



United States Department of the Interior



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In Reply Refer To:
2710 (NVS0055)

DECISION MEMORANDUM

To: SNPLMA Executive Committee

Through: SNPLMA Partners Working Group

From: Mike Stiewig /s/ Robert Wandel, Acting 5/27/11
Acting Assistant District Manager, SNPLMA Division

Subject: Request Revisions to the SNPLMA Implementation Agreement Regarding (1) the Special Account Reserve, (2) the Processes for Project Termination, and (3) the Addition of a section on Project Time Frames

Introduction:

The SNPLMA Implementation Agreement (IA) contains the business rules and procedures for nomination through implementation and closeout of projects funded by the Southern Nevada Public Land Management Act (SNPLMA), including project implementation guidance on time, scope, and budget for projects approved by the Secretary of the Interior. The lessons learned in implementing the legislation and approved projects have proven valuable in modifying the IA for greater efficiency, effectiveness, and transparency. Since this continuous improvement approach was adopted in 2000, the IA has undergone numerous revisions to reflect lessons learned for improved implementation and processes, amendments to the legislation, legal opinions on SNPLMA implementation, modifications to requirements and funding criteria, etc.

This decision memorandum recommends three changes to the IA:

- **Special Account Reserve (SAR):** Changes to reflect a new process for prioritizing, reviewing and approving requests for additional funds from the Special Account Reserve (SAR) and clarification of requirements and limitations. The changes will be located primarily in “Requests for Additional Funds from Special Account Reserve” in Section XI “Project Modifications” and Section XIV “Special Accounts Reserves (SAR).” These changes would be effective for the Round 11 SAR funds not yet approved for allocation to projects and SAR in future rounds.
- **Terminations:** Revisions to the section on termination of projects to expand on the logic behind terminations, clarify the processes for both agency-initiated and SNPLMA-Division initiated terminations, and more clearly relate terminations to the ability to adhere to the purpose/scope, time frame, and funding of the project. The changes will be located primarily in “Requests to

Terminate a Project Prior to Completion” in Section XI “Project Modifications.” This change would be effective immediately upon approval.

- **Project Time Frames:** Add a section to establish expectations for maximum time frames for initiating, implementing, and closing out a project, the relationship between the time frame and the Secretary’s requirements, requirements for addressing time frame in the nomination and project work plan, and differentiate between the terms “time frame” and “period of performance” which are often used synonymously. The new section will be entitled “Project Time Frames/Standard Period of Performance” and will be located in Section V. “SNPLMA Recommendation Development Process” under “General Requirements.” This change would be effective with nominations for Round 13 and forward.

A previous decision memorandum recommending revisions to the IA “Regarding the Purpose of the Project and Project Implementation in Conformance with Nominations Approved by the Secretary of the Interior and Other Secretarial Decisions, Project Workplans and Deliverables, and Appropriations Law and Relationship to Requests for Scope Changes” was presented to the Executive Committee at its meeting on March 24, 2011. The Executive Committee decided to table a decision on the recommendations in that memorandum pending this decision memorandum for additional revisions, review of consolidated proposed revisions of the IA language, and other decisions pending by the EC regarding guidance for future rounds beyond Round 12.

1. CHANGES TO THE SAR REQUEST PROCESS

Background:

The SNPLMA Implementation Agreement provides guidance to program partners as to the purpose of the SAR, how it may be used, and what is required to request SAR funding. The Implementation Agreement (IA) indicates that “If the total project costs exceed the original approved budget amount by more than the contingency percentage approved by the Secretary, the agency may request approval for additional funds from the Special Account Reserve.” The IA goes on to say that “Additional funds for changes in scope will be limited to those scope changes required to complete the project as originally described, not to increase the size, function, level of finish, etc. of the project.”

Issue:

At its March 2-3, 2011 meeting the SNPLMA Partners Working Group (PWG) asked the Bureau of Land Management SNPLMA Division staff to develop new requirements for the Special Account Reserve (SAR). The PWG has concerns that, with reduced SAR amounts, the current SAR approval process, where generally the first requests submitted are the first approved until the funding is gone, as well as the overall lack of a prioritization process and/or criteria, is not strategic and may not ensure the most critical requests are funded. The IA says that “Requests should include an explanation of the circumstances leading to the shortfall, any efforts taken to minimize the shortfall or otherwise achieve costs savings, and the amount required to complete the acquisition or project as approved by the Secretary.”

The concerns with the current process are: 1) the purpose for which SAR requests are granted is very broad, with no prioritization of type or level of need; 2) the process for approving SAR requests, which is generally on a first come first served basis, may lead to an inability to fund most critical needs given limited availability of SAR funds; and 3) the amount and type of information that is required in SAR requests is insufficient to ensure adequate assessment of the request.

Request:

This decision memorandum requests revisions to Section XI regarding the process for requesting SAR funds that would expand the explanation of circumstances that need to exist for SAR funds to be

requested, expand and clarify the information that needs to be included in the SAR request, and clarify the process and update the terminology for completing and documenting approved SAR requests. Also requested are revisions to Section XIV that would establish a quarterly review and availability timeframe for requests and funds with the caveat that total SAR funds may be expended at any point due to the high priority nature of projects.

A two part test is proposed which, if both parts are met, would designate requests as high priority and eligibility for immediate processing. The tests are (1) demonstrate that the recipient agency/entity has attempted to down-scope or taken other actions to complete the project within budget, but additional funds are still needed and (2) demonstrate that the funding need is urgent to prevent work stoppage, layoffs, award a contract and/or funds are needed for a safety or emergency situation needing immediate attention.

The proposed changes also establish a target maximum request of 10% of the current total funds available for the project.

Analysis:

The proposed changes above are intended to make SAR funding more strategic and to help the PWG and Executive Committee ensure the most urgent or critical projects receive needed funds. The above changes would not impact the process currently in place for documenting and processing requests for SAR funds for new projects to meet urgent or emergency needs that have to be approved by the Secretary.

Recommendation:

The SNPLMA Division recommends that the Executive Committee approve the SAR revisions described above and as depicted in the attached revised IA language. The SNPLMA Division also recommends striking the section on BRA funding which is no longer authorized by the Secretary and striking the language on the PPP reserve funding process except for any portion necessary to manage the ongoing approved PPP projects.

2. REVISIONS TO SECTION ON REQUESTING TERMINATION OF PROJECTS

Background:

The IA currently contains a section on termination in which the agency/entity can provide a notification that it is terminating a project and the reason for the termination and that the SNPLMA Division may initiate a termination if the project isn't in compliance IA policies and procedures.

Request:

Revise the section to update the list of justifications for and agency-initiated termination and provide a more comprehensive list of circumstances under which termination may be recommended by the SNPLMA Division. The section should specify that the SNPLMA Division will notify the agency in writing of its concerns and work with the agency for 60 days to resolve the situation before it provides notice to the agency of its intent to recommend termination of the project. Also address the process for agency-initiated terminations and SNPLMA Division-initiated terminations separately.

Analysis:

The current section on project terminations does not adequately address the situations under which a recommendation for termination may be initiated by the SNPLMA Division, nor does it clearly explain that the SNPLMA Division will work with the agencies/entities before initiating a request to terminate the project. The current list of situations under which the Division may recommend project termination is too vague and needs to be revised to avoid confusion and uncertainty.

It has always been the intention that the SNPLMA Division would work with the agencies/entities to resolve any situation in which a project is inconsistent with IA policies and procedures before the Division initiates a termination. The inclusion of guidelines to advise the agency in writing of the Division's concerns regarding the project and specifying a time period to resolve the concerns will help the agencies and the Division to address such situations in an organized and consistent manner.

Recommendation

The SNPLMA Division recommends the Executive Committee approve the described changes to the termination section as depicted in the revised IA language.

3. NEW SECTION ON PROJECT TIME FRAMES/STANDARD PERIODS OF PERFORMANCE

Background:

In the Round 11 Secretary of the Interior's Decision Document, the Secretary has directed that "It is expected 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." This direction led the Executive Committee to request the SNPLMA Division, through the Partners Working Group, to develop IA language for establishing standard time frames for the project categories within the SNPLMA. The Executive Committee also requested IA language to include a requirement that projects begin implementation within one-year from the notice of funding availability.

Currently, project time frames are established by the entity as part of the nomination for a new project and prior to approval by the Secretary of the Interior. With the exception of Land Acquisitions, the project categories do not have time frames established for the nominating entities to adhere. Land Acquisitions is currently limited to a two year time frame, which was established at the beginning of the SNPLMA program implementation.

Analysis:

The purpose of establishing a standard time frame/period of performance per category is to communicate an expectation to the nominating entities to prepare a scope, budget, and time consistent with the approved time frame for that category. This will improve many aspects of program and project management. Projects that adhere to a time frame are more often completed on time or sooner, within the approved scope and budget. The result is a more effective program and improved accountability and demonstrated results.

The following are time frames for the respective categories and a brief explanation of how the time frame was established:

- **Land Acquisitions - 2 years:** Land Acquisitions have historically been limited to two years. According to the SNPLMA Division Program Manager, the acquisition process generally does not exceed two years if the project is actively being worked on; of course notwithstanding any complication with title, rights-of-way, reservation, or other issues which may arise. Improvements in the Land Acquisition process, like preliminary estimates of value and willing seller letters, have reduced the need to request time extensions, with few exceptions. It is expected that time extension for this category will be the exception and therefore limited in number and scope.

- Parks, Trails, and Natural Areas - 5 years: The PTNA program provides Federal funding to local and regional governmental entities; therefore, the BLM must use an Assistance Agreement as the funding instrument to provide the SNPLMA funding for project implementation. According to the Code of Federal Regulations, the time frame of an Assistance Agreement should not exceed five years from the time the agreement is signed by both parties. Also, the regulations provide the recipient up to 90 days, from the expiration of the agreement or completion of the project whichever is first, to close-out the Assistance Agreement with the BLM.
- Capital Improvements - 5 years: Capital Improvements are generally for discrete improvements, generally capable of being completed within 3.5 years of actual construction. The Capital Improvement program has a limitation of 27% of the project total on planning, environmental, and design costs, which emphasizes project readiness. It is expected that the planning, environmental, and design can be completed within the first year, construction over the next three to three and a half years, and close the project by the end of the fifth year. Of course there are exceptions, like those agencies building visitor centers or the like, where the time frame for such a large undertaking may exceed five years. It is understood that those projects are very limited and can be approved on an as appropriate basis.
- Multi-Species Habitat Conservation Plan - 5 years: The MSHCP program is administered by Clark County and because Clark County is a local government, Federal funding must be provided through Assistance Agreements. The same regulations apply for this category as PTNA; therefore, the five year time frame is appropriate. Further, the projects nominated in the MSHCP category are to serve as compliance for the Clark County Incidental Take Permit, which currently operates on a biennial budget. This means projects approved in the biennial budget must be properly sized to demonstrate compliance with the Permit and the data is used instantaneously to inform future needs of the MSHCP program for the next biennial budget. The type of adaptive management is a cornerstone for the MSHCP program and projects generally do not exceed the five year time frame.
- Conservation Initiatives - 4 years: The Conservation Initiative category implements a myriad of projects from Resource Protection (Law Enforcement) to scientific research and desert dumping clean-ups. Exceptions to this time frame might be from an Interagency Conservation Initiative nomination, where possibly five Federal agencies are working together to accomplish a project scope across multiple jurisdictional boundaries and the work is not able to be completed concurrently. It is understood that these projects are very limited and can be approved on an as necessary basis.
- Eastern Nevada Landscape Restoration Project - 4 years: The Eastern Nevada Landscape Restoration Project program is implementing projects according to the Great Basin Restoration Initiative. The eastern Nevada Federal agencies responsible for implementing this project (BLM, NPS, and USFS) are generally in agreement to have discrete projects that produce quick and effective results. This is reflected in the SNPLMA Subgroup guidelines and criteria for nomination. Since this category was authorized in Round 8, the majority of the projects have been nominated for four years or less.
- Hazardous Fuels Reduction and Wildfire Prevention - 6 years: The Hazardous Fuels category provides a mix of planning and implementation projects. Planning is on a large multi-agency and landscape level and on specific project areas. Planning projects are capable of being completed within six years, even if an Environmental Impact Statement is required. Implementation projects often require six years to complete from beginning to end. An implementation project often

requires the site specific planning and/or environmental analysis. The work is seasonal, meaning in areas where adverse weather (snow, rain, wind, etc) is a factor during the winter months; the project area may be inaccessible for up to six months. Then once the project area is accessible, depending on the implementation (equipment harvesting vs. prescribed or pile burning) the vegetation may have to cure or dry-out enough to ignite. Additional restrictions for smoke and wind may exist for areas like the Lake Tahoe Basin and the Carson and Washoe valleys.

- Lake Tahoe Restoration Act - 5 years for capital projects; 4 years for science projects; and 6 years for hazardous fuels projects: The Lake Tahoe Restoration Act category is available for a myriad of projects, so long as they are from the approved Environmental Improvement Program (EIP) list as approved by the Tahoe Regional Planning Agency (TRPA). Capital projects are subcategorized under the themes of air quality, forest health, and watershed and habitat improvement. Science is a standalone theme and the program receives an annual commitment of funding from the Lake Tahoe allocation. Projects within the science theme respond to annual subtheme priorities developed by the Lake Tahoe partnering entities. The science projects are generally addressing specific area of concern or need, and therefore are limited in scope and time. In most instances the product is needed immediately for use in an ongoing or proposed project, either capital or science. Like the other categories, the scope of a capital project (restoration, hazardous fuels, recreation) can vary in size and therefore funding and time. For purposes of the time frame portion of the SNPLMA IA, the hazardous fuels projects in the Lake Tahoe category will be grouped with the other hazardous fuels category (see above). Capital projects in the Lake Tahoe basin are generally the same as in other areas of the SNPLMA program, each possibly requiring time for site specific analysis or planning, construction or implementation, and closure. For example, a capital project at the Lake Tahoe Basin may be for trail construction or rehabilitation, and therefore similar to the time needs of the Conservation Initiatives or Capital Improvement categories.

Once approved, the time frame is carried forward into the project workplan and authorizing financial documentation. While the specific dates may change, the dates are used to establish a time frame. For example, a project is nominated to begin January 1 and conclude on December 31 of that year. That establishes a one-year time frame; however, if the project does not actually begin until March, then it is not expected to conclude until February 28/29 the following calendar year.

Also, with respect to establishing category time frames/standard period of performance, the Executive Committee directed the SNPLMA Division to add a requirement in the IA that projects approved by the Secretary of the Interior must begin implementation within one-year from when SNPLMA provides the notice of funding availability for that project. Currently, the IA has a requirement that the agency/entity only request the funding be initiated within one-year of the SNPLMA notice of funding availability. Increasing the requirement to begin project implementation within one year will emphasize the requirements contained throughout this and other decision memoranda and the IA, to complete projects within the time, scope, and funding provided through the Secretary's approval.

In addition, these proposed changes and other changes to the IA currently proposed and already approved, call into question the SNPLMA "on hold" policy. A project is placed "on hold" usually at the beginning, prior to initiating the funding, because circumstances have arisen which need to be resolved before implementation can begin. When a project is placed in "on hold" status the IA directs the SNPLMA program manager to remove existing funding from the project for use on other projects. When the "on hold" is lifted, the agency will need to reapply or establish again the funding to implement the project. This prevents funding from being tied up and thereby put to use on projects that are ready to go.

Based on the requirement to have a project ready to implement within one year of the notice of funding availability, the Secretary's expectation that time extensions are not a standard practice but rather an exception to the rule for timely completion, and the Executive Committee's commitment to accountability and demonstrated results, the "on hold" policy in the IA should be removed. Projects that are faced with problems so great that implementation is not ready within one year should be terminated and reapplied for in subsequent rounds. This helps ensure compliance with the Secretary's and Executive Committee's requirements for project implementation.

Recommendation:

The SNPLMA Division recommends approval of the project time frames as listed above and depicted in the attached revised IA language, with the understanding that exceptions always exist, and if the Executive Committee recommends it, and the Secretary approves it, a longer time frame may be established on a case-by-case basis. The SNPLMA Division also recommends striking the existing "on-hold" section contained within the October 2007 reissue of the IA. The newly approved and the proposed IA changes adequately address how to deal with problems occurring with project implementation enough to warrant deleting this component of the IA.

Action Needed:

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

1. CHANGES TO THE SAR REQUEST PROCESS

Partners Working Group Decision: The signature below indicates the decision made by majority vote on the above SNPLMA Division recommendation.

BY: Raul Morales, SNPLMA Partners Working Group Chair



Approve SNPLMA Division Recommendation

6/6/11

Date

Approve Alternate Recommendation
(Refer to rationale provided below)

Date

Disapprove
(Refer to rationale provided below.)

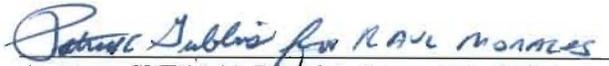
Date

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

2. REVISIONS TO SECTION ON REQUESTING TERMINATION OF PROJECTS

Partners Working Group Decision: The signature below indicates the decision made by majority vote on the above SNPLMA Division recommendation.

BY: Raul Morales, SNPLMA Partners Working Group Chair


Approve SNPLMA Division Recommendation

6/6/11
Date

Approve Alternate Recommendation
(Refer to rationale provided below)

Date

Disapprove
(Refer to rationale provided below.)

Date

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

3. NEW SECTION ON PROJECT TIME FRAMES/STANDARD PERIODS OF PERFORMANCE

Partners Working Group Decision: The signature below indicates the decision made by majority vote on the above SNPLMA Division recommendation.

BY: Raul Morales, SNPLMA Partners Working Group Chair

Approve SNPLMA Division Recommendation

Date


Approve Alternate Recommendation
(Refer to rationale provided below)

6/6/11
Date

Disapprove
(Refer to rationale provided below.)

Date

PWG ALTERNATE RECOMMENDATION: The PWG recommends approval of the SNPLMA Division recommendation on time frames and standard periods of performance with the exception of the 4-year time frame proposed for Conservation Initiatives. The PWG recommends that Conservation Initiatives

have a 5-year time frame which will provide time required to bring on board needed temporary federal employees and still allow four years to actually perform the work.

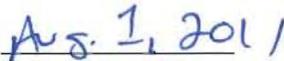
Executive Committee Decision: By signature below, indicate the decision made by majority vote on the above recommendation of the Partners Working Group (PWG) on each of the three recommendations above:

1. CHANGES TO THE SAR REQUEST PROCESS

BY: Amy Lueders, Acting SNPLMA Executive Committee Chair



Approve PWG Recommendation



Date

Disapprove PWG Recommendation
(Refer to rationale provided below.)

Date

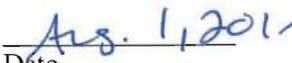
If the Executive Committee disagrees with the Partners Working Group recommendation and/or approves an alternate action, please explain below.

2. REVISIONS TO SECTION ON REQUESTING TERMINATION OF PROJECTS

BY: Amy Lueders, Acting SNPLMA Executive Committee Chair



Approve PWG Recommendation



Date

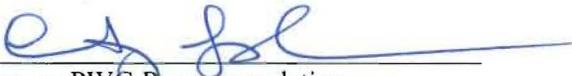
Disapprove PWG Recommendation
(Refer to rationale provided below.)

Date

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

3. NEW SECTION ON PROJECT TIME FRAMES/STANDARD PERIODS OF PERFORMANCE

BY: Amy Lueders, Acting SNPLMA Executive Committee Chair



Approve PWG Recommendation

Aug. 1, 2011

Date

Disapprove PWG Recommendation
(Refer to rationale provided below.)

Date

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