

**CHAPTER 17 – GAME DAMAGE****Index**

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## CHAPTER 17 - DAMAGE CAUSED BY BIG GAME

### ARTICLE I - GENERAL PROVISIONS

#### #1700- DEFINITIONS

- A. **"Aftermath"** means the usable livestock forage left from an alfalfa crop after the last annual harvesting or after the first killing fall frost. The "first killing frost" is the time the temperature drops below 25°F after September 1 each year. This date/temperature shall be determined by negotiation with the claimant based upon weather station data for the local area.
- B. **"Alfalfa"** means land on which alfalfa has been seeded and has become established to the extent that fifty (50) percent or more of the useable livestock forage is alfalfa.
- C. **"Artificially seeded rangelands"** means land on which grasses or legumes have been seeded, and have become established to the extent that 50 percent or more of the useable livestock forage production is from the seeded species and whose primary use is grazing by livestock.
- D. **"Big game being moved or under direct control of Division of Wildlife personnel"** includes, but is not limited to the following:
1. If they are being driven or through-herded.
  2. If they are intentionally moved as a result of actions of Division personnel.
- E. **"Claimant"** means a person who has filed a big game damage claim with the Division and in the case of commercial orchards, shall be the legal owner of said orchard.
- F. **"Crops under cultivation"** means all products of the soil that are planted, managed, grown, severed and saved by manual labor and/or mechanical means on an annual basis, including grasses and legumes maturing for harvest, small grains, row crops and vegetables, but not grasses or other forage on lands used primarily for pasturage, windbreaks, gardens or ornamental trees and shrubs.
- G. **"Damage"** means any change in the quality or quantity of any property which reduces its value. Damage shall include all costs necessary to restore property to its condition immediately prior to damage, to replace it with property of equal value or to compensate for restoration or replacement.
- H. **"Damage to fences"** means any damage in excess of ten (10) percent of the value of any specific fence just prior to damage. A "specific fence" means that portion of any fence between corner posts; in a situation where corner posts are greater than one-quarter (1/4) mile apart, "specific fence" shall mean a one-quarter (1/4) mile section of fence.
- I. **"Damage prevention materials damaged or destroyed by wildlife"** means materials which have been damaged by big game to the extent that such materials have been rendered unusable for the purpose intended.

- J.** "Division" means the Division of Wildlife.
- K.** "Grazing land" means land used primarily for production of native forage plants for livestock grazing as differentiated from lands where a crop is harvested.
- L.** "Grazing land which is deferred for seasonal use" means grazing land that is designated for a postponement of grazing by livestock for a specific season(s) with the purpose of reserving forage available for grazing by livestock during a later season.
- M.** "Harvested crops" means any crops that have been reaped, severed, gathered and appropriately saved, stored for subsequent use. Saving or storage will not be considered as appropriate unless done by a method representing accepted agriculture practices.
- N.** "Hay meadows" means land that is used primarily for production of hay but may also be used for grazing by livestock prior to and following cutting for hay. Production is from a long term stand of grasses or legumes and is irrigated or is classified by the Soil Conservation Service as wet meadow, salt meadow, sandy meadow or mountain meadow range sites.
- O.** "Historic levels" means the average number of a species of big game that occurred on the property in question during the 20-year period of January 1, 1953 through December 31, 1972.
- P.** "Normal life" means the period of time that panels and permanent fencing reasonably can be maintained by the person to whom they were issued specifically:
1. Panels are presumed to have a normal life of 5 years or as agreed upon by the property owner and the Division through written agreement when constructed according to Division specifications.
  2. Permanent fencing materials are presumed to have a normal life of 20-30 years or as agreed upon by the property owner and the Division through written agreement when constructed according to Division specifications.
- Q.** "Nurseries" means a group of trees and/or shrubs propagated for sale, transplant, or for use as stock for budding and grafting for commercial purposes.
- R.** "Orchard" means a planting of fruit trees cultivated for commercial purposes. Such orchards may be subdivided for game damage claim purposes into one of the following groups:
1. Commercial producing orchard shall be defined as a planting of fruit trees that for 1 of the last 3 years has produced fruit for sale in amounts of no less than one thousand (1,000) 40-lb.-boxes of apples or pears; or no less than two hundred and fifty (250) 40-lb. boxes of peaches or other stone fruit; or one ton (2,000 lbs.) of cherries or any combination of the above so long as the size of the orchard exceeds one acre.
  2. "Commercial non-producing orchards" shall be defined as an orchard planting of no less than one (1) acre of non-producing fruit trees planted at no less than one hundred (100) trees per acre for all species except that sweet cherry trees shall be planted at no less than sixty (60) trees per acre.

- S. **"Pasture meadows"** means land is used primarily for the production of grasses or legumes grazed by livestock and is irrigated or is classified by the Soil Conservation Service as wet meadow, salt meadow, sandy meadow or mountain meadow range sites. **T. "Personal property"** means everything that is subject to ownership, other than real estate. Personal property includes moveable and tangible things, such as animals, furniture, merchandise.
- U. **"Real property"** means land and generally whatever is erected or growing upon or affixed to land.
- V. **"Season"** for hunting means any period of time established by the Wildlife Commission for the taking of big game. When investigating a big game damage claim, the Division shall consider all big game hunting seasons established during the 12-month period immediately preceding the date when the first notice of loss was made.

**#1701 – VACANT**

**#1702 - PERMIT TO TAKE BIG GAME CAUSING DAMAGE**

- A. No hunting license is required for any person authorized to take big game under any permit issued under provisions of 33-3-106 C.R.S. Big game killed under this permit remain the property of the state.
- B. All bear and mountain lion taken or destroyed under this subsection or 33-3-106 (3) C.R.S. shall remain the property of the state and will be delivered to an officer of the Division within 5 days. In addition, a report shall be given to an officer of the Division within 5 days of the killing. Such report shall contain:
  - 1. Name(s) of person(s) who killed the animal(s).
  - 2. The county and the specific location of the kill.
  - 3. The species and number of animals killed.
  - 4. The reason for such action.
- C. When any permit to take a big game causing excessive damage to private, real or personal property, is issued to members of the public other than the landowner or his designee, any hunting under such permit shall be directed by the Division in cooperation with the landowner.

**#1703 - DAMAGE CAUSED BY BIG GAME UNDER CONTROL OF THE DIVISION OR BY PREVENTION MATERIAL BEING USED BY THE DIVISION.**

- A. When big game are being moved or are under the direct control of Division personnel and cause damage to real or personal property, the following provisions shall apply:
  - 1. When damage is noticed by Division personnel, such damage shall be reported to the property owner, lessee or person in charge immediately and confirmed in writing within 5 days.

2. The amount of the claim shall be determined by the actual value of property at the time of damage.
3. The Division may require the owner or his authorized agent, when reasonable, to assist the Division in locating alleged damage.

**#1704 - VACANT**

**#1705 - UNREASONABLE RESTRICTION ON HUNTING**

- A. No claim for big game damage will be approved where the claimant or other person who controls the land where damage occurred has unreasonably restricted hunting for the species causing damage unless the claimant shows that he or she have not unreasonably restricted hunting for the specific group of animals causing damage. Whether or not an unreasonable restriction of hunting has occurred will be determined by the following procedure:
  1. The percentage and number of big game animals to be harvested in each Management area (DAU) will be established annually by the Wildlife Commission.
  2. Upon request by the landowner, the Division shall provide to such landowner the number of big game, by species, anticipated on his property, property under his control and private and public property to which he controls access during the hunting season and the percent and number of such big game to be harvested. Such notice shall be in writing and shall be a basis for establishing a reduction in a necessary harvest of wildlife.
  3. The claimant shall be responsible to prove that the percentage of big game harvested, during the big game hunting seasons in the twelve (12) months previous to his filing of a damage claim, was not substantially lower than the percentage described in (1) or (2) above. Proof provided pursuant to this subsection by the claimant may include any one of the following: (such proof shall be required only for lands in the same management area (Data Analysis Unit) where the damage occurred and only for the species causing damage):
    - a. A statement that big game hunting access was not prohibited to any person on or across lands under his control or the control of the owner of the private land where damage has occurred except where hunting would create an obvious or immediate risk of injury or death to persons, damage or death to livestock congregated in a concentrated area, or other significant property damage.
    - b. Actual counts of big game animals during each hunting season for all areas to which he or the owner of the private lands where damage has occurred, controlled access and documentation of big game taken by hunters, including a list of numbers and species of big game and indicating that the percentage described in (1) is substantially met on such areas.
    - c. Documentation sufficient to establish that the failure to achieve the necessary harvest was due to factors outside the control of the claimant (or the lessor).

- d. Evidence that the number of big game harvested on lands to which he, or the owner of the private lands where damage has occurred, controlled access was not substantially less than the value established pursuant to #1705(a)(2).

**#1706 - HUNTING ACCESS FEE LIMITATION**

- A. A damage claim will be denied when a fee in excess of five hundred (\$500.00) per season has been charged any person for big game hunting access onto or through any lands owned, leased or otherwise controlled by the claimant, or the landowner if the claimant is the lessee. Access is defined as ingress into or through any property for the purpose of big game hunting.

This provision applies only to the species causing damage; but even then, not if the claimant shows that he or she have not unreasonably restricted hunting for the specific group of animals that was causing damage by charging a fee in excess of \$500 for access on or to lands which the animals causing damage inhabit or migrate across. In the case of a lease or other agreement by two or more persons, the fee charged shall be determined by dividing the total fee paid for the lease by the number of individual big game hunters who actually hunted under terms of the lease or agreement for one or more days. The number of big game hunters who actually hunted shall include any persons who were individually authorized to hunt but were unable to do so for reasons outside the control of the claimant.

- B. A statement of the maximum fee actually charged, if any, shall accompany any claim for game damage. The amount of this maximum fee shall be determined in accordance with provisions of #1706(a).

**#1707 - CLAIMANT STATEMENT ON USE OF MATERIALS**

- A. Any person who submits a claim for damage shall provide a certified statement that damage prevention materials provided by the Division, if any, were used in an effort to prevent or reduce the extent of damage and were not used for any other purpose.

**#1708 - CLAIMANT STATEMENT ON INSURANCE**

- A. Any person who submits a claim for damage shall provide a certified statement on his Proof-of-Loss form that the damages for which he is submitting a claim are, or are not, covered under an insurance policy and that he does or does not contemplate receiving insurance compensation for damages claimed. If the claimant is in possession of a crop insurance policy or any other insurance policy covering the real or personal property for which a big game damage claim is made to the Division, he shall provide on his Proof-of-Loss form the name, address and phone number of the insurance company(s) providing coverage; the name, address and phone number of the insurance company's agent; the amount and type of coverage provided; and the amounts of insurance reimbursement requested and received.
- B. The claimant shall also submit with his Proof-of-Loss form written permission authorizing the Division to make inquiries to and receive information from the claimant's insurance company(s)

and its agent(s) concerning any insurance coverage of or claims submitted under the policy for damages for which claims have also been submitted to the Division.

The claimant shall also agree in writing to notify the Division of all claims later submitted to any insurance company for game damage already paid by the Division and of any amounts paid to the claimant for such claims.

- C. In the event a claim is paid by the Division to any person and such person later receives additional compensation for such damage under an insurance policy, he shall immediately repay to the Division any moneys he has previously received from the State for those damages.
- D. Refusal to provide accurate insurance information as herein required shall be cause for denial of the claim.

#### **#1709 – ARBITRATION**

- A. If the Division cannot agree with the claimant on normal historic levels of big game or any element of a settlement (such as the extent of damage, the numbers or species of big game involved) such disagreement may be decided by the arbitration process provided for in Section 33-3-104 (1)(d) or 33-3-203 (2), C.R.S. Arbitration of non-forage damage claims pursuant to Section 33-3-104(1)(d) must be requested prior to review of the claim by the Commission. Subject to the provisions of Article 3 of Title 33, C.R.S., and the following, arbitration proceedings shall be conducted pursuant to the "Uniform Arbitration Act of 1975," part 2 of Article 22 of Title 13, C.R.S.
- B. The arbitrator chosen by the claimant and the arbitrator chosen by the Division shall be non-neutral members of the arbitration panel; and the third arbitrator chosen by these two arbitrators (or by the court as the case may be) shall be a neutral member of the panel.
- C. The claimant and the division shall enter into a written arbitration agreement for submission to the arbitration panel. Said agreement shall include:
  - 1. A statement of the parties setting forth all facts relevant to the damage claim upon which the parties agree.
  - 2. A statement of the parties identifying statutes, regulations, and other law which the parties agree are applicable to the claim.
  - 3. A statement of the issues of fact upon which there is disagreement between the parties, including a list of witnesses and other evidence which each intends to introduce to the panel in support of their positions.
  - 4. A statement of the legal issues upon which there is disagreement between the parties. Each party shall submit a brief written legal argument, including citation to statutes, regulations, court decisions and other appropriate law, supporting their position.
  - 5. A statement setting forth the procedures the parties have agreed upon for presentation of the claimant's and division's factual evidence and legal argument. Generally, the panel

shall proceed in accordance with these regulations. Any agreement to proceed in a manner inconsistent with these regulations shall be subject to approval of the arbitration panel.

6. The panels authority to render decisions deciding issues of fact and law shall be limited to those matters upon which the parties have agreed in the written agreement are in dispute and any issues incidental to those matters.
- D. The panel shall render its decision in accordance with the provisions of article 3 of title 33 of the Colorado Revised Statutes and Chapter 17 of the Commission's wildlife regulations.
- E. Except as may otherwise be approved or required by the arbitration panel, the arbitration hearing shall be conducted as follows.
1. The hearing shall be conducted by all three arbitrators who shall act by majority vote.
  2. The Division shall be responsible to make a recording of the arbitration hearing and maintain a copy of all exhibits presented to the panel for consideration.
  3. The claimant shall have the burden of proving all elements of the claim for damages pursuant to the provisions of Article 3 of Title 33, C.R.S., and of this Chapter 17 of the Commission's regulations. The Division shall have the burden of proving any affirmative defenses.
  4. Evidence
    - a. Testimonial and evidentiary rulings shall favor the reception of any and all evidence which may be probative and relevant to the decision; but unduly repetitious, irrelevant, or incompetent evidence may be limited or excluded. The arbitrators shall not give undue weight to hearsay or other improper or unsubstantial evidence.
    - b. The panel may take notice of general, technical or scientific facts within its knowledge, but only if the fact so noticed is brought to the attention of the parties before final decision and each party is afforded an opportunity to controvert the fact so noticed.
    - c. At the conclusion of each witness' testimony, the other party may then cross-examine such witness or witnesses. The arbitrators may cross-examine any witness called.
    - d. Unless otherwise ordered by the panel, five (5) copies of each exhibit shall be submitted (one for each panel member's use, one for the record to be maintained by the Division, and one for the opposing party's use).
  5. The hearing shall proceed in the following order:
    - a. Call to order, introductory remarks by arbitrators.

- b. Presentation by the Division of all documents that have been filed with the Division by the claimant in making his claim and any prepared by the Division in response to the claim. They shall include, to the extent they exist, but are not limited to all 10-day notices of damages, the claimant's proof of loss form with supporting documentation, investigator's report, the Division's recommendation to the Wildlife Commission. The Division shall also report how far the claim has progressed through the administrative claims process and the status of the claim in that process at the time arbitration was requested.
  - c. Presentation of any stipulation or agreements of the parties.
  - d. Opening statement by the claimant, including a brief statement of what it will prove and the relief requested.
  - e. Opening statement by the Division, including a brief statement of what it will prove and of defenses to be presented to claim.
  - f. Presentation of evidence in support of the claim by the claimant.
  - g. Presentation of the Division's evidence contesting the claim, including defenses.
  - h. Rebuttal by the claimant.
  - i. Closing statements by the parties.
  - j. Adjournment.
- 6. Proved further, however, that the panel may at any time consider any motion or make any ruling in the interest of fairness, completeness and economy of the proceedings which ruling will not result in substantial prejudice to a party's right to present its case.
  - 7. The panel shall issue its written decision within ten (10) days after adjournment of hearing. Each decision issued pursuant to an arbitration hearing shall include a statement of findings and conclusions upon all the material issues of fact, law or discretion considered and state the sanction or relief granted or denied.
  - 8. No ex parte communication with or by the neutral arbitrator may occur during the pendency of a hearing.
- F. The Division shall designate a Division employee to act as the case administrator, who shall arrange for meeting place for the arbitration hearing and recording of the hearing, issue subpoenas for witnesses at the request of the panel, and otherwise assist the panel in the performance of its duties.

#### **#1710 - DUTY TO MITIGATE DAMAGE**

The doctrine of avoidable consequences applies to wildlife damage claims, and claimants have a duty to mitigate damages. A claim shall be denied or limited, as is appropriate under the doctrine, where the

claimant fails to exercise reasonable care and diligence to avoid the loss or to minimize or lessen resulting damage. The burden of proving a failure to mitigate damages shall be on the Division.

**#1711-#1719 - VACANT**

**ARTICLE II - DAMAGE PREVENTION MATERIALS**

**#1720 - REQUEST FOR DAMAGE PREVENTION MATERIALS**

- A. Landowners or lessees who qualify for damage payments and who desire to obtain materials to prevent damage caused by big game shall make a written request to the Division for such materials on a form furnished by the Division.
- B. If the landowner does not erect permanent game damage prevention materials within a reasonable time period after receipt of materials, not to exceed 270 days, to prevent the anticipated damage, or if the materials are not erected in such a manner as to reasonably prevent damage, the Division shall not be responsible for any subsequent damage caused by the failure to use such materials. When materials have been provided for temporary game damage prevention materials or electric fencing surrounding apiaries this time period shall not exceed 15 days from date of receipt of materials. Damage prevention materials may be delivered by the Division to any person if his request is the result of game damage occurring in any area where it has not normally occurred.
- C. If the Division offers, in writing, to furnish fencing to a landowner and the offer is refused or he does not respond within 30 days, the Division shall not be responsible for any subsequent damage until such time as the landowner makes a written request for fencing materials at which time the provision of #1720(b) shall apply.

**#1721 - DELIVERY OF DAMAGE PREVENTION MATERIALS**

- A. The Division will furnish materials for, or construct, permanent stackyards or orchard fencing only under terms of a written cooperative agreement which is binding on heirs, assignees, and successors in title and which is filed with the clerk and recorder in the county in which the fence is erected. The Division will provide materials within the limitations of the special purpose funds appropriated for game damage materials.
- B. The Division will furnish temporary protective fencing only when the landowner, lessee, property owner or person in charge acknowledges by his signature receipt of such material.

**#1722 - MAINTENANCE OF DAMAGE PREVENTION MATERIALS**

- A. All permanent stackyards or fences or panels furnished or constructed by the Division shall be maintained and repaired for their normal life by the landowner unless damaged or destroyed by wildlife. Materials for repairing damages done by wildlife to permanent fencing or panels in excess of \$100 shall be furnished by the Division and shall remain the property of the Division.
- B. All persons furnished panels or other fencing materials shall be responsible for maintaining such materials in a current state of repair to prevent access by big game.

- C. In the event that damage prevention materials are destroyed or made unusable through negligence or abuse or if they are used for any purposes other than the prevention of game damage the Division may take one or more of the following actions:
1. After written notice to the landowner the Division may remove the materials from the landowner's owned or leased land.
  2. The Division may require payment for any damaged or misused materials or may refuse to issue any additional prevention materials until the landowner has paid for the damaged or misused materials. The amount of payment shall be the cost of new materials of similar construction, reduced by a depreciation factor based on the normal life of these materials.
  3. The Division may deny all or part of a big game damage claim where proper use and maintenance of damage prevention materials would have prevented or reduced the damage.
- D. All voluntary workers who assist the Division in erecting damage prevention materials shall provide their name, address, and telephone number in writing to the Division 10 days prior to such work being performed. The Division will provide this information to the landowner upon his request.
- E. In the case of land ownership change the former owner shall notify the Division when such change occurs. The Division may require a written ratification of the existing agreement by the new owners.
- F. All permanent and temporary damage prevention materials furnished or constructed by the Division shall remain the property of the state.

**#1723-#1729 – VACANT**

**ARTICLE III - DAMAGE CLAIM PROCEDURES**

**#1730 - GENERAL PROVISIONS**

- A. Initial notification of damage may be verbal, but must be followed by written notice to the District Wildlife Manager or Area Wildlife Manager within ten (10) days of the discovery thereof. Said ten (10) day period may be extended for good cause shown provided, however, that verbal notice has been given within ten (10) days of discovery. Failure to submit written notice within ten (10) days of discovery: (a) because of failure of Division personnel to supply claim forms in time to allow timely filing; or (b) because of other reasons not due to the claimant's lack of diligence shall all be considered "good cause."
- B. Notifications must include:
1. date or dates damage occurred.
  2. number and species of big game causing damage;

4. date damage discovered;
5. estimated extent of damage;
6. location of damage; and
7. If the Division will receive the first written notice of damage more than ten (10) days after the date of discovery an explanation of the delay.

C.

1. If the same type of damage caused by the same species of big game is ongoing at a single site, additional notices every ten days after the initial written notification shall be required unless the DWM or AWM concerned is advised by the claimant by some means of the ongoing damage activity and an additional written notice is submitted when the damage ends. Said notice shall include an estimate of the total extent of damage; specify beginning and ending dates that the damage occurred and provide the other information required in #1730(a)(1) through (7) of these regulations. Proof of Loss forms shall be filed within 90 days after claimant submits this last written notice. Damage is not considered as ongoing if more than 30 days have elapsed between instances where damage occurred.
2. A single site is a complete orchard, adjoining fields of growing crops, haystacks under the same contiguous ownership or control, or a single herd of cattle or band of sheep, under one ownership and continuous control between spring and winter range. If damage occurs at different sites or is of a different type (e.g., harvested alfalfa instead of growing alfalfa), separate claims and separate investigation reports shall be required, even if the claimant is the same and the species of big game causing damage is the same.

- D. A Division representative accompanied by the complainant shall in cases of claims in excess of \$1,000.00 and may in cases of claims of \$1,000.00 or less as is appropriate and necessary to determine the facts underlying the claim make an on-site inspection and investigation within ten (10) days of the receipt of the initial notification or as soon thereafter as practicable.

**#1731 - PROOF OF LOSS**

- A. The proof of loss forms shall be submitted within 90 days of the last notification of damage to the District Wildlife Manager or Area Wildlife Manager. Forms shall be provided by the Division and the claimant shall complete and return only those forms designated for the type of damage which occurred. Incomplete or incorrect forms may be returned to the claimant by the Division; however, the time period for filing Proof of Loss forms shall not be altered thereby. Such forms shall be signed and be accompanied by the written documentation required by these regulations to meet the burden of proof required under provisions of 33-3-104 (3), C.R.S., and other statutes pertaining to damage by big game.
- B. The Area Wildlife Manager or his designee will investigate as necessary and shall in cases of claims in excess of \$1,000.00 and may in cases of claims of \$1,000.00 or less as is appropriate

and necessary to determine the facts underlying the claim meet with the claimant, within 30 days of the receipt of the proof-of-loss form where practicable, and at a time and place mutually agreed upon to attempt to reach a settlement.

#### **#1732 - CLAIM SETTLEMENT**

- A. Any claim up to \$5,000 may be approved by the Area Wildlife Manager. Claims in the amount of \$5,001 to \$20,000 may be approved by the Regional Manager. Claims exceeding \$20,000 which are recommended for payment by the Division must be approved by the Commission.
  - 1. In cases where the Division and the claimant are unable to reach settlement, the claimant may seek review by the Commission, by an arbitration panel, or in the state courts, all as provided in Article 3 of Title 33, C.R.S. A claim of any amount, which is recommended for denial of payment by the Director shall require a final decision by the Wildlife Commission; provided, however, if the claim is for other than livestock forage damage and is for \$7,500 or less, the claimant may waive review by the Commission and commence an action in the small claims division of the county court of the county of which the damage was alleged to have occurred. Provided, further, that in the case of claims for livestock forage in hay meadows, pasture, artificially seeded rangelands and grazing land which has been deferred for seasonal use, a claimant who wants Commission review of his claim must give written notice of his intent to waive arbitration. Either type of waiver shall be in writing and shall be mailed to the Commission within ten (10) days after such claimant receives notification from the Division of the denial of his claim, or within ten (10) days after the claimant receives from the Division an offer of settlement unacceptable to such claimant.
- B. When a claim for big game damage is recommended for denial of payment by the Division, the claimant will be notified of such recommendation by certified mail at least 30 days prior to the regularly scheduled Wildlife Commission meeting when his claim will or could be considered.
- C. Any claimant who cashes a state warrant issued for the purpose of claim settlement thereby acknowledges receipt of payment in full satisfaction of damages claimed and thereby waives any and all further claim against the state for such damages.

#### **#1733-#1739 – VACANT**

### **ARTICLE IV - DAMAGE TO LIVESTOCK OR PERSONAL PROPERTY USED IN THE PRODUCTION OF RAW AGRICULTURAL PRODUCTS CAUSED BY BIG GAME**

#### **#1740 - PROOF OF LOSS REQUIREMENTS**

- A. The claimant shall be responsible to prove by a preponderance of evidence that he suffered damage to livestock or personal property used in the production of raw agricultural products and that such damage was caused by big game to the extent claimed.

#### **#1741-DOCUMENTATION OF CLAIMS**

- A. Documentation by the claimant necessary to support a claim for damage by big game shall include but is not necessarily limited to:
  - 1. Tangible evidence that big game was present in the area. Evidence may include, but is not necessarily limited to photographs or records of torn logs, scat, tracks or direct observation.
  - 2. Demonstrate that such animals were responsible for the damage, and in the case of livestock, the actual cause of injury or death. Evidence may include, but is not necessarily limited to type and location of wounds, physical description of the carcass, for example: hide peeled or rolled back, measured distance between canine wounds, claw marks, hemorrhage, or buried carcasses.

#### **#1742 - EVALUATION AND SETTLEMENT PROCEDURE**

- A. Payment of all claims involving personal property used in the production of raw agricultural products, other than livestock, will be based on the actual value of the property at the time and place of loss.
- B. Payment of all claims for livestock losses will be based on sales receipts or sale contracts when copies of such receipts or contracts are furnished with the claim and exclude such expenses as transportation, yardage, feed costs at sales yards and sales commissions. Where such receipts or contracts are not submitted to the Division, the following methods shall be used:
  - 1. Payment of adult range sheep claims for each age class, other than running age ewes, will be based on the prices as derived from the monthly Department of Agriculture Marketing Reports or from the Weekly Market Report from the Sheep Industry Development Program, Inc. from the September preceding the date of the loss or damage.

Payment for running-age ewes (ewes between the ages of 2 and 5 years old) will be determined by the following formula: The value shall equal the price received for lambs based on contracts or the average weekly sale price from the Sheep Industry Development Program Inc. report from the last week of September plus 50% of the above value. (Example: Fall lambs at \$90 Plus 50% = \$90 + \$45 or \$135, total value of each running-age ewe.)
  - 2. Payment of lamb claims will be based on the average sale price shown in the weekly Sheep Industry Development Program Inc. report for the last week of the September preceding the date of the loss or damage.
  - 3. Payment of calf claims will be based on the average sale price shown in the monthly update published by the Colorado Crop and Livestock Reporting Service for the month of the October preceding the date of the loss.
  - 4. For good cause shown, a claimant may establish the value of any livestock lost by reliable means other than those shown above. Such claimant shall be required to

establish by a preponderance of evidence that the valuation methods listed above are inappropriate for the claim submitted and that the method of valuation requested represents the fair market value of the lost livestock.

5. Payment of all other livestock loss claims will be based on the fair market value at the time of the loss for the type, age and weight of the animal involved.

#### **#1743 - SPECIAL PROVISIONS**

- A. The livestock owner or his authorized agent is required to assist in locating and investigating alleged damage.

#### **#1744-#1749 – VACANT**

#### **ARTICLE V - DAMAGE TO ORCHARDS**

#### **#1750 - PROOF OF LOSS REQUIREMENTS**

- A. At the time of the investigation or upon submission of the proof-of-loss form, the claimant shall be responsible to prove by a preponderance of evidence:
  1. Date that big game were present in the orchard.
  2. That big game did damage to the orchard to the extent that future production will be affected.
  3. A map of the entire orchard showing the location of plantings, each tree within the damaged planting, tree and row spacing and the location of each damaged tree.
  4. Each damaged tree shall be identified by number on the map and in a listing of damaged trees which reports the species, variety, age, nature of the damage (bark or browse damage), extent of damage and the anticipated number of years for recovery.
- B. The claimant shall also furnish:
  1. Crop production records for each block and variety of damaged trees for the past five (5) years. When such records are not available due to change in orchard ownership or tree age, records from orchards with comparable plantings and management shall be provided.
  2. Records of income to the orchard for the past five (5) years and cost of harvesting and handling the fruit for each block and variety of damaged trees. When such records are not available, records from orchards with comparable plantings and management shall be provided.

#### **#1751 - DOCUMENTATION OF CLAIM**

A. Investigation of damage claims for any trees shall be conducted jointly by the claimant and the Division. Documentation prepared by the claimant shall be conducted according to the following procedures:

1. Determination of Physical Damage by Type and Percentage.

a. Damage will be designated in the following manner:

(1) Bark Damage shall be considered only when it has penetrated the bark and cambium layer to the inner wood. Injury of each damaged limb or tree shall be determined on the basis of the width of the exposed wood in relation to the circumference of the damaged limbs or trunk. Damage which does not expose more than 33% of the wood around the limb or trunk will not be considered as serious damage resulting in significant loss of production. Damage that exposes 60% or more of the inner wood shall be considered serious enough to cause total loss of commercial fruit production from the damaged limb or tree in the case of trunk injury. All areas damaged by big game shall be treated with a wood sealing compound, such as "Greencap" or its equivalent, which shall be provided by the Division. Bark damage shall be assessed as:

0-33% = none

34-49% = 33% loss

50-59% = 65% loss

60 and over = 100% loss

and calculated pursuant to the formulas set forth in #1752.

(2) Browse damage results from loss of shoots, spurs and blossom buds. Damage shall be determined for each damaged side branch (branch), scaffold limb (limb) and tree with the extent of damage assessed as:

(a) Short term when damage affects only the terminal and blossom buds, resulting in loss of fruit production on apple and pear for two (2) years and on stone fruits (cherry, apricot, peach and plum) for one (1) year.

(b) Long term when damage affects the growth of limbs and development of the tree structure. Such damage has a longer lasting effect which requires determining the number of years for the limb or tree to achieve the size and productivity of comparable undamaged limbs and trees.

(c) Permanent damage can be caused by either severe barking or browsing. Such damage can result in the loss of limbs or trees.

Where tree replacement is required, both the cost of removal and replacement of trees shall be paid. When 85% of the trees in the planting sustain 60% or more damage, the entire planting shall be considered as 100% loss, requiring replacement.

2. Determination of Percentage Lost of Production:

Damage shall be defined as a loss of production potential. Production is proportional to the number and physical size of all the branches, limbs and trees in the planting. This physical size increases as branches and limbs develop and as the tree enlarges to fill the amount of space allotted by planting distance. When the trees have completed this growth or development period, they are considered full size and reaching full production potential. After a few years at this maximum level of production, tree vigor, fruit size and market quality begin to decline. This results in reduced productivity and income. Using the above concept, assess any loss as a percent reduction in production potential during the years required for the damaged limbs and/or trees to redevelop the production potential of comparable undamaged trees.

- a. Short Term browsing damage will be proportional to the percent of damage. For stone fruits this will be for one (1) year. For apple and pear, the percentage loss will be reduced by 50% the second year before regaining full potential in the third year.
- b. Long Term damage can result from either browsing or barking. Damage shall be assessed as a percent loss of production potential over a period of years. Loss in the first year will be proportional to the percent of damage but this percentage of loss will decrease each year at a rate proportional to the anticipated recovery period. The percentage of loss will be assessed in relation to comparable undamaged branches, limbs or trees, preferably in the same planting. With developing trees, the number of years to recover will be the number of years remaining to reach full size and full production. Developing apple and pear should close the spacing between trees at an average rate per 5 ft per year while with stone fruits the average rate will be 2.0 feet per year. Damage to mature trees should be assessed as either short term damage as outlined above in (a) or as permanent damage as outlined below in (c).
- c. Permanent damage caused by either a loss of limbs or trees should be assessed as a percent of production over the remaining commercial life of the planting. For trees which need to be replaced as a result of permanent damage, the number of years of lost production shall equal the number of years required to regain the production level of undamaged trees. When tree replacement is required, the damage assessment shall include the cost of removing and replanting. When a group of trees are replaced which can be managed separately, the amount of savings resulting from reduced operating costs shall be determined and deducted from the damage claim.

3. Conversion from Percentage to Numerical Crop Loss:

Many factors cause changes in crop production from year to year as well as between trees and plantings. Therefore it is necessary to assess damages as a percentage of the production potential of the orchard. The percentage crop loss must then be converted to a numerical crop loss for each year of the recovery period. This requires determining the proportion of the planting which is damaged. Such can be determined either by planting distance and number of trees per acre or by the percentage of damaged trees to the total number of trees in the planting.

- a. Numerical crop loss shall be based on a percentage of the production over the previous five (5) years or from comparable plantings of the same variety, tree spacing, age and level of management when actual production records are not available.
- b. For trees which are not in production or did not reach full production during the previous five years, estimates must be based on comparable plantings which have recently reached full production.
- c. Numerical lost production shall be tabulated for each year of the recovery period and for each planting, crop and variety damaged.

4. Determination of Annual Loss of Income:

Income to the orchard depends on the amount of fruit produced and its market value. This differs from season to season, between crops and varieties, between growers and even between plantings. Therefore the value of any crop must be determined based on records of the average income over the previous five (5) years. Where such records are not available, estimates must be based on income to comparable plantings and level of management. This income assumes that all charges have been deducted such as storage, packing, and sales. This income must be further reduced by an amount equal to the cost of harvesting and hauling the lost production since such costs would not be incurred.

The orchard income (less cost of harvest and handling) when divided by the total number of units of production represents the value of each unit of lost production. This unit value is then multiplied by the number of units of lost production to determine the annual loss of orchard income over the recovery period.

5. Determination of Costs Due to Tree Replacement

When damage is sufficient to require tree replacement, adjustments shall be made not only for the loss of income but also for any added costs of replacement and savings due to reduced annual production costs on the following basis:

- a. Replacing occasional trees in a planting requires the determination of added costs of removal, purchase of trees and planting. Other possible added costs and savings shall not be considered.
- b. Replanting sufficient numbers of trees in a block permits management as a separate planting. Reduced are such operational costs as pruning, bee rental, fruit thinning, fertilizer and insect, mite and disease control during the re-establishment period. The claimant should provide sufficient cost records to verify those cost savings for each of the re-establishment years. Such determinations shall be made before receiving any compensation for lost income and added costs of removing, purchase of trees and replanting.

6. Determination of Present Value of Orchard Losses

Income received today, in payment for lost future production, must be discounted according to the appropriate rate of interest on that money and the number of years of advanced payment for future lost production. The appropriate discount rate from Table B in regulation No. 1754 must be applied for all but the first year of lost production. Different discount rates shall be used depending on the number of years for the orchard to recover lost production.

**#1752 - FORMULAS FOR CALCULATION OF BARK DAMAGE**

A. Short term bark damage (0-33%/limb or trunk) = no loss

B. Long term bark damage

1. (34-49%/limb or trunk) = 33% loss

$$\text{\$ Loss} = (\text{\# of trees}) (\text{Bu/Tree}) (33\%) (\text{ORV Equivalent}) (2.0) (87\%)$$

Where,

ORV Equivalent =	(ORV/Bu) - (Harvest + Haul Cost/Bu)
2.0 Factor =	Recovery Loss Adjustment for 4-year recovery period.
87% =	Present value percentage factor from column 3 of Table B of #1754.

2. (50-59%/limb or trunk) = 65% Loss

$\text{\$ Loss} =$	$(\text{\# of Trees}) (\text{Bu/Tree}) (65\%) (\text{ORV Equivalent}) (3.5) (80\%)$
Where,	
ORV Equivalent =	(Orchard Run $\text{\$/Bu}$ ) - (Harvest + Haul Cost/Bu)
3.5 Factor =	Recovery Loss Adjustment for 6- year recovery period.
80% =	Present value percentage factor from column3 of Table B of #1754.

C. Permanent Bark Damage (60+%/Limb or trunk) = 100% Loss

Trees which have a limb and/or truck-limb damage in excess of 60%.

1. Limb loss without 100% tree loss.

\$ Loss/Tree =	(Bu/Tree) (# 100%-loss limbs/Total # Limbs) (ORV Equivalent) (Years) (P.V.1) + (Bu/Tree) (# 33%-loss limbs/Total #limbs) (33%) (ORV Equivalent) (2.0) (87%) + (Bu/Tree) (# 65%-loss limbs/total # limbs) (65%) (ORV Equivalent) (3.5) (80%)
Where	
ORV Equivalent =	(ORV/Bu) - (Harvest + Haul Cost/Bu)
Years =	Remaining Commercial Life
P.V.1 =	Present value percentage factor from Column 3 of Table B of #1754 based on # of years of remaining commercial life.
2.0 and 3.5 factors =	recovery loss adjustment for 4 and 6 year recovery periods respectively.
87% and 80% =	present value percentage factors from column 3 of Table B of #1754 for 4 and 6 year recovery periods.
	(Recovery period for 33% damaged tree is deemed to be 4 years and for 65% damaged tree it is deemed to be 6 years.)
Total Block \$ Loss =	sum of losses calculated for individual trees.

2. Total tree loss (individual or block)

Production \$ loss =	(# of trees) (Bu/tree) (ORV equivalent) (Years) (P.V.)
Replacement \$ Cost =	(# of trees) (Cost of removal/tree + replacement cost/tree + replant cost/tree - operational cost savings)
Total \$ loss =	Production \$ loss + replacement \$ cost
Where,	
ORV equivalent =	(ORV/Bu) - (Harvest + haul cost/Bu)
Years =	# years of remaining commercial life, but not greater than 10 years for apple, 8 years for peach/apricot, 15 years for sweet cherry, 10 years for sour cherry.
P.V. =	Present value percentage factor from column 3 of Table B of #1754 based on # years of remaining commercial life.

**#1753 - FORMULAS FOR CALCULATION OF BROWSE DAMAGE**

A. Short term damage

1. Production trees - removal of terminal and blossom buds

a. Full production trees

\$ Loss =	(# of trees) (Bu/tree) (% buds browsed) (ORV equivalent) (factor)
Where,	
ORV equivalent =	(ORV/Bu) - (Harvest + haul cost/Bu)
Factor =	(1.5) (95%) for apple and pear

Factor =	(1.0) for stone fruits
95% =	present value percentage factor from column 3 of Table B of #1754.

b. Developing young production trees

\$ Loss =	(# of trees) (Ave exp bu/tree) (% buds browsed) (ORV equivalent) (factor)
Where for apple types:	
Ave exp bu/tree =	ave exp bu production for next 2 years
Factor =	(1.5) (95%)
Where for stone types:	
Ave exp bu/tree =	next year's ave exp bu production
Factor =	(1.0)

2. Pre-production trees - Removal of terminal buds

\$ loss =	(# of trees) (Ave exp bu/mature tree) (% buds browsed) (ORV equivalent) (P.V.)
Where	
P.V. =	Present value percentage factor from column 3 of Table B of #1754 based on # years = (midproduction age - age of tree)

B. Long term damage

1. Production trees - Removal of terminal and blossom buds and substantial damage into past year(s) wood. (Would primarily affect young production trees prior to closure and full development.)

a. Full production trees

\$ loss =	(# of trees) (Bu/tree) (Years) (ORV equivalent) (P.V.)
Where,	
Years =	Number of years setback
P.V. =	present value percentage factor from column 3 of Table B of #1754 based on number of years setback.

b. Developing young production trees

\$ loss/year =	(# of trees) (Ave exp bu/tree) (% branches browsed) (ORV equivalent) (P.V.)
Total block \$ loss =	sum of \$ losses for each 1 year setback calculated separately
Where,	
Ave exp bu/tree =	Bu/tree adjusted for each year's calculation depending on

	projected production by multiplying Bu/tree times the percent of full production normally realized for that type tree based on its age in the year for which the loss is calculated (from column 7 of Table A of #1754).
% branches browsed:	
For first year of loss Calculation =	% of branches actually browsed. For subsequent years this factor has to be reduced to reflect recovery. The value by which the factor is reduced for each subsequent year = % branches browsed/# years setback.
ORV equivalent =	(ORV/bu) - (Harvest + haul cost/bu)
P.V. =	present value factor from column 2 of Table B of # 1754 based on the particular year of recovery (1st, 2nd, etc.)

2. Pre-production trees - Damage into past year(s) wood through browsing or rubbing, setting tree back by years.

\$ Loss =	(# of trees) (Ave exp bu/tree) (Years) (ORV equivalent) (P.V.)
Where,	
Years =	Number of years setback
ORV equivalent =	(ORV/bu) - (Harvest + haul cost/bu)
P.V. =	Present value percentage factor from column 3 of Table B of # 1754 based on # years=(Midproduction age - age of tree)
Ave exp bu/tree =	Average expected bushel production/mature tree

C. Permanent damage

1. Developing young production trees

Production \$ loss =	(# of trees) (Ave exp bu/tree) (ORV equivalent) (Years) (P.V.)
Replacement \$ loss =	(# of trees) (Cost removal/tree)+ Replacement cost/tree + replant cost/tree - Operation cost savings/tree
Total \$ loss =	Production \$ loss + replacement \$ loss
Where,	
Ave exp bu/tree =	Average expected bushel production/mature tree
ORV equivalent =	(Orchard run \$/bu) - (Harvest + haul cost/bu)
Years =	Age of tree
P.V. =	Present value percentage factor from column 3 of Table B of #1754 based on age of tree in years.

2. Pre-production trees

Production \$ loss =	(# of trees) (Ave exp bu/tree) (Years) (ORV equivalent) (P.V.)
Replacement \$ loss =	(# of trees) (cost removal/tree+ replacement cost/tree + replant cost/tree - Operation cost savings/tree)
Total \$ loss =	Production \$ loss + replacement \$ loss
Where,	

ave exp bu/tree =	Average expected bushel production/mature tree
ORV equivalent =	(ORV/bu) - (Harvest + haul cost/bu)
Years =	Age of tree
P.V. =	Present value percentage factor from column 3 of Table B of #1754 based on # years = (Midproduction age - age of tree)

3. Full production trees - total tree loss

\$ loss shall be calculated pursuant to formula set forth in #1752(C)(2).

**#1754 - PRODUCTION, RECOVERY AND PRESENT VALUE TABLES**

Tree Type	Plant Density	Full Production Per acre	Start Mid Production	Age	Obtain High Production	% Full Production Realized in Successive Production Years
Apple	200+	1,000 Bu	6 yrs	(8)	10 Years	5, 15, 40, 70, 100
	-200	1,000 Bu	6 yrs	(9)	12 Years	5, 10, 15, 30, 50, 70, 100
Peach	All	400 Bu	4 yrs	(6)	8 Years	5, 15, 20, 40, 100
Sweet Cherry	All	10,000 lbs	8 yrs	(12)	15 Years	5, 10, 15, 20, 30, 50, 70, 100
Sour Cherry	All	10,000 lbs	4 yrs	(7)	10 Years	5, 10, 15, 30, 50, 70, 100

Years	P.V.	% Applied
1	1.0000	100%
2	.9091	95%
3	.8264	91%
4	.7513	87%
5	.6830	83%
6	.6209	80%
7	.5645	76%
8	.5132	73%
9	.4665	70%
10	.4241	67%
11	.3855	67%
12	.3505	62%
13	.3186	60%
14	.2897	58%
15	.2633	56%

**TABLE C: MINIMUM VALUES**

(Used when claimant cannot present evidence of actual values)

Bottom production would be 1 bu/tree

Bottom ORV would be juice at \$1.25/bu

**TABLE D: ABBREVIATIONS**

Bu =	bushel; but if other unit of measurement is appropriate (e.g., box, pound, etc.) substitute appropriate units.
Bu/tree =	Annual production in bushels (or other appropriate units) of undamaged mature trees, taking into consideration growing practices and conditions.
Ave exp bu/tree =	Average expected annual production in bushels (or other appropriate units) for undamaged trees, taking into consideration growing practices and conditions, the normal % of full production for age of the tree, and other factors as may be specified for a particular formula. (Note: ("Bu/tree" and "Ave exp" bu/mature tree" do not necessarily imply different factors.)
ORV =	Orchard run value in dollars.

**#1755-#1759-VACANT**

**ARTICLE VI - DAMAGE TO CROPS UNDER CULTIVATION**

**#1760 - PROOF OF LOSS REQUIREMENTS**

- A. At the time of the investigation or upon submission of the proof-of-loss form the claimant shall be responsible to prove by a preponderance of evidence:
  - 1. Big game were present in the field prior to the time of harvest.
  - 2. Big game did damage to his crop(s) in the amount set forth on his claim.

**#1761 - DOCUMENTATION OF CLAIM**

- A. Documentation by the claimant which is necessary to support a claim for damage to crops under cultivation shall include but not need be limited to:
  - 1. Data indicating that big game caused the damage which may be in the form of counts of big game in the field made initially at the time the damage is first discovered and at least once every ten (10) days thereafter so long as damage continues.
  - 2. Data indicating the extent of damage in commonly accepted units - for example, pounds, bushels, bales, tons, hundred weight - and the value per unit measurement in dollars. Data acceptable for determining value include:
    - a. Sales receipt for harvested crops from the same field;

- b. Current market value obtained from local sales, market reports or other sales value sources.

#### **#1762 - EVALUATION AND SETTLEMENT PROCEDURE**

- A. Damage to a growing hay crop shall be evaluated by one of the following three methods or any other method agreed upon in writing by the claimant and the Division.
  - 1. If comparable undamaged areas are available, the method of comparing harvest yield on damaged versus undamaged areas, and adjusting for difference in production, if any, not due to big game use.  
  
or:
  - 2. Where comparable, undamaged areas are available the selection of comparative sample plots of the damaged and undamaged crop, and clipping, air drying, and weighing vegetation within each plot to determine the quantity and quality of forage removed by wildlife may be used as an option to the method described under #1762 a. 1.  
  
or:
  - 3. Where comparable damaged and undamaged areas are not available from which to obtain samples, damage shall be evaluated on a cured or air dried forage basis of 2.2 pounds per deer day use, 2.5 pounds per sheep day use, 8.8 pounds per elk day use, 1.6 pounds per pronghorn day use, 2.1 pounds per mountain goat day use, and 15.3 pounds per moose day use, or under conditions existing at the time or place of damage. If this method is used big game counts must be made at least once every ten days and no claim for damage by loss of livestock forage caused by big game shall be submitted for the same time period.
- B. Damage to a growing small grain crop shall be evaluated by comparing the harvest yield on damaged versus the most comparable undamaged areas in the vicinity, and adjusting for differences in production, if any, not due to big game use. Such damage may be evaluated by any other method agreed upon in writing by the claimant and the Division.
- C. Damage to a row crop, shall be determined by one of the following methods, whichever is most appropriate for the crops, type of damage, size of the area and other pertinent factors:
  - 1. Selecting comparative sample areas from the damaged field and measuring the percentage of plants which have been damaged by big game and the estimated average percent of crop loss per damaged plant within each sampled area.
  - 2. Comparing harvest yield on damaged versus undamaged areas, and adjusting for differences in production, if any, not due to big game use.
  - 3. Any other method agreed upon in writing by the claimant and the Division.

- D. The value of alfalfa aftermath damaged by big game shall be based on the local market value of nearby comparable alfalfa fields, e.g. amounts paid for leasing nearby comparable alfalfa fields for grazing.
- E. Value of any crop under cultivation shall be the market value at the time and place of harvest less any normal harvesting costs that were not incurred.
- F. Where the Division has determined that consulting with a crop adjuster would facilitate resolution of issues raised as part of any claim for damage to crops under cultivation, including settlement of such claim, it may contract with a crop adjuster to evaluate and report on suspected damage to such crops. If the estimated amount of damage claimed reasonably exceeds \$10,000, the Division shall contract with a crop adjuster for an evaluation and report on the suspected damage. In all cases, the report prepared by the crop adjuster will be provided to the claimant for their review and information.

**#1763-#1769 – VACANT**

**ARTICLE VII - DAMAGE TO HARVESTED CROPS**

**#1770 - PROOF OF LOSS REQUIREMENTS**

- A. At the time of the investigation or upon submission of the proof-of-loss form, the claimant shall be responsible to prove by a preponderance of evidence:
  - 1. That big game caused damage to his harvested crop in the amount set forth on his claim.

**#1771 - DOCUMENTATION OF CLAIM**

- A. Documentation by the claimant which is necessary to support a claim for damage to harvested crops shall include but need not be limited to:
  - 1. Evidence sufficient to establish that the alleged damage was caused by big game. Such evidence may include actual counts, photographs and data on concentration of tracks and/or fecal pellets or any other reasonable evidence.
  - 2. Data indicating the extent of damage in commonly accepted units such as pounds, bushels, bales or tons and the value per unit. Data acceptable for use in determining value include:
    - a. Sales receipts for crops of similar quality during the period when the damage occurred.
    - b. Evidence or documents showing the actual cost for replacement if the damaged crops were replaced.

**#1772 - EVALUATION AND SETTLEMENT PROCEDURE**

- A. Damage to a harvested crop shall be evaluated as follows or by any other method agreed upon in writing by the claimant and the Division.

1. Damage to stacked hay shall be evaluated by calculating the pounds of hay which have been damaged by big game through:
  - a. calculation of the volume of hay removed or damaged;
  - b. determining the number of bales damaged based on bailing wires or strings remaining or number of bales originally in the stack.
2. Damage to harvested crops, other than haystacks, and crops being fed to livestock shall be evaluated on a cured or air dried forage basis of 2.2 pounds per deer day use, 2.5 pounds per sheep day use, 8.8 pounds per elk day use, 1.6 pounds per pronghorn day use, 2.1 pounds per mountain goat day use, and 15.3 pounds per moose day use, or under conditions existing at the time and place of damage.

B. Value of any crop shall be the market value at the time and place of damage.

#### **#1773-#1779 – VACANT**

### **ARTICLE VIII - DAMAGE TO LAWFUL FENCES**

#### **#1780 - PROOF OF LOSS REQUIREMENT**

- A. At the time of the investigation or upon submission of the proof-of-loss form, the claimant shall be responsible to prove by a preponderance of evidence:
  1. That big game caused damage to the specific lawful fence in the amount set forth on his claim.

#### **#1781 - DOCUMENTATION OF CLAIM**

- A. Documentation by the claimant which is necessary to support a claim for damage to fences shall include but need not be limited to:
  1. A statement that damaged fence was a "lawful fence" as defined in Section 35-46-101(1), C.R.S., and that it was in good repair prior to being damaged.
  2. Tangible evidence that big game animals caused the damage (i.e. game counts, tracks, droppings, hair, game trails).
  3. Agreement between the claimant and Division investigating officer, where possible, that incurred damage was caused by big game animals.
  4. A statement setting forth the amount of fence destroyed including the amount of material by type (i.e. posts, wire, gates and labor) that is needed to repair the fence to its condition immediately prior to the occurrence of damage or destruction.

## **#1782 - EVALUATION AND SETTLEMENT PROCEDURE**

- A. Settlement with the claimant shall be based on repair/replacement costs if the damage is in excess of ten (10) percent of the value of the specific fence involved; provided however, that if the value of the repaired fence is greater than the value of the fence before damage, the amount of payment shall be reduced by the amount of increased value, or the Division may offer to replace damaged materials on an in-kind basis provided this is agreed to by both parties.

## **#1783 - SPECIAL PROVISIONS**

- A. In the event that fence repairs are needed prior to the time that notification of damage can be given and/or investigation made, the claimant shall provide sufficient evidence (photos, etc.) to the Division so that the extent of damage that occurred and that was caused by big game can be determined.
- B. The state shall not be liable for damages to any fence on Federal lands except where the claimant can prove ownership and title to such fence.
- C. The Division may require the fence owner or his authorized agent, when reasonable, to assist in locating and investigating alleged damage.

## **#1784-#1789 - VACANT**

## **ARTICLE IX - DAMAGE TO LIVESTOCK FORAGE IN HAY MEADOWS, PASTURE AND ARTIFICIALLY SEEDED RANGELANDS.**

### **#1790 - PROOF OF LOSS REQUIREMENTS**

- A. At the time of the investigation or upon submission of the proof-of-loss form, the claimant shall be responsible to prove by a preponderance of evidence:
  - 1. That damage occurred and it was more than ten (10) percent in excess of normal historic wildlife use levels.
  - 2. That damage occurred and that the claimant was unable to graze the damaged area at the rate or time which would normally be expected by the claimant for this area under similar growing conditions in the absence of big game grazing.
  - 3. That damage was caused by big game and not adverse weather, insects, rodents, or some other cause.
  - 4. That the claimant owns the land or leases it from a private owner.
  - 5. That the meadow, pasture or artificially seeded range land was fenced and that the fence was adequate to exclude any livestock present on adjoining lands.

### **#1791 - DOCUMENTATION OF CLAIM**

- A. Documentation by the claimant which is necessary to support a claim for damage to livestock forage in hay meadows, pasture meadows and artificially seeded rangelands shall include but not necessarily be limited to:
1. A statement of the actual beginning and ending dates that the area was grazed.
  2. A statement of the numbers of livestock animal units grazed by species.
  3. A proof-of-loss form prepared jointly by the claimant and a Division of Wildlife investigator after the livestock grazing period has been completed. Such form shall include an estimate of the amount of grazing which was still available, if any, at the time of investigation. If disagreements exist these will be separately noted on the proof-of-loss form.
  4.
    - a. The landowner shall provide the Division with written documentation of when (including time and dates) and where (including specific locations) the damage is occurring.
    - b. Head counts of the wildlife causing damage made by the claimant shall be made in accordance with Section 33-3-202, C.R.S. to include timely notice to the Division. The required 24-hour notice to the Division shall be given either in person or by direct telephone contact to the nearest regional or area office.
    - c. The claimant shall provide the Division with the results of their counts with the proof of loss forms. Nothing herein shall prevent the Division from making additional head counts.
  5. A statement characterizing the nature of the growing season in one of three categories and a statement as to the basis for such characterization: favorable, normal, or unfavorable. Such statement may include data on normal and current year dates of last killing frost and amount of rainfall by week from the nearest weather station or by other records or evidence where such records are kept.
  6. An estimate by a professional range conservationist or other similarly qualified person, acceptable to the Division and claimant, of the normal grazing capacity of the damaged area considering the actual growing conditions, range condition and type of livestock grazed or the normal grazing capacity can be determined by an arbitration panel composed of one arbitrator chosen by the landowner, one chosen by the Division and a third arbitrator chosen by the other two arbitrators as stated in 33-3-104 (d). The panel shall provide an estimate within ninety (90) days of the claim submitted.
  7. If the damaged area is a hay meadow, a certified statement of the date of last hay cutting.
  8. A statement designating the historic average number(s) of big game, by species, present on the property in question.

## #1792 - EVALUATION AND SETTLEMENT PROCEDURE

- A. The amount of damage shall be the difference between the grazing capacity of the area and the amount of grazing actually realized by the claimant, provided that the amount of damage calculated in this way could have been caused by the number and kind of big game animals documented to have used the designated area or damage can be determined strictly on the basis of the number of big game animals counted on the property during the damage period. The amount of damage that could have been caused by big game shall be based on the following annual average livestock animal unit month (AUM) equivalents:

13.6 pronghorn months = 1 AUM

8.7 bighorn months = 1 AUM

9.9 deer months = 1 AUM

2.5 elk months = 1 AUM

1.4 moose months = 1 AUM

10.3 mountain goat months = 1 AUM

Each AUM equivalent represents the average total amount of forage that could have been eaten by big game. Actual consumption is determined by establishing the proportion of the big game animals' daily forage intake that occurred on the damaged area and dividing the wildlife UM's by this fraction. In the event that these average equivalents are not applicable to the circumstances of an individual case either party may come before the Commission to request a change in regulation in that instance.

1. The Division may compensate landowners or lessees with the comparable amount of hay or feed or equivalent thereof in lieu of AUM equivalents of the wildlife causing damage where the loss of livestock forage required supplemental feeding.
- B. Grazing capacity shall be determined by forage measurement procedures which meet U.S. Soil Conservation Service standards, contained in the National Range Handbook published by the U.S. Soil Conservation Service (July 13, 1976).(note: later amendments to these standards are not hereby incorporated). Copies of the SCS handbook may be obtained at cost by writing: Director, Colorado Division of Wildlife, 6060 Broadway, Denver, CO 80216.
- C. The amount of grazing actually realized by the claimant shall be determined by taking the actual number of animal unit months of livestock grazing which occurred on the area and adding the estimated amount of grazeable forage remaining after termination of grazing or subtracting the amount by which the area was overgrazed.
- D. Liability is limited to that proportion of the damage in excess of the historic big game use levels, and the state shall be liable for such damages only if they are more than ten (10) percent in excess of normal historic wildlife use levels. This proportion is obtained by subtracting the 1953 to 1973 average population from the current population for the species causing damage and

dividing this difference by the current population. If the Division does not agree with the claimant on the historic levels of any species, or this proportion, it may be determined by arbitration. If a satisfactory solution cannot be established by arbitration then the proportion shall be determined by the legal process described in 33-3-104(1)(d) and 33-3-108, C.R.S.

E. Value of grazing shall be the current market value at the time and place of the forage loss.

**#1793-#1799 - VACANT**

**ARTICLE X - DAMAGE TO LIVESTOCK FORAGE ON GRAZING LAND WHICH IS DEFERRED FOR SEASONAL USE**

**#17100 - NOTICE OF INTENT TO DEFER GRAZING**

- A. Any person who designates all or part of his grazing land as "grazing land which is deferred for seasonal use" shall provide written notice thereof to the Division no later than fifteen (15) days prior to the beginning date of intended deferral period. Such notice shall include:
1. A map and legal description of the grazing land which is deferred for seasonal use.
  2. A statement from a professional range conservationist or similarly qualified person, stating the range site(s) included within the area to be designated and the range condition class(es) of the area, and the resulting initial stocking rate recommended for the designated area in a normal year, a favorable production year and an unfavorable production year. If more than one range site and/or condition class is represented on the area designated, the area in each site and condition class shall be outlined on the map described in 1, and the percentage of the total area in each site and condition class shall be recorded. Methods used to determine range site and condition class shall be described. Copies of all data collected shall be included. If the professional range conservationist or other qualified person is not available the range site classification maps and data may be used provided that the range site classification maps and data have been developed within the last five years.
  3. A signed statement on forms provided by the Division from the owner or grazing lessee of the lands to be designated certifying;
    - a. That the area to be designated is surrounded by a fence adequate to exclude livestock which may be present on adjacent lands.
    - b. Beginning and ending dates of the intended deferral period (period of no livestock grazing).
    - c. Beginning and ending dates of the intended grazing period.
    - d. Numbers of livestock animal units by species which are intended to be grazed.

## **#17101 - PROOF OF LOSS REQUIREMENTS**

- A. At the time of the investigation or upon submission of the proof-of-loss form, the claimant, shall be responsible to prove by a preponderance of evidence:
1. That he met the requirements concerning notice of intent to defer grazing on the lands where the damage is alleged to have occurred.
  2. That damage occurred and it was more than ten (10) percent in excess of normal historic use levels.
  3. That livestock were unable to graze the area at the rate planned and normally expected under similar growing conditions in the absence of big game grazing; and that the damage was caused by big game and not adverse weather, insects, rodents or some other cause.
  4. That he owns the land or leases it from a private owner.
  5. That the land was adequately fenced to exclude any livestock present on adjoining lands.

## **#17102 - DOCUMENTATION OF CLAIM**

- A. Documentation by the claimant which is necessary to support a claim for damage to livestock forage on grazing land deferred to seasonal use shall include but is not necessarily limited to:
1. A statement of the actual beginning and ending dates that the area was grazed.
  2. A statement of the numbers of livestock animal units grazed by species.
  3. A proof-of-loss form prepared jointly by the claimant and the Area Wildlife Manager or his designee after the grazing period has been completed. Such form shall include an estimate of the amount of grazing which was still available, if any, at the time of investigation. If the claimant and the Division representative do not agree on the amount of remaining grazing capacity, sufficient evidence which may include but is not limited to appropriate photographs and range condition data shall be provided by the claimant to document the actual condition of the area, and if disagreements exist these will be separately noted on the proof-of-loss form.
  4. A statement of the number and kind of big game using the designated area including data from all counts made by date and time of day and a list of all known witnesses who participated in these counts. Head counts of the wildlife causing damage shall be made in accordance with Section 33-3-202, C.R.S. to include timely notice to the Division. The required 24-hour notice to the Division shall be given either in person or by direct telephone contact to the nearest regional or area officer. Numbers of big game shall be expressed in terms of the average daily number of animals present and shall include an estimate of the percentage of their daily food consumed or damaged on the designated area. Counting procedure shall be described. Nothing herein shall preclude the Division from making additional head counts.

5. A statement describing the quality of the growing season as favorable, normal or unfavorable. Based on weather and related environmental conditions, a growing season shall be considered favorable if, on the average, more favorable conditions occur 1 year in 4 or less frequently. A growing season shall be considered unfavorable if, on the average, less favorable conditions occur 1 year in 4 or less frequently. Such statement shall include data on normal and current year dates of the last killing frost and the amount of rainfall by week from the nearest weather station or by other records or evidence where such records are kept.
6. A statement designating the historic average number(s) of big game, by species, present on the property in question.

**#17103 - EVALUATION AND SETTLEMENT PROCEDURE**

- A. The amount of damage shall be the difference between the grazing capacity of the area and the amount of grazing actually realized by the claimant, provided that the amount of damage calculated in this way could have been caused by the number and kind of big game animals documented to have used the designated area during the deferral period. The amount of damage that could have been caused by big game shall be based on the following annual average livestock animal unit month (AUM) equivalents:

- 13.6 pronghorn months = 1 AUM
- 8.7 bighorn months = 1 AUM
- 9.9 deer months = 1 AUM
- 2.5 elk months = 1 AUM
- 1.4 moose months = 1 AUM
- 10.3 mountain goat months = 1 AUM

If the deferred grazing land contains a substantial amount of herbage other than grasses and legumes, the AUM equivalents must be adjusted for the amount of herbage consumed by wildlife which is not livestock forage. This is accomplished by dividing the appropriate AUM equivalent from the list above, by the proportion of dietary overlap for the species of wildlife and livestock involved. This proportion shall be obtained from the following table unless some other figure can be shown to reflect more accurately the actual situation.

**DEGREE OF DIETARY OVERLAP BETWEEN VARIOUS BIG GAME SPECIES AND DOMESTIC CATTLE AND SHEEP.**

	COW	SHEEP
ELK	.91	.96
DEER	.50	.80
PRONGHORN	.80	.80

Each AUM, as adjusted if necessary, represents the average total amount of forage that could have been eaten by big game. Actual consumption is determined by establishing the proportion of the big game animals' daily forage intake that occurred on the damaged area and dividing the wildlife UM's by this fraction. In the event that these average equivalents are not applicable to the circumstances of an individual case either party may come before the Commission to request a change of regulations in this instance.

- B. Grazing capacity shall be determined by forage or measurement procedures which meet U.S. Soil Conservation standards as set forth in #1792(b) of these regulations or as designated for the forage growth favorable class most representative of the actual growing conditions when forage was produced.
- C. The amount of grazing actually realized by the claimant shall be determined by taking the actual number of animal unit months of livestock grazing which occurred on the deferred area and adding the estimated amount of grazable forage remaining after termination of grazing or subtracting the amount of which the area was overgrazed.
- D. Liability is limited to the proportion of the damage in excess of the historic big game use levels and the state shall be liable for such damages only if they are more than ten (10) percent in excess of normal historic wildlife use levels. This proportion is obtained by subtracting the 1953 to 1973 average population from the current population for the species causing damage and dividing this difference by the current population. If the claimant and the Division cannot agree on this proportion it may be determined by arbitration. If a satisfactory solution cannot be established by arbitration then the proportion shall be determined by the legal process described in 33-3-104(1)(d) and 33-3-108, C.R.S. (amended, 1984 by HB 1376).
- E. Value of grazing shall be the current market value at the time and place of the forage loss. Values computed for loss of dry standing forage shall be reduced by the amount which should have been required for purchase of necessary protein, and/or energy supplements if the forage had been used for grazing.

#### **#17104 - SPECIAL PROVISIONS**

If any person who has designated deferred grazing land turns livestock into the designated area at any time or at any rate other than that specified in the notice of designation, he shall notify the Division in writing on the date, type and number of livestock within 10 days of the actual beginning date of livestock grazing. If any such change substantially modified the expected grazing capacity of the designated area, any claim for damage shall be based on the modified grazing capacity.

#### **#17105-#17109 - VACANT**

#### **ARTICLE XI - DAMAGE TO NURSERIES**

#### **#17110 - PROOF OF LOSS REQUIREMENTS**

- A. At the time of the investigation or upon submission of the proof-of-loss form, the claimant shall be responsible to prove by a preponderance of evidence.

1. That big game were present in the nursery.
  2. That big game did damage to the nursery to the extent that future production will be affected.
- B. The claimant shall also furnish:
1. The age of each damaged tree or shrub.
  2. The species and variety of each damaged tree or shrub.
  3. Production records for the last 5 years, or for the number of years the claimant has owned the nursery, which ever is less.
  4. Average operating expenses for 5 years, or for the number of years the claimant has owned the nursery, which ever is less, immediately preceding the date of claim. Such expenses include all costs for spraying, pruning, irrigation water, harvesting, cultivating and any other cultivation practice required for production of the crop.

#### **#17111 - DOCUMENTATION OF CLAIM**

- A. Investigation of damage claims for nursery damage shall be conducted jointly by the claimant and the Division's investigator. Documentation which is necessary to support a claim for damage to nurseries shall be prepared by the claimant and shall include but need not be limited to:
1. A map of the entire nursery area showing the location of trees and shrubs within the nursery that have been damaged by big game.
  2. The species, variety, age and extent of damage for each tree and shrub.
  3. The percent of each tree that has been damaged by barking, browsing or rubbing which shall be determined as follows:
    - a. Bark damage - will be determined by estimating the percent of bark removed down to the cambium layer on the circumference of the trunk and branches of each tree or shrub and its relative affect on the life and productivity of the trees and shrubs in question. This percent permanent damage will be applied to the appropriate tree and shrub values to arrive at the amount of reimbursement to the claimant. Light barking which doesn't expose the cambium will not be considered as permanent damage.
    - b. Browse damage - will be determined for each tree or shrub by first estimating the percent of total twigs that have been damaged. This percent will be applied to the appropriate tree or shrub value to arrive at the dollar amount of damage.

- c. Barking and browse damage to the same tree or shrub will be determined by first estimating bark damage then estimating browse damage to only the unbarked percent of each tree or shrub.
  - d. Antler rubbing damage, which characteristically occurs to younger trees, will be determined by estimating the percent of permanent damage to each tree including bark removal and stem breakage, and applying this percent to the appropriate tree value.
4. A statement as to the overall health and vigor of each damaged tree in relation to the undamaged trees. The overall condition of each damage tree shall be considered in relation to trees which have been maintained in a reasonably good condition. Sales receipts will be reviewed to assist in determining the value of the trees. Field inspection and production records where applicable shall be used as a basis for this statement.
5. The dollar value loss for the entire claim shall be a summation of dollar value losses derived from the total of individual tree or shrub damage values. If the damaged stock happens to be fruit trees the values listed for them in Article V may be used. Leaf browsing during the growing season is usually not damaging since it is not permanent. Removal of fruit and berry buds can be damaging to future production.

**#17112 - SPECIAL PROVISIONS**

- A. Where more than one claim for damage is made for the same trees or shrubs damaged in different years cumulative payments to the claimant shall not exceed 100 percent of the highest value of the trees or shrubs involved.
- B. Where 100% damage has been paid on a tree or shrub it becomes the property of the state and may be disposed as the Division directs.

**#17113-#17119 - VACANT**

**Basis and Purpose:**

The statements of basis and purpose for these regulations can be viewed and copies obtained from the Colorado Division of Parks and Wildlife, Office of the Regulations Manager, Public Involvement Unit, 6060 Broadway, Denver, CO 80216.

**The statutory authority for these regulations can be found in § 24-4-103, C.R.S., and the state Wildlife Act, §§ 33-1-101 to 33-6-209, C.R.S., specifically including, but not limited to: §§ 33-1-101, 102, 104, 105, 106-108, 115, and 121; §§ 33-2-104, 105, 106, and 107; § 33-3-104; §§ 33-4-101, 102, 102.5, 103, 116, 116.5, 117, and 119; § 33-5.5-102; and §§ 33-6-107, 109, 112, 113, 113.5, 114, 114.5, 117, 119, 120, 121, 124, 127, 128, 129, 131, 205, 206, 207, and 208.**

**EFFECTIVE DATE - THESE REGULATIONS SHALL BECOME EFFECTIVE JULY 1, 2012 AND SHALL REMAIN IN FULL FORCE AND EFFECT UNTIL REPEALED, AMENDED OR SUPERSEDED.**

**APPROVED AND ADOPTED BY THE PARKS AND WILDLIFE COMMISSION OF THE STATE OF COLORADO THIS 10<sup>th</sup> DAY OF MAY, 2012.**

**APPROVED:  
Tim Glenn  
Chairman**

**ATTEST:  
Mark Smith  
Secretary**