Attachment 2 - *Bond Amount Determination, Recordkeeping, and Review*

*Bond Amount Determination:*

As authorized in 43 C.F.R. 2805.20(a)(3), the BLM authorized officer shall require the applicant/holder to furnish a reclamation cost estimate (RCE) for review and approval by the authorized officer, estimating all the costs (see Attachment 3 for template) necessary to fulfill the terms and conditions of the grant or land use authorizations in the event that the holder is unable. The RCE estimate shall be prepared by an individual, or team, with the knowledge, skills, and expertise in reclamation and the general costs associated with phases of reclamation. The individual/team preparing the RCE may be on the proponent’s staff or may be a third party. A BLM authorized officer may require a BLM individual or team with similar knowledge, skills and expertise review the RCE prior to approval.

Depending on the grant or land use authorization, the bond shall cover the construction, operation, maintenance, and termination/reclamation of the grant or land use authorization, and thus, the estimate would include the reclamation costs to cover everything over the life of the grant or land use authorization. The bond estimate also shall include, but is not limited to: information such as direct and indirect administrative costs, equipment rental, contracting, monitoring, and reclamation costs, as well as the Davis-Bacon and Related Acts requirement to pay locally prevailing wages potentially incurred by the BLM.

The BLM will recommend that the applicant/holder use the RCE template provided in Attachment 3, noting its use will expedite the BLM authorized officer’s bonding review. Costs estimated for the BLM to administer a reclamation contract and inspect and monitor the reclamation activities should be commensurate with the complexity necessary to fully reclaim by returning the land back its original condition. This cost may be a percentage-based determination by the BLM which is added to the RCE as part of its bond amount determination. The RCE, along with inflationary estimates, shall be the basis for the bond amount and shall remain in effect for 5 years unless the authorized officer determines that conditions warrant a review of the bond sooner. The forecasted inflationary rate is found in the “fiscal year tab, row 32” of the Congressional Budget Office economic projections at <https://www.cbo.gov/sites/default/files/recurringdata/51135-2017-06-economicprojections2.xlsx>.

All costs of preparing and submitting the RCE shall be borne solely by the applicant/holder.

Certain circumstances may dictate different approaches to estimating the amount of a bond. For rights-of-way (ROW) for roads with multiple users, there are two options: 1) All holders of the road ROW would sign a road maintenance agreement and submit the agreement to the BLM. The multiple user group designated lead for the road maintenance agreement will submit the RCE to the BLM for review. The BLM will then determine the bond amount for each user from the RCE and the percentages in the road maintenance agreement. When a new grant, amendment or relinquishment is approved, the maintenance agreement will need to be updated and the RCE may need to be resubmitted (depending on the age of the RCE) and new bonds will need to be submitted; or 2) All users will obtain bonds to cover the terms and conditions of their grant or land use authorization.

If the proposed grant or land use authorization would not allow any surface disturbance on the public land (e.g., powerline corner crossing) or if the preparation cost of the RCE would be a hardship for the applicant/holder, the BLM staff in the District and Field Offices may help with completion of the RCE. Where the proponent requests the BLM to assist or prepare the RCE, the cost for assistance or preparation must be included in the cost recovery estimate.

The BLM issued policy and guidance for determining bonding requirements under 43 CFR 3809 for mining operations on the public lands (IM 2009-153, dated June 19, 2009) that provides detailed information about the process for determining the appropriate financial guarantees for intensive land uses on the public lands. This guidance should be used to assist in calculating the bond amount for grants on public lands. Attachment 1 to IM 2009-153, “Guidelines for Reviewing Reclamation Cost Estimates,” can be used as a guideline to assist in reviewing RCEs. While realty staff has the responsibility of reviewing the RCEs, the engineering staff in the District and Field Offices should assist with review of the RCEs for adequacy, as needed.

Where a holder has multiple authorizations consolidated into a single bond, management is specified as follows:

* Local consolidated bonds are to be addressed by the authorized officer;
* Intrastate (BLM State Office jurisdiction) consolidated bonds are to be addressed by the appropriate BLM State Office; and
* Interstate consolidation of bonds must be developed through coordination between the affected State Offices, with the State Office having the bulk of the bond value being the lead State Office.

As required by 43 C.F.R. 2805.20(a)(5), the RCEs must consist of three components of financial liability in order for the BLM to make a determination of the bond amount. Each component may individually or jointly contribute to a significant bond amount. The three required components of the RCE are:

1. Environmental liabilities including hazardous materials liabilities, such as securing, removal, or use of hazardous waste and hazardous substances. This component may also account for herbicide use, petroleum-based fluids, and dust control or soil stabilization materials.
2. The decommissioning, removal, and proper disposal, as appropriate, of improvements and facilities.
3. Interim and final reclamation, revegetation, restoration, and soil stabilization. This will be determined based on the amount of vegetation retained onsite and the potential for flood events and downstream sedimentation from the site that may result in offsite impacts.

In addition, the RCE shall include consideration for restoring or protecting all survey monuments, witness corners, reference monuments, bearing trees, and line trees against unnecessary or undue destruction, obliteration, or damage.

The performance and reclamation bond will be a single instrument to cover all potential liabilities. The entire bond amount could be used to address a single risk event such as hazardous materials release or groundwater contamination regardless of the fact that in calculating the total bond amount other risks were also considered. If the bond is used to address a particular risk, the holder would then be required to increase the bond amount to compensate for this use. This approach to establishing a bond is preferable to one allowing holders to maintain separate bonds for each contingency. If separate bonds are held, an underestimation of one type of liability may leave the BLM responsible for making up the difference, as the funds associated with one bond may not be applicable for the purposes of another. Where the holder is in good financial standing and has not had a bond default or bankruptcy within the previous seven years, the bond reduction of up to 15% incentivizes the holder to consolidate multiple bonds, thereby reducing the BLM’s overall administrative costs.

The RCEs will be calculated as if there were no such salvage value for structures, equipment, or materials since these are generally based upon a transient market value for commodities. The BLM will inform the applicant/holder that they may provide an addendum to the RCE if the salvage and recycling value for the structures, equipment, or materials can be detailed. Such an addendum must include current local market information and be readily available for BLM review and consideration in making its bond determination. The BLM, however, will only include an addendum for salvage values in the bond determination with adequate third-party documentation and justification for salvage or considering special circumstances, such as State mandates to recycle and salvage project materials.

The BLM shall require the applicant/holder to submit the RCE in a standardized electronic format (Excel is preferred) that the BLM can easily updated with current costs in future reviews. A template for the bond estimate is attached (Attachment 3).

Based on a review of the RCE, the BLM authorized officer must provide the applicant/holder with a written letter as to the amount required for the performance and reclamation bond. The offer letter will include the bond determination. For those ROW and land use authorization decisions that include a Notice to Proceed (NTP) requirement, the authorized officer will send a bond determination letter prior to the NTP approval. For amendments, assignments, or partial relinquishments, the authorized officer will send a bond determination letter prior to approval of the assignment or partial relinquishment. The authorized officer may require the holder to submit a new estimate at any time during the term of the grant.  The bond, in a form acceptable to the authorized officer, shall be furnished by the applicant/holder prior to any grant or decision being issued.  If the authorized officer determines that the bond furnished under this authorization is insufficient for covering potential reclamation costs, at any time, the authorized officer may demand that the holder furnish a new bond (i.e., up to 100 percent of the bond amount calculated in the RCE) to the authorized officer within 30 days.

The authorized officer must adequately document the bond determination letters in the case file, which should be supported by an RCE provided by the applicant/holder. As noted above, the authorized officer’s determination of the amount of the performance and reclamation bond will be based on the RCE. The authorized officer also must properly document additional administrative and other such costs and retain such information in the case file to be included in the final bond determination. The official case file will have a section that fully documents the RCE for the grant or land use authorization. The BLM’s authorized officer shall review the RCE, which will serve as the basis for the final bond determination. The authorized officer, or designees, shall be responsible for communications with the applicant/holder regarding the bonding requirements for the grant or land use authorization, and records related to the bond instruments provided by the applicant/holder.

Bond determinations must also consider compliance with State standards for public health and safety, environmental protection, survey monument protection, construction, operation and maintenance of a grant or land use authorization. Consideration must be made when the State standards are more stringent and are consistent with the applicable Federal standard. If a State regulatory authority requires a bond to cover some portion of the environmental liabilities or other requirements for the grant or land use authorization, the BLM must be listed as an additional named insured on the bond instrument and this documentation must be included in the case file. This inclusion would suffice to cover the BLM’s exposure should the holder default in any environmental liability listed in the respective State bond.

The bond, in a form acceptable to the authorized officer, shall be furnished by the applicant/holder prior to any grant or land use authorization being issued.

Bonds for film permits should only be required when the land involved in a filming permit will need to be reclaimed or cleaned up after completion of the filming project. A certificate of liability insurance for not less than $1 million should be provided to the BLM prior to issuance of most commercial filming permits. The *Bureau of Land Management* must be named as an additional insured party on the policy as well as the statement pertaining to cancellation as stated above.

*Bond Recordkeeping*:

The LR2000 and the Bond and Surety System (B&SS) are the BLM’s national and local data systems used to track information for grants and land use authorizations, including the status of performance and reclamation bonds. It is critically important that all managers and staff place a high priority on timely and accurate data entry. Update of information in LR2000 and the B&SS shall be consistent with current data standards for both systems. All authorization data entry into the LR2000 and the B&SS shall occur within 10 business days of the action.

The Washington Office has worked with the National Operation Center to develop a new action code in LR2000 to track the bonding determinations. The new code will be available for use by January 1, 2018. The new action code is 384 – BOND NOT REQUIRED and the definition will be disseminated to the BLM once it is established, and must be used to track bonding determinations starting on January 1, 2018. Additionally the action code 300 – BOND REQUIRED has been modified for use under case types 2800 and 2920.

*Bond Review:*

Each year the BLM District Offices will coordinate field office reviews of at least 20 percent of the RCEs and bonds for grants within their administrative boundaries that are less than five years of age for bond adequacy. These reviews will prioritize higher risk projects that involve greater land disturbance acreage, projects with a history of incidents of noncompliance, projects with abandoned or disabled equipment, or projects that may have potential environmental liabilities associated with use of hazardous materials and substances, hazardous waste, or herbicides.

Each bond and RCE must be reviewed at least once every five years, regardless of its review priority. These reviews should be completed throughout the fiscal year to moderate workload impacts. The reviews should be completed and documented in each case file within 90 days of the end of each fiscal year. For any authorization determined to have an inadequate RCE, the appropriate BLM field office will issue a letter to the grant holder requesting that it provide an updated RCE within 90 days of the date of the letter.