



United States Department of the Interior



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In Reply Refer To:
2805/2885/2920 (921Wrigley) P

October 20, 2016

EMS TRANSMISSION: 10/20/2016
Instruction Memorandum No. WY-2016-018, Change 1
Expires: 09/30/2018

To: District Managers
From: Associate State Director
Subject: Right-of-way (ROW) Bonds

Program Area: Lands and Realty Management.

Purpose: This Instruction Memorandum (IM) provides revised guidance and clarification on Right-of-Way (ROW) bonding requirements.

Policy/Action: Effective April 18, 2016, the Bureau of Land Management (BLM) Wyoming issued policy that would require a bond(s) for all new grants, amendments, renewals (including grants not offered prior to the effective date of the policy issued on April 18, 2016), and assignments. That Instruction Memorandum can be found at the following link - <http://web.blm.gov/Wy.im/16/WY-2016-018.pdf>. A bond is to ensure compliance with all the terms and conditions of a grant (construction, operation, maintenance and termination) and the requirements of the regulations (43 CFR 2805, 2885, and 2920), including reclamation. The changes and clarification are as follows:

1. The requirement that a bond(s) be approved by the BLM authorized officer prior to the grant being issued is changed to read: "The applicant/holder of any new grant, amendment, renewal, partial relinquishment and/or assignment must obtain a bond(s). The bond(s) must be submitted and accepted prior to the grant being issued or prior to a Notice to Proceed (NTP) as stipulated in the grant."

2. Waivers for hardships only, has been changed to read: “Waivers/exceptions will be considered.” The requirement that the waivers be approved by the BLM Wyoming Deputy State Director, Lands and Minerals have been removed from the policy. The authorized officer will have the authority to approve waivers/exceptions.
3. The Reclamation Cost Estimate (RCE) template, attachment 1 that was mentioned has been revised. The new template is attached. We will not mandate the use of the attached template but we strongly suggest the applicants use this format to expedite the review process. The template is to be used for estimates for construction, operation and maintenance as well as reclamation, depending on the ROW action the estimate is to cover.
4. The requirement that the estimate be prepared, stamped with seal and signed by an independent State Licensed Engineer has been removed from this policy. The RCE must, however, be prepared by a reclamation specialist, either employed by the company or hired by the company. A private individual would have the option to request an exception to this requirement from the Authorized Officer.
5. The requirement that the RCE be included as part of the Plan of Development (POD) has been removed. However, an RCE will be requested in a deficiency letter as additional information required in accordance with 43 CFR 2804.12(c), 2884.11(c) and 2920.5-2(b).
6. To clarify when the bond is requested. The Bond Determination Letter would be mailed to the applicant/holder prior to the project approval letter. For a new grant, amendment or renewal the Bond Determination Letter would be sent at the same time as the Offer to grant letter. For NTP’s, the Decision would be sent prior to the NTP approval. For assignments or partial relinquishments the Bond Determination Letter would be sent prior to their approval.
7. To clarify the engineering staffs role. The review of the RCE’s is the responsibility of the realty staff, but the engineering staff will help, if requested.
8. Under the heading “*Bond Amount Determination*” there seems to be some confusion on how the bond should be figured. Depending on the ROW, the estimate would be figured accordingly.
 - A. The bond is to cover the construction, operation, maintenance and termination/reclamation of the grant; therefore, normally the estimate would be figured on the reclamation costs to cover everything over the life of the grant.
 - B. In instances where reclamation may not be anticipated or would be minimal (i.e. BLM designated roads, typically small diameter (10 inches or smaller) pipelines, small scale powerlines without any ancillary facilities, etc.), the estimate would be figured on the operation and maintenance costs of the ROW over the life of the grant.
 - C. Maintenance costs for small diameter pipelines without any ancillary facilities should consider the need to dig up the line or a portion of the line for repairs and for small scale powerlines the need to replace transformers, etc.

9. For roads with multiple users, there are two options: (1) all users of the road would sign a road maintenance agreement and submit the agreement to the BLM. The 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 100 percent bonds to cover the terms and conditions of their grant.

10. Insurance policies may be accepted in place of a bond for a ROW. The policy itself must contain the following requirements: (1) the BLM must be included as an additional insured; (2) the statement *“this policy shall remain in full force and effect on a continuous basis for the term of the ROW(s) unless the Insurer provides to the insured not less than one hundred twenty (120) days advance written notice of its intent to cancel the policy. It is understood and agreed that the Insured may recover the full amount of the policy (less any previous amounts paid to the Insured under the policy) if the Insurer cancels the policy, and within thirty (30) days prior to the effective date of the cancellation, if the Insured has not received replacement Security acceptable to the BLM”* (this is an endorsement to the policy that the holder must request be added). This would be an endorsement on the policy; and 3) the ROW’s must be listed on the policy under “Description of Operations,”

The policy will be reviewed to ensure the policy covers the work spelled out in the RCE (i.e., hazardous materials, etc.) or under the road maintenance agreement. A letter accepting the policy, the same as a bond instrument, will be sent to the applicant/holder. If the policy doesn’t include the necessary coverage or statements required, a letter returning the policy to the applicant/holder will be sent.

Insurance policies cannot be put in the Bond Surety System, so an electronic spreadsheet of the ROW’s with their RCE values has been developed and will be kept on the State Office shared drive so all Field Office Realty Staff have access. The insurance policy General Liability and Umbrella Liability total must exceed the total of all the estimates to be acceptable.

11. Bonds for Film Permits will 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 \$1,000,000 (U.S. dollars) must be provided to the BLM prior to issuance of a commercial filming permit. 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.

Timeframe: This IM is effective upon issuance and will remain in effect unless formally modified.

Budget Impact: The application of this policy will have a minimal budget impact. The bond determination, adequacy and compliance review workload are subject to the processing and monitoring fee provisions of the regulations (43 CFR 2804.14(a), 2805.16(a), 2884.12(a), 2885.24(a), and 2920.6(b)).

Background: Historically, BLM Wyoming has not required a bond on all grants. With the increasing concern over changes in financial markets and corporate financial volatility, the BLM is reducing the potential liabilities to the United States associated with grants by requiring a performance and reclamation bond. The BLM would use the bond for reclamation of sites or meeting other grant requirements in the event a holder is unable to meet their obligations.

Coordination: This bonding policy was coordinated with the Office of the Solicitor, Washington Office Branch Chief for Rights-of-Way (WO-350), Renewable Energy Coordination Office (WO-301), and the BLM Wyoming Office of Communications (WY-912).

Contact: If there are any questions related to this IM, please contact Janelle Wrigley at 307-775-6257.

Signed by:
Larry Claypool
Associate State Director

Authenticated by:
Jessica Camargo
State Director's Office

1 Attachment:

1 – Reclamation Construction cost – Bid Estimate Sheet(s) (7 pp)

Distribution:

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