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Regional Mitigation Planning

Archeological Resources

A. History of Regional Research Approaches in Archeology

1. There is a long history of viewing resources and conducting research from a regional perspective in archeology
2. One of the first occurred in 1971, when a group of archeologists in the Southwest began coordinating research through what was called the Southwest Archeological Research Group (SARG).
3. It consisted of a group of cooperating archeologists who devoted at least part of their research time towards the testing of hypotheses of interest to the group.
4. They group adopted a general question to solve, developed a research design, and agreed upon the critical variables to measure.
5. The general question they focused on was ‘Why do people live where they do?’
6. In Southern Nevada, efforts to agree upon regional approaches to manage cultural resources from a common over-arching perspective got a boost in 1982 when Margret Lyneis published Prehistoric Context of Southern Nevada. This document helped land managers evaluate the significance of prehistoric archeological sites.

B. The Structure of Regional Research Designs

1. Generally regional research designs in my discipline focus the research of academic and contract archeologists.
2. They pose a series of the most important research questions or hypotheses that can realistically be answered given the archeological record
3. What we want to know is: What can the study of sites in this region inform us about better than other places in the state? Where is the biggest bang for the buck in terms of archeological research?
4. Next, we need to know what kinds of data are needed to answer the questions posed. And which site types or features are most likely to have the data needed to answer the hypotheses
5. An important but sometimes overlooked component would be guidance to measure progress in implementing the design. How do we judge when a particular questions has been adequately addressed. When is it time to move on to other questions and others site/feature types?

C. A Prehistoric Context for Southern Nevada June 2012

1. We are really fortunate that here in southern Nevada, an update of the 1982 Historic Context Report has just been completed.
2. In June 2012 A Prehistoric Context for Southern Nevada was published.
3. It was submitted by the firms HRA Conservation Archeology and Gnomon Inc.
4. The Bureau of Reclamation commissioned the update using funding through the Southern Nevada Public Land Management Act. It was prepared in cooperation with a variety of federal and state agencies including the BLM and the NV State Historic Preservation Office. (NPS, USFWS, USFS BOR)
5. This is a very helpful document that we can build upon.

6. It first describes the state of our knowledge of the present and past climates of the region. It summarizes research in the area and the state of site record and survey databases.
7. Then for a set of chronological periods (Paleo-Indian and Archaic; Puebloan; Post –Puebloan), it addresses how these sites can address research questions organized by themes (chronology; technology; settlement systems; subsistence; trade; etc.).
8. Importantly, the report concludes with a discussion of the priority questions and data required to answer them. The report summarizes what is known about the prehistory in southern NV and importantly what we don't yet know. It asks how can we best fill those data gaps?

D. So where do we go from here?

1. It strikes me that we can build upon the June 2012 Prehistoric Context report for S NV to achieve what we're after as far as Regional Mitigation Planning is concerned for the BLM's Solar energy program
2. We can utilize the descriptions of the environment, the literature reviews, and summations of radiocarbon dating and obsidian sourcing.
3. But we should broaden the approach to cover historic sites as well.
4. And the focus of our research design would be on those types of properties that are most likely to be found on the valley bottoms so prevalent in the SEZs.
5. Sites recently recorded for a sample survey in the Dry Lake Valley North and Amargosa SEZ are probably typical:
 - Historic: RR grade and trash dumps
 - Prehistoric: low to moderate lithic scatters, some Groundstone, projectile points

6. I would recommend that if we decide to move forward with a Regional Research Design for the Dry Lake SEZ that it also contain recommendations to:

- Standardize field methods for testing and excavation (stripping, auguring, blading, etc.)(when are these appropriate, how much, how to do it)
- Recommend sampling approaches
- Propose standard terminology for various artifact class descriptions
- Standardize data gathering for artifact classes (how much and how do you record flakes, historic cans, bottles, ceramics, etc.)
- Establish guidelines for when archeological fieldwork vs archival research is most appropriate to deal with historic sites
- Establish standard procedures for collecting certain samples (radio carbon dates, thermo luminescence, obsidian hydration, etc.)

E. At this point, industry representatives may well be asking, why go through this effort? What does a Regional Research Design archeological resources buy us? How Could it Incentivize Work within the Dry Lake SEZ?

1. In the absence of a Regional Research Design, the BLM would consult with the SHPO and tribes on the results of each survey as they come in
 - Which sites are eligible for the NRHP?
 - Which eligible sites would be affected by the proposed undertaking?
 - How can we best deal with adverse effects through a program of treatment or mitigation?

- There is normally a fair amount of back and forth negotiation between the BLM and the SHPO to decide how to treat the affected historic properties
 - When we come to agreement, the BLM and SHPO execute a Memorandum of Agreement (MOA) which spells out the testing, excavation, and analyses agreed to
 - If the BLM and the SHPO are unable to negotiate such an MOA, we bring in the Advisory Council on Historic Preservation from Washington, DC to help try and resolve the impasse
2. A Regional Research Design is a mitigation strategy that is approved in advance by the BLM, the SHPO, and contract professionals.
 3. If we have the Regional Research Design, it would streamline and speed up the process from survey to treatment
 - I would envision something like this: we write to the SHPO and say:
 - Here are the results of the survey and our determinations of eligibility and effect
 - For the following eligible properties, we will carry out mitigation according to the Regional Research Design's research questions, and data standards
 - It should be more or less pro-forma for the SHPO to write back stating that is fine
 - There would be far less chance for an impasse over treatment to develop requiring the ACHP to intervene

F. Who Are the Players?

1. Key players would include:

- BLM archeological staff (RECO, Field Office, District Office, and State Office)
 - SHPO staff
 - Peer reviewers (contract archeologists and academics)
 - Tribes
 - ACHP
2. The point is: the final product has to have credibility and be widely accepted within the profession at all levels (academia, contract world, federal and state agencies, and so on)

G. **How to Get it done?**

1. So how would we get this done?
2. Obviously, there'd need to be a series of meetings to bring the players together to agree upon the content and detail of the RRD and the process for peer review of draft products
3. I recommend contracting out the responsibility to a contract firm or a partnership (like the Historic Context report on June this year that was done by the staff of both HRA Conservation Archeology and Gnomon, Inc.
4. A less desirable alternative would be to create a series of Assistance Agreement or small contracts and farm out the job to a wider variety of contractors and academics
5. Given the fact that all of SHPO and BLM staff are already swamped with work, I would also suggest that a **BLM RRD Archeologist** be hired to ramrod this project through
 - Could be industry-funded position
 - Or a BLM solar program funded position or maybe a combination of both

- [Somebody like Dr. Pat Barker (former NV BLM State Archeologist) would be perfect]?
- Would be a temporary position

H. Costs. How Much?

1. You're probably looking at a cost of \$100K to \$200K to contract for production of the RRD
2. Figure on another \$30K to \$40K for covering costs of travel, support for travel for partners, printing, and distribution of RRD, etc.
3. Could set up an Assistance Agreement with the SHPO to set up the mechanism to cover these costs

I. Timeframes. How long would it take to produce such document and put it in place?

1. Figure on about 2 years to engage the professional archeological community in a process to agree to standardize research/treatment approaches on both prehistoric and historic archeological sites
2. 1st Year: Develop the RRD content through consultations and meetings with academics, contractors, and state, federal agencies, tribes. At the end, agree upon the scope and content of the RRD and the process for peer review of draft products.
3. 2nd Year: write, award, administer , review, and accept a contract to write the RRD

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Tribal Concerns

A. Tradition of Dealing with Tribal Issues Falls to the Cultural Program

1. Within the BLM, there is a tradition of addressing Indian tribal issues within the cultural resources management program
2. Though quite honestly, it would make as much sense to assign responsibility for addressing tribal concerns and issues to the wildlife program, the forestry program, hydrologists, or inter-governmental affairs offices.
3. It's important to keep in mind that Indian tribes are concerned with a wide array of issues affecting their communities and quality of life, everything from
 - Water rights
 - Fishing and hunting rights
 - Treaty rights
 - Pollution
 - Jobs
 - Access to public lands

B. Whether the BLM is consulting under these so-called "cultural resource" laws, EOs, and regulations or planning and environmental

assessment phases of decision making under NEPA, our goals are to assure that

- federally recognized tribal governments and Native American individuals, whose traditional uses of public land might be affected by a proposed BLM action, will have sufficient opportunity to contribute to the decision and
- that the decision maker will give tribal concerns proper consideration.

C. A number of Indian tribes commented on the Solar PEIS, in public testimony, and through written correspondence and their concerns were broad:

- Inadequate tribal consultation (#1 concern)
- Need more ethnographic studies (#2 concern)
- Adequacy of water supply
- Prefer a modified SEZ program and object to development on Variance lands (want concentrate development in fewer areas)
- Concerns regarding unanticipated discoveries of buried archeological sites
- Concern over limited archeological survey data
- Impacts of development on plants used by tribes for medicines and food
- Adverse effects of dust on plants, animals, and air quality
- Concern regarding the indirect effects of solar on cultural resources
- Concerns about treatment and reburial of human remains
- Host of other issues included use of brownfields and disturbed ground
- Partnering to develop solar on tribal lands, etc.

D. Ethnographic Contract

1. In order to better understand tribal issues and concerns in a number of SEZs, including the Dry Lake SEZ, the BLM contracted with SWCA Environmental Consultants.
2. They hired Dr. Richard Stoffle from the U of AZ and he conducted ethnographic interviews and archival research
3. The objectives were to identify:
 - religious and traditional use sites;
 - significant ethnobotanical resources;
 - Indian perspectives on direct and indirect effects of solar development.
4. He consulted with the Moapa Band of Paiute Indians who represented the cultural interests of Southern Paiute people.
5. The SEZ was visited by tribal representative and nine interviews were conducted.
6. Major Findings:
 - a. Culturally significant animals (34 important species), plants (15 species), and culturally significant sites were identified by the Moapa Band of Paiutes.
 - b. The Cry Song Trail and Salt Song Trail were reported within the Dry Lake region though not mapped
 - c. Culturally important topographic features and geographical regions were listed that the tribe would like to be consulted about whenever a project is planned that could affect it. These include:
 - Muddy River
 - Virgin River

- Colorado River
 - Arrow Canyon Range
 - Potato Woman ridge
 - Apex Pleistocene Lake
7. Dr. Stoffle wrote up his findings and submitted draft to the tribe for review and approval before the texts were passed on to the BLM. They were posted to the solar website and included within the Supplement.

E. Unhappiness with Current Tribal Consultation Process

1. The process the BLM undertook to carry out tribal consultation for the Solar PEIS is typical for large EISs, where ethnographic contracts are often used to further our knowledge about sacred sites and traditional cultural properties and uses of the public lands in the project area. These may be paid for by the BLM or the applicants.
2. For smaller-scale undertakings, ethnographic research is not usually carried out. Rather the BLM consults with tribes pursuant to NEPA, NHPA, and other authorities and the burden falls on tribes to come forward and identify the places and resources of importance to them so that the BLM can take the effects of the undertaking upon those resources into account.
3. I think it is fair to say that both Indian tribes and the BLM are unsatisfied with this arrangement.
4. Tribes have criticized the agency for considering their traditional resources and land uses only at the 12th hour and for not consulting early enough or thoroughly enough.
5. The BLM, for its part, would like to move the basis of our consultation away from the limited perspective of Section 106 of NHPA. We want to

engage tribes in discussions about the stabilization and protection of sites; the sustainability of cultural resources; and conservation in the broadest sense.

F. What Regional Mitigation Planning Gives Us an Opportunity to Do

In General:

1. If we could replace project-by-project consultation with an approach that recognizes tribal connections to SEZs within a regional context, the we could:
 - a. Establish on-going consultation that would not be under the time pressures that would be the case for a specific project. Therefore, the agency and tribes can take longer to discuss issues and arrive at solutions.
 - b. Create mechanisms that tribes would support for sharing and protecting sensitive information.
 - c. Foster a dialogue between solar industry and tribes to increase knowledge about solar development and its effects upon the landscape.
 - d. Invite tribal reps out to see solar facilities that have been built so they can better understand the impact on the landscape.
 - e. Consult about indirect effects. How do the tribes feel about various strategies to lessen effects of solar development in areas where the effects on cultural resources to tribes are indirect?
 - f. Prioritize the most important cultural properties to tribes in southern NV?
 - g. Clarify with the tribes which sites and/or site types they wish to consult about for the 106 process, especially the eligibility and treatment determinations.

- h. Put into place plans for dealing with inadvertent discoveries and treatment of human remains acceptable to the tribes.

More Specifically for the Dry Lake SEZ:

1. Get feedback from other tribes re. Stoffle report. Do they share similar concerns regarding the sites mentioned? Are there other important places to their tribes that are not mentioned in the Stoffle report?
2. Prioritize plants and animals in Stoffle's report. Are there any others? Can off-site mitigation strategies be devised to address impacts to them?
3. Tackle issues of effects of solar development on trails:
 - What are the effects on trails or trail use?
 - What mitigation strategies can lessen adverse effects to trails or trail use?
 - Specifically focus on the Salt Song Trail.

G. So How Do We Create a Different Consultation Process?

1. The BLM could organize a series of face-to-face meetings between the BLM and tribes to talk about these issues.
2. We'd begin with a larger meeting in which all tribes were invited to participate
3. Follow up with face-to-face meetings between the BLM and individual tribes as necessary.
4. Discussions could focus on just the Dry Lake SEZ or perhaps cover all the SEZs in southern NV.
5. Eventually, we'd want to formalize any new approaches agreed to with an MOA/MOU and perhaps incorporate these into the Solar PA as State-Specific Agreements.

6. **IMPORTANT:** The important point is I'm not envisioning a process much different from current BLM-tribal G-2-G consultation. The difference would be a different focus—one that would be regional and long-term, not project-specific.

H. Who Would Participate? Who are the Players?

1. All tribes with whom the BLM normally consults regarding projects in southern NV (6 to 8 tribes).
2. Participants initially would include:
 - BLM managers, cultural staff, and tribal liaisons
 - Tribal representatives including elected officials, traditional leaders, cultural program staff
3. Later, we'd want to be in:
 - SHPO and ACHP perhaps later in the process as we deal with incorporating procedures into the Solar PA
 - Academic/professional ethnographers. Perhaps could play a role as facilitators but we have to be careful since the consultative G2G relationships between the BLM and Indian tribes.

I. Timeframes

1. Not much lead time needed. We've already told the tribes that we consider consultation to be an ongoing process.
2. The BLM could probably organize the first such meetings within a few months.

3. If both tribes and the agency commit to this, such consultation would take a long time and should be considered somewhat open-ended

J. Costs

1. The BLM doesn't pay for tribes for Section 106 or NEPA consultation.
2. That being said, the BLM can and does pay for ethnographic studies or other forms of information gathering tied to a product or report.
3. It could prove helpful if the solar industry would consider contributing funds into an account (perhaps managed by them or the SHPO) that could provide financial support for tribes to participate in the consultation I just described. It could pay for travel, per diem, field trips, gas, vehicle costs, and so on.
4. Such support for could run to some \$60,000 for the first few years.
5. If we decide that additional follow-up ethnographic studies are needed, these will cost upwards of \$500K to \$600K.
6. Consider establishing an industry-supported ethnographer position who would work for the BLM (There are precedents for this in the oil and gas industry in WY and elsewhere). BLM staff is over-committed right now and a dedicated position to shepherd these negotiations through would greatly enhance chances for success.

K. How Does Additional Tribal Consultation focusing on the issues I mentioned Incentivize Working in the Dry Lake SEZ?

1. After the process becomes established, it will led to knowledge about critical tribal issues ahead of time and not at the project stage
2. Allows more time to solve difficult problems of dealing with the impacts of solar development on tribal religious and cultural sites

3. Lessens chances for legal challenges being raised
4. Could create a model for tribal consultations based on landscapes and not projects that are applicable elsewhere in the BLM