

2009

By-Laws Middle Rio Grande Endangered Species Collaborative Program

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BY-LAWS
MIDDLE RIO GRANDE ENDANGERED SPECIES COLLABORATIVE PROGRAM

Adopted by the Executive Committee on October 2, 2006
Amended by the Executive Committee on July 17, 2008
Amended by the Executive Committee on January 15, 2009
Amended by the Executive Committee on September 17, 2009

1.0 PURPOSE	4
1.1 Authority	4
1.2 Definitions	4
1.3 Effective Date	5
1.4 Amendment	5
2.0 PROGRAM MEMBERSHIP	5
2.1 Initial Signatories	5
2.2 Addition of Signatories	6
2.3 Resignation and Reinstatement of Signatories	7
3.0 TRIBAL INTERESTS AND PARTICIPATION	7
3.1 Trust Responsibilities	7
3.2 Pueblo and tribal involvement	7
4.0 ORGANIZATION	7
5.0 EXECUTIVE COMMITTEE	8
5.1 Membership	8
5.2 Responsibilities	9
5.3 Voting Procedures	10
5.3.1 Resolution of Concerns	11
5.4 Meetings	11
5.4.1 Notice of Meetings	11
5.4.2 Special and Emergency Meetings	11
5.4.3 Cancellation of Meetings	11
5.4.4 Closed Sessions	12
5.5 Officers	12
5.5.1 Election of Federal and Non-federal Co-chairs	12
5.5.2 Removal of Federal and Non-federal Co-Chairs	12
5.5.3 Resignation of Co-Chairs	12
5.5.4 Replacement of Co-Chairs	12
5.5.5 Terms of Co-Chairs	13
5.5.6 Responsibilities of Officers	13
5.6 Public involvement	13
6.0 COORDINATION COMMITTEE	13
6.1 Membership	13
6.2 Officers	13
6.3 Meetings	14
6.4 Responsibilities	14
7.0 WORK GROUPS	14
7.1 Establishment of Work Groups	14
7.2 Membership	14
7.3 Meetings	15
7.4 Work Products	15
7.5 Annual Review of Work Groups	15
8.0 PROGRAM MANAGEMENT TEAM	15
8.1 Staffing	15
8.2 Evaluation of the Program Management Team	16

8.3 Roles and Responsibilities	16
8.3.1 Program Manager.....	16
8.3.2 General Duties.....	16
8.3.3 Support of Executive Committee.....	17
8.3.4 Support of Coordination Committee	17

1.0 PURPOSE

The Middle Rio Grande Endangered Species Collaborative Program (Program) is established by this Memorandum of Agreement (MOA) as a collaborative effort consisting of federal, state, and local governmental entities, Indian Tribes and Pueblos, and non-governmental organizations. The intent of Program participants is two-fold: first, to prevent extinction, preserve reproductive integrity, improve habitat, support scientific analysis, and promote recovery of the listed species within the Program area in a manner that benefits the ecological integrity, where feasible, of the Middle Rio Grande riverine and riparian ecosystem; and, second, to exercise creative and flexible options so that existing water uses continue and future water development proceeds in compliance with applicable federal and state laws. To achieve these ends, the Program may not impair state water rights or federal reserved water rights of individuals and entities; federal or other water rights of Indian nations and Indian individuals, or Indian trust assets; San Juan-Chama Project contractual rights; and the State of New Mexico's ability to comply with Rio Grande Compact delivery obligations.

1.1 Authority

Under section 4(f)(2) of the Endangered Species Act (ESA), 16 U.S.C. § 1536(f)(2), the Secretary of the Interior is directed to develop and implement plans for the conservation of endangered species. The Secretary of the Interior may enlist the services of public and private agencies, individuals and institutions in developing and implementing such recovery plans. Advice from such agencies, individuals, and institutions, such as that offered by signatories, is not subject to the Federal Advisory Committee Act, 5 U.S.C. app. 2. The Program is consistent with section 4(f) (2). The Program does not create an agency, board, commission, or any other entity of state government, nor does the MOA create a state advisory committee subject to Section 9-1-9 NMSA 1978.

1.2 Definitions

- a) **Corps** - U.S. Army Corps of Engineers.
- b) **ESA** - Endangered Species Act, 16 U.S.C. §§ 1531 to 1544.
- c) **Executive Committee** - The Program's governing body.
- d) **Flycatcher** - southwestern willow flycatcher (*Empidonax traillii extimus*).
- e) **Listed species** –the flycatcher and silvery minnow.
- f) **Long Term Plan (LTP)** - The Program's long-term plan, an evolving work plan and budget that provides a description of the Program activities that will be conducted over the following ten years of the Program.

- g) **Memorandum of Agreement (MOA)** –This agreement among the parties sets forth the responsibilities of the signatories in achieving the Program’s goals and objectives collaboratively.
- h) **NEPA** - National Environmental Policy Act, 42 U.S.C. §§ 4321 et seq.
- i) **Program** - Middle Rio Grande Endangered Species Collaborative Program.
- j) **Program activities** - The coordinated series of actions implemented by the Program to contribute to the recovery of the listed species.
- k) **Program area** - The headwaters of the Rio Chama watershed and the Rio Grande, including tributaries, from the New Mexico-Colorado state line downstream to the elevation of the spillway crest of the Elephant Butte Reservoir at 4450 feet above mean sea level, excluding the land area reserved for the full pool of the Elephant Butte Reservoir. Indian Pueblo and Tribal lands and resources within the Program area will not be included in the Program without their express written consent of the affected Indian Pueblo or Tribe.
- l) **Reclamation** - Bureau of Reclamation
- m) **Service** - U.S. Fish and Wildlife Service
- n) **Signatory(ies)** - Signer(s) of the Memorandum of Agreement
- o) **Silvery minnow** - Rio Grande silvery minnow (*Hybognathus amarus*)

1.3 Effective Date

These by-laws shall be effective when adopted by vote of the Executive Committee.

1.4 Amendment

Modifications to the by-laws may be made only by vote of the Executive Committee.

2.0 PROGRAM MEMBERSHIP

2.1 Initial Signatories

The following entities are invited to sign the MOA:

- a) U.S. Bureau of Reclamation;
- b) U.S. Fish and Wildlife Service;
- c) U.S. Army Corps of Engineers;
- d) State of New Mexico Interstate Stream Commission;

- e) State of New Mexico Department of Game and Fish;
- f) New Mexico Attorney General;
- g) Pueblo of Santo Domingo;
- h) Pueblo of Sandia;
- i) Pueblo of Isleta;
- j) Pueblo of Santa Ana;
- k) Middle Rio Grande Conservancy District;
- l) Albuquerque-Bernalillo County Water Utility Authority;
- m) City of Albuquerque, New Mexico;
- n) an organization that represents a significant portion of the environmental community;
and
- o) an organization that represents a significant portion of the farming community.

2.2 Addition of Signatories

Any organization having a demonstrated interest in the success of the Program may apply to become a signatory. To qualify for consideration, the applicant organization must submit a letter of interest to the Executive Committee co-chairs supporting the goals and success of the Program and expressing its intent to sign the MOA if the application is accepted. While the number of signatories is unlimited, the number of signatories on the Executive Committee shall not exceed twenty (20). Any signatory not listed in section 2.1 (a) through (m) may apply to the Executive Committee for membership on the Executive Committee as outlined in section 5.1.

The Executive Committee may consider among other things the following criteria in determining whether to accept an application, provided that an applicant need not meet all criteria, and further provided that meeting the criteria does not guarantee an applicant's acceptance as a signatory. These criteria include:

- a) representation of a sizable constituency, for example through public outreach or membership;
- b) contribution to the non-federal cost share, including in-kind services;
- c) ownership of an interest affected by the Program, such as land, water, or other property rights;
- d) jurisdictional or regulatory responsibility, including sovereignty; and
- e) commitment to participation.

Acceptance of an application requires consensus by the Executive Committee. Within one week following Executive Committee action on an application, the co-chairs will notify the applicant in writing of the Executive Committee's decision.

2.3 Resignation and Reinstatement of Signatories

A signatory may resign from the Program at any time upon written notice to the co-chairs. Signatories may request reinstatement subject to the same approval process and requirements described in these by-laws.

3.0 TRIBAL INTERESTS AND PARTICIPATION

3.1 Trust Responsibilities

The Executive Committee recognizes that the federal government and federal agencies have trust responsibilities to Pueblo and Tribal governments pursuant to applicable federal law. *See e.g.* Executive Memorandum of April 29, 1994; Executive Order #13084 issued May 14, 1998 and superseded by Executive Order No. 13175 issued November 6, 2000; Secretarial Order #3206, dated June 5, 1997 and Secretarial Order #3215, dated April 28, 2000; Secretarial Order #3175, dated November 8, 1993, now incorporated in 512DM2; Reclamation's August 31, 1994 ITA Policy; and COE Policy Guidance Letter No. 57, Indian Sovereignty and Government-to-Government Relations with Indian Tribes. The federal participants will conduct government-to-government consultations with Tribes and Pueblos potentially affected by the Program.

3.2 Pueblo and tribal involvement

The Executive Committee recognizes that Indian Pueblos and Tribes are sovereign entities and encourages them to become members of the Executive Committee by signing the MOA. Whether or not any or all of the Tribes and Pueblos become directly involved, the Executive Committee will seek to engage and establish working partnerships with Pueblos and Tribes in implementing the Program.

The signatories recognize that the Indian Pueblos and Tribes may elect to not sign the MOA, and rather, conduct their sovereign affairs privately, which may include activities that contribute to the interim goals of the Program and expend funding under the MOA. Nothing in the MOA shall obligate any non-signatory Indian Pueblo or Tribe to participate in, contribute to, or otherwise adopt elements of the MOA. The Federal government continues to have a trust responsibility to all potentially affected Indian Pueblos and Tribes, whether or not an Indian Pueblo or Tribe signs the MOA.

4.0 ORGANIZATION

The organizational structure of the Program consists of four groups: the Executive Committee; the Coordination Committee; work groups; and the Program Management Team. General descriptions of the organizational responsibilities are provided in this section. More specific descriptions are provided in subsequent sections.

Executive Committee

The Executive Committee is the governing body of the Program. The Executive Committee provides policy, budget approval and decision-making on all issues, unless specifically delegated to the Program Management Team, Coordination Committee or work groups.

Coordination Committee

The Executive Committee will establish a Coordination Committee that meets on a regular basis to identify concerns associated with Program activities, work to resolve those concerns, and develop consensus recommendations to the Executive Committee. The Coordination Committee reviews Program activities and consults with the Executive Committee representatives to keep their respective members informed on the Program. Coordination Committee assures that their respective EC members are apprised of Program.

Work Groups

The Executive Committee may establish work groups as needed to provide assistance and expertise to address specific Program tasks. Members of a work group may consist of professionals, signatories, contractors, and other parties who have expertise related to the assignment given to the work group.

Program Management Team

The Program Management Team (PMT) consists of a Program Manager and management staff employed by Reclamation, Department of the Interior and Corps staff, administrative and clerical staff (federal employees or contractors), and Signatory representatives. The PMT provides management and technical support to the Executive Committee, Coordination Committee and work groups.

5.0 EXECUTIVE COMMITTEE

5.1 Membership

The Executive Committee will be made up of the signatories listed in Section 2.1. The total membership of the Executive Committee shall not exceed twenty (20). If there are 20 members already on the Executive Committee, the signatory(ies) must wait until vacancies occur before becoming a member of the Executive Committee. Vacancies will be filled based in the date-order on which signatories applied to the Executive Committee for membership.

Each member of the Executive Committee shall designate, by written notice to the Program Manager, one representative who is authorized to vote and otherwise act on its behalf on matters before the Executive Committee. Each member may appoint one or more alternates to act as its voting representative in the absence of its regular representative on the Executive Committee.

5.1.1 Addition of Executive Committee Members

Any signatory not listed in section 2.1 (a) – (m) may apply to the Executive Committee for membership on the Executive Committee. Acceptance of an application requires consensus by the Executive Committee. The Executive Committee shall make decisions regarding acceptance of applications received in a closed session. Applications shall be submitted to the co-chairs through the Program Manager and will be considered in the date-order they are received. Criteria for selection are listed in section 2.2 (a) – (e). The Executive Committee will make a decision on the application within 90 days of receiving the application. The co-chairs will notify the applicant in writing of the Executive Committee’s decision within one week following the Executive Committee action on the application.

5.1.2 Additional Executive Committee Members not on the list of Initial Signatories

Additional Executive Committee members now include:

- o) The Assessment Payers Association of the MRGCD, an organization that represents a significant portion of the farming community;
- p) New Mexico Dept. of Agriculture;

5.2 Responsibilities

The primary responsibility of the Executive Committee is to direct and coordinate the Program. Specific responsibilities of the Executive Committee include but are not limited to:

- a) setting Program priorities;
- b) providing direction, assigning tasks to, and overseeing the work of the PMT, Coordination Committee, and work groups;
- c) ensuring development and implementation of the LTP to achieve the purposes of the Program;
- d) coordinating Program activities with other Federal and non-federal activities in the Program area to achieve the greatest effect and limit unnecessary duplication of other efforts;
- e) authorizing work groups;
- f) developing multi-year budget recommendations to the Corps, Reclamation, Service, other Federal agencies and non-federal entities;

- g) reviewing and approving annual reports and work plans, budgets, and policy or position papers on behalf of the Program;
- h) establishing operating procedures for the Program;
- i) representing the Program to executive agencies, legislative bodies and other third parties;
- j) monitoring progress in achieving Program goals;
- k) ensuring implementation of a quality assurance/quality control program;
- l) coordinating requests for funding and resources to Congress, the New Mexico state legislature, and other sources;
- m) ensuring sound financial management of Program resources and timely reporting of the financial status of the Program;
- n) ensuring coordination among participants in carrying out Program actions and policies;
- o) providing periodic reports to Congress, the New Mexico state legislature, interest groups and the public regarding the Program; and
- p) conducting other activities necessary or advisable to achieving the goals of the Program.

5.3 Voting Procedures

The Executive Committee is empowered to make decisions at any meeting at which a quorum is present. A quorum shall constitute 50% of all Executive Committee members at that time.

If two members request, decision items may be tabled until the next meeting. No agenda item may be tabled for more than one meeting without the unanimous consent of the Executive Committee.

The Executive Committee shall seek consensus in reaching decisions. If consensus cannot be reached, the decision will be tabled until the following meeting at which a quorum is present. In lieu of consensus, the decision may be approved by a super majority (75%). If a non-consensus decision is made, the minority may submit a report to the co-chairs of the Executive Committee to be included with official minutes of the Executive Committee. The Executive Committee may, in limited circumstances, allow for votes to be taken via e-mail.

It is recognized that the federal, state, tribal and other governmental agencies cannot achieve consensus, vote on issues, or be bound by Executive Committee decisions that would violate their obligations under applicable federal, state, tribal or local laws.

5.3.1 Resolution of Concerns

Any signatory having a concern with issues related to the Program may submit a written request for resolution to the Executive Committee in a timely manner, identifying the issue of concern with a recommended resolution. The Executive Committee will determine appropriate resolution of the dispute in a timely manner.

5.4 Meetings

The Executive Committee will hold meetings as necessary to conduct its business. Executive Committee meetings will be open to the public and public comments will be welcome and encouraged. The co-chairs will ensure adequate opportunities for public comments and input at meetings. At a minimum, the Executive Committee shall meet twice per year and at such other times as called by a co-chair. If a signatory is not represented at two consecutive Executive Committee meetings the co-chairs shall provide written notice to that signatory that its membership on the Executive Committee is suspended and will be terminated unless that signatory is represented at the next Executive Committee meeting.

5.4.1 Notice of Meetings

The Program Manager shall provide adequate notice to interested parties and the public of meeting times and places, which will include draft and final agendas that the co-chairs have approved with date, time, location, and decisions to be made. Any member may request of the co-chairs that an item be included or changed on an agenda. Modifications to the agenda may be made at meetings, subject to approval of the Executive Committee. Final agendas should be accompanied by a packet of supporting materials relevant to items on the agenda, except materials submitted to the Executive Committee pursuant to a nondisclosure or confidentiality agreement, pertaining to the closed portion of the meeting or declared confidential by law. Packets will be distributed at least one week prior to a scheduled Executive Committee meeting to Executive Committee members.

5.4.2 Special and Emergency Meetings

Either co-chair, at his or her discretion, may call special and emergency meetings with one week's notice. The Program Manager shall publish notice of such meetings as soon as they are scheduled and prepare packets.

5.4.3 Cancellation of Meetings

The Program Manager shall publish notice of cancellation or postponement as early as possible, and the notice shall explain the reasons for postponement or cancellation.

5.4.4 Closed Sessions

The Executive Committee may hold closed sessions to address sensitive issues related to contract, membership, personnel or legal matters. The purpose of the closed session shall be noted in the minutes of the Executive Committee. Only the Executive Committee member and their designated representative shall attend a closed session.

5.5 Officers

The officers of the Executive Committee shall include a Federal co-chair and a non-federal co-chair.

5.5.1 Election of Federal and Non-federal Co-chairs

At the first meeting of the Executive Committee following the effective date of the MOA, and at its first meeting following the beginning of the fiscal year thereafter, the Secretary of the Interior will designate the Federal co-chair.

The non-federal members of the Executive Committee shall elect from among the non-federal Signatories a non-federal co-chair. The non-federal co-chair shall be elected from the non-federal members of the Executive Committee on approval by $\frac{3}{4}$ of the non-federal members of the Executive Committee.

5.5.2 Removal of Federal and Non-federal Co-Chairs

The Secretary of the Interior shall replace the Federal co-chair on a vote of no confidence by $\frac{3}{4}$ of the members of the Executive Committee.

The non-federal co-chair shall be removed on a vote of no-confidence by $\frac{3}{4}$ of the non-federal members of the Executive Committee.

5.5.3 Resignation of Co-Chairs

Federal and non-federal co-chairs must provide a letter of resignation to the members of the Executive Committee at least 30 days before they resign. Additionally, the Federal co-chair shall provide a copy to the Secretary of Interior.

5.5.4 Replacement of Co-Chairs

Upon resignation or no-confidence removal of the Federal co-chair the Secretary of the Interior shall select a new Federal co-chair, as soon as possible, and notify the Executive Committee of that selection. That individual will immediately assume the responsibilities of the Federal co-chair.

Upon the resignation or removal as a result of a no-confidence vote of a non-federal co-chair the non-federal Executive Committee members shall elect a new co-chair in accordance with 5.5.1 at the next Executive Committee meeting.

5.5.5 Terms of Co-Chairs

The term of the non-federal co-chair shall be one year.

5.5.6 Responsibilities of Officers

The Federal co-chair shall be a non-voting member of the Executive Committee, shall convene the Executive Committee, shall develop meeting agendas, and shall schedule votes and other decision-making processes in consultation with the non-federal co-chair.

The non-federal co-chair shall be a voting member of the Executive Committee, and shall develop meeting agendas jointly with the Federal co-chair. Either co-chair may chair meetings in the absence of the other co-chair.

Each co-chair shall interact with the PMT, as necessary, to assure that assignments from the Executive Committee are completed and to determine action items and agendas necessary for the Executive Committee meetings.

5.6 Public involvement

The Executive Committee will consider the interests of all stakeholders and the general public in implementing the Program. Public involvement and comment is invited and encouraged. The Executive Committee will ensure that there are adequate formal and informal opportunities for public comment on Program activities.

Work product, reports, meeting summaries, and other program materials will be available to the public via the list serve, website, and/or other appropriate means.

6.0 COORDINATION COMMITTEE

6.1 Membership

Each member of the Executive Committee will appoint one member to the Coordination Committee. Each member may also appoint one or more alternate members.

6.2 Officers

The Coordination Committee will elect a chair and a vice-chair, each serving for a term of one year with no more than one consecutive term. Any member of the Coordination Committee may serve as chair. The chair or vice-chair will report on committee activities at each Executive Committee meeting.

6.3 Meetings

The meeting requirements for the Executive Committee will apply to the Coordination Committee, including public notice of meetings. The Coordination Committee will meet approximately every four to six weeks.

6.4 Responsibilities

The Coordination Committee responsibilities include:

- a) carrying out the directives of the Executive Committee;
- b) reviewing and providing comments and recommendations on formation of work groups, the LTP, annual reports, work plans, budgets, operating procedures, congressional reports, work group deliverables, and other documents prior to submittal to the Executive Committee by the PMT;
- c) working to achieve consensus recommendations for the Executive Committee on unresolved issues; and
- d) consulting regularly with their Executive Committee representatives on issues of concern to ensure that recommendations reflect the viewpoints of organizations participating in the Executive Committee and Executive Committee members and assuring that Executive Committee members are informed on matters coming before the Executive Committee.

7.0 WORK GROUPS

7.1 Establishment of Work Groups

The Executive Committee may establish work groups and designate members of work groups on its own initiative or on the recommendation of the Coordination Committee when additional assistance or expertise is beneficial to accomplishing the goals of the Program. Work groups will operate with specific schedules, objectives, and scopes of work established by the Executive Committee.

The Program Manager will assign Program staff to support each work group so that the objectives and work products are clearly identified, work group schedules are met, and necessary administrative support is provided. Upon formation of the work group, a group leader will also be designated to work with the assigned staff to establish a schedule and identify deliverables.

7.2 Membership

Membership on work groups will vary depending on the subject matter and may include:

- a) Signatories and/or their representatives;
- b) professionals with expertise in the subject matter who may or may not be involved in the Program;
- c) contractors as deemed appropriate by the Executive Committee; or
- d) other parties, including members of the public, with experience in the subject matter addressed by the work group.

7.3 Meetings

Work groups will meet as needed. The PMT will post work group meeting schedules, locations, and agendas on the Program website. All meetings will be open to the public. The work group leader will keep meeting summaries, which shall accurately reflect actions of the work group and shall be made available on the website within one week after the meeting.

7.4 Work Products

All final work group work products are subject to approval by the Executive Committee, and upon approval, the PMT will make them available to the public.

7.5 Annual Review of Work Groups

The Program Manager, with input from the PMT, will review the accomplishments of each work group annually with respect to its mission, schedule, participation by members, and objectives, and make recommendations to the Executive Committee regarding continuation or termination of the work group, changes in mission, schedule, or membership.

8.0 PROGRAM MANAGEMENT TEAM

The Program requires management and administration support to accomplish its goals and objectives. The Program Management Team (PMT) consists of a Program Manager and management staff employed by Reclamation, Department of the Interior and Corps staff, administrative and clerical staff (federal employees or contractors), and Signatory representatives. The PMT provides management and technical support to the Executive Committee, Coordination Committee and work groups.

8.1 Staffing

The Program Management Team (PMT) includes a Program Manager and staff. The Program Manager is an employee of Reclamation. Reclamation is responsible for selecting a Program Manager; however, Reclamation may solicit input from the Executive Committee during the recruitment process. Reclamation provides administrative staff to support the Program Manager and other support staff to administer the Program, including contract administration.

As directed by the Secretary of the Interior, any agency of the Department of the Interior will provide staff for the PMT as necessary. Additionally, each member of the Executive Committee may provide a representative on a voluntary basis, full time or part-time, to work as staff for the PMT. All PMT members shall work under the direction of the Program Manager. The PMT shall be comprised of qualified individuals to carry out the duties in these by-laws.

The Corps' Program staff responsibilities will include ensuring coordination of Corps activities (studies, surveys, assessments, planning, design, NEPA compliance, construction, funding) with Program activities and may include contract administration and other activities mutually agreed upon by Reclamation and the Corps to support the Program.

8.2 Evaluation of the Program Management Team

On an annual basis, the Executive Committee will evaluate the performance of the PMT with respect to its assigned duties and responsibilities.

8.3 Roles and Responsibilities

The following are the general roles and responsibilities of the PMT.

8.3.1 Program Manager

The Program Manager will provide direction to staff for PMT activities and will report regularly on Program activities and accomplishments to the Executive Committee. The Program Manager is responsible for determining the most expeditious and reasonable manner to carry out assignments as directed by the Executive Committee, whether through a work group, assignment to the PMT or outsourcing. The Program Manager is a part of the PMT.

8.3.2 General Duties

The duties of the PMT include:

- a) providing administrative support for all Program operations;
- b) drafting a Long-Term Plan and annual revisions;
- c) drafting annual revisions, annual work plans, budget requests, and activity and fiscal reports consistent with the Long-Term Plan;

- d) providing information to the public concerning activities of the Program and undertaking community outreach;
- e) collaborating with other efforts relating to the protection and recovery of the listed species carried out under other Federal and non-federal programs, including:
 - (1) silvery minnow and flycatcher recovery teams under the direction of the Service;
 - (2) other ecosystem recovery programs under the Service and Corps;
 - (3) river maintenance and water operations under the direction of Reclamation; and
 - (4) other related programs;
- f) administering project proposal processes;
- g) tracking contracts, grants, and cooperative agreements;
- h) ensuring that all activities undertaken by the Program comply with applicable laws and regulations; and
- i) undertaking such other duties as are assigned by the Executive Committee and necessary to carry out the Program.

8.3.3 Support of Executive Committee

The PMT shall provide general administrative support, as the Executive Committee requests, to include transmittals of Executive Committee communications, recordkeeping, liaison with entities, and meeting organization.

Before each Executive Committee meeting the Program Manager will prepare and post on the web site a packet of supporting materials. At each Executive Committee meeting, the Program Manager will provide a brief report to the Executive Committee on the status of the Program activities and milestone accomplishments. After an Executive Committee meeting, the Program Manager will distribute a draft meeting summary to Executive Committee members for review. The draft and final meeting summaries will be made available to the public via an established Program distribution network.

8.3.4 Support of Coordination Committee

The PMT will provide support for meetings of the Coordination Committee, including distribution of agendas and meeting materials, and development and distribution of meeting summaries.

The Program Manager will provide Program documents subject to Executive Committee approval to the Coordination Committee for review and discussion, and will assist the Coordination Committee in developing recommendations to the Executive Committee.