

Lesson 3 – Maintain Bond

Slide 1 – In Lessons 1 and 2 we looked at new bonds and how to write decisions. Once a new bond is established there are many things that can happen. The life of a bond can range from one year to twenty; it all depends on the life of the operation. In this Lesson, we will discuss everything that can happen to a bond during its lifetime. While we can't go over every scenario, this is what you will see most of the time.

Slide 2 – Let's take a look at our objectives for this Lesson. There are several since there are multiple tasks you must be able to perform when maintaining a bond. By the end of this lesson, you should be able to: 1) Given documents associated with the processing and maintenance of a bond, establish a physical case file in accordance with the Bond Processing Handbook; 2) Given a bond file, a surety or personal bond rider, and documentation of why the rider is needed, adjudicate the rider in accordance with the Bond Processing Handbook; 3) Given a transfer or name change document, rider, LR2000 report and Decision letter, adjudicate the transfer or name change document in accordance with the Bond Processing Handbook.

Slide 3 – 4) Given an original bond, replacement bond, and circumstantial information, determine the compatibility of the two bonds in accordance with the Bond Processing Handbook; 5) Given a default report and bond file, draft a demand payment letter in accordance with the Bond Processing Handbook, and finally, 6) Given various maintenance actions involving bonds, update BASS (Bond and Surety System) in LR2000 in accordance with the data standards.

Slide 4 – In order to get you to those objectives we will first go over some general knowledge on bond file maintenance. Next, we will establish a physical bond case file. Then, we will talk about bond riders, transfers and name changes, replacement bonds, and what to do if you ever have to collect on a bond. Now that you know what we will be covering, let's begin by going over some general information on bond file maintenance.

Slide 5 – Once we have received and accepted a bond it needs to go somewhere, right? The primary function of the BLM is to maintain records about public lands and resources. Therefore, knowing how to maintain a bond is very important. The bond adjudicator has an important role when it comes to maintaining a bond file. Let's take a look.

Slide 6 – The bond adjudicator is responsible for maintaining the record of the bond and timely and accurately processing all actions associated with the bond. Let's take a look at the adjudicator's responsibilities.

Slide 7 - Once a bond is approved a case file is created. We have the electronic case file which we covered in Lesson 1 when we entered the new bond into BASS, or the Bond and Surety System. Then we have the physical case file. We already know that case files are important to maintain records so let's look at how we do that.

Where a bond file is kept will vary between programs and based on what the regulations say. 3809 and Fluids bonds are kept at the State Office while Mineral Material bonds and ROW bonds are adjudicated and kept at the District or Field. There are some exceptions to this rule based on staffing and resources in each State.

For example, geothermal communitization bonds should be held in the District or Field. Many years ago in Nevada, the geothermal program lead called all of the comm site bonds to the State Office where the expertise in bond adjudication was located.

Bond files should be kept separate from the resources file or the operational file. They should be kept separate because Bond files are covered under the Privacy Act System of records and FOIA. Third-party financial and personal information may be contained in the bond files such as bank account numbers and balances, addresses, social security numbers, etc. Public access is limited to the bond principal or a 3rd party with permission from the principal. If the principal or an approved 3rd party want to review the file the bond adjudicator must stay with the file the entire time.

Documents received by the BLM are part of the public record and cannot be returned, destroyed or permanently removed from BLM. Public here refers to records for administration of federal or public interests as opposed to information being categorized as public in that it may be viewed by any party. This is very important to remember when we terminate the period of liability on a bond. Many surety companies will request the original bond form be returned. We should NEVER return original bond documents, but we will discuss that further in Lesson 4.

After bond termination, the documents in the bond file are incorporated with the resources file. For bonds held at the state office, that would mean the bond adjudicator would send the bond file to the field. For the Mineral Materials program or a ROW bond, the bond file and the operation file are both at the Field so they would simply have to be combined. Resource files are archived for various times according to the retention and disposal schedules in BLM Manual 1220, Schedule 4. You will need to refer to this to determine how long files are to be kept in the office.

Slide 8 – Let's take a look at what goes into the bond file. First, we have the original bond. In the case of a surety bond this would be the bond form. For a personal bond this would be a bond form *and* the financial instrument.

Next, you have the bond abstract and corresponding serial register pages which you print from LR2000. This will be all you have in the initial bond file. The rest of the contents will vary depending on what happens to the bond during the life of it.

You may have bond riders or other related correspondence. You may also have the FDIC bank certification or a copy of the Circular 570 with the surety information.

Each office will decide how to organize their files differently. If you have established bond files, take some time to find those and determine how your office has organized the file. If not, you may want to talk to your supervisor to determine how you want to do this.

In my office we adjudicate 3809 bonds and Fluids bonds. For the 3809 bonds we use a 6 part bond file. The 3809 files tend to get quite large due to extended mine life. The 6 part file allows the file to be separated to find documents easily.

The first section is miscellaneous. This is the smallest section and will contain general information like the secretary of state page if you printed one out. I will also sometimes staple business cards here if I receive one.

The next part is the bond form and financial instruments. All original bond forms and riders are here.

The next part is for State information. Any correspondence received from the state is put here. This allows us to find these documents quickly without searching through the file.

The next part is the automated data section. The most current version of the bond abstract and serial register pages for all the operations the bond covers goes here. The automated data should reflect the bond file exactly.

The last and largest part is the correspondence. This is where everything else goes. It is filed in date order with the newest on top. This is the section that should really tell the story of the life of the bond.

For fluids bonds however, we use a 2-part bond file. Because the files are significantly smaller we do not separate information out. On the left side of the file is the automated data or the bond abstract and on the right side is all other bond information. Like the 3809 file, documents are organized by date with the most recent on top. The first thing in this bond file, or the first document, would be the bond form. Then the acceptance decision and after that any other memos or correspondence relating to the bond.

Slide 9 – On the last slide, I mentioned related correspondence. This could mean many different things. Correspondence from bond parties could be anything from an address change to a cover letter with a bond rider. This correspondence is very important because it will usually contain useful information you may need later.

BLM Decisions is another type of correspondence filed in the bond file. These Decisions are a record of action taken by the BLM. E-mails and phone messages may contain important information like clarification of an issue or an informal deadline given to the proponent.

Contact information is always important to keep track of, especially if the proponent is difficult to get a hold of. Business cards often get tossed into a desk drawer or discarded but keeping them in a file is a good way to track contact information. Again, I like to staple them to the inside cover of the file so they don't fall out or get misplaced.

Last, is the Memo to File. Often times we convey information through phone calls or face-to-face. Taking the time to write a memo to file is the best way to document that interaction. When you write a memo to file, make sure you include the date, all parties involved, the issue, and your name.

Slide 10 – Exercise #7 is Establish a Physical Case File. Please put together the physical case file for the bond you received in Lesson 1 and bring it with you to the live, class webinar. Keeping with your office's policy on bond files, create a physical case file as if the bond from

Lesson 1 and the decision from Lesson 2 were an actual bond received in your office. You will use this case file as we continue with this Lesson.

Slide 11 - The next topic we will be discussing is bond riders. Adjudicating bond riders is a very important part of maintaining bonds. First, we'll go through some general knowledge about bond riders and then we will practice adjudicating different riders.

Slide 12 – A rider is a legal document that formally amends an existing bond. It can be furnished by the bond principal or the surety company. Riders can accompany the original bond when it is filed, or can be filed at a later date in order to allow approval of some action.

Slide 13 – As we already said, a bond rider is required to make a material change to bond. This could be to increase or reduce the amount of coverage provided by a bond, extending or limit coverage such as changing from individual coverage to statewide coverage, adding co-principals on the bond, or when a third party is providing the financial instrument for the bond. Bond riders are kept in the same office that maintains the original bond.

Slide 14 – The bond adjudicator's responsibilities are similar to that for an original bond. You must make sure that the bond rider is date stamped. You must process it promptly. You must enter the rider into BASS. And, you will write a Decision. There are surety bond riders and personal bond riders. 3809 is the only program which has a specific form for a personal bond rider, Form 3809-4a. Surety bond riders and personal bond riders for all other programs will be general or all purpose riders with all of the key factors required by the BLM.

Slide 15 – Now that we know why we are adjudicating a rider, let's look at how to do it step by step. This slide is really just a checklist of all of the items you need to look at on a rider. You can follow along with me or if you are a visual learner pull up the rider specific for your program and follow along. The first step is to receive the rider and ensure it is date stamped. We will review the principal's name and address, the surety's name and address, the bond number, the execution date, a clear explanation of what the rider is amending from the original bond contract, the original signatures of both principal and surety, and a valid POA attached. Please make sure that the execution date is before the filing date. The principal or surety *cannot* submit a rider to be effective at a future date.

Slide 16 - Once the surety bond rider is determined acceptable, then we will determine the effective date, write a Decision and update data in BASS. In addition to action code 478 and 479, don't forget to make any other changes. You may need to update the bond amount, add a receipt number or change customer information.

Slide 17 - Exercise #8 is Adjudicate Surety Bond Rider. Using your bond file and surety bond rider, adjudicate the bond rider in accordance with the handbook. Please annotate your findings and bring them to the live, class webinar so we discuss together.

Slide 18 – Exercise #9 is updating BASS. You have just adjudicated the bond rider. Now you will need to update BASS with action codes 478 and 479. Don't forget you have the data element dictionary to determine what dates and comments to use with the action codes. This is a perfect time to make sure ALL of the information in BASS is correct. If the rider increased the

bond you will need to change the bond amount. I recommend starting at the top and making sure each field in BASS has the correct information.

Slide 19 – Now that we are familiar with a surety bond rider, we will take a look at a personal bond rider. As with the surety bond rider, the first step is to receive the rider and ensure it is date stamped. We will review the principal's name and address, the bond number, the execution date, a clear explanation of what the rider is amending from the original bond contract, and the original signature of the bond principal.

If a rider to a personal bond is an increase in coverage, an additional financial instrument or amendment to a letter of credit is required. If a personal bond is being reduced by the bond principal, and a refund is to be made or an amendment to a letter of credit is received reducing the amount, an acceptable rider must be filed corresponding to the reduced bond amount. A time deposit or US Treasury security cannot be reduced because the amount and other terms of those instruments are fixed for a specific period of time.

For 3809 bond riders a notary is required on form 3809-4a. As you remember from earlier, programs other than 3809 do not have specific forms for personal bond riders. Therefore, I would strongly suggest for other programs you require a notarized signature to provide some assurance of the signer's authority to financially bind the company with BLM.

Slide 20 – Exercise #10 is to adjudicate Personal Bond Rider. Using your bond file for the personal bond rider for your program, adjudicate the bond rider in accordance with the handbook. In this exercise we are increasing the bond amount; therefore, you will have additional documents for your financial instrument. For this exercise the riders have bond number XXX listed. You will need to pretend this is your bond number that you created in Lesson 1 for this exercise. Please annotate your findings and bring them to the live, class webinar so we discuss together.

Slide 21 – Exercise #11 - Now that you have adjudicated your bond rider, you will need to update BASS. In addition to action code 479, you will need to change the amount of the bond and add the new document number in remarks, if applicable. For this Exercise, please go ahead and update BASS in the test training site.

Slide 22 – The next maintenance actions we are going to look at is transfers and name changes. It is very important to understand the differences between the two since there are different requirements for each. The difference between a transfer and a name change can be found in examining the end product. In a transfer, the responsible party is changing. This could be because of a sale, or a bankruptcy. Either way you should be able to identify the two separate entities. In a name change, the responsible party is still the same, just a different name. The simplest example of this would be when someone gets married or changes their last name. Another example would be a merger. In a merger, two entities come together and a surviving entity is listed. We will talk about transfers first and then name changes.

Slide 23 – What does a transfer look like? This is a bit tricky with bonding. We DO NOT transfer a bond! When we talk about transfers it is important to note that a transfer will be a

transfer in the operator or proponent, not the bond. We don't transfer a bond because anyone can hold a bond. It is the operator that is responsible for the liability. Also, depending on the bond type, some bonds may not be transferable.

For instance, a surety company has an agreement with a bond principal. We would not be able to automatically transfer a bond to a new principal without their knowledge. Same with a Letter of Credit. If I were a bond principal and held a Letter of Credit in my name the BLM would not be able to transfer a bond to Kelly because the Letter of Credit would still be in my name. So, a transfer will not be with the bond, it will be with the operations.

In the 3809 program, we have a Change of Operator form that is completed. In other programs you may not get this form but you would get notification that a new operator or proponent was taking over a project.

In fluids for example, you would receive an assignment. Transfers are very important because if something should happen, it is the operator of record that is responsible; therefore we MUST know who the correct operator is.

As I said before, the 3809 program has a change of operator form, however, in other programs the documentation required could look different. Because of this, it is very important to know what is supposed to be in a transfer. We will need to know first what is being transferred. Is it an operation, a lease, a ROW? Next, we will need to know the transferee and the transferor. We will also need to know that the transferee is assuming all past liability on the operation.

Slide 24 – Let's walk through the steps to adjudicate a transfer. Step 1 is to receive and date stamp the documentation. By now we all should know that this is always the first step for anything we receive. Step 2 is to ensure the documentation contains all of the required information. Does the transfer clearly identify the operation or project that is being transferred? Next, is the operator on our records the same as the transferor listed? If not, you should stop there and reject the transfer. We cannot accept a transfer from someone that isn't listed as an operator of record. After you verify the transferor you will need to make sure the transferee is listed with the address.

Since we don't transfer bonds, the next step is to make sure the transferee has submitted a replacement bond to cover the operations. The transfer may not be recognized until a satisfactory replacement bond by the transferee has been submitted. We will discuss replacement bonds more in a bit.

The next step is to ensure all prior liabilities have been assumed. The 3809 bond forms contain the appropriate language on assumption of liabilities so that any and all obligations under the existing operations are covered under the new bond. However, other programs should be requiring an assumption rider to ensure the new operator is held responsible for all past, present, and future liability. Upon satisfactory bonding being submitted by the transferee, the bond adjudicator can accept the bond and terminate the period of liability under the transferor's bond.

When you issue your Decision to recognize the transfer, you can write 1 decision that addresses all 3 actions taken: the change of operator, the new bond by the transferee, and the old bond from the transferor.

And lastly, data entry. You will want to enter action code 586, transfer of interest, into BASS. This code should be entered on both the new and the old bond

Slide 25 – I will now demonstrate a 3809-5 change of operator from the form to the data entry. In this scenario, we received this change of operator form from the field office. The first page, you can see, the field office wrote us a letter and attached the 3809-5 completed by the operator and signed by the authorized officer. I want to point out that it is approved by the authorized officer pending acceptance of satisfactory bonding. In return, the new operator, Almadex America Inc. submitted a new bond, which we accepted. The next document we are going to look at is the Acceptance Decision. This Decision was written to accept the new bond, recognize the change of operator, and terminate the period of liability under the old operator's bond.

Now let's walk through how the data entry would be entered into LR2000 for this operator. First you will log into LR2000 as we have previously done. You will go to view/update a bond. Enter the bond number for the previous operator and click view. This will bring up the bond abstract. Scroll down to the actions section and click on update actions. You will click on provide me with 3 or 4 new occurrences (if you are making a cash refund there will be 4). At that point you will 1) enter the date you received the change of operator, action code 586 and in action remarks, "to" and the name of the new operator. For the second line, you will enter the date of your decision, action code 473, and in your remarks you will put the effective date the bond period was terminated. For the third line, you will enter the date of your decision, action code 970, which is bond closed, and in remarks, replaced by and the new bond number for the new operator. You will have to abbreviate to "RPLCD by NVB2085". Lastly, if you are making a refund to the previous operator, you will enter the date of your decision, action code 092 (refund authorized) and in action remarks, put the amount of the refund. Once this information is entered you click save and exit. Once this is done, your disposition should change to closed. You can click on bond abstract to print and add the updated abstract to the bond file.

Now we need to update the new operator's bond. Go to view/update a bond. Enter the bond number for the new operator and click view. This will bring up the bond abstract. At this point your bond is pending for the new operator. Scroll down to actions section. Click on update actions. You will click on provide me with 2 new occurrences. For the first line, you will enter the date of your decision, action code 469, bond accepted, and in your remarks you will put the effective date the bond was accepted. You will add action remarks for action code 468, "replaces nvb1879", and remove the pending org code. The second action code you will enter is action code 586, transfer of interest, and in the action remarks, FROM and the name of the previous operator, Almaden Minerals Ltd.

Once this information is entered you click save and exit. Once this is done, your disposition should change to accepted. You can click on bond abstract to print and add the updated abstract to the bond file.

Note that we have cross referenced the two bonds to each other by adding the remarks “replaced by the new bond number” and “replaces the old bond number,” which lets the bond adjudicator easily trace the chain of events for the change of operator.

Slide 26 – The BLM provides efficient customer service by allowing operators to file merger or name change documentation in any state office for nationwide recognition. The bond principal and operator or proponent name change is automatically recognized by operation of law; therefore, a bond rider is not required but our records will still need to be updated. Because we recognize the name change by operation of law all programs should be looking for an amendment to the articles of incorporation or other documentation filed with the state the operator is incorporated with. If the operator is an individual that is changing their name you would require whatever documentation was used. For example, a marriage certificate.

Slide 27 – The steps to adjudicate a name change are very simple. First, as always, we receive and date stamp the documentation. Next we ensure what was submitted is acceptable. Are the names correct, is it an official document from the state the operator has filed it’s company with? Is it signed? Is it dated? Next, you will need to determine what bonds and operations are affected. In some cases you may receive a cover letter listing the affected areas. I will always recommend though to do a search of BASS, Case Recordation, and if needed, the Mining Claims to ensure all ACTIVE cases are accounted for. Next, you will determine the effective date. This will be listed on the document and is generally the date signed by the Secretary of State’s office. Issuing a Decision recognizing the new name will be next. Be sure to send a copy of the Decision to all affected offices. These are determined by the reports you ran to determine affected cases.

So if it’s an individual oil and gas bond and there are APDs on the lease, you would send a copy of the Decision to the District or Field Office where the lease is located.

If this is a mineral material bond you don’t need to send the decision to any other BLM offices since both the bond and operational files are kept in the Field Office.

Finally, complete your data entry. For a name change you would enter action Code 290, name change recognized, and put the old name in the remarks.

Slide 28 – Exercise 14. Using the Article of Amendment provided and the template in the Handbook for Recognizing a name change, adjudicate the name change on your bond and write a Notice. For this exercise we will only be addressing the bond, not the operations. Please remember to bring your findings for this Exercise to the final, class webinar.

Slide 29 – For Exercise 15; please update BASS by completing the necessary data entry for the name change. As with the rider make sure you are updating all the necessary fields in BASS, not just the action code.

Slide 30 – The next topic we have in this lesson is replacement bonds. We touched on these briefly when talking about transfers, now we will get into more detail.

Slide 31 - Replacement bonds can be submitted for a number of reasons. There could be a new financial instrument. Because our regulations give multiple options for financial instruments, we are not able to require a specific one. A principal would do this for many reasons. They may desire to move all its business to a different financial institution or bank for business reasons such as lower costs or better interest rates. They may decide they don't want to pay premiums to the surety or obtain lower rates with a different surety. Or they may be forced to find another bond source due to bank qualifications. As long as we do not return the existing instrument until the new one is in place, they can do this. As discussed earlier, another reason to replace a bond would be if there is a new operator. Partial collection would be another reason. We will talk about bond default in a minute but if there is a partial collection on a bond and a continuing need for the bond, we would require the principal to replace that portion that was collected. Lastly, if a surety company is removed from the Circular 570 we would require the bond to be replaced since they are no longer qualified to secure a bond.

Slide 32 - As discussed, the principal may have a business reason or may be forced to replace. BLM may request a replacement if a partial collection was made or if the current bond proved to be inadequate. An example of this would be if a surety was decertified by the Department of Treasury.

Replacement bonds must be handled carefully because of the danger of unintentionally leaving some reclamation obligations with diminished coverage or without any coverage. A new bond which is not specifically conditioned to completely assume any outstanding liability on the operations covered by the existing bond may not cover all obligations that are covered by the existing bond. BLM will not terminate the period of liability and, if a personal bond, release the financial instrument, until a replacement bond has been determined compatible and accepted. The language of the 3809 bond forms provide for the assumption of past liabilities by the new bond principal or the bond principal and surety. The use of these forms provides assurance to BLM that the new bond inherently covers outstanding liabilities incurred by or on behalf of the principal.

However, other programs will need an assumption rider to address this. When we look at what is needed to replace a bond, each program will be different. In the 3809 program you will need a satisfactory replacement bond which would be a surety bond form or a personal bond form AND a financial instrument. In all other programs you will need a satisfactory bond AND an assumption rider that states that the replacement bond assumes all past, present, and future liability on the operations.

Slide 33 - To adjudicate a new bond you will first receive and adjudicate the replacement. A replacement bond is essentially a new bond and we learned how to adjudicate those in Lesson 1. Once you have determined the new bond is satisfactory, you will need to determine if the replacement is compatible with the existing bond. Is it on the same form, same operator is covered, same amount? If you are not working in the 3809 program you should have also received an assumption rider. We learned earlier in this lesson on how to adjudicate a rider. The requirements for a rider are name and address of the bond principal, bond number (which will be the new, replacement number), the rider is signed and dated and contains a clear explanation as

to what the rider is amending. In this case, the rider should state that it is extending coverage of all past, present, and future liabilities on operations conducted by the principal on whatever operation or lease should be listed. If this is a statewide bond, it could say operations conducted in whatever state you are in.

Once you have determined the new bond is acceptable you will write one decision terminating the period of liability on the old bond and accepting the new one, similar to the process in the name change lesson. Again, you will need to do data entry and cross reference the bond numbers.

Slide 34 - For exercise 16, you will adjudicate a bond replacement, update BASS and write a Decision. Using the PERSONAL bond in your file you have been using and the bond in the Lesson 3 exercise folder, adjudicate the replacement, write a decision and update BASS. Before you begin, I'll give you a few notes, reminders and tips. For this exercise you will be using the personal bond you adjudicated in Lesson 1. The replacement is a Surety bond. This will mean that you are returning some type of financial instrument and accepting a Surety bond. When you write your decision you are essentially taking three actions: first, accepting a new bond, second, terminating the period of liability on an old bond, and third, transferring liability from one party to another; so you may need to piece together more than one illustration from the 3809 bond handbook. BASS will require lots of entries. You will need to establish a new bond and then also update the data entry in the old bond. There are many steps so it's a bit tricky to remember all of them. And PLEASE always remember to use the test training site for these exercises.

Slide 35 - Our last topic in this lesson is collecting on bonds. If you are lucky, you will go your career without having to do this, but just in case, we are going to go over this. The most important thing you should remember for this topic is that there are detailed steps outlined in the 3809 handbook on how to collect on a bond. There are a lot of differences between a surety bond and a personal bond so after defining default and forfeiture we will take a look at each instance.

Slide 36 – First, let's define default. Default as defined in Black's Law Dictionary is the omission or failure to perform a legal or contractual duty or to observe a promise or discharge an obligation, such as to pay interest or principal on a debt when due. This could include a number of things including: 1) uncorrected violations of operating conditions or practices contained in the approved plan of operation or lease, 2) uncorrected damage to surface improvements, including failure to perform adequate restoration of the surface area covered by the plan or lease, 3) failure to prevent unnecessary or undue degradation within the approved operation area, or 4) violation of environmental laws.

Who can declare default? Ultimately the authorized officer is the one that declares default. It must be well documented.

Determining default will vary depending on the program and authorized officer. These procedures will also be affected by the program's regulations and their compliance guidelines.

While default is the failure to perform the required work, forfeiture is the act of collecting on the bond. Again, the authorized officer will be the one to make that decision. In all programs, once default is determined the operator will have one last chance to perform the required work before forfeiture is determined. Performance is always an available option to the operator or surety and is usually preferable to the BLM.

Slide 37 - The default process will vary slightly depending on the program, but we will cover the basics. The reason for the difference is mainly due to differences in regulations.

The first step in the default process is a notice of non-compliance on the operation. This will be a decision from the authorized officer letting a proponent know that some work needs to be performed before they are allowed to continue with regular operations. The noncompliance notice should specify the exact work to be performed, the time allowed to begin the work, and let them know that failure to perform the work will result in forfeiture of the bond. Like I said before, the degree and number of noncompliance orders may vary between programs and even between Field Offices.

The next step after non-compliance is to require the operator to perform reclamation. This will be the last opportunity the operator has to comply with the requirements.

If no action results from this, the next step is for the authorized officer to prepare a default report and request bond forfeiture. The default report will include copies of all previous correspondence sent to and received from all parties concerning the demand for work, reclamation, or compliance with the terms and conditions of the plan or operation. The default report is sent to the bond adjudicator and starts the bond forfeiture process. This process is different for Surety bonds and Personal bonds so let's take a look.

Slide 38 - When the bond adjudicator receives the default report from the Field Office it is date stamped and BASS is updated with Action Code 483, default determined.

You will need to contact any affected offices such as other districts if this is a statewide bond or possible other surface management agencies that may have interests.

Because this is a Surety bond, we will give the Surety an option to pay or perform. The Decision you will write will be to the Surety to take action. They will be given three options: 1) Require the operator to perform the work required. Please note, the BLM has already done this but sometimes the threat from the surety is more powerful than the BLM. I have never seen this option work because usually at this point the operator is long gone. 2) The next option the surety has is to perform the work. This is usually the best option for the surety company because they can usually complete the work much cheaper than the BLM could. 3) The other perform option would be for the surety to contract BLM to act as the surety's agent to complete the work. This is usually not very cost effective for the surety since they would not only have to pay to have the work completed, but they would need to pay the BLM's costs as well. 4) The last option is to pay the bond. In this instance the surety company will cut a check to the BLM for the amount of the bond. The bond will be closed, and the surety, not the principal, just the surety will be released from any obligation to the bond. Now you may be thinking, "What if the bond

doesn't cover the work needed?" Well, this is why it is VERY important to have up-to-date bond coverage. We cannot hold the surety liable for any more than what the bond was accepted for. We can take steps toward the operator to recoup the additional funds, but not the Surety.

Slide 39 – I'm now going to demonstrate a surety bond collection. I will go through each document to show the steps. This is an example of one of the first surety bond collections that I processed. As we discussed, the first step is non compliance. I don't have the example here but the file reflects 3 notices of non compliance that were sent to the operator. The second step, require work performance can be seen here. This Decision shows the last attempt by the District Office to get the required reclamation work completed. You see in the last paragraph on the first page the District states that the bond will be collected if they do no act. The top of the second page shows the options the operator has.

The options are:

Providing a written agreement under which you or another person will perform reclamation operations in accordance with a compliance schedule which meets the conditions of your plan of operations and reclamation plan. Where the work will be done by another person, the agreement must demonstrate they have the ability, both technically and financially, to satisfy the conditions.

Their second option, Obtaining written permission from the BLM for a surety to complete the reclamation. The surety must demonstrate an ability to complete the reclamation in accordance with the reclamation measures incorporated in your plan of operations.

This is the last step the District Office takes before handing the collection of the bond over to the State Office. If you are in a program where you work on both the operation file and you are the bond adjudicator this step can be simply a note to the file. In this case, I had been working with the District Office and in lieu of a formal memo, considered an email the default report. At this point we cease all attempts to communicate with the operator. They did not comply with our requirements and we now deal directly with the surety company.

Here is the Bond Performance Required Decision we wrote. Remember, since this is a surety bond we have to give them an opportunity to pay or perform. This template is found in the 3809 Handbook. As you can see it outlines the steps taken with the operator to comply and gives the surety company options

The surety company may: 1. Require the operator to begin the specified work within 30 days and continue the work diligently to completion, 2. Directly enter into a contract such as that specified work will begin within 30 days and continue diligently to completion with the contractor directly billing the surety for the work done, 3. Authorize in writing within 30 days for the BLM to act as the surety's agent to contract and oversee the performance of the specified work, with the contractor directly billing the surety company, 4. Submit within 30 days the penal sum of the bond.

When a surety company is weighing the decision to pay or perform they will ultimately look at what action would be best for them. Either way a site visit usually occurs and they will reach out to the BLM to coordinate that as they have done here. The surety company will do an estimate

to determine how much it would cost THEM to do the work. If this amount is less than the bond amount, they will choose to perform the work. If they determine the amount of work exceeds what the bond amount is, they will simply pay. In this instance, once they pay, they are no longer liable for the bond. As you can see by this email, they decided to pay the bond. So the surety company arranged for a certified check to be sent to the BLM and we in turn terminated the period of liability on the bond.

Slide 40 - When collecting on a personal bond the first few steps are the same as a Surety bond. You receive the default report and update BASS. You contact any affected offices and write a demand payment Decision.

Where the differences start is here. With a personal bond there is no pay or perform option. You have already exhausted BLM's efforts to have the required work performed. Now the only step is to collect the financial instrument. Basic collection methods and approximate time to receive proceeds will vary depending on the type of security, the governing guidance of each security, and the procedures set by the individual financial institutions.

All funds collected are deposited into subactivity 5320, repair of damaged lands. For a Personal bond held by cash, your decision would be to notify the principal that the Personal bond is appropriated. The bond funds, which are held in suspense, are transferred to subactivity 5320. Contracting will assign a project number, a contractor is awarded the work and reclamation begins. If the Personal bond is secured by a LC, a draft for payment is sent to the financial institution with the Decision and the *original* LC. You must be careful to follow any specific instructions outlined in the LC such as a specific address to send the demand for payment. Payment occurs upon BLM demand. Once payment is made, it is deposited in the 5320 account and the same procedures occur as with the cash. Time Deposits are essentially the same as LC's. A collection letter is sent, the bank pays, and funds are deposited. When the bond is secured with a treasury security you will need to notify the negotiable securities manager and request the treasury security be sold to obtain the funds needed to cover the default. The manager will withdraw the security and transfer the proceeds to the BLM.

Slide 41 - I'm now going to show you 2 examples of personal bond collection. The first is a collection on a Time Deposit. This is VERY similar to a Letter of Credit. So first the bond adjudicator receives the bond default report. In this instance it is this memo from the Field Office.

You can see in the memo, the Field Office listed all attempts at contacting the operator. The bond adjudicator then wrote a Personal Bond Appropriated Decision informing the bond principal and financial institution the bond was in default and was being collected. An additional letter to Wells Fargo was included giving them instructions on how to send BLM funds. Once we received the funds from the bank, we then transferred them to the 5320 account and then notified the Field Office the funds were available to perform reclamation.

This second example shows collection of a cash bond. This is the easiest type of collection because the funds for the bond are already held by the BLM. It is simply a matter of transferring them from the suspense account where bond funds are held to the 5320 account. We see here the Field Office put the operator in non compliance, then they declared forfeiture where the operator

had one last chance to perform reclamation. The default report from the Field Office was a memo that outlined all of the attempts to get the operator to comply. Here you can see that Kelly, the bond adjudicator notified the bond principal that the bond was appropriated. The funds were then transferred into the 5320 account and Kelly notified the Field Office that the funds were available for reclamation.

Slide 42 – To close out let's take a look back to see what we covered in Lesson 3.

Slide 43: Our objectives for this Lesson were: 1) Given documents associated with the processing and maintenance of a bond, establish a physical case file in accordance with the Bond Processing Handbook, 2) Given a bond file, Surety (or Personal Bond) Rider, and documentation of why Surety (or Personal Bond) Rider is needed, adjudicate the Surety (or Personal) Bond Rider in accordance with the Bond Processing Handbook, 3) Given a transfer or name change document, rider (transfer only), LR2000 reports (name change only) and Decision letter, adjudicate the transfer or name change document in accordance with the Bond Processing Handbook.

Slide 44: 4) Given an original bond, replacement bond, and circumstantial information, determine the compatibility of the two bonds in accordance with the Bond Processing Handbook, 5) Given a default report and bond file, draft a demand payment letter in accordance with the Bond Processing Handbook, and finally, 6) Given various maintenance actions involving bonds, update BASS (Bond and Surety System) in LR2000 in accordance with the data standards.

Slide 45: In order to get you to those objectives we covered several topics. First, we went over some general knowledge on bond file maintenance. Remember, bond information is proprietary and should be kept separate from the operation file. Next, we went over how to establish a physical bond case file. Every office will have a different way of keeping records so make sure you know what your office policy is. Next, we reviewed bond riders. With the exception of 3809, there is no specific rider form so make sure each rider has all of the required information. Next, we reviewed transfers and name changes. Remember, we don't transfer bonds, we transfer operations. You will need to make sure a replacement bond is submitted for a transfer. Next, we went over replacement bonds. Remember that the new bond must be accepted before the old bond can be closed. Finally, we went over what to do if you ever have to collect on a bond. This doesn't happen very often so don't be afraid to reach out to a coworker for assistance with this. Next up, is our final presentation, Lesson 4, Terminating Bond Period of Liability.