



TWG: Cultural and Historic

Meeting: #5 **Date:** Nov. 1, 2018 **Time:** 1-3 p.m.

Attendees:

- | | |
|--|--|
| <input checked="" type="checkbox"/> Laura Berglan, Pascua Yaqui Tribe | <input checked="" 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 checked="" type="checkbox"/> Peter Steere, Tohono O'odham Nation |
| <input checked="" type="checkbox"/> Kathryn Leonard, SHPO | <input checked="" type="checkbox"/> Mary-Ellen Walsh, State Historic Preservation Office |
| <input checked="" type="checkbox"/> Robert Linsell, Granite Construction Company, Inc. | <input checked="" type="checkbox"/> JR Welch, Archaeology Southwest |
| <input type="checkbox"/> Ronald Maldonado, WestLand Resources, Inc | <input checked="" type="checkbox"/> Alana Hake, Gallagher & Kennedy |
| <input checked="" type="checkbox"/> Linda Mayo, Pima County | |

Staff Support:

- David Lelsz, ADEQ Kelly Cairo, GCI

Discussion Items:

Notes

- Comments on notes will be due Monday

Task Assignments

- Alana said that Gallagher & Kennedy is vetting the consultation resource documents with their client. Anticipate providing this information to the attorneys in the TWG, Laura, Susan, plus Mary-Ellen, and to the greater TWG next week.

Existing Documents

- Would like additional time to review docs.
- Current consultation process author is Mary Ellen.
 - Assignment: Peter agreed to review the process from a tribal point of view.
- Assignment: Courtney agreed to review existing documents to begin to finalize them.
- Assignment: All were assigned to review these process documents and provide comments to Courtney by Nov. 14.

State Permitting Action on Private Land

- Kathryn explained that state permitting action on private land does fall under state process. The action of ADEQ issuing a 404 permit would be sufficient to trigger state involvement under SHPA.
 - Action item: Kathryn to report on 106 relationship to this process.
 - Other laws should be considered including ARPA, NAGPRA, and Indian Religious Freedom acts.
 - There was concern about the disconnect on the Corps not being involved in this decision-making, lack of consultation from EPA.
 - Tribes may want federal laws followed, even when actions are on private land.
 - A work group member noted that the Permits Process TWG is suggesting that once ADEQ assumes the 404 program and a permit is issued on private land, federal nexus goes away.

- Action item: Mary-Ellen to forward 40 CFR 233.52d6 to Kathryn for additional review from SHPO Advisory Office.
- There was a concern that with ADEQ assumption of the 404 program, there would not be a NEPA or 106 process. If private land is involved and there is no other federal nexus, how do we ensure compliance? No NEPA process at the state level. No remedy process.
- SHPO office acknowledges that SHPA would not be as robust for a state level 404 program as similar protections at a federal level. Hope for a process, perhaps through MOA, that provides for protections. Examination of SHPA may need to be considered.
- The group discussed whether Arizona and/or other states can be required to follow federal law. The ADOT process, through FHWA, should be considered since this is a case of state following federal law.
- Assignment: Permitting actions on private land – Kathryn volunteered staff time, and Linda agreed to assist.
- From a tribal perspective ESA and cultural/historic issues are one issue. Peter recommended these groups meet to talk about process.
- Other questions to address: How would local jurisdiction interface with state level cultural/historic regulations?

Extension

- We are charged with drafting a white paper. Is an extension possible? David explained that Permits sought an extension due to the broad nature of their task, and that they provided a timeline for achieving goal.

Questions for Corps

- Action item: David to invite Corps to participate at an upcoming Cultural TWG.
- Possible questions include: Corps requiring ADEQ to follow federal law, as FHWA requires ADOT. What comes forward on addressing laws? Could assumption approval be contingent on following a parallel process?
- May find that Corps is knowledgeable about running the day-to-day process, more so than the assumption process. These may be questions for EPA.

Chairs Call/Tribal Consultation and Work Group Update

- Sue explained that each of the chairs reported on their activities. ADEQ asked whether chairs had any additional needs.
- Tribal consultation
 - Dear tribal leader letter went out.
 - David explained that the letter requested input from tribal leaders by Nov. 5.
 - Peter has not received it and suggested copying cultural staff members on letters to leadership.
 - Action item: David to provide letter to Peter.
 - Sue recommended following up on the letter and not to assume lack of interest if response is not received by Nov. 5.
 - May need to make a presentation to the tribal council, and expect additional follow up.
- A lot of interest in the upcoming Tribal TWG.

- David has been working with GIS on mapping projects.
 - David explained that the map feature will be part of PIP report page. Groundwater rules require APP reporting. AZPDS, reclaimed water are now included. Would also add JDs and individual 404 permits should the program be assumed. The mapping program test for additional functions goes live tomorrow. David will send links for testing to this group on Nov. 2. Hope this will become a template for other states to clearly show projects.
- Kelly took informal notes. Susan will provide additions.
 - Action item: Kelly will provide notes from Chairs meeting. (Done.)
- Wondering if TWGs need more coordination with other TWGs. What is the follow up to the various white papers that will be received?
 - David explained that an Executive Work Group will help synthesize viewpoints.
 - Expect to finalize list of names with ADEQ director next week.
 - Will this group identify gaps between the TWGs? Yes.
 - Chairs will be interacting with the Executive WG.
- Needed better room information to get to this meeting.

Assignments and Action Items:

- All to provide any comments on the previous meeting notes by Nov. 5.
- Pending approval, Lee to provide consultation research documents to Laura, Susan, Mary-Ellen; then TWG members.
- Peter to review the current consultation process document from a tribal point of view and his work on 404 issues for the nation.
- All to review process documents and provide comments to Courtney by Nov. 14.
- Courtney to review existing documents and begin to finalize them.
- Kathryn to report on 106 relationship to permitting process on private land.
- Mary-Ellen to forward 40 CFR 233.52d6 to Kathryn for additional review from SHPO Advisory Office.
- Kathryn (and staff members) and Linda to coordinate on permitting actions on private land.
- David to invite Corps to participate at an upcoming Cultural TWG. Possible questions include: Corps requiring ADEQ to follow federal law, as FHWA requires ADOT. What comes forward on addressing laws? Could assumption approval be contingent on following a parallel process?

Future Discussion Needed:

- How would local jurisdiction interface with state level cultural/historic regulations?

Next Meeting Agenda:

- Review Consultation Process Flow Chart/Power Point on the Google Drive
 - Does it describe the current state as we know it?
 - Does it describe an idealized future state?
- Review list of applicable laws on Google Drive
- Next meeting: Nov. 15, 1:30-3:30 p.m., ADEQ, 1110 W. Washington St., Room 5100B.