

A PROPOSAL FOR REVISING SECTION 5.6.5 OF THE FUNDING AND MANAGEMENT AGREEMENT

The paragraph in the current version of Section 5.6.5 is numbered as Section 5.6.5.1:

5.6.5.1 Limitation on Use of Funds. With the exception of Program Administration Costs of EAA, funds may not be used for: (a) costs of any Party's employees; or (b) any Party's administrative costs, such as costs of overhead, management, administration, research, planning, engineering, or legal services, or any other ancillary costs that are not directly required for the Program.

The following paragraphs are inserted as Sections 5.6.5.2 and 5.6.5.3:

5.6.5.2 Special Exception. Notwithstanding anything in Section 5.6.5.1(a), an employee of a Party may apply for and receive a contract for work associated with the implementation of a Conservation Measure in an approved Work Plan and Funding Application as long as each of the following conditions are met:

- (a) The costs for the measures are not used to increase Party Staff or for work that is historically operational in nature;
- (b) The contract for the project has been awarded through a competitive procurement process that considers cost, contractor qualifications, and merits of the contractor's proposal, and through which the selected contractor's proposal was determined to be competitive with respect to cost; and
- (c) After the contractor has been selected, the EAA will issue those contracts under which a Party/Employee will be paid, and the EAHCP Program Manager will oversee and manage those contract.

5.6.5.3 Conduct of Party Contractors. Any employee who is paid from EAHCP Funds shall:

- (a) give first priority to the purposes and goals of the EAHCP as reflected by the entire Implementing Committee over the individual purposes and goals of the employee's employer;
- (b) conduct his or her work and communications in an open and transparent manner and in a manner that avoids a conflict of interest or the appearance of a conflict of interest;
- (c) not use the employee's Party's status as a member of the Implementing Committee or information that is not publicly available to obtain an advantage in the procurement process; and

(d) not advocate, directly or indirectly, a particular decision or participate in discussions of policy matters unless expressly requested to do so by the Program Manager and the Chair of the Implementing Committee. Nothing herein precludes the employee, when requested by the Implementing Committee, from discussing scientific data and conclusions with the Science Review Panel and Science Committee.

Failure to strictly comply with the requirements of Section 5.6.5.3 may be the basis for the termination of the Special Exception with respect to future contracts involving that employee or, if the non-compliance warrants, termination of the employee's participation in an existing contract. In any vote of the Implementing Committee with regard to such termination, the Party/Employer shall abstain, and a decision to terminate must be unanimous among the remaining four voting members of the Implementing Committee.