

Proposed Redline Amendments to 19.2.100.23 NMAC

(NMCGA Proposed Revisions Protecting Agricultural Surface Lessees)

Note:

The following proposed language is intended as a conceptual redline to incorporate into the State Land Office's proposed amendments to 19.2.100.23 NMAC. Additions are shown in **bold/underline style**, and deletions are shown in ~~strikeout style~~ where applicable.

19.2.100.23 NMAC — FINANCIAL ASSURANCE REQUIREMENTS

A. Purpose

The purpose of financial assurance required under this rule is to ensure the timely reclamation, restoration, and remediation of state trust lands disturbed by authorized activities and to protect the interests of the trust and affected surface lessees.

The financial assurance requirements of this section shall specifically protect agricultural surface lessees, including grazing and farming lessees, against losses or damages arising from disturbance, impairment, destruction, or interruption of agricultural operations, improvements, forage, water resources, crops, access, or related surface uses.

B. Scope of Covered Damages

Financial assurance shall be sufficient to cover all reasonably foreseeable reclamation and remediation obligations associated with the authorized activity.

Covered damages shall expressly include, but are not limited to:

- 1. Damage to livestock watering facilities, pipelines, wells, drinkers, tanks, pumps, reservoirs, ditches, acequias, and related water distribution systems;**
- 2. Damage to fences, gates, corrals, pens, cattleguards, handling facilities, roads, trails, and agricultural infrastructure;**
- 3. Loss of forage, grazing capacity, crop productivity, or agricultural use;**
- 4. Soil degradation, erosion, sedimentation, or altered drainage affecting agricultural operations;**
- 5. Introduction or spread of noxious weeds or invasive species;**

6. Loss of access to leased premises or operational interference affecting livestock or farming operations;
 7. Costs associated with temporary operational disruption, emergency livestock management, or alternative water delivery necessitated by disturbance activities; and
 8. Restoration of the surface estate to a condition reasonably capable of supporting pre-existing agricultural uses.
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C. Sufficiency of Financial Assurance

The commissioner shall determine the amount of financial assurance required.

Financial assurance amounts shall be sufficient to fully cover:

1. Reclamation and remediation costs under reasonably foreseeable field conditions;
2. Replacement or repair of agricultural improvements;
3. Losses associated with diminished forage or agricultural productivity;
4. Inflation, contractor mobilization, and rural construction costs;
5. Emergency stabilization or temporary replacement of water or fencing infrastructure necessary to maintain livestock or farming operations; and
6. Administrative and enforcement costs associated with unresolved reclamation or damage disputes.

Financial assurance shall not be reduced or released unless the commissioner determines that all verified agricultural surface damages have been repaired, compensated, or otherwise adequately secured.

D. Notice to Agricultural Surface Lessees

~~The commissioner may release or reduce financial assurance upon completion of reclamation obligations.~~

Prior to any proposed reduction, substitution, termination, or release of financial assurance, the commissioner shall provide written notice to all affected agricultural surface lessees.

Notice shall:

1. Describe the proposed action;
2. Identify the lands and operations affected;
3. Advise lessees of their right to file written objections; and
4. Provide not less than 30 days for submission of objections or claims.

E. Agricultural Surface Lessee Claims Procedure

Any agricultural surface lessee claiming damage arising from the authorized activity may file a written claim with the commissioner seeking remediation, repair, compensation, or payment from the applicable financial assurance instrument.

Upon receipt of a claim, the commissioner shall:

- 1. Acknowledge receipt within 10 business days;**
- 2. Conduct or arrange an inspection within 30 days unless impracticable due to weather or emergency conditions;**
- 3. Issue a written determination within 60 days after inspection; and**
- 4. Specify required corrective actions, compensation, or disbursement from the financial assurance instrument where appropriate.**

Where the commissioner determines that damage materially threatens livestock watering capability, fencing integrity, crop production, or operational continuity, the commissioner may authorize interim emergency repairs or direct payment pending final resolution.

F. Objections to Bond Release

Agricultural surface lessees shall have standing to object to reduction or release of financial assurance.

If objections are filed, the commissioner shall issue written findings addressing:

- 1. The nature of the claimed damages;**
- 2. Whether remediation has been completed;**
- 3. Whether compensation is warranted; and**
- 4. Whether sufficient financial assurance remains available to protect the affected lessee.**

No final release shall occur until unresolved claims are adjudicated, settled, or otherwise secured to the satisfaction of the commissioner.

G. Direct Payment Authority

The commissioner may authorize direct payment from the financial assurance instrument to affected agricultural surface lessees for verified damages, emergency repairs, restoration work, or compensation authorized under this section.

H. Preservation of Surface Protections

Nothing in this rule shall be interpreted to diminish existing protections historically afforded to agricultural surface lessees under State Land Office bond forms, reclamation practices, or surface-damage procedures.

This rule shall be construed liberally in favor of protecting the productive agricultural use and stewardship of state trust lands.