Cultural Resources on Federal Lands

What is a cultural resource?
A cultural resource is a place, feature or object associated with past or present human use and cultural values. Cultural resources may be archaeological sites or places that are important to living people such as locations where Native Americans conduct traditional plant gathering or religious ceremonies, sometimes called Traditional Cultural Properties (TCP).

Archaeological Sites
An archaeological site is any place where physical remains of historic or prehistoric human activities are present. Archaeological sites are very sensitive to disturbance and once they have been harmed, they can’t be repaired.

Prehistoric Archaeological Sites: Prehistoric archaeology focuses on past cultures that did not have a written language. Prehistoric archaeologists may study surface finds, conduct site excavations and talk to the living descendants of past cultures to understand prehistoric cultures. Prehistoric sites include Native American village sites, rock art sites and flaked-stone scatters.

Historic Archaeological Sites: In the United States, historic archaeology focuses on cultural resources that are 50 years of age or older, and were created during recorded history. Historic sites include historic buildings, and features, such as roads or trails and historic mining areas.

Federal Cultural Resource Laws
Multiple laws have been passed in the United States to protect cultural resources on federal lands. These laws also apply on private lands where federal funding or permitting of the project is involved. In addition to those listed below, there are additional authorities protecting Native American sacred sites and religious values (American Indian Religious Freedom Act of 1978; Sacred Sites EO .13007; Native American Graves and Repatriation Act., 1990). Three of these cultural resource laws are described below.

The National Historic Preservation Act (NHPA) of 1966 establishes that the federal government is required to undergo a review process for all federally funded and permitted projects that have the potential to impact sites listed on, or eligible for listing on, the National Register of Historic Places (NRHP). This process is undertaken in consultation with the State Historic Preservation Officer (SHPO), the Advisory Council on Historic Preservation (ACHP), Indian Tribes and the public. This law defines a process for conducting federal cultural resource compliance for cultural resources that have been defined as significant and are at least 50 years of age.

The Archaeological Resources Protection Act (ARPA) of 1979 prohibits the unauthorized excavation of archaeological sites on Federal or Indian lands and prescribes civil and criminal penalties for unauthorized excavation. This law also establishes the standards for permissible...
excavation, requires agencies to identify archaeological sites and encourages cooperation between federal agencies and private individuals.

The **National Environmental Policy Act (NEPA) of 1969** requires that the federal government includes historic preservation issues, including the identification of historic properties and the assessment of effects upon them, when a federal agency is preparing documentation on a federal action that significantly affects the quality of the human environment.

**Federal Cultural Resource Compliance Oversight**

The organizations described below provide oversight over the federal cultural resource compliance process to insure that the requirements of the NHPA are being met by the agencies.

**The Advisory Council on Historic Preservation (ACHP)** is an independent federal agency that was created under the National Historic Preservation Act of 1966. The ACHP encourages federal agencies to include historic preservation into federal project requirements, and it reviews federal agency policies to ensure consistency with national preservation policies.

**State Office of Historic Preservation (OHP)** was established under the National Historic Preservation Act of 1966. Each state’s State Historic Preservation Officer (SHPO) ensures that federal agencies comply with federal cultural resource laws.

In 2012, the Bureau of Land Management executed an **National Programmatic Agreement (nPA)** through consultation with the ACHP, the nation’s SHPOs and Indian Tribes which defines how the agency will complete the cultural resource compliance process under the NHPA. As required under the nPA, BLM California executed a **State Protocol Agreement** in 2014, which further defines this process.

**Federal Cultural Resource Compliance and Native American Tribes**

Several federal laws, regulations and policies require that agencies consult with Native Americans when there may be an impact to places of traditional importance or Tribal cultural or religious values.

**A federally recognized tribe** has a government-to-government relationship with the United States, is recognized as a sovereign entity and is eligible for funding and services from the Bureau of Indian Affairs. Federally recognized tribes interested in the Keysville area include: the Santa Rosa Indian Community of the Santa Rosa Rancheria, Tejon Indian Tribe, Tule River Indian tribe of the Tule River Reservation and the Big Pine Paiute Tribe of the Owens Valley.

**A non-federally recognized tribe** is not on the list of federally recognized tribes. There are many non-federally recognized American Indian Tribes, groups and individuals within the state of California. The non-federally recognized tribes in the Keysville area include the Tubatulabal Tribe, the Kern Valley Indian Council, and the Kern River Paiute Council.
Under the federal cultural resource laws, the agencies are required to conduct formal
government-to-government consultation with federally recognized Indian Tribes in the event
that Tribal values may be affected. Federal cultural resource laws and BLM policy ensure
that non-federally recognized tribes and individuals are also included during the project
planning process.

The Federal Cultural Resource Compliance Process
Cultural resource staff reviews all activities that have a federal connection. These activities are
evaluated for potential effects to cultural resources; then strategies are developed for avoidance or
mitigation. This is done according to the process defined in the federal regulations and policies
described above. It should be noted that Tribal and SHPO consultation and public involvement is often
conducted at multiple steps in this process.

1) Activities are reviewed for their potential to affect cultural resources. Certain activities may be
exempt from further cultural compliance requirements if it is determined that effects are unlikely. The
types of activities which may be exempted are identified in the State Protocol Agreement. The nature of
the cultural resource and cultural values that are associated with it are taken into consideration when
determining if an exemption may apply.
2) The Area of Potential Effect (APE) for the activity is defined so that all potential effects can be
considered.
3) The area within the APE is examined to determine if cultural resources are present that may be
affected.
4) If cultural resources are present, they are then evaluated to determine if they are eligible for the
National Register of Historic Places (NRHP). The process for this determination is defined in the NHPA
and by the National Park Service, which is the keeper of the NRHP. Eligible resources are then defined
as “historic properties”, and are subject to the cultural resource compliance process. Ineligible cultural
resources are not subject to further compliance requirements.
5) If there are eligible historic properties within the APE for the activity, the SHPO must be consulted
regarding the development of measures for avoidance or mitigation of any potential affects to the
cultural site.

Cultural Resource Compliance and Management in Keyesville
- Keyesville has a high density of archaeological sites eligible for the National Register of Historic
Places.
- Many of the cultural resources in Keyesville have been impacted by recent activities. Plans are
being developed to mediate these effects. An important component of the planning will be to
redirect activities to areas where cultural resources won’t be affected.
- These resources have been determined to be significant in preserving and telling the story of an
important part of Kern River Valley and California history.
- Due to the complexity of the archaeological record in Keyesville, the compliance process described above is especially complicated and time consuming. Developing plans for uses which are compatible with the preservation of these resources, will also be complex.

- Archaeological sites do not necessarily require complete avoidance, however potential requirements for testing, mitigating impacts, and completing consultations can become costly and time consuming.

- Measures are necessary to preserve these sensitive resources through both the specific project level compliance process and proactively through management of activities that have the potential to impact them.

- These resources have the potential to greatly benefit the public through their educational and scientific value.

- There are significant Tribal values associated with Native American cultural and heritage resources located throughout the Kern River Valley, and efforts are necessary to preserve them.

- These resources belong to the American public, who has charged BLM with their protection. BLM needs the cooperation and support of the public in order to successfully preserve these resources.

- The development of partnerships with interested members of the public is critical to the preservation and management of these important resources.

References

1. Society for American Archaeology

2. Shull, Carol D

3. Advisory Council on Historic Preservation

4. National Preservation Institute

5. Advisory Council on Historic Preservation

6. California State Parks Office of Historic Preservation