). The FS DOES NOT pay for non-commercial (irrigation) water, but rather contracts for use of private land to access irrigation water. Temporary use of irrigation water for emergency fire suppression doesn't require a permit or prior approval from the State. Use must cease when water is no longer required to meet the emergency. The agreement must be written to include access to dip/draft sites, diversion of water and specify that rate includes use of water. Compensation rate cannot be based on units of use of water, i.e. per gallon, flow/pump rate, or daily rate for water.

State:

- **MT-DNRC** - LUAs are done for access only; the State does not pay for water.
- **ID-IDL** - LUAs are done for access only; the State does not pay for water.
- **ND** - The N.D. State Water Commission (SWC) requires a temporary water permit is obtained any time surface or ground water is used during an emergency response (North Dakota Century

Code 61-04-02.1 and North Dakota Administrative Code 89-03-01-10). To obtain a temporary water permit, contact the SWC at (701) 328-2754. If unable to reach the SWC, contact the NDDDES Duty Officer via State Radio at (701) 328-9921 for assistance. Note: Filing fees may be waived for Emergency Use, including firefighting, as noted in NDAC 89-03-01-10.2. The temporary water permit process is not intended to delay any response and fire suppression should be a priority.

- **SD** - LUAs are done for access only; do not pay for water. Depending on the situation, replacement of water, for example, a stock pond may be required as part of restoration. If questions arise, seek counsel from local representative.

State Trust or Endowment Lands

- Contact local area State office for information. A Letter of Authorization (LOA) or LUA may need to be done. These agreements are usually done by the local State official with authority.
 - **ID-IDL Specific:** Trust/Endowment lands must be treated as private; LUAs are required.
 - **ND School Trust Lands Specific:** ND School Trust Lands – contact the Department of ND Trust Lands for more information. LUAs are required. Treat trust lands as private.
 - **SD Specific:** No Endowment or Trust lands
 - **MT DNRC Specific:** General guidance relating to the use of MT DNRC Trust Lands for fire purposes such as an ICP/camp/dip site, etc:
 - If land is identified as state trust land, contact the appropriate DNRC Area or Unit office. DNRC office information can be found at:
<https://dnrc.mt.gov/TrustLand/about/field-offices>

Lands owned by Other State Agencies

Federal Agencies:

- Work with local area State office for contact information or may work directly with ownership Agency. LUA may be required; pricing should be based on operating costs and restoration.

State Agencies:

- MT-DNRC and IDL - Work with local area State office for contact information or may work directly with ownership Agency. LUA may be required; pricing should be based on operating costs and restoration.
- ND - Work directly with ownership agency. LUAs may be required; pricing should be based on operating costs and restoration.
- SD - Restrictions apply, follow the LUA checklist in the SIIBM. If questions arise, seek counsel from local representative.

Schools and Fairgrounds

Federal Agencies:

- If Government owned; pricing should reflect operating costs and restoration.

State Agencies:

- MT-DNRC, IDL and ND - If Government owned; pricing should reflect operating costs and restoration.
- SD - Schools and other governmentally owned facilities should be compensated for operating costs only, since these facilities are funded by the taxpayers through tax revenues.