

**TWG: Cultural and Historic**

**Meeting:** #8 **Date:** Dec. 14, 2018 **Time:** 10:30 a.m.-12:30 p.m.

**Attendees:**

- |                                                                               |                                                                                                 |
|-------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------|
| <input checked="" type="checkbox"/> Laura Berglan, Pascua Yaqui Tribe         | <input type="checkbox"/> Susan Montgomery, Attorney representing Inter-Tribal Assoc. of Arizona |
| <input checked="" type="checkbox"/> Lee Decker, Gallagher & Kennedy           | <input checked="" type="checkbox"/> Courtney Rose, Pima County                                  |
| <input checked="" type="checkbox"/> Mark Horlings, Maricopa Audubon Society   | <input type="checkbox"/> Peter Steere, Tohono O'odham Nation                                    |
| <input type="checkbox"/> Kathryn Leonard, SHPO                                | <input type="checkbox"/> Mary-Ellen Walsh, State Historic Preservation Office                   |
| <input type="checkbox"/> Robert Linsell, Granite Construction Company, Inc.   | <input checked="" type="checkbox"/> JR Welch, Archaeology Southwest                             |
| <input checked="" type="checkbox"/> Ronald Maldonado, WestLand Resources, Inc | <input checked="" type="checkbox"/> Chris Cody, State Historic Preservation Office              |
| <input checked="" type="checkbox"/> Linda Mayo, Pima County                   | <input checked="" type="checkbox"/> Alana Hake, Gallagher & Kennedy                             |

**Staff Support:**

- David Lelsz, ADEQ     Jill Hankins, ADEQ     Mark Joyner, ADEQ     Kelly Cairo, GCI

**Discussion Items:**

Update and Review

- Laura reviewed the December 6 stakeholder meeting. Comments to EPA on potential changes to 404(g) assumption implementing regulations at 40 CFR part 233 are due January 11, 2019. According to EPA's schedule, they plan to have a proposed rule in March 2020 and a final rule in March 2021. (Note: the timeline above was verified and updated after the TWG meeting.)
- Deadline for any changes to the November 29 notes is COB, December 17.

Review and Consensus on Draft White Paper Sections

Kelly noted areas of agreement on the live document. Additional discussion highlights follow.

- Lee asked the group if they agreed that existing state law provides protection for complying with 404(b)(1).
  - Remedies might not be addressed through state law.
  - Chris noted that rulings tend to be based on whether the process was followed correctly, not the outcome.

Next Steps

Laura will collect additional information from TWG members as noted below by December 19. She will submit the working draft of the white paper on December 20. This draft is intended for internal review by ADEQ only.

Since the December 20 draft is expected to include new sections which will not have been reviewed by the TWG, the TWG will meet to note consensus where appropriate and review these additions. At the completion of a meeting to be held on January 14 meeting, the Draft Cultural and Historic TWG White Paper will be updated and at that time considered acceptable for distribution to the Tribal Work Group.

## **Action Items/Assignments**

- (10/18) Pending approval, Lee to provide consultation research documents to Laura, Susan, Mary- Ellen; then TWG members.
- (11/1) Peter to review the current consultation process document from a tribal point of view and his work on 404 issues for the nation.
- (11/1) Kathryn to report on 106 relationship to permitting process on private land.
- (11/1) Mary-Ellen to forward 40 CFR 233.52d6 to Kathryn for additional review from SHPO Advisory Office.
- (11/1) Kathryn (and staff members) and Courtney to coordinate on permitting actions on private land.
- (11/15) Courtney to post current state by COB Nov 16.
- (11/15) All to review updated current state by COB Nov 19.
- (11/15) Courtney to post updated current state, including current definitions of cultural and historic resources by COB Nov 27.
- (11/29) Sue to look at interpretations of 40 CFR 233.51
- (11/29) Lee to look at whether there is preamble language from EPA.
- (11/29) Linda to draft local jurisdictional protection information.
- (11/29) David to distribute current draft of ESA white paper. (Outline distributed.)
- (11/29) Assignments
  - Lee: Follow existing state law as an option
  - Lee and Sue: EPA Role
  - Mary-Ellen: Federal nexus
  - Tom and Peter: Equivalency option
  - Sue recommended using the ADOT process “ADOT Section 106 flowchart” as a basis to develop the cultural and historic flowchart. She will provide a draft for review.
- (12/14) Laura to follow up with TWG members:
  - Peter and John to draft option for white paper
  - Linda to send document for white paper, 40 CFR 230.54
  - Sue to provide information about interpretations of 40 CFR 233.51
  - Mary-Ellen to provide state flow chart

## **Future Discussion Needed:**

- (11/1) How would local jurisdiction interface with state level cultural/historic regulations?
- (11/29) How will an animal or plant significant to a tribe be protected outside of the state’s official T&E list?
- (12/14) Unresolved issue: ADEQ needs to explore whether EPA can deny a permit based on cultural and historic resources.

## **Next meeting**

- (Updated): Friday, Jan. 11, noon-3 p.m., ADEQ, 1110 W. Washington St., Room 5100B.