



United States Department of the Interior



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In Reply Refer To:
2710 (NVS0055)

DECISION MEMORANDUM

To: Southern Nevada Public Land Management Act (SNPLMA) Executive Committee (EC)

Through: SNPLMA Partners Working Group (PWG)

From: Karla Norris,
Assistant District Manager (ADM), SNPLMA Division /s/ 12/4/2013

Subject: Request Revision to the SNPLMA Implementation Agreement Regarding Changes
Proposed at the August 14-15, 2013 meeting of the EC

Introduction:

The Southern Nevada Public Land Management Act (SNPLMA) Implementation Agreement (IA) contains the business rules and procedures for nomination through closeout of projects funded through the SNPLMA. Lessons learned in implementing the legislation have proven valuable in modifying the IA over the years to provide greater efficiency, effectiveness, and transparency. The EC is committed to the continual improvement of program management and oversight. Recommended changes ensure increased accountability, provide program partners with greater clarity in the interpretation of the business rules contained in the IA, and will clarify the decision space for the SNPLMA Division.

This decision memorandum recommends the following changes to the IA:

I. Delegate approval authority for the majority of project modification Decision Memoranda.

Background:

Currently, when a partner submits a project modification request, the SNPLMA Division Program Manager prepares a Decision Memorandum (DM). DMs are reviewed by the ADM, SNPLMA Division, and submitted to the PWG with a 14 calendar day timeframe for voting. The result of the PWG vote is forwarded to the EC with a 14 calendar day timeframe for voting. The DM is signed by the Bureau of Land Management Nevada State Director indicating either approval, disapproval, or approval of an alternate decision from what was recommended. The signed DM is electronically distributed to the requesting partner, the PWG, and the EC.

Issue:

There are several issues with the current process. It is time intensive and may slow the approval of project modification requests. Membership on the PWG is a collateral job responsibility and at times members are inundated with decision memoranda, which may affect their ability to review requests thoroughly.

Recommendation:

Authorize the ADM, SNPLMA Division to make project modification request decisions for the majority of requests submitted. (Requests for termination, Special Account Reserve (SAR) funding, and for a waiver of business rules will continue to be routed using the current process.) The SNPLMA ADM or the Program Manager will ensure there is communication with the partner prior to signing the decision memorandum, particularly if the findings do not recommend the request as submitted by the entity. Once the ADM signs a decision memorandum, it will be sent to the EC for a seven day review period. If no objection is received from any member of the EC within seven calendar days, the decision 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 PWG 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.

After the above process is complete and the requesting agency/entity has received an electronic copy of the signed DM from the SNPLMA Division, if the agency/entity does not agree with the SNPLMA ADM 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 PWG Chair (the BLM Nevada Deputy State Director, Natural Resources, Lands and Planning) within 14 days of the DM 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 DM
- A copy of the original request submitted by the entity
- Any other pertinent information the entity believes is important for the EC to consider as part of the request for reconsideration.

Electronic copies of the letter and attachments should also be sent to the SNPLMA ADM, SNPLMA Program Manager, and the Special Legislation Program Manager in the BLM Nevada State Office.

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 DM, which will be signed by the EC Chair.

Analysis:

There are several reasons for the proposed change: 1) Better aligns the process with that of other Federal grant programs; 2) Improves program efficiency by reducing the time required to process a project modification request; and 3) Allows the PWG and EC to better focus on the project nomination and recommendation process and on developing and implementing strategic direction for the SNPLMA program.

II: Time Extensions

Background:

Time extensions are addressed in the IA, on page 34, *Part I* (IA Part I) in “Part VI. Phase 2 SNPLMA Business Process-Funding: Principles of Appropriations Law and Application to SNPLMA of the IA.” The specific language says: “Availability of project funds approved by the Secretary is limited by the duration of the project

stated in the nomination . . . time extension should be ‘exceptions to the expected practice of timely implementation of projects and therefore limited in number and scope.’”

Issue:

The language is vague and ambiguous.

Recommendation:

The following are recommended changes:

1. Required additional information when partners submit a time extension request:
 - a. Information on the entity’s attempt to consider accelerating timelines or 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.
 - b. Time extension requests must include deliverable target start and end dates and any additional estimated costs if there is a change in any deliverables
2. Items considered when a time extension request is reviewed:
 - a. The current Project of Concern (POC) list. Only under extenuating circumstances will a time extension be granted for an orange or red project. The IA currently includes language defining examples of extenuating circumstances as “. . .beyond an agency’s or entity’s control include, but are not limited to, weather-related delays; contracting appeals; claims or stop work orders that delay the award; mobilization and closeout of contracts and release of claims/liens; vandalism; or unanticipated site conditions requiring additional engineering or project redesign.”
 - b. The overall “track record” of the entity when analyzing a time extension request, including the total number of SNPLMA projects completed by the requesting agency relative to its total number of approved SNPLMA projects as well as the total number of projects it has on the POC list (i.e., orange or red projects).
3. No further time extensions, retroactive or otherwise, are granted for PPP projects. If the entity requests an exception, it would be considered a waiver of business rules and would necessitate approval by the EC.
4. All time extensions are conditional approvals as defined in the IA on page 56. Entities must meet the deadlines for deliverables and milestones set in the conditions before approval is given by the SNPLMA Program Manager to move to the next stage of the project. As each conditional deliverable or milestone is completed, the entity is required to report that progress to the SNPLMA Program Manager via electronic correspondence and include the same progress information in the next SNPLMA quarterly status update report.
5. If a project has not progressed at a reasonable rate (evaluated on those things that are within the entity’s control or scope of influence) based on the project timeframe and deliverable target start dates in the approved workplan, and then later experiences extenuating circumstances that further delay the project, a time extension will not be approved.

For example, consider a Capital Improvement or PTNA project with a standard timeframe of 5 years where construction has not begun and the target start date for construction has passed. In this situation should a flood event occur that would delay the project completion to a 6-year timeframe, the extenuating circumstance may be beyond the control of the entity, but not starting project construction in a timely fashion was within the control of the entity. In this circumstance a time extension due to the flood event would not be approved.

Consider the same Capital Improvement or PTNA project (a 5-year timeframe that had not progressed at a reasonable rate), but where construction had begun before the flood event occurred, although well after the target start date for construction had passed. The EC will consider a waiver of the business rules to grant a conditional time extension to ensure completion of construction. For example, factors to be considered could include the percent complete for construction, the extent and nature of any damage, whether any additional funds outside the original approved amount would be required to complete the project, and whether completion of construction is necessary to meet the intent of the nomination as approved by the Secretary.

6. As time extension requests are submitted, the category-specific project timeframes are applied retroactively when making a decision to recommend a time extension. (Currently, category-specific timeframes only apply to projects in Round 11 and after). Project timeframes are on page 23 of the IA and are as follows:
 - Land Acquisition-2 years
 - PTNA-5 years
 - Capital Improvements-5 years
 - MSHCP-5 years
 - Conservation Initiatives-5 years
 - ENLRP-4 years
 - Hazardous Fuels-6 years
 - Lake Tahoe-5 years for capital projects, 3 years for science projects, and 6 years for hazardous fuels projects
7. Time extensions are limited to 1 year beyond the above-referenced timeframes. After the 1-year time extension, approval of another extension may only be granted by the EC through a waiver of business rules. An approved waiver of business rules automatically moves the project into an “orange” POC List status.

If an entity submits an 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 plus 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 (per #5 above) to ensure construction is completed. If such a project has not started construction, an extension request will not be considered. Rather, the project will be recommended for termination.

Project extension requests for projects with no construction component that are over the category timeframe, plus 1 year, are not granted an extension. Rather, these projects are recommended for termination at a logical and reasonable termination point in the project. For example, a logical stopping point for a revegetation project would be at the end of a field season.

8. The EC may continue to authorize a longer timeframe if the request is submitted as part of the project nomination and there is sufficient justification to approve an extended timeframe.

Analysis:

These revisions increase certainty and set clear expectations for partners who submit a request for a time extension, serve to clarify the decision space for the ADM, SNPLMA Division, and should result in timely project completion and greater accountability.

III. Terminations

Background:

Pages 69 and 70 of the IA (Part I) address terminations in “Part XII. Phase 4 SNPLMA Business Process: Project Closeout.” Current language says: “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.... If the problems cannot be resolved project termination may be necessary.”

Issue:

The language is vague and ambiguous.

Recommendation:

The following are recommended changes to the IA termination rules (Note: Only the EC is authorized to approve project terminations; this will not change):

1. If any project deliverable date or the project completion date identified in a conditional approval for a project modification is not met, the project will be recommended for termination.
2. The language on page 69 is changed regarding circumstances that would lead to a recommendation for termination from “may be recommended” to “will be recommended” and the list of circumstances will be revised as necessary for consistency with other changes outlined in this memorandum.
3. If an entity does not adequately respond to the SNPLMA Division within 30 days regarding notification that the SNPLMA Division is considering termination, the project will be recommended for termination.
4. The SNPLMA Division will recommend project termination if more than two consecutive quarters go by without the entity reporting adequate information in the quarterly database. Adequate quarterly reporting means that the entity must complete all of the following in the SNPLMA-SMART web-based reporting system for all active projects:
 - a. Quarterly Status Update:
 - i. Enter overall project completion percent.
 - ii. Provide status comments for all deliverables where work has occurred.
 1. 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.)
 2. Explain if project completion rate and duration are not syncing up (e.g., 5% complete, but 70% of the time has elapsed).
 - iii. Enter a percent complete for each deliverable where work has started.

- iv. Enter “Actual Start Date” for each deliverable where work has begun, or where other information regarding timing of starting work on the deliverable is required.
- v. Enter “Actual End Date” for each deliverable that is 100% complete
- b. Funding Request:
 - i. Enter current funding request.
 - ii. Enter total expended/obligated amount (required for transfer, reimbursement, and direct charge funding, but not for ASAP funding).
 - iii. In funding comment field, enter the reason the funds requested are needed now; explain if the amount expended/obligated in the previous quarter is less than 95% of the funds that have been provided (typically applies to transferred funds).
- c. Contacts: Review and update contacts for each project to ensure they are current.
- d. Annual Accomplishments
 - i. Complete a concise summary of the overall project accomplishments focusing on the project purpose and primary deliverables for any project that is completed and closed out during the fiscal year.
 - ii. During the 1st Quarter of each new fiscal year, complete a concise summary of the work accomplished on the deliverables during the previous fiscal year.
- e. Workplan
 - i. For new projects enter the deliverables, tasks, and subtasks required to accomplish the project purpose, with target start and end dates.
 - ii. If updates are indicated as being necessary in the PM comments, update the workplan deliverables to reflect revised target start and end dates or descriptions for deliverables affected by time extensions or scope changes.

Analysis: These revisions increase certainty and set clear expectations for partners regarding termination recommendations, serve to clarify the decision space for the ADM, SNPLMA Division, and should result in greater accountability.

IV. Projects of Concern List

Background:

The IA does not currently include language regarding the POC List. In February 2012 the EC approved an IA DM, outlining the purpose, scope, and implementation of a POC List.

Issue:

At the time the above-referenced DM was signed, it was not recommended to be incorporated into the IA.

Recommendation:

The POC List process is incorporated into the IA. In addition, a project will be added to the POC list in an orange status if adequate reporting information is not received during a quarter. Adequate quarterly information must be submitted during the next quarter or the project is recommended for termination under section III, 4 above.

Analysis:

Recent experience has demonstrated a continuing need for the List and for utilization of the List in making recommendations for project modifications and funding.

V. Other Changes

Background: In the past, modifications or clarifications have been made to the IA on the average of every several years to improve understanding of the guidelines by the partners.

Issue: There are several minor changes to be clarified in the IA as a part of the overall program of continuing improvements.

Recommendation:

1. The same information required for time extensions, I, 1, a. is required for all project modification requests and requests to use contingency funding (for projects funded in Round 10 and beyond). Currently, this is only required if making a SAR request.
2. Partners may not exceed the 27% cap for “Planning, Environmental Compliance, and Preconstruction Engineering and Design” for Capital Improvement and Park, Trail, and Natural Area projects, 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 authorizations to exceed this cap are no longer considered 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% with other funds.
3. No project modification should be submitted by an entity, and none will be considered by the SNPLMA Division, that is in conflict with requirements in the IA.
4. Agencies and entities at the subgroup and PWG levels are not allowed to rank or vote on their own projects during the nomination and recommendation process.

Recommendation:

The SNPLMA Division recommends approval and implementation of the suggested changes to the IA effective immediately upon signature of this DM by the Chair of the EC. The IA language will then be amended and the revised IA distributed to all partners for a 30 calendar day review period. Upon completion of the review period, changes will be made as appropriate and the IA distributed to the EC for a 14-day review period. If acceptable to the EC, it will be signed and distributed to all partners.

Action Needed:

Partners Working Group members should provide their vote via e-mail and/or voice vote during conference calls or meetings to Raul Morales, Chair of the SNPLMA Partners Working Group with a copy to the SNPLMA Division. Once all votes have been submitted or 14 days have passed, the Working Group’s recommendation will be finalized by the Working Group Chair.

Decision:

The signature below indicates the decision made by majority vote on the above SNPLMA Division recommendation.

BY: Raul Morales, SNPLMA Partners Working Group Chair



Approve SNPLMA Division Recommendation

1/6/2014
Date

Approve Alternate Recommendation
(Refer to rationale provided below)

Date

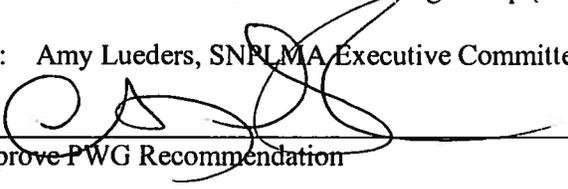
Disapprove SNPLMA Recommendation
(Refer to rationale provided below.)

Date

If the Partners Working Group (PWG) disagrees with the SNPLMA Division recommendation and/or approves an alternate action, please explain below:

Executive Committee Decision: By signature below, indicate the decision made by majority vote on the above recommendation of the Partners Working Group (PWG).

BY: Amy Lueders, SNPLMA Executive Committee Chair



Approve PWG Recommendation

1/15/14
Date

Approve Alternate Action
(Refer to rationale provided below.)

Date

Disapprove PWG Recommendation
(Refer to rationale provided below.)

Date

If the Executive Committee disagrees with the Partners Working Group recommendation and/or approves an alternate action, please explain below:

The Executive Committee will notify the Partners Working Group of its decision and return the original signed document to the SNPLMA Division to be maintained in the administrative record.

