

## **Preservation Board Report December 2013**

**December 3-4, 2013**  
**Washington, D.C.**

**Attendees:** Bureau of Land Management (BLM) Acting Federal Preservation Officer , Kate Winthrop; Tribal Liaison Officer Jerry Cordova; Deputy Preservation Officers (DPO): Robert King (Alaska), Daniel Haas (Colorado), John Sullivan (Eastern States), Kirk Halford (Idaho), Gary Smith (Montana), Stan McDonald (Oregon), Ranel Capron (Wyoming); Field Managers: Victoria Barr (Caliente, NV), E. Lynn Burkett (Lakeview, CO), Rick Miller (Newcastle, WY), Michael Stiewig (Vernal, UT); Specialists: George "Buck" Damone (Buffalo, WY), and Nathan Thomas (Cedar City FO, UT).

### **Additional Attendees:**

Erik Hein, Executive Director, National Conference of State Historic Preservation Officers (NCSHPO), Nancy Brown, Advisory Council on Historic Preservation (ACHP) Liaison to the BLM, and Michael Smith, Department of the Interior Office of the Solicitor. Additional BLM attendees: Greg Shoop, Deputy Assistant Director for WO-200; Chris McAlear, Deputy Assistant Director, WO-400; Nikki Moore, Division Chief, WO-410; Mary Tisdale, Division Chief, WO-420; Byron Loosle, WO-240 Division Chief; Emily Palus, WO-240 Deputy Division Chief; Karen Prentice, National Healthy Landscapes Coordinator WO-200 Initiatives Team; Jim Perry, Senior Natural Resource Specialist, Division of Fluid Minerals, WO-310; Robin Hawks, WO-240; Alice Hart, BLM Curator; Michael Thomas, BLM Historian; and Cynthia Herhahn, Acting DPO for New Mexico. Charlotte Hunter, DPO for California was unable to attend and Utah did not send a DPO. Susanne Rowe, DPO for Arizona, Bryan Hockett, Acting DPO for Nevada, Dan Martin, Geospatial Archaeologist, Stephen Fosberg, WO-240 Archaeologist, and Annamaria Rago, National Training Center (NTC) attended via conference phone.

### **Welcome**

Greg Shoop, Deputy Assistant Director for WO-200, welcomed the Preservation board and said he was pleased the Board was able to meet in person. Greg thanked the Board for their support of the BLM mission and talked about his District Manager experience with the cultural resources program, from compliance issues, to using new technology for archaeological research, to proactive management. Greg updated the Board on the changing BLM leadership and said that the Executive Leadership Team was meeting the same time as the Preservation Board to set priorities and strategies for FY14 and beyond.

### **Overview and Logistics**

Kate Winthrop provided an overview of the agenda and goals of the meeting and reviewed logistics for the week. She also moderated a discussion on recent personnel changes, including progress toward filling vacancies in state lead positions and concerns about downgrades of these positions.

### **BLM National Programmatic Agreement Protocols**

Robin Hawks presented an overview of the BLM State Office's self-reporting on progress toward completing protocol revisions by February 9. As of November 15, 2013 no state had completed its revision, several states reported being close to completion; and a few states did not expect to meet the February 9, 2013 due date. Robin reminded the Board that protocol revisions were required for BLM State Office's that had reported the need for a protocol revision and intended to continue to operate under a protocol authorized by the national Programmatic Agreement (PA). She informed the Board that the BLM WO held preliminary discussions with the ACHP on the possible need for a deadline extension and asked the Board's assistance in developing a realistic time line to inform an extension request. According to the terms of the PA, a state that does not complete its required revision by February 9, 2014 must operate under the 36 CFR Part 800 regulations or other alternative procedure. Several BLM DPOs noted that ongoing tribal consultation to inform their revisions should not be prematurely concluded to meet an arbitrary due date. Several Board members noted that the use of the National Environmental Policy Act (NEPA) "logs" to accomplish National Historic Preservation Act (NHPA) 106 public notification was challenging. The use of NEPA "logs" is not uniform in states that had not implemented E-Planning; where E-Planning is in effect, the NEPA "logs" are operated by the National Operations Center (NOC) according to a specific protocol.

**Action Item:** The Board discussion concluded that the BLM should request a one-year extension. Robin will draft a request memo to the ACHP and send it to the Board for review. Robin will also talk with WO-210 and the National Operations Center regarding E-Planning and the use of the NEPA project lists for NHPA compliance purposes.

### **Data-Sharing Agreements/Confidentiality.**

Ranel Capron, Stan McDonald, and Kirk Halford moderated a discussion on data sharing with Indian tribes and asked the Board if additional guidance is needed in the form of an Instruction Memorandum (IM). Stan presented a detailed overview of the authorities and background on the issue of data sharing, including the appropriate and prudent use of data sharing agreements. Noting that there is increased interest expressed by tribes in access to BLM data, Stan posed several important questions to the Board: (1) Is there overarching guidance that the BLM should provide to managers in their consideration of sharing data with tribes?; (2) Are there general limits to the geographic scope of sensitive-confidential data to be shared?; (3) Under what circumstances would it be appropriate to share BLM confidential –sensitive data with tribes and should there be a distinction between land use planning and project-specific activities?; (4) Are there specific cultural resource data which are appropriate to share and data which cannot/should not be shared; (5) What is the sensitive-confidential data requested is available to tribes through the SHPO?: (6) Should specific site location be redacted when sharing data with tribes?: (7) Is a formal written agreement required to share data?: (8) Are there standard stipulations that should be included in data sharing agreements?: (9) Can a Section 106 PA substitute for a data sharing agreement when the party to with whom the data is shared is a signatory/concurring party to the PA?: (10) What if a tribe refuses to enter into and sign a data sharing agreement with BLM?: (11) Should BLM play a role in determining whether a requesting tribe has a valid ancestral, aboriginal, or ceded lands interest in the project/plan when making a decision to share or not share data?: (12) Is it appropriate for BLM to share digital site and survey data?: (13) Should Tribal Historic Preservation Officers be treated differently regarding data sharing procedures?: (14) Does the BLM need clear guidance on data sharing?: and (15) Are tribes treated differently from the public under the Freedom of Information Act (FOIA)?

**Action Item:** The Board agreed that additional guidance was needed on this topic and recommended that the presenters continue developing their Q and A and incorporate any new policy into Manual Section 8110. The Board also expressed concern with the implications of policy for the BLM's ability to continue protecting sensitive archaeological site location and cultural data, including from FOIA requests. Robin was asked to get clarification from the Solicitors Office on implications for FOIA request to BLM or to tribes.

#### **Landscape Approach: Healthy Lands Focal Areas**

Karen Prentice, WO-200, gave a detailed overview and PowerPoint presentation of major BLM initiatives regarding the landscape approach and healthy lands focal areas. She asked Board members to become involved with these efforts. The next opportunity is to review the draft IM, "Identify Focal Areas and funding Priorities for Multi-Year Programs of Work to Achieve Landscape Objectives," and work with their Healthy Lands coordinators on nomination of focal areas. Karen invited the Board members and the WO-240 staff to identify ways in which cultural resources could be more integrated into healthy landscapes projects.

**Action Item:** Board members will review the draft IM on "focal area" nominations by the January 8, 2014 due date. Board members are encouraged to meet with the state Healthy Lands coordinators (contacts were provided) and consider ways to include/integrate cultural resources into Health Lands Focal Area projects?

#### **Landscape Approach: Regional Mitigation Strategies**

Jim Perry, WO-310, reviewed recent national and Departmental policy statements regarding regional mitigation strategies, including Secretarial Order 3330, *Improving Mitigation Policies and Practices of the Department of the Interior*. His PowerPoint, *Regional (Compensatory) Mitigation*, reviewed the mitigation hierarchy at 40 CFR § 1508.20, the use of Best Management Practices, examples of compensatory mitigation, and the concept of regional mitigation. He encouraged the Board members to take the time to review the draft Mitigation Manual per IM 2013-142, *Interim Policy, Draft- Regional Mitigation Manual Section – 1794*. Jim's presentation stimulated a discussion on the opportunities and challenges of regional mitigation planning for impacts to site-specific cultural resources, including funding and implementation of regional mitigation projects.

**Action Item:** Board members will review the interim mitigation policy and forward comments to Kate for consolidation by January 14, 2014.

#### **Training**

Robert King, Stan McDonald, Kirk Halford, and Annamaria Rago reviewed the history and current status of the cultural resources training program, and led a discussion on plans for the future. In particular, they asked for the Board's recommendation regarding formation of a Curriculum Advisory Team (CAT). The CAT would be structured similar to the less formal training advisory team that has been in effect for over 16 years. The Board discussed how to institute formal training requirements, in particular the 8100-01 course. Annamaria said that the NTC could make classes available through the DOI Learn Web Site and WO-200 could publish requirements through an IM. Finally, Annamaria noted that the last training needs assessment was conducted in October 2011 and that the next one will be performed around 2015. She asked that the Board to identify any unmet training needs. Stan asked the Board to identify priorities for

FY14-15 and an in-person 8100 class, training in the 2012 PA and new protocols, tribal relations, Archaeological Resources Protection Act enforcement, Native American Graves Protection and Repatriation Act were all mentioned. The Board asked Annamaria Rago to track the status of the existing Manager Module and to explore opportunities for raising the visibility of the cultural program in the Pathways class.

**Action Item:** The Preservation Board expressed its general support for establishing a formal CAT and recommended that it include separate teams for paleontology, tribal relations, and cultural resources management. The NTC will prepare nomination letters for BLM State Directors. The Board recommended that the NTC make 8100 classes more accessible, including the basic 8100 class and a class for managers; and identify alternative training providers. The Board expressed support for identifying training as a priority in FY2015 budget planning documents.

The Board recommended that the WO-240 budget in the 1050 Planning Target Allocation cover an in person 8100 class and pay for specialist travel as an allocation to the NTC. To evaluate the need to host the class, WO-240 asked State Leads to provide the number of cultural specialists that have not taken the 8100-01 course and would have to attend if the BLM made it mandatory.

### **Tribal Relations: Update and Issues.**

Jerry Cordova, Kate Winthrop, and Michael Smith gave an update on tribal relations activities and policy development. Jerry reviewed the recent administration and departmental initiatives. He mentioned the President's fourth Native American meeting and the request for a report on consultation activities. Kate discussed the efforts of the cultural resources and infrastructure team to provide clarity and establish best practices for tribal consultation, particularly for major infrastructure projects. Mike Smith gave a PowerPoint presentation on the efforts to provide supplemental guidance, including Qs and As, on consultation responsibilities under various authorities with a goal of clarifying responsibilities, improving efficiencies, improving consultation, and improving defensibility of BLM decisions. Kate and Mike asked the Board for a recommendation on the best way to make these suggestions available to BLM and applicants.

**Action Item:** Jerry will provide information on the Departmental tribal consultation reporting process to the field as soon as possible. The Board supported a layered approach to publishing the guidance being developed by the Solicitor. First step would be an IM to disseminate the information and this could be followed by incorporating selected information into the new 1780 Manual Section. Finally, the Board was supportive of a tribal consultation brochure similar to the brochure developed for cultural resources and split estate, for use with applicants and other external parties.

### **Implications of Recent Legal Decisions: Travel Management**

Byron Loosle gave an overview of recent decisions regarding the BLM's NHPA compliance for travel management decisions in Utah and Montana. He suggested the Board members pay close attention to their decision-making process and documentation, but change their practice until the end of January 2014, when the BLM expected the settlement phase of the most recent law suit to be concluded. DPOs were encouraged to consider developing protocol language governing travel management decisions. Robin suggested that the Board members review the existing policy at IM 2012-067, *Clarification of Cultural Resource Considerations for Off-Highway Vehicle Designations and Travel Management* (February 10, 2012) to determine if it needed clarification.

### **8100 Manual Series**

Robin reported on the status of the 8100 Manual Series review and revision. She thanked the Board members for their efforts in developing the revised drafts following the June 2013 Preservation Board meeting. She asked Dan Haas to report on the Inter-Division coordination with WO-210 on 8130. Finally, she said that the WO will be conducting a "consistency review" and said the reformatting will be required prior to formal review and publication.

### **Nate Thomas Presentation on Damaged Site**

Nate Thomas showed a dramatic video of his experience rappelling 300 feet down to an archaeological site suspected of having been vandalized.

### **Advisory Council on Historic Preservation (ACHP)**

Kate introduced Nancy Brown, the BLM's Liaison with the ACHP and Erik Hein, the new Executive Director for NCSHPO. Nancy gave a PowerPoint presentation covering new ACHP products, training, the BLM protocol revision process, and some lessons learned on large infrastructure projects. Nancy mentioned the new Applicant toolkit, the new NEPA and NHPA handbook developed jointly with the Council on Environmental Quality while Robin was detailed there, and the new guidance for Indian tribes and Native Hawaiian Organizations. She also mentioned the upcoming guidance on Preparing Agreement Documents and the 106 Success Stories project. She said that training is available through scheduled classes and webinars, and can also be arranged for specific offices by special request. Nancy noted that the ACHP's review of the BLM

protocols under the national PA will be looking primarily at the criteria for protocols in the national PA and the incorporation of any changes to the 106 process in the body of the PA rather than in appendices. She will also review for what is and what is not going to the SHPO on a case-by-case basis and when the State intends to follow the 36 CFR Part 800 regulations instead of the protocol process. Nancy asked that protocols be sent in Word version for easy mark-up, and that the BLM allow the ACHP 30 days for review. Finally, Nancy noted the Gateway West Transmission Line project and programmatic agreement can be a model for working through many of the complex 106 issues associated with similar multi-state infrastructure projects.

#### **National Conference of State Historic Preservation Officers**

Erik Hein talked about the historic preservation education and experience he brings to his new position at NCSHPO, including leadership of Preservation Action and of a Certified Local Government in Pennsylvania. He explained the mission of the NCSHPO in representing individual SHPOs, as signatories on national agreements, and as members of the ACHP. Erik also explained the organization and operation of the NCSHPO and variation among individual SHPOs in funding, staffing and organizational location within state government. Erik said that he intended to emphasize communications and improve understanding of the role of SHPOs. His vision is to improve web based information and use of social media; improve training of SHPO staff to adapt to rapid staff turn-over and pending retirements; and improve the PA negotiation process. Erik said he had recently completed a survey on how SHPOs were doing in terms of historic property survey coverage and use of Geographic Information Systems technology. He said that he was encouraging increased digitization of survey information and strongly supported involvement of NCSHPO in data standardization efforts.

#### **National Landscape Conservation System (NLCS)**

Chris McAlear, Deputy Assistant Director for NLCS and former Preservation Board member, introduced his two Division Chiefs and talked about the connections between NLCS and the cultural program and the importance of continuing to seek ways to collaborate to achieve shared conservation goals in support of the BLM mission. Nikki Moore, WO-410 Division Chief, gave an overview of the NLCS National Monuments, National Conservation Areas, Wilderness, Wilderness Study Areas, Wild and Scenic Rivers, and National Scenic and Historic Trails managed by the NLCS and talked about the critical importance for the National Conservation Lands for recreation and critical habitat. Nikki updated the Board on the FY14 science grant program in response to questions and the Board and Nikki also discussed science permits. Mary Tisdale, WO-420 Division Chief, talked about the close connection with WO-240 through joint efforts such as the Boy Scout Jamboree and Archaeology Merit Badge and Project Archeology. She also talked about the Division's efforts to implement the Hands on the Land, National Junior Explorers, Artist in Residence, and new Citizen Conservation Corps program.

#### **June 2014 Meeting**

We will schedule our June 2014 in Idaho. The June 2013 meeting was scheduled for Idaho but was cancelled and replaced by a teleconference.

#### **Field Trip:**

The Board visited with the ACHP on Thursday, December 5, in the afternoon to meet with Reid Nelson, Director of the Office of Federal Agency Programs, Caroline Hall, the Assistant Director for the Federal Property Management Section, Nancy Brown.