



TWG: Cultural and Historic

Meeting: #2 **Date:** September 19, 2018 **Time:** 10:30 a.m.-12:30 p.m.

Attendees:

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

Staff Support:

- David Lelsz, ADEQ Heidi Welborn, ADEQ Kelly Cairo, GCI

Discussion Items:

- There was consensus to adopt the charter language. However, members were concerned that additional input needs to occur regarding consultation within the 404 process. This issue could also be addressed in the white paper as a gap.
- David recommended including the flow chart as a whole in the white paper, and not attempting to summarize it in narrative.
- Other laws and executive orders, beyond section 106, are implicated that pertain to cultural and historic resources.
- With some adjustments based on a gap analysis, one recommendation could be to mimic the section 106 process. Another approach could be to begin with the state act, which includes some section 106 similarities.
- There was a concern that if there is not a legal basis for these actions, potential permittees could experience delays due to litigation and other challenges. Must be consistent with the state act.
- If there is a permit requested on federal land, there is a federal nexus and the permit becomes a federal responsibility through the Corps.
- For situations where permits are requested on state land, the TWG recommendation could be to adopt a process, and/or recommend ADEQ seek a change in state legislation.
- A member believed that state legislation would not be required in order for ADEQ to conduct tribal consultation, as these issues could be addressed under current policy.
- NHPA does include cultural resources.

Critical Information Resources:

- Determine whether statute will allow ADEQ to enforce a process similar to that of section 106 at the state level.

Decisions:

- There was consensus to adopt the charter language. However, members were concerned that additional input needs to occur regarding consultation within the 404 process. This issue could also be addressed in the white paper as a gap.
- There was agreement that the COE Revised Flow Chart PDF, available in the references folder, describes the current state. However, the document does not address the timing of tribal consultation. There is no mechanism for bringing in tribes prior to the 404 process. Legislative timeframes are also missing.
- The group scheduled a meeting for Oct. 18, 1:30-3:30 p.m.

Potential Future Discussion:

- (9/6) What is the status of the Florida 404 assumption process?
- (9/6) Ask the Corps what they think the process is.
- (9/6) What is the current process for tribal consultation, pros and cons. Some issues include: No macro plan of action, timelines, early consultation is needed.
- (9/19) Need tribal representatives to look at the flow chart and determine if this is accurate.
- (9/19) Need to identify pitfalls in the process from the applicant's point of view.

Action Items:

- (9/6) Post tribal consultation policy of ADEQ, Corps of Engineers
- (9/19) Steve to convey larger concerns regarding consultation with the Permit Process group. Suggestion is to urge them to look at how the consultation process and cultural and historic process fits in part of the overall process.
- (9/19) Mary Ellen will obtain a list of applicable laws by land jurisdiction and create flow charts.
- (9/19) Members to review COE flow chart and make notes about how the process works in practice.

Next Meeting Agenda:

- Next steps: Determine whether the state process is robust enough to adopt a similar 106 process and address any gaps.
- Laura agreed to chair the next meeting.
- Address white paper topics