

## Guidelines for Reviewing Reclamation Cost Estimates

### BLM's Review Responsibilities

New or Modified Operation – When submitting a new Notice or Plan of Operations, the operator must provide the Bureau of Land Management (BLM) with a reclamation cost estimate (RCE) that meets the requirements of 43 CFR 3809.552(a) and 3809.554(a), and must be acceptable to the BLM as required by 43 CFR 3809.554(b). Where an existing Notice or Plan of Operations is proposed to be modified, the operator must provide the district/field office with an estimate of the reclamation costs for all components of the existing and proposed operation that will be affected by the modification.

The BLM will review the operator's RCE to determine if the operator has identified and incorporated all applicable reclamation and administrative costs (identified below). In performing the review of the operator's RCE, the responsible district/field office will notify the operator, in writing, of any deficiencies or additional information needed in order for the BLM to complete the review. It is not the BLM's responsibility to calculate the reclamation cost for an operator, but the district/field office, at the BLM manager's discretion, may assist the operator in identifying costs to be included in the estimate and in developing the cost estimate. Although not required, the BLM should encourage the operators to submit the RCE both in hard copy and in a standardized electronic format that can be easily updated with current costs by the BLM for future reviews.

Reclamation Cost Estimate for Part of an Operation – Where the district/field manager authorizes an operator to provide the BLM with a financial guarantee under 43 CFR 3809.553 that covers only the current or proposed phase of the operation ("phased financial guarantee"), the operator must prepare a RCE for the phase of the operation to be covered by the financial guarantee. The RCE for a phased financial guarantee must conform to the same standards as the RCE for a financial guarantee for the entire operation. In addition to providing the RCE for the proposed phase, the operator must also prepare a separate RCE for all operations proposed in the Plan of Operations. The district/field manager's decision on the amount of the required financial guarantee will identify both the RCE for all operations proposed in the Plan of Operations and the RCE for the part or phase of operations that is being authorized. The amount of the required financial guarantee that the operator must provide the BLM will be based on the RCE for the part or phase of the operation where the authorized incremental operations are to occur.

Long-Term Funding Mechanisms – When a trust fund or other funding mechanism is required under 43 CFR 3809.552(c), the operator must provide the district/field office with a cost estimate for the monitoring, construction, operation, maintenance, replacement and other activities for the required facilities, treatment or other needs documented in the Plan of Operations. The operator's estimate must project when the cost obligations will occur. For recurring costs, such as maintenance of a water treatment facility, the frequency, timing and duration of the obligation should be estimated for each cost component. The operator's cost estimate prepared for post-reclamation obligations (PRO) to be covered under 43 CFR 3809.552(c) must be documented separate from the RCE prepared under 43 CFR 3809.554(a). The cost estimates for PRO should be reviewed by the BLM in the same manner and with the same degree of scrutiny and detail that

is used in reviewing estimates for financial guarantees for reclamation obligations under 43 CFR 3809.552(a).

Periodic Review – It is the BLM’s responsibility to conduct a periodic review of the cost estimates for all reclamation, closure, and post-reclamation requirements. As required by 43 CFR 3809.552(b) and 3809.553(b), the BLM’s review ensures the amount of the required financial guarantee for ongoing operations continues to meet the requirements of the regulations and all reclamation, closure, and post-reclamation requirements in the accepted Notice or approved Plan of Operations.

Unless the operator is proposing a modification to the Notice or Plan, the existing RCE does not reflect authorized operations, or additional information is needed, the BLM’s review will consist of an evaluation and update of the operator’s cost estimates on file. Where additional information is necessary to complete the review or a revised cost estimate is required, the district/field manager will direct the operator to provide that information. The BLM may find it helpful to request an updated RCE from the operator to facilitate its review if the RCE on file is not in a readily update-able format such as an electronic, standardized spreadsheet to which current unit costs may be readily applied.

### **Reclamation Cost Estimate Assumptions and Conditions**

The cost estimate must be based on the following assumptions and conditions:

- The estimate must cover all relevant operation, maintenance, and administrative costs for all reclamation identified in the filed Notice or approved Plan of Operations [43 CFR 3809.301(b), 3809.401(d) and 3809.552(a)].
- Costs must be estimated as if the BLM were hiring a third-party contractor to perform all required reclamation [43 CFR 3809.552(a)].
- Costs must include the use of offsite equipment as if the project area was vacated, and the estimate must include all associated mobilization and demobilization costs [43 CFR 3809.554(a)].
- The estimate must include, when applicable, all interim maintenance required to keep the area of operation in compliance with applicable safety and environmental requirements while reclamation contracts are developed and executed [43 CFR 3809.552(a)].
- The estimate must cover costs to construct and maintain any long-term treatment facilities or post-closure structures required by the filed Notice or approved Plan of Operations [43 CFR 3809.552(a)].

- Labor costs must be based on federally mandated labor rates, as required by the Davis-Bacon Act [40 U.S.C. 3141 et seq.] and the Federal Acquisition Regulations [43 CFR 22.403-1] for contracts over \$2,000. If the reclamation and cost estimate is solely for the dismantling, demolition, or removal of improvements, then contracting is under the Service Contract Act [43 CFR 22.1002] and Davis-Bacon wage rates do not apply. If construction, alteration, or repair of the improvements is contemplated, even if such work is under a separate contract, then the Davis-Bacon wages apply (see [www.access.gpo.gov/davisbacon](http://www.access.gpo.gov/davisbacon)).

Maximum Reclamation Cost – The RCE must reflect the maximum cost of reclamation for the proposed disturbance to be covered by the financial guarantee. The point of maximum reclamation costs is often when there is the greatest area of disturbance, greatest volume of materials needing special handling, or some other factor or combination of factors escalating the cost to reclaim. The maximum cost of reclamation is generally not at the end of the project life.

Unless the district/field manager authorizes a phased financial guarantee under 43 CFR 3809.553, the financial guarantee must cover all of the operations described in the Notice or Plan. In reviewing the operator's cost estimate where the financial guarantee will cover all of the operations in the notice or plan, the BLM must make sure the RCE reflects the maximum reclamation obligation, including the BLM's cost to administer the reclamation contract.

Inflation – Inflation can, over time, become a significant factor in the amount of the required financial guarantee. To minimize the potential impact inflation can have on the amount of the financial guarantee needed to cover the current reclamation cost, the district/field office must review, on a periodic basis, the cost estimates for all ongoing operations as addressed in this IM. The maximum allowable time period between reviews is discussed below.

### **Reclamation, Closure, Mitigation and Monitoring**

The reclamation operating and maintenance (O&M) costs reflect the direct current costs of reclamation based on the filed Notice or approved Plan of Operations. Where applicable, reclamation and closure tasks that should be identified are interim O&M; hazardous materials; water treatment; demolition, removal and disposal; earthwork; drill hole plugging; revegetation; mitigation; and post-reclamation costs of long-term operation, maintenance, and monitoring.

Interim Operation and Maintenance – If an operator abruptly ceases operations, the BLM may need to contract with a third party to maintain the area of operation in compliance with applicable safety and environmental requirements. The RCE must include the cost of providing immediate site O&M, where appropriate.

Interim O&M costs may vary significantly depending on the individual site needs and may include labor, equipment, and materials for pumping of fluids to prevent overflow of process ponds, costs for support equipment and electricity to operate the pumps, and site security. There

is no set time period to use in estimating the costs for the care and maintenance of a site prior to the start of reclamation; much depends on the BLM's ability to obtain access to the financial guarantee, especially in bankruptcy cases. It is a good rule-of-thumb to allow for a minimum of six months of interim O&M by a contractor. Large operations or project areas with limited seasonal access may warrant a longer time period.

Hazardous Materials – The RCE must include the cost of decontaminating, neutralizing, disposing, treating or isolating hazardous materials used, produced, or stored on the site. The estimated cost for handling hazardous materials should assume, unless otherwise documented, that the materials are properly stored and labeled.

If upon site inspection, the BLM determines that the operator is using, producing or storing material on site that could be hazardous, e.g., unlabeled barrels, and if the BLM is unsuccessful in getting the operator to properly manage those materials, the BLM must update the RCE to reflect the potentially higher cost of disposing of such material. This distinction is important as the disposal of properly managed hazardous materials may be a fraction of the disposal cost for materials not properly stored and identified.

Water Treatment – The RCE must identify all necessary construction and maintenance water treatment costs needed to ensure that mine discharge or drainage will meet relevant standards. The cost of long-term, post-reclamation operation, maintenance, and replacement requirements may be addressed in a trust fund established under 43 CFR 3809.552(c) (see Attachment 2 – *Guidelines for Establishing a Long-Term Funding Mechanism*).

Mine Facilities – The RCE must include the costs of demolition, removal, and disposal of all mine facilities, immobile equipment, and materials from the project area. No salvage value for structures, equipment, or materials is allowed in the cost estimate.

The RCE must exclude disposal costs for those facilities that have been approved in writing by the BLM for post-reclamation BLM use. The RCE must also exclude the removal and disposal costs for operable mobile equipment, e.g., trucks, dozers, etc., from the cost estimate. However, if the BLM determines upon site inspection that the mobile equipment is inoperable and the BLM is unsuccessful in getting the operator to repair or remove the inoperable equipment from the project area, the BLM must update the RCE to include the cost of removing and disposing of any inoperable equipment.

Earthwork – The RCE must include the costs of all required earthwork. The cost estimate must address the cost of hauling, placement, grading, and backfilling to reclaim mine features, including roads that have not been specifically identified and approved to remain open.

Drill Hole Plugging – The RCE must include the cost of plugging, capping, and isolation of drill holes, including exploration, production and monitoring holes, and water monitoring and piezometer wells, where applicable. In determining the plugging costs, it must be considered whether drill holes encounter water, water under artesian pressure, or are dry. Proposed plugging must meet all applicable Federal and state requirements.

Where the operator is proposing drilling, the RCE must include, at a minimum, the estimated cost of plugging the maximum number of drill holes that may be open at one time. In determining the number of drill holes that may be open at any one time, there can never be less one drill hole for each drill rig that will be working in the project area. Where the submitted Notice or approved Plan of Operations calls for drill holes to be plugged, but does not specifically require the drill holes be plugged before the drill rig has been moved from the drill pad, the RCE must include the plugging cost for all drill holes identified in the Notice or Plan of Operations or the plugging cost for all drill holes authorized in a particular phase of an operation where the financial guarantee is being phased under 43 CFR 3809.553(a).

For all drill holes, and water, monitoring and piezometer wells authorized to be left open for an interim period, the estimated plugging cost must be included in the RCE.

Revegetation – The RCE must include the cost of obtaining the seed mix specified in the reclamation plan and the cost of soil preparation, such as ripping or harrowing, soil amendments such as mulching or fertilizer, application of the seed mix, noxious weed control, and placement of tree and shrub seedlings, if required in the Notice or Plan. The RCE must also include the cost for hauling and placement of growth medium, if not addressed under earthwork.

Mitigation – The RCE must include costs of reclamation work for mitigation, which may include avoiding, minimizing, rectifying and reducing, or eliminating the operation's impact, or compensating for the impact, that are required in the Plan of Operations. The RCE must also include that cost of any deferred mitigation the BLM is requiring the operator to perform. For example, if the operator is required to develop 5 acres of wetlands to compensate for disturbance elsewhere on the project area, until that wetland development is completed the RCE must include the cost of that mitigation.

Post-Reclamation Costs – The RCE must include the costs of meeting any long-term construction, operation, maintenance, or replacement of any treatment facilities and infrastructure that are not addressed in a trust fund established by 43 CFR 3809.552(c) (see Attachment 2 – *Guidelines for Establishing a Long-Term Funding Mechanism*).

### **Identified Costs**

In calculating the cost to perform these interim operations, reclamation, closure, mitigation, and monitoring tasks, the operator's estimate must identify the current O&M costs relating to reclamation including:

- Equipment rental or acquisition costs
- Equipment operation costs
- Equipment maintenance costs
- Cost of operating supplies

- Labor costs for operations, maintenance and supervision
- Site maintenance including roads, infrastructure, power lines, fences and monitoring facilities
- Reclamation materials acquisition costs
- Mobilization and demobilization costs

## **Data and References**

Data and reference sources that may be useful in preparing and reviewing the RCE are:

- Applicable parts of the Office of Surface Mining *Handbook for Calculation of Reclamation Bond Amounts* (Office of Surface Mining, Department of the Interior (<http://www.wrcc.osmre.gov/>))
- BLM's *Solid Minerals Reclamation Handbook*, H-3042-1
- *Caterpillar Performance Handbook* (Caterpillar Inc., Peoria, IL 61629 ([www.cat.com](http://www.cat.com)));
- Products and services by CostMine (MineInfo USA, CostMine, 1120 N. Mullan Rd. Suite 100, Spokane Valley, WA 99206 (<http://costs.infomine.com/>))
- *R.S. Means Site Work & Landscaping Cost Data* and *R.S. Means Heavy Construction Cost Data* (RSMeans, 63 Smiths Lane, Kingston, MA 02364-9988 (<http://www.rsmeans.com/index.asp>))
- EquipmentWatch's *Cost Reference Guide* and *Rental Rate Blue Book for Construction Equipment* (Penton Media, Inc., EquipmentWatch, 1735 Technology Drive, Suite 410, San Jose, CA 95110-1333 (<http://www.equipmentwatch.com/>))

The user of these and other reference materials must to be cognizant of how to apply the data to the RCE. For example, the cost estimate must reflect the BLM's cost to have a third-party contractor perform the work; owner/operator cost data does not reflect the BLM's contracting cost.

## **BLM Administrative Costs**

The district/field office must ensure the cost of reclamation is estimated as if the BLM were hiring a contractor to perform all required reclamation. This will include costs that the operator does not normally encounter. The BLM reviewer must to pay particular attention to costing standards that are based, in part, on the Federal Acquisition Regulations (48 CFR parts 1-53). The responsible BLM specialist must coordinate with the state office procurement analyst concerning current labor wages, contracting requirements, and advice on various types of contracts, contract language, and administration.

This document contains suggested percentages for some of these administrative costs. Unless otherwise noted, these percentages are rules-of-thumb and not specified by regulation or law. Figures or percentages, other than those listed below, should be included in a calculation if they are explicitly addressed in a Federal-State agreement regarding the financial guarantee and/or are required by Federal or State law.

In reviewing the operator's RCE, the district/field office may need to determine what administrative costs the operator has included with their reclamation O&M costs. For example, operator's labor cost estimates may include base pay, payroll loading, overhead and profit. A typical dozer operator rate in Idaho, in 2002, was \$37.59 to \$40.25 per hour. This rate included the base pay plus 14.6 percent payroll loading, 10 percent overhead, and 6 percent profit. To avoid overlooking or double counting any of the identified administrative costs, e.g., contractor profit, the operator must document what administrative costs are included in the labor costs or other O&M costs. This may be done by itemizing the cost estimates or by providing the BLM with a statement that identifies the specific administrative costs that are included in the estimated O&M costs.

Unless otherwise noted, the administrative cost categories identified below should be included in the RCE.

Engineering, Design and Construction Plan – An engineering, design, and construction (ED&C) plan provides the details needed for contracting the reclamation construction work. Where appropriate, the RCE should reflect the costs to prepare such a plan. Should the operator fail to reclaim, the BLM may need to undertake a number of tasks including:

- Prepare maps and plans to show the extent of required reclamation.
- Survey of topsoil and growth medium stockpiles to determine amount of material available.
- Sample and analyze waste rock, tails, heap material, surface and ground water, etc.
- Sample and analyze topsoil and waste piles to determine whether special handling or treatment is necessary.
- Evaluate structures to determine requirements for demolition and removal.
- Evaluate storm water facilities and process solutions or water impoundments to determine if treatment, clean out, or other improvements are necessary.
- Prepare an environmental analysis or site studies before reclamation may commence.

Not all operations will require a line item for an ED&C plan in the RCE. Specifically, notice-level and some other small or uncomplicated operations may not require the BLM to develop detailed engineering information.

The actual cost of developing the ED&C plan will depend to a great extent on the specifics, including reclamation complexities, of the proposed operation. The amount or percentage to apply should be based on available data within the state. Absent specific local or state data, the BLM should estimate the cost for an ED&C plan, where necessary, as four to eight percent of the estimated reclamation operation and maintenance costs, depending on the size of the operation.

Contingency – The contingency allowance is for cost overruns that regularly occur but cannot be ascertained when an operation is being reviewed. Contingency costs generally reflect the level of detail and completeness of the cost estimate, as well as the level of uncertainty in the assumptions used for the RCE.

Development of an ED&C plan reduces the amount of operational unforeseen circumstances and costs. However, contingency costs are not intended to account for changes in the scope of the operation or unforeseeable or unanticipated events such as earthquakes, labor strikes, or floods. An operator may not be required to provide a financial guarantee to address unanticipated events or worst-case scenarios.

Where the proposed operation involves a relatively small, uncomplicated reclamation effort, and development of an ED&C plan is not anticipated, there may not be a need to include a contingency line item in the RCE. Contingency costs would generally not be required for notice-level operations.

The RCE should include a contingency allowance for all operations with estimated reclamation operation and maintenance costs over \$100,000. Federal and state agencies that routinely prepare construction cost estimates apply contingencies, ranging from 3 to 45 percent of the O&M costs. The amount or percentage required should be based on available reclamation or construction contract information within your state. Absent specific local or state data, the BLM should calculate the contingency cost, where applicable, as four to ten percent of the estimated reclamation operation and maintenance costs, depending on the size of the operation.

Contractor Profit – Government contracts generally include a line item for prime contractor's profit over and above the estimated reclamation O&M costs. The operator's RCE must account for prime contractor's profit.

The RCE should use state or local contract information to determine the amount or percentage of prime contractor's profit. Where state law specifies an amount or percentage, the BLM should use that figure. Absent specific local or state data, the RCE should estimate contractor profit as 10 percent of the estimated reclamation O&M costs.

The line item for prime contractor's profit should not be added where O&M costs already include the contractor's profit. In such cases, the operator's reclamation operating and maintenance estimate must document or itemize the inclusion of the prime contractor's profit.

Liability Insurance – The RCE should include the cost of obtaining contractor's liability insurance. The RCE may contain a separate line item for liability insurance premium, or the RCE can itemize the insurance premium in the reclamation operating and maintenance estimate. The contractor's liability insurance premium should be estimated as 1.5 percent of the estimated labor costs for the project and included in the RCE.



Payment and Performance Bonds – Federal construction contracts exceeding \$100,000 require payment of premiums for both a performance bond and a payment bond, as required by the Miller Act, and must be included in the cost estimate (40 U.S.C. 3131 to 3134). A set amount equal to three percent of the estimated contract cost should be used to calculate the payment of premiums for both a performance bond and a payment bond.

BLM Contract Administration – Contract administration costs include the BLM’s labor and operations costs for the district/field and state offices to administer the contract. These costs must be included in the RCE. The amount required to cover the BLM’s contract administration costs will depend to a great extent on the specifics, including reclamation complexities, of the proposed operation. Absent available state or local data, estimate the BLM’s contract administration and inspection cost for reclamation contracts using 6 to 10 percent of the estimated O&M costs, depending on the size and complexity of the proposed operation. Generally, the larger the amount of the financial guarantee, the lower the percentage needed for contract administration.

Where data is available, the state or district/field office should review their records to determine appropriate costs. Generally, the larger the amount of the financial guarantee the lower the percentage needed for contract administration.

BLM Indirect Costs – The BLM’s indirect costs for contract administration must be included in the amount of the required financial guarantee. The indirect cost rate is a fixed 21 percent of the estimated BLM contract administration cost; therefore, the indirect costs may range from 1.26 to 2.1 percent of O&M costs (21 percent of the 6 to 10 percent contract administration costs).

If the BLM is required to administer a reclamation contract under a forfeited financial guarantee, these indirect cost funds are to remain within the state where the reclamation work will be done. The funds will be available to pay for within-state indirect costs (building rental, telephone, etc.) associated with the project and any project support needed from other offices such as the National Operations Center contract officers or inspectors.

Federal-State Agreement – If a Federal-State agreement through 43 CFR 3809.200 provides for joint administration or deferral of the administration of financial guarantees to the State, the RCE may reflect the State’s administrative costs for contracting the required reclamation under certain situations. The Federal-State agreement must specify that the amount of the financial guarantee must be calculated based on the completion of both Federal and State reclamation requirements as required by 43 CFR 3809.203(d), must be redeemable by the Secretary, and the BLM must concur in the approval, release, or forfeiture of a financial guarantee for public lands.

### **Reclamation Cost Estimating Tools**

Summary sheets, checklists, and cost models are available to assist the operator in developing and district/field office reviewing the cost estimate. Individual BLM state offices or district/field offices may develop their own tools to support the reclamation cost estimating process.

Standardized reclamation cost estimating processes that include standardized unit costs, schedules, spreadsheets and models are useful tools that provide simplified, efficient, defensible and consistent means of estimating reclamation costs for both Notices and Plans of Operations. Where appropriate, state, district, and field offices are encouraged to develop processes based on standardized unit costs to facilitate the review and approval of the operator's RCE. A process that uses standardized costs may be developed, based on local and/or regional costs, to reclaim typical activities, features, and facilities (roads, drill pads, drill-holes, trenches, pits, structures, site stabilization, revegetation, etc.) for specific kinds of terrain (topography).

Where a standardized reclamation cost estimating process is used, the amount of a financial guarantee must be sufficient to meet the requirements of 43 CFR 3809.552(a) and 3809.554(a). The assumptions used in developing the cost inputs must be consistent with both state and Federal regulations and laws. Determining consistency with state and Federal regulations and laws goes beyond the applicable environmental requirements. The assumptions used must also be consistent with applicable contracting requirements, such as Federal Acquisition Regulations (48 CFR parts 1-53). For example, under Federal contracting the BLM cannot require an operator to work double shifts. As such, the RCE should not be based on the assumption that the reclamation contractor will conduct the work using a double shift.

Where a BLM state or district/field office develops a standardized reclamation cost process for estimating the amount of the required financial guarantee for Notices or Plans, the standardized inputs, schedules, spreadsheets, and models must be reviewed annually to ensure the cost inputs remain current.

### **Periodic Review**

The BLM must provide a periodic review of RCEs for all ongoing operations (43 CFR 3809.552(b)). The periodic review by the district/field office ensures the current RCE and the amount of the required financial guarantee continue to meet the requirements of 43 CFR 3809.552(a), 3809.552(c) and 3809.554(a). If there is a change in the required amount of the financial guarantee or the review was conducted at the request of the operator, the district/field manager must issue a decision as to the amount of the required financial guarantee. If the RCE does not require an adjustment, i.e., a decision is not issued, the authorized officer will add a statement to the case file certifying that the cost estimate(s) and financial guarantee(s) have been reviewed in conformance with review periods described below, and the estimate(s) and guarantee(s) continue to meet the requirements of the regulations. Where a financial guarantee is deemed to be inadequate, the authorized officer must take action to rectify the situation.

The following establishes the maximum time the BLM may allow to elapse between reviews. The BLM has the authority under 43 CFR 3809.552(b) and 3809.553(b) to review the RCE more frequently than the schedule listed below at the discretion of the district/field manager. The manager should perform these reviews whenever becoming aware of significant changes to the site conditions and should monitor the adequacy of the RCE through the inspection program.

Notices - Reclamation cost estimates for Notice operations must be reviewed at time of extension under 43 CFR 3809.333, i.e., every 2 years.

Plans of Operations - Reclamation cost estimates for Plans of Operations must be reviewed at least every 3 years.

State Requirements - Where the BLM has an agreement under 43 CFR 3809.200 with the State that requires a review more frequently than every 2 years for Notices and/or every 3 years for Plans of Operations, reviews must be conducted in conformance with that agreement.

Modifications - Where the Notice or Plan of Operations is modified, a review must be conducted at the time of modification. The review will focus on how the modification affects the existing RCE on file. The review need not be for all aspects of the operation. However, unless the RCE for the entire operation is reviewed, the review for the Notice or Plan modification does not substitute for the required 2-year review for a Notice or 3-year review for a Plan of Operations, as required above.

Phased Coverage - Where the financial guarantee is for a part of the operations, as provided under 43 CFR 3809.553, the BLM must review the RCE at least annually. The district/field office review must cover the RCE for each authorized increment of the operation.

Trust Funds - Cost estimates for PRO established under 43 CFR 3809.552(c) must be reviewed at least every 3 years. The district/field office must review, adjust as necessary, the cost estimates and other assumptions used in determining the amount of funds needed in the long-term funding mechanism.

The district/field office must also monitor the growth of all trust funds. At least once per year, the responsible district/field office must review the financial statements to ensure growth of the fund is keeping pace with the assumptions used to determine the amount needed in the fund. The funding level in the trust fund may be adjusted annually at the discretion of the district/field manager. However, the funding level must be increased at least every 3 years when the growth of the available funds is not keeping pace with the amount needed to address all anticipated PRO.

### **Review Results and Decisions**

The district/field manager must issue a decision that establishes the amount of the required financial guarantee. The decision must be provided to the operator following the completion of the review of the RCE with a copy provided to the BLM office responsible for adjudication of the financial guarantee.

Acceptable Review Results – When the district/field office receives an acceptable RCE or the district/field office independently estimates the amount of the reclamation costs, the district/field manager must provide the operator with a written decision as to the amount of the required financial guarantee. The decision must state the amount of the financial guarantee to be provided (\$0.50 or more rounded up to the nearest whole dollar and less than \$0.50 rounded down to the nearest whole dollar), the types of financial instruments that are acceptable to the BLM, and that any adversely affected party may appeal the decision on the amount of the required financial guarantee under 43 CFR 3809.800 through 3809.809.

The decision on the amount of the financial guarantee must make it clear that the line items contained in an acceptable RCE are not to be considered spending constraints should a financial guarantee be forfeited. The line items listed are solely for the purpose of arriving at a total financial guarantee amount. This total amount may be spent however the BLM deems necessary to implement the reclamation plan.

**New and Modified Operations** - For a new or modified Notice or Plan, the district/field manager's decision must also state that an operator may not begin operations in any areas not covered by the existing financial guarantee without first providing the BLM with an acceptable financial guarantee that meets the requirements of 43 CFR 3809.551 thru 3809.572. No activity greater than casual use on lands not covered by the existing financial guarantee is authorized until the BLM has accepted and obligated the operator's financial guarantee.

**Ongoing Operations** - Following the periodic review for an ongoing operation, the district/field manager must notify the operator, with a copy to the BLM office responsible for adjudicating financial guarantees, as to the amount of the change in the required financial guarantee. A written decision will be issued any time there is a change in the amount of the required financial guarantee as a result of the review or the review was conducted at the request of the operator. This requirement applies to financial guarantees under 43 CFR 3809.552(a), 3809.552(c), and 3809.554(a).

For ongoing operations under an existing Notice and Plan, the decision must state: 1) the amount of the required financial guarantee, 2) any change (increase or decrease) in the amount of the required financial guarantee, 3) that the operator has 60 days from receipt of the decision to submit an acceptable financial guarantee if the amount has increased, and 4) that failure to provide an acceptable financial guarantee in the new amount within the specified timeframe will result in an enforcement action against the operator for failure to maintain an acceptable financial guarantee. This requirement to ensure the financial guarantee is adequate to cover all operator obligations, including post-reclamation requirements, applies to financial guarantees under 43 CFR 3809.552(a), 43 CFR 3809.552(c), and 43 CFR 3809.553.

**Extended Notice** - For a Notice extension under 43 CFR 3809.333, where the amount of the required financial guarantee has increased, the decision must also state: 1) that the Notice is conditionally extended subject to meeting the financial guarantee requirements, 2) that failure to provide an acceptable financial guarantee within 60 days will result in the Notice expiring immediately upon conclusion of the timeframe, and 3) that upon expiration of the Notice, all activities, other than reclamation, are unauthorized and must cease. The Notice expires should the operator fail to provide the required financial guarantee within the timeframe.

**Unacceptable Review Results** – If the district/field office finds the operator has incorrectly calculated O&M costs, or finds that the estimate is based on out-of-date cost data that does not reflect the actual cost of reclamation, the district/field manager must notify the operator, in writing, of its unacceptability, and identify the deficiencies or errors that led to that conclusion. The BLM must advise the operator to incorporate the administrative costs outlined above if they are not included in the estimate.

Where the RCE for a new Notice is not acceptable to the BLM, the Notice will not be considered complete as required under 43 CFR 3809.301.

**Ongoing Operations** - For ongoing operations, where the district/field office lacks the information necessary to determine the adequacy of the RCE on file, the district/field manager must notify the operator of the deficiencies or errors and include a due date when the information or revised RCE must be submitted. The notification to the operator must include a statement that failure to provide the required information within the specified timeframe will result in an enforcement action against the operator for failure to maintain an acceptable financial guarantee.

**Extended Notice** - For Notices to be extended under 43 CFR 3809.333, where the district/field office lacks the information necessary to determine the adequacy of the existing RCE, the district/field manager must notify the operator that within 30 days from receipt of the notification all requested information must be provided to the BLM office. The Notice will be conditionally extended pending district/field office receipt of the required information. Failure to provide the required information within the 30-day period will result in the Notice expiring.

Decrease the Amount – Where the existing amount of the financial guarantee exceeds the district/field manager’s determination as to the amount of the required financial guarantee, the operator may request the BLM decrease the amount of the required financial guarantee. Any request by the operator for a reduction in the amount of the financial guarantee must be made to the BLM office responsible for adjudicating the financial guarantee.

Appeal of Decisions – All decisions relating to the acceptability or unacceptability of a financial guarantee are subject to appeal under the provisions of 43 CFR 3809.800. Any adversely affected party may elect to seek a State Director Review (SDR) under 43 CFR 3809.800(a) or appeal directly to the Office of Hearings and Appeals (OHA) under 43 CFR 3809.801.

Appeal to OHA of a district/field manager’s decision must be filed in the office that issued the decision. The district/field office then forwards the Notice of Appeal to OHA. Appeals must be filed by the appellant with the office that issued the decision within 30 days of receipt of the decision.

Request for an SDR are filed with the office of the state director within 30 days of the district/field manager’s decision. If the review and evaluation of the financial guarantee and/or financial instrument was conducted by the state office, a request for state director review under 43 CFR 3809.806 may not be accepted.