

Chapter 74

MINERAL RIGHTS*

- Sec. 74-1. Mineral reward.
- Sec. 74-2. Uranium mining.
- Sec. 74-3. Timber.
- Sec. 74-4. Timber policy.

*Cross references—Real property, ch. 47; zoning, ch. 61.

Sec. 74-1. Mineral reward.

(a) Any Tribal member who finds or discovers a commercially workable deposit of minerals on Tribal land will be paid a reward of \$250.00. The reward is contingent upon finder reporting the finding to the Business Committee who shall then obtain samples through a qualified mineralogist. If the mineralogist confirms the commercial nature of the discovery, the Business Committee shall promptly pay the reward from Tribal funds.

(b) The Tribe shall receive not less than ten percent of the net proceeds from the sale of such minerals or ore mineral from any trust land. (Res. No. 43, 11-20-1936)

Sec. 74-2. Uranium mining.

(a) All prospecting permits and mining leases shall be executed on forms approved by the Secretary of the Interior or his duly authorized representative.

(b) A fee of \$25.00 shall be charged for each nonexclusive prospecting permit, which sum must be paid to the Tribe at the time of application for such permit.

(c) All nonexclusive prospecting permits shall be issued for a prescribed period of time of six months duration or less and within the period from January 1 to June 30 and from July 1 to December 31 for each year. Applicants for nonexclusive prospecting permits who apply at any time other than at the start of one of the six-month periods shall receive a permit covering only the remaining term in the then current permit period. It is the purpose of this section that all permits shall terminate on the same date in order that a review of the circumstances may be made at the end of each permit period.

(d) The permit area may be defined as to any part of or may include the entire reservation of the Eastern Band of Cherokee Indians in North Carolina.

(e) The nonexclusive prospecting permit may grant to the permittee a right, exercisable at any time during the term of said permit, upon a

discovery of ore in commercial quantities, to apply for a mining lease on one parcel of not to exceed 40 acres of the land embraced in said permit.

(f) If an ore discovery is made and a lease is approved covering said discovery, lands in the proximity to said discovery may be included in an advertised sale of either mining leases or exclusive prospecting permits containing a right to select a lease or leases on 960 acres, subject to the acreage limitation of federal regulations. However, if there is no competitive interest in an advertised sale and it is to the advantage of the Tribe, mining leases may be negotiated and approved without advertising.

(g) Permits and leases shall be granted pursuant to federal law and regulation and must comply with all laws and regulations applicable to mineral leases on Indian lands. (Res. No. 34, 12-5-1955)

Sec. 74-3. Timber.

The Tribal Council hereby adopts a timber cutting policy which shall be enforced by the Bureau of Indian Affairs and the Tribe.

(a) The Cherokee Agency Forester shall make an inspection of all timber prior to any cutting by lessees on Tribal and leased property.

(b) Any timber cut on Tribal lands which are leased from the Tribe shall be designated for use by the Tribe or distribution to the senior citizens or needy members of the Tribe.

(c) Any person or firm violating the provisions of this chapter regarding timber shall be subject to a fine of \$500.00.

(d) The Tribal Business Committee is authorized to enforce this policy by collecting the subject fine of \$500.00 from any person or firm violating the provisions of this chapter regarding timber.

(Ord. No. 154, 4-19-1990)

Sec. 74-4. Timber policy.

(a) *Scope.* This policy addresses the changes and additions necessary for harvesting of forest products to continue, from both Tribal lands as well as possessory holdings. This policy statement applies to all Eastern Band of Cherokee Indian trust lands, and specifically to those lands which are considered chiefly valuable for the production of forest products or to maintain watershed or other land values enhanced by a forest cover.

(b) *Purpose.* This policy statement sets forth measures to control and monitor the harvest of lesser value forest products through a permit system (paid and free use), as well as providing an avenue of harvesting higher value forest products by means of timber sales. These procedures for harvesting any forest product will protect the Eastern Band of Cherokee Indians forest resource.

(c) Definitions.

- (1) *Tribal member* shall mean a person who is officially enrolled as a member of the Eastern Band of Cherokee Indians.
- (2) *Trust land* shall mean those lands whose title is held by the United States government for the benefit of the Eastern Band of Cherokee Indians.
- (3) *Tribal land* shall mean the Eastern Band of Cherokee Indian land which is in unassigned status, generally regarded as Tribal Reserve.
- (4) *Possessory holding* shall mean an assignment of land made through Tribal regulations which grants an individual Tribal member or a group of Tribal members the right of use and occupancy to a specified area and acreage of Eastern Band of Cherokee Indian trust lands.

(d) Limits to cutting.

- (1) No person may cut timber on any Eastern Band of Cherokee trust lands except enrolled members and their immediate families.
- (2) No person may cut down any fruit bearing tree, including mulberry, service berry, walnut and apple trees located on Tribal Reserve Lands.
- (e) *Permits.*
 - (1) Free use permits—possessory holdings: A free use permit will be issued to any possessory holder for the purpose of removing products for his or her personal use. Products cut under this authority are not to be sold or exchanged for other goods or services. The stumpage value which may be cut in a calendar year shall not exceed \$4,500.00. Permits shall be issued by the Agency Forester.
 - (2) Tribal Reserve: A free use permit will be issued to enrolled Tribal members who are 18 years or older for the purpose of removing products for his/her personal use. Products cut under this authority are not to be sold or exchanged for other goods or services.
 - (3) Free use permits for Tribal Reserve products are subject to the following stipulations:
 - (A) The Bureau of Indian Affairs Branch of Forestry will designate areas or trees to be cut.
 - (B) Trees will be utilized down to a four-inch top (logs excluded).
 - (C) All slash and debris caused by harvesting of products will be kept out of or removed from streams and roadways.
 - (D) The stumpage value which may be cut in a calendar year shall not exceed \$2,500.00.
 - (4) Paid permits—possessory holdings: Paid permits may be issued to a possessory holder when total stumpage for the forest products is less than \$10,000.00. The area for harvest will be marked and trees to be cut will be marked. After marking the trees, an appraisal value will be set, as well as harvesting procedures, including a general environmental assessment.

(f) *General timber use rules and regulations for all permits (free use or paid).*

- (1) Forest products cut under timber permits shall conform to federal regulations, 25 C.F.R. general forest regulations and 53 B.I.A.M. regulations.
- (2) Authorized Tribal representatives and the Agency Superintendent or his authorized representative will execute and issue permits.
- (3) Immediate family members who are not members of the Eastern Band of Cherokee Indians can participate in the harvest of forest products when accompanying a family member who has been granted a permit (free use or paid).
- (4) Permits are issued as a service to meet the needs of Tribal members but must be consistent with sound silvicultural and economic principles that maintain and enhance productivity of the timber stands and the land base.
- (5) Permits are subject to closure due to road conditions or fire danger as determined by the Agency Superintendent.
- (6) Timber marked for harvest will be 18 inches DBH or larger unless a specified silvicultural treatment justifies a reduction in the DBH limit.
- (7) If the permittee damages any roads, bridges, culverts, ditches, fences or other improvements in the permit area, or used as access to the permit area, they will repair them to their original condition to the satisfaction of the Agency Superintendent or his authorized representative.
- (8) The permit area will be kept clear of all litter and garbage. Access roads within the permit area will be kept open at all times. Streams and roadways will be kept free of litter at all times.
- (9) The holder of any permit must have the permit in their possession at all times when cutting or hauling permit materials. Permits are nontransferable.
- (10) Any stumpage owed on a permit must be paid in full before another permit will be issued.
- (11) Stumpage for paid permits is as follows:
Sawlogs - current appraised log prices
Pulpwood - \$0.01 per cubic foot
Firewood - \$0.01 per cubic foot
Posts - \$0.02 each
- (12) Unauthorized harvesting of any nature is subject to trespass as outlined in 53 B.I.A.M. Supplement 7, 25 C.F.R. § 163.22 and Cherokee Tribal Code.
- (13) Neither the Bureau of Indian Affairs nor the Eastern Band of Cherokee Indians will be liable for any actions by the permittee while operating under a permit (free use or paid). All cutting will be under the direction of the Agency Forester or his staff.
- (14) By accepting any permit (free use or paid), the permittee and their associates shall be deemed to have consented to the jurisdiction of the Tribal Court of the Eastern Band of Cherokee Indians and also to any resolutions of the Tribal Council or directives from the Principal Chief.
- (15) Possessory holders who obtain permits shall request the Forestry Department to mark the areas or trees, which shall be marked within five working days of filing a written request with the Forestry.

(g) *Timber sales.*

- (1) *Possessory holding timber sales.* Any possessory holding which is determined to have timber, the stumpage value of which is greater than \$10,000.00, will be sold under a timber sale as set forth in 25 C.F.R. and 53 B.I.A.M. Sales may or may not be advertised. The area will be marked and trees to be cut will be marked. A timber cruise will determine the minimum acceptable stumpage rate. A Forest Officer's report will be prepared as well as an Environmental Assessment and other studies as necessary. No timber sale will

be conducted without the written consent, or at the request of, the possessory holder, obtained through the Tribal Council.

- (2) *Tribal land timber sales.* All harvesting of products from Tribal lands shall be done under a timber sale (except for free use permits.) Sales will be kept as small as practical and will be advertised. A Forest Officer's report shall set forth all pertinent information of the proposed sale. This shall include, but not be limited to, an analysis of the tract of timber, silvicultural treatment to be incorporated, design of harvest operations, appraisal and cruise data, and Environmental Assessments. A contract shall be drawn which conforms to 25 C.F.R. and 53 B.I.A.M. requirements. All timber sales shall require a valid Tribal Council resolution, unless authority for consent is granted to the Timber Committee.

(h) *Timber sale rules and regulations.*

- (1) Sales will be conducted in accordance with 25 C.F.R. and 53 B.I.A.M. requirements.
- (2) Stumpage due and any performance bonds will be collected according to 25 C.F.R. §§ 163.14 and 163.15.
- (Res. No. 444, 5-8-1985; Ord. No. 456, 10-1-2006)