

Implementation Agreement

**Southern Nevada Public Land Management Act of 1998
Public Law 105-263 (as amended)**

PART ONE

November 20, 2018

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I. INTRODUCTION

A. The Southern Nevada Public Land Management Act of 1998

The Southern Nevada Public Land Management Act, Public Law (P.L.) 105-263, (“SNPLMA” or “Act”) was passed by Congress and signed into law in October 1998. The Act provides for the disposal of public land within a specific area in the Las Vegas Valley and creates a special account “SNPLMA Special Account” or “Special Account”) into which 85 percent of the revenue generated by land sales or exchanges in the Las Vegas Valley is deposited. The remaining 15 percent is split between the State (5 percent) and the Southern Nevada Water Authority (10 percent).

Additional legislation has amended the SNPLMA by including additional public land in the disposal area, authorizing deposit of certain land sale revenues into the SNPLMA Special Account; adding Conservation Initiatives, Lake Tahoe Restoration Act projects, Hazardous Fuels Reduction and Wildfire Prevention projects, and projects to carry out the Eastern Nevada Landscape Restoration Project as new expenditure categories; adding more eligible local government entities for the Parks, Trails, and Natural Areas category; and authorizing certain revenues be set aside for specific purposes. The amending legislative acts are:

- Consolidated Appropriation Act for Fiscal Year 2000 (P.L. 106-113);¹
- Ivanpah Valley Airport Public Lands Transfer Act of 2000 (P.L. 106-362);
- Clark County Conservation of Public Land and Natural Resources Act of 2002 (P.L. 107-282)²;
- Department of Interior and Related Agencies Appropriation Act of 2004 (P.L. 108-108);
- Lincoln County Conservation, Recreation, and Development Act of 2004 (P.L. 108-424);
- White Pine County Conservation, Recreation, and Development Act of 2006 (P.L. 109-432, Division C, Title III);
- Omnibus Public Land Management Act of 2009 (P.L. 111-11); and
- Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (P.L. 113-291).³

The SNPLMA, as amended, (section 4(e)(3)) directs that the revenue in the SNPLMA Special Account “shall be expended by the Secretary [of the Interior]” for the following purposes:

- Acquisition of environmentally sensitive land and interests in land in Nevada, with priority given to lands within Clark County;
- Capital Improvements (CIP) (not to exceed 25 percent of amounts available) at the Lake Mead National Recreation Area; the Desert National Wildlife Refuge [Complex]; the Red Rock Canyon National Conservation Area; the Great Basin National Park; and other areas administered by the

¹ P.L. 106-113 was enacted on 11/29/1999, and previously referred to as Consolidated Appropriation Act of 1999, but the actual title states “for Fiscal Year 2000.”

² P.L. 107-282 was the first amending legislation that expanded the SNPLMA Disposal Boundary.

³ Among other provisions impacting SNPLMA, P. L. 113-291 modified the disposal boundary resulting in a net decrease in total acreage available for sale within the boundary. This act also formally established the Tule Springs Fossil Beds National Monument and its approximate boundary and acreage which impacted the SNPLMA disposal boundary.

Bureau of Land Management (BLM) and the U.S. Forest Service (FS) in Clark, Lincoln, and White Pine Counties, and the Spring Mountain National Recreation Area;

- Development and implementation of a multi-species habitat conservation plan (MSHCP)⁴ in Clark County;
- Development of parks, trails, and natural areas (PTNA) in Clark, Lincoln, and White Pine Counties in Nevada; in Carson City, Nevada at locations adjacent to or within the 100-year FEMA Floodplain of the Carson River⁵ pursuant to a cooperative agreement with units of local government or regional governmental entities;
- Conservation initiatives (CI) (not to exceed 10 percent of amounts available) on Federal land in Clark, Lincoln, and White Pine Counties, Nevada, and in Carson City, Nevada, on lands adjacent to or within the 100-year FEMA floodplain administered by the Department of the Interior (DOI) or the Department of Agriculture;
- Federal Environmental Restoration projects under Section 6 and 7 of the Lake Tahoe Restoration Act, Environmental Improvement Payments under Section 2(g) of P.L. 96-586, and any Federal environmental restoration project included in the environmental improvement program adopted by the Tahoe Regional Planning Agency (TRPA) in February 1998 (as amended) (Lake Tahoe restoration projects) “in an amount equal to the cumulative amounts authorized to be appropriated for such projects under those Acts” as directed in the Department of the Interior and Related Agencies Appropriations Act, 2004, P.L. 108-108, section 342, November 10, 2003;
- Development and implementation of comprehensive, cost-effective, multijurisdictional hazardous fuels reduction and wildfire prevention plans (Hazardous Fuels) of not more than 10 years in duration (including sustainable biomass and biofuels energy development and production activities) for the Lake Tahoe Basin (to be developed in conjunction with the TRPA), the Carson Range in Douglas and Washoe Counties and Carson City in Nevada, and the Spring Mountains in Nevada;
- Projects to carry out the Eastern Nevada Landscape Restoration Project (ENLRP) in White Pine and Lincoln Counties in Nevada;
- Reimbursement of costs incurred by the BLM in arranging sales or exchanges under the SNPLMA;⁶ and
- Reimbursement of any costs incurred by the Bureau of Land Management to clear debris from and protect land that is located in the disposal boundary and land reserved for affordable housing.⁷

⁴ This acronym is used through this document to refer to this SNPLMA category only. The name of the County’s plan is *Multiple Species Habitat Conservation Plan* and will be distinguished from the category by use of the acronym “CC-MSHCP.”

⁵ An EC decision memorandum approved 9/8/2009 to reflect SNPLMA modifications contained in the Omnibus Public Lands Act of 2009 (P.L. 111-11) added Carson City (with limitations). The White Pine County Conservation, Recreation, and Development Act of 2006, (P.L. 109-432, added Washoe County, Nevada, as eligible to submit nominations for funds to acquire land (not to exceed 250 acres) and develop one regional park and natural area with an expiration date of December 31, 2011. P.L. 111-11 which added Carson City’s eligibility also changed Washoe County’s eligibility expiration date to December 31, 2015.

⁶ Language in Senate Report 106-99 (on S-192) noted that it was the intent of Congress that these costs “*shall include not only the direct costs for these sales and exchanges, but also other BLM administrative costs associated with implementing the provisions of the Act.*”

⁷ The White Pine County Conservation, Recreation, and Development Act of 2006, (P.L. 109-432, Division 3, Title III) amended SNPLMA to clarify that these costs are reimbursable from SNPLMA funds.

Certain revenues deposited into the SNPLMA Special Account are designated and set aside for specific purposes. These set asides include:

- Acquisition of in-holdings within the Mojave National Preserve in California and protection and management of petroglyph resources in Clark County, utilizing revenues from the disposal of lands in the Ivanpah Valley for an airport. These revenues are not available until the lands are transferred to Clark County, Nevada, and a final Record of Decision pursuant to the National Environmental Policy Act of 1969 has been issued which permits development of the airport at the Ivanpah site;⁸
- Acquisition of environmentally sensitive land in the Lake Tahoe Basin pursuant to the Santini-Burton Act of 1980 (P.L. 96-586), utilizing revenue deposited in the SNPLMA Special Account in compliance with Section 4(g)(4) of the SNPLMA from the conveyance (e.g., sale, lease, etc.) of parcels within the SNPLMA disposal boundary which are also within the disposal boundary established by the Santini-Burton Act and within the McCarran Airport Cooperative Management Area (CMA) boundary;⁹
- Expenditure of revenues from the sale of Parcel A identified on the map entitled “Southern Nevada Public Land Management Act” dated October 1, 2002, are set aside in the SNPLMA Special Account pursuant to the Clark County Conservation of Public Land and Natural Resources Act of 2002 (P. L. 107-282) for management of the Sloan Canyon National Conservation Area;
- Development of a multi-species habitat conservation plan for the Virgin River and associated groundwater monitoring utilizing revenue from the sale of certain land to the City of Mesquite;¹⁰ and
- Up to \$6 million dollars from the SNPLMA Special Account for a “Water Resources Study of the Basin and Range Carbonate Aquifer System (BARCAS) in White Pine County, Nevada and Adjacent Areas in Nevada and Utah” pursuant to provisions of the Lincoln County Conservation, Recreation, and Development Act of 2004 (P.L. 108-424).¹¹

The SNPLMA grants the Secretary and the Secretary of Agriculture the authority to determine whether land proposed for acquisition is “environmentally sensitive,” defined in the Act as land that would:

⁸ The Ivanpah set aside was established by the Ivanpah Valley Airport Public Lands Transfer Act (P. L. 106-362) enacted on 10/27/2000.

⁹ The McCarran Airport CMA area overlaps a substantial part, but not all, of the Santini-Burton Disposal Boundary. Pursuant to SNPLMA, the federally-owned lands within the CMA were conveyed to Clark County in March 1999; if Clark County disposes of those lands, 85 percent of the revenue from the lands that are both within the Santini-Burton boundary and the CMA boundary is deposited into the SNPLMA Special Account and set aside for purchase of environmentally sensitive lands in the Lake Tahoe Basin. Revenue from disposal of lands within the Santini-Burton boundary but not within the CMA boundary do not go to the SNPLMA Special Account. Those revenues are deposited into the Treasury of the United States for distribution as specified in the Santini-Burton Act. Revenue from disposal of lands within the CMA boundary and the SNPLMA disposal boundary, but not within the Santini-Burton boundary are deposited in the Special Account for the uses specified in the SNPLMA.

¹⁰ The “Clark County Conservation of Public Land and Natural Resources Act of 2002 (P.L. 107–282, November 6, 2002,” Title IX, Section 901 “Technical Amendments to the Mesquite Lands Act 2001”) revised the Mesquite Lands Act to direct that proceeds from the sale of parcels identified in the Mesquite Act be deposited into the SNPLMA Special Account where they are available for use by the Secretary (a) to reimburse costs incurred by BLM in arranging the Mesquite land conveyances; (b) for development of a multispecies habitat conservation plan for the Virgin River in Clark County, Nevada and any associated groundwater monitoring plan; and (c) other purposes under Section 4(e)(3) of SNPLMA.

¹¹ The full \$6 million was provided through an inter-agency agreement with the U.S. Geological Survey in Carson City, Nevada and BLM in Reno, Nevada, in 2005 with a final report due to Congress by 12/1/2007.

“...promote the preservation of natural, scientific, aesthetic, historical, cultural, watershed, wildlife and other values contributing to the public enjoyment and biological diversity; enhance recreational opportunities and public access; provide the opportunity to achieve better management of public land through consolidation of Federal ownership; or otherwise serve the public interests.”

The SNPLMA requires the Secretary to “*coordinate the use of the [SNPLMA] special account with the Secretary of Agriculture, the State of Nevada, local governments, and interested persons, to ensure accountability and demonstrated results,*” and to cooperate with the Secretary of Agriculture in submitting an annual report “*on all transactions under this Act*” to Congress.

B. Development and Maintenance of the Implementation Agreement¹²

The agreement for implementation of the SNPLMA was first developed in 1999 by a team of representatives from the BLM, U.S. Fish and Wildlife Service (FWS), National Park Service (NPS) in the DOI, and the FS in the Department of Agriculture. The purpose of the agreement was to address how the Federal agencies would work together to implement the portions of SNPLMA that require coordination within the DOI and between the DOI and the Department of Agriculture. The team also addressed the requirements related to coordination and consultation with the State of Nevada, local governments, and interested parties. The team assembled a draft document entitled *The Federal Partners Charter* (Charter) which outlined a collaborative process for developing a recommendation for the Secretary regarding the SNPLMA Special Account expenditures. Though not fully executed, the draft Charter was utilized to initiate the first cycle of nominations for expenditures from the SNPLMA Special Account, referred to as a “Round.” Round 1 was approved by the Secretary of the Interior Babbitt on June 27, 2000.

The draft Charter was circulated for public comment which resulted in significant revisions, including renaming the document as the *Federal Partners Implementation Agreement* (Agreement). The Agreement was dated May 2000 and fully executed by all the Executive Committee members by July 10, 2000. The lessons learned in executing the process for Round 1 proved valuable in modifying certain terms of the *Federal Partners Implementation Agreement* in order to make the process more efficient and effective. A continuous improvement approach was adopted. The Agreement was revised and renamed *The Southern Nevada Public Land Management Act of 1998 (SNPLMA) Implementation Agreement* and was signed November 30, 2001.

Changes to the *SNPLMA Implementation Agreement* (IA) over the years reflect lessons learned for implementation, modifications to the Act that have expanded the SNPLMA program to include additional eligible entities and funding/project categories, opinions provided by the DOI Office of the Solicitor, direction and guidance resulting from audits, and changing circumstances due to the growth of the program.

This IA is expected to continue to evolve during the life of SNPLMA. Maintenance of the IA is the responsibility of the Partners Working Group (PWG). BLM will prepare draft revisions based on processes put into place by direction received from, and decision memorandums approved by, the Executive Committee (EC) since the previous version was approved; legislative revisions to the SNPLMA; recommendations from the BLM Southern Nevada District Office, Division of SNPLMA Acquisition, Improvement, and Conservation Programs (SNPLMA Division); and comments and suggestions from Federal managers, non-Federal eligible entities, and PWG recommendations. The BLM will distribute the draft revisions for review and comment by eligible entities and others involved in implementation of the Act. The PWG will make a recommendation on the final draft to the EC. All

¹² See the IA Part Two, Appendix P for a detailed history of the revisions to the SNPLMA Implementation Agreement.

proposed changes not previously approved through a decision memorandum or specific direction of the EC must be approved by the EC before taking effect.¹³

Appropriations laws apply to all funded activities without exception whether the funded activity is called a “project” or a “program.”¹⁴ Throughout budgetary guidance and standard usage, the two terms are often used interchangeably. Implementation of SNPLMA, therefore, does not distinguish between “projects,” “programs,” “programs of work,” or “programmatic projects.” All policies, procedures, and business rules contained herein, including those intended to ensure compliance with appropriations law and the Secretary’s requirements, shall apply to all SNPLMA projects regardless of whether a project is for a single activity or a group of activities and regardless of the category within which the project falls. Furthermore, arbitrary descriptors of “program” or “project” shall not affect the guidelines or rules used to implement a project or assess requests for project modifications.¹⁵

II. OBJECTIVES

The objectives of the IA are to:

- Establish policies, procedures, and business rules for implementation of the SNPLMA, as amended, in order to ensure the expenditure of the SNPLMA Special Account in a manner that is consistent with the SNPLMA which includes ensuring tangible results and adherence to the rules in Federal Appropriations Law, Office of Management and Budget (OMB) policy and regulations publications, and the Federal Acquisition Regulation for expenditure of appropriated funds;
- Clarify the respective roles of the Federal agencies, the State of Nevada, local and regional governmental entities throughout Nevada, and interested parties in order that they might work together effectively to implement the SNPLMA (as amended); and
- Effectively involve the eligible Federal agencies, State of Nevada, local and regional governmental entities, and interested parties in the process of assembling the recommendation to the Secretary for expenditure of funds in the Special Account.

There are four phases to the SNPLMA Business Process for implementing the expenditure of revenues from the Special Account. These are the:

- Nomination and Recommendation Process,
- Funding Instrument Process,
- Implementation Process, and
- Project Closeout Process.

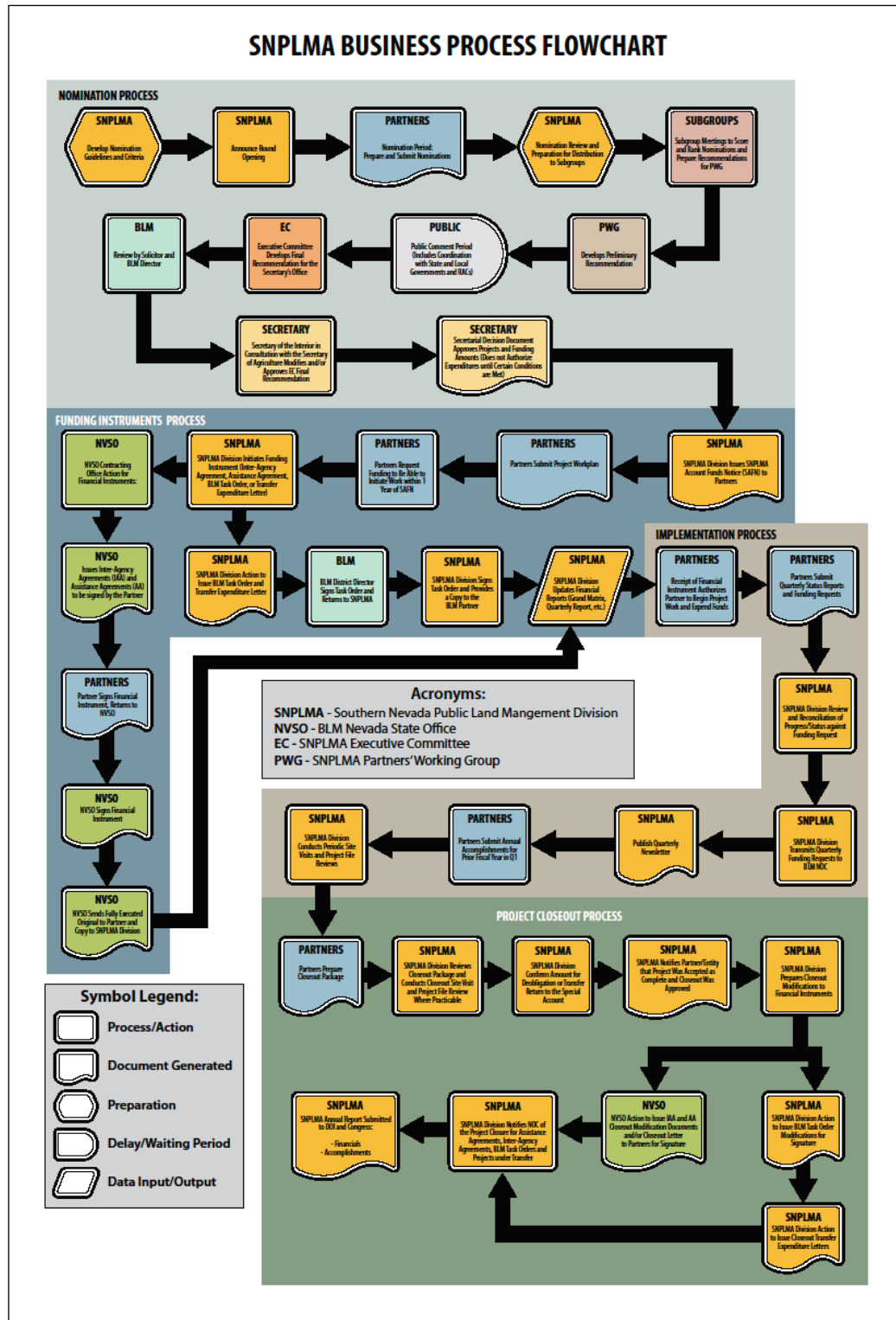
Each of these processes are depicted in Figure 1 below and the steps, requirements, and business rules associated with each are covered in detail in this document in order to meet the objectives outlined above.

¹³ Changes to the IA approved by the EC between published versions of the IA through the decision memorandum process or by verbal direction during an EC meeting take effect immediately upon approval and affect all active projects, regardless of the round in which approved, unless otherwise noted in the EC’s decision.

¹⁴ The September 2005 GAO *Glossary of Terms Used in the Federal Budget Process* states that the term “Program” “has many uses in practice, it does not have a well-defined, standard meaning in the legislative process.” See also GAO Glossary definition of “Program, Project, or Activity” as a single unit within a budget account.

¹⁵ This revision for resolution of the “project vs. program” question made by EC decision memorandum approved 8/11/2011.

FIGURE 1¹⁶



¹⁶ This figure is available in .pdf format upon request to the BLM SNPLMA Division.

III. ORGANIZATION, RESPONSIBILITIES AND RELATIONSHIPS

A. Secretaries of the United States Department of the Interior and Department of Agriculture

The Secretary is charged with implementation of the SNPLMA and use of funds within the SNPLMA special account in coordination with the Secretary of Agriculture. In September 2000, the Secretary assigned the responsibility for implementing the SNPLMA to the Bureau of Land Management. The Secretary has maintained approval authority over the expenditure of the SNPLMA Special Account. However, the Secretary may delegate this approval authority. Approval of the annual operating budget is delegated to the BLM Nevada State Director who also serves as the Chairperson of the SNPLMA EC.

B. BLM Nevada State Office (NSO)

The BLM Nevada State Office manages certain implementation activities for the SNPLMA in Nevada. The role of the NSO is to:

- Coordinate with the BLM's National Operations Center (NOC) in Denver, Colorado for management of the Special Account, including accounting for, investing, and disbursing funds;
- Provide funds control for the Special Account;
- Review and coordinate approval of the SNPLMA operating budget;
- Provide contracting functions for SNPLMA Inter-Agency Agreements (IAAs)¹⁷ and Assistance Agreements (i.e., cooperative agreements) as well as certain acquisition and project-related procurements;
- Provide contracting and administration functions for IAAs and assistance agreements for reimbursement or payment of necessary expenses for approved projects. Final approval of reimbursements and follow up to ensure accurate and timely payment is provided following acceptance of a reimbursement package by the BLM Southern Nevada District (SNDO) SNPLMA Division;
- Facilitate the development, continuous improvement, and implementation of procedures and guidelines for nominating expenditures for project categories, in coordination with the SNPLMA process;
- Prepare the preliminary and final recommendation packages for expenditure of funds in the SNPLMA Special Account for Secretarial approval in coordination with the SNPLMA Division; and
- Provide input for management of the SNPLMA Special Account to include development and approval of the SNPLMA annual work plans, annual reports to Congress, and Congressional briefings on recommendations and status of the Special Account.

C. BLM National Operations Center (NOC)

The BLM's NOC has national responsibility for BLM financial accounting processes and procedures, contracting, implementation of OMB and other Federal financial regulations throughout the BLM, as well as facilitation and coordination of financial audits. The NOC assists with implementation of the SNPLMA by providing the following services:

- Management of the SNPLMA investment program in order to ensure that funds are effectively invested at all times as required by the Act while maintaining adequate cash in the Special Account to cover disbursements;

¹⁷ Inter-Agency Agreements (IAA) were formerly called Intergovernmental Orders or IGOs. They are effectively the same instrument executed for the same purposes.

- Providing input to the SNPLMA Annual Report to Congress and BLM's annual Public Land Statistics;
- Preparation of a monthly financial status report and monthly investment reports;
- Coordinate with the SNPLMA Division regarding processing and managing BLM Task Orders, anticipated disbursements affecting cash account requirements, financial updates, and the SNPLMA Grand Matrix to ensure accuracy of tracking obligations, allocations, and disbursements; expenditures by project number; and financial information utilized by both offices;
- Ensure cash availability from investments in the Special Account for direct transfer of funds, payment of BLM direct charges to subactivities, and drawdown of funds obligated through assistance agreements; and
- Process 1151 direct transfer requests for submittal to the BLM Washington Office of Budget for entry into the Department of the Treasury system and track direct transfers by project.

D. Bureau of Land Management, Las Vegas Field Office (LVFO), Division of Lands

The role of the BLM Las Vegas Field Office, Division of Lands regarding implementation of SNPLMA land disposals and other expenditures is to:

- Coordinate land disposal activities with local governments through the joint selection process;
- Conduct all land disposals under the SNPLMA by conducting oral and internet auctions, sales directed by legislation, and, where appropriate, modified competitive or direct sales;
- Prepare land for sale by completing Preliminary Environmental Site Assessments (ESA); writing Environmental Assessments; ordering appraisals; preparing Master Title Plats and maps; and preparing a Notice of Realty Action (NORA) for publication in the Federal Register and local newspaper and mail copies of the NORA to adjacent property owners and to other interested parties;
- Conduct post-sale activities including preparing a Final ESA, mailing notices to high bidders, collecting final payments, and transmittal of case files to the BLM NSO;
- Process requests for Resource and Public Purposes (R&PP) reservations, leases, and sales; right-of-way applications, and affordable housing reservations and sales on lands within the SNPLMA disposal boundary;
- Address air quality issues and fencing or other barrier requirements for management of lands within the SNPLMA disposal boundary; and
- Provide input for management of the SNPLMA Special Account to include development of annual work plans, work load accomplishments, and expenses to carry out land disposals.

E. Bureau of Land Management, Southern Nevada District Office (SNDO), Division of Law Enforcement

The Law Enforcement Division assists with the management of lands within the disposal boundary in the following ways:

- Patrol unsold lands for violations of BLM administrative regulations, local ordinances or municipal codes, and local and Federal laws;
- Respond to calls regarding illegal activities on the lands; and
- Issue citations and perform other law enforcement activities on the lands.

F. Bureau of Land Management, Southern Nevada District Office (SNDO), Division of Support Services

The Support Services Division of the SNDO is responsible for managing the clean-up efforts on unsold lands within the SNPLMA disposal boundary, provides contracting support for SNPLMA land sales when needed, and provides financial accounting support for deposit of disposal revenues.

G. Bureau of Land Management, Southern Nevada District Office (SNDO), SNPLMA Division

The SNPLMA Division has responsibility related to management of the overall implementation of the SNPLMA. The role of this Division regarding implementation of the SNPLMA and expenditures from the SNPLMA Special Account is to:

- Promote collaboration among the eligible Federal agencies and local and regional governmental entities in identifying properties and projects with the greatest public benefit, regardless of agency jurisdiction;
- Facilitate the development, improvement, and implementation of procedures and guidelines for nomination packages under the applicable categories and publish the nomination requirements for each round of SNPLMA nominations;
- Manage the nomination process for all project categories under SNPLMA, except for Lake Tahoe restoration projects and with some modifications for MSHCP projects, to include:
 - issuing the call for nominations,
 - responding to and assisting entities as needed to prepare nominations,
 - ensure that nomination packages meet all nomination requirements,
 - enter nomination information in the SNPLMA nomination database,
 - prepare documentation to communicate nomination information to SNPLMA subgroups,
 - facilitate subgroup meetings to score and rank nominations,
 - prepare subgroup recommendations for submittal to the PWG, and
 - prepare information relative to the round of nominations at appropriate times during the round for publication on the SNPLMA website;
- Ensure that coordination and consultation occurs regarding each round of SNPLMA and nominations with the BLM Resource Advisory Councils (RACs), State of Nevada, local governments, and interested parties;
- Provide input for management of the SNPLMA Special Account, including:
 - developing an annual operations budget and allocation of funds for reimbursement of administrative expenses to implement SNPLMA,
 - communicating expected annual and actual quarterly project funding needs, and
 - archiving all documentation needed to support the use of the revenue;
- Implement and manage the processes and procedures for funding approved projects in all categories as outlined in this document either by allocation using a BLM Task Order, obligation through an IAA or Assistance Agreement; or through 1151 direct transfer of funds documented by a SNPLMA Division letter authorizing expenditure of the transferred funds”).

- Assure compliance with documentation and other requirements contained in this document for implementation of approved projects;
- Provide technical guidance and expertise to assist recipient entities in carrying out projects;
- Manage the process for use of the Special Account Reserve (SAR) and contingency funds within each round when approved by the Secretary;
- Review and process requests for project modifications by preparing decision memorandums for the appropriate approving authority (SNPLMA Division or EC);
- Prepare amendments to task orders, IAAs, Assistance Agreements, and authorization to expend transferred funds letter to reflect approved project modifications and project closeouts;
- Review and process reimbursement, payment, and transfer requests for all project categories funded through BLM Task Orders, IAAs, Assistance Agreements, and the 1151 Direct Transfer process consistent with the requirements in the IA;
- Develop and maintain a financial database for all projects to accurately track the funding history of all projects approved by the Secretary;
- Develop and maintain a nomination database to accurately track nominations submitted each round through the nomination and recommendation process;
- Develop and maintain a contacts database to track contact information for SNPLMA partners, project contacts, and other interested parties for distribution of program notifications such as the call for nominations, funds notice, and other communications with partners;
- Manage the web-based *SNPLMA Management and Reporting Tool (SMART)* database application hosted by the NOC to upload data monthly from the financial database and ensure accuracy of data, consistency of report results, prompt submittal of remedy tickets regarding problems with the application, and acceptability of remedy ticket “fixes,” and application enhancements, as well as provide access to entity users and maintain a current up-to-date list of those users;
- Enter program manager quarterly report instructions by project in SMART and review project data and agency/entity quarterly reporting in SMART for accuracy of project descriptions and period of performance; approval of work plans and financial requests; regular reporting of project progress; and appropriate annual and overall project accomplishments and performance measures upon completion of projects.
- Coordinate with recipient entities to ensure entry and approval of the project workplan, entry of quarterly status reports against project work plans, quarterly funding needs in SMART, and adequate progress toward project completion.
- Conduct pre-work site visits and work plan reviews before providing funds for newly approved projects.
- Conduct periodic project site inspections, and file review of backup documentation for expenditures, and conduct a final inspection for project close out upon completion;
- Publish SNPLMA information and statistics on a “SNPLMA Website” (www.blm.gov/snplma) including this IA, the monthly Grand Matrix, sales information, the round call for nominations, press releases pertaining to a round, Secretary approvals, and other annual statistics regarding expenditures, projects, and land sales.
- Publish project status information by clicking on the link “Projects Funded by SNPLMA” located on the SNPLMA website which re-directs the user to a separate public project website (PPWS) hosted by the NOC;

- Coordinate maintenance and remedy tickets for PPWS functionality and performance issues with the NOC;
- Develop and regularly update SNPLMA PowerPoint training modules to cover SNPLMA in general and the four basic process areas (nomination, funding, implementation, and project closeout) for presentation twice a year, once in southern Nevada and one in northern Nevada, and publication on the SNPLMA website;
- Develop the SNPLMA Annual Report to Congress in coordination with the NSO; and
- Prepare SNPLMA data for input into the annual BLM's *Public Land Statistics*.

H. The Five Federal Land Management Agencies

The five Federal land management agencies directly involved in implementation of the SNPLMA are the BLM, NPS, FWS, and the Bureau of Reclamation (BOR) in the DOI; and the FS in the Department of Agriculture. Successful implementation of the SNPLMA requires these agencies to work together to ensure that the public benefit is maximized for current and future generations of Americans.

All agencies except BOR are signatories to this IA. In signing this agreement, each agency agrees to:

- Participate in the process established in this agreement to identify eligible expenditures under the SNPLMA to provide the greatest public benefit;
- Consult with the State of Nevada, local governments, and interested persons for all properties nominated for acquisition regarding the need for the acquisition and potential impacts to State and local governments;
- Follow any and all applicable policies, procedures and guidelines for nomination, funding, and implementation of projects under each project category;
- Establish and implement cooperative agreements as necessary and take other actions related to implementing the Secretary's decisions regarding use of the Special Account; and
- Provide all documentation determined by the Bureau of Land Management, Nevada State Office and SNDO SNPLMA Division, as required and necessary to support expenditures of the Special Account and/or to prepare the annual reports to Congress required by the SNPLMA.

The following is an important provision of this IA applicable to all recipient Federal agencies and non-Federal entities:

- All entities eligible to receive project funds through SNPLMA agree to abide by the applicable policies, procedures, and business rules contained in this document by signature to an inter-agency agreement, assistance agreement, or BLM Task Order and by their acceptance of SNPLMA project funds provided through the Federal 1151 direct transfer process. (*See Section VI for guidance relative to consistency with appropriations law, Section VI for funding requirements, and Section VIII for information funding instruments.*)

I. SNPLMA Organizational Units

The EC, PWG, subgroups for each project category,¹⁸ and a variety of Lake Tahoe groups have been established to achieve the objectives outlined above. These groups have varying degrees of representation by state, local, and regional governmental entities. It is important to note that the process

¹⁸ The Multi-Species Habitat Conservation Plan is the only project category that does not utilize a SNPLMA subgroup. See Section III.I.3.(c) for an explanation of the alternate process used by the MSHCP category.

of developing a recommendation for the Secretaries' consideration is designed to be as open and inclusive as possible without bias for or against any particular agency, unit of government, or interested party. The “Recommendation Development Process” section of this IA details the opportunities that the state, local and regional governmental entities, Federal agencies and interested parties have to participate in the process.

1. Executive Committee

The EC is structured to act on behalf of the Secretaries of Interior and Agriculture in preparing the Final Recommendation. The coordination required between the DOI and the Department of Agriculture occurs, in part, within this Committee. The EC is composed of the State or Regional Director or Manager of the four Federal land management agencies, or his or her designee, as listed below:

- Bureau of Land Management - State Director, Nevada State Office (Chair)
- National Park Service – Regional Director, Pacific West Region
- U.S. Fish & Wildlife Service – Regional Director, Pacific Southwest Region
- U.S. Forest Service –Regional Forester, Inter-Mountain Region (Region 4)
- Bureau of Land Management Chief Financial Officer as a non-voting financial advisor

The EC prepares and transmits the SNPLMA Final Recommendations for expenditure of funds in the Special Account to the Secretary. The FS Region 4 member also represents the FS Region 5 and represented the Lake Tahoe Basin Management Unit interests regarding Lake Tahoe restoration projects during Rounds 5 through 12.¹⁹ The EC forwarded the Recommendation for Lake Tahoe restoration projects during those rounds to the Secretary of Agriculture, through the FS Region 4 member for approval, and to the Secretary of Interior (the “Secretary”) for approval to utilize SNPLMA funds for the recommended projects and inclusion in the SNPLMA Special Account budget. The Secretary makes the final decisions regarding round expenditures under the Act unless further delegated. Once approvals are received, the EC oversees the use of the funds in the Special Account to achieve the desired objectives.

The EC has final approval authority for this IA, project modification requests requiring EC action, and other matters as described throughout this document. The EC retains the authority to approve waivers of specific requirements or “business rules” under this IA where the EC determines extenuating circumstances warrant.

“Extenuating Circumstances” as used throughout this document are conditions or events beyond an agency’s or entity’s control including, but not limited to, weather-related delays; contracting appeals; claims or stop work orders that delay the project or contract award; mobilization and closeout of contracts and release of claims/liens; vandalism; or unanticipated site conditions requiring additional engineering or project redesign.²⁰

If any of the four EC member agencies were to not sign this IA, that agency would not be eligible to receive funds for SNPLMA approved projects, but would still be eligible to participate in SNPLMA through the various organizational groups and their functions as described herein.

¹⁹ P. L. 108-108, section 342 directed that SNPLMA fund Lake Tahoe Restoration Projects up to \$300,000,000, the amount authorized for appropriation in Section 2(g) of P.L. 96-586 and The Lake Tahoe Restoration Act (P.L. 106-506). Projects were approved for Lake Tahoe Restoration in Round 5 through 12 to meet the full obligation of \$300,000,000 in SNPLMA funding.

²⁰ The EC reconfirmed the definition of “extenuating circumstances” in a decision memorandum approved on 1/15/2014.

2. Partners Working Group

The PWG is composed of one representative who has decision making authority and voting authority from each of the following organizations:

- Bureau of Land Management, Nevada State Office (Chair)
- State of Nevada (appointed by the Governor)
- Two seats from the PTNA Subgroup shall represent all of the local and regional governmental entities in Clark, Lincoln and White Pine Counties,²¹ and Carson City, Nevada²² (*See Section III.I.3.(b) for PTNA subgroup membership and an explanation of membership rotation onto the PWG.*)
- Rural Nevada (a member of Nevada Association of Counties (NACO))
- National Park Service
- U. S. Fish and Wildlife Service
- U. S. Forest Service
- Bureau of Reclamation, Lower Colorado Regional Office

The PWG has three primary functions:

- Coordinate suggested revisions to the IA based on lessons learned and feedback received from participating Federal and non-Federal entities and forward those recommendations to the EC for consideration and approval.
- Develop a SNPLMA Preliminary Recommendation for consideration by the EC. This function includes:
 - When the Ivanpah airport revenues become available after approval for construction of the airport, the National Park Service will independently develop a prioritized list of lands or interests in lands for acquisition within the Mojave National Preserve in California for inclusion in the Preliminary Recommendation;
 - Reviewing recommendations from the project category subgroups and from Clark County for the MSHCP for consideration in developing the Preliminary Recommendation; and
 - Developing a proposed budget for the round as a whole and for each eligible project category in which projects are being recommended in a given round based upon revenue projections.
- Make recommendations to the EC on project modification requests based on approval thresholds established herein, and coordinate the implementation of the Secretary's decisions. (*See Section XII.F. for information on approval thresholds.*)

The PWG functions under Operating Guidelines which outline processes and procedures for carrying out its responsibilities, making and documenting decisions, membership, etc.

²¹ Washoe County became eligible for limited projects in fiscal year 2007; the County's eligibility expired 12/31/2015.

²² This revision for two seats from the PTNA Subgroup on the PWG complies with an EC decision memorandum approved 11/16/2011. See Section II.H.3.(b) for the process utilized in providing the two members to the PWG.

3. SNPLMA Subgroups

Subgroups are structured around the project categories of allowable expenditures from the Special Account. Subgroups evaluate, score, and rank proposals according to ranking criteria for their respective category and forward the rankings as well as any recommendations to the PWG for development of the Preliminary Recommendation for each round of nominations. Ranking criteria are developed by the subgroups to address the minimum criteria, goals, and objectives specific to each category. The criteria are then forwarded through the PWG to the EC for approval. Subgroups also develop recommendations for revisions to ranking criteria and ranking factors. Because the criteria are subject to modification each round to improve effectiveness in meeting the category goals, they are not included in this IA, but rather are published on the SNPLMA website (www.blm.nv/snplma) when each new round opens.

Operating rules applicable to how subgroups function are:

- Each subgroup functions under a set of Operating Guidelines which outline processes and procedures for carrying out its responsibilities, making and documenting decisions, membership, and other applicable information.
- Subgroup members representing organizations eligible to receive SNPLMA funds for projects shall not be the same individual who sits on the PWG.
- The Nevada Rural representatives may sit on both a subgroup and the PWG since the representative does not represent an entity eligible to receive project funds.
- No entity shall have more than one vote on subgroup decisions, even if multiple representatives participate on the subgroup.
- The Assistant District Manager (ADM), SNPLMA Division, Bureau of Land Management, Southern Nevada District Office shall be the non-voting chair of each category subgroup.²³
- The applicable SNPLMA Program Manager for each category subgroup shall be the non-voting vice-chair to carry out the responsibilities of the chair in the event the chair is unavailable or unable to do so.

(a) Capital Improvements Subgroup

The CIP Subgroup reviews nominations for capital improvements at the Lake Mead National Recreation Area; the Desert National Wildlife Refuge Complex; the Red Rock Canyon National Conservation Area; the Great Basin National Park and other areas administered by the BLM and the FS in Clark, Lincoln and White Pine Counties; and the Spring Mountain National Recreation Area. The membership of the CIP Subgroup consists of a representative who has decision making and voting authority from each of the following six organizations:

- ADM, SNPLMA Division, Bureau of Land Management, Southern Nevada District Office, Non-voting Chair
- Bureau of Land Management
- National Park Service
- U.S. Forest Service, Humboldt-Toiyabe National Forest
- U.S. Fish and Wildlife Service, Desert National Wildlife Refuge Complex

²³ The change in the non-voting chair of all subgroups to the SNPLMA ADM and the change from a subgroup-voted vice-chair to the SNPLMA Program Manager as vice-chair for the applicable category subgroup was made by the EC in a decision memorandum approved April 23, 2013.

- Bureau of Reclamation, Lower Colorado Regional Office

(b) Parks, Trails, and Natural Areas Subgroup

The PTNA Subgroup reviews nominations for development of parks, trails, and natural areas in Clark, Lincoln, and White Pine Counties, Nevada as well as Carson City in Nevada for its limited project eligibility.²⁴

This subgroup is composed of a representative who has decision making and voting authority from each of the following organizations:²⁵

- ADM, SNPLMA Division, Bureau of Land Management, Southern Nevada District Office, Non-voting Chair
- Clark County, Nevada
- City of Las Vegas, Nevada
- City of North Las Vegas, Nevada
- City of Henderson, Nevada
- Lincoln County, Nevada
- Southern Nevada Water Authority
- Clark County Regional Flood Control District
- White Pine County, Nevada
- Carson City, Nevada
- Desert Conservation Program (non-voting limited membership)

The PTNA Subgroup will provide two subgroup members to serve as representatives for all of the SNPLMA eligible local/regional governmental entities on the PWG. The Clark County Desert Conservation Program (DCP), representing the MSHCP, is authorized to become a limited member of the PTNA Subgroup allowing the DCP to enter into PWG representative rotation following the City of Henderson (*see rotation list below*). The DCP limited membership does not allow the DCP to score and rank PTNA project nominations. However, the DCP can attend and participate in any PTNA Subgroup meeting.²⁶

The two local/regional government representatives will rotate from the membership of the PTNA Subgroup. Each representative will be a voting member of the PWG. Each membership will serve for two full rounds of the Nomination and Recommendation Process (round of nominations).²⁷ One

²⁴ Washoe County is no longer eligible under PTNA, but previously had limited eligibility under the PTNA category that expired 12/31/2015, to acquire land up to 250 acres and develop one regional park or natural area. The County received SNPLMA funds for both a land acquisition and development of a regional park and natural area.

²⁵ A decision memorandum approved by the EC on 2/24/2015, removed the Federal partners from the PTNA subgroup because project coordination is now carried out before local/regional entities submit PTNA project nominations. This decision memorandum also removed the Clark County Water Reclamation District, which has never been an active participant, from the subgroup with no change in its status as an eligible entity.

²⁶ This revision for addition of a second local/regional representative to the PWG, the rotation list and process, and limited membership of the DCP on the Subgroup comply with an EC decision memorandum approved 11/16/2011.

²⁷ This change to the definition of the term of the PTNA membership on the PWG is the result of a January 2016 poll of the PTNA members and was agreed to by the PWG in its August 2017 meeting to take effect beginning with

membership will start in January after the end of a round of nominations as the other membership begins its second round of nominations, thus creating an overlap between the two memberships. In this way one of the two memberships will always have at least one round of experience with the Nomination and Recommendation Process.

Each new incoming representative will start receiving PWG correspondence regarding programmatic issues six months before beginning the membership's term. The City of Henderson became the initial second PTNA Subgroup member on the PWG beginning in January 2012.²⁸ The rotation between PTNA members follows the order shown below:

- Clark County, Nevada
- City of Henderson, Nevada
- Desert Conservation Program
- White Pine County, Nevada
- City of Las Vegas, Nevada
- Lincoln County, Nevada
- City of North Las Vegas, Nevada
- Southern Nevada Water Authority (SNWA)
- Clark County Regional Flood Control District

(c) MSHCP Process In Lieu of a Subgroup

The DCP is the permit administrator for Clark County and other permittees under the "Multiple Species Incidental Take Permit" issued by the U.S. Fish and Wildlife Service following the listing in 1989 of the desert tortoise under the Endangered Species Act. The MSHCP category does not utilize a subgroup in the same manner as the other categories because the County's *Multiple Species Habitat Conservation Plan* (CC-MSHCP) existed prior to SNPLMA and the County had a process in place for proposing and evaluating plan development and implementation proposals. Clark County and the other CC-MSHCP permittees initiated an amendment to the CC-MSHCP and incidental take permit in 2009. A final revised DCP process for recommending MSHCP projects will not be completely defined until the CC-MSHCP and associated implementing documents are approved by the U.S. Fish and Wildlife Service.

Beginning with Round 12, MSHCP projects were permitted to be nominated every round rather than biennially in even numbered years as had been the case previously.²⁹ Also beginning in Round 12, nominations began using a slightly modified version of the previous DCP process for nominating and evaluating project proposals and submittal through the Clark County Board of County Commissioners (BCC) which approves projects for funding from the mitigation account or to be submitted for SNPLMA funding. The current modified process is outlined below:

1. Clark County prepares project proposals based on guidance from applicable adaptive management reports and in consultation with Permittees and the FWS. Proposals are developed based on budget principles and project concepts agreed upon by the FWS. Proposals are ranked

Round 18. Therefore, the length of the term will depend on whether rounds are annual or biennial (e.g., 2 to 4 years).

²⁸ Carson City opted out of the rotation due to its limited eligibility and Washoe County's eligibility under the PTNA category ended in 2015.

²⁹ Revisions to the MSHCP section are in accordance with an EC decision memorandum approved on 8/10/2010.

in order of priority based on needs of the CC-MSHCP and at the request of the SNPLMA Division.

2. Clark County seeks review and input from a Science Advisor on science-based project proposals and budget. Proposals are revised as needed.
3. Clark County posts project proposals and budgets for public comment. Proposals are revised as needed.
4. Clark County takes project proposals to the Board of County Commissioners (BCC) for direction to submit as nominations to SNPLMA.

The SNPLMA Division receives the nominations for the proposed projects approved by the BCC and forwards them to the PWG for consideration in developing the SNPLMA Preliminary Recommendation for that round of expenditures. The DCP project nominations then follow the remainder of the SNPLMA nomination process, including the SNPLMA public comment period, SNPLMA EC Final Recommendation, and Secretary approval.

(d) Conservation Initiatives Subgroup

The CI Subgroup reviews nominations for conservation initiatives on Federal land administered by the DOI or Department of Agriculture in Clark, Lincoln, and White Pine Counties, Nevada, and in Carson City, Nevada on lands adjacent to or within the FEMA 100-year floodplain administered by the DOI and the Department of Agriculture and forwards recommendations to the PWG. The CI Subgroup is composed of a representative who has decision making and voting authority from each of the following organizations:

- ADM, SNPLMA Division, Bureau of Land Management, Southern Nevada District Office, Non-voting Chair
- Bureau of Land Management
- National Park Service
- U.S. Forest Service, Humboldt-Toiyabe National Forest
- U.S. Fish and Wildlife Service, Desert National Wildlife Refuge Complex
- Bureau of Reclamation, Lower Colorado Regional Office

(e) Environmentally Sensitive Land Acquisition Subgroup

The Land Acquisition Subgroup reviews nominations for acquisition of environmentally sensitive land and interests in land within the State of Nevada proposed for acquisition by the United States and forwards recommendations to the PWG. The Land Acquisition Subgroup is composed of a representative who has decision making and voting authority from each of the following organizations:

- ADM, SNPLMA Division, Bureau of Land Management, Southern Nevada District Office, Non-voting Chair
- Bureau of Land Management, Nevada State Office Lands Lead (BLM voting member)
- State of Nevada (appointed by the Governor)
- Rural Nevada (a member of NACO per decision of the Governor)
- National Park Service
- U. S. Fish and Wildlife Service

- Bureau of Reclamation

(f) Hazardous Fuels Reduction and Wildfire Prevention Subgroup³⁰

The Hazardous Fuels Subgroup reviews nominations for fuels projects and forwards recommendations to the PWG. The Subgroup is composed of a representative who has decision making and voting authority from each of the following organizations:

- ADM, SNPLMA Division, Bureau of Land Management, Southern Nevada District Office, Non-voting Chair
- U.S. Forest Service, Humboldt-Toiyabe National Forest
- U.S. Forest Service, Lake Tahoe Basin Management Unit
- BLM Southern Nevada District Office
- State of Nevada, Tahoe Resource Team, Lands Division
- State of Nevada, Nevada Division of Forestry
- State of California, California Tahoe Conservancy
- Fish and Wildlife Service, Desert National Wildlife Refuge Complex
- Tahoe Douglas Fire Protection District
- North Lake Tahoe Fire Protection District
- Clark County Fire Department, Rural Division

(g) Eastern Nevada Landscape Restoration Project Subgroup

The ENLRP Subgroup reviews nominations for projects to carry out the ENLRP and forwards recommendations to the PWG. The Subgroup is composed of a representative who has decision making and voting authority from each of the following organizations:

- ADM, SNPLMA Division, Bureau of Land Management, Southern Nevada District Office, Non-voting Chair
- Bureau of Land Management, Ely District Office
- U.S. Forest Service, Humboldt-Toiyabe Forest
- National Park Service
- U.S. Fish and Wildlife Service
- United States Department of Agriculture, Natural Resource Conservation Service
- State of Nevada, Nevada Department of Wildlife
- Lincoln County
- White Pine County

³⁰ An updated Lake Tahoe Basin Multi-Jurisdictional Fuels Reduction and Wildfire Prevention Strategy was approved in April 2016, replacing the original 2007 Strategy. An updated Carson Range Multi-Jurisdictional Fuel Reduction and Wildfire Prevention Strategy was approved in May of 2018. The two U.S. Forest Service members coordinate to share one vote and the two State of Nevada members coordinate to share one vote.

J. Resource Advisory Councils

There are four Resource Advisory Councils (RAC) with advisory responsibilities in Nevada--the Northeast Great Basin (NGB) RAC, the Sierra Front Northwest Great Basin (SFNGB) RAC, the Mojave Southern Great Basin (MOSO) RAC, and the Northern California (NorCal) RAC.³¹ These RACs are composed of citizen advisors appointed by the Secretary and are designed to have a balance of interests represented. They are sanctioned under the Federal Advisory Committee Act. The RACs meet independently between four to six times a year and the NGB, SFNGB, and MOSO RACs have one joint meeting per year. RAC meetings are open public meetings with published agendas and open public comment periods.

The BLM forwards nomination and recommendation information to the three Nevada RACs through the RAC Chairs. BLM provides program updates at meetings as requested in order to provide the RACs with the opportunity to offer advice on any aspect of the program. RACs may jointly or individually formulate comments and provide advice to the BLM regarding projects proposed for funding within their area of jurisdiction during the public comment period for each round.

K. Lake Tahoe Organizational Units

SNPLMA was directed in Section 342 of P.L. 108-108 to provide funding in the amount authorized to be appropriated for Federal environmental restoration projects under Section 6 and 7 of the Lake Tahoe Restoration Act (114 Stat.2354), Environmental Improvement Payments under Section 2(g) of P.L. 96-586, and any Federal environmental restoration project included in the environmental improvement program adopted by the Tahoe Regional Planning Agency in February 1998 (Lake Tahoe Restoration Projects). The full authorized amount of \$300,000,000 was allocated to projects approved by the Secretary between Rounds 5 and 12 of SNPLMA. (*See Section V.A.11.(i) for information on potential future Lake Tahoe restoration project nominations.*)

The BLM SNPLMA Division and certain Lake Tahoe organizational units described below remain involved in oversight and other processes related to implementation of the approved projects as described elsewhere in this document.

1. The Tahoe Regional Executive Committee

The existing Tahoe Regional Executive Committee (TREX), established pursuant to Executive Order 13057, dated July 26, 1997, served as the advisory body for reviewing and determining the priorities for the recommendations for Lake Tahoe Restoration Projects to be funded by SNPLMA. The TREX approves time extensions for approved projects and reprogramming of funds as explained above. The TREX is composed of the Regional Director or Manager of each agency listed below:

- U.S. Department of Agriculture, Forest Service
- U.S. Department of Agriculture, Natural Resources Conservation Service
- U.S. Environmental Protection Agency
- U.S. Department of Transportation, Federal Highway Administration
- U.S. Department of the Interior, Geological Survey
- U.S. Department of Defense, Army Corps of Engineers

³¹ The Eagle Lake and Surprise Valley Field offices in California are eligible to receive SNPLMA funds to acquire environmentally sensitive land or interests in land in the portion of Washoe County, NV managed by those two offices. The two field offices are advised by the NorCal RAC.

- U.S. Department of the Interior, Bureau of Reclamation
- U.S. Department of the Interior, Bureau of Land Management
- U.S. Department of the Interior, Fish & Wildlife Service

2. Lake Tahoe Basin Executive Committee

The Lake Tahoe Basin Executive Committee (LTBEC) is a member of several other groups involved in oversight and implementation of Lake Tahoe projects funded by SNPLMA. The LTBEC consists a representative from each of the following:

- U.S. Department of Agriculture, Forest Service
- U.S. Department of Agriculture, Natural Resources Conservation Service
- U.S. Department of the Interior, Bureau of Reclamation
- U.S. Department of the Interior, Fish & Wildlife Service
- U.S. Department of the Interior, Geological Survey
- U.S. Department of Transportation, Federal Highway Administration
- U.S. Department of Defense, Army Corps of Engineers
- U.S. Environmental Protection Agency

3. Lake Tahoe Federal Advisory Committee³²

The Lake Tahoe Federal Advisory Committee (LTFAC) primarily assisted in developing the Recommendations for Lake Tahoe by the TREX under the SNPLMA. The LTFAC will continue to be available to advise TREX regarding project implementation or modification and reprogramming of funds as described elsewhere in this document. LTFAC consists of representatives from the following:

- Gaming industry
- Local environmental
- National environmental
- Ski resorts
- North Shore economic/recreation
- South Shore economic/recreation
- Resort Associations
- Education
- Property rights advocates
- Science and research
- California local government
- Nevada local government

³² LTFAC is inactive as of September 2018 because its Charter and memberships expired. The FS is working to re-establish the Committee. It is anticipated the member list, as shown, will be the same when (if) the LTFAC is re-established.

- Washoe Tribe
- State of California
- State of Nevada
- Tahoe Regional Planning Agency
- Labor
- Transportation
- Two at-large members

IV. JOINT SELECTION OF PARCELS FOR SALE WITHIN THE SNPLMA DISPOSAL BOUNDARY

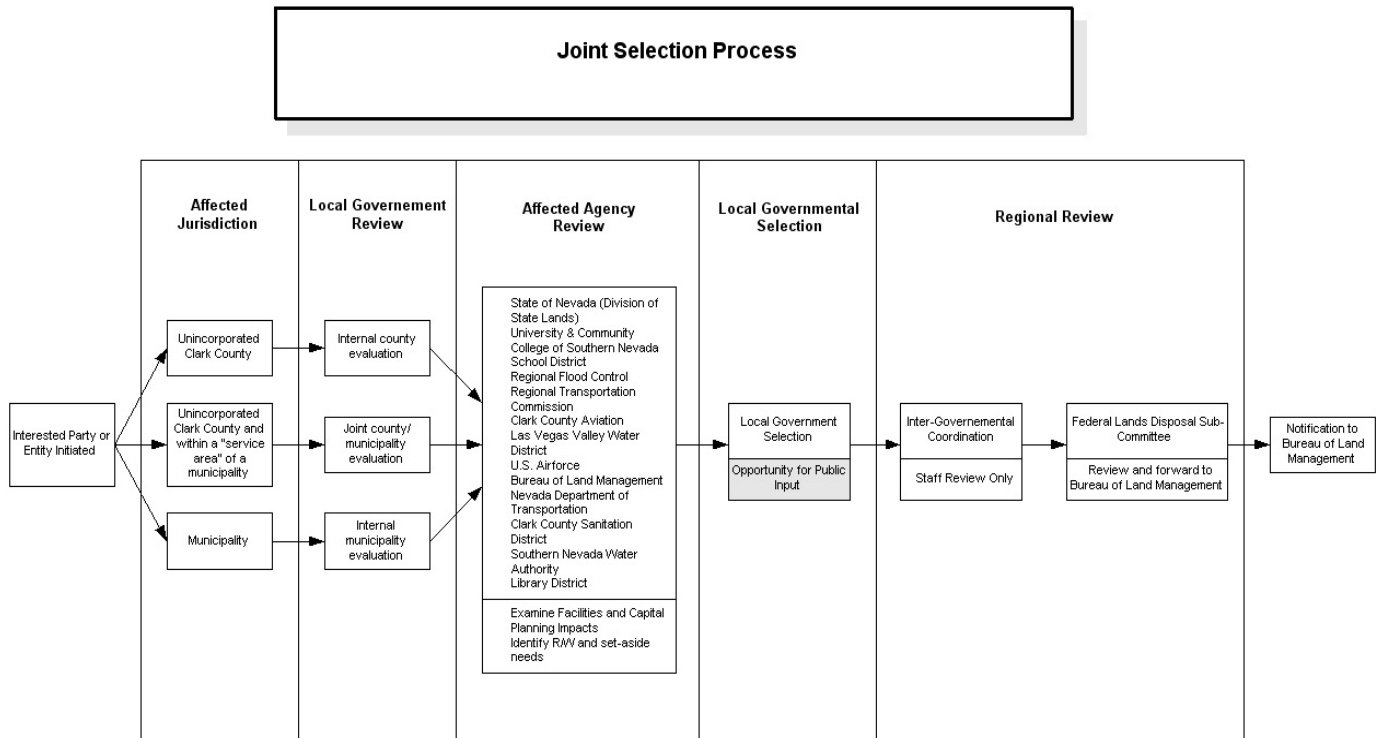
Any party interested in acquiring BLM land within the SNPLMA disposal boundary may nominate land for disposal to the affected local governmental entity. The interested party contacts Clark County or incorporated municipalities within Clark County with a description of the land they wish to have offered at a future competitive land auction. The affected local government conducts an internal review of the nominated parcels. In some instances, a joint County and municipality review will be conducted if the parcel is located within unincorporated Clark County but within the “service area” of a municipality. The review is intended to identify whether or not the nominated parcels have been reserved or need to be reserved by the local government for public purposes. In some cases, the review also determines whether or not the local governmental entity is prepared for development of the parcel at that time.

Following the internal review process, nominated parcels go through a “Joint Selection Process,” (*see Figure 2 below*) during which affected public agencies review the nominated lands for impacts on services, facilities and capital planning as well as to identify right of way and set-aside needs that would be associated with development of the parcels subsequent to sale. Following joint selection, local governments finalize their selection of lands to be offered for sale during a process which includes an opportunity for public input. A regional review then takes place which includes inter-governmental coordination and review at the staff level and a Federal Lands Disposal Sub-Committee prepares the final list for submittal to BLM. Local governments may submit nominations at any time to BLM of lands to be offered for sale but the BLM will determine the dates for sale of the lands by auction or other methods of sale.

The BLM will make the final determination on which lands can be offered for sale based on a review of cultural and threatened and endangered species regulations, existing prior rights, hazardous materials issues, etc. BLM will also make the final determination as to whether the lands will be offered as open competitive, modified competitive, or direct sale. BLM will make every effort to offer for sale all lands nominated by the local governments which meet the requirements for sale under SNPLMA and that can be legally disposed of according to Federal laws and regulations.

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FIGURE 2
JOINT SELECTION PROCESS FOR SALE PARCELS



V. PHASE I SNPLMA BUSINESS PROCESS: NOMINATION AND RECOMMENDATION PROCESS

The Nomination and Recommendation Process is the process for assembling a recommendation to the Secretary for expenditure of funds in the Special Account. This process includes the organizational entities described in Section III and provides several opportunities for Federal, state, local governmental entities, and other interested parties to participate. The start and end dates of the nomination period for each round is established by the EC. Project nominations must meet eligibility requirements in terms of both entity and location.

Nominated projects, regardless of category, are not guaranteed to be recommended or approved for funding. Consideration for recommendation to the Secretary will be given to nominated projects based on a combination of factors such as the ranking against the evaluation criteria; Federal managers' statements where required; SNPLMA priorities; the SNPLMA Strategic Plan; funding constraints; compliance with Departmental/Agency priorities and strategic goals, secretarial orders, and directives; and other information the EC deems appropriate.

A. Nomination Process

The nomination process consists of a call for nominations, publication of nomination package requirements for each category, and ranking criteria for each category, except MSHCP, on the SNPLMA website, submittal of nominations by eligible entities, and review and acceptance of the nominations by the SNPLMA Division.

1. Nomination Package Requirements By Round

Nomination package requirements are published each round as part of the call for nominations. The requirements can be grouped as follows:

- Eligibility Requirements for Location and Entity
- Nomination Limitations for the Round, if any
- General Formatting and Submittal Requirements
- Content Requirements
- Category-Specific Requirements
- Ranking Criteria Phrased as Assessment Questions

The nomination requirements may change from round to round and will be defined in the nomination package requirements published for each category during the call for nominations. The rules and requirements listed below apply to all categories and are intended to be permanent. They are significant and relate to other sections of this document relative to the principles of appropriations law so warrant inclusion in this document.

2. Eligible Entity Guidelines

Only eligible entities may nominate projects within a given category. During the nomination period, eligible entities prepare nomination packages according to the published nomination package requirements for submittal to the SNPLMA Division by the close of the nomination period. Eligible counties in the PTNA category may nominate projects for unincorporated municipalities and incorporated municipalities not named in the legislation that are within the county's jurisdictional area. Eligible entities remain responsible for carrying out all projects including management of project funds and demonstrated results. With the exception stated for the PTNA category, entities may not "sponsor" projects for other entities. Special considerations regarding these restrictions are discussed under the applicable categories in the nomination section below. The eligible entities for each project category are identified under the discussion of each category in paragraph 10 below.

3. Eligible Location Guidelines

Where an eligible location is identified in the legislation as a specific facility/area (e.g., projects "at the Lake Mead National Recreation Area"), the project must be conducted only on land that is officially part of that facility/area. Such facilities/areas may have internal boundary areas resulting from in-holdings which are either privately or publicly owned and not officially part of the facility/area. Eligible Federal agencies shall, if necessary, refer to originating legislation and amendments to determine whether facilities within eligible areas are located on land that is officially a part of the eligible area, or an in-holding. Eligible locations for each category are described within this Section in paragraph 10 below.

4. Non-Federal Nomination Coordination Guidelines

Nominations for non-Federal entity projects, regardless of category, must address whether or not the project will have an environmental effect or other impact on Federal lands and whether a Federal land-use authorization will be required. Prior to submitting a nomination, local and regional government entities and other non-Federal entities shall consult with BLM and other Federal agencies regarding impacts of proposed projects on Federal lands and any application approvals from the agency which will be required. All application approvals and requirements will be identified in the nomination package. A nomination package that fails to meet this Federal agency consultation requirement will be rejected.

5. Submittal Requirements

Nomination packages must meet all requirements identified in the applicable “nomination package requirements” as published on the SNPLMA website at the opening of each round and include all required documentation. Nominations for all categories must be submitted to the SNPLMA Division by close of business on the due date specified during each nomination round. Late packages will not be accepted.

The SNPLMA Division reviews the nomination packages for completeness. Time permitting, nominating entities will be notified regarding incomplete packages and given an opportunity to supply missing information, but packages that remain incomplete after such notification will not be accepted. All submitted nominations become the property of the BLM. Nominating entities will be notified if a nomination is rejected and the reason for the rejection, but rejected nominations will not be returned.

Nominations are required to include the project purpose and deliverables³³ as explained in this section in paragraphs 6 and 7, and include a timeframe for completion of the project (*see paragraph 9 below for standard project timeframes by category*), as required by the Secretary. Nominations that omit the purpose statement or deliverables, have incomplete purpose statements, or have a vague or indistinct purpose statement or deliverables, will not be accepted.

Project necessary expense estimate forms (*see Section VI.C.1.(b) and the IA Part Two, Appendix B for more information on necessary expenses and Appendix B-1 and B-2 for sample estimated necessary expense forms, and Appendix B-3 for examples of “other” necessary expenses*) and detailed budgets, when required, should take into account likely cost escalations between the time the project is nominated and when it would be implemented if approved.

6. Project Purpose Statement Requirement

Nominations are required to include a specific Purpose Statement in the form of a short paragraph replacing the previously required “Executive Summary.” The project purpose statement is extremely important in assessing whether or not expenditures meet the definition of necessary expenses and other requirements of appropriations law, whether or not a project modification request for a change in scope is allowed, and in determining when the project reaches completion.

- The Purpose Statement must be clear and follow a “who, what, where, why” format that specifically identifies the following: The eligible agency/entity that will carry out the project.
- The action to be taken (e.g., construction of a facility, park, or trail; reconstruction of picnic area “A;” restoration/stabilization of a historic structure; excavation of a cultural site; acquisition of land; protection of paleontological resources; conduct environmental awareness training for educators; etc.).
- The physical location where the project will be carried out. The statement must identify the specific facility, physical plant, or other physical location within a specified area managed by the agency/entity (“management area”) where the project will be carried out. The Capital Improvements and Parks, Trails, and Natural Areas categories are limited to one physical location within the specified management area.³⁴

³³ The requirements, definitions, and guidance on identifying the project purpose and deliverables in the nomination were approved by the EC in a decision memorandum on 8/1/2011 and went into force beginning with Round 13.

³⁴ Limiting just these two categories to “one location” was authorized by the EC in approving the nomination package requirements for Round 15. The change recognizes that the nature of other categories is such that the

- The outcome of the project (e.g., to improve visitor access, to protect specified natural resources, to stabilize a cultural resource, etc.).

Examples of purpose statements can be found in the IA Part Two, Appendix A. (*See Section VI.C.1. for the relationship of the purpose statement to appropriations law and Section XII.D. for more information on allowed changes to the scope of work of a project as defined by the purpose statement and deliverables.*)

7. Deliverables Requirement

After the purpose statement, the nomination must list the project deliverables categorized as Primary, Anticipated, or Standard as defined below. The purpose statement along with the deliverables identified to accomplish the purpose will determine project completion and acceptability of scope changes. The three types of deliverables are defined below (*see the IA Part Two, Appendix A for examples of each type of deliverable*):

- **Primary Deliverables:** Primary deliverables are those that must be completed in order to complete the project and accomplish the purpose. The nomination must identify any Primary Deliverables for which the final size, configuration, siting within the described location, or quantity will be impacted by studies such as final design, engineering studies, or public scoping, and identify those studies or reports that are expected to have an impact on these aspects of the Primary Deliverable.
- **Anticipated Deliverables:** Anticipated deliverables are those that are desirable and beneficial, but not minimally necessary to completion of the proposed project and project purpose. Their inclusion will be based on the results of final planning, design, cost estimates, public scoping, or other studies, analyses, or reports. The cost estimate for the project should include the cost of completing anticipated deliverables that are likely to be included unless the results of such studies, analyses, or reports determine that they should not be developed. The cost estimate should not include the cost of anticipated deliverables that are planned for inclusion only if sufficient funds remain after completing the primary deliverables.

All studies, reports, and analyses, including monitoring for altered conditions that may require inclusion of the anticipated deliverable, should be completed before the deliverable is designated for exclusion. For example, the initial survey for a CI project for mine closures may determine that bat gates are not needed. However monitoring throughout the project could reveal a new bat population in one of the caves so that bat gates would be needed. In this example, the anticipated deliverable for bat gates should not be excluded from the scope until all monitoring or other surveys that could determine bat gates are needed have been completed.

- **Standard Deliverables:** Standard deliverables are those actions/activities that are generally accepted by the agency/entity, and/or by industry standards as necessary to complete the aforementioned Primary and Anticipated deliverables. Standard Deliverables are not required to be identified in the purpose statement or elsewhere in the nomination, and may or may not be identified individually on the cost estimate form or in the detailed budget if one is required. Regardless of whether the standard deliverable is specifically identified, the cost of completing all Standard Deliverables must be accounted for in the amount requested for the project.

projects are often over more than one location (e.g., multiple non-contiguous parcels for a land acquisition, multiple areas for Hazardous Fuels projects; County-wide conservation initiatives, etc.).

Standard Deliverables are to be detailed as tasks or subtasks in the project work plan as they aid in tracking progress toward accomplishing the Primary and Anticipated Deliverables leading to project completion.

An opportunity is available in other sections of the nomination and through responses to the assessment questions to provide more detailed information and descriptions of project deliverables.

8. Performance Measures and Strategic Plan Values³⁵

Nominations in all categories must identify at least one of the SNPLMA Performance Measures that will be accomplished through the nominated project's "outcomes and outputs." (*See the IA Part Two, Appendix J-3 for a list of performance measures.*) In addition, the *SNPLMA Strategic Plan – FY2015 – FY2019* states that "Project nominations will include the following: a description of how the project contributes to one or more of the Strategic Plan values; reference to the relevant Strategic Plan Objectives/Sub-objectives; and a map to display how the project fits into the broader context relevant to the category." These requirements are outlined in more detail in the nomination package requirements for each category published at the beginning of the nomination period of each round.

9. Compliance with Departmental Priorities, Executive Orders, Secretarial Orders, and Directives³⁶

All partner nominations must describe which of the current Department of the Interior (DOI) priorities or United States Department of Agriculture (USDA) strategic goals and the Chief of the U.S. Forest Service priorities, secretarial orders (SO), and/or directives the nominated project addresses and how the nominated project will advance the priority, strategic goal, SO, or directive.

Federal project nominations will address either the applicable DOI priorities or the USDA strategic goals and the U.S. Forest Service priorities, SOs, and directives dependent upon which Department the nominating Federal agency is located within.

Non-federal partners will address the applicable DOI priorities and/or USDA strategic goals, U.S. Forest Service priorities, SOs, and directives in consideration of the location of the proposed project, Federal lands impacted by the proposed project, and those Departmental strategic goals, priorities, SOs and directives most closely aligned with the purpose of the project.

The current DOI priorities and USDA strategic goals and the U.S. Forest Service priorities, SOs and directives will be listed in the nomination package requirements published for each round of nominations. Inclusion of the required information on the Departmental strategic goals and priorities, SOs, or directives will be confirmed by the category subgroups in reviewing the nominations, but will not impact the scoring of the projects against the criteria for each category. However, along with consideration of project ranking, the PWG will consider the thoroughness of the information provided on the strategic goals and priorities, SOs, or directives as well as consistency of the information with the description of the project elsewhere in the nomination in making its final determination for inclusion of nominated projects in the Preliminary Recommendation for the round.

10. Standard Project Timeframes

The Secretary has directed that:

³⁵ The *SNPLMA Strategic Plan – FY2015 – FY2019* can be found on the SNPLMA website (www.blm.gov/snplma) under "Implementation." Note, however, that the updated SNPLMA Performance Measures are in the IA Part Two, Appendix J-3, not in the *SNPLMA Strategic Plan – FY2015 – FY2019*.

³⁶ The EC directed in its general meeting held in August 2018 that all project nominations must address the applicable Departmental priorities, executive and secretarial orders, and directives.

“Approved projects will be implemented within the timeframe specified in the project nomination, with appropriate time allocated for project startup and closeout as agreed upon in the work plan approved by the BLM. The Executive Committee will determine an appropriate process to approve exceptions to the timeframes specified in the nomination where special circumstances warrant a time extension. Such extension requests should be considered exceptions to the expected practice of timely implementation of projects and therefore limited in number and scope.”³⁷

To avoid confusion over how long a project will take from startup through implementation to completion and closeout, the timeframe identified in the nomination must include time needed for project startup and closeout. Therefore, all agencies and entities must plan to prepare and submit the project closeout package no later than the end date of the project timeframe as identified in the financial instrument that funds the project.³⁸ The only exception to this is projects that are funded through an Assistance Agreement which, by Federal regulation, are allowed 90 days beyond the end date of the agreement to submit all required closeout documentation. (*See Section XII.C. for circumstances under which the SNPLMA Division can approve a one-time 90-day extension for project closeout.*)

Below are expected maximum timeframes, including startup and closeout, for projects within the respective categories.³⁹ The scope of the project as described in the nomination should be written so as not to exceed the below timeframes, or when feasible anticipate completion in a shorter timeframe. If a proposed project needs to exceed these timeframes, the nomination should identify the appropriate timeframe and the special circumstances warranting a longer timeframe. In such cases, the EC maintains the authority to judge whether or not the longer timeframe is sufficiently justified to remain in the nomination.⁴⁰ For projects already approved, the agency/entity must submit a written request using the SNPLMA Project Modification Request Form (IA Part Two, Appendix L) to the appropriate SNPLMA Program Manager for processing through the decision memorandum process. (*See Section X for the process to request project modifications.*)

- Land Acquisitions: 3 years
- Parks, Trails, and Natural Areas: 5 years
- Capital Improvements: 5 years
- Multi Species Habitat Conservation Plan: 5 years
- Conservation Initiatives: 5 years
- Eastern Nevada Landscape Restoration Project: 4 years
- Hazardous Fuels Reduction and Wildfire Prevention: 6 years
- Lake Tahoe Restoration Act: 5 years for capital projects; 3 years for science projects; and 6 years for Hazardous Fuels projects.

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³⁷ See Round 11 and later Secretarial Decision Documents.

³⁸ The standard project timeframe or longer time frame approved in the nomination begins on the date that the initial financial instrument for the project is executed.

³⁹ Standard maximum timeframes added per decision memorandum approved by the EC on 8/1/2011.

⁴⁰ The EC's authority to authorize use of a longer timeframe in a nomination is addressed in a decision memorandum approved by the EC on 1/15/2014.

11. Nomination Guidelines By Category

(a) Nomination of High-Value Land Acquisitions – Multiple Categories⁴¹

The EC has indicated that it is important to have the flexibility to take advantage of high value land acquisition opportunities, especially those that are time sensitive or present a unique opportunity that could be lost forever if action is not taken. The EC will consider such opportunities when brought forward in a normal scheduled round of nominations, but also outside of the normal round process referred to as “off-cycle.” Nominations during the normal scheduled round are to follow all general and applicable category-specific requirements published for the round and direction provided within this Section V.A. “Nomination Process.” (See paragraph 12 below for the condensed process for off-cycle nomination of high-value lands.)

- **Definition:** Within the confines of the SNPLMA legislation, the EC defines “high value lands” as those that contribute to sustainability of the landscape and/or connectivity of habitat and migratory corridors for sensitive species, and those values that are at risk of being lost to development.
- **Eligibility:** High value land acquisitions can be nominated under three SNPLMA categories – Environmentally Sensitive Lands; Parks, Trails, and Natural Areas; and Multi-Species Habitat Conservation Plan – by those agencies/entities eligible to nominate projects within each category.
- **Funding Source:** If high value off-cycle land acquisitions are recommended by the EC, they will be sent to the Secretary with a request to approve allocation of funds from the SNPLMA Special Account, not from the current round’s SAR.

(b) Nomination for Acquisition of Environmentally Sensitive Land or Interests in Land

The BLM, NPS, FWS, BOR, and FS are the eligible entities that may receive funding for acquisition of environmentally sensitive lands and interests in land within the State of Nevada. Any eligible entity or other interested party may nominate land and/or interests in land (e.g., conservation easements, water rights) for acquisition provided the nomination includes a willing seller letter signed by the owner of record and a statement from the acquiring eligible agency accepting the nomination and agreeing to acquire and manage the land. The formats for the willing seller letter and agency statement are provided in the nomination package requirements.

Entities nominating environmentally sensitive lands for acquisition are required to provide advance notice to the affected local jurisdictions of their intent to nominate, including a description of the property as instructed in the nomination package requirements. This notification is meant to satisfy, in part, the consultation requirement in the SNPLMA, which states that:

“Before initiating efforts to acquire land...the Secretary [of the Interior] or the Secretary of Agriculture shall consult with the State of Nevada and with local governments within whose jurisdiction the lands are located, including appropriate planning and regulatory agencies, and with other interested persons, concerning the necessity of making the acquisition, the potential impacts on State and local government, and other appropriate aspects of the acquisition.”

⁴¹ This section is based on guidance and direction made by the EC in developing the *SNPLMA Strategic Plan FY2015-2019* and for Round 15 relative to consideration of high value land acquisitions. The eligible categories and the specific process steps for off-cycle nominations of such lands were approved by the EC in a decision memorandum signed on 2/24/2015.

For nominations originating with other interested parties, those parties are required to confer with the acquiring Federal agency far enough in advance of the nomination submittal date to allow that agency sufficient time to do the required site visit and confirm the presence of sensitive resources. Failure to confer with the agency at least 30 days prior to the submittal date for nominations can result in rejection of the nomination by the acquiring Federal agency at its sole discretion.

(c) Nomination of Capital Improvement Projects

Five Federal agencies--BLM, NPS, BOR, FWS, and FS--may submit nominations and receive funding for CIP projects. Projects must be at the Lake Mead National Recreation Area (NPS); the Great Basin National Park (NPS); the Desert National Wildlife Refuge [Complex] (FWS), the Red Rock Canyon National Conservation Area (BLM); the Spring Mountains National Recreation Area (FS); and other areas administered by the BLM and the FS in Clark, Lincoln, and White Pine Counties. Projects cannot be conducted on private or public in-holdings within the boundary of the eligible area that are not officially part of the eligible area. BOR is eligible for projects on land it manages within the Lake Mead National Recreation Area “except projects related to power generation or transmission.”⁴²

Eligible agencies may not exceed the 27 percent cap for “Planning, Environmental Compliance, and Preconstruction Engineering and Design” for Capital Improvement projects⁴³ unless pre-authorized by the EC in the nomination prior to Secretarial approval or pre-approved as a waiver of business rules by the EC. Retroactive authorization to exceed this cap is no longer allowed as a business rule waiver; agencies/entities that overspend in this area without pre-authorization or pre-approval to do so as described above are required to cover the amount over 27 percent with other non-SNPLMA funds. Therefore, if an entity anticipates the project being nominated may exceed the 27 percent cap on these expenses, the issue should be addressed in the nomination with a clear explanation of the factors expected to lead to exceeding the cap.⁴⁴

There are certain limitations on CIP project nominations:

- Nominated projects may not include maintenance or deferred maintenance as defined in the IA Part Two, Appendix Q because such costs are not covered by SNPLMA.⁴⁵ This rule does not prohibit nominating projects (1) where the facility has exceeded its useful life, does not meet current Federal accessibility standards, or deferred maintenance costs would exceed the cost of replacement or reconstruction or (2) where the planned use/visitation exceeds expectations necessitating replacement or reconstruction of the facility prior to expiration of its useful life.
- Project proposals intended to restore and stabilize a “cultural or historic property” as defined in the IA Part Two, Appendix Q in order to regain an original appearance and function or work necessary to maintain the asset in an “arrested state of decay” for interpretation and education of the public would be considered. However, a proposal for work to repurpose or repair a cultural or historic property for other uses would not be considered.⁴⁶
- The purpose of nominations should not be to correct critical health and safety issues. The EC determined that urgent health and/or safety issues are the responsibility of the managing entity,

⁴² BOR eligibility for capital improvements on land it manages at the Lake Mead National Recreation Area with the exception noted was approved by the EC on 9/28/2006 after consultation with BLM’s Regional Solicitor’s Office.

⁴³ See the IA Part Two, Appendix B. 1. “Necessary Expenses in General.”

⁴⁴ The revised rules regarding the 27 percent cap were approved by the EC in a 1/15/2014 decision memorandum.

⁴⁵ This rule and referenced definition regarding maintenance and deferred maintenance complies with a decision memorandum approved by the EC on 3/10/2016.

⁴⁶ This rule and the referenced definition regarding cultural or historic properties complies with a decision memorandum approved by the EC on 3/10/2016.

should be corrected in a timely fashion, and are not an appropriate expenditure of SNPLMA funds.⁴⁷

Prior to recommending a project nomination for approval to the EC, the SNPLMA Program Manager for Capital Improvements will:⁴⁸

- Meet with the project managers for proposed projects in order to discuss the proposed nomination and clarify what is expected if the project is approved.
- Visit the site of the proposed project with the project manager to verify the exact location of the project.

(d) Nomination of Park Trail and Natural Area Projects and Land Acquisition for PTNA Projects

Nominating PTNA Projects

PTNA projects can be nominated by the local governments of Clark County, the City of Las Vegas, the City of North Las Vegas, the City of Henderson, Lincoln County, White Pine County, and Carson City (with limitations).⁴⁹ PTNA projects may also be nominated by three regional government entities – the Southern Nevada Water Authority, the Regional Flood Control District, and the Clark County Water Reclamation District (formerly referred to as the Clark County Sanitation District) -- within one of the eligible jurisdictions. Funding for PTNA projects must be pursuant to a cooperative agreement (i.e., Assistance Agreement) between the eligible entity and the BLM as required in the SNPLMA.

Carson City is eligible to nominate PTNA projects within the Carson City boundary. However, Carson City nominations for land or interests in land to be acquired for PTNA projects must also be adjacent to the Carson River or within the 100-year Federal Emergency Management Agency (FEMA) floodplain of the Carson River.⁵⁰

PTNA projects for all eligible entities are subject to the following location eligibility requirements (in addition to the legislated limitations for Carson City):

- PTNA projects must be within the jurisdiction of the eligible nominating entity – Clark, Lincoln, and White Pine Counties, and Carson City (with limitations).
- The eligible entity must own or, in certain cases, legally control (e.g., access easement, encroachment easement, right-of-way for a trail alignment, R&PP lease, etc.) the land on which the PTNA project is proposed for construction.
- Eligible entities may not nominate PTNA projects on land owned and controlled by the State of Nevada. Projects proposed on land within the eligible jurisdiction that is leased from the State of Nevada may be eligible providing the lease is a long-term instrument that provides adequate rights and control over the land on which the project would be constructed. Any such proposal

⁴⁷ This rule follows the 3/10/2016 EC decision memorandum which stated that “urgent health and/or safety issues are the responsibility of the managing entity, should be corrected in a timely fashion, and are not an appropriate expenditure of SNPLMA funds.” This rule applies to all categories, though such issues are more likely to arise in proposed projects with a construction component.

⁴⁸ The two listed requirements are consistent with direction from the EC in its meeting on 9/2-3/2015, and an EC decision memorandum approved on 9/16/2015.

⁴⁹ Washoe County, Nevada was deleted as an eligible entity in the 2018 version of the IA because the County’s eligibility expired on December 31, 2015.

⁵⁰ Guidance from the DOI Solicitor on 8/24/2009 provided clarification on Carson City’s eligibility under the PTNA category.

must include a full explanation of the lease terms and conditions and will be evaluated on a case-by-case basis before the nomination is accepted.

- Eligible entities may not nominate projects on land owned by private entities unless the private entity has or will grant a permanent easement which will provide control of the land to the eligible entity.
- Projects may be nominated on entity-owned land leased to the State of Nevada or other not-for-profit/non-profit entities for management purposes so long as the following criteria are met: (a) the local/regional governmental entity maintains full title and ownership of the land on which the project will be constructed; (b) the local/regional governmental entity will maintain ownership of the facilities constructed using SNPLMA funds, and (c) the local/regional governmental entity maintains ultimate responsibility to ensure proper maintenance and operation of SNPLMA funded projects/facilities.
- Projects may be nominated on Federal lands if controlled by the eligible entity through a R&PP lease, right-of-way, use permit, or easement provided the proposed use is consistent with the purpose of the R&PP lease, right-of-way, or easement. Projects which will require a Federal right of way, easement, or R&PP lease for all or a portion of the project must have coordinated with the appropriate Federal agency and be assured by the agency that there are no issues which would prevent the easement or right-of-way authorization from being granted or a R&PP lease from being issued.

There are additional limitations and rules regarding PTNA project proposals:

- *Limitation on construction of buildings:* The PTNA category is inherently intended to fund outdoor projects aimed at accomplishing the strategic goals outlined in the IA Part Two, Appendix E. The PTNA category is not intended to fund capital improvement-type projects where the primary goal of the nomination is construction, renovation, or expansion of buildings (e.g., museums, schools, office or administrative buildings, theaters, auditoriums, etc.). However, funding may be provided for PTNA projects which, due to the nature of the project, require incidental building construction (e.g., restrooms, maintenance sheds, group picnic shelters, shade structures, small visitor greeting areas, etc.). In addition, funding may be provided, in whole or in part, for PTNA projects which include, or where the primary purpose is, more significant building construction, such as a visitor center with nature displays tied to the park's theme, when the proposed building is deemed an integral part of a larger PTNA project and critical to accomplishing the purpose of that larger project. Funding for such construction will generally be limited to indoor public areas and displays vs. office space or space for commercial enterprises such as gift shops or snack bars.
- *Limitation on the construction of roads:* Project proposals that include the development of primary streets are not eligible for funding within the PTNA category. Minor connections to project parking lots, required half-street improvements adjacent to a park boundary, and internal roads are permissible if the development is minimal in nature and required for immediate access within the project site. However, these improvement(s) must meet the following criteria:
 - Improvements must remain within the immediate boundaries of or be directly adjacent to a park or trailhead project.
 - The improvement must be a secondary element of a larger PTNA project nomination that is minor relative to the nature and size of the project as a whole; stand-alone road improvement projects are not permissible.
 - The road improvement must be detailed as a deliverable in the project nomination package.

- Development of required half-street improvements shall not exceed 10 percent of the total project nomination budget.
- *Limitation on “cultural or historic” properties:* PTNA project proposals that include work to restore and stabilize a “cultural or historic property” as defined in Part Two, Appendix Q would be considered. However, a proposal may not include work to repurpose or repair a cultural or historic property for other uses.⁵¹
- The purpose of nominations should not be to correct critical health and safety issues. The EC determined that urgent health and/or safety issues are the responsibility of the managing entity, should be corrected in a timely fashion, and are not an appropriate expenditure of SNPLMA funds.⁵²
- Nominated projects may not include routine maintenance or deferred maintenance as defined in Part Two, Appendix Q because these costs are not covered by SNPLMA.⁵³ This rule does not prohibit nominating projects (1) where the facility has exceeded its useful life, does not meet current Americans with Disability Act accessibility standards, or deferred maintenance costs would exceed the cost of replacement or reconstruction or (2) where the planned use/visitation exceeds expectations necessitating replacement or reconstruction of the facility prior to expiration of its useful life and increased deferred maintenance costs exceed the cost of replacement or reconstruction.

Partners may not exceed the 27 percent cap for “Planning, Environmental Compliance, and Preconstruction Engineering and Design” for PTNA projects,⁵⁴ unless pre-authorized by the EC in the nomination prior to Secretarial approval or pre-approved as a waiver of business rules by the EC. Therefore, if an entity anticipates the project being nominated may exceed the 27 percent cap on these expenses, the issue should be addressed in the nomination with a clear explanation of the factors expected to lead to exceeding the cap. Retroactive authorizations to exceed this cap are no longer allowed as a business rule waiver; agencies/entities that overspend in this area without pre-authorization or pre-approval to do so are required to cover the amount over 27 percent with other non-SNPLMA funds.⁵⁵

Nominating Land Acquisitions for Development of PTNA Projects

Those entities named above as eligible to nominate PTNA projects may also nominate acquisition of lands or rights in land, including easements or rights of way, necessary to develop parks, trails, and natural areas.⁵⁶ Certain rules apply to such nominations:

- The nominated lands must be within the jurisdiction of the eligible nominating entity. As stated above nominations for PTNA land acquisitions by Carson City are limited in that the nominated land must also be adjacent to the Carson River or within the Carson River 100-year FEMA floodplain.
- The nomination must include an “owner’s statement” indicating that the owner is a willing seller.

⁵¹ This rule and the referenced definitions regarding cultural and historic properties comply with a decision memorandum approved by the EC on 3/10/2016.

⁵² This rule regarding urgent health and safety issues complies with the 3/10/2016 EC decision memorandum.

⁵³ This rule and referenced definition regarding maintenance and deferred maintenance comply with a decision memorandum approved by the EC on 3/10/2016.

⁵⁴ See the IA, Part Two, Appendix B. 1. “Necessary Expenses in General.”

⁵⁵ These restrictions regarding the 27 percent cap comply with the EC decision memorandum approved on 1/15/2014.

⁵⁶ See Sections V.A.10(a) and V.A.12 for information on nominating high-value land acquisitions under the PTNA category.

- The approved project or intended new project for which the land is to be acquired must be identified in the nomination.
- If the land is for a new project not yet approved, the entity must provide sufficient information within the nomination on the nature and scope of the new project to justify the need for the land acquisition.
- Nomination package requirements for each round will include other specific requirements for nominating lands and interests in land for current or future PTNA projects.⁵⁷

If the land acquisition is approved by the Secretary for development of a new PTNA project, the entity must either follow-up with a nomination for the new project described in the approved land acquisition nomination, or provide evidence that the project was funded and constructed using another funding source(s).

(e) Nomination of MSHCP Projects

The Clark County DCP, and four Federal land management agencies (BLM, NPS, FWS, and FS) are eligible for funding for MSHCP development and implementation projects within Clark County. Only these eligible entities may submit nominations in this category.⁵⁸ Clark County DCP may accept project proposals from other entities, but, in these cases, Clark County remains the official nominating entity and eligible recipient for approved funds.

Nominations submitted by the DCP for the MSHCP category will have added to them a statement by the applicable Federal manager(s) regarding the impact of the proposed project, if any, on Federal lands.⁵⁹

As explained in Section III.I.3(c), the MSHCP category does not use the same subgroup process used by other categories to review, score, rank, and recommend projects for funding to the PWG. Rather, project proposals go through a Clark County review and evaluation process and are approved for submittal as SNPLMA nominations by the Clark County BCC.

Clark County may purchase lands or rights in land for purposes consistent with implementation of the CC-MSHCP. Nominations for purchase of land under the MSHCP category must identify the specific purpose of the land acquisition as it relates to implementation of the CC-MSHCP. The nomination must include an “owner’s statement” indicating that the owner is a willing seller and must provide basic property information as outlined in the PTNA nomination package requirements regarding land acquisitions. In general, the acquisition process under MSHCP category must follow the requirements outlined for the PTNA category land acquisitions in Section XIII.B.4.⁶⁰

(f) Nomination of Conservation Initiative Projects

BLM, NPS, FWS, FS and BOR are the eligible entities to nominate projects and receive funding for CI projects. CI projects must be on Federal land administered by the DOI and Department of Agriculture in

⁵⁷ See Section XIII.B.4 for specific requirements relative to implementation of PTNA projects to acquire land and/or interests in land for development of PTNA projects.

⁵⁸ To date none of the Federal agencies have submitted nominations under the MSHCP category.

⁵⁹ This MSHCP consultation process is similar to the required PTNA consultation between local governments and Federal agencies and submittal of a letter by the applicable Federal agency addressing any impacts to Federal lands for inclusion in PTNA project nominations.

⁶⁰ Through Round 17, no land acquisition has been nominated under the MSHCP category. Off-cycle high-value land acquisitions may also be nominated under the MSHCP category (see Sections V.A.11(a) and V.A.13).

Clark, Lincoln, and White Pine Counties and Carson City (limited to lands within the Carson City boundary and within the 100-year FEMA flood plain of the Carson River).⁶¹

Nominations for conservation initiative projects are required to discuss the methods and techniques the agency(ies) plan to use to disseminate the results of the proposed project including survey results, educational and research formats, data, processes, etc., to other Federal and non-Federal entities within Nevada and elsewhere.⁶²

(g) Nomination of Hazardous Fuels Reduction and Wildfire Prevention Projects

Hazardous Fuels projects may be nominated by entities that are signatories to those plans for projects on lands in the Lake Tahoe Basin; the Carson Range in Douglas County, Washoe County, and Carson City in Nevada; and the Spring Mountains in Nevada. The eligible entities are:

Lake Tahoe Basin Eligible Entities

- FS Lake Tahoe Basin Management Unit
- Tahoe Regional Planning Agency
- Nevada Resource Conservation District
- Nevada Division of State Parks
- Nevada Division of Forestry
- Nevada Division of State Lands
- California Department of Forestry and Fire Protection
- California Tahoe Conservancy
- California State Parks
- North Tahoe Fire Protection District
- North Lake Tahoe Fire Protection District
- Tahoe-Douglas Fire Protection District
- Lake Valley Fire Protection District
- Meeks Bay Fire Protection District
- South Lake Tahoe Fire Department
- Fallen Leaf Fire Department

Carson Range Eligible Entities

- FS Humboldt-Toiyabe National Forest
- Nevada Division of Forestry
- Nevada Division of State Lands
- Nevada Division of State Parks
- Nevada Network of Fire Adapted Communities
- Carson City – Parks and Recreation, Open Space
- Carson City Fire Department

⁶¹ Guidance from the DOI Solicitor dated 8/24/2006 provided clarification on Carson City's eligibility under Conservation Initiatives.

⁶² The requirement to discuss dissemination of project results in the nomination was initiated with Round 8.

- Washoe County, Nevada
- Washoe Tribe Environmental Protection Department
- Truckee Meadows Fire Protection District
- Tahoe-Douglas Fire Protection District
- The Nature Conservancy
- University of Nevada Cooperative Extension
- Nevada Prescribed Fire Alliance

Spring Mountains Range Eligible Entities

- FS Humboldt-Toiyabe National Forest
- BLM Southern Nevada District Office
- Nevada Division of Forestry
- Nevada Division of State Lands
- Nevada Division of State Parks
- Clark County Fire Department
- Nye County Fire Department
- Pahrump Valley Fire Department

Projects in this category are to provide funding for development and implementation of comprehensive, cost-effective, multijurisdictional hazardous fuels reduction and wildfire prevention plans of not more than 10 years in duration (including sustainable biomass and biofuels energy development and production activities) for the eligible areas. Projects for the Lake Tahoe Basin are to be developed in conjunction with the TRPA. Hazardous Fuels projects may include project level planning, fuels reduction treatment activities, biomass utilization, and biofuels energy development and production activities.

(h) Nomination of Eastern Nevada Landscape Restoration Projects

Federal agencies of the Departments of the Interior and Agriculture may nominate Great Basin restoration initiatives in White Pine and Lincoln Counties, Nevada, in order to carry out ENLRP.⁶³ In carrying out ENLRP, the Secretaries of the Interior and Agriculture may make grants, and the Director of the BLM and the Chief of the FS may enter into an agreement, with the Eastern Nevada Landscape Coalition, Great Basin Institute, and other entities for certain restoration actions.⁶⁴ Through these agreements and grants, the Secretaries may use SNPLMA funding for restoration projects on non-Federal lands within White Pine and Lincoln Counties, Nevada.

The FS, BLM, and Ely Shoshone Tribe may carry out eligible ENLRP projects on Ely Shoshone Trust Lands that are beneficial to the tribe and the FS or the BLM. The FS and BLM will consult and coordinate with the Tribe on any proposed ENLRP project on trust lands.

(i) Nomination of Lake Tahoe Restoration Act Projects

The authorized amount of \$300,000,000 from SNPLMA for allocation to Lake Tahoe Restoration Projects was allocated to projects approved by the Secretary between Rounds 5 and 12 of SNPLMA. Funds authorized for primary projects which are not needed to complete the project may be

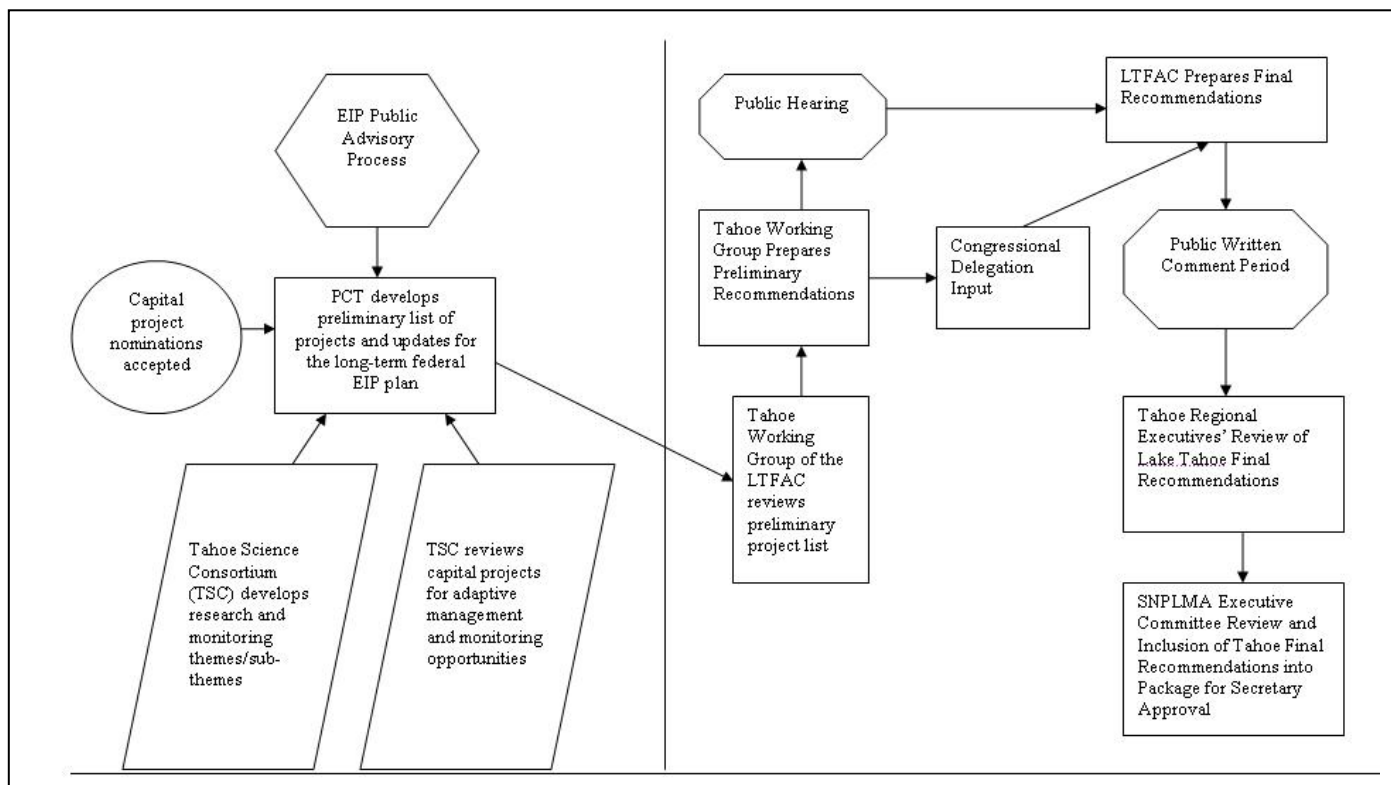
⁶³ The EC approved identifying eligibility for ENLRP to be consistent with the language in the White Pine Act of 2006 (P.L. 109-432, Division C, Title III) in its meeting on 8/6/2014.

⁶⁴ More detail on the allowed grants and agreements under ENLRP can be found in Part Two, Appendix I.

reprogrammed to fund cost overruns in other approved projects or to fund any project on a list of secondary projects approved for funding.

Although not all approved projects are complete, there is a potential for future nominations of primary or secondary projects to be recommended in order to utilize funds no longer needed for the previously approved projects. Such nominations are not expected on a regular basis, but may occur until the full authorized amount has been expended. In the event that new projects are recommended that would require approval by the Secretary before funds can be reprogrammed, the nomination and approval process illustrated in Figure 3 below will be utilized.⁶⁵

FIGURE 3: Lake Tahoe SNPLMA Project Recommendation Flow Chart⁶⁶



12. Ranking Nominations

Complete packages accepted for all project categories (except MSHCP) are forwarded to the respective subgroups for review and ranking utilizing the applicable ranking criteria. *(See Section V.A.9. for subgroup responsibility regarding nomination compliance with departmental/agency priorities and strategic goals, secretarial orders, and directives.)* The subgroup for each project category (except MSHCP) reviews, scores, and ranks nominations against the funding criteria approved by the EC for the round.⁶⁷ The subgroups each submit the rankings and a funding recommendation to the PWG. The

⁶⁵ Three new secondary projects were approved by the Secretary as part of Round 15.

⁶⁶ A detailed narrative description of the process can be found in the October 2007 version of the IA.

⁶⁷ The applicable criteria for each category are posted on the SNPLMA website during the call for nominations for each round as “assessment questions” in the nomination requirements package for each category. The EC approved

recommendation shall include all projects regardless of ranking but may be separated into a list of projects recommended for funding and a separate list of any projects, along with the rationale, which are not being recommended for funding.

Subgroup members are not allowed to score or vote on whether or not to recommend projects submitted by their own agency or entity.⁶⁸ However, once a full recommendation package is developed, all members may vote on whether to recommend the full package to the PWG.

The MSHCP category does not utilize a subgroup to rank project proposals. Section III.I.3(c) explains the MSHCP process for reviewing and recommending projects to the PWG for consideration for inclusion in the Preliminary Recommendation for the round.

13. Off-Cycle Nomination Process for High-Value Land Acquisitions⁶⁹

The nomination and review process for off-cycle high value land acquisition proposals will include all the steps in a normal round, but in a highly condensed manner. The off-cycle process is described below.

- **Nomination Package**

- (a) The nominating agency/entity will submit a complete nomination package based on the nomination requirements for the most recent round of nominations.
- (b) The nomination will include a cover letter describing the special circumstances that warrant consideration outside of the standard round process.
- (c) For environmentally sensitive lands the nomination package must also include any items which the standard round process may have allowed to be submitted separately. For example, in some prior rounds the items below were submitted separately:
 - i. Preliminary title report and exception documents,
 - ii. Acquiring agency statement accepting the nomination, and
 - iii. Estimated Necessary Expense form.

- **SNPLMA Review:** The SNPLMA Division will review the nomination package within 14 calendar days and notify the agency/entity if additional information is needed.

- **Subgroup Review and Scoring**

- (a) The SNPLMA Division will send the nomination package to the pertinent subgroup (Environmentally Sensitive Land Acquisitions or Parks, Trails, and Natural Areas) and request that the members score the project based on current ranking criteria for the category within 14 calendar days.
- (b) The Multi-Species Habitat Conservation Plan category does not currently have a subgroup process, so those off-cycle high value land nominations will be forwarded to the PWG.

no longer publishing ranking criteria in the IA at its July 2012 meeting for Round 13 because the criteria are frequently modified to be more effective and reflective of the category goals based on lessons learned in each round.

⁶⁸ The rule that subgroup members cannot score or vote on their own project was approved by the EC in a decision memorandum signed on 1/15/2014.

⁶⁹ The process for off-cycle nomination of high-value land acquisitions was approved by the EC in a decision memorandum signed on 2/24/2015.

- **PWG Review and Recommendation**

- (a) The nomination package and the compilation of the ranking criteria will be sent by the SNPLMA Division to the PWG.
 - (b) The PWG will make a funding recommendation within 14 calendar days.

- **Public Comment Period:** The result of said funding recommendation will be distributed to the public, via a press release and posting on the SNPLMA website for a comment period of 30 calendar days.

- **EC Review and Recommendation**

- (a) The result of the PWG funding recommendation and public comment(s) will be forwarded to the EC by the SNPLMA Division.
 - (b) The EC will develop its final recommendation for funding of the project within 14 calendar days.

- **Secretarial Review and Approval**

- (a) If the EC's decision is to recommend funding the project, the SNPLMA Division will prepare a recommendation package within 30 calendar days and forward it to the BLM Washington Office for vetting, consultation with the U.S. Department of Agriculture, and submittal to the Secretary of the DOI.
 - (b) If the project is not recommended for funding by the EC, the partner will be notified in writing by the SNPLMA Division within 7 calendar days of the EC decision.

B. Assembling SNPLMA Preliminary Recommendation Package

The PWG will review the subgroups' recommendations and rationale during the development of the Preliminary Recommendation package for the EC that includes, but is not limited to: (1) a budget for the round including total project funding by category and special account reserve funding, if any, and (2) a recommendation for a prioritized list of projects to be funded in each category. The Preliminary Recommendation may divide each project category into those projects which are recommended for funding, those recommended with certain conditions, those not recommended, and those which are deemed not to qualify under a given category. *(See Section V.A.9. for the PWG's responsibility regarding nomination compliance with departmental/agency priorities and strategic goals, secretarial orders, and directives.)* Project nominations that are withdrawn, for whatever reason, by the nominating entity prior to development of the Preliminary Recommendation Package will not be addressed in the recommendation package or forwarded to the EC.

PWG members are not allowed to vote on whether or not to recommend projects submitted by their own agency or entity for inclusion in the round's Preliminary Recommendation.⁷⁰ However, once a full Preliminary Recommendation package is developed, all members may vote on whether to recommend the package as a whole to the EC.

C. Public Review of the SNPLMA Preliminary Recommendation Package

A consolidated Acrobat Portable Document Format (.pdf) of the complete nominations in each category as well as the Preliminary Recommendation developed by the PWG will be made available on the SNPLMA website for review during a 30- to 60-day comment period to obtain comments from interested

⁷⁰ The rule that PWG members cannot vote on whether to include their own agency's/entity's project in the Preliminary Recommendation was approved by the EC in a decision memorandum signed on 1/15/2014.

parties, from local and State government entities, and from the general public on the Preliminary Recommendation. Electronic .pdf copies of the nominations and Preliminary Recommendation will also be provided on a flash drive to the BLM NSO and the each BLM District having a nomination in the round for review by interested parties in the respective public rooms. In addition, whenever possible, the BLM will participate in at least one RAC open meeting during the public comment period in order to receive public comments in an open meeting forum. The public comment period is meant to satisfy, in part, the requirement in the Act that:

“The Secretary [of the Interior] shall coordinate the use of the special account [SNPLMA Special Account] with the Secretary of Agriculture, the State of Nevada, local governments, and other interested persons, to ensure accountability and demonstrated results.”

D. Development of SNPLMA Final Recommendation

The EC considers the recommendations of the PWG and the comments received up through the end of the public comment period and assembles a SNPLMA Final Recommendation for the round. In developing the Final Recommendation, the EC has the authority to make changes from what was included in the Preliminary Recommendation such as altering the priority order, adding or deleting nominated projects based on information and circumstances not reflected in the funding criteria, and adjusting funding recommendations.

The Final Recommendation specifies a budget for the round that will include total project funding by category and a prioritized list of projects recommended for funding by category. The Final Recommendation may also include an amount for a SAR for the round and a contingency amount for one or more categories. (*See Section VII.E. for the purpose, policies, and rules for use of contingency funds.*) In addition, the Final Recommendation may include any special line-item funding requests.

The Final Recommendation is transmitted to the Secretary through the Office of the BLM Director. The Final Recommendation is transmitted to the Secretary of Agriculture by the FS member on the EC and consultation occurs directly between the two Secretaries' offices.

The Final Recommendation will not be posted on the SNPLMA website or otherwise made available to the general public because it is subject to change by the Secretary of the Interior who has the ultimate authority to make all decisions regarding expenditure of funds from the Special Account. Following the Secretary's decision on the recommendation, the signed decision document and list of approved projects will be posted on the SNPLMA website.⁷¹

E. Nomination Rewrites Reflecting Changes During the Recommendation Process

Changes made to a nomination following the subgroup or PWG review process will be summarized by the SNPLMA Program manager in a brief separate document explaining what was changed (e.g., deliverables, scope, phase to complete, funding requested) that will accompany the original nomination. Following a decision by the EC to recommend such projects to the Secretary for approval, the nominations will be rewritten by the nominating entity to incorporate the identified changes made throughout the review and recommendation process. The rewritten nominations must be initialed by an authorized officer of the nominating entity to signify concurrence with the changes. Copies of the

⁷¹ Once a round is approved by the Secretary, the Preliminary Recommendation and project nominations are removed from the website. Requests for copies of nominations following Secretary approval should be made to the SNPLMA Division Program Manager.

rewritten nominations should be placed in the nomination binders and/or electronic copies provided to the PWG and EC and maintained in the Program Manager’s binder.⁷²

F. Secretarial Review and Approval

The Secretary, in consultation with the Secretary of Agriculture, makes the final decision regarding expenditures under the SNPLMA and has the authority to make any changes to the final recommendation. The Secretary’s decision consists of a list, in priority order, of projects for each category of allowable expenditures and a budget figure for each category under each Act. The decision may also include line item approvals for project funding, contingency amounts, or provide direction for implementation of approved projects.

VI. PHASE 2 SNPLMA BUSINESS PROCESS--FUNDING: PRINCIPLES OF APPROPRIATIONS LAW AND APPLICATION TO SNPLMA

A. 2005 Solicitor’s Opinion Regarding Interpretation of SNPLMA

The DOI, Office of the Solicitor, Division of General Law, provided a formal written memorandum on implementation of the SNPLMA dated February 25, 2005, (“Solicitor’s opinion”)⁷³ which concluded that funds placed in the SNPLMA Special Account “constitute appropriated funds” and that the rules (i.e., principles) governing expenditure of appropriated funds govern expenditures from the Special Account.⁷⁴ The Solicitor’s opinion focused on the “necessary expense doctrine” relative to the purpose of the appropriation and amount available, stating that all necessary expenses are eligible for reimbursement/ payment, regardless of whether they are direct or indirect costs. The Solicitor’s opinion also upheld the authority of the SNPLMA EC to determine which necessary expenses are “permissible” for payment from the SNPLMA Special Account. The EC has authorized certain specific necessary expenses and certain categories of “Other Necessary Expenses.” *(See paragraph C.1.(a) below for more information on the necessary expense doctrine and rules for its application to SNPLMA projects and IA Part Two, Appendix B for information on certain types of necessary expenses as they relate to SNPLMA.)*

The Solicitor’s opinion also advised that SNPLMA does not authorize “advance payments” or include a general authority to utilize reimbursement of funds, but reimbursement may be utilized under the Economy Act if applicable. *(See Section VIII.C. for information on funding through reimbursable agreements.)*

As recommended in the Solicitor’s opinion, funding procedures have been revised to provide for payment of necessary project expenses without requiring use of a reimbursement mechanism whenever possible and to provide that “payments for approved projects should be made at logical stages in the life of a project while it is being implemented.” *(See Sections VIII, A., B., and D. for information on the funding processes in place in addition to funding through reimbursement.)*

⁷² The requirement and timeline for nomination rewrites was approved by the EC in a decision memorandum on 9/8/2009.

⁷³ The 2005 Solicitor’s memorandum serves as guidance to the BLM for implementation of SNPLMA, but does not carry the same binding authority as an “M” opinion which has the force of Federal regulations. BLM has accepted the guidance and has implemented it through revisions to this Implementation Agreement.

⁷⁴ Revision to the section on the Solicitor’s opinion to add the information on principles of appropriations law and their application to SNPLMA projects for consistency with the Solicitor’s guidance and direction was approved by the EC in two decision memorandums. The first approved on 9/3/2010 addressed appropriated funds relative to the principle of time and the requirement to have a valid (i.e., executed, not expired) funding instrument for reimbursement or payment of project necessary expenses. The second approved on 8/1/2011 addressed expenditure of appropriated funds and appropriations law in a more comprehensive manner and included rules regarding expenditures associated with scope change modifications.

B. Application of Appropriations Law to SNPLMA

Through the passage of the SNPLMA, Congress made the SNPLMA Special Account funds available to the Secretary “without further appropriation” for the purposes described in the legislation (i.e., the various project categories and other purposes), and specifically stated that the amounts in the Special Account would “remain available [to the Secretary] until expended.” These statutory parameters provide the appropriation law principles of purpose, time, and amount that control the Secretary’s use of SNPLMA’s Special Account. The legal sideboards that set the boundaries for compliance with these principles have been adopted by the SNPLMA program as the sideboards to confirm compliance with Secretarial decisions authorizing expenditures. Thus, by selecting which projects to fund, the Secretary is in essence designating an amount from the Special Account to carry out the specific purpose of each approved project over the time period identified in the nomination.

- When the Secretary exercises his/her authority by approving funding for a project, the Secretary’s approval establishes the purpose of the project as defined in the nomination as the purpose for which the designated amount of appropriated funds from the Special Account can be spent.
- For an expenditure of the appropriated SNPLMA project funds to be in compliance with the SNPLMA program, the expenditures must be in compliance with the amount, purpose, and time described in the project nomination that is approved by the Secretary, and the period of performance in the financial instrument, including any approved extensions.

The discussion below highlights the principles of appropriations law that are binding on the Secretary and, if not directly applicable to project proponents, serve as clear guidelines for considering SNPLMA implementation and compliance issues.

C. Defining the Three Principles of Appropriations Law

The *Principles of Federal Appropriations Law* produced by the United States Government Accountability Office (GAO), Office of the General Counsel (the “Red Book”) provides detailed explanations, guidance, and examples regarding the three principles of appropriation law that determine whether appropriated funds are legally available for obligation and expenditure. These are purpose, time, and amount.⁷⁵ (*See the IA Part Two, Appendix K for detailed explanations, examples and citations from the Red Book illustrating the application of the Principles of Appropriations to SNPLMA.*)

- Principle of Purpose: “Appropriations may be used only for their intended purposes. 31 U.S.C. § 1301(a) (‘purpose statute’).” Relates to determination of expenses as necessary and to requests for project scope modifications.
- Principle of Time: “Appropriations made for a definite period of time may be used only for expenses properly incurred during that time. 31 U.S.C. § 1502(a) (“*bona fide* needs” statute). This principle relates to the period of performance for a project, the validity period of funding instruments, and expenditure of project funds within the valid period of performance.
- Principle of Amount: “Agencies may not spend, or commit themselves to spend, in advance of or in excess of appropriations. 31 U.S.C. § 1341 (Antideficiency Act).” This principle relates to the total amount available for a project and expenditure of that amount, and to necessary expenses.⁷⁶

⁷⁵ Principles of Federal Appropriations Law, Government Accountability Office, 3rd Edition, Vol. I, pg. 4-6.

⁷⁶ Principles of Federal Appropriations Law, Government Accountability Office, 3rd Edition, Vol. I, pg. 1-12.

Many SNPLMA business rules, requirements, and processes throughout various sections of the IA are tied to the three appropriations law principles.

In addition to appropriations law, the use of project funds must also comply with applicable provisions of the OMB regulations regarding grants and cooperative agreements,⁷⁷ and is also conditioned by Federal acquisition regulations requiring that funds be expended only for obligations incurred during the period of performance specified in the financial instrument between “buyer” and “seller” (inter-/intra-agency agreements, assistance agreements, task orders, transfer authorization letter).⁷⁸ That is, the relevant financial instrument must be valid for the recipient agency to incur any new expenditures or obligations whether for supplies and materials, labor or new contracts. (*See Section VII on funding requirements, particularly VII.C.*)

1. Principle of Purpose -- “The Purpose Statute”

The purpose for which the Secretary allocates appropriated funds from the Special Account cannot be changed by the recipients or the EC without appropriate approval (i.e., by the Secretary). Therefore, understanding and adhering to the purpose statute and its nuances is critical in considering how project funds can be expended and in determining whether or not scope changes requested by the recipients are allowable.

(a) Rules for Use of Appropriated Funds

The Red Book provides rules for application of the purpose statute to the use of appropriated funds.⁷⁹ When relating the purpose statute rules to SNPLMA, the following apply:

- Use of funds inconsistent with the purpose for which they were approved by the Secretary is improper even if it results in a cost savings or other benefits to the agency/entity.
- The “common meaning” of the words used to describe the purpose of the project is to be used in interpreting whether an expenditure or scope change is appropriate; funds available for a specific purpose are not available for related but more extended or general purposes.
- Changes of scope must not alter the project purpose to expand the purpose to be more general or cover a broader area or additional facilities from what was authorized by the Secretary when the project was approved as doing so would not be in compliance with the purpose statute of appropriations law.
- Moving a SNPLMA project to a different facility, physical plant, or location within the entity’s management area from what is stated in the nomination approved by the Secretary would not comply with the purpose statute.
- Expanding the work or adding new work/deliverables to a project beyond what was originally approved even though doing so is cost effective, efficient, or related to the original project, is not allowed because it not consistent with the purpose statute.

⁷⁷ Applicable to local, regional, and other non-Federal entity projects funded through assistance agreements (aka cooperative agreements). See 2 CFR Subtitle A, Chapter II, Part 200 for OMB guidance on “administrative requirements, cost principles, and audit requirements for Federal awards” to non-Federal entities” particularly note section 200.309 regarding availability of funds during the period of performance.

⁷⁸Relative to inter-intra/agency agreements, see FY2018 OMB Circular A-11, Part 1, sections 20.4 through 20.13 noting particularly section 20.4(c). (Final payments/reimbursements can be made after an instrument has expired provided no additional costs were or will be incurred after the expiration date.)

⁷⁹ The Red Book rules discussed in this document relative to the three Principles of Appropriations Law are not necessarily all-inclusive, though an effort has been made to be thorough. Further review of the Red Book rules for use of appropriated funds could be required to address unique situations.

- Unless authorized by law, agencies/entities cannot use other appropriated Federal funds toward accomplishing the purpose of the project. This includes using other Federal funds:
 - To initiate or carry out project work prior to execution and receipt of the appropriate financial instrument for that project,
 - In expectation of approval for additional funds and receipt of a modified financial instrument reflecting the additional funds, or
 - To initiate or carry out work requiring a scope change prior to approval of the request for a change of scope and modification of the financial instrument reflecting the change in scope.

As stated previously (*see Section V.A.6*), all nominations from Round 13 forward must include a specific project purpose statement. For all projects not completed, closed, or terminated in Rounds 1 through 12, the SNPLMA Division will use the common meaning of the words written in the nomination in coordination with the agency/entity to properly identify the purpose of the project. (*See more on the requirement for coordination in Section XII.D. regarding requesting scope change modifications.*)

(b) Necessary Expense Doctrine

Another aspect of the purpose statute is the “necessary expense doctrine” which was discussed at length in the Solicitor’s 2005 opinion. The doctrine does not distinguish between indirect and direct costs, either can be a necessary expense, but rather it governs the determination of whether appropriated funds designated by the Secretary to carry out the purpose of a project have been expended appropriately. For a cost to be considered a necessary expense of the project it must meet the following three criteria:

- The expenditure must “make a direct contribution to carrying out the appropriation” which in the case of SNPLMA are expenditures within the project categories authorized by Congress in SNPLMA as reflected in the projects approved by the Secretary;
- The expenditure must not be prohibited by law; and
- The expenditure must not be covered by another more specific source of funding, i.e., the specific approved project or acquisition and associated necessary expenses must not be provided for in another appropriation or statutory funding scheme.

In addition to evaluating project expenditures based on the above requirements, the following SNPLMA rules regarding necessary expenses also apply to all projects:

- Although there is no distinction between direct and indirect costs in the “necessary expense” doctrine, the expenses charged by the agencies/entities must be tied to a specific project and tracked by project.
- Although direct and indirect costs can be a necessary expense, the EC has implemented a policy whereby Federal agencies and local and regional governmental entities shall not seek, and the SNPLMA will not pay, the recipient agency/entity’s standard overhead percent based on the total project cost.
- SNPLMA will pay all necessary expenses to complete approved projects in all categories or, if a project has to be terminated, all necessary expenses up to the point that a determination to terminate is made, plus the costs to shut down the project and prepare the closeout package. However, SNPLMA does not pay costs incurred after the project expiration date that are associated with preparing and submitting a closeout package.).⁸⁰ (*See Section VI.C.2 regarding*

⁸⁰ This rule is consistent with IA changes approved by the EC in a decision memorandum signed 9/30/2010.

the “Principle of Time,” Section XIV.A regarding project closeout, and the IA Part Two, Appendix J “Document Retention, Funding, Reimbursement, and Close Out Requirements.”)

- Disputes between any agency/entity and the SNPLMA Division over whether or not a requested expense is necessary and/or authorized will be resolved by the EC.
- Agencies/entities may pay, and be reimbursed by SNPLMA, overhead charges under agreements or contracts they enter into for work needed to complete the approved project. Examples would be an agreement with another Federal agency that operates on a cost center basis, or an agreement with a university or a commercial contract to do project work where the university or company charges indirect costs including overhead as a percent of the total of the agreement or contract.
- Attorney fees, interest incurred, and other legal costs awarded by a court or an arbitrator resulting from a contractual dispute between a recipient agency/entity and a contractor hired to work on a SNPLMA project do not meet the definition of a necessary expense incurred to complete the project. Therefore, such litigation awards will not be reimbursed by SNPLMA.⁸¹
- Project-related agency/entity indirect costs for agency/entity support services such as secretarial support, in-house printing and copying, etc. may be charged as a percent when that percent is based on staff labor hours spent on the project(s), provided these indirect expenses meet the three criteria above. Such eligible indirect costs may also be charged at a per-man-hour rate where agencies maintain cost records in this manner and can substantiate the rate being charged based on the number of agency/entity labor hours on the project.
- Indirect costs for expenses such as utilities, rent, cleaning, etc., though they may contribute to being able to complete the project(s), may not meet criteria number three which states the expenditure must not be funded through another appropriation.
- Monetary awards may be granted for significant work performed by agency/entity personnel in carrying out a SNPLMA project provided such awards are issued for exceptional performance on an individual basis, not simply for participating in work on a project or for completion of the SNPLMA-funded projects. It is recommended that proposed monetary awards be submitted to the SNPLMA Division Program Manager for review along with justification for the award to ensure the proposed award meets these criteria and can be accepted as a necessary expense.⁸²
- Project equipment as a necessary expense is treated in accordance with 2 CFR, Subtitle A, Chapter II, Part 200, Subpart D, Sections §200.313 and §200.439. “Equipment” does not include office furnishings or equipment for operation and maintenance of the project once completed. These subtitles provide detailed information and requirements regarding ownership, use, management, and disposal of project equipment. (*See the IA Part Two, Appendix B “Necessary Expenses” paragraph 3 “Project Equipment as a Necessary Expense” for detailed information on project equipment, and paragraph 4 for additional rules regarding allowable expenses for equipment and capital expenditures.*)⁸³

Necessary expense cost categories applicable to all categories can be found in the IA, Part Two, Appendix B; sample estimated necessary expense forms in the IA Part Two, Appendix B-1 and B-2; and examples of “Other Necessary Expenses” permitted for payment from SNPLMA by the EC in Appendix B-3.

⁸¹ This rule is based on legal guidance provided by DOI’s Solicitor on 8/12/2016 in response to an entity request that SNPLMA cover such costs awarded by an arbitrator in a project contract dispute.

⁸² This guidance has been in place since late 2007 and was shared verbally with eligible agencies/entities prior to inclusion in the IA.

⁸³ This paragraph and the IA Part Two, Appendix B paragraphs 3 and 4 were updated in the 2018 version of the IA to be consistent with revised federal regulations regarding post-federal award requirements for equipment.

2. Principle of Time

The principle of time relates to the duration or period of time during which appropriated funds are available “to incur obligations and . . . to make expenditures.” The obligations and expenditures must be for *bona fide* needs to carry out the purpose (i.e., necessary expenses) during the time period specified in the appropriation document. Payments may be made after the available time period “only for payment of expenses properly incurred during the period of availability or to complete contracts properly made within that period of availability.”⁸⁴

SNPLMA funds are “no-year funds,” meaning they can be authorized for expenditure by the Secretary at any time “until expended.” However, availability of project funds approved by the Secretary is limited by the duration of the project stated in the nomination as reflected in the project financial instrument, including modifications to the instrument that reflect any approved time extensions. The Secretary has directed that “projects will be implemented within the timeframe specified in the project nomination” and that time extensions should be “exceptions to the expected practice of timely implementation of projects and therefore limited in number and scope.”⁸⁵

The Principle of Time is applied to SNPLMA projects as follows:

- Funds are not authorized for obligation or new expenditures if the initial financial instrument has not been executed and received, or the time period of availability, referred to as the period of performance, in the funding instrument has expired, even if approval of a time extension is pending or anticipated.
- The project “start date” is established by the execution date of the initial IAA, BLM Task Order, or Assistance Agreement and, for projects under direct transfer, the date identified as the “start date” in the Authorization to Expend Transferred Funds Letter. When the project timeframe in the approved nomination is documented in the executed financial instrument (IAA, Assistance Agreement, Task Order, or Authorization to Expend Transferred Funds Letter), the timeframe is then referred to as the “period of performance.”
- The project “end date” reflects the duration of the project stated in the nomination from the “start date” described above, or the end date established by an approved time extension as reflected in a executed modification to the financial instrument.

When the period of performance under the financial instrument expires (including any approved time extensions) or the project is complete or terminated, the project is closed out and any amounts not obligated or expended during the valid period of performance are returned to the Special Account and remain available to the Secretary for allocation to new projects or other authorized purposes. (*See the IA Part Two, Appendix Q for definitions of project status such as completed and expired; also see the IA Part One, Sections XI. A. and XI. B for information on implications for projects with expired status.*)

3. Principle of Amount

The basis of the appropriations principle of amount is the Antideficiency Act which prohibits, in part, authorizing obligations or expenditures in excess of the amount available and involving the government in any contract or other obligation for payment for any purpose in advance of appropriations for such purpose.

⁸⁴ Principles of Federal Appropriations Law, Government Accountability Office, 3rd Edition, Vol. I., pg. 5-4.

⁸⁵ This direction from the Secretary was first reflected in the Round 11 Decision Document and thereafter in each succeeding round approval.

The intent of the Antideficiency Act is to prohibit Federal agencies from incurring obligations for expenditures or liabilities beyond the amount available or beyond the period of availability, to require the Agencies to stay within the “purposes of appropriations,” and “to prohibit any officer or employee of the Government from involving the Government in any contract or other obligation for the payment of money for any purpose, in advance of appropriations made for such purpose. . . .”⁸⁶ Non-Federal entities are also limited to obligate and expend only the amount made available within the period of performance (period of availability) by the terms and conditions of the project’s Assistance Agreement which include references to OMB guidance/regulations and other rules relative to grants and agreements.

The application of these prohibitions to SNPLMA is that project obligations and expenditures:

- May not exceed the total amount allocated by the Secretary, plus any approved additional funds (contingency funds or SAR), and available on the financial instrument;
- May not exceed the amount transferred to, and received by, the agency by the U. S. Treasury for projects under 1151-direct transfer;
- May not occur in anticipation of approval of additional funds; and
- May not be used to do work not authorized in anticipation of approval of a project change of scope.

VII. PHASE 2 SNPLMA BUSINESS PROCESS--FUNDING: REQUIREMENTS FOR ALL PROJECT CATEGORIES

This section applies to all projects in all project categories. The section describes the Secretary’s requirements, and the requirements for an executed funding instrument, that must be met in order to receive and expend funds to implement project approved for funding by the Secretary.

The SNPLMA Division will notify the Federal agencies and local/regional governmental entities of the Secretary’s decisions. If the Special Account lacks sufficient funds to fund all approved projects at the same time, projects will be funded in the order approved by the Secretary as revenue accumulates in the Special Account for distribution between all project categories. The SNPLMA Division notifies the agencies/entities when the balance of the Special Account is sufficient to fund projects. This notification is referred to as the “Special Account Funds Notice.” If the Secretary approves priority funding for one or more expenditure categories as part of the Decision Document for any given round, revenue accumulated in the SNPLMA Special Account will be distributed first to those categories in the priority order authorized by the Secretary before funds are distributed to the other categories.

A. Secretary’s Requirements for Authorization to Expend Funds

The Secretary has instituted several requirements that must be met by all projects in order for approved project funds to be authorized for expenditure.⁸⁷ The requirements that all recipients/projects must meet are:

- Recognize that amounts authorized in the decision document for expenditures for projects are not to be construed as a final approval for any particular expenditure.

⁸⁶ Principles of Federal Appropriations Law, Government Accountability Office, 3rd Edition, Vol. II, pg. 6-37.

⁸⁷ This section was added in accordance with a decision memorandum approved by the EC on 9/3/2010 regarding compliance with appropriation law and Secretary requirements for expenditure of funds.

- The amounts authorized in the decision document for the round are not approved for expenditure unless and until all requisite procedures are followed as outlined in the decision document itself and the *SNPLMA Implementation Agreement*.
- A Special Account Funds Notice (formerly referred to in the IA and Secretary decision documents as “Notification of Availability of Funds” or “notice of availability of funding”) must have been received by the recipient. Once this notice has been issued, the projects receive a status of FA (“Funds Available”) with a status date of the date identified in the notification. Projects with FA status are not authorized to expend funds or incur obligations.
- The recipients must submit a project work plan that reflects funding over logical phases of the project and project deliverables to BLM for approval before funds are authorized for expenditure. This requirement is met by completing the work plan in SMART (*See Section IX.A for work plan requirements.*)

In addition to the above, the Secretary’s decision states that local and regional governmental and other non-Federal recipients must meet the following conditions before funds for the project are expended:

- “A cooperative agreement or grant [assistance agreement] between the recipient entity and the BLM or other Federal agency has been fully executed,” and
- “The starting point for an identified phase and its associated funding start date has been reached.” This requirement is met by completing the work plan in SMART (see general requirements under paragraph B below).

Any changes to these requirements or additional requirements contained in future decision documents signed by the Secretary or otherwise directed by the Secretary shall be incorporated by reference in this IA, will take effect immediately, and will be communicated to the partners and participants by notification from the SNPLMA Division until the changes can be reflected in a future revision to this document.

B. General Requirements For Initiating Funding to Start Project Implementation

Beginning with Round 13, recipient agencies have been required to start work on approved projects within one (1) year from the date of the Special Account Funds Notice.⁸⁸ Therefore, funding should be requested as soon as possible after the Secretary’s requirements and the two initial conditions in paragraph B above are met to ensure the applicable financial instrument is fully executed and funds are available within the one-year timeframe for beginning work on the project (“project initiation”). Any project expenses incurred by the agencies/entities prior to meeting these requirements are not payable/reimbursable by SNPLMA.

The general requirements listed below apply to all projects and all recipient agencies and entities:

- **Receive the Special Account Funds Notice.**
- **Complete and receive approval from BLM of a project work plan.** Work plans can be submitted in SMART during the regular quarterly reporting cycle. If needed to facilitate meeting the required one-year timeframe to receive project funds and start project work, agencies/ entities may also work with the appropriate SNPLMA Program Manager to submit the project work plan for approval outside the regular quarterly report cycle in order to finalize the work plan prior to

⁸⁸ This requirement was added per a decision memorandum approved by the EC on 8/11/2011.

requesting funding.⁸⁹ (See Section IX.A. and B. for requirements and rules for project work plans and the quarterly database.)

- **Submit a “Request to Initiate Project Funding” to the SNPLMA Division.** (See the IA Part Two, Appendix J, part B for the process and requirements.) The amount of the initial funds request should be entered in SMART either by the requesting entity or the SNPLMA Program Manager if the request is not being submitted during a regular quarterly reporting cycle.
- **Receive an Executed Financial Instrument.** The recipient agency/entity must receive the appropriate fully executed financial instrument for funding before beginning work on the project (BLM direct charge task order, Assistance Agreement, IAA, or transfer expenditure authorization letter). (See Section VIII “Funding Instrument Process.”) Projects receiving funds by direct transfer must also have received the funds requested to initiate the project from Treasury prior to beginning work on the project.

When the funding instrument is executed, the project will receive a status of TO (“Active”)⁹⁰ to indicate that the project has been initiated and funding has been authorized to start project work and cover necessary expenses to complete the project. The method to actually receive project funds requested in SMART depends upon the type of financial instrument used for the project (see Section VIII).

C. Initial Conditions to Receive Funds and Commence Work⁹¹

In addition to the general requirements listed above to initiate funding, prior to actual receipt of funds and commencement of project work, the following conditions must be met:

- All agency/entity project managers and those involved in requesting or approving acquisitions and expenditures using project funds are required to complete SNPLMA training when it is offered live, or with the approval of the SNPLMA ADM, self-certify that they have taken the training online.⁹²
- All SNPLMA Program Managers must visit the site with the project manager to verify the exact location of the newly approved project or project area as addressed in the nomination and work plan.

D. Conditions for Payment of Agency/Entity Obligations and Expenditures

The most basic conditions that must have been met prior to an agency or entity incurring an obligation or expenditure in order for that obligation or expenditure to be eligible to be reimbursed/paid with SNPLMA funds are:⁹³

1. A work plan must have been accepted and all required updates completed and accepted.
2. A valid financial instrument (IAA, BLM Task Order, Assistance Agreement, or transfer authorization letter for projects under direct transfer) must have been executed and received by

⁸⁹ This requirement complies with the requirements in the Secretary’s decision (see paragraph A above), and with direction provided by the EC at its 9/2-3/2015 meeting and in an EC decision memorandum approved on 9/16/2015.

⁹⁰ TO originally stood for “task order” when all projects were being funded through task orders against blanket inter-agency agreements during the first few years of SNPLMA. The SNPLMA Division has continued to use this acronym to designate active status for projects in the implementation stage. This is different from “open” projects which have some other status designation but that have not been closed out (e.g., complete, expired).

⁹¹ The two conditions are consistent with direction provided by the EC in its 9/2-3/2015 meeting.

⁹² If a new project manager or other staff involved in authorizing expenditures is brought on board after project initiation and the start of work, the new staff must complete the required training.

⁹³ The six requirements/conditions listed under paragraph D are in accordance with a 9/3/2010 EC decision memorandum.

the recipient agency and, for projects under direct-transfer, the initial transferred funds must be received from Treasury.

3. The period of performance in the financial instrument (IAA, BLM Task Order, assistance agreement, transfer authorization letter) cannot have been expired when the expenditure or obligation was incurred.
4. The contract(s) to carry out project work may not have an end date beyond the end date identified in the financial instrument.⁹⁴ (*Also see Section XII.C item number 3.*)
5. The expenditure must qualify as a “necessary expense.”
6. As of January 1, 2011, no funds may be obligated against, nor will recipients be reimbursed for expenses incurred against SNPLMA projects that have not met the requirements for funds to be authorized for expenditure in association with a valid funding instrument.⁹⁵

The above list of conditions is not all inclusive. Other rules regarding eligibility for reimbursement/ payment with SNPLMA funds of obligations and expenditures are cited throughout this IA in relation to specific circumstances such as requests for change in scope, additional funds, or project categories.

E. Use of Contingency Amounts Approved by the Secretary

1. Purpose/Intended Use of Secretary-Approved Contingency Funds

Project nominations include an estimated cost for the work to be completed. This work includes primary, anticipated, and standard deliverables, which, together with the purpose statement, represents the scope of the project. Contingency funds may be recommended by the category subgroup, PWG, or the EC, but can only be approved by the Secretary.⁹⁶ “Approved amounts” are based on the original estimated cost, without contingency. In the project documentation, the SNPLMA Division will make clear whether additional amounts have been approved by the Secretary for use contingent upon need.

Approved contingency funds are intended to cover unexpected cost increases for contracting, materials, labor, and other necessary expenses to complete the project as proposed in the nomination and approved by the Secretary. Examples of circumstances that may cause cost increases justifying use of contingency funds include, but are not limited to:

- Price increase in supplies or materials with no increase in quantity required,
- An increase in the required quantity of supplies or materials from what was expected to do the same work,
- Increased costs required to deal with differing site conditions than those anticipated when the project costs were estimated,
- Higher than expected contract bids for the project work described in the nomination, or
- Greater level of effort than anticipated to accomplish the project work or produce the described deliverables resulting in increased agency/entity labor costs.

⁹⁴ Condition number four is consistent with decisions made by the EC in a decision memorandum approved on 8/26/2014.

⁹⁵ Condition number six is in accordance with an EC decision memorandum approved 9/3/2010 for comprehensive time extensions. At the time the decision memorandum was signed, the list of circumstances included that a project could not be in “on-hold status.” Since then, the EC eliminated the option of placing a project “on-hold” in a decision memorandum approved 8/1/2011.

⁹⁶ The section on use of contingency funds is consistent with an EC decision memorandum for IA changes approved 9/8/2009.

2. Rules for Use of Contingency Funds

Contingency funds for projects approved through Round 9 continue to be available without justification for use as part of the total amount available for reimbursement, transfer, direct charge by BLM, or ASAP draw down by local/regional governmental and other non-Federal entities. For projects approved in Round 10 and forward, agencies/entities must submit a request and justification utilizing Appendix L in the IA Part Two for use of a specific amount of the contingency funds up to a maximum of 10 percent of the project amount approved by the Secretary. The request must be submitted to the appropriate SNPLMA Program Manager for review and approval. The SNPLMA Program Manager will review the request and, if necessary, contact the agency/entity within three (3) business days to obtain additional information or clarification to complete the request.

Once the request is complete, the SNPLMA Division will have a 10-business-day review period within which to provide a signed, written response on BLM letterhead to the agency/entity. If the request and justification meet the guidelines and rules in this Section VII.E. for use of contingency funds, the written response will approve use of the contingency funds and outline the financial transactions necessary to make the contingency funding available to the requesting agency/entity. The SNPLMA Division will provide a quarterly summary of projects approved for use of contingency funds to the PWG and EC.

If the SNPLMA Program Manager determines the request does not meet the guidelines, the SNPLMA Program Manager will consult with the agency/entity during the SNPLMA Division's 10-business day review period regarding inconsistencies with the guidelines and possible alternative actions. At this point, the agency/entity can decide to withdraw its request and submit a brief written withdrawal notice to the SNPLMA Program Manager. If this occurs, the SNPLMA Program Manager's written response will address the withdrawal, the reasons for the withdrawal, and any alternatives discussed. However, if the agency indicates within the SNPLMA Division's 10-business-day review period, that it disagrees with the SNPLMA Program Manager's findings and wants to pursue the use of contingency funds, the SNPLMA Program Manager will, within no more than an additional three (3) business days, forward the request in the form of a decision memorandum through the SNPLMA ADM and the PWG to the EC for a final decision.

In addition to the rules for proper expenditure of all SNPLMA funds, rules specifically applicable to contingency funds are:

- Contingency funds cannot be used to expand the scope of the project or to do additional work not required to complete the project as described in the approved nomination or in subsequent, approved scope changes.

For example, a scope expansion would be treating additional acres, installing more landscaping, or using a higher grade of pavement than what was described in the nomination because contingency funds remain or were not needed due to cost increases.

- Contingency funds may only be used to complete the project as originally described, not to increase the size, function, quantity of project elements, or level of finish for the project.
- Project nominations should develop the purpose and estimated costs without assuming availability of any contingency funds.

Financial documents that create a financial obligation in the accounting system for approved project funds (e.g., IAAs and assistance agreements) will obligate the total amount approved by the Secretary, including any approved contingency amount, in order to minimize the need to modify those documents. However, the contingency amount will not be made available for reimbursement or ASAP draw down until a request and justification for its use is submitted to and approved by the SNPLMA Division in writing.

Financial instruments for projects funded by direct transfer and BLM direct charge will not reflect any approved contingency amount; if use of contingency funds is approved the transfer authorization letter or BLM Task Order will be modified to reflect the approved contingency amount.

F. Use of Special Account Reserve Funds Authorized by the Secretary

During each Round, the Secretary may be asked to approve a specific amount as a reserve for the Special Account. The primary purpose of the SAR is to fund unexpected shortfalls between estimated and actual costs for approved projects due to unexpected or unavoidable cost increases. SAR funds may also be requested for new urgent projects to respond to unique opportunities or unanticipated circumstances that require fast action. SAR funds for approved projects are expended as directed by the EC during the Round in which they were approved. When a new Round is approved, any funds not yet allocated or obligated from the previous Round's SAR become part of the revenue available to fund future rounds and other authorized purposes.

1. Rules for SAR Requests to Cover Unexpected Shortfalls Between Estimated and Actual Costs

Project planning and design will be carried out to complete the project within the budget amount approved by the Secretary. The SAR is intended to cover unexpected and unavoidable cost increases for contracting, materials, labor, and other necessary expenses to complete the project as described in the nomination and approved by the Secretary. Additional funds for changes in scope (*see Section XII.D, "Requests for Change in Project Scope"*) are limited to those scope changes required to complete the project as originally described, not to increase the size, function, level of finish, or expand on the purpose of a project. Requests for SAR funds associated with work outside the scope of the original approved project are not allowed and will not be accepted.

SAR requests for approved projects have a target maximum of 10 percent of the funding currently available for the project, not including any available contingency funds.⁹⁷ Requests for more than ten percent of available funds may require a higher degree of justification, explanation, or documentation than those requesting 10 percent or less. Any available contingency funds need to have been requested and approved for use prior to requesting SAR funds (*see Section XII.B. and the IA Part Two, Appendix L*).

SAR funding is not guaranteed. Approval of a SAR request does not in itself constitute authorization to obligate or expend the approved funds. Before expending approved SAR funds, the agency/entity must

- submit a revised work plan to the SNPLMA Division for approval;
- submit a revised cost estimate form and, if required, a revised expanded/detailed budget form;
- receive the executed modification to the applicable financial document; and
- in the case of 1151-direct transfers, have received the transferred funds from the U. S. Department of the Treasury before any portion of the approved SAR amount can be obligated or expended.

The EC will divide the SAR allocation approved by the Secretary into funding available for each quarter before the next SAR is anticipated to be approved (i.e., as part of the next round of nominations).⁹⁸ High priority SAR requests, as defined below, can be submitted for approval at any time during the fiscal year and amounts above the quarterly allocation will be considered for high priority projects. Furthermore, the

⁹⁷ The 10 percent target was approved by the EC in a decision memorandum signed on 8/1/2011.

⁹⁸ The procedures and processes outlined in this section for quarterly allocation of SAR etc. are in accordance with a decision memorandum approved by the EC on 2/27/2012 to clarify the process associated with the two-part test.

total available SAR funding may be expended at any point at the direction of the EC due to the high priority nature of requests.

(a) Establishing Priority of SAR Requests

SAR funding requests must meet a two-part test to be considered a high priority.⁹⁹ The two-part test is that the agency/entity must demonstrate:

- 1) It has attempted to down scope¹⁰⁰ the project or taken actions to complete it within current budget but still requires further funding for completion; and
- 2) The funding need is urgent to (a) prevent a work stoppage or personnel layoff, and/or (b) to award a contract, and/or (c) address a critical situation that needs immediate remediation to complete the project.

If a SAR request is received that meets this two-part test and is approved for funding by the EC, the amount of that SAR request will reduce the total funding available for the year, thus decreasing the SAR funding available for each quarter.

Example: In Round 12, the Secretary approved \$1,500,000 in SAR and Round 13 was anticipated to be approved 12 months later. Hence, the SAR funding allocated for each quarter would be \$375,000.

Situation 1: Assume a priority SAR request meeting the two-part test is received and approved by the EC for \$250,000 early in the first quarter. Available funding for the remainder of the year would be reduced to \$1,250,000 and the quarterly funding available for the four quarters would be reduced to \$312,500.

Situation 2: Assuming no additional SAR requests are made or approved in the first quarter, the funding available for the subsequent three quarters will increase. That is, the remaining available SAR of \$1,250,000 would be divided between the remaining three quarters to \$416,667 per quarter.

Situation 3: Assuming an additional first quarter routine SAR request of \$300,000 is received and approved, the balance remaining of the original \$1.5 million for quarters two through four would be \$950,000 which would be divided between the remaining three quarters to \$316,667 per quarter.

As the example and situations above show, the balance of available SAR per quarter will be adjusted quarterly to reflect SAR amounts approved by the EC in previous quarters.

Those SAR requests that meet the first part of the above test but not the second part are not considered to be a priority, but rather are “routine” requests and will be considered for funding after all high priority requests during the quarter have been acted upon and, if approved, are funded. Routine SAR requests can be submitted at any time, but in order to be acted upon for the quarter in which submitted, they will be due not later than 30 days prior to the end of the Federal fiscal quarter. The quarters are:

1 st Quarter	October, November, December
2 nd Quarter	January, February, March

⁹⁹ The two-part test to prioritize SAR request is in accordance with an EC decision memorandum approved 8/11/2011.

¹⁰⁰ A down scoped project must still be a functional project that, at a minimum, accomplishes the primary deliverables needed to achieve the purpose of the project.

3 rd Quarter	April, May, June
4 th Quarter	July, August, September

Routine SAR requests will be collated by the SNPLMA Division and forwarded through the regular decision memorandum process through the PWG to the EC for funding decisions.

- **SAR requests that do not meet the first part of the test will not be considered.**

If the affected agency does not concur with the SNPLMA Division determination as to whether or not the project meets the two-part test, or other criteria for SAR funding, the SNPLMA Division will prepare a decision memorandum describing the request and justification, with the Division's recommendation, and forward it through the PWG to the EC for a final decision.

If "routine" SAR requests during a quarter exceed the allocation for that quarter, the SNPLMA Division will forward all the requests, with a recommendation for action, in a decision memorandum through the PWG to the EC for a decision. Options for recommended action could include:

- Ranking and prioritizing the requests with some requests recommended to receive funding that quarter, while others would be held until funding is available in the next quarter;
- Recommending all requests be funded, thus reducing the funds available for SAR requests in the remaining quarters;
- If insufficient SAR funds remain available to fund all routine SAR requests, recommend that all or some of the requests be held until SAR funds become available in a future round; or
- Recommending that one or more SAR requests be denied.

(b) Submitting Requests for SAR Funds

Requests for SAR funds must be submitted in compliance with this Section VII.F., Section XII.A. general instructions for project modification requests, Section XII.B. regarding SAR requests, and the instructions in the IA Part Two, Appendix L "SNPLMA Project Modification Request Form."

2. Rules for SAR Requests for a New Urgent Project

Funds from the SAR may also be requested to serve as a response to urgent, unique opportunities or unanticipated circumstances that require fast action. Such requests for new urgent projects require Secretary approval.

The SAR is not meant to circumvent the normal nomination and approval process. Federal agencies, local and regional governmental entities, and other non-Federal eligible entities should recognize that new projects funded from the SAR will not have received the same kind of consultation, coordination and collaboration that occurs as a part of the normal nomination process. Thus, every attempt should be made to use the normal nomination process where possible.

Requests for funding of new projects from the SAR must include all the documentation for a nomination within the same project category that was required during the current round of SNPLMA. In addition, the request should include a cover letter which explains the special circumstances that warrant consideration for funding from the SAR. Requests are to be submitted to the SNPLMA Division. The SNPLMA Division will coordinate a review of the SAR project request by the pertinent category subgroup and the PWG. Requests that are recommended by the PWG are then forwarded to the EC for consideration for recommendation to the Secretary for approval.

VIII. PHASE 2 SNPLMA BUSINESS PROCESS--FUNDING INSTRUMENT PROCESS

In order to begin work on the project, the agency/entity must submit a written request to initiate the project and receive project funds. This process and the requirements for initiating a project are detailed in the IA Part Two, Appendix L, Section B (*see also IA Part One, Section VII.A-C for more information on requirements and conditions to receive project funds*). There are four methods of funding, each with its own financial instrument format, used to provide funds for approved projects. The method used depends primarily upon which agency or entity is the recipient of the funding.

- **Authorization to Expend Transferred Funds Letter:** Certain Federal agencies are eligible to receive project funding by “1151” direct transfer of project funds.
- **Assistance Agreement:** Non-Federal recipients (e.g., local and regional governmental entities) receive project funds pursuant to a cooperative agreement/assistance agreement between the BLM and the local or regional governmental entity or other non-Federal entity.
- **Inter-agency Agreement:** Some Federal agencies receive project funding by reimbursement pursuant to the Economy Act (31 U.S.C. 1535) utilizing an IAA.
- **BLM Task Order:** BLM receives project funds utilizing an internal management document referred to throughout this IA as a “BLM Task Order.” BLM projects are funded by direct charge to the SNPLMA Special Account financial subactivity for the applicable project category following execution of the BLM Task Order.

Multiple funding instruments for a single project are allowed only for interagency projects where more than one agency/entity will receive funding to carry out its portion of an approved project. (*See Section XIII.D. for additional information on interagency projects.*) Most commonly this situation occurs with interagency Conservation Initiatives, but on occasion other categories may also have interagency projects. Each interagency project designates an agency/entity as the “lead” agency; nominated projects count against the number of allowed nominations for the lead agency. Each agency/entity involved in an interagency project will require its own financial instrument designating the amount of project funding allocated for its portion of the project. Project teams determine the portion of total project funds available that will be required by each agency/entity for its part of the project. The determination of how the project funds are to be divided among the participating agencies must be provided to BLM either by the lead agency or by the first participating agency requesting funds for project initiation. (*Also see Section XIII.D. for additional information regarding interagency projects.*)

A. Funding Through “1151” Direct Transfer Process

In 2005 the OMB designated the SNPLMA Special Account as an “allocation account” and established subsidiary “transfer appropriation accounts” for the primary Federal recipients of project funds, an arrangement more commonly referred to as parent/child accounts. This designation allows the BLM to directly transfer funds from the SNPLMA account (“parent”) to the recipient Federal agencies (“child”) using the “1151 direct transfer” process without recording an obligation or expenditure for the funds in the BLM’s financial records for the SNPLMA Special Account. The obligations and expenditures of the funds are incurred and recorded by the recipients of the direct transfer funds.

As of the date of this IA the FS, NPS, FWS, BOR (at Lake Mead only), and Federal Highway Administration have appropriation accounts and can receive direct transfers. Those Federal agencies identified in P.L. 108-108, Section 342, regarding Lake Tahoe Restoration projects can be included in the direct transfer process, after two conditions have been met: (1) execution of a “cooperative [sic] agreement” as required by P.L. 108-108 between the Secretary of Agriculture and the Federal agencies

conducting projects under P.L. 108-108, Section 342, and (2) the U.S. Department of the Treasury establishing the necessary allocation accounts.

A detailed explanation of the 1151 Transfer Process can be found in the IA Part Two, Appendix N covering basic procedures to effect a transfer; specific guidelines such as timing and amount of transfers, monitoring use of transferred funds compared to the percent completion, and circumstances that can delay transfers; and transfer-specific reporting requirements. The transfer process may be modified somewhat from time to time in order to provide clarification and greater efficiency. Such revisions will not require further EC approval.

1. Projects Eligible for Direct Transfer

Agencies eligible for direct transfer converted many projects approved in Rounds 1-5 from reimbursement to transfer, which resulted in some projects being partially funded under reimbursement and partially funded by transfer. Beginning with projects in Round 6, eligible entities receive project funding by direct transfer.

2. Transfer Amounts per Quarter

The February 2005 Solicitor's opinion specified that advance payments are prohibited. Agencies are, therefore, expected to identify quarterly transfer amounts consistent with how much they anticipate being able to either expend or obligate during that quarter. Agencies are not to request funds be transferred if there is no expectation that the funds can be obligated or expended within the quarter for which they are requested. Requesting funds to be transferred prior to a need for the funds could result in delays of future transfers or even a request to return some amount of transferred funds until such time as they are needed for obligation or expenditure. Therefore, agencies are expected to expend and/or obligate at least 95 percent of the amount previously transferred during the quarter provided. The "95 Percent Rule" was put in place to ensure that funds transferred will be obligated or expended within the quarter provided. (*See also Section XI.A.3. and the IA Part Two, Appendix N, Paragraph B, third bullet for additional information regarding the 95 Percent Rule.*)

3. Authorization to Expend Transferred Funds Letter

Because the amounts transferred by the BLM from the SNPLMA Special Account to another Federal agency do not record either an obligation on an expenditure in BLM's financial system, no formal financial instrument is executed. Instead, agencies will receive a standardized notification of authorization to expend transferred funds letter ("transfer authorization letter") from the SNPLMA Division.¹⁰¹ This transfer authorization letter serves as the financial instrument for projects funded by direct transfer. The letter will confirm that all requirements for expenditure of funds have been met, the amount of funding, the start and end dates for the project (i.e., "period of performance"), and any other applicable terms and conditions for expenditure of the funds and implementation of the project. (*See sample letter in the IA Part Two, Appendix J-1.*) A modified letter will be transmitted to reflect any approved project modifications as well as project closeout and return/release of any unused funds.

B. Funding Through Assistance Agreements

Following the Special Account Funds Notice for approved projects, local and regional governmental entities and other non-Federal entities submit documentation for Assistance Agreements (AA) which meet the requirement in SNPLMA for carrying out projects pursuant to a cooperative agreement. Upon receiving the required documentation, the SNPLMA Division will review the request for accuracy and coordinate, if necessary, with the entity to complete the request package. (*See IA Part Two Appendix J,*

¹⁰¹ Addition of this document as a transfer financial instrument in accordance with EC Decision Memorandum approved 9/3/2010.

part B for funding request requirements.) When the request is complete, the SNPLMA Division submits the draft AA for processing through the BLM Grant Management Officer¹⁰² at the BLM NSO.

The White Pine County Conservation, Recreation, and Development Act of 2006 (P.L. 109-423, Division C, Title III, Subtitle H) provides that the BLM shall transfer funds to local and regional governments for Park, Trail, and Natural Area projects authorized by the Secretary and approved for expenditure. OMB guidance directs that “Federal agencies must require recipients to use only OMB-approved standard government wide information collection requests to request payment” (2 CFR 200.305(b)) and that “the non-Federal entity must be paid in advance” (2 CFR 200.305(b)(1)). Therefore, although P.L. 109-423 only required transfer of funds to non-Federal entities for Park, Trail, and Natural Area projects, the BLM utilizes the Automated Standard Application for Payment (ASAP) system to implement the transfer process for project funds to all non-Federal entities regardless of category. (*See the IA, Part Two, Appendix M for detailed information on ASAP.*)

1. Drawdown Process

All entities receiving SNPLMA project funds through ASAP are required to estimate the quarterly drawdowns for each project in the financial section of SMART, SNPLMA’s web-based reporting database. (*See Section X for a detailed explanation of the quarterly reporting process.*) Drawdowns in the ASAP system shall be made only in amounts necessary to meet current quarterly disbursement needs once all required documentation is submitted to the SNPLMA Division (*See the IA Part Two, Appendix J, part C*). Once funding is available for drawdown, the amounts drawn down shall be allocated only to those projects for which the drawdown was budgeted. Funds should be expended by the end of the budgeted quarter; the 95 Percent Rule discussed under direct transfers also applies to projects funded through ASAP. When drawn down funds are not expended, the following SNPLMA quarterly report should detail the circumstances that have caused those funds to remain unexpended.¹⁰³ When a project is completed or terminated, any excess funds that may have been drawn down by the recipient shall be returned to the SNPLMA Special Account.

2. PTNA Expanded Drawdown Process¹⁰⁴

Due to the large number of PTNA projects and associated collective high dollar drawdowns each quarter, a special process has been established between the BLM, the NOC, and the PTNA-eligible local and regional governmental entities to ensure sufficient cash is on hand to cover drawdown requests. In addition to the quarterly report estimates for drawdowns by project, the PTNA entities follow the process described below:

- At least three days prior to making any drawdown in ASAP, entities transmit an email to the SNPLMA PTNA Program Manager identifying the dollar amount by project to be drawn down and the anticipated date of the drawdown.
- After the drawdown in ASAP is completed, entities transmit an email including a PDF of the ASAP Payment Transaction Confirmation summary identifying that the drawdown occurred. The email should be copied to the:

¹⁰² Although the title of the BLM position that manages Assistance Agreements is “Grant Management Officer,” SNPLMA funds are not technically “grants” as SNPLMA requires substantial involvement between BLM and the non-Federal recipient entity while the entity carries out the project (quarterly reporting, site visits, periodic project funding, project modifications, etc.) whereas a grant does not expect substantial involvement between the granting agency and the recipient.

¹⁰³ Entities should review their assistance agreement terms and conditions for other reporting requirements and consequences of not expending all drawn down funds.

¹⁰⁴ This information was previously included in Appendix M, but because it reflects SNPLMA policy, vs the ASAP process, it has been moved to the IA, Part One.

- SNPLMA Senior Accountant at the NOC,
- SNPLMA Finance Manager at the NOC,
- SNPLMA PTNA Program Manager in the SNPLMA Division, and
- BLM Grant Management Officer at the BLM Nevada State Office.

The PTNA Program Manager will provide the entities with the current names and email addresses for sending these notices.

The IA, Part Two, Appendix M provides a detailed explanation of the ASAP process, timeframes for expenditure of drawdowns, limits to drawdowns that can be set within the ASAP system, the agency review process that may be established for one or all projects prior to processing of ASAP drawdown requests, and Federal regulations controlling the ASAP process.

C. Funding Through Inter-Agency Reimbursable Agreements (IAA)

This section describes the process associated with implementing the Secretary's decisions for spending funds in the Special Account by reimbursement pursuant to the Economy Act (31 U.S.C. 1535) or other authorizing legislation utilizing IAAs. The use of the reimbursable process to fund new projects is diminishing, but is still a requirement for some agencies. The reimbursable account is backed by an agreement (the IAA) to pay at logical stages of the project during its implementation (generally quarterly) when all documentation is in order and accepted by the SNPLMA Division.

1. Submit Required Documentation to Request an Inter-Agency Agreement

Following receipt of the Special Account Funds Notice, the Federal agencies utilizing the reimbursement process prepare and submit to the SNPLMA Division a package of the required documentation to request an IAA (*See the IA Part Two, Appendix J, part B for request requirements*).

2. Review and Process Requests for Inter-Agency Agreements

Upon receiving the required documentation, the SNPLMA Division will review the request for accuracy and coordinate, if necessary, with the agency/entity to complete the request package. When the request is complete, the SNPLMA Division submits the IAA for processing through the BLM Contracting Officer at the BLM NSO. The contracting office forwards copies of the document to the agency for signature. The agencies are to ensure that their reimbursable account number is entered on the IAA when it is provided to them for signature before signing the IAA and returning it to the BLM Contracting Officer. Agencies should make every effort to sign and return IAAs within 60 days of receipt of the IAA for signature. After the agency returns the signed IAA, the BLM contracting officer will sign and return a fully executed original to the recipient agency and a copy to the SNPLMA Division.

3. Agencies Open Reimbursable Account

An IAA allows agencies to open a reimbursable account for the project. Agencies may then charge necessary expenses against that account. Reimbursement of necessary expenses charged to the reimbursable account is made using the Intra-Governmental Payment and Collection (IPAC) system. The IPAC bills are initiated by the recipient agent (called the "seller" in the IAA) after approval of the reimbursement request submitted to the SNPLMA Division.

4. Prepare and Submit Reimbursement Request Package for IAA

For projects being funded through an IAA, the agency prepares and submits a reimbursement package at logical phases of the project. If a reimbursement is requested in the quarterly reporting in SMART, the reimbursement package should be submitted concurrently. (*See the IA Part Two, Appendix J, part D. for the requirements for requesting reimbursement.*)

The SNPLMA Division will review the reimbursement package for completeness and determine the acceptability and accuracy of necessary expenses based on documentation submitted or additional information requested. When the quarterly report/reimbursement package is deemed complete and appropriate, the SNPLMA Division will accept the package and notify the agency in writing of the acceptance and approved amount to initiate an IPAC for payment. The SNPLMA Division will maintain a file copy to support disbursement from the Special Account, and submit documentation and a payment authorization memorandum to the NSO contracting officer for formal approval and coordination with the SNPLMA Accountant at the NOC.

D. Funding BLM Projects by Direct Charge Utilizing a BLM Task Order

Projects from Rounds 1 through 6 were completed using the reimbursable internal task orders put in place when they were initiated. Since Round 7, all BLM projects are funded by direct charge against a project number in the applicable SNPLMA Special Account financial subactivity that is documented on an internal form referred to as a “BLM Task Order.” As with other forms of financial instruments, when the task order is fully executed the timeframe is referred to as the “period of performance.”

The BLM Task Order is the financial instrument for projects funded by “direct charge” and documents the amount of available funds, terms and conditions, the timeframe or “period of performance” to complete the project, and the cost structure just as do the other forms of financial instruments. Modifications to the BLM Task Order will reflect any approved project modifications as well as project closeout and return/release of any unused funds.

Just as with other methods of funding, BLM submits the necessary documentation to request funds according to the requirements and procedures outlined in the IA Part Two Appendix J, part B. The SNPLMA Division prepares the BLM Task Order for execution by the recipient BLM office and the SNPLMA Division Program Manager.

The SNPLMA Division submits the fully executed BLM Task Orders to the SNPLMA Accountant at the NOC to allocate appropriate funding to the project number and activate the project in its Financial and Business Management System (FBMS) so that charges can be made. The BLM contracting office is not involved in processing the internal task orders since BLM cannot technically contract with itself. The task orders serve as a management tool to document and track parameters of approved BLM projects and establish the project number account and funding limit within the appropriate subactivity of the Special Account in FBMS.

The documentation retention requirements are the same for BLM projects funded by direct-charge task orders as for projects funded by all of the other three methods -- IAA, direct transfer, AA (*see the IA Part Two, Appendix J, part A for document retention requirements*).

E. Payment for Projects Which Cannot Be Completed

In instances where a project cannot be completed and termination has occurred or notification of termination has been submitted but has not yet been finalized (*see Section XIV on closing terminated projects*), necessary expenses incurred up to the decision to terminate the project, those expenses necessary to stop work on the project including clearing unliquidated obligations, and expenses to prepare the closeout package and documentation will be compensable by SNPLMA. As with completed projects, agencies/entities should make every effort to submit the close out documentation as outlined in the IA Part Two, Appendix J as soon as possible, but no later than 90 days, after the date of the notification of termination to the SNPLMA Division. (*See Section XI.A. for Projects of Concern consequences of not submitting a closeout package within 90 days.*)

IX. PHASE 3 SNPLMA BUSINESS PROCESS -- IMPLEMENTATION: PROJECT WORK PLAN¹⁰⁵

As mentioned in the Secretary's requirements contained in Section VII.A (*see also requirements and conditions in Section VII.B-D*), after receipt of a Special Account Funds Notice, and before a project can receive funds and commence work, a project work plan must be submitted and approved by BLM. Agencies/entities enter project work plans into SMART.¹⁰⁶ The work plans must then be reviewed and accepted by the appropriate BLM SNPLMA Program Manager in writing before funds will be provided for obligation and expenditure on the project. This written approval of project work plans satisfies the Secretary's requirement for a work plan described in Section VII.A.

The work plan must be submitted in SMART. The SNPLMA Program Managers will work with the agencies/entities to ensure that the SMART database is open for entering the work plan or provide an alternate means to review and approve the project work plan until SMART is available for entering the work plan.

A. Requirements for an Acceptable Work Plan

The project work plan must include:

- **Deliverables.** The work plan for all projects must include comprehensive project deliverables. Beginning with Round 13, project deliverables are categorized as one of three types – Primary, Anticipated, and Standard. (*See Section V.A.7. for a definitions and explanation of requirements for each type of deliverable. See the IA Part Two, Appendix A for examples of each type of deliverable.*)
 - Use the Deliverable “Comment” Section to:
 - Identify the type of deliverable (primary, anticipated, or standard)
 - For Primary Deliverables, indicate the size, configuration, anticipated siting within the described location, and/or quantity.
 - Identify whether any of these aspects of the Primary Deliverable will be impacted by studies such as final design, engineering studies, or public scoping; and, if so, identify those studies or reports that are expected to have an impact on these aspects of the Primary Deliverable
 - For Anticipated Deliverables identify the analysis, study, or report that will determine whether each is included in the project, and whether the cost of the deliverable was included in the cost estimate
 - Standard deliverables do not have to be listed in the nomination and do not require a scope change request to be included in the work plan unless completing them may lead to the need for additional funds. (*See Section XI.D on scope changes.*)
 - The last deliverable in every work plan must be for preparation and submittal of the project closeout package which must be completed by the end date of the project including any approved time extensions. (*See Section V.A.9 regarding Standard Timeframes for more information on closeout within the project timeframe.*)

¹⁰⁵ The guidance, instructions, and rules for completing project work plans is in accordance with decision memorandums approved by the EC on 9/8/2009 and 8/1/2011.

¹⁰⁶ SNPLMA maintains a list of users for each entity who are responsible for completing quarterly project reporting requirements. The users have been provided with SMART access information, an informal user guide, and a SNPLMA point of contact for issue resolution.

Following completion of the identified studies, analyses, or reports that impact a Primary or Anticipated Deliverable, written notification must be sent to the appropriate SNPLMA Program Manager of the final determination regarding the final siting of the project or configuration. The Program Manager will then coordinate with the agency/entity to revise the deliverable description in the project work plan as appropriate. Changes in the size or quantity of a deliverable from what was described in the nomination and/or resulting from completion of studies, analyses, or reports require an approved scope change prior to implementation of the changes (*see Section XI.D.2 for circumstances requiring a scope change decision memorandum*).

- **Target Start and End Dates for Each Deliverable.** Each deliverable must include a target start and end date.
- **Tasks and Subtasks necessary to complete each deliverable.** All deliverables should have tasks associated with them to show progress toward completing the deliverable. Not all tasks need to be broken down into subtasks. For example, “Contract for Architecture and Design” as a deliverable would have tasks such as: issue an Request for Proposals (RFP) or Request for Quote, review submissions and select contractor, issue contract, review 30 percent drawings, review 60 percent drawings, review 90 percent drawings; approve final documents and close contract. Target start and end dates for tasks and subtasks are optional at this time, but could be required in the quarterly database in the future.

Work plans which list deliverables only with no tasks or subtasks (where subtasks are appropriate) and no target start and end dates for the deliverables will not be accepted by BLM as they do not provide a comprehensive picture of the work to be done in order to complete the project and thus have insufficient detail to allow for accurate reporting of progress on a quarterly basis and justification for quarterly funding requests.

- **“Project Contacts.”** This section of the project database must be completed so that the SNPLMA Program Manager knows who to contact with questions on or revisions to the work plan and quarterly status reports. Categories of contacts are project manager, financial specialist, and other (e.g., supervisor, alternate project manager).

B. Rules Regarding Work Plans

The rules below tie directly to the appropriations law principle that appropriated funds must be expended only for the purpose intended. (*See Section VI.C.1. regarding expenditure of funds in compliance with the purpose statute of appropriations law and Section VII for SNPLMA requirements for expenditure of funds.*)

- The work plan cannot be used as a means to change, broaden, or enhance the purpose of the project from what was stated in the nomination or, beginning with Round 13, in the nomination purpose statement.
- Once the work plan is approved, no new Primary or Anticipated deliverables may be added without an approved change of scope. (*See Section V.A.7. for definition of deliverables.*) Anticipated deliverables can be removed from the work plan as explained in Section XI.D on scope changes.
- Additional work or activities may not be added into the work plan even if they are similar to other work identified in, or related to, the purpose of the nomination. (*See Section XI.D.3 for prohibited scope changes.*)

- Once a project work plan is approved, only “Standard Deliverables” not previously included in the work plan can be added to the project work plan and then only if the previously unidentified standard deliverable does not add any additional cost to the project and clearly meets the definition of a standard deliverable. (*See Section V.A.7. for definitions of deliverables*). The addition of such standard deliverables must be reviewed in advance and accepted for inclusion in the work plan by the SNPLMA Program Manager.
- The work plan may not be used to change the end date of a project unless and until a time extension has been approved through the decision memorandum process (*see Section XII.C. regarding time extensions*) and a modified financial instrument has been executed. Changing target end dates beyond the end date for the project identified in the financial instrument (*see Section VIII.A-D for information on financial instruments*) does not automatically extend the period of performance for the project.
- Following completion of the identified studies, analyses, or reports that impact a Primary or Anticipated Deliverable, the agency must coordinate with the Program Manager for appropriate revisions to the work plan.

The format for the project work plan is integrated into SMART. Approved work plans are restricted from further edits except to add previously unidentified standard deliverables; to make necessary revisions following completion of studies, analyses, or reports that impact Primary or Anticipated Deliverables; or to reflect changes in deliverables or target start/end dates consistent with project modifications for time and scope approved through the decision memorandum process. If such edits need to be made, the agency/entity should coordinate with the SNPLMA Program Manager for access to the work plan in SMART.

X. PHASE 3 SNPLMA BUSINESS PROCESS -- IMPLEMENTATION: QUARTERLY REPORTS

Quarterly reporting of financial data, project progress by deliverable, and other project information as outlined in the paragraphs below are entered by the entities in SMART. The SMART application is open from the first day of each Federal fiscal quarter to the last day of the first month of the quarter unless notified otherwise by the SNPLMA database administrator. Reports are due by close of business the date the database closes. The opening dates and due dates are generally as follows:

- 1st Quarter FY** Database: Open October 1- October 31; Report Progress for Q4 July – September
- 2nd Quarter FY** Database: Open January 1 – January 31; Report Progress for Q1 October – December
- 3rd Quarter FY** Database: Open April 1 – April 30; Report Progress for Q2 January – March
- 4th Quarter FY** Database: Open July 1- July 31; Report Progress for Q3 April – June

If the quarterly reports are incomplete or inadequate as determined by the SNPLMA Division, funding requests for the quarter may not be approved until the quarterly reports are accepted by BLM.¹⁰⁷

¹⁰⁷ Revised per EC decision memorandums approved on 9/8/2009 and 8/1/2011.

A. Requirements for Quarterly Reporting¹⁰⁸

All approved work plans serve as a baseline against which quarterly status updates are reported. Each agency/entity will prepare and submit to the SNPLMA Division a quarterly report for each project that has not been completed and/or closed out accompanied by a transmittal letter following the requirements set out in the IA Part Two, Appendix J, part C. The initial quarterly report for a project must include the project work plan and, if not submitted with a separate request to initiate project funding, an updated necessary expense worksheet and, if applicable, detailed budget or cost estimate as well as contact information as described above. *(See the IA Part Two, Appendix J, part B, Item number 3 for information on including the request to initiate a new project and its initial funding in the regular quarterly report transmittal letter.)*

Quarterly reports must include:

➤ **Quarterly Status Update** (review and update every quarter):

- Enter overall project completion percent. Explain if project completion rate and duration are not syncing up (e.g., 5 percent complete, but 70 percent of the time has elapsed).
- Provide status comments for all deliverables where work has occurred. If no new progress is made from one quarter to the next, the comment should explain why that is the case. Do not simply repeat the previous quarter's comment.
- Enter a percent complete for each deliverable where work has started.
- Enter "Actual Start Date" for each deliverable where work has started, or where other information regarding timing of starting work on the deliverable is required.
- Enter "Actual End Date" for each deliverable that is 100 percent complete.
- Explain why a deliverable has not been started or completed if the Target Start Date or Target End Date, as applicable, has passed. (This would be a situation where a fictitious "actual start date" would be required in order for the comment under status to be saved. The comment should explain that the actual start date will be updated when work on the deliverable begins.)

➤ **Funding Request** (review and update every quarter):

- Enter current funding request for the quarter through transfer, estimated ASAP drawdowns or estimated BLM direct charges, or reimbursement requests for the previous quarter for projects under IAA.
- Enter total amount expended/obligated out of funds previously provided (required for transfer, reimbursement, and direct charge funding, but not for ASAP funding). This must be done even if no additional funds are being requested for the quarter.
- In funding comment field, include an explanation of the work, financial obligations, or other expenditures expected to occur in the quarter in order to justify the amount requested. The explanation should address why the amount requested is needed in addition to any funds not yet expended or obligated. This is especially important if the obligated/expended amount is less than 95 percent of the amount already provided (typically applies to transferred funds). This area may also be used to explain why

¹⁰⁸Quarterly report requirements were originally approved by the EC in decision memorandums approved 9/8/2009 and 8/1/2011. The quarterly report requirements reflected in this 2018 version of the IA reflect revisions made by the EC in a decision memorandum approved on 1/15/2014.

project funds are not 95 percent obligated/expended or why no additional funds are being requested.

- If a reimbursement request is identified, a reimbursement package and all required documentation must be submitted to the Program Manager in conjunction with the quarterly report, (*See the IA Part Two, Appendix J, paragraph D for instructions on submitting a reimbursement request package.*)
- **Contacts** (review and update as needed every quarter): Review and update contacts for each project to ensure they are current.
- **Annual Accomplishments**¹⁰⁹ (complete once a year)
 - Annual Accomplishments are to be reported during the first quarter of each new fiscal year by entering a concise paragraph summarizing the work accomplished on the deliverables during the previous fiscal year.
- **Overall Project Accomplishments** and Performance Measures (once at completion and closeout of the project)
 - Report the overall accomplishments for any project that is completed and closed out during the fiscal year by “checking” the appropriate box and entering a concise summary of the overall project accomplishments focusing on the project purpose and primary deliverables.
 - Also report SNPLMA Performance Measures for completed and closed out projects by selecting the applicable performance measures from the drop down list in SMART.
- **Work plan** (complete at project initiation and when project modifications are approved)
 - For new projects enter the deliverables, tasks, and subtasks required to accomplish the project purpose, with target start and end dates. (*See Section IX.A.1. “Requirements for an Acceptable Workplan.”*)
 - If updates are indicated as being necessary in the PM comments, update the work plan deliverables to reflect revised target start and end dates or descriptions for deliverables affected by approved time extensions or scope changes.

B. Review of Quarterly Status Updates

The quarterly status information, amounts expended/obligated, funding requests, and percentages complete, are reviewed by the SNPLMA Division and used, in part, to update the Projects of Concern (POC) list and Focus List (*see Section XI.A for information on the POC List*). The information in the reports is also used to make agencies and entities aware of any projects for which adequate progress may be a concern.

After reviewing the quarterly project status reports, the SNPLMA Division will apply the POC and Focus List criteria to add or remove projects from those lists, update the POC color-coded level of concern, and update the comment section of both the POC and Focus List regarding progress and outstanding issues. The quarterly status information is also used to review quarterly funding requests, for consideration in

¹⁰⁹ Do not use lists in the accomplishments narrative (bullets, numbers, etc.) as they do not translate into the report formats. Please use concise paragraph summaries only.

reviewing project modification requests, and to inform the SNPLMA Program Managers when conducting project file reviews and site visits.¹¹⁰

If the quarterly reports are incomplete or inadequate as determined by the SNPLMA Division, funding requests for the upcoming quarter may not be approved until the status reports are accepted by BLM.

C. Review of Quarterly Funding Requests

As part of the process to approve quarterly funding requests, the requests will be reviewed for work completed and work planned for the upcoming quarter against the project work plan, the value of contracts to be issued the next quarter, amount remaining available, and amount of funds previously provided that have not yet been obligated or expended. If the percent of obligated and expended funds out of the total funds previously provided is less than 95 percent or the request for additional funds is not well supported when reviewed against progress and planned work, funding requests will not be approved until adequate supporting information is provided and accepted by the SNPLMA Division. (*See paragraph A item number 2 above for information on including justification in the quarterly report*).

D. Document Retention

Regardless of the method of funding and financial instrument used for the project, recipient agencies and entities are no longer be required to submit invoices, receipts, payroll records, and other documents previously required for inclusion with requests for reimbursement.¹¹¹ Agencies and entities are required to retain backup documents in support of project expenditures in the project file and have them readily available for a project file review by the SNPLMA Program Manager or for a thorough review and validation by an auditor. (*See the IA Part Two Appendix J, part A for specific information on document retention requirements.*)

E. Project Inspections

Although the SNPLMA Division has always done some project inspections, based on advice from the Office of the Inspector General in a recent audit, the BLM now conducts more frequent periodic project inspections at logical intervals during implementation of the project consisting of site visits and/or project file reviews. This cursory review of project files is to confirm that appropriate documentation is being retained for all projects, but especially those receiving funds by transfer. Whenever feasible, the BLM SNPLMA Division will conduct a final inspection consisting of both a site visit and a project file review when the project is completed as part of certifying the project close out documentation. In addition, all SNPLMA Program Managers are required to meet with project managers at least twice a year to review progress and ensure that the project is completed on schedule.¹¹²

XI. Phase 3 SNPLMA Business Process—Implementation: POC and Focus Lists

A. The Projects of Concern (POC) List

The POC List was initially created in 2011 to identify projects that demonstrated only minimal progress towards completion, reported expenditures in excess of the level of accomplishment reported, or were anticipated to require a scope change or additional funds in order to continue work on the project. Since then the POC has evolved and in April 2013 the EC decided to make the POC List permanent. A subset

¹¹⁰ This expanded paragraph is consistent with the purpose of the POC and associated rules as approved by the EC on 4/5/2013.

¹¹¹ Revisions in this section are in accordance with a decision memorandum related to project purpose and appropriations law approved by the EC on 8/1/2011.

¹¹² This requirement is consistent with direction provided by the EC during its 9/2-3/2015 meeting and an EC decision memorandum approved on 9/16/2015.

of the POC List to help entities focus on the projects most in need of attention to closeout was developed. This subset of the POC List was called the “Focus Projects for Closeout” List, now simply referred to as the Focus List (*see Section XI.B. for details on the Focus List.*)

The following is an explanation of the purpose of the POC List and a description of the determining factors for inclusion of a project on the list. Also addressed are the review protocols to keep the list current and accurate as well as the system for categorizing projects by color for prioritizing the level of concern.¹¹³

1. Purpose of POC List

- Ensures that SNPLMA projects, as much as is possible, close on time, within scope, and within budget.
- Ensures that SNPLMA’s partners are aware that there are projects needing special attention.
- Gives the SNPLMA Division Program Managers access to a resource/tool that assists them in tracking projects that are not making sufficient progress. The SNPLMA Division can then interact with the partners and resolve issues/concerns to get projects back on track.
- Allows the PWG and EC to use the list (1) in making future funding decisions, and (2) to assist them in making decisions on project modification requests,
- Allows the PWG, EC, and partners to use the list as a tool to decide if a project should be considered for termination.¹¹⁴

2. System for Categorizing Risk

Four (4) categories, designated by color, will be applied to all projects to indicate the level of risk associated with the project and determine inclusion on the POC List. The table below provides a description of each color category and associated level of risk. Following the table are examples of criteria/circumstances that would result in inclusion on the POC List at each color category.¹¹⁵

GREEN	Projects that consistently comply with SNPLMA processes, procedures, and business rules including timely progress toward completion and, thus, do not meet criteria for inclusion on the POC List. Projects that have been designated as complete (CM) and are not expired, but have not yet submitted a closeout package. All new approved projects have an initial category of “Green.”
YELLOW	(Low Risk) Projects that have had relatively minor compliance issues but are taking steps to correct the issues or ensure the lack of compliance is not repeated. The project has issues outside the control of the partner such as litigation or contract disputes but the project is expected to be completed or closed quickly when the issue is resolved. This level of risk will not have an effect on future funding and should not have an effect on project modification decisions. Once the compliance or other issue is corrected, the project may be re-categorized as “Green” provided no other POC rule applies.

¹¹³ Unless otherwise noted, the POC information and rules are from the EC decision memorandum approved on 4/5/2013 and associated 3/1/2013 issue paper presented to the EC in advance of the decision memorandum.

¹¹⁴ This bullet was approved by the EC for further clarification of the purpose of the POC in a decision memorandum signed on 5/4/2018.

¹¹⁵ The EC approved changes in the original 4/5/2013 definitions of the color categories in a new decision memorandum approved on 5/4/2018.

ORANGE	(Moderate Risk) Projects with one or more issues that currently impact progress, need resolution, and warrant elevated attention from partner and SNPLMA Program Manager. If the issue or compliance failure(s) are corrected, and the project is determined by the SNPLMA Program Manager to be making satisfactory progress, it may be re-categorized as “Yellow” or “Green” based on a consistent pattern of compliance and satisfactory progress provided the approved project end date will be met.
RED	(High Risk) Projects with issues resulting in little, no, or unknown progress; or issues that are of such a serious nature that project termination should be considered. A pattern of repeated failure to comply with one or more SNPLMA processes, procedures, or business rules. Automatically included in this status are all expired projects that have not submitted a closeout package within 90 days after the expiration date. Once projects are categorized as “Red” they will remain “Red” until completed or terminated and closed out. Projects with this ranking will be placed on the Focus List, inclusion on which potentially impacts qualification for future funding and project modification decisions.

3. Projects to Be Included on the POC List¹¹⁶

The following is a listing of criteria and circumstances which can result in the inclusion of a project on the POC List. The criteria/circumstances listed under each color are not necessarily all encompassing since it's not possible to address every circumstance that can arise in implementing SNPLMA projects or every business rule outlined in this IA.¹¹⁷ **In all cases, conditions described which will allow the re-categorization of a project to a lower level of concern apply only if no other condition exists that would lead to categorization at the same or a higher level of concern.**

Example Criteria/Circumstances for “Yellow” POC

- (a) Projects that fail to adequately report for one quarter, without providing an acceptable explanation to the SNPLMA Program Manager. Resumption of adequate reporting the following quarter will result in the project being re-categorized as “Green” and removed from the POC List.
- (b) Any project that is not meeting its “amortized” completion rate (within a 5 percent variance). For example, a PTNA project that should be complete in five (5) years should have between 15 percent and 25 percent of the project completed each year. This should be based on project milestones established by the partner in the workplan submitted to and approved by the SNPLMA Division. Once a project meets or exceeds its amortized completion rate, it will be re-categorized as “Green” and removed from the POC List.
- (c) Projects where the partner has not expended 95 percent of transferred or drawn down funds within the quarter provided. If the percent expended comes in line with the “95 Percent Rule” the next quarter, the project will be re-categorized as “Green” and removed from the POC List.

¹¹⁶ In its decision memorandum signed on 5/4/2018, the EC approved removing the original classification of “permanent” and “temporary” replacing it with more examples of circumstances leading to categorization of a project at each color level and how the project could be re-categorized at a lower level or when it would remain at that level permanently, including that any project categorized as “Red” remains permanently “Red” and is included on the Focus List.

¹¹⁷ The EC approved the examples under each category in its 5/4/2018 decision memorandum.

- (d) Projects where the percentage of funds expended and/or obligated exceeds the level of completion by more than 20 percent. For example, 75 percent of the funds have been obligated/expended, but the project is only 50 percent complete. Once a project's funding and completion again sync, the project will be re-categorized as "Green" and removed from the POC List. An exception to this circumstance would be those instances where full funding was required to create an obligation for contract award, such as with a construction contract, where the work will occur over a relatively long portion of the project's timeframe.
- (e) Projects that have had modifications to time, scope, or additional funding that have, in the opinion of the SNPLMA Program Manager, compromised the completion of the project as approved by the Secretary. The agency/entity and SNPLMA Program Manager will open a dialogue to discuss the concerns and, if the concerns are adequately addressed, the project will be re-categorized as "Green." Re-categorization to "Orange" or "Red" would occur only if one or more criteria/circumstances listed under those risk levels apply. Projects that do not comply with the notification requirements regarding minor scope changes as required in Section XII. D.1.
- (f) Failure to comply with the conditional approval rule to provide notification within five working days of a milestone deadline to the SNPLMA Program Manager. Compliance with this rule for a period of six (months) will result in the project being re-categorized as "Green."

Example Criteria/Circumstances for "Orange" POC

- (a) Any project receiving a waiver of the business rules.¹¹⁸
- (b) Any project that fails to report for two consecutive quarters without adequate explanation to the SNPLMA Program Manager, will be elevated to an "Orange" level of concern and remain on the list until the project is closed.
- (c) Projects expired (EX) for less than 90 days.
- (d) Projects that do not comply with the scope change rules that require an approved decision memorandum as outlined in Section XII.D.2.
- (e) Any project that was previously given a "Yellow" status for failure to comply with the conditional approval rule to provide notification of a milestone deadline within five working days that continues not to provide the required notification for a total of 10 days or any project that fails to comply with two conditional approval rules outlined in Section XII.E. Compliance with all conditional approval rules for a period of six (6) months will result in the project being re-categorized as "Yellow" and compliance for a period of nine (9) months will result in the project being re-categorized as "Green."
- (f) Projects previously given a "Yellow" status for not expending 95 percent of previously transferred or drawn down funds during the quarter for which the funds were provided that then continue to not meet the "95 Percent Rule" for a second consecutive quarter. If the percent expended comes in line with the "95 Percent Rule" for two consecutive quarters, the project will be re-categorized as "Yellow" and if it continues to meet the rule for three consecutive quarters, the project will be re-categorized as "Green."

Example Criteria/Circumstances for "Red" POC

Once a project is categorized as "Red," it will remain "Red" until the project is either completed or terminated and closed out. All POC "Red" projects are included on the Focus List, inclusion on which

¹¹⁸ Application of an "orange" status to a project receiving a waiver of business rules was approved by the EC in a decision memorandum signed on 1/15/2014. If the waiver was for a time extension of two years or more, the POC "Red" rule regarding time extensions applies.

can impact funding for projects in future rounds.

- (a) All projects with time extensions of two years or more beyond the standard time frame or longer timeframe approved in the nomination will be included at a level of “Red”¹¹⁹ and will, therefore, be on the Focus List.¹²⁰
- (b) Projects that fail to adequately report progress in SMART for three consecutive quarters, or for four or more quarters total over the life of the project, where the agency/entity did not provide an acceptable explanation for the failure to report to the SNPLMA Program Manager.
- (c) Failure to request project initiation and funding in time to start actual project work within one year of the Special Account Funds Notification.
- (d) Non-compliance with the “95 Percent Rule” without adequate explanation more than three quarters over the life of the project.
- (e) All expired (EX) projects where a closeout package is not submitted within 90 days of the project expiration date. EX projects include any project previously designated as CM where the status was changed to EX because a closeout package was not submitted within 90 days of the project end date; such completed but expired projects are not subject to termination.
- (f) All terminated (TR) projects where a closeout package is not submitted within 90 days of the date of termination.
- (g) A participating agency’s/entity’s sub-project for an interagency project where the responsible participating agency/entity made little or no progress on its portion of the project such that the project as a whole required a time extension and reassignment of the deliverables and tasks to another participating entity. The non-compliant participating entity’s sub-project will not be subject to separate termination but will remain open, “Red” and on the Focus List until all other sub-projects are completed; only then will it be closed and the project as a whole closed out.
- (h) A project that is not making adequate progress toward timely completion and then experiences extenuating circumstances that further delay the project such that a longer or additional time extension would be required to complete the project. Progress toward timely completion will be evaluated on those things that are within the entity’s control or scope of influence as evidenced through the SNPLMA quarterly and annual reporting process and/or SNPLMA Program Manager project reviews/inspections.
- (i) Projects receiving a conditional approval where a contract is subsequently awarded with a completion/expiration date that extends beyond the end date for the project in the conditional approval.
- (j) Projects that do not comply with rules for scope changes that are prohibited as outlined in the IA Part One, Section XII.D.3.
- (k) Continued or repeated lack of compliance with two or more conditional approval rules over a period of six (6) months.

¹¹⁹ This rule complies with a decision by the EC made at its 8/25-26/2016 meeting. Although such extensions now require a waiver of business rules, some older projects may have received extensions of two years or more before such requests required a waiver of the business rules and being on the POC List due only to having received a waiver does not automatically place a project on the Focus List. Therefore both rules are necessary.

¹²⁰ This rule complies with a decision by the EC made at its 8/25-26/2016 meeting that such projects are to be included on the Focus List, except that the original decision had the project as “Orange.” The decision memorandum approved by the EC on 5/4/2018 changed such projects to be categorized as “Red.”

4. POC List Review Protocol

The following is the protocol for maintaining an up-to-date and accurate POC List.¹²¹

- (a) The POC List will be updated by the SNPLMA Program Manager for each category and reviewed each quarter by the SNPLMA ADM. Upon completion of the SNPLMA ADM review, the POC List will be sent to eligible entities, the PWG, and the EC.
- (b) Projects with a CL (closed) status will be removed from the POC List.
- (c) The SNPLMA Program Managers will update the “comment” column to ensure as complete an understanding of the issues as is possible.
- (d) If a project is on the POC, additional justification and/or documentation may be required from the partner in order for the SNPLMA Division to process and develop a recommendation for modifications to time, scope, or funding.
- (e) SNPLMA Program Managers may request additional information from partners on projects that are on the POC List through an informal electronic mail process. Program managers may carry out more frequent project file reviews and site visits, particularly before considering project modification requests.

B. The Focus List¹²²

The Focus List is a subset of the POC List that includes:¹²³

- 1. Projects with time extensions of two years or more beyond the category standard project timeframe or longer timeframe approved in the nomination where said timeframe begins when the initial financial instrument is executed.¹²⁴
- 3. Projects with a status of Expired (EX) where a closeout package was not submitted within 90 days of the expiration date.
- 2. All other projects that have a POC level of "Red" concern, regardless of the expiration date or reason.

The purpose of the Focus List is to help partners identify the most critical projects on which to concentrate their close-out efforts prior to the PWG and EC developing funding recommendations for the current round. The EC established a threshold for the number of projects or percent of open projects that an entity may have on the Focus List within any project category and still qualify to have project nominations recommended for funding in that category as part of the round recommendation. Since Round 15, the qualification threshold has not changed. been in effect:

¹²¹ Changes to (a) to provide copies to the PWG and EC as well as partners on a quarterly basis and associated clarification of (c) were approved by the EC in its 5/4/2018 decision memorandum.

¹²² The Focus List, was presented to the EC as a subset of the POC List in its May 8, 2014 meeting. The EC accepted the use of the Focus List and directed the SNPLMA Division to develop Focus List criteria for partners to qualify to be recommended for funding for the round of nominations.

¹²³ Three rules for inclusion on the Focus List and the criteria were originally approved by the EC during its meetings on May 8, 2014 and August 25-26, 2016. The rules for inclusion on the Focus List as presented here were approved by the EC in a decision memorandum signed on 5/4/2018. The revised language implements the intent of the original decision consistently and fairly across all categories.

¹²⁴ The original decision in August 2016 referred to projects that were “more than seven years old.” The purpose of that decision was to avoid having to change the round number(s) each year for projects to be included on the Focus List because they were more than two years beyond the typical 5-year standard timeframe. Because not all categories have a five-year timeframe, this revised language approved by the EC on 5/4/2018 implements the intent of the original decision consistently and fairly across all categories.

- **Focus List Qualification Threshold:** Partners may have either no more than one, or no more than 10 percent of open projects in a category with red status on the Focus List.

If either of the above criteria is true, the entity is qualified. If both criteria are false, the entity is not qualified. Example: An entity has only one open project in a category but that project is “Red” making the percent of open projects on the Focus List 100 percent (100%). The entity is qualified in this case because it has only 1 “Red” project. If the entity had 2 projects “Red” with a total of 20 open projects, the percent of open projects on the Focus List would be 10 percent (10%) so the entity would be qualified in this case as well. However, if the entity had 2 projects “Red” with a total of 10 open projects, the percent of open projects on the Focus List would be 20 percent (20%) and the entity would not be qualified.

Rules used in determining whether the above threshold has been met are:

- CM projects will retain their current POC color level and their CM status for 90 days after project expiration, and will be counted as open projects when determining project percentages on the Focus List.¹²⁵
- CM projects, not previously “Red” and on the Focus List, with an expired period of performance, that do not submit an acceptable closeout package within 90 days of the project end date will have their status changed from CM to EX, will receive a POC color category of “Red,” and will be placed on the Focus List until closed out, and, will be counted when determining project percentages on the Focus List.
- Projects with a status of TR that have been categorized as POC “Red” and placed on the Focus List due to failure to submit a closeout package within 90 days of the date of termination will be counted when determining project percentages on the Focus List since they have not been closed out and are still technically “open” projects.
- Projects on the Focus List that experienced a natural disaster (fire, flood, etc.) that negatively impacted the project timeline and necessitated a time extension will not be counted when determining qualification for funding recommendation in the round until and unless the time extension provided due to the natural disaster has expired.
- Projects that are “Red” and on the Focus List but are also experiencing legal or contract disputes that delay or prevent progress or closeout will remain on the Focus List but will not be counted when determining qualification for funding recommendation in the round.
- Projects that are exempt based on natural disasters or legal issues are not included in the numerator, but are included in the denominator (total number of open projects) when calculating the percentage of Focus List projects compared to total number of open projects for a partner by project category.

Entities must be qualified based on the Focus List qualification threshold no later than 14 calendar days prior to the start of the PWG’s Preliminary Recommendation meeting for a given round. Nominations submitted by entities not qualified by the identified date will not be considered by the PWG when developing the Preliminary Recommendation.¹²⁶

¹²⁵ Projects that are completed but not closed are still considered to be open projects.

¹²⁶ This rule was approved by the EC at its 8/25-26/2016 meeting.

XII. PHASE 3 SNPLMA BUSINESS PROCESS--IMPLEMENTATION: REQUESTING PROJECT MODIFICATIONS

Eligible agencies and entities have a responsibility to make every effort to complete projects in all categories according to the scope, description, budget, and time approved by the Secretary. Nonetheless, circumstances beyond the control of the entities and changing conditions may require modifications to approved projects in order to complete them as described in the nomination and approved by the Secretary.

Project modifications may be requested for additional funds, time extensions for project completion, or certain changes in project scope. Circumstances may also warrant termination prior to project completion (*see Section XIV.B for detailed information on terminations*).¹²⁷ The rules outlined in this Section XII apply to all projects regardless of category (except Lake Tahoe Restoration projects) and regardless of the method used to fund the project. The EC will not approve any request to waive a SNPLMA business rule or requirement that appears, in the opinion of the EC, to conflict with one or more of the appropriation law principles or that specifically conflict with IA rules for use of SNPLMA appropriated funds discussed in Section VI of this IA.¹²⁸

Approved project modification requests will be documented in an amendment to the IAA, task order, Assistance Agreement, or transfer authorization letter prepared by the SNPLMA Division, as well as in revised work plans which must be approved by the SNPLMA Division. The consideration and approval process and thresholds for approval of all project modification requests are addressed in Section XII.F. below.

A. Process for Requesting Project Modifications

Agencies/entities submit a project modification request package (*see the IA Part Two, Appendix L for submittal requirements*) to the appropriate SNPLMA Program Manager that contains:

- A request letter on agency letterhead signed by the authorized agency/entity manager. The letter should:
 - Provide the project name, SNPLMA project number, and SNPLMA priority number;
 - Include the amount of time, funds (SAR or contingency), or nature of the scope change being requested;
 - Briefly summarize the reason for the request; and
 - For time extensions, describe the entity's deliberations regarding accelerating timelines, downsizing, or down-scoping the project while still meeting the project purpose as defined in the approved project nomination, in order to complete the project within the original timeframe.¹²⁹
- A completed "SNPLMA Project Modification Request Form" (*see the IA Part Two Appendix L*). This form requires basic project information for every request and information specific to the type of modification being requested. The completed form for a time extension request must include

¹²⁷ Projects may no longer be placed into "on hold" status in accordance with a decision memorandum approved by the EC on 8/1/2011.

¹²⁸ This statement clarifying circumstances for which the EC will not waive a business rule was approved by the EC in a decision memorandum signed on 5/4/2018.

¹²⁹ This revision complies with the EC decision memorandum approved on 1/15/2014.

proposed new target end dates for deliverables started but not completed and new target start and end dates for deliverables not yet started.¹³⁰

- Include with requests for additional funding and, if needed, for scope change requests:
 - Revised Necessary Expense Estimate Worksheet, and
 - Revised Detailed Cost Estimate Worksheet for all categories except Land Acquisitions which does not require a detailed cost estimate with nominations.
- Where appropriate to understand the request, a map of the project area should be included.

A modified work plan is not required to be submitted with the project modification request because the IA Part Two, Appendix L project modification request form provides for detailed information regarding the impact of the request on project deliverables, removing the need to have an updated work plan in advance of approval of the request.¹³¹ However, if a modification for a time extension or scope change is approved, the project work plan must be updated in the next available Smart quarterly reporting period after the approval date or sooner in coordination with the SNPLMA Program Manager.

The modifications to the work plan following approval of a project modification should:

- Reflect changes in target start and/or end dates for affected deliverables and project completion; and/or
- Delete, add, or modify deliverables and target start and end dates as necessary to accurately reflect changes to the project through an approved change of scope.

The SNPLMA Division Program Manager reviews the requests for completeness and consults with the agency/entity to provide additional information or clarification, if necessary, in order for the request to be fully responsive to the requirements contained herein and in the IA Part Two, Appendix L. A project modification request is not considered complete until all information requested by the SNPLMA Division has been received.

Once the request is complete, the SNPLMA Division will process the modification request following the decision memorandum process and procedures outlined in this Section XII.F below, for consideration and a decision by the appropriate decision making authority also described in Section XII.F.

B. Requests for Additional Funds from SAR

If the total project costs exceed the original budget approved by the Secretary due to unexpected or unavoidable cost increases, and any available contingency funds have been requested and approved for use, the agency may request approval for additional funds from the SAR by submitting a completed IA Part Two, Appendix L “Project Modification Request Form,” in accordance with the rules for use of SAR funds outlined in Section VII.F.¹³²

¹³⁰ This clarifying rule was approved by the EC in a decision memorandum signed on 1/15/2014.

¹³¹ The decision memoranda approved by the EC on 9/3/2010 regarding a one-time comprehensive time extension for multiple projects and the 9/3/2010 decision memorandum for IA revisions both included a requirement that requests for time extensions include an updated work plan. This has proved to be impractical and unnecessary. This requirement was implemented prior to development of Appendix M (see the IA Part Two) which includes impacts on project deliverables. Modification of the work plan is best left until the decision is finalized so that revisions are sure to be consistent with what was/or was not approved.

¹³² Budget reallocation (BRA) has been deleted as a source of additional funds, because the Secretary withdrew the authority for the EC to approve BRA in the Round 11 decision document stating then, and thereafter, that all funds not required to complete a project are to be returned to the Special Account for future projects and other authorized purposes.

C. Requests for Time Extensions

If the project cannot be completed within the period of performance specified in the financial instrument, the agency/entity must submit a written request in accordance with the instructions in the IA Part Two, Appendix L to the SNPLMA Division for a project modification to extend the project. Approved requests will be documented in a modification to the applicable financial instrument. (*See Section XI.A. and B. regarding Projects of Concern for impact of time extensions.*) Rules applicable to requests for and approval of time extensions are listed below.¹³³

1. Requests for time extensions should be submitted at least 120 days in advance of the expiration of the period of performance (i.e., project expiration/end date) in the financial instrument as defined previously in Section VIII to ensure time extensions can be processed prior to project expiration.¹³⁴
2. The SNPLMA Division may process and approve a one-time 90-day time extension¹³⁵ over and above any previous time extensions (including ones approved by the EC) to cover unexpected circumstances where the agency needs just a short time to complete final steps of the project (e.g., close out a contract, conduct final inspection, receipt of “Notice of Completion and Release of Claims,” etc.) and prepare and submit a closeout package.
 - Requests for a one-time 90-day extension do not require submittal of a revised detailed cost estimate worksheet, map, or a revised work plan after approval.
 - Requests for a one-time 90-day extension should be submitted at least 30 days prior to expiration of the project to allow time for processing and modification of the project’s financial instrument.
3. **If the period of performance in the current financial instrument (i.e., IAA, task order, assistance agreement, or the transfer authorization letter) expires before an amendment or new instrument extending the period of performance is executed, the recipient agency/entity shall not create new obligations or incur new expenses, and shall not be reimbursed/paid for new obligations or expenses incurred during the lapse in the period of performance. If a contract is awarded with a completion date past the SNPLMA project expiration date (end date of the period of performance in the financial instrument), SNPLMA will not be responsible for any costs.**¹³⁶
4. The category-specific standard project timeframes (*See Section V. A. 9*) are applied retroactively to all open projects when making a decision to recommend a time extension.¹³⁷

¹³³ Rules 1 and 2 and the first sentence of 3 are in accordance with an EC decision memorandum approved 9/3/2010 for revisions to the IA. The last sentence of Rule 3 is consistent with a conditional approval rule approved by the EC in a decision memorandum on 8/26/2014.

¹³⁴ In its decision memorandum signed 5/4/2018, the EC approved removing the fixed requirement for 120-day advance request for modifications and thus the need to waive that “rule.” This decision was based on the fact that there are frequently good justifications for a shorter notification and thus implementation of this rule and the associated repercussion of recommending termination due to violation of the rule were not feasible to implement.

¹³⁵ One-time 90-day time extensions are not “conditional approvals.” See Section X.E.

¹³⁶ This final sentence in number three has been added for consistency with conditional approval rule number six approved by the EC on 8/26/2014.

¹³⁷ Rules numbered 4 - 5 were approved by the EC in the 1/15/2014 decision memorandum. The decision memorandum included that no further extensions to PPP projects would be approved, but the final PPP project was closed as of 6/1/2015, and all references to PPPs have been removed from the IA except for Appendix P “History of the Implementation Agreement.”

5. Time extensions are limited to one (1) year beyond the standard project timeframes or longer timeframe approved in the nomination.
6. All time extensions of more than one year beyond the category standard project timeframe, or longer timeframe approved in the nomination, except a one-time 90-day extension for project closeout approved by the SNPLMA ADM, are conditional approvals (*see Section XII.E. for information and rules regarding conditional approvals*). An extension of one year or less beyond the standard project timeframe or other timeframe approved in the nomination may also be processed as a conditional approval if circumstances warrant in the opinion of the SNPLMA Program Manager in consultation with the requesting agency/entity.¹³⁸
7. All time extensions beyond the category standard project timeframe, plus one year, except one-time 90-day extensions, require a waiver of business rules approved by the EC.¹³⁹
8. Only under extenuating circumstances will a project with a POC level of concern of “Orange” or “Red” be granted an extension.¹⁴⁰ (*See Section III.H.1. and the IA Part Two, Appendix Q “Glossary” for definition and examples of extenuating circumstances.*)
9. A time extension request for a project that has not made adequate progress toward timely completion and then experiences extenuating circumstances that further delay the project, will not be approved. Progress toward timely completion will be evaluated on those things that are within the entity’s control or scope of influence as evidenced through the SMART quarterly and annual reporting process and/or SNPLMA Program Manager’s project reviews/inspections. (*See also the POC “Red” example “h” in Section XI.A.*)
10. A time extension request for a project that has a construction component (typically in the PTNA or Capital Improvement category) where the project timeframe is currently equal to the standard category timeframe, or longer timeframe approved in the nomination, plus one (1) year, but the project is in the construction phase, the EC may consider a waiver of the business rules for a conditional time extension to ensure construction is completed.¹⁴¹

In addition to the information in the time extension request and the above rules, the SNPLMA Division will consider the following when reviewing the request and developing a recommendation:¹⁴²

1. The number of projects categorized as “Orange” and “Red” on the current POC List.
2. The number of projects on the current Focus List compared to the number of open projects.

¹³⁸ The original rule number 6 approved 1/15/2014 made all time extensions “conditional.” The EC approved the modified rule here on 5/4/2018 to allow flexibility in determining whether or not a time extension of one year or less justified conditions with milestone deadlines.

¹³⁹ Rule number 7 was originally in a 1/15/2014 decision memorandum, modified slightly in the 8/26/2014 decision memorandum, and modified as shown here in the 5/4/2018 decision memorandum approved by the EC. This decision included deletion of a bullet regarding the SNPLMA Division recommending only sufficient time to close at a logical stopping point which is counter to the emphasis on completing projects as approved, and deletion of a bullet and the original rule 8 which both referenced the applicable POC color (now addressed elsewhere).

¹⁴⁰ Rules number 8 and 9 were approved by the EC in the 1/15/2014 decision memorandum.

¹⁴¹ Rule number 10 was originally in the 1/15/2014 decision memorandum but was modified as stated here by the 8/26/2014 and 5/4/2018 decision memorandums approved by the EC.

¹⁴² The considerations listed in a) and b) as modified here were approved by the EC in a decision memorandum signed 5/4/2018.

D. Requests for Change in Project Scope

Consistent with the discussion of the Solicitor’s opinion on SNPLMA funds as appropriated funds and the principles of appropriations law discussed in Section VI, the “purpose statute” is the guiding principle in regard to requesting, analyzing, and either approving or denying modifications for changes to project scope.¹⁴³

Recipients of SNPLMA funds may request a change in scope so long as the requested change is determined to be necessary to accomplish the purpose of the project as described in the nomination and approved by the Secretary, and does not change or expand/generalize that purpose.

The rules below address types of changes that do not require an approved decision memorandum to change the scope, types of scope changes that require an approved decision memorandum, and types of scope changes that are prohibited because they would not comply with the project purpose as approved by the Secretary or the purpose statute. These rules are based on application of appropriations law, the Secretary’s requirements for expenditure of funds, and the Secretary’s authority and discretion to decide which projects to fund based on the description of the project purpose in the nomination.

Beginning with Round 13, project nominations include a specific purpose statement. The purpose statement along with the deliverables identified to accomplish the purpose will be used to determine project completion and acceptability of scope change requests. For all projects not completed, closed, or terminated in Rounds 1 through 12, the SNPLMA Division, in coordination with the recipient agency/entity, will use the common meaning of the words written in the nomination to determine the purpose of the nomination, together with the deliverables in the approved work plan, when evaluating change requests which affect the project scope. The SNPLMA Division will coordinate with the recipient agency/entity to properly identify the project’s purpose. In addition to considering the determined project “purpose,” the SNPLMA Division, the PWG, and the EC will also consider the nomination requirements and other relevant conditions existing at the time the Round 1 through 12 nominations were written. Using the determined purpose and other appropriate considerations, they will apply common sense reasoning in evaluating, recommending, and making decisions on scope changes for projects in Rounds 1 through 12.¹⁴⁴

- **In no case will recipient agencies/entities be reimbursed or otherwise compensated for obligations or new expenditures incurred using other funds to begin work on, or complete, new deliverables prior to approval of a change of scope to add the deliverable to the project description and receipt of the appropriate fully executed financial instrument or transfer authorization letter documenting the approved scope change.**

The rules below address scope changes based on the type of deliverable and information regarding stated deliverables that is being provided in nominations and carried over into the project work plan beginning with Round 13. For projects in Round 1 through 12 the Program Manager will evaluate the request using the guidance above for these projects along with the rules below to develop a recommendation regarding the scope change request.

1. Scope Changes That Do Not Require a Decision Memorandum

The circumstances listed below do not require an approved decision memorandum for the scope change provided no additional time or funds are required to make the change.

¹⁴³ The changes to the section on change of scope are in accordance with an EC decision memorandum approved 8/11/2011.

¹⁴⁴ This paragraph addresses EC decisions approved 8/1/2011 for IA changes regarding project purpose, project implementation in conformance with approved nominations, and scope changes.

- Each circumstance requires prior written notification be provided to the SNPLMA Division on agency/entity letterhead signed by the authorized agency/entity manager.
- The SNPLMA Division must concur in writing that no scope change approval is required.

The SNPLMA Division will then coordinate with the recipient agency/entity to update the project work plan as needed to reflect the changed circumstances, additions, or deletions to the project work plan. Determinations for, and requests for changes to, interagency projects must confirm that all affected agencies are aware of and support the requested determination or change.

- Determination of the final configuration or siting of the primary deliverable(s) at the physical location within the management area where the nomination identified that these factors would be based on the results of planning, design, engineering, public scoping, or other such studies, analyses, and reports.¹⁴⁵
- Determination of which anticipated deliverables will be included or excluded from the project based on the results of planning and design, cost estimates, public scoping, monitoring, or other studies identified in the nomination.
- Determination of the final configuration or siting of anticipated deliverables based on the results of planning and design, cost estimates, public scoping, monitoring, or other studies identified in the nomination.
- Add standard deliverables that were not specifically identified in the nomination as project deliverables and/or were inadvertently omitted from the initial project work plan.
- Relatively insignificant change to the total number of environmentally sensitive acres approved for acquisition (less than 1 percent) and that does not negatively impact the environmentally sensitive resources being acquired.
- Transfer responsibility for one or more deliverables between participants in an interagency project provided there is no change in deliverables, scope, purpose, time, or overall project cost. This circumstance will generally occur with Conservation Initiatives, but other project categories may also have multiple eligible entities participating. At the request of the interagency team implementing the project, and with the submission of a revised detailed cost estimate worksheet(s), the SNPLMA Division will carry out the process to modify the appropriate financial instruments to designate the funds for the identified deliverable(s) to the entity accepting the responsibility.

2. Scope Changes That Require an Approved Decision Memorandum

The circumstances below attempt to address in a general sense the types of changes in scope that would require a decision memorandum approving the scope change. However, because it is not possible to foresee every instance that could arise given the wide variety of SNPLMA projects, this list should not be considered all inclusive. Questions as to whether a specific situation requires an approved scope change decision memorandum should be addressed to the appropriate SNPLMA Program Manager.¹⁴⁶

¹⁴⁵ Changes in size and quantity from that described in the nomination do require an approved scope change. See paragraph 2 of this section.

¹⁴⁶ This paragraph and other changes to this section have been made in this 2018 version of the IA for clarity and to increase consistency between this Section XII.D. and Section XII. F regarding approval thresholds.

- Any change in project deliverables, regardless of the type of change or how minor, that directly or indirectly leads to the need for additional funds to complete the project (submit request for additional funds in conjunction with the request for a scope change).
- Any change in project deliverables, regardless of the type of change or how minor, that will result in the need for additional time to complete the project (submit scope change in conjunction with a time extension request).
- Changes to the final determination of siting or configuration of a primary or anticipated deliverable after notification of the final determination based upon the results of certain studies, analyses, surveys, monitoring, or reports was provided to the SNPLMA Division and documented in the project work plan.
- Changes in siting or configuration of a primary or anticipated deliverable from what was described in the approved nomination where the nomination did not indicate that these factors were dependent upon the results of certain studies, analyses, surveys, monitoring, or reports.
- Changes in the size or quantity of a primary or anticipated deliverable from what was described in the nomination and documented in the project work plan as the result of completion of studies, analyses, surveys, monitoring, or reports identified in the nomination, provided no additional time or funds from SNPLMA will be required as a result of the change.
- Changes in size or quantity of a primary or anticipated deliverable from what was described in the nomination where the nomination did not indicate that these factors were dependent upon the results of certain studies, analyses, surveys, monitoring, or reports.
- Deletion of anticipated deliverables after previously designating them for inclusion in the project based on the results of completed studies, analyses, surveys, monitoring, or reports and documenting them in the work plan.
- Changes in quantity of acres or water rights to be acquired under a land acquisition (environmentally sensitive, PTNA or MSCHP) that exceed one (1) percent of the originally approved acreage or volume of water rights (e.g., change in acre feet per annum (afa)) or that negatively impact the environmentally sensitive resources being acquired or negatively impact the ability to complete the anticipated project for which the land is being acquired under PTNA or MSHCP.
- Changes in the rights to be acquired in a land acquisition from what was nominated and approved (e.g., exclusion of all water rights, exclusion of mineral rights).
- Removal of a primary deliverable. This would be approved for deletion only under extraordinarily rare circumstances because primary deliverables are defined as those that are required to complete the purpose of the project. *(See the final sentence of the second introductory paragraph of this Section XII and Section VI.C1 regarding appropriations law “Principle of Purpose.”)* Addition of a new primary deliverable(s) when there is clear evidence from the results of design and engineering or other studies, reports, or analyses that the additional work is necessary to complete the project and accomplish the purpose as described in the approved nomination.

3. Scope Changes That Are Prohibited

- Changes to the purpose of the project from the common meaning of the words used to describe the purpose in the nomination. Examples: change a survey project to a monitoring project, a picnic area rehabilitation to a trail rehabilitation, a new construction project to a rehabilitation project, a

fee acquisition of land to a conservation easement, a cultural survey to a cultural restoration project, and similar changes are not acceptable.

- Adding new Primary Deliverables that were not identified in the nomination and that are not proven by the results of planning, design and engineering or other studies and reports to be necessary to complete the project and accomplish the specific purpose as described in the nomination/purpose statement.
- Deleting a Primary Deliverable where doing so will not allow the original purpose of the project to be accomplished or would change the purpose of the project from what was approved by the Secretary (*see Section VI.C.1 regarding the appropriations law “Principle of Purpose.”*)
- Adding new deliverables not necessary to complete the already identified primary deliverable(s) or anticipated deliverables in order to do more of the same work or similar work beyond what was identified in the nomination or any previously approved scope change. This rule applies even if the requested additional deliverables are consistent with the nomination purpose and/or would result in a cost savings or other benefit to the Federal government.
 - Example: The fact that funds remain in a project after all deliverables identified in the nomination or through previously approved scope changes have been completed is not justification for a scope change to do more of the same kind of work, even if doing so would continue work toward meeting a program goal, or provide additional public benefit.
- Change the physical location of the project within the management area even if the request is otherwise consistent with the nomination and project work plan and even if the change would result in a cost savings or other benefit to the Federal government. This rule does not preclude changes in the final siting of a project at the location within the management area indicated in the nomination based on final design and construction parameters. It does preclude moving the project or a portion of the project to a different building, picnic area, park, trail, cove, marina, valley, agency management area, or other different facility.
- Adding back an anticipated deliverable that was designated to be excluded from the project based on the results of completed studies, reports, or analyses.
- Add new deliverable(s) not identified in the nomination or original work plan that are outside of the common meaning of the purpose of the project as described in the nomination based on a broader or more general interpretation of the purpose of the project.

Disagreements between the SNPLMA Division and the requesting agency/entity as to whether a scope change is prohibited will be resolved by the EC through the decision memorandum process.

E. Conditional Recommendations/Approvals¹⁴⁷

As explained in paragraph C above, all time extensions of more than one year beyond the standard timeframe (*see Section V.A.9 for standard timeframes*), or longer timeframe approved in the nomination, except one-time 90-day extensions for project closeout, are conditional approvals. Entities must meet the deadlines for deliverables and milestones set in the conditions. As each conditional deliverable or milestone is completed, the entity is required to report that progress to the SNPLMA Program Manager

¹⁴⁷ The use of conditions in recommendations for project modifications was originally approved by the EC in a 2/27/2012 decision memorandum. More specific rules and clarification regarding such conditional approvals were approved by the EC in a decision memorandum on 1/15/2014 as amended by a decision memorandum approved on 8/26/2014. The rules and requirements outlined in this section now reflect those earlier decision memorandums as well as further modifications by a EC decision memorandum approved on 5/4/2018.

via electronic correspondence and include the same progress information in the next SNPLMA quarterly status report. The following list provides the rules applicable to conditional time extension requests, approvals, and implementation.

- The SNPLMA Division will work with the entity to cooperatively establish deliverable deadlines that the entity believes are realistic and achievable. Those deadlines will be incorporated into the decision memorandum requesting the conditional time extension approval. As applicable, the SNPLMA Division will incorporate conditional deadlines into the memorandum for such deliverables as planning start and/or completion dates, contract award date, construction start date (ground breaking activities), construction end date, and closeout date.
- After approval is received, the agencies/entities are required to submit a modified project work plan that clearly details the deliverable completion dates and milestone dates outlined in the approved conditional decision memorandum including those defining how and when the project will be completed.
- All project deliverables, including the close-out package, must be completed by the stated project end date in the conditional decision memorandum or a subsequently approved one-time 90-day extension for project closeout.
- If the entity is aware that a milestone deadline will not be met, it is required to contact the SNPLMA Program Manager as soon as possible but not later than five working days before the milestone deadline, to explain the reason and how much additional time is needed to meet the deadline. The SNPLMA Division has the authority to allow additional time to achieve the specified milestone if the request is adequately justified in the opinion of the SNPLMA Program Manager, provided the project completion date will still be met.¹⁴⁸ Such authorization must be documented in writing by the SNPLMA Program Manager.
- If the project as a whole will experience a significant delay, the agency/entity must provide the SNPLMA Program Manager with documentation of extenuating circumstances beyond the agency's or entity's control in conjunction with a request for a waiver of business rules and additional time extension.¹⁴⁹
- **If the deliverables require a contract award, the entity will ensure the dates in the contract are in line with the conditional approval dates for the deliverables. After the contract is finalized/signed, a copy of the contract will be provided to the SNPLMA Division. If the deadlines in the contract do not meet the milestone dates in the conditional approval memo, SNPLMA funds will not be used. If a contract is awarded with a completion date past the SNPLMA project expiration date, SNPLMA will not be responsible for any of the contract costs.**
- Not later than five (5) working days after a milestone date, the entity is required to email the SNPLMA Program Manager to notify the SNPLMA Division that the milestone has been met.

¹⁴⁸ If the project end date needs to change, approval of a business rule waiver and project time extension must be approved by the EC.

¹⁴⁹ Significant delays are defined as "Any action or inaction that has, or is likely to have, an influence or affect that would delay completion of the project." The term "Extenuating Circumstances" is defined in Section III.I.1. and in Appendix Q "Glossary."

- If the SNPLMA Program Manager does not hear from the entity within five (5) working days of a milestone deadline, the SNPLMA Program Manager will notify the entity that the project is being placed on the POC List at the “Yellow” level of concern. Continued or repeated lack of compliance with the conditional approval rules can result in the project being re-categorized as “Orange” or as “Red” if the lack of compliance continues over a six-month period (*see Section XI.A.3.*)

F. Consideration and Approval Process and Thresholds for Approval

The SNPLMA Division, the PWG and the EC are the organizational groups which will be included in the modification review and approval process for all requests for project modifications. This section details the roles and responsibilities of each group, as well as the approval thresholds for the SNPLMA Division and EC.

All requests for project modifications are submitted through the SNPLMA Division for initial review and coordination with the submitting agency/entity to gather any additional information that may be required to ensure complete submissions. Once the request is complete and the SNPLMA Division initial review has been completed, the SNPLMA Division Program Manager will prepare a decision memorandum for the request. The decision memorandum will detail the project background, the issues and justification(s) for the request, the specific request itself, an analysis of the request, and a recommendation, with signature areas for the SNPLMA Division, PWG, and EC as appropriate.

For modification decisions requiring EC approval, the PWG may make an alternate recommendation to the SNPLMA Division’s recommendation to the EC which itself may make an alternate decision to the recommendation of the PWG.

Requests which could be approved by the SNPLMA ADM but are not recommended by the SNPLMA Division will be forwarded to the PWG which will make a recommendation to the EC for a final decision. Only the EC may deny a modification request.

The SNPLMA Division will coordinate obtaining additional information to respond to PWG or EC questions or comments during the voting period. Requesting agencies/entities are not to forward additional information to the PWG or EC members unless requested to do so.

Original signed decision memorandums will be forwarded to the SNPLMA Division for retention in SNPLMA administrative files. The SNPLMA Division will advise the requesting agency/entity of the decision, provide a copy of the signed decision memorandum to the agency/entity for its project file, and initiate a modification of the applicable financial instrument as needed to document approved changes.

1. SNPLMA Division Approval Thresholds

The SNPLMA ADM has the authority to approve the majority of project modification requests submitted.¹⁵⁰ Such modifications include, but are not limited to:¹⁵¹

- Time extensions not to exceed one (1) year beyond the standard timeframe or longer timeframe approved in the nomination (*see Section V.A.9*).¹⁵²

¹⁵⁰ Unless otherwise noted, the changes in this section are in accordance with the EC decision memorandum signed on 1/15/2014.

¹⁵¹ An expanded list of examples of modifications that can be approved by the SNPLMA ADM was approved by the EC in a decision memorandum signed on 5/4/2018.

¹⁵² The authority for the SNPLMA Division to approve up to one year time extensions was approved by the EC in its meeting on 6/6-7/2006 and included in the 6/7/2006 version of the IA which included the initial approval thresholds.

- One-time extension of no more than 90 days to complete final steps of the project (e.g., close out a contract, conduct final inspection, receipt of “Notice of Completion and Release of Claims,” etc.) and prepare and submit a closeout package.¹⁵³
- Changes in scope not specifically identified for approval by the EC in paragraph 2 below, that do not require additional time beyond the ADM one-year extension approval authority, and do not require additional funds. Examples include, but are not limited to:
 - Changes to the final determination of siting or configuration of a primary or anticipated deliverable:
 - After notification of the final determination was provided to the SNPLMA Division and documented in the project work plan;
 - From what was described in the approved nomination where the nomination did not indicate that these factors were dependent upon the results of certain studies, analyses, surveys, monitoring, or reports.
 - Changes up to 20 percent in the size or quantity of a primary or anticipated deliverable from what was described in the approved nomination and documented in the project work plan:
 - As the result of completion of studies, analyses, surveys, monitoring, or reports identified in the nomination;
 - Where the approved nomination did not indicate that these factors were dependent upon the results of certain studies, analyses, surveys, monitoring, or reports.
 - Removal of any anticipated deliverable after previously designating it for inclusion in the project based on the approved nomination or based on the results of completed studies, analyses, surveys, monitoring, or reports identified in the approved nomination and documenting the anticipated deliverables in the project work plan.
 - Changes in quantity of acres or water rights to be acquired under a land acquisition (environmentally sensitive, PTNA or MSCHP) that is more than one (1) percent but do not exceed 20 percent and that do not negatively impact the environmentally sensitive resources being acquired or that do not negatively impact the ability to complete the anticipated project for which the land is being acquired under PTNA or MSHCP.
 - Add standard deliverables that require additional time within the one-year time extension approval threshold of the SNPLMA Division.
- A change to a milestone date contained in an approved conditional time extension provided that the change in the milestone date does not extend the project end date as identified in the conditional approval decision memorandum.
- Use of contingency funds up to a maximum of the percent approved by the Secretary (generally 10 percent). Approval in writing sits with the SNPLMA Program Manager; no decision memorandum required. (*See Section VII.E regarding use of contingency amounts*).¹⁵⁴

¹⁵³ The 120-day advance submittal rule and the authority to waive it under this circumstance was approved by the EC in a decision memorandum signed on 9/3/2010.

¹⁵⁴ The section on contingency funds including the purpose, process, and approval was authorized by the EC in a 9/8/2009 decision memorandum.

The standard operating procedure for the SNPLMA Division will be to provide a decision within two weeks from the date of a complete submission. EC members receive an electronic copy of all SNPLMA Division approvals. If no objection is received from any member of the EC within seven (7) calendar days, the decision of the SNPLMA Division shall be deemed final.

If an objection by an EC member is received that cannot be resolved by the SNPLMA Division providing additional information, the SNPLMA ADM, in consultation with the EC Chair, will determine whether an internal EC call is warranted, and, if so, will make every attempt to schedule said call as quickly as possible in order to review the decision on the modification request. If the EC overturns the SNPLMA ADM decision, it will do so by adding an alternate decision to the original decision memorandum, which will be signed by the EC Chair.

After the above process is complete and the requesting agency/entity has received an electronic copy of the signed decision memorandum from the SNPLMA Division, if the agency/entity does not agree with the SNPLMA ADM decision and/or EC decision, it may choose to elevate its concerns to the EC.

To elevate the decision, the entity should electronically submit a request for reconsideration of the proposed modification on agency letterhead signed by the authorized agency/entity manager, to the SNPLMA ADM within 14 days of the decision memorandum being transmitted to the agency/entity. The letter should state why the entity believes the project modification is allowable under the IA and why the entity disagrees with the ADM decision. The entity should include with the letter:

- A copy of the signed decision memorandum;
- A copy of the original request submitted by the entity; and
- Any other pertinent information the entity believes is important for the EC to consider as part of the request for reconsideration.

The SNPLMA ADM will forward the information electronically to the PWG Chair (the BLM Nevada Deputy State Director, Natural Resources, Lands and Planning) with copies to the SNPLMA Program Manager and the Special Legislation Program Manager.

The PWG Chair will review the elevation request, the decision memorandum, and any additional information; conduct additional fact finding if necessary; and provide the information to the EC within 14 calendar days of receipt of the reconsideration request. The EC will have 14 calendar days to sustain or overturn the SNPLMA ADM decision. If the EC overturns the SNPLMA ADM decision, it will do so by adding an alternate decision to the original decision memorandum, which will be signed by the EC Chair.¹⁵⁵

2. Partners Working Group Role in Approval Process

The PWG no longer approves project modifications but plays a key role in reviewing and making recommendations for project modification requests that require a decision by the EC.¹⁵⁶ For such reviews, the PWG members will have two weeks (14 calendar days) from the date the decision memorandum is forwarded by the SNPLMA Division to respond with questions and comments and vote to recommend approval or disapproval of the SNPLMA Division's recommendation or develop an alternate recommendation for a final decision by the EC. The PWG Chair will sign the decision

¹⁵⁵ The process for elevating a SNPLMA ADM decision is outlined in the EC decision memorandum signed on 1/15/2014.

¹⁵⁶ This change in PWG decision making authority is consistent with the direction in the EC decision memorandum approved on 1/15/2014.

memorandum reflecting the majority vote of the PWG members on the SNPLMA Division's recommendation.

3. Executive Committee Approvals Required

The EC will review and decide on the following:¹⁵⁷

- Requests for waiver of SNPLMA business rules outlined in the IA.
- Time extensions of more than one year beyond the standard timeframe or beyond a longer timeframe approved in the nomination (such time extensions also require approved waiver of business rules).
- All SAR requests.
- All major scope changes including, but not necessarily limited to:
 - Changes in quantity of acres or water rights to be acquired under a land acquisition (environmentally sensitive, PTNA, or MSCHP) that exceed 20 percent or that negatively impact the environmentally sensitive resources being acquired or negatively impact the ability to complete the anticipated project for which the land is being acquired under PTNA or MSHCP.
 - Changes in the rights to be acquired in a land acquisition (environmentally sensitive, PTNA, or MSCHP) from what was nominated and approved (e.g., removal of all water rights, exclusion of mineral rights).
 - Changes over 20 percent in the size or quantity of a primary or anticipated deliverable from what was described in the approved nomination and documented in the project work plan.
 - As the result of completion of studies, analyses, surveys, monitoring, or reports identified in the nomination;
 - Where the approved nomination did not indicate that these factors were dependent upon the results of certain studies, analyses, surveys, monitoring, or reports.
 - Addition of a new Primary Deliverable that was proven by the results of studies, reports, or analyses to be necessary to accomplish the purpose and complete the project.
 - Removal of a Primary Deliverable as described in the approved nomination or subsequent to gaining approval for it to be added to the scope of the project. (*See Section VI.C. second introductory paragraph and VI.C.1.*)¹⁵⁸
- Recommendations by the SNPLMA Division and/or PWG to deny an agency/entity modification request.
- SNPLMA Division initiated termination requests.

Once the initial SNPLMA Division review has been completed, an EC decision memorandum will be prepared and forwarded to the PWG for review and recommendation to the EC (*see Section XII.F.2. above for PWG timeframe and process*). The decision memorandum with the PWG's recommendation

¹⁵⁷ Expanded list of modification requests requiring EC decision was approved by the EC in a 5/4/2018 decision memorandum. As stated in Section III.I.1. the EC also has final approval authority for other matters as described throughout the IA.

¹⁵⁸ The authority to approve removal of an anticipated deliverable after it was designated for inclusion in the project was moved to the SNPLMA ADM approval threshold by decision of the EC in a memorandum signed on 5/4/2018.

will be forwarded with the signature of the PWG Chair to the EC whose members will then have two weeks (14 calendar days) to vote on the recommendation or develop an alternate decision. All EC decisions will be documented by signature of the EC Chair on the decision memorandum. In the case of a tie vote among the EC members or less than a majority of EC members voting, the EC Chair will make the deciding vote and sign the decision memorandum either approving or denying the SNPLMA Division's and/or PWG's recommendation or approving an alternate recommendation.

XIII. PHASE 3 SNPLMA BUSINESS PROCESS: PROJECT IMPLEMENTATION RULES BY PROJECT CATEGORY

Sections VII and VIII explain the funding requirements and process, respectively, and Section XII explains the process for requesting project modifications applicable to all categories. Some categories have special considerations and rules applicable only to that category given the nature of the projects. The section below provides additional information on categories that have such considerations. Categories that are not included below do not have any category-specific considerations or rules.

A. Environmentally Sensitive Land Acquisition Projects

1. Acquisition Time Extensions

Failure to agree on price following receipt of a federally approved appraisal and delivery of a written offer to the owner is not, in and of itself, sufficient justification for a time extension.

2. Acquisition Change in Scope

Lands and/or interests in land are evaluated, scored, ranked, and approved by the Secretary based on their resource values and public benefit. Changes in the acreage, parcels, or rights to be acquired could dramatically impact the resource values on which the ranking and approval were based. Any such changes should be identified and submitted in writing as a request for a change of scope to the SNPLMA Division as soon as circumstances develop which would prevent acquisition of the property as nominated and approved. The request for change in scope must include a description of the change in acreage, number of parcels, and/or rights being offered, and an explanation of how the requested changes impact the resource values on which approval of the acquisition was based.

If the resources are negatively impacted or measurably reduced, or the changes otherwise significantly alter the nature of the acquisition approved by the Secretary, the acquisition may be subject to termination as determined by the EC in reviewing a request for a change in scope (*see Section VII.F.3 regarding EC approval of scope changes.*)

3. Acquisition Appraisals and Costs

Section 5(c) of the SNPLMA legislation requires that “The fair market value [FMV] of land or an interest in land to be acquired by the Secretary [of the Interior] or the Secretary of Agriculture . . . shall be determined pursuant to Section 206 of the Federal Land Policy and Management Act of 1976 [FLPMA] and shall be consistent with other applicable requirements and standards. . . . without regard to the presence of a species listed as threatened or endangered under the Endangered Species Act of 1973.”

The applicable FLPMA text regarding appraisals is Section 206(f)(2) requires that agency rules and regulations regarding appraisals reflect “nationally recognized appraisal standards” [i.e., *Uniform Standards of Professional Appraisal Practice* (USPAP)], including to the extent appropriate the *Uniform*

Appraisal Standards for Federal Land Acquisitions [UASFLA]." Other provisions in Section 206 of FLPMA that are only applicable to an exchange action do not apply.¹⁵⁹

Appraisals for environmentally sensitive land acquisitions are to follow USAFLA and any other acquiring Federal agency requirements at a minimum. Although, FLPMA does not include a requirement that the acquiring Federal agency pay for the appraisal, these same standards must be followed even if the appraisal cost is being paid by the seller or another third party, including review and approval of the appraisal report by the appraisal office of the acquiring Federal agency. For some agencies, accomplishing this level of control over a third party funded appraisal may require that the agency's appraisal office have contractual authority to direct the appraiser as well as comment, review, and accept/reject the appraisal.¹⁶⁰

The SNPLMA Special Account will cover the cost of one federally approved appraisal. If the agency has owner agreement on price but, despite its best efforts, the acquisition cannot be completed before the appraisal expires, with submittal of supporting documentation and advance approval by the SNPLMA Division, the SNPLMA Special Account will also cover the cost of a new appraisal if carried out by the same appraiser.¹⁶¹ Regardless of which entity (agency, seller, other third party) paid for the original appraisal, failure to agree on price or obtain the owner's decision regarding the offered price resulting from the original appraisal is not justification for SNPLMA to cover the cost of a second appraisal.

Except as stated above, the cost of any additional appraisals or updates sought by the acquiring agency, regardless of the reason, will be the responsibility of the acquiring agency. This policy applies to all approved acquisitions which were not yet completed or terminated as of November 7, 2003, the date this policy was approved by the EC. However, the EC reserves the right to waive this policy and authorize a second appraisal due to extenuating circumstances. Requests for a waiver of this policy are to be submitted in writing to the SNPLMA Division Program Manager on agency letterhead signed by the authorized agency/entity manager and must include a full discussion of the circumstances and justification for the waiver.

4. Acquisitions with Apparent Mineral Value or Third-Party Reserved or Owned Mineral Rights

Agencies are generally expected to acquire lands and interests in land which include all subsurface rights, where subsurface rights are retained by an agency of the Federal government, or where no third party has, or could acquire, development rights for subsurface minerals retained by another party. However, lands are occasionally nominated that are patented mining claims, include non-patented mining claims, or where a third party has retained ownership of all or a portion of the mineral rights. In these instances, a brief mineral rights analysis should be conducted to validate ownership of the mineral rights and discuss in a general sense the likelihood of saleable minerals. If there are third-party owned mineral rights, agencies should conduct appropriate risk assessments in accordance with agency policy to be able to support a decision to purchase or not purchase.

1. Certain mineral situations may need to be addressed by obtaining a more detailed mineral potential report which addresses market feasibility for potential/proven saleable minerals, but that does not specifically determine a value for the minerals. If the acquiring agency believes a

¹⁵⁹ Clarification of the FMV requirements and application of FLPMA Section 206 was added in the 2018 version of the IA based on consultation with the Solicitor.

¹⁶⁰ This paragraph was added in the 2018 version of the IA to clarify required standards and review requirements regardless of whether the acquiring agency or another entity pays for the appraisal with SNPLMA funds or other available funds.

¹⁶¹ The rules for reimbursement of the cost of appraisals was approved by the EC in a decision memorandum signed on November 7, 2003.

mineral potential report is appropriate and necessary, the SNPLMA Division Program Manager must concur in advance in order for the cost of the mineral potential report to be reimbursed by SNPLMA. However, SNPLMA will not pay the cost of mineral exploration in order to provide detailed drilling and testing data necessary to value mineral rights. Such exploration is the responsibility of the owner or mining claim holder.

B. Parks, Trails, and Natural Areas

1. PTNA Project Perpetual Ownership, Management

In addition to perpetual ownership of acquired land and interests in land (*see paragraph 4(a) below*), the local and regional governmental entities are required to own and maintain in perpetuity any facilities, trails, or other features which are constructed using SNPLMA funds. This requirement does not prohibit the governmental entities from entering into agreements with third parties to perform necessary and appropriate maintenance of SNPLMA funded PTNA projects. Such agreements, however, cannot sell, give, or otherwise transfer ownership of the SNPLMA-funded PTNA project or project elements to a third party nor can such agreements abdicate the local or regional governmental entity's ultimate responsibility for such maintenance.

Commercial, for-profit entities may not operate facilities funded by SNPLMA for a profit. However, local and regional governmental entities may enter into management agreements/contracts with either commercial for-profit entities or non-profit/not-for-profit entities on a fixed fee basis where any excess revenues are retained by the local/regional governmental entity and utilized solely for the operation and maintenance of the SNPLMA funded facility. Similarly, profits from gift shops, snack bars or similar retail enterprises operated directly by the local/regional government entity on or within the SNPLMA-funded facility as well as entrance fees, use fees, and other such fees charged to the public by the local/regional government entity for access and/or use of the SNPLMA funded facility must be utilized solely for the operation and maintenance of the SNPLMA funded facility.¹⁶²

2. Short-Term PTNA Projects

Certain relatively low cost, short-term PTNA projects with an intended life of 10 years or less (such as an equestrian dirt trail with signage in an existing road right of way not yet needed for road construction or widening) may be nominated and considered for funding based on less than perpetual ownership and maintenance. This would not be an option if SNPLMA funds were used to acquire the land, easement, or right of way for construction of such a project. Such project nominations must clearly state the intended minimum life of the project, why the project must be considered for a short-term use rather than use in perpetuity, and justify the estimated cost to the value to the government for the use of SNPLMA funds over the intended life of the project. Such projects, if approved, would not require reimbursement to SNPLMA if and when the project is decommissioned at or after the minimum life of the project specified in the nomination.

3. PTNA NEPA

If an environmental impact assessment in compliance with the National Environmental Policy Act (NEPA) is required for the project, a copy of the NEPA documentation shall be retained in the entity's project file when the project is being funded through the ASAP process. The NEPA document will depend upon the level of compliance required and may be a decision record, finding of no significant

¹⁶² The DOI's Solicitor provided guidance in 2005 on appropriate use of profits and fees derived from SNPLMA funded PTNA projects and facilities in conjunction with preparing an MOU between the City of North Las Vegas and BLM regarding continued use and management of the Craig Ranch Golf Course property as a public golf course for a 2-year transition period after acquisition of the golf course property for a regional park using SNPLMA funds.

impact, categorical exclusion, determination of NEPA adequacy, or record of decision if an Environmental Impact Statement was completed.

4. PTNA Acquisition of Land & Interests in Land

SNPLMA Special Account funds may be provided for acquisition of lands or rights in land, including easements or rights of way, necessary to develop parks, trails, and natural areas by local and regional governmental entities. SNPLMA will reimburse no more than the fair market value of the land or right in land as determined by an appraisal prepared consistent with the USPAP and UASFLA. (*See more on PTNA acquisition appraisals in 4(b) and (c) below.*)

Acquisition of land and interests in land for PTNA projects require a willing seller. No reimbursement will be made for any PTNA acquisition of land or interest in land made by condemnation or under the threat of condemnation. A willing seller letter must be provided with any nomination for acquisition of land and major right of way for a PTNA project. Incidental right of way acquisitions which become necessary for completion of approved PTNA projects also require a willing seller letter, but the willing seller letter can be provided at any time prior to deposit of purchase funds in the project ASAP account. No purchase funds will be approved for ASAP draw down for such acquisitions without submittal of the willing seller letter.

(a) PTNA Land Acquisition Perpetual Ownership

The deed for land acquired with SNPLMA funds must contain a non-revocable restrictive covenant satisfactory to the BLM and the DOI Regional Solicitor that requires the local or regional entity to utilize the land for the intended purpose in perpetuity.¹⁶³ The requirement for a restrictive covenant does not apply to small, incidental right of way or easement acquisitions necessary to complete the alignment, provide access, or install signage for trail projects. Local and regional governmental entities are also required to maintain ownership for the intended purpose of other rights in land even though use of a restrictive covenant to that effect may not be practical.

(b) PTNA Land Acquisition Appraisals

Local/regional governmental entities are required to obtain an independent market value appraisal of lands and rights in land to be acquired for PTNA projects. The appraisal must be prepared in compliance with the USPAP and UASFLA and local/regional governmental entity regulations, and a complete rather than a summary report must be obtained so that all supporting documentation is included. The scope of work provided to the contract appraiser must state that both standards are to be followed and these standards must be identified in the appraisal report. The entities also must have the appraisal reviewed by a qualified appraisal professional. The review can be completed by a qualified employee or the review can be completed by a contracted independent professional appraiser. The review must be completed according to USPAP and UASFLA standards for review reports. The review appraiser's qualifications are to be included as a part of the review report, and the scope of work must be included in the appendices.

High value land acquisitions must be reviewed by the DOI, Office of Valuation Services (OVS) for the purpose of confirming the appraisal adheres to USPAP and UASFLA standards. High value acquisitions are defined as those with an expected value of \$2.5 million or higher. This threshold is consistent with thresholds for higher level review contained in the DOI Appraisal Manual.

When OVS review of the appraisal is required, local or regional governmental entities must coordinate with OVS and the SNPLMA Division from the beginning of the appraisal process. OVS must participate

¹⁶³ The approved language for the restrictive covenant can be obtained from the SNPLMA Program Manager for the PTNA category.

in development of the scope or work for the appraisal, selection of the appraiser, participate in and guide the pre-work appraisal conference, and be named as a client and user in the appraisal. In these instances, the appraisal review will be conducted by OVS and the entities will not be required to also obtain their own review of the appraisal report.

(c) PTNA Valuation of Low Cost Land Acquisitions

Entities may utilize a summary or modified valuation report if the property value is expected to be below \$2,500. Such summary report must include an approval signature and documentation signifying that the simplified valuation was reviewed and approved by appropriate management official within the local/regional governmental entity. Values determined in this manner must be reasonably supported.

(d) PTNA Title Insurance for Land Acquisitions

Entities must obtain a Title Insurance Policy for land acquisitions (but not for incidental right of way or easement acquisitions) with liability coverage equal to the purchase price and provide a Statement of Assurance from the entity that it has reviewed all exceptions in the policy to which the property is subject, and that there are no restrictions or encumbrances on the property that would prohibit the property from being used for its intended PTNA purpose.

(e) PTNA Phase I Hazmat Study for Acquisitions

A Phase I Environmental Site Assessment (ESA) completed in accordance with the Environmental Protection Agency (EPA) Final Rule for Standards and Practices for All Appropriate Inquires (effective November 1, 2006) must be obtained for all land acquisitions (but generally not for incidental right of way or easement acquisitions). The Final Rule can be complied with by following ASTM 1527-13 standards (or most recent version). The Phase I ESA must be reviewed by a qualified environmental professional as defined by the EPA Final Rule who is either employed by the entity or hired by the entity, where the review confirms that there are no recognized environmental conditions (RECs) on the property. A copy of the Executive Summary, Conclusions, and Recommendation sections of the Phase I ESA and a copy of the review must be provided to the SNPLMA Division. The entity must provide confirmation that clean-up of potential RECs or concerns identified and recommended for removal in the Phase I have been carried out by a qualified firm in an appropriate manner.

If the Phase I report identified RECs leading to the entity obtaining a Phase II for testing and confirmation of the existence and extent of the contamination, the entity must also provide the same sections and review of the Phase II Environmental Site Assessment. If the Phase II confirms the presence of hazardous materials requiring clean-up/reporting under Federal, state, or local laws and regulations, a Phase III clean-up plan must be developed and carried out. Following clean-up the entity must receive certification from the Nevada Department of Environmental Protection (NDEP) that the cleanup has been completed and no further action is required. A copy of the NDEP “no further action required” letter must be included in the documentation provided to the SNPLMA Division. These ESA requirements must be met before acquisition of the property is completed in order to obtain reimbursement from SNPLMA. If purchase funds are to be provided in advance, the ESA documentation is a part of the package that must be provided to the SNPLMA Division before purchase funds will be provided.

(f) PTNA Relocation Assistance for Acquisitions

A description of the determination regarding the applicability of relocation assistance under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646; 49 CFR Part 24, Final Rules Effective February 3, 2005) must be provided before purchase funds are approved for draw down through ASAP. (*See the IA Part Two, Appendix O for a Sample Relocation Assistance Assessment Under the Uniform Act from the BLM Acquisition Manual H-2100-1.*) The description should include an explanation of the circumstances of the acquisition and explain whether or not any displaced persons as defined in the regulations were impacted and, if so, what action was taken or will be taken to provide

relocation assistance. Relocation assistance determinations and resolution regarding providing such assistance are to be made, prior to completion of the acquisition.

It should be noted that owner termination of an otherwise valid lease or eviction of tenants or others legally occupying the property whether with verbal or written permission, does not relieve the entity of its obligation to pay relocation assistance to such “displaced persons” as defined in the Uniform Act.

5. PTNA Projects with Road Construction Elements

Consistent with the nomination guidance provided in Section V.A.10.(d), project implementation shall not include construction of primary roads and construction of internal roads and minor connections are limited as described in that section.

6. PTNA Projects with Building Construction

Consistent with the nomination guidance provided in Section V.A.10.(d), project implementation is limited to incidental building construction (e.g., restrooms, maintenance sheds, group picnic shelters, shade structures, small visitor greeting areas, etc.) and, when allowed, construction connected to more significant buildings such as a visitor center when the proposed building is deemed an integral part of a larger PTNA project and critical to accomplishing the purpose of that larger project is generally limited to indoor public areas and displays vs. office space or space for commercial enterprises such as gift shops or snack bars.

C. MSHCP Development and Implementation Projects

In Rounds 2 and 4, MSHCP Development Projects were funded by issuing one or two task orders against one Clark County Cooperative Agreement to cover all approved projects. Beginning with Round 6, the MSHCP project category receives funds on a per-project basis, as do the other project categories.

1. Section 108 Consultation for MSHCP Projects

If a MSHCP development or implementation project will involve ground disturbing activities that will trigger the provisions of Title 54, Section 306108 (previously Section 106 of the National Historic Preservation Act), required consultations for compliance with Section 108 must be carried out.¹⁶⁴

2. MSHCP Implementation Involving Land Acquisitions

Clark County may purchase land or rights in land for purposes consistent with implementation of the CC-MSHCP. The land acquisition guidelines provided for the PTNA category in Section XIII.B.4. apply equally to approved MSHCP land acquisition projects.

D. Conservation Initiative -- Interagency Projects

The following rules apply to interagency Conservation Initiative projects and, though uncommon, any other category that develops and gains approval of an interagency project.

1. Funding

Each participating agency receives its own financial instrument to receive project funds and each agency is assigned a separate project number for its portion of the project. At least one of the participating agencies must initiate its portion of the project, request funds, and begin work on the project within one year following the date of the Special Account Funds Notice. The first agency requesting funding must identify how the project funds are to be allocated between all participating agencies and confirm that all

¹⁶⁴ The National Historic Preservation Act of 1966 was first codified originally and as amended in CFR 16. In December 2014 P.L. 13-287 moved the Act’s provisions to Title 54 of the United States Code and reordered some of the provisions. What is now USC 54, Subtitle III, Division A, Section 306108 (54 U.S.C. 306108) was originally Section 306106 (commonly referred to as Section 106) when the Act was codified in CFR 16.

participating agencies have agreed to the allocation of project funds. All participating agencies must request funds and complete their portion of the project within the project timeframe stated in the nomination and/or the period of performance of the financial instrument plus any approved time extensions.

2. Project Modifications

Each participating agency is responsible for submitting project modification requests, except scope changes, and quarterly reporting on its portion of the project. Only the lead agency may submit a scope change request since these are likely to affect the scope of the project overall and therefore need concurrence of all participating agencies.

3. Project Closeout

Participating agencies close their portion of the project independently from the other participating agencies. The project as a whole will not be closed in SNPLMA's records or reported as closed until all participating agencies have closed out their individual portion of the project overall.

E. Lake Tahoe Restoration Projects

The process for funding Lake Tahoe Restoration Projects mirrors the process for the other SNPLMA project categories where the method of funding depends upon the entity receiving the funds. Program and implementation responsibilities are under BLM oversight as authorized in the SNPLMA. The responsibilities for administration and financial management of SNPLMA funds approved for Lake Tahoe will be with the BLM in accordance with Section 4(e) of the SNPLMA legislation. The BLM's contracting officer's representative and SNPLMA Program Manager is located in the SNPLMA Division and is responsible for processing financial instruments and funding requests. Documentation requirements for requesting an IAA, AA, or transfer of funds for Lake Tahoe restoration projects is the same as for all categories as described in the IA Part Two, Appendix J, part B.

The BLM may consider contracting with the FS or others, if authorized, to provide oversight and administrative functions which may include, but not be limited to:

- Administer and support the LTBEAC and LTFAC by organizing meetings, preparing reports, facilitating the development of the Quarterly Status Reports and other administrative needs of the LTBEAC and LTFAC;
- Organize TREX review of project modifications as needed; and
- Coordinate and consult with the LTFAC, TRPA, Lake Tahoe Transportation and States of California and Nevada, Federal agencies, and other parties interested in SNPLMA funded Lake Tahoe Restoration Projects.

1. Memorandums of Understanding with Tahoe Participating Federal Agencies

Memorandums of understanding (MOU) are executed for each participating Federal agency. Each agreement is a tri-party agreement executed by the BLM, the FS and the participating Federal agency. The BLM signs based on its implementation, oversight, and financial management responsibilities for the SNPLMA Special Account. The FS signs in its role as representing the Secretary of Agriculture and recipient of funds pursuant to P.L.108-108 as well as in its role as the entity responsible for inspection and acceptance of projects as qualified restoration projects under the applicable laws. Finally, each participating agency signs the MOU in order to create the mechanism by which funds can be provided to these agencies for performance of the projects in accordance with P.L. 108-108.

2. Reprogramming of Tahoe Funds from Primary to Secondary Approved Projects

As approved by the Secretary, the approved funding available for Lake Tahoe projects in a given Round may be reprogrammed from the Primary Category to the Secondary Category in the event that a project(s) in the Primary Category becomes infeasible or actual costs are less than estimated costs. In cases where actual costs for any given project in either the Primary or Secondary Category exceed the amount approved by the Secretary, any funds available from previously approved projects as a result of other projects being terminated or actual costs being less than estimated may be made available to cover the higher than expected costs for other projects. In such cases as these, the PCT shall notify and present the issue to the TREX for final approval.

After TREX approval to reprogram the funds, the agency will submit its request for modification of the financial instrument to decrease or increase available funds for the affected projects to the BLM SNPLMA Division. The request should include a copy of the TREX approval document and, if not included in that document, an explanation of project(s) from which funds are being diverted. This is necessary in order for the SNPLMA Division to ensure that all financial instruments are amended to show the revised amounts available for the affected projects.

The cumulative amount authorized through P.L. 108-108 for Lake Tahoe Restoration projects of \$300,000,000 was met with the funding of Round 12 Lake Tahoe Restoration Projects. These projects are not, therefore, eligible to request or receive additional funds through the SAR from the SNPLMA Special Account.

3. Tahoe 1151 Transfer of Funds for “Pass Through”

Federal agencies may request an 1151 Direct Transfer of funds from the SNPLMA Special Account where those funds are intended to be passed through to non-Federal entities (e.g., local governments, environmental groups, etc.) similar to grant programs. The purpose of such “1151 Transfers” is to meet the requirement of “environmental payments” to non-Federal entities under the Lake Tahoe Restoration Act (114 Stat. 2354). In accordance with that Act the total of amount to meet this requirement shall be \$10 million annually. The 1151 Direct Transfer process for this purpose is the same as that outlined in Section VIII.A. and the IA Part Two, Appendix N for all categories.

4. Tahoe Sponsoring Federal Agency Responsibility

Each sponsoring Federal agency for Lake Tahoe will be responsible for implementing their respective projects. For example, the agency will develop a RFP for its approved projects, administer the review of the proposals, and provide oversight of the project(s) funded through the RFP.

5. Tahoe Requests for Change in Scope

If a project cannot be completed as described in the nomination and approved by the Secretary (reduced or altered scope), the Federal agency may elect to either terminate the project or request approval of a change in scope by the TREX. Changes in scope are discouraged, as there is a responsibility to utilize funds to complete the project as approved by the Secretary. However, the TREX may consider extreme or unusual extenuating circumstances. Requests for approval of a change of scope should be made as soon as circumstances preventing completion of the project as nominated and approved are known. Following TREX approval of a change in scope, the agency submits a request to amend the project financial instrument to reflect the change in scope to the SNPLMA Division. The request must explain the change in scope, any impact on funding, source of any additional funds if needed, and include a copy of the TREX decision document authorizing the change in scope.

6. Tahoe Requests for Time Extensions

If the project cannot be completed by the expiration date identified in the financial instrument, the agency must request a project modification for a time extension up to one year by submitting the required

documentation to the SNPLMA Division (*see the IA Part Two, Appendix L*). The SNPLMA Division can approve one time extension request of one year or less for Lake Tahoe Restoration Projects and a one-time, final 90-day extension for project closeout.

Time extensions beyond one year require approval by the TREX. The agency submits the request to TREX with a copy to SNPLMA. SNPLMA is then copied on the TREX decision and processes the required modification to the financial instrument for extensions approved by TREX.

7. Tahoe Closeout Documentation Package

Project closeout packages are submitted to the FS Lake Tahoe Basin Management Unit (FS-LTBMU) designated representative. The FS-LTBMU will review the project deliverables for consistency with the Environmental Improvement Program (EIP).¹⁶⁵ If the FS-LTBMU accepts the deliverables then the FS-LTBMU will forward the closeout package to the SNPLMA Division with a letter requesting closeout (*see the IA Part Two, Appendix L, part F for information on closeout requirements including content of the closeout request letter and documentation requirements*). The SNPLMA Division will complete the financial review and coordinate with the recipient agency/entity to resolve any issues and complete the financial closeout process. The SNPLMA Division will send a letter confirming the project is closed to the recipient agency/entity with a copy to the FS-LTBMU designated representative.

XIV. PHASE 4 SNPLMA BUSINESS PROCESS: PROJECT CLOSEOUT

A. Closeout Upon Completion of Project

When a project has been completed the agency/entity will prepare a project closeout request package in accordance with the requirements in the IA Part Two, Appendix J. Those requirements include completing a final work plan status update which is to include project accomplishments in the section for reporting annual accomplishments. The project accomplishments include reporting appropriate quantities of Performance Measures approved by the EC in July 2012. (*See the IA Part Two, Appendix J, part F.2.b. and the IA Part Two, Appendix J-3 for more information on Performance Measures.*)

In compliance with the Secretary's decision (*see Section V.A.9*) agencies/entities are to complete and submit the closeout package by the project end date identified in the project financial instrument including any approved time extensions. If the agency/entity does not submit the closeout package by the project end date, SNPLMA will not pay any costs incurred after the end date for preparation of the closeout package.¹⁶⁶

When the project purpose has been accomplished as confirmed by status updates in SMART and site inspections as appropriate, and the agency/entity is in the process of preparing, or has submitted, all required documentation in a closeout package to the SNPLMA Division, the project may receive a status of CM with a status date equal to the date identified in SMART for project completion. If the project closeout package is not submitted within 90 days of the project end date in the financial instrument, the status will change from CM to EX.

All expired projects will be included on the POC List. Expired projects that have not submitted a closeout package within 90 days of the project end date in the financial instrument will be elevated to a level of "Red" concern and will be included on the Focus List. Therefore, all entities should make every

¹⁶⁵ This initial step in the closeout process for Lake Tahoe Restoration projects, is the responsibility of the FS because the FS is officially designated as the lead for the Environmental Improvement Program compliance.

¹⁶⁶ This rule is consistent with decisions approved by the EC in a decision memorandum signed 9/30/2010. See also Section VII.D. "Conditions for Payment of Agency/Entity Obligations and Expenditures" and associated footnotes.

effort to submit a close-out package for completed projects before project expiration or, but no later than 90 days after the project expiration to avoid inclusion of the project on the Focus List.

The SNPLMA Division will review the closeout package to ensure completeness and verify that costs qualify as necessary expenses (*see Section VI.C.1.(b) and the IA Part, Two Appendix B*). Any missing information or other issues with the closeout package will be addressed by the SNPLMA Division with the recipient agency/entity.

The SNPLMA Division will then complete the project closeout process based on the type of financial instrument:

- **Projects Funded by 1151 Direct Transfer:** Process the final transfer request or return of excess transferred funds, if either apply, for projects funded by 1151 direct transfer as part of the next regularly scheduled quarterly transfer process. Return amounts will be netted against the agency's positive funding requests for the quarter, resulting in a reduction in the transfer of new dollars equal to the amount being returned. It is the responsibility of the agency to effectively make up that deficit by moving the "returned" funds from the closed project(s) to one or more projects that had a positive fund request in the quarter.¹⁶⁷ The SNPLMA Division will also provide the agency with a revised transfer authorization letter documenting the closeout of the project, excess transferred funds to be returned through the quarterly transfer process, and any unused funds allocated to the project that will be released back to the Special Account.
- **Projects Funded by BLM Task Order:** The SNPLMA Program Manager will advise the recipient BLM office of any erroneous charges to the project and/or direct-charge funds that must be returned, if any. It is the responsibility of the recipient BLM office to initiate whatever action is required in FBMS to move erroneous or inappropriate charges to another cost structure; every effort should be made to complete the required correction process within 60 days of notification that the charge is incorrect or otherwise inappropriate. Once corrections for erroneous charges, if any, have been made, the SNPLMA Division will initiate and process a BLM Task Order modification to close the project and release any unused funds.
- **Projects Funded by IAA or AA:** Initiate a modification to close the IAA or Assistance Agreement and de-obligate any funds in excess of approved necessary expenses. The modification is finalized by the NSO Grant Management Officer.

Once the financial instrument has been closed as indicated above, the project will receive a status of CL with a closeout date equal to the execution date of the modification to close the financial instrument and a copy of the modified financial instrument will be provided to the agency/entity by the SNPLMA Program Manager.

B. Closeout Due to Termination Prior to Completion

During the course of project implementation, a project may experience problems, delays, or changing circumstances such that implementing the project in its current form is not possible. When problems with project implementation arise, the SNPLMA Division will work with the agency/entity to identify a mutually acceptable course of action and, if appropriate, assist in submitting a project modification request. If the problems cannot be resolved, project termination may be necessary.¹⁶⁸

¹⁶⁷ Occasionally the amount to be returned may be so large that the SNPLMA Program Manager will work with the recipient agency to do a "reverse transfer" in order to return the funds to the SNPLMA Special Account in a timely manner rather than spreading the return amount over multiple quarterly funding requests.

¹⁶⁸ The termination section as published in the February 2013 version of the IA was in compliance with an EC decision memorandum approved 8/1/2011 to expand the list of circumstances under which SNPLMA would recommend termination. The decision memorandum included a decision that projects may no longer be placed into

Project terminations can occur for a variety of reasons. For example, a project may need to be terminated because it can no longer accomplish the purpose or deliverables approved by the Secretary; or a modification is not appropriate because it conflicts with Federal Appropriations Law, regulations, implementing agency/entity policies, or SNPLMA policies and procedures. Project terminations sometimes occur prior to initiating the project funding or at the early stages of project implementation. Before termination of a project that is in the implementation stage (TO status), the SNPLMA Division will work with the agency/entity to identify, consistent with SNPLMA policies and procedures, which, if any, deliverables within the project could be completed in order to achieve the purpose and primary deliverable(s) of the project. In such instances, the project may request approval to down-scope the project (i.e., a reduction in the scope of the project by altering or removing certain deliverables) and, if approved, be designated as complete when the reduced scope has been accomplished and then be closed out versus terminated.

1. Termination Justification Examples

Projects are expected to be completed within the scope, time, and budget approved by the Secretary or as modified by approved decision memorandum(s). Although the following list is not all encompassing, when termination is necessary one or more of the reasons listed may typically be cited for terminating a project:

- Higher than expected costs, which cannot be rectified through requesting additional funding or by down scoping the project and still achieve the purpose and primary deliverable(s) of the project;
- Health/safety, environmental, construction constraints, or legal issues which cannot be resolved or cannot be resolved within a reasonable time period;
- The appraised value for a land acquisition is not an acceptable purchase price to the owner;
- The project scope no longer fits within the context of the project as originally nominated and approved by the Secretary;
- The project no longer fits within the context of the recipient agency's/entity's set of priorities and/or goals;
- The need for the project has been met by another resource; and/or the project was funded through another source;
- The project does not have sufficient time remaining to achieve the purpose and primary deliverables of the project, even if reduced in scope; or
- Receipt of an EC decision on a project modification request which requires that the project be terminated.

2. SNPLMA Initiated Terminations

In addition, there are circumstances when termination will be initiated by the SNPLMA Division due to the actions or inactions of the recipient agency/entity. Examples of actions and inactions that would trigger the SNPLMA Division termination process are listed in the "POC" Section XI. A. 3. "Example Criteria/Circumstances for Red POC" items (b) through (e) and (h) through (k) except where otherwise noted.

Although the POC "Red" examples are not necessarily all encompassing, they provide good guidance for circumstances that should be avoided in order to prevent a situation where the SNPLMA Division

"on hold" status. As a result, the original termination rule for failure to reactivate an "on-hold" project has been deleted from the list.

termination process would be triggered. If any of the specified “Red” circumstances (items (b) through (e) and (h) through (k)) or other circumstances consistent with the definition of the “Red” level of concern in Section XI.A.3., “System for Categorizing Level of Risk,” occur, the SNPLMA Division termination process will be initiated by the SNPLM Program Manager.¹⁶⁹

3. Processing Termination Requests

(a) Terminations Initiated by the Recipient Agency/Entity

If an agency/entity decides termination of a project is appropriate, the agency/entity will provide a written termination notice to the SNPLMA Division including an explanation of the circumstances and justification for the termination. The termination notice will include the total amount expended on the project (e.g., ASAP draw downs, reimbursement, BLM Task Order direct charges, expenditure of transferred funds). Projects funded by a reimbursable instrument (IAA, Assistance Agreement, or BLM reimbursable task order) will also identify the total amount obligated by that instrument and the amount to be deobligated and returned to the SNPLMA Special Account. If funds were provided by 1151 direct transfer, the agency termination notice will include the total expended and the amount of any unused transferred funds to be returned to the SNPLMA Special Account. The SNPLMA Division will review the termination notice and supporting documentation and request additional information as necessary.

The SNPLMA Division will communicate the agency’s/entity’s termination notice to the PWG and EC in writing detailing the agency’s/entity’s justification and rationale for requesting termination. The PWG and EC may request additional information or suggest alternatives to termination for consideration by the agency/entity within seven (7) days of the date of the termination notification issued by the SNPLMA Division. The SNPLMA Division will notify the entity in writing of any concerns or recommendations regarding the termination expressed by the PWG or EC and work jointly with the agency/entity to address them in a timely fashion.

The agency/entity should make every effort to submit the completed closeout package to the SNPLMA Division within 90 days of the expiration of the 7-day review period for the EC and PWG. (*See the IA Part Two, Appendix J, part F for closeout package requirements.*)

(b) Terminations Initiated by the SNPLMA Division¹⁷⁰

Prior to recommending termination of a project, the SNPLMA Division will notify the agency/entity in writing regarding those issues that the SNPLMA Division believes to be grounds for termination and request coordinated effort to resolve the cited issues. If, after 30 days of the date of the written notice of concerns (i.e., initiation of discussions), the SNPLMA Division determines that the issues are not resolved, the SNPLMA Division will provide a written memorandum or letter formally notifying the recipient agency/entity of its intent to recommend termination of the project and the reasons for the request. The SNPLMA Division will then prepare a decision memorandum recommending termination and forward it through the PWG to the EC, which shall have the sole authority to approve terminations initiated by the SNPLMA Division.

¹⁶⁹ Only the EC has authority to approve terminations recommended by the SNPLMA Division. Rules for initiation of the SPLMA termination process included in the February 2013 version of the IA and approved in a 1/15/2014 decision memorandum have been either incorporated into the list of “Red” rules that will trigger initiation of the SNPLMA termination process or have been deleted as not practical to enforce by decision of the EC in a memorandum signed on 5/4/2018.

¹⁷⁰ The discussion period was changed from 60 to 30 days and the second paragraph was added to this section in accordance with an EC decision memorandum approved on 5/4/2018.

The 30-day discussion period to resolve the issue will not apply if the same circumstance regarding the project that initiated the termination process is repeated by the agency/entity. If this happens, the SNPLMA Division will notify the agency/entity that the repeated offense has occurred and the SNPLMA Division will move to immediately prepare a decision memorandum recommending termination. As an example, consider a conditional approval where a contract is subsequently awarded with a completion/expiration date that extends beyond the end date for the project in the conditional approval. This circumstance would result in the SNPLMA termination process being initiated. If the agency/entity resolves the issue within the 30-day discussion period by modifying the contract to be consistent with the end date in the conditional approval, the termination process ceases. However, if a second contract is then initiated for the same project with an end date beyond the end date in the conditional approval, notice of the repeated offense will be sent to the agency/entity and a decision memorandum recommending termination will be immediately prepared.

The SNPLMA Division will provide the agency/entity a copy of the signed EC decision memo. If the termination request was approved, the agency/entity will take immediate steps to stop work on the project (e.g., cease work orders, close/cancel contracts, cancel supply orders, pay outstanding invoices, etc.) and ensure that additional costs incurred by the project are only those necessary to bring work to a stop and close out the project consistent with the EC's decision. The project will be given a status of TR with a status date equal to the date of the EC decision. The project will retain its POC "Red" color category and will remain on the Focus List until closed out.

4. Reimbursement, Final Transfer, and Closeout of Terminated Projects

After receiving, reviewing, and accepting the closeout package, the SNPLMA Division will process the termination closeout by initiating a modification to the applicable financial instrument to close the instrument and the project as well as document the deobligation, return, or release of unused funds. Once the financial instrument for the terminated project is executed, the project will receive a status of CL with a status date equal to the execution date of the modification to close the financial instrument. As with all CL projects, the terminated project will then be removed from the POC and Focus Lists.

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XV. APPROVALS

By signature below, the Executive Committee members confirm approval of the SNPLMA Implementation Agreement Part One and Part Two on the latest date signed below.

Approved:  11/20/18
Date
Marci Todd, Chair
Acting State Director, Nevada
Bureau of Land Management

Approved: _____
Date
Polly Wheeler
Assistant Regional Director, Pacific Southwest Region
U.S. Fish and Wildlife Service


Approved: _____
Date
Stan Austin
Deputy Regional Director, Pacific West Region
National Park Service

Approved: _____
Date
Nora Rasure
Deputy Regional Forester, Intermountain Region
U. S. Forest Service

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Approved:  _____
Polly Wheeler
Assistant Regional Director, Pacific Southwest Region
U.S. Fish and Wildlife Service
Date 10/26/18

Approved: _____
Stan Austin
Deputy Regional Director, Pacific West Region
National Park Service
Date _____

Approved: _____
Nora Rasure
Deputy Regional Forester, Intermountain Region
U. S. Forest Service
Date _____

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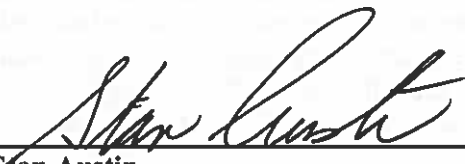
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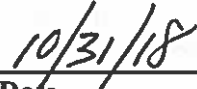
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Acting State Director, Nevada
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Date

Approved:  _____
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Date

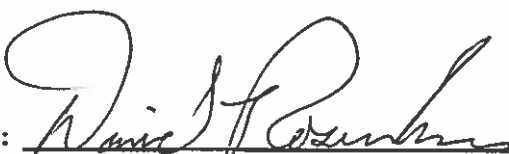
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Date _____

Approved: _____
Stan Austin
Deputy Regional Director, Pacific West Region
National Park Service
Date _____

Approved:  _____
for Nora Rasure
Deputy Regional Forester, Intermountain Region
U. S. Forest Service
Date 11/19/2018