

# **Implementation Agreement**

**Southern Nevada Public Land Management Act of 1998  
Public Law 105-263 (as amended)<sup>1</sup>**

## **PART ONE**

**February 5, 2013**

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<sup>1</sup> All references to the Federal Land Transaction Facilitation Act of 2000 (Public Law 106-248) (FLTFA) have been deleted from this document because the FLTFA expired and has not been reauthorized.

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## **I. INTRODUCTION**

### **A. The Southern Nevada Public Land Management Act of 1998**

The Southern Nevada Public Land Management Act (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) into which 85% of the revenue generated by land sales or exchanges in the Las Vegas Valley is deposited. The remaining 15% is split between the State (5%) and the Southern Nevada Water Authority (10%).

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 of 1999 (P.L. 106-113);
- 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);
- Department of Interior and Related Agencies Appropriation Act of 2003 (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); and
- Omnibus Public Land Management Act of 2009 (P.L. 111-11).

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) 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 Bureau of Land Management (BLM) and the 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) 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 River.<sup>2</sup> Washoe County, Nevada, is eligible until December 31, 2015,<sup>3</sup> to submit nominations for funds to acquire land (not to exceed 250 acres) and develop one regional park and natural area, pursuant to a cooperative agreement with units of local government or regional governmental entities;<sup>4</sup>

- Conservation initiatives (CI) 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 Interior 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 Public Law 96-586, and any Federal environmental restoration project included in the environmental improvement program adopted by the Tahoe Regional Planning Agency in February 1998 (as amended) “*in an amount equal to the cumulative amounts authorized to be appropriated for such projects under those Acts*” as directed in Appropriation Bill 108-108, Section 341 & 342 (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 Tahoe Regional Planning Agency), 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. Language in Senate Report 106-99 (on S-192) provided clarification to this provision, noting that it was the intent of Congress that this “*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*”; 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 reserved for affordable housing.

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

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<sup>2</sup> Per EC decision memorandum approved 9/8/09 to reflect SNPLMA modifications contained in the Omnibus Public Lands Act of 2009 (P.L. 111-11).

<sup>3</sup> Per EC decision memorandum approved 9/8/09 to reflect SNPLMA modifications contained in the Omnibus Public Lands Act of 2009 (P.L. 111-11).

<sup>4</sup> All approved PTNA projects must be implemented pursuant to a cooperative agreement in the form of an Assistance Agreement between BLM and the applicable local or regional governmental entity; the Assistance Agreement must be in place and current for the entity to initiate the project and receive project funding through the process outlined in this IA.



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;

- 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 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 the McCarran Airport CMA boundary;<sup>5</sup>
- 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 MSHCP for the Virgin River and associated groundwater monitoring utilizing revenue from the sale of certain land to the City of Mesquite; and
- Up to \$6 million dollars 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).

The SNPLMA grants the Secretary of the Interior 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:

*“...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 of the Interior 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 to Congress.

Appropriation Bill 108-108, Section 341 & 342 (2003), authorizes the Secretary of the Interior to transfer funds to the Secretary of Agriculture, or if the Secretary of Agriculture enters into a cooperative agreement with another Federal agency, the head of the Federal agency, for Federal environmental restoration projects at Lake Tahoe.

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<sup>5</sup> 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 Special Account. Those revenues are the 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.

## **B. Development and Maintenance of the Implementation Agreement**

The agreement for implementation of the SNPLMA was first developed in 1999 by a team of representatives from the Bureau of Land Management (BLM), U.S. Fish and Wildlife Service (FWS), National Park Service (NPS) in the Department of the Interior, and the U.S. Forest Service (USFS) 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 Department of the Interior and between the Department of the Interior 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 document, entitled *The Federal Partners Charter*, which outlined a collaborative process for developing a recommendation for the Secretary of the Interior regarding the SNPLMA Special Account expenditures.

*The Federal Partners Charter* was executed to produce the Round 1 Recommendation for Expenditures from the SNPLMA Special Account. The lessons learned in executing the process proved valuable in modifying certain terms of the Charter in order to make the process more efficient and effective. A continuous improvement approach was adopted, and the Charter, renamed *The Southern Nevada Public Land Management Act (SNPLMA) Implementation Agreement*, was signed in May 2000. Changes to the 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 Department of the Interior Office of the Solicitor, direction and guidance resulting from audits, and changing circumstances due to the growth of the program. A history of the revisions can be found in Appendix P.

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 decision memorandums approved by the Executive Committee (EC) since the previous version was approved; SNPLMA Division recommendations; 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 proposed changes must be approved by the EC before they take effect.

Appropriations laws apply to all funded activities without exception whether the funded activity is called a “project” or a “program.”<sup>6</sup> 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.<sup>7</sup>

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<sup>6</sup> The September 2005 GAO *Glossary of Terms Used in the Federal Budget Process* defines “Program” as: “Generally, an organized set of activities directed toward a common purpose or goal that an agency undertakes or proposes to carry out its responsibilities. **Because the term has many uses in practice, it does not have a well-defined, standard meaning in the legislative process. It is used to describe an agency’s mission, functions, activities, services, projects, and processes** [emphasis added].” Also see GAO Glossary definition of “Program, Project, or Activity” as a single unit within a budget account.

<sup>7</sup> This revision for resolution of the “project vs. program” question made by EC decision memorandum approved 8/11/11.

## 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 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 (FAR) 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.

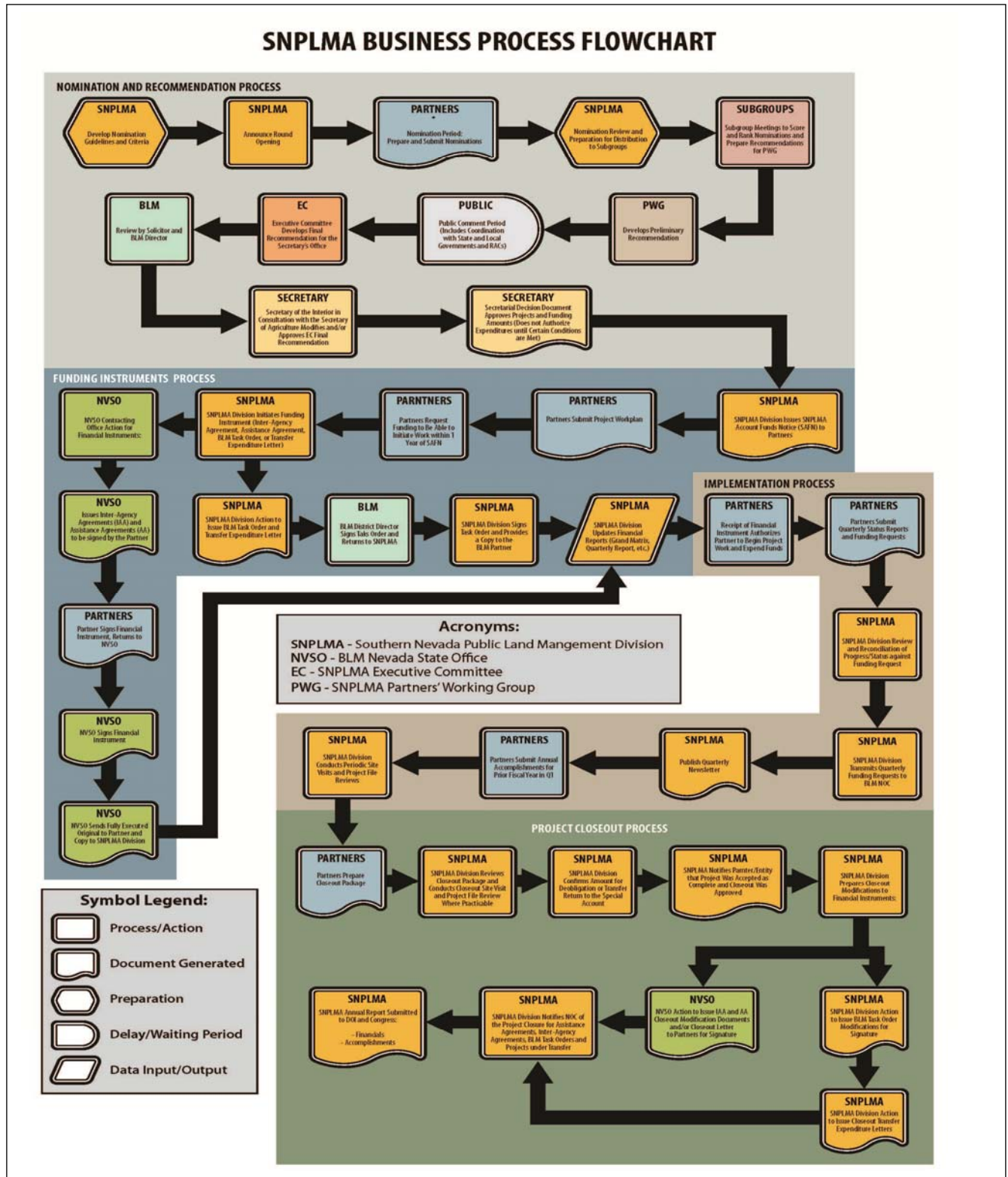
There are four phases to the SNPLMA Business Process for implementing the expenditure of revenues from the Special Account. These are the:

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

Each of these processes are depicted on a flowchart on the next page 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.

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FIGURE 1<sup>8</sup>



<sup>8</sup> This figure is also available on the SNPLMA website (<http://www.blm.gov/snplma>) as a .pdf.

### **III. ORGANIZATION, RESPONSIBILITIES AND RELATIONSHIPS**

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

The Secretary of the Interior 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 of the Interior assigned the responsibility for implementing the SNPLMA to the Bureau of Land Management. The Secretary of the Interior 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 (NSO), manages certain implementation activities for the SNPLMA in Nevada. The role of the NSO is to:

- Coordinate with the BLM's Interior Business Center (IBC) (formerly National Operations Center or NOC<sup>9</sup>) 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)<sup>10</sup> and Assistance Agreements (i.e., cooperative agreements) as well as certain acquisition and project-related procurements;
- Provide contracting and grants 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 Interior Business Center**

The BLM's IBC 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 IBC assists with implementation of the SNPLMA by providing the following services:

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<sup>9</sup>Effective October 1, 2012, the National Operations Center was reorganized and rebranded as the Interior Business Center (IBC). The functions performed for SNPLMA by the newly reorganized IBC will not change.

<sup>10</sup> Inter-Agency Agreements (IAA) were formerly called Intergovernmental Orders or IGOs. They are effectively the same instrument executed for the same purposes.

- 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;
- Provides input to the SNPLMA Annual Report to Congress and 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; account numbers; and financial information utilized by both offices;
- Ensure cash availability from investments in the Special Account for direct transfer of funds; and
- Process 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 Nevada State Office;
- 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;
- Issue citations and perform other law enforcement activities on the lands; and
- Manage the clean-up efforts on unsold land.

**F. Bureau of Land Management, SNDO, Division of SNPLMA Acquisition, Improvement, and Conservation Programs (SNPLMA Division)**

The BLM Southern Nevada District Office, Division of SNPLMA Acquisition, Improvement, and Conservation Programs (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 which includes funding Lake Tahoe projects pursuant to MOUs with participating Federal agencies that are not signatories to this document;
- 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, PWG, or EC);
- Prepare amendments to task orders, IAAs, Assistance Agreements, and transfer authorization documentation 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 a database for project descriptions; period of performance; workplans including deliverables, tasks, and subtasks; financial status and requests; quarterly status reporting; annual accomplishments; and for creation of a variety of reports including quarterly financial requests, status reports, pending expiration dates, etc.;

- Development and maintenance of a web-based database to meet the above requirements which can be accessed by both Federal and non-Federal partners to complete quarterly and annual project reporting requirements;
- Coordinate with recipient entities to obtain quarterly reports containing a Project Work Plan, funding needs, and progress reports for project deliverables leading to project completion;
- Review and verify information contained in quarterly reports; 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 project reporting information 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 Public Land Statistics.

#### **G. 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 Department of the Interior; and the USFS 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 the 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 Sections VI through VIII for information on funding requirements, application of appropriations law to expenditure of funds, and funding instruments.)*

#### **H. SNPLMA Organizational Units**

An Executive Committee, Partners Working Group, subgroups for each project category, 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 and local and regional governmental entities. It is important to note that the process 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 Department of the Interior 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 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 Executive Officer, or his or her designee, as a non-voting financial advisor

The EC prepares and transmits the SNPLMA Final Recommendations for expenditure of the funds in the Special Account to the Secretary of the Interior. The USFS Region 4 member also represented USFS Region 5 and the Lake Tahoe Basin Management Unit interests regarding Lake Tahoe Restoration Projects during Rounds 5 through 12.<sup>11</sup> The EC forwarded the Recommendation for Lake Tahoe Restoration Projects during those rounds to the Secretary of Agriculture, through the USFS 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 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.

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.

### **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)

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<sup>11</sup> Appropriation Act of 2004 (P. L. 108-108), Section 341 and 342 directed that SNPLMA fund Lake Tahoe restoration projects up to \$300,000,000, the amount authorized for appropriation in section 2(g) of Public Law 96-586 and The Lake Tahoe Restoration Act (Public Law 106-506). New projects were approved for Lake Tahoe Restoration in Round 5 through 12 to meet the full obligation of \$300,000,000 in SNPLMA funding. No new projects have been forwarded for funding since Round 12.

- Two seats from the PTNA Subgroup shall represent all of the local and regional governmental entities in Clark, Lincoln and White Pine Counties, and portions of Washoe County (through 2015), and Carson City, Nevada<sup>12</sup> (*see Section III.H.3.(b) for PTNA subgroup membership*)
- Rural Nevada (a member of Nevada Association of Counties (NACO) per decision of the Governor)
- 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 category subgroups and from Clark County for the MSHCP for consideration in developing the Preliminary Recommendation; and
  - Developing a proposed budget for the round and for each eligible project category in which projects are being recommended in a given round based upon revenue projections.
- Make decisions, or 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 X.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.

### **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 recommendations to the PWG for development of the preliminary recommendation for each round of nominations. Ranking criteria are established 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 when each new round opens ([www.blm.nv/snplma](http://www.blm.nv/snplma)).

Operating rules applicable to how subgroups function are:

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<sup>12</sup> This revision for two seats from the PTNA Subgroup on the PWG complies with an EC decision memorandum approved 11/16/11. See Section II.H.3.(b) for how details on the process to provide the two members to the PWG.

- Each subgroup functions under a set of Operating Guidelines which outline processes and procedures for carrying out its responsibilities, making and documenting decisions, membership, etc.
- Subgroup members representing organizations eligible to receive SNPLMA funds for projects shall not be the same individual who sits on the PWG.
- The State of Nevada and Nevada Rural representatives may sit on both a subgroup and the PWG.
- No entity shall have more than one vote on subgroup decisions, even if multiple representatives participate on the subgroup.
- Each subgroup appoints a non-voting vice-chair to carry out the responsibilities of the chair in the event the chair is unavailable or unable to do so.<sup>13</sup>

**(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 Bureau of Land Management and the Forest Service 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:

- Bureau of Land Management, Southern Nevada District Office (Clark County), Non-voting Chair
- Bureau of Land Management, Ely District Office (BLM voting member)
- National Park Service
- USDA Forest Service, Humboldt-Toiyabe National Forest
- U.S. Fish and Wildlife Service, Desert National Wildlife Refuge Complex
- 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 Washoe County and Carson City in Nevada for their limited project eligibility.

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

- Bureau of Land Management, Southern Nevada District Office (Clark County), Non-voting Chair
- Bureau of Land Management, Ely District Office (BLM voting member)
- National Park Service
- U.S. Forest Service, Humboldt-Toiyabe National Forest
- U.S. Fish and Wildlife Service, Desert National Wildlife Refuge Complex
- 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 (SNWA)
- Clark County Regional Flood Control District

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<sup>13</sup> In compliance with EC guidance provided at July 2012 meeting for development of Round 13 Final Recommendation as a result of the sudden retirement of a subgroup chairperson leaving no replacement.

- Clark County Water Reclamation District (formerly Clark County Sanitation District) White Pine County, Nevada
- Carson City, Nevada

The PTNA subgroup will provide two non-Federal 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.<sup>14</sup>

The two local/regional government representatives will rotate from the non-Federal membership of the PTNA Subgroup. Each representative will be a voting member of the PWG serving for two years beginning and ending in January. One membership will start in even years, and the other in odd years, creating an overlap between the two positions. In 2011 the PTNA membership was designated to be Clark County. The City of Henderson became the initial second PTNA Subgroup member on the PWG beginning in January 2012. Each new incoming representative will start receiving PWG correspondence regarding programmatic issues six months before beginning the position's term. Carson City opted out of the rotation due to its limited eligibility and Washoe County is not eligible since its eligibility ends in 2015. The rotation between non-Federal 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 Water Reclamation District (formerly Clark County Sanitation District)
- Clark County Regional Flood Control District

***(c) Multi-Species Habitat Conservation Plan (MSHCP) Process In Lieu of a Subgroup***

The Desert Conservation Program (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 MSHCP existed prior to SNPLMA and had a process in place for proposing and evaluating plan development and mitigation proposals. Clark County and the other MSHCP permittees initiated an amendment to the MSHCP and incidental take permit in 2009. A final revised DCP process for recommending MSHCP projects will not be completely defined until the MSHCP and associated implementing documents are approved by the U.S. Fish and Wildlife Service.

Beginning with Round 12, MSHCP projects can be nominated every round rather than biennially in even numbered years as had been the case previously.<sup>15</sup> Also beginning in Round 12, nominations use a

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<sup>14</sup> This revision for addition of a second local/regional representative to the PWG and the other changes to the PTNA Subgroup section comply with an EC decision memorandum approved 11/16/11.

<sup>15</sup> Revisions to the MSHCP section are in accordance with an EC decision memorandum approved on 8/10/10.

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 FWS. Proposals are developed based on budget principles and project concepts agreed upon by the FWS. Proposals are ranked in order of priority based on needs of the 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 of the Interior approval.

***(d) Conservation Initiatives Subgroup***

The CI Subgroup reviews nominations for conservation initiatives on Federal land administered by the Department of the Interior 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 Department of the Interior 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:

- Bureau of Land Management, Southern Nevada District Office, Non-voting Chair
- Bureau of Land Management, Ely District Office (BLM voting member)
- National Park Service
- USDA 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:

- Bureau of Land Management, Nevada State 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 Subgroup***

The Hazardous Fuels Reduction and Wildfire Prevention 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:

- U.S. Forest Service, Humboldt-Toiyabe National Forest, Non-voting Chair
- U.S. Forest Service, Lake Tahoe Basin Management Unit (LTBMU) (USFS voting member)
- BLM Southern Nevada District Office
- State of Nevada, Tahoe Team Representative, Lands Division
- State of Nevada, Nevada Division of Forestry
- State of California
- Nevada Fire Safe Council

***(g) Eastern Nevada Landscape Restoration Project Subgroup***

The Eastern Nevada Landscape Restoration Project (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:

- BLM Ely District Office, District Manager Non-voting Chair
- BLM Ely District Office, Associate District Manager (BLM voting member)
- USDA Forest Service Humboldt-Toiyabe Forest
- National Park Service
- U.S. Fish and Wildlife Service
- USDA Natural Resource Conservation Service
- State of Nevada
- Lincoln County
- White Pine County

**4. Resource Advisory Councils**

There are three Resource Advisory Councils (RACs) in Nevada: the Northeast Great Basin (NGB) RAC, the Sierra Front Northwest Great Basin (SFNGB) RAC, and the Mojave Southern Great Basin (MOSO) RAC. These RACs are composed of citizen advisors appointed by the Secretary of the Interior 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.

**I. Lake Tahoe Organizational Units**

SNPLMA was directed in the Department of the Interior Appropriation Act of 2003 (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 Public Law 96-586, and any Federal environmental restoration project included in the environmental improvement program adopted by the Tahoe Regional Planning Agency in February 1998. The authorized amount of \$300,000,000 was allocated to projects approved by the Secretary between Rounds 5 and 12 of SNPLMA.

Although not all approved projects are yet complete, no further nominations are expected for Lake Tahoe Restoration Projects. Funds authorized for primary projects which are not needed to complete the project may be reprogrammed to fund cost overruns in other approved projects or to fund any project on a list of secondary projects approved for funding. However, in the unlikely event that a new high priority project arises that would require approval by the Secretary before funds can be reprogrammed, the nomination and approval process documented in the October 2007 version of this document will be utilized.

The BLM SNPLMA Division remains involved in oversight and other processes related to implementation of the approved projects as described elsewhere in this document. Certain Lake Tahoe organizational units described below also remain involved in the oversight and implementation process until all SNPLMA-funded Lake Tahoe Restoration Projects are complete and all allocated funds have been utilized.

### **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
- U.S. Department of the Interior, Geological Survey
- U.S. Department of Defense, Army Corps of Engineers
- 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 Committee**

The Lake Tahoe Federal Advisory Committee (LTFAC) primarily assisted in developing the Recommendations for Lake Tahoe by the Tahoe Regional Executive Committee (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:

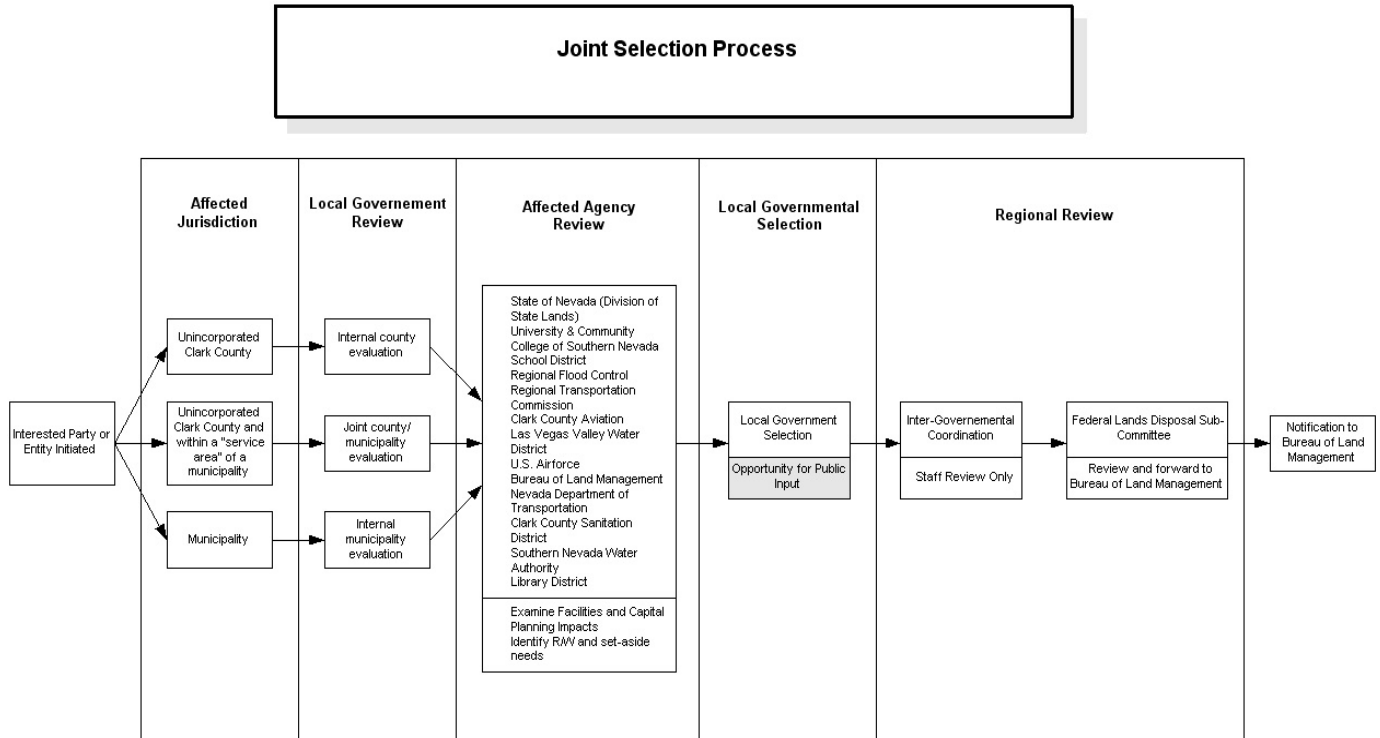
- Gaming industry
- Local environmental
- National environmental
- Ski resorts
- North Shore economic/recreation
- South Shore economic/recreation
- Resort Associations
- Education
- Property rights advocates
- Science and research
- California local government
- Nevada local government
- Washoe Tribe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



**FIGURE 2**  
**JOINT SELECTION PROCESS FOR SALE PARCELS**



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.

## **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 timing and duration 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, 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, 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, some beginning with Round 13, and are intended to be permanent. They are significant and related to other changes in 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 entities may not “sponsor” projects for other entities. Eligible entities remain responsible for carrying out all projects including management of project funds and demonstrated results. 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 9 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 9 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 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, BLM Southern Nevada District Office by 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, nominators 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.

Beginning with Round 13, nominations are required to include the project purpose and deliverables as explained in this Section in paragraphs 6 and 7, and include a timeframe for completion of the project (*see paragraph 8 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.A.(a) and Appendix B through B-3 for more information on necessary expenses and sample estimate forms*) and detailed budgets, when required, should take into account likely cost escalations between the time the project is nominated and when it will be implemented.

## **6. Project Purpose Statement Requirement**

Nominations in all categories from Round 13 forward 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 specific following a “who, what, where, why” format that identifies:

- The eligible agency/entity that will carry out the project.
- The action to be taken (e.g., construction of a facility, park, or trail; refurbish picnic area “A;” restoration 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 outcome of the project (e.g., to improve visitor safety, to protect specified natural resources, to improve access).

Examples of Purpose Statements may be found in Appendix A. (*See Section VI.C.1. for information on the relationship of the purpose statement to appropriations law and Section X.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

Beginning with Round 13, 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 Appendix B 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.

Standard Deliverables are to be detailed as tasks or subtasks in the Project Workplan 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. Project Time Frames

The Secretary has directed that:

*“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.”<sup>16</sup>*

To avoid confusion over how long a project will take from startup through implementation to completion and closeout, the timeframe identified in the nomination should include time needed for project startup and closeout.

Below are expected maximum timeframes, including startup and closeout, for projects within the respective categories.<sup>17</sup> 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 project needs to exceed these timeframes, the nomination should identify the appropriate timeframe and special circumstances warranting a longer timeframe. For projects already approved, the agency/entity must submit a written request using the SNPLMA Project Modification Request Form (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: 2 years
- Parks, Trails, and Natural Areas: 5 years
- Capital Improvements: 5 years
- Multi Species Habitat Conservation Plan: 5 years
- Conservation Initiatives: 4 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.

## **9. Nomination Guidelines By Category**

### ***(a) Nomination for Acquisition of Environmentally Sensitive Land or Interests in Land***

The BLM, NPS, FWS, BOR, and USFS are the eligible entities that may receive funding for acquisition of environmentally sensitive lands and interests in land within the State of Nevada. Any entity or 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:

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<sup>16</sup> See Round 11 and later Decision Documents.

<sup>17</sup> Standard maximum timeframes added per decision memorandum approved by the EC on 8/1/11 that, in part, addressed project timeframes.

*“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.”*

***(b) Nomination of Capital Improvement Projects***

Five Federal agencies--BLM, NPS, BOR, FWS, and USFS--may submit nominations and receive funding for Capital Improvement 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 Bureau of Land Management and the Forest Service 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.”<sup>18</sup>

***(c) Nomination of Park Trail and Natural Area Projects***

PTNA projects must be within Clark, Lincoln, and White Pine Counties, Nevada, or within Washoe County, Nevada (with limitations) or Carson City, Nevada (with limitations). 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, Washoe County, and Carson City. 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.

Washoe County eligibility is limited in that it is eligible to nominate for funds until December 31, 2015, to acquire land (not to exceed 250 acres) and develop one regional park and natural area. 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.

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, Carson City, and Washoe County.
- The eligible entity must own or, in certain cases, legally control (e.g., access easement, encroachment easement, right-of-way for a trail alignment, Recreation and Public Purposes (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

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<sup>18</sup> BOR eligibility for capital improvements on land it manages at the Lake Mead National Recreation Area with the exception noted was approved by the Executive Committee on 9/28/06 after consultation with the BLM’s Regional Solicitor’s Office.

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 an 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 and 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.
- Proposals for acquisition of land for PTNA projects must identify the approved project or intended new project in the nomination, and, if the land is for a new project not yet approved, must follow-up with a nomination for that project or evidence that the project was funded and constructed using other funds sources.

There are two additional specific limitations on 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 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 activity must be detailed in the project nomination package.
- Development of required half-street improvements shall not exceed 10 percent of the total project nomination budget.

***(d) Nomination of MSHCP Projects***

Clark County Desert Conservation Program (DCP), BLM, NPS, FWS, and USFS are eligible for funding for MSHCP development and implementation projects within Clark County. Only these eligible entities may submit nominations in this category. 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.<sup>19</sup>

As explained in Section III.H.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 real property for mitigation purposes as part of its implementation of the 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 MSHCP.

***(e) Nomination of Conservation Initiative Projects***

BLM, NPS, FWS, USFS and BOR are the eligible entities to nominate projects and receive funding for Conservation Initiative (CI) projects. CI projects must be on Federal land administered by the Department of the Interior and Department of Agriculture in 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).

Beginning with Round 7, nominations for conservation initiative projects shall 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.

***(f) Nomination of Hazardous Fuels Reduction and Wildfire Prevention Projects***

Hazardous Fuels Reduction and Wildfire Prevention Projects (“Fuels”) projects may be nominated by entities that are specifically named in the three multijurisdictional plans, and/or 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**

- USFS Lake Tahoe Basin Management Unit
- Tahoe Regional Planning Agency
- Nevada Tahoe Resource Team

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<sup>19</sup> This process is similar to the required consultation between local governments and Federal agencies and submittal of letter by the applicable Federal agency addressing any impacts to Federal lands for inclusion in PTNA project nominations.



- Nevada Division of Forestry
- Nevada Division of State Lands
- Nevada Fire Safe Council
- 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*

- USFS Humboldt-Toiyabe National Forest
- Nevada Division of Forestry
- Nevada Division of State Lands
- Nevada Division of State Parks
- Nevada Fire Safe Council
- Carson City – Parks and Recreation, Open Space
- Carson City Fire Department
- Washoe County, NV
- Douglas County, NV
- Washoe Tribe of Nevada and California
- Sierra Fire Protection District
- City of Reno Fire Department
- Truckee Meadows Fire Protection District
- Whittell Forest, University of Nevada, Reno

*Spring Mountains Range Eligible Entities*

- USFS Humboldt-Toiyabe National Forest
- BLM Southern Nevada District Office
- Nevada Division of Forestry
- Nevada Division of State Lands
- Nevada Division of State Parks
- Nevada Fire Safe Council
- 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 reduction and wildfire prevention projects may include project level planning, fuels reduction treatment activities, biomass utilization, and biofuels energy development and production activities.

***(g) Nomination of Eastern Nevada Landscape Restoration Projects***

The BLM, NPS, FWS, and USFS may nominate restoration initiatives in Lincoln and White Pine Counties, Nevada, to carry out the Eastern Nevada Landscape Restoration Project (ENLRP). 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 USFS may enter into an agreement, with the Eastern Nevada Landscape Coalition, Great Basin Institute, and other entities. The Secretaries may use SNPLMA funding for restoration projects on non-federal lands within White Pine and Lincoln Counties.

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

**10. 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. The subgroup for each project category (except MSHCP) reviews, scores, and ranks nominations against the funding criteria approved by the EC for the round.<sup>20</sup> The subgroups each submit a funding recommendation to the PWG. The 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. The PWG will review the subgroups' recommendations and rationale during the development of the Preliminary Recommendation for the round.

The MSHCP category does not utilize a subgroup to rank project proposals. Section III.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.

**B. Assembling SNPLMA Preliminary Recommendation Package**

The PWG will develop a 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 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. 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.

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<sup>20</sup> The current criteria for each category are posted on the SNPLMA website and are provided as “assessment questions” in the nomination requirements package for each category. Ranking criteria are no longer published in the IA because they are frequently modified to be more effective and reflective of the category goals based on lessons learned in each round. Approved by EC during July 2012 meeting for Round 13.

### **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 public and local and State government comments on the Preliminary Recommendation. 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. 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 VIII.D. 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 of the Interior through the Office of the BLM Director. The Final Recommendation is transmitted to the Secretary of Agriculture by the USDA Forest Service EC member 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.

### **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 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.<sup>21</sup>

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<sup>21</sup> The revision defining the requirement and timeline for nomination rewrites was approved by the EC in a decision memorandum on 9/8/09.

#### **F. Secretarial Review and Approval**

The Secretary of the Interior, 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 Department of the Interior, Office of the Solicitor, Branch of General Legal Services, provided a formal written memorandum on implementation of the SNPLMA dated February 25, 2005, ("Solicitor's opinion") 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.<sup>22</sup> Through the passage of the SNPLMA, Congress appropriated the funds for use by 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." The 2005 Solicitor's Opinion further stated that SNPLMA funds are to be expended in conformance with "the basic rules governing expenditures of appropriated funds." Appropriations law defines the availability of appropriated funds in terms of purpose, time available, and amount available (the three principles of appropriations law).

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 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 by the Solicitor in the 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.*)

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<sup>22</sup>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 in two decision memorandums. The first addressed the issues in a fairly general way and was approved on 9/3/10; the second addressed expenditure of appropriated funds and appropriations law in a more comprehensive manner and was approved 8/1/11.

## **B. Application of Appropriations Law to SNPLMA**

Through passage of SNPLMA, Congress appropriated SNPLMA funds to the Secretary and the Secretary retains the authority at his/her discretion to decide which projects in each round to approve for funding from the Special Account. Thus, by selecting which projects to fund, the Secretary is designating an appropriated amount from the Special Account for expenditure 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 appropriations law, 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 regarding the principles of appropriations law are to be understood in the context of the above.

## **C. Defining the Three Principles of Appropriations Law**

The *Principles of Federal Appropriations Law* produced by the United States General 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.<sup>23</sup> (See *Part II, 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).” Relates to the total amount available for a project and expenditure of that amount, and to necessary expenses.<sup>24</sup>

In addition to appropriations law, the use of project funds 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). That is, the relevant financial instrument must be valid for the recipient agency to incur any new expenditures or obligations

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<sup>23</sup> Principles of Federal Appropriations Law, Government Accountability Office, 3<sup>rd</sup> Edition, Vol. I, pg. 4-6.

<sup>24</sup> Principles of Federal Appropriations Law, Government Accountability Office, 3<sup>rd</sup> Edition, Vol. I, pg. 1-12.

whether for supplies and materials, labor or new contracts.<sup>25</sup> (*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 SNPLMA management groups 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. The Red Book provides rules for application of the purpose statute to the use of appropriated funds.<sup>26</sup> When relating the purpose statute rules to SNPLMA, the following apply:<sup>27</sup>

- 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.
- 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*

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<sup>25</sup> See “Period of Availability of Funds” in 43 CFR, Part 12, Subpart C, §12.63 (a) and Subpart F, §12.928 relative to assistance agreements; see FY2012 OMB Circular A-11, Part 1, Section 20.4, (c), relative to inter/intra-agency agreements. (Final payments/reimbursements can be made after an instrument has expired provided no additional costs were or will be incurred after the expiration date.)

<sup>26</sup> 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.

<sup>27</sup> Many SNPLMA business rules and processes throughout various sections of the IA are tied to the three appropriations law principles.

*requirement for coordination in Section X.D. regarding requesting scope change modifications.)*

**(a) 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 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 of the Interior;
- 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.
- 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 Executive Committee.
- 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.
- 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.<sup>28</sup>

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

## **2. The 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.”<sup>29</sup>

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.”<sup>30</sup>

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 transfer, the date the initial transfer request is forwarded to the IBC for entry into the U.S. Treasury system for processing and as reflected 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) as explained above, the timeframe is then referred to as the “period of performance.”

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<sup>28</sup> This guidance has been in place since late 2007 and has been shared verbally with eligible agencies/entities.

<sup>29</sup> Principles of Federal Appropriations Law, Government Accountability Office, 3<sup>rd</sup> Edition, Vol. I., pg. 5-4.

<sup>30</sup> This direction from the Secretary was first reflected in the Round 11 Decision Document and thereafter in each succeeding round approval.



- 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.

### **3. Principle of Amount**

The basis of the appropriations principle of amount is the Anti-Deficiency Act (31 U.S.C. § 1341) 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.

The intent of the Anti-Deficiency 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. . . .”<sup>31</sup> 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 circulars 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

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<sup>31</sup> Principles of Federal Appropriations Law, Government Accountability Office, 3<sup>rd</sup> Edition, Vol. II, pg. 6-37.

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 of the Interior has instituted several requirements that must be met by all projects in order for approved project funds to be authorized for expenditure.<sup>32</sup> 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.
- 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.
- The recipients must submit a project workplan 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 workplan in the SNPLMA Quarterly Reporting database. (*See Section IX.A.*)

In addition to the above, 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 workplan in the SNPLMA Quarterly Reporting database. (*See Section IX.A.*)

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 must begin work on approved projects within one (1) year from the date of the Special Account Funds Notice.<sup>33</sup> Therefore funding should be requested as soon as possible after receipt of the Special Account Funds Notice to ensure the applicable financial instrument is fully executed and funds are available within the one-year time frame 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

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<sup>32</sup> This section was added in accordance with a decision memorandum approved by the EC on 9/3/10 regarding compliance with appropriation law and Secretary requirements for expenditure of funds.

<sup>33</sup> This requirement was added per a decision memorandum approved by the EC on 8/11/11.

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 Workplan. Workplans can be submitted in the SNPLMA Quarterly Reporting Database available closest to the time the agency wishes to start work on the project. Agencies/entities may also work with the appropriate SNPLMA Program Manager to submit the project workplan for approval outside the normal quarterly report cycle in order to finalize the workplan prior to requesting funding in the next regularly scheduled quarterly report. (*See Section IX.A. and B. for information on project workplans and the quarterly database.*)
- Submit a “Request to Initiate Project Funding” to the SNPLMA Division. (*See Appendix J, part B for process and requirements.*)
- Receive 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.

### **C. 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:<sup>34</sup>

1. A workplan must have been accepted and all required updates completed and accepted;
2. A valid financial instrument must have been executed (IAA, BLM task order, Assistance Agreement) or for projects under direct transfer a transfer authorization letter received by the recipient agency and funds 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 with the expenditure or obligation was incurred;
4. The expenditure must qualify as a “necessary expense.”
5. 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.<sup>35</sup>

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.

<sup>34</sup> The first five requirements are in accordance with an EC decision memorandum approved 9/3/2010 for revisions to the IA.

<sup>35</sup> This addition is in accordance with an EC decision memorandum approved 9/3/10 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.

## **D. 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, which includes primary, anticipated, and standard deliverables, 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 of the Interior.<sup>36</sup> “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.

### **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. Starting with projects approved in Round 10, agencies/entities must submit a request and justification utilizing Appendix L 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 program manager in the SNPLMA Division for review and approval. The SNPLMA program manager will review the request and, if necessary, contact the agency/entity within 3 business days to obtain additional information or clarification to complete the request. Within 10 business days of the date the request is completed, the program manager will 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.D. for use of contingency funds, the 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 Partners Working Group and Executive Committee.

If the program manager determines the request does not meet the guidelines, the program manager will consult with the agency/entity during the 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 Program Manager. If this occurs, the SNPLMA program manager’s written response will address the withdrawal, the reasons for the

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<sup>36</sup> The section on use of contingency funds has been added consistent with an EC decision memorandum for IA changes approved 9/8/2009.

withdrawal, and any alternatives discussed. However, if the agency indicates within the 10-business-day review period, that it disagrees with the program manager's findings and wants to pursue the use of contingency funds, the 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 Assistant District Manager, SNPLMA Division, and the Partners Working Group to the Executive Committee 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 weren't 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 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.

#### **E. 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 emergency projects to respond to safety issues that pose an imminent threat and require immediate remediation, and 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 the new Round as approved by the Secretary.

##### **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 X.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% of the funding currently available for the project, not including any available contingency funds. Requests for more than 10% of available funds may require a higher degree of justification, explanation, or documentation than is normally expected. Any available contingency funds need to have been requested and approved for use prior to requesting SAR funds (*see Section X.B. and 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. The entity must submit a revised workplan to the SNPLMA Division for approval; submit a revised cost estimate form and, if required, a revised expanded/detailed budget form; the modification to the appropriate financial document must be executed; and, in the case of 1151-direct transfers, the transferred funds must also have been received from the U. S. Treasury before any portion of the approved amount can be obligated or expended.

The EC will divide the SAR allocation approved by the Secretary into funding available for each quarter.<sup>37</sup> 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 total annual 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.<sup>38</sup> The two-part test is that the agency/entity must demonstrate:

- 1) It has attempted to down scope<sup>39</sup> 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 prevent a work stoppage or personnel layoff, to award a contract, and/or is a safety or emergency 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. Hence, the 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. Available funding for the remainder of the year would be reduced to \$1,250,000 and the quarterly funding available would be reduced to \$312,500.

Situation 2: If there are no SAR requests in a quarter, the funding available for subsequent

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<sup>37</sup> 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 2/27/12 to clarify the process associated with the two-part test.

<sup>38</sup> The two-part test to prioritize SAR request and the 10% target for limiting requests is in accordance with an EC decision memorandum approved 8/11/11.

<sup>39</sup> 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.

quarters will increase. For example, in Round 12, if there were no requests for SAR funding in the first quarter, the funding available for Quarters 2-4 would increase to \$500,000.

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 quarter. The quarters are:

1 <sup>st</sup> Quarter	October, November, December
2 <sup>nd</sup> Quarter	January, February, March
3 <sup>rd</sup> Quarter	April, May, June
4 <sup>th</sup> 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 and to the EC for funding decisions. So long as SAR funds from a round remain available, the SNPLMA Division will notify partner entities of the submission deadline not later than two weeks prior to the submission date, generally near the mid-point of each quarter.

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 Section X.A. general instructions for project modification requests, Section X.B. regarding SAR requests, and the instructions in Appendix L “SNPLMA Project Modification Request Form.”

**2. Rules for SAR Requests for a New Urgent or Emergency Project**

Funds from the SAR may also be requested to serve as a response to urgent safety issues that pose an imminent threat and require immediate remediation, and respond to unique opportunities or unanticipated circumstances that require fast action. Such requests for new urgent or emergency 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 Division will coordinate a quick review of the SAR/project request by the pertinent 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**

There are four methods, 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: Many Federal projects receive project funding by reimbursement pursuant to the Economy Act (31 U.S.C. 1535) utilizing an IAA (formerly referred to as Inter-Governmental Order or IGO).
- BLM Task Order: BLM receives project funds utilizing an internal management document referred to throughout this IA as a “BLM task order.” BLM projects approved prior to Round 6 were funded using internal reimbursable task orders; projects beginning with some in Round 6 and all projects in Round 7 and forward 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 entity will receive funding to carry out its portion of the project. Most commonly this situation occurs with interagency Conservation Initiatives, but on occasion other categories may also be structured as interagency projects. 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 when the first participating agency requests funds for project initiation.

#### **A. Funding Through “1151” Direct Transfer Process**

In 2005 the Office of Management and Budget (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, and Federal Highway Administration have appropriation accounts and can receive direct transfers. Those Federal agencies identified in Public Law 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 Public Law 108-108 between the Secretary of Agriculture and the Federal agencies conducting projects under Public Law 108-108, Section 342, and (2) the Department of Treasury establishing the necessary allocation accounts.

A detailed explanation of the 1151 Transfer Process can be found in 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 are expected to request project funding by direct transfer, although, if in the best interest of the agency, funding by a reimbursable inter-agency agreement pursuant to the Economy Act could be requested (see Section VIII.C. on reimbursable IAAs). From Round 6 forward, projects may be funded using only the single most appropriate method.

### **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 three months of receipt. Requesting funds 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.

### **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 or 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.<sup>40</sup> 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

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<sup>40</sup> Addition of this document as a transfer financial instrument in accordance with EC Decision Memorandum approved 9/3/2010.

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 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 Using ASAP Transfers**

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 Appendix J, part B for funding request requirements.*) When the request is complete, the SNPLMA Division submits the AA for processing through the BLM Assistance Agreement Officer at the BLM Nevada State Office.

The White Pine County Conservation, Recreation, and Development Act of 2006 (P.L. 109-423, Division C, Title III, provides that the BLM shall transfer funds to local and regional governments for Park, Trail, and Natural Area projects authorized by the Secretary of the Interior and approved for expenditure. The BLM utilizes the Automated Standard Application for Payment (ASAP) system to implement this transfer process after all conditions for authorization to expend funds have been met. Although the White Pine County legislation only required the BLM to transfer funds to local and regional governmental entities for Park, Trail, and Natural Area projects, regulations now require that all non-Federal entities receive funds through the ASAP system. Therefore, all non-Federal entities eligible for SNPLMA project funds, regardless of category, are required to utilize the ASAP process to receive project funds authorized in an Assistance Agreement.

All entities receiving SNPLMA project funds through ASAP are required to estimate the quarterly drawdowns for each project in the financial section of the SNPLMA quarterly reporting database. (*See Section IX.B. for an 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 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. When not expended, the following SNPLMA quarterly report should detail the circumstances that have caused those funds to remain unexpended. 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.

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. Appendix M also describes the expanded process that has been established for local and regional governmental entities to request ASAP drawdowns for PTNA projects.

#### **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 an alternative for some agencies, and a requirement for others. 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 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 Nevada State Office. 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.

Projects may be considered for termination if IAAs are not executed in a timely manner. Projects terminated for this reason may be re-submitted in a subsequent round when the agency is ready to move forward

### **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. Payment 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 status report database, the reimbursement package should be submitted concurrently. (*See 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 Division will maintain a file copy to support disbursement from the Special Account, and submit documentation and a payment authorization memo to the NSO contracting officer for formal approval and coordination with the SNPLMA Accountant at the IBC. IPAC bills for all IAAs initiated in Fiscal Year 2009 and forward also require acceptance by the Program Manager in the BLM’s FMBS financial system before the IPAC bill can be paid.

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

Projects from Rounds 1 through 6 will be completed using the reimbursable internal task orders put in place when they were initiated and are subject to requirements for reimbursement outlined in Appendix J, part D. Since Round 7, all BLM projects are funded by direct charge against a project number in the applicable SNPLMA Special Account financial subactivity 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 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 IBC to allocate appropriate funding to the project number and activate the project in the BLM’s 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 Appendix J, part A for document retention requirements*).

#### **E. Payment for Projects Which Cannot Be Completed**

In those 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 XII.B. on closing terminated projects*), necessary expenses incurred up to the decision to terminate and those expenses necessary to stop work on the project including clearing unliquidated obligations, and 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 Appendix J as soon as possible after submitting the notification of termination to the SNPLMA Division, preferably within 90 days (one quarter).

### **IX. PHASE 3 SNPLMA BUSINESS PROCESS -- IMPLEMENTATION : PROJECT WORKPLANS AND QUARTERLY REPORTING**

#### **A. Project Workplan**

The Secretary’s decision documents direct that the amount authorized for Federal and non-Federal projects is not considered “approved for expenditure” until a project workplan that reflects a schedule of periodic expenditures reflecting logical phases of the project with associated project deliverables has been submitted and accepted by the BLM. The workplan must be submitted, reviewed, and accepted by the appropriate BLM SNPLMA Program Manager in writing before funds will be provided for obligation and expenditure on the project. Agencies/entities must receive this written approval of project workplans from the appropriate SNPLMA Program Manager in order to satisfy the Secretary’s requirement.<sup>41</sup>

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<sup>41</sup> This guidance and instructions for completing project workplans is in accordance with decision memorandum approved by the EC on 9/8/09 and 8/1/11.

## 1. Requirements for an Acceptable Workplan

The project workplan must include:

- a) **Deliverables.** The workplan 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 Appendix A for examples of each type of deliverable.*)
  - i) Use the Deliverable “Comment” Section to:
    - (1) Identify the type of deliverable (primary, anticipated, or standard)
    - (2) For Primary Deliverables, indicate the size, configuration, anticipated siting within the described location, and/or quantity
      - (a) 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
    - (3) 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
  - ii) Standard deliverables do not have to be listed in the nomination and do not require a scope change request to be included in the workplan unless completing them may lead to the need for additional funds. (*See Section X.D on scope changes.*)

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 workplan as appropriate. Changes in the size or quantity of a deliverable resulting from completion of identified studies, analyses, or reports shall be submitted as a minor scope change, provided they do not increase the project cost (*see Section X.D.2*).

- b) **Target Start and End Dates for Each Deliverable.** Each deliverable must include a target start and end date.
- c) **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 RFP or RFQ, 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.

Workplans 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.

- d) **“Project Contacts.”** This section of the project database must be completed and kept up to date so that the SNPLMA Program Manager knows who to contact with questions on or revisions to the Workplan and quarterly status reports.

## **2. Rules Regarding Workplans**

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.*)

- a) The workplan 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.
- b) Once the workplan 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 X.D on scope changes.
- c) Additional work or activities may not be added into the workplan even if they are similar to other work identified in, or related to, the purpose of the nomination. (*See Section X.D.3 for prohibited scope changes.*)
- d) Once a Project Workplan is approved, only “Standard Deliverables” not previously included in the Workplan can be added to the Project Workplan 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 workplan by the SNPLMA Program Manager.
- e) The workplan may not be used to change the end date of a project unless and until a time extension has been approved through the decision memo process and a modified financial instrument has been executed. Changing target end dates beyond the end date for the project identified in the financial instrument does not automatically extend the period of performance for the project.
- f) 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 workplan.

The format for the project workplan is integrated into the quarterly reporting database provided by BLM (either through MS Access or as a web-based database). Approved workplans 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 memo process.

## **B. Quarterly Reports**

### **1. Requirements for Quarterly Reporting**

All approved workplans 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 Appendix J, part C. The initial quarterly report for a project must include the project workplan

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. (Item number 3 below addresses including the request to initiate project funding in the regular quarterly report transmittal letter.)<sup>42</sup>

Quarterly reports must include:

- Funding needs for the next quarter through transfer, reimbursement requests for the previous quarter for projects under IAA or BLM reimbursable task orders, estimated ASAP drawdowns or estimated BLM direct charges for the next quarter;
- If funding for the quarter is requested, include in the financial request “comment” area of the database an explanation of work, obligations, or expenditures expected to occur in the next quarter in order to justify funding requested compared to funding already provided and not yet obligated or expended. This is especially important if the obligated/expended amount is less than 95% of the amount already provided;
- If a reimbursement request is identified, a reimbursement package and all required documentation must be submitted in conjunction with the quarterly report;
- The funding request section must include the total amount obligated/expended out of the funds previously provided;
- Actual start and end dates as deliverables are started and completed;
- Progress and accomplishments made on project deliverables, tasks, and subtasks (i.e., status updates);
- Percentage complete for all deliverables;
- Project completion percentage (this will be a best estimate);
- Annual accomplishments summarizing all work completed in the previous fiscal year shall be reported the first quarter of each fiscal year for every project not yet closed out; and
- Annual accomplishments for projects that are being or have been closed out will identify the applicable SNPLMA Performance Measures with corresponding quantity. (*See Appendix J, Part F.2.b. for more information on reporting PMs during closeout and Appendix J-3 for an explanation and examples of the SNPLMA Performance Measures.*)

## **2. Review of Quarterly Reports and Funding Requests**

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.<sup>43</sup>

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 workplan, 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 or expended funds out of the total funds previously provided is less than 95% and 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 B.1. above for information on including justification in the quarterly report.*)

## **C. 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

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<sup>42</sup> Addition of quarterly report guidance in accordance with EC decision memo approved 9/8/09 and 8/1/11.

<sup>43</sup> Revised per EC decision memorandums approved on 9/8/09 and 8/1/11.

previously required for inclusion with requests for reimbursement.<sup>44</sup> 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. Appendix J, part A provides specific information on document retention requirements.

#### **D. 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.

### **X. 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 of the Interior. 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 changes in project scope. Circumstances may also warrant termination prior to project completion.<sup>45</sup> The rules outlined in this Section X apply to all projects regardless of category (except Lake Tahoe Restoration projects) and regardless of the method used to fund the project.

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 workplans which must be approved by the SNPLMA Division. (The consideration and approval process and thresholds for approval of all modification requests are addressed in this Section X.F. below.)

#### **A. Process for Requesting Project Modifications**

Agencies/entities submit a project modification request package to the appropriate SNPLMA Program Manager that contains:

- A request letter on agency letterhead signed by the authorized agency/entity manager. The letter should:
  - name the project,
  - the amount of time, funds (SAR or contingency), or nature of the scope change being requested, and
  - briefly summarize the reason for the request.
- A completed “SNPLMA Project Modification Request Form” (Appendix L). This form requires basic project information for every request and information specific to the type of modification being requested.

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<sup>44</sup> Revisions in this section per decision memorandum related to project purpose and appropriations law approved by the EC on 8/1/11.

<sup>45</sup> Projects may no longer be placed into “on hold” status in accordance with a decision memorandum approved by the EC on 8/1/11.



- Include with requests for additional funding and, if needed, for scope change requests:
  - Revised Necessary Expense Estimate form, 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 workplan is not required to be submitted with the project modification request because the 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 workplan in advance of approval of the request.<sup>46</sup> However, if a modification for a time extension or scope change is approved, the Project Workplan must be updated in the next available quarterly database after the approval date. The modifications to the workplan 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 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 memo process and procedures outlined in this Section X, part F below, for consideration and a decision by the appropriate decision making authority also described in part F of this Section.

#### **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 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 Appendix L “Project Modification Request Form,” in accordance with the rules for use of SAR funds outlined in Section VII.E.<sup>47</sup>

#### **C. Requests for Time Extensions**

If the project cannot be completed within the period of performance specified in the financial instrument, the agency must submit a written request to the SNPLMA Division for a project modification to extend

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<sup>46</sup> The decision memoranda approved by the EC on 9/3/10 regarding a one-time comprehensive time extension for multiple projects and the 9/3/10 decision memorandum for IA revisions both included a requirement that requests for time extensions include an updated workplan. This has proved to be impractical and unnecessary. This requirement was implemented prior to development of Appendix M which includes impacts on project deliverables. Modification of the workplan is best left until the decision is finalized so that revisions are sure to be consistent with what was/or was not approved.

<sup>47</sup> 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.

the project in accordance with the instructions in Appendix L.<sup>48</sup> Approved requests will be documented in a modification to the applicable financial instrument.

- Requests for time extensions must be submitted at least 120 days in advance of the expiration of the period of performance in the financial instrument or other funding documentation (i.e., project expiration date) to ensure time extensions can be processed prior to project expiration.
- The SNPLMA Division may waive the 120-day-in-advance rule, in order to process and approve a one-time 90-day extension 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 and waiver of the 120-day-in-advance rule are solely to complete closeout of the project so do not require submittal of a revised detailed cost estimate worksheet, map, or a revised workplan 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.
- **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.**

#### **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.<sup>49</sup>

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 a change in scope, types of changes that require a change in scope, and types of changes that are prohibited because they would not comply with the purpose 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

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<sup>48</sup> Revisions to this section on time extensions is in accordance with an EC decision memorandum approved 9/3/10 for revisions to the IA.

<sup>49</sup> The changes to the section on change of scope are in accordance with an EC decision memorandum approved 8/11/11.

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 workplan, 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 Division, the PWG, and the EC will also consider the nomination requirements and other relevant conditions existing at the time the Round 1-12 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 1-12.<sup>50</sup>

- 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 Workplan beginning with Round 13. For projects in Round 1-12 entities the Program Manager will evaluate the request using the guidance above for projects in Rounds 1-12 and the rules below to develop a recommendation regarding the scope change request.

### **1. Scope Changes That Are Not Required**

The circumstances listed below as not requiring a scope change are applicable only if no additional time or funds are required. 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 that no scope change is required. The Division will then coordinate with the recipient agency/entity to update the Project Workplan as needed to reflect the changed circumstances, additions, or deletions to the Project Workplan. 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 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.<sup>51</sup>
- 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.
- Add Standard Deliverables that were not specifically identified in the nomination as project deliverables and/or were inadvertently omitted from the initial project workplan.
- Relatively insignificant changes in environmentally sensitive acres to be acquired (less than 1

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<sup>50</sup> EC decision memo approved 8/1/11 for IA changes regarding project purpose, project implementation in conformance with approved nominations and, and scope changes.

<sup>51</sup> Changes in size and quantity from that described in the nomination do require a scope change. See paragraph 2 of this section.

percent) that don't negatively impact environmentally sensitive resources being acquired.

- Minor trail alignment changes (generally due to availability of rights of way to complete the trail project) where the realignment does not significantly lengthen or shorten the trail (less than 5 percent change) or change the intended trail use (e.g., from equestrian to pedestrian, from motorized to non-motorized).
- To 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 revised budget tables, 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 Are Required**

- Changes in the size or quantity of a Primary or Anticipated Deliverable as the result of completion of studies, analyses, surveys, monitoring, or reports identified in the nomination/workplan require only a minor scope change approvable by the SNPLMA Division provided no additional time or costs will be incurred as a result of the change.
- 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 in size, quantity, siting, or configuration 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.
- Changes in siting or configuration of the Primary or Anticipated Deliverables after initial notification of the determination of configuration or siting has been made to the SNPLMA Division and the description modified in the Project Workplan.
- Removal of a Primary Deliverable. These will always be treated as a major scope change requiring EC approval since Primary Deliverables are those that are required to complete the purpose of the project.
- 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 nomination. If a new Primary Deliverable requires additional time or funds it will be treated as a major scope change requiring EC approval, otherwise approval will fall under the threshold parameters described below.

- To remove deliverables identified as “anticipated deliverables” after previously designating them for inclusion in the project based on the results of completed studies, analyses, surveys, monitoring, or reports,

### **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.
- 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 workplan and 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 allowed will be resolved by the EC through the decision memo process.

#### **E. Conditional Recommendations/Approvals**

The SNPLMA Division recommends conditional approvals on a limited, as needed, basis, for projects that have not shown satisfactory progress towards completion of primary deliverables or if the agency has not shown due diligence towards completing the project.<sup>52</sup>

Recommending a conditional approval would be based upon the judgment of the Program Manager. It would only occur after discussion with the agency project manager and review of the project schedule, milestones, and deliverables.

Conditional approvals require that the agencies/entities submit a modified project workplan that clearly details the deliverable completion dates and milestone dates outlined in the approval and clearly defined milestones as to how (and when) the project will be completed.

Conditional approvals also require that agencies/entities must meet the deliverable and milestone deadlines before approval is given to move to the next stage of the project. If the agency/entity cannot meet a milestone or major deliverable, and the project will experience a significant delay, the agency/entity must provide the Program Manager with documentation of extenuating circumstances beyond the agency's or entity's control, or the project could be subject to termination.

Significant delays would be defined as "Any action or inaction that has, or is likely to have, an influence or affect that would delay completion of the project and would impact the target completion date in the approved workplan."

Examples of extenuating circumstances 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.

#### **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 threshold of each group.

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 a signature area for either the SNPLMA Division, PWG, or EC based on decision approval thresholds as explained below. Each approval threshold section also addresses processes for review of the decision memorandum and, in some case, higher level review of decisions.

The PWG may make an alternate decision to the SNPLMA Division recommendation or make an alternate recommendation to the EC which itself may make an alternate decision to the recommendation of the PWG. Requests which are not recommended by the SNPLMA Division will be forwarded to the PWG which will either make a decision, or, if concurring with the SNPLMA Division to deny the request, forward the request to the EC for a final decision. Only the EC may deny a modification request.

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<sup>52</sup> The section on conditional approvals is in accordance with an EC decision memorandum approved 2/27/12.

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 memos 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 for the project file, and initiate modification of the applicable financial instrument to document approved changes.

### **1. SNPLMA Division Approval Thresholds**

The SNPLMA Division has the authority to approve modification requests by signature of the Assistant District Manager, SNPLMA Division, limited to the following approval thresholds:

- Time extensions adding up to 1 year to the original period of performance.
- Final one-time extensions 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.
- Initial changes in the size or quantity of a Primary or Anticipated deliverable from what was stated in the nomination based on completion of the studies, analyses, monitoring, surveys, or reports identified in the nomination as affecting these aspects of the project. (If the changes require additional time or funds, approval authority will be based on time and funding approval thresholds.)
- Minor changes in size or quantity (less than 10 percent), and siting, or configuration of primary or anticipated deliverables from what was described in the nomination:
  - After initially determined and documented in the workplan based on the results of studies, reports etc. that were identified in the nomination;
  - Where the nomination did not indicate that these factors were dependent upon the results of certain studies, analyses, or reports; or
  - Where changes in quantity of acres or water rights to be acquired under an environmentally sensitive land acquisition are more than 1 percent but less than 10 percent or are not sufficient to result in a change in the value if already appraised, and changes do not negatively impact the resources to be acquired.
- Add standard deliverables that require additional time within the time extension approval threshold of the Division.
- Use of contingency funds up to a maximum of the percent approved by the Secretary (generally 10 percent).

The standard operating procedure for the SNPLMA Division will be to provide a decision within two weeks from the date of a complete submission. PWG and EC members receive an electronic copy of all SNPLMA Division approvals. If no objection is received from any member of the PWG or EC within seven (7) calendar days, the decision of the SNPLMA Division shall be deemed final. If an objection is received which cannot be resolved by providing additional information, the SNPLMA Division will forward the request through the PWG to the EC for a final decision.

### **2. Partners Working Group Approval Thresholds**

The PWG has the authority to approve time, scope, and financial modification requests limited to the following approval thresholds:

- Time extensions adding no more than two (2) years to the original period of performance. (Example: For a project with an initial two year (2 year) period of performance may receive a one-year (1 year) extension from the Division and an extension for one (1) additional year by the PWG for a total of two years added to the original period of performance);
- SAR requests not to exceed \$250,000.00 or 5% of the Secretarial approved project budget, whichever is lower; and
- Significant changes in size or quantity (10 percent to 19.99 percent), and in siting or configuration of primary or anticipated deliverables from what was described in the nomination:
  - After initially determined and documented in the workplan based on the results of studies, reports, or analyses that were identified in the nomination;
  - Where the nomination did not indicate that these factors were dependent upon the results of certain studies, analyses, or reports; and
  - Where changes in quantity of acres or water rights to be acquired under an environmentally sensitive land acquisition do not exceed 20 percent and do not negatively impact resources being acquired.
- Addition of new Primary Deliverables to the scope that were proven by the results of studies, reports, or analyses to be necessary to accomplish the purpose and complete the project where no additional time or funds are needed.
- Add standard deliverables that require additional time and/or funds within the limits of the time and funds that can be approved by the PWG.

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, comments, alternate recommendations, or a vote to approve or deny, after which the PWG Chair will sign the decision memorandum based on the majority vote. Requests that are not recommended by the PWG will be forwarded to the EC for a final decision.

### **3. Executive Committee Approvals Required**

The EC is the final decision making group for modification requests. The most significant and major requests will be evaluated by the EC. The EC will review and decide on the following:

- Time extensions of more than two years over the initial period of performance for the project;
- SAR requests exceeding \$250,000.00 or 5% of the Secretarial approved project budget;
- Requests for waiver of SNPLMA business rules outlined in the IA;
- Major changes in size or quantity (20 percent or more), and in siting or configuration of primary or anticipated deliverables from what was described in the nomination:
  - After initially determined and documented in the workplan based on the results of studies, reports, or analyses that were identified in the nomination;
  - Where the nomination did not indicate that these factors were dependent upon the results of certain studies, analyses, or reports; and
  - Where changes in quantity of acres or water rights to be acquired under an environmentally sensitive land acquisition exceed 20 percent or negatively impact resources being acquired.
- Changes in the rights to be acquired in a land acquisition from what was nominated and approved (e.g., removal of all water rights, exclusion of mineral rights).
- Addition of new Primary Deliverables to the scope that were proven by the results of studies, reports, or analyses to be necessary to accomplish the purpose and complete the project.
- Removal of any Primary Deliverable from the scope of a project where additional time or funds is required.



- Removal of any Anticipated Deliverable after it was designated for inclusion in the project based on the results of completed studies, reports, or analyses.
- Recommendations by the SNPLMA Division or PWG to deny an agency/entity modification request.
- SNPLMA Division initiated project termination requests.

Once the initial SNPLMA Division review has been completed, a decision memorandum will be prepared and forwarded to the PWG which will have two weeks to vote on a recommendation to the EC. The decision memorandum with the PWG's recommendation will be forwarded with the signature of the PWG chair to the EC whose members will then have two weeks 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.

## **XI. PHASE 3 SNPLMA BUSINESS PROCESS: PROJECT IMPLEMENTATION RULES BY PROJECT CATEGORY**

Sections VII and VIII explain the funding requirements and process, respectively, and Section X explains the process for requesting modification 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 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.

#### **3. Acquisition Appraisal Costs**

The SNPLMA Special Account will pay 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 pay the cost of a new appraisal if carried out by the same appraiser. 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 pay for 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 extraordinary 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. 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.

Certain mineral valuation situations may be addressed by obtaining a mineral potential assessment report which also addresses market feasibility although it does not specifically determine a value for the minerals. If the acquiring agency believes a mineral feasibility/potential report is appropriate and necessary, the cost of the mineral potential report will be a reimbursable expense. 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 5 below*), the SNPLMA Assistance Agreements/Cooperative Agreements between the BLM and the local and regional governmental entities require that the governmental entities 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 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.<sup>53</sup>

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<sup>53</sup> The BLM'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

## **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 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 (DR), finding of no significant impact (FONSI), categorical exclusion (CX), documentation of NEPA adequacy (DNA), or record of decision (ROD) if an Environmental Impact Statement (EIS) 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 Uniform Standards for Professional Appraisal Practices (USPAP) and Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA). (*See more on PTNA acquisition appraisals in 5(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 ways 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 Acquisition Perpetual Ownership***

The deed for land acquired with SNPLMA funds must contain a non-revocable restrictive covenant satisfactory to the BLM and the Regional Solicitor that requires the local or regional entity to utilize the land for the intended purpose in perpetuity. 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.

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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.

***(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 Department of the Interior 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 Department of the Interior 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 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 also be required to obtain their own review of the appraisal report.

***(c) PTNA Valuation of Low Cost 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 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 1527-05 standards. 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 (49 CFR Part 24, Final Rules Effective February 3, 2005) must be provided before purchase funds are approved for draw down through ASAP. (*See 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.9.(c), 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.9.(c), 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 106 Consultation for MSHCP Projects**

If a MSHCP development or implementation project will involve ground disturbing activities that will trigger the provisions of Sec. 106 of the National Historic Preservation Act, required consultations must be carried out.

## **2. MSHCP Implementation Involving Land Acquisitions**

Clark County may purchase real property for mitigation purposes as part of its implementation of the MSHCP. The land acquisition guidelines provided for the PTNA category in Section XI.B.4. apply equally to approved MSHCP land acquisition projects.

### **D. Conservation Initiatives**

For Interagency Conservation Initiatives each participating entity 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 request funds and begin work on the project within one year following the date of the Special Account Funds Notice. 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. The first agency requesting funding must identify how the project funds are to be divided between all participating agencies. The lead agency identified in the project nomination is responsible for certifying overall progress and completion of the project as a whole. Each participating agency is responsible for submitting project modification requests and quarterly reporting on its portion of the project, except that only the lead agency may submit a scope change request since these need concurrence of all participating agencies. Participating agencies may close their portion of the project independently from the other participating agencies. (Though uncommon in other categories, these rules apply to any category that develops and gains approval of an inter-agency project.)

### **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. The BLM's contracting officer's representative and 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 projects is the same as for all categories as described in Appendix J, part B.

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

- Administer and support the TWG and LTFAC by organizing meetings, preparing reports, facilitating the development of the Quarterly Status Reports and other administrative needs of the TWG and LTFAC;
- Organize TREX review of project modifications as needed; and
- Coordinate and consult with the LTFAC, TRPA, Lake Tahoe Transportation and Water Quality Coalition, 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 USDA Forest Service, and the participating Federal agency. The BLM signs based on its implementation, oversight, and financial management responsibilities for the SNPLMA Special Account. The USDA Forest Service signs in its role as representing the Secretary of Agriculture and recipient of funds pursuant to Appropriations Act 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 Appropriations Act 108-108.

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

As approved by the Secretary of the Interior, 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 Appropriation Bill 108-108 for Lake Tahoe Restoration projects of \$300,000,000 was met with the funding of Round 12 Lake Tahoe projects. These projects are not, therefore, eligible to request or receive additional funds through the SAR from the 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 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 Request for Proposals (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 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 Appendix L*). The SNPLMA Division can approve a one-time extension request of one year or less for Lake Tahoe 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 to be submitted to the USDA Forest Service designated representative. The USDA Forest Service will serve a role similar to a project inspector by certifying “acceptance of the project as a qualified restoration project under the applicable law(s).” The USDA Forest Service will then forward the closeout package along with its “Certification of Acceptability” of the completed project deliverables to the SNPLMA Division for processing.

## **F. Virgin River MSHCP**

Section 901 of the Clark County Conservation of Public Land and Natural Resources Act of 2002 (P.L. 107-282) amends the Mesquite Lands Act by providing that the proceeds of sale of certain land to the City of Mesquite be used first to develop a multispecies habitat conservation plan and associated ground water monitoring plan for the Virgin River and to cover the cost incurred by BLM to convey lands identified in the Mesquite Lands Act, as amended. Only after these purposes are complete can any remaining funds be utilized to fund projects in the project categories identified in SNPLMA section 4(e)(3). The FWS has been selected to take the lead on development of a MSHCP for the Virgin River and associated ground water monitoring plan. FWS is eligible to receive funding to develop these plans without nomination of specific projects or Secretarial approval since Congress designated the Mesquite Land Sale funds for this purpose. FWS is, therefore, the only eligible agency to receive funds for this purpose.

## **G. Pre-Proposal Planning Reserve**

During Rounds 6, 7, and 8, the Secretary was asked to approve a specific amount as a reserve to pay for Pre-Proposal Planning. The Pre-Proposal Planning (PPP) reserve is intended to provide funds which can be expended at the discretion of the EC during the Round in which they were approved for future projects that fit within an authorized SNPLMA category. PPP funds were awarded during Round 6 only, after which the EC made a determination that the dollar value of the project nominations that could come out of the PPP efforts already approved would outstrip available funding for the foreseeable future. Funds not allocated or obligated from the PPP reserve for Rounds 7 and 8 became part of the revenue available to fund future rounds as approved by the Secretary.<sup>54</sup> The purpose of the approved Pre-Proposal Planning Reserve is:

“To fund feasibility and pre-proposal conceptual design for the purpose of developing more accurate information on the scope of work, detailed cost estimates, and time frames required to complete projects

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<sup>54</sup> The section on requesting PPP reserve funds and associated Appendices L, L-1, and L-2 (PPP request form, cost estimate and criteria) have been deleted from the IA in June 2011 since there is currently no expectation that PPP funding reserves will be requested in future rounds.



which will be nominated in FUTURE ROUNDS [emphasis added].”<sup>55</sup>

“The ability to do pre-proposal planning will help ensure projects can be completed as nominated within the budget request and help reduce the need for changes in scope [, time extensions,] and additional funds due to critical elements or costs that weren’t appropriately addressed in the nomination. This reserve will be available to all expenditure categories except MSHCP and Lake Tahoe Restoration Projects which already have a detailed pre-proposal development process in place.”<sup>56</sup>

Necessary expenses for Pre-Proposal Planning funds shall not include any construction or active-construction related costs. Although some of the examples of Other Necessary Expenses contained in Appendix B-3 would apply, none of those which are or would be associated with an on-going construction project apply to pre-proposal planning efforts.

### **1. Rules Regarding Pre-Proposal Planning Funds**

The PPP reserve is not intended to circumvent the normal nomination and approval process for projects. PPP funds are intended to be used to conduct the work required to do planning in advance of submitting a nomination (i.e., pre-proposal) for feasibility, cost estimation, conceptual design, time lines, etc. for future projects only. Inclusion of work to review the planning, design, and construction of a previous phase(s) of a multi-phased project is allowed only to the extent absolutely necessary in order to conduct valid pre-proposal planning for the anticipated project as an additional phase. If the result of the PPP initiative determines that previously approved phases of the anticipated project need to be redesigned or altered, the agency/entity should request funds for that purpose from the SAR provided the redesign or alternations do not change the purpose of the previous project.

1. Approval of PPP funding, or completion of the PPP effort, cannot be construed in any way as an indication that the future project nomination package, if any, will be acceptable, or, if accepted, that the nominated project would be either recommended or approved. The SNPLMA Division, the PWG, the EC, and the Secretary are not legally, or otherwise, bound to accept, recommend, or approve any project resulting from PPP efforts.
2. Approval of PPP funding does not earn additional ranking points or any kind of priority for the associated SNPLMA project nomination if one is submitted. Each project nomination will be reviewed, scored, and ranked on its own merit.
3. If the results of the PPP initiative is a decision that the anticipated project is not feasible, the agency/entity shall so advise the appropriate SNPLMA Division Program Manager in writing, who will forward the results through the SNPLMA Assistant District Manager to the EC. There is no expectation that anticipated projects deemed to be impractical, too expensive, too time consuming, too costly to operate and/or maintain, or otherwise infeasible for any reason must be brought forward for nomination.
4. Approved PPP planning/feasibility studies shall not be eligible for changes in scope or additional funding. With those two exceptions, approved PPP projects are subject to all the same policies, procedures, processes, and business rules for funding, expenditure of funds, quarterly reporting, and closeout as all other projects.

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<sup>55</sup> Excerpted from the Round 6 Final Recommendation submitted to the Secretary of the Interior dated January 25, 2006, and approved by the Secretary on February 7, 2006.

<sup>56</sup> Ibid.

5. Upon completion of the PPP planning/feasibility process, a findings summary will be submitted to the appropriate SNPLMA Division Program Manager and retained in the project file in support of the reimbursements/payments made. The documentation and information required in the findings summary will be identified on a case-by-case basis in the IAA, task order, assistance agreement, or transfer authorization letter and will be dependent upon the nature of the PPP planning/feasibility study.
6. If an associated project nomination is submitted, the findings summary, reports, preliminary designs, etc. shall be discussed in the project nomination package resulting from the PPP project.
7. The PPP planning/feasibility effort must be completed and all reporting documentation and project closeout documentation submitted and accepted by the SNPLMA Division before a nomination of the associated project will be accepted in a future round of SNPLMA.

## **XII. 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 Appendix J. Those requirements include completing a final workplan 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 Appendix J.2.b. and Appendix J-3 for more information on Performance Measures.*) Agencies/entities should make every effort to submit the closeout package within 90 days (one quarter) of completion of the project.

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

The Division will then complete the project closeout process by:

- Processing 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. The 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.
- Reviewing FMBS reports for direct charge projects (those with BLM Task Orders) and advise the BLM office of any erroneous charges to the project and/or direct-charge funds that must be returned, if any. The recipient BLM office will initiate an expense journal voucher in FBMS to move the erroneous or inappropriate charges to another cost structure and shall make every effort to complete the expense voucher process within 60 days of notification that the charge is incorrect or otherwise inappropriate. Once corrected, the Division will initiate and process a BLM Task Order modification to close the project and release any unused funds.
- Initiating a modification to close the IAA, Assistance Agreement, or any remaining BLM reimbursable task order and de-obligate any funds in excess of approved necessary expenses.

## **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.<sup>57</sup>

Project terminations can occur for a variety of reasons. For example, a project may need to be terminated because it can no longer accomplish what was 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 (i.e., active or in process), the SNPLMA Division will work with the agency/entity to identify, consistent with SNPLMA policies and procedures, which deliverables within the project would need to be completed in order to constitute a viable 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 and ready for close out versus termination.

### **1. Termination Justifications**

Projects are expected to be completed within the scope, time, and budget approved by the Secretary of the Interior or as modified by decision memorandum. When termination is necessary, one or more of the following reasons 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 deliver a viable product;
- Health/safety, environmental, construction constraints, or legal issues which cannot be resolved or cannot be resolved within a reasonable time period;
- The acquisition appraised value is not acceptable 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 deliver a viable product, even if reduced in scope; or
- Receipt of an EC decision on a project modification request which requires that the project be terminated.

In addition, there are circumstances when termination may be recommended by the SNPLMA Division due to the actions or inactions of the recipient agency/entity such as:

- The project is not making adequate progress as evidenced through the SNPLMA quarterly and annual reporting process and/or SNPLMA Program Manager project reviews/inspections;
- Failure to initiate funding procedures and start work on the project within one year of the Special Account Funds Notification;
- Failure to execute an initial IAA/agreement/task order or modification within 60 days of receipt of the IAA/agreement/task order from the BLM;

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<sup>57</sup> This revised termination section is in compliance with an EC decision memorandum approved 8/1/11.

- Failure to submit a request and required documentation for time extensions 120 days prior to the expiration of the project;
- Failure to submit required documentation to reassign responsibility for a Conservation Initiative deliverable or task and associated funding from one interagency partner in the project to another when such reassignment is necessary;
- Failure to comply with transfer documentation and reporting requirements; and
- Failure to reactivate a project in “on-hold” status within one year of the effective date of that status, or failure to provide evidence that issues used to justify the on-hold status were satisfactorily resolved. (Note: On-hold status is no longer an available option; at the time of this writing, one project remains in on-hold status.)

## **2. 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/entity 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 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 (one quarter) of the expiration of the 7-day review period for the EC and PWG. (See Appendix J, Part F for closeout package requirements.)

### ***(b) SNPLMA Division Initiated Terminations***

Prior to recommending termination of a project, the SNPLMA Division will notify the agency/entity in writing regarding those issues that the Division believes could be grounds for termination and request coordinated effort to resolve the cited issues. If, after 60 days of the date of the written notice of concerns (i.e., initiation of discussions), the Division determines that the issues are not resolved, the 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. The EC may elect to request a special meeting with the agency/entity to discuss the termination initiated by the SNPLMA Division.

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.

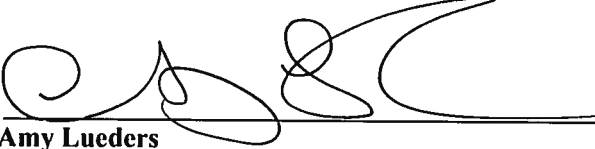
The agency/entity shall make every effort to submit a complete closeout package for projects within 90 days (one quarter) of a final decision to terminate the project (*see closeout package requirements in Appendix J, Part F*).

### **3. Reimbursement, Final Transfer, and Closeout of Terminated Projects**

After receiving, reviewing, and accepting the closeout package, the SNPLMA Division will process the termination 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.

### XIII. APPROVALS

By signature below, the Executive Committee members confirm approval of the Implementation Agreement Part I and Part II by voice vote on February 5, 2013.

Approved:   
Amy Lueders  
State Director, Nevada  
Bureau of Land Management

3/8/13  
Date

Approved: \_\_\_\_\_  
Ren Lohofener  
Regional Director, Pacific Southwest Region  
U.S. Fish and Wildlife Service

\_\_\_\_\_  
Date

Approved: \_\_\_\_\_  
Martha Lee  
Deputy Regional Director, Pacific West Region  
National Park Service

\_\_\_\_\_  
Date

Approved: \_\_\_\_\_  
Nora B. Rasure  
Regional Forester, Intermountain Region  
U. S. Forest Service

\_\_\_\_\_  
Date

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**Amy Lueders**  
**State Director, Nevada**  
**Bureau of Land Management**

\_\_\_\_\_  
**Date**

Approved: \_\_\_\_\_  
**Ren Lohofener**  
**Regional Director, Pacific Southwest Region**  
**U.S. Fish and Wildlife Service**

*March 11, 2013*  
\_\_\_\_\_  
**Date**

Approved: \_\_\_\_\_  
**Martha Lee**  
**Deputy Regional Director, Pacific West Region**  
**National Park Service**

\_\_\_\_\_  
**Date**

Approved: \_\_\_\_\_  
**Nora B. Rasure**  
**Regional Forester, Intermountain Region**  
**U. S. Forest Service**

\_\_\_\_\_  
**Date**

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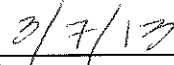
Approved: \_\_\_\_\_  
**Amy Lueders**  
**State Director, Nevada**  
**Bureau of Land Management**

\_\_\_\_\_  
**Date**

Approved: \_\_\_\_\_  
**Ren Lohofener**  
**Regional Director, Pacific Southwest Region**  
**U.S. Fish and Wildlife Service**

\_\_\_\_\_  
**Date**

Approved:  \_\_\_\_\_  
**Martha Lee**  
**Deputy Regional Director, Pacific West Region**  
**National Park Service**

  
**Date**

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**Regional Forester, Intermountain Region**  
**U. S. Forest Service**

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**State Director, Nevada**  
**Bureau of Land Management**

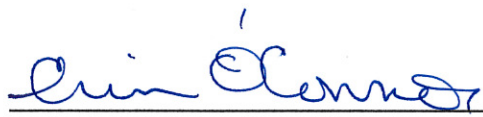

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**Date**

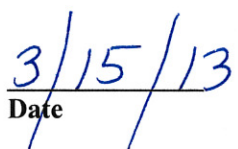
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**U.S. Fish and Wildlife Service**

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**Martha Lee**  
**Deputy Regional Director, Pacific West Region**  
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\_\_\_\_\_  
**Date**

Approved:  \_\_\_\_\_  
 **Nora B. Rasure**  
**Regional Forester, Intermountain Region**  
**U. S. Forest Service**

  
\_\_\_\_\_  
**Date**