

Report on Tribal AMWG Representative Budget Discussion For Fiscal Year 2013-14

**Department of Interior Assistant Secretary for Water and Science
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The following Tribal Adaptive Management Work Group (AMWG) Representatives relayed commentary for this report to the Native American Tribal Liaison (NATL): Loretta Jackson Kelly Hualapai Tribe, Charley Bullitts Southern Paiute Consortium, and Mike Yeatts Hopi Tribe. The foregoing Adaptive Management Program (AMP) Fiscal Year (FY) 2013-14 Budget comments have been compiled by the Native American Tribal Liaison but the Native American Tribal Liaison does not speak for the Tribes. These views and comments reflect information relayed to the NATL by the above Tribal AMWG Representatives so a presentation on their Tribal views and ideas on the AMP FY 2013-14 Budget may be presented at the Technical Work Group (TWG) April 2012 meeting.

Note from John Halliday Native American Tribal Liaison:

I informed the above Tribal AMWG Representatives that the Cultural Resources Program operations that had been planned for 2012 would proceed unchanged as scheduled. That for FY 2013-14 the Department of Interior (DOI) has not formulated a final plan on cultural resources. The National Park Service (NPS) and Grand Canyon Monitoring Research Center (GCMRC) are conducting a review of proposed cultural activities, and will propose an integrated program as set forth in GCMRC Chief Jack Schmidt's cover memo. That DOI is interested to hear the tribes' viewpoints on what a Cultural Resources Program might include. But DOI does not have a proposal on a new Cultural Resources Program at this point and that no decision on funding has been made. Further that as the cultural resources funding is not slated for any one pot or another, it is not yet determined how money will be spent in FY 2013-14 AMP Budget on cultural resources by whom, or on what specifically.

I informed the Tribal AMWG Representatives that Jan Balsom NPS and Helen Fairley GCMRC were suppose to be meeting in the near future to work things out to frame a new collaborative Cultural Resources Program proposal that would bring more efficiency in addressing Cultural Resources Program needs, but that a proposed new Cultural Resources Program framework would not be expected to come out until shortly after the upcoming TWG meeting.

Below are the comments and request from AMWG Tribal Representatives Regarding the FY 2013-14 AMP Budget.

Summary of key above AMWG Tribal Representatives comments and request:

1. Tribes respectfully request that these comments be included in the budget process as recommendations for honoring the trust responsibility of the federal government to AMWG tribes and their tribal citizens;
2. Tribes request that CPI be included as real dollars in the Tribal Contracts DOI Agency Appropriated Funds budgets for FY 2013-14 and subsequent future budgets so funding can be budgeted in accordance with Tribal finance policy;
3. Tribes request that the NPS Cultural Resources Monitoring \$91,000 Program scope of work be the subject of Tribal Consultation prior to any final determination;
4. Tribes request that appropriate Tribal Consultation Policy in this new proposed AMP cultural resources programming matter be followed and meetings that include Tribal participation in the program development process be implemented providing an opportunity for meaningful consultation before any new Cultural Resources Program is adopted;

5. Tribes request that the budget specifically identify how the High Flow Experimental (HFE) and Non Native Fish Control (NNFC) Environmental Assessment (EA) Memorandum of Agreement's (MOA's) stipulations is going to be covered in the FY 2013-14 budget. What and how specific funded programs will cover which MOA stipulations;
6. Tribes request that Tribal values and monitoring be incorporated into the Terrestrial Monitoring Program and that it articulate the specifics of its operational goals and functions;
7. Tribes request that DOI state how they are going to proceed with developing Traditional Ecological knowledge (TEK) and that TEK incorporation in to DOI administrative mechanisms development be included in the FY 2013-14 budget and the Annual Work Plan;
8. Tribes request that DOI provide a schedule for how and when Tribal concerns are going to be resolved.

General Tribal Comments:

Historic and Cultural Preservation -

As part of the inherent rights of self-governance and self-determination, tribes directly manage preservation, maintenance, and revitalization efforts in order to maintain culture and traditions. Tribal nations also have the rights to control their ancestors' remains and sacred cultural items.

History and culture are passed down through Native traditions celebrated in ceremony, art, and place. Historical and cultural preservation must be a priority to ensure that the next generation carries on the traditions and ways of their nations.

Honoring the Promises: The Federal Trust Responsibility in the 21st Century -

Of Constitutional Consequence -

A key theme of the last federal election was that Congress and the federal budget should focus on programs that are clearly within the constitutional role of the federal government and what the framers intended to be federal responsibilities. The obligations to tribal citizens funded in the federal budget are the result of treaties negotiated and agreements made between Indian tribes and the U.S. in exchange for land and resources, known as the trust responsibility. The authority to fund programs that fulfill this responsibility is founded in the Constitution, specifically the Indian Commerce Clause, the Treaty Clause and the Property Clause.

Specific Tribal FY 2013-14 AMP Budget Concerns

Keeping the Momentum:

1. Tribes respectfully request that these comments be included in the budget process as recommendations for honoring the trust responsibility of the federal government to AMWG tribes and their tribal citizens.

In 2011, the DOI took historic steps to address numerous long-standing challenges facing AMWG Tribes by developing MOA's for the Bureau of Reclamation (BOR) HFE and NNFC EA's. In past years AMWG DOI agencies have negotiated numerous policies and agreements with Tribes to insure National Historic Preservation Act (NHPA) Section 106 compliance but they will not mean much if they are not implemented. The NHPA obligations recently negotiated in the MOA's effective implementation is contingent upon adequate federal funding in the AMP budget process authorized programs.

This moment, this FY 2013-14 budget processes presents an extraordinary opportunity to honor the promises of the federal trust responsibility acknowledged in the Constitution. Tribal AMWG Representatives look to the upcoming fiscal year 2013-14 with great anticipation for honorable fulfillment of federal trust, moral, and statutory obligations to AMWG tribes in the 21st century. The FY2013-14 federal AMP budget presents a fresh opportunity for the DOI to live up to the promises made to AMWG tribes in the MOA's.

Tribal Monitoring Program Support:

2. Tribes request that CPI be included as real dollars in the Tribal Contracts DOI Agency Appropriated Funds budgets for FY 2013-14 and subsequent future budgets so funding can be budgeted in accordance with Tribal finance policy.

While the Tribal Integrated Resource Monitoring budget does show CPI the Tribal Contracts DOI Agency Appropriated Funds budgets do not. The current structure of the potential for inclusion of CPI in Tribal Contracts DOI Agency Appropriated Funds budgets only if the Tribe has completely spent all of their yearly funding does not work. For example: Hopi financial policy only allows for the budgeting of actual funds not potential funds. Therefore no actual budgets including CPI for real authorized expenditure can be processed, as they do not conform to Tribal finance policy.

3. Tribes request that the NPS Cultural Resources Monitoring \$91,000 Program scope of work be the subject of Tribal Consultation prior to any final determination.

It has been discussed at previous AMWG meetings that an additional \$5,000 would go to each tribe to support and augment Tribal Monitoring. However, the scope of work for the above monitoring activity has not been vetted through Tribal Consultation. Once a scope of work is determined and if an additional \$5,000 is allocated to Tribal budgets then it should be reflected as so in FY 2013-14 AMP Budget documentation.

Proposed New Cultural Resources Program:

4. Tribes request that appropriate Tribal Consultation Policy in this new cultural resources programming matter be followed and meetings that include Tribal participation in the program development process be implemented providing an opportunity for meaningful consultation with the Tribes before any new Cultural Resources Program is adopted.

The proposed cultural resources programming change is a great cause of concern as there has been a lack of implementation of past Cultural Resources Programs. The history of AMP cultural resources programming lacks continuity and follow through. Any changes to cultural resources programming should be done in consultation with the affected tribes. The letter generated by GCMRC Chief Jack Schmidt on April 6th 2012 states that a new collaborated interagency Cultural Resource Program is currently being developed. Mr. Schmidt indicated that GCMRC, NPS, and BOR were in the process of development but it does not mention that Tribes will be consulted on this very important programming change.

As this new proposed program is still in the development stage the tribes cannot support the FY 2013-14 AMP Budget in its current form. DOI has agreements with the tribes as well as statutory obligations for NHPA Section 106 compliance and without a concrete funded plan that outlines how DOI agencies will meet those obligations there is no means of confidence that compliance obligations will be carried out.

Providing clarity on how MOA obligations will be covered:

5. Tribes request that the budget specifically identify how the HFE and NNFC EA MOA's stipulations are going to be covered in the FY 2013-14 AMP Budget. What and how specific funded programs will cover which MOA stipulations.

The current budget and program descriptions are vague and do not specifically identify which stipulations within the MOA's they will cover. For example it is not clear how HFE effects are going to be monitored for positive and negative i.e.. impacts involving high elevation work, cultural sites, eolian effects.

Tribal values are not reflected in the current proposed FY 2013-14 AMP Budget:

6. Tribes request that Tribal values and monitoring be incorporated into the Terrestrial Monitoring Program and that it articulate the specifics of its operational goals and functions.

The Terrestrial Resources Program does not identify the integration of Tribal values. Tribes are very concerned about this area and operate their own Terrestrial Monitoring Programs. It very important that this program commit to working hand in hand with the tribes so that Tribal values and concerns in this area are integrated and part of the program. The Terrestrial Monitoring Program description is not clear. Is it just core monitoring or totally something new?

Integrating TEK in to DOI Administrative Mechanisms:

7. Tribes request that the DOI state how they are going to proceed with developing TEK and that TEK incorporation in to DOI administrative mechanisms development be included in the FY 2013-14 AMP Budget and the Annual Work Plan;

In recent meetings there has been a great deal of discussion about integrating TEK in to DOI administrative mechanisms. The tribes would like to see this reflected in the FY 2013-14 AMP Budget and the Annual Work Plan. To implement this there needs to be a great deal of process agreement and development. For example the informant contact and information gathering, interpretation and presentation is a very complex task and needs to be handled in a culturally appropriate manner under the appropriate protocols by Tribal staff or in a manner approved by the Tribe for it to be successful.

Resolving Longstanding Issues:

8. Tribes request that DOI provide a schedule for how and when Tribal concerns are going to be resolved.

The Tribes feel that trying to resolve long standing Tribal Cultural Program issues is a moving target. Many issues such as the existing Programmatic Agreement compliance, the Treatment Plan implementation have been stalled and there is no plan or timeline for resolution. Also it creates a state of apprehension for support of a new Cultural Resources Program when tribes have not had the opportunity to provide input in to its development. Tribes need a schedule for when their above concerns will be handled.