CREATIVE APPROACHES TO SECTION 106 COMPLIANCE: THE PERMIAN BASIN

TRANSCRIPTS

We don't have to do the same thing over and over and over the way we've always done it. We can actually be creative and use new ideas to comply with the law.

When a company wants to develop for oil on public lands, they must apply for an application for permit and drill with BLM. BLM's process includes a NEPA review. Part of that review is Section 106 compliance for archeology.

We're at the Carlsbad, New Mexico Field Office. The big draw for southeastern New Mexico is that we're in the Permian Basin. And the Permian Basin is currently the most prolific oil and gas basin in the world. And because of that, we have a lot of applications for drilling. The amount of Section 106 compliance that we need to do is a challenge here. There are so many permits coming through the office. Each one requires compliance. And choosing the best path to achieve that compliance is what we need.

The Permian Basin Project got started way back in about 2003 when we were starting to become concerned that most of the surveys that were being done in the Carlsbad oil patch were either surveying over ground that had been previously surveyed and picking up sites that had been previously recorded, or we were finding it harder and harder to fit projects, oil rigs, in between areas that had been determined to have archaeological resources.

So the oil field was getting crowded. It was getting crowded with archaeological surveys and it was getting crowded with oil rigs, essentially. And so we were having a hard time fitting things in and understanding what had previously been surveyed. A lot of times when people go out to do a survey, they would find that there was other work that had been done previously, but that those records had not been entered into the state database.

So there was a little lag in terms of what information was available. There was very, very rapid growth in the oil field. And we were finding that our process wasn't doing what we needed it to do for Section 106 compliance. So way back in 2003, we thought we had better get a handle on finding a way to get section 106 compliance done in a different way than it had before.

Under the Section 106 of the National Historic Preservation Act, the BLM has the responsibility to identify archaeological sites and other historic properties such as historic buildings or structures that might be affected by oil and gas development. Traditionally, archaeologists will go out and survey the proposed well pad or access road or utility corridor and identify archaeological sites that might be affected.

For many years, the strategy was to move the proposed well pad and avoid the archaeological site. And that became the flag and avoid strategy that we were
following. But over a number of years, we realized that strategy wasn't very effective, and sites were still being damaged. So that's when we decided to look at an alternate process of complying with Section 106, and the Permian Basin MOA and resulting PA came out of that discussion.

The Permian Basin Programmatic Agreement is an agreement among the Advisory Council on Historic Preservation, the New Mexico State Historic Preservation Officer, and the Bureau of Land Management State Office. It is intended to ameliorate the effects of full-field oil and gas development in the Permian Basin here in southeastern New Mexico.

The goals of the Permian Basin Programmatic Agreement are to do research, to promote conservation, and to promote education. In the research that we're undertaking, we want to identify and discover all the facets that we can of the archaeological record in the Carlsbad Field Office area and relate that to the larger knowledge of archaeology in the plains and also in the southwest.

For conservation, we're interested to learn how to manage and protect the archaeological resources into the future. And we do have an emphasis on education, and that is to make available all the knowledge that we gain through the Permian Basin Programmatic Agreement to other archaeologists and also to the general public.

The Permian Basin Programmatic Agreement has been rather beneficial for not only our tribe but the other tribes that have traditional homelands within that region as well because it has allowed to have some more research questions answered rather than just having all these really small areas surveyed. And you can't really get much information out of surveying a half acre or an acre or that. And it's actually allowed for the BLM to start to use tribal monitors on some of those projects.

So we're actually getting people, tribal folks, out into the field on the projects to look for resources that are important to the tribes-- not just archaeological, but also plant gathering areas, spiritual places, and different areas. So it's allowing a lot more research opportunities for tribes as well, not just the archaeological community. And so that's very helpful for us.

The easiest way to understand what the Permian Basin Programmatic Agreement is to think about it in terms of what it does for three different groups. The oil production industry, energy developers, the State Historic Preservation Office and the Bureau's archaeologists, or archaeologists in general.

And so what the Permian Basin Agreement did in a nutshell was find a way to make it possible for industry to have some good understanding of what the time frame was going to be for developing a project, because previously, they were dependent on a fairly cumbersome 106 Process and some back and forth with SHPO and some archaeologists. And then they would get their application to drill approved.
When dealing with any applicant, the key is efficiency. And the key for us is compliance. And the efficiency and compliance are both achieved through the programmatic agreement. So much that we have similar programs and other resources that do almost the same thing. We've used the programmatic agreement as an example for other resources in order to achieve compliance. In fact, it even raised the conservation while still being very efficient.

And so the oil and gas companies really appreciate the ability to still comply while doing it more efficiently and on a predictive time schedule.

I like this approach because it's creative. It allows industry to voluntarily pay into a mitigation fund rather than doing traditional archaeological survey for every oil and gas well pad and access road. The fund has provided millions of dollars for research that wouldn't otherwise have been conducted. We have learned a lot more about the archeology of Southeast New Mexico than we would have learned just from doing the traditional archaeological survey.

It gives us an opportunity to do better archaeology and to do archaeology that will help us not only streamline the 106 Process, but understand what's going on in the Permian Basin in terms of how people behaved there in the past and what they did there in the past. So for archaeologists, it took the-- it took the selection of where to look for sites away from the oil companies, because oil companies don't often drill where we'd like to look for things.

And it gave the archaeologists a chance to direct archaeological research. And that research is founded on the idea that we were mitigating the impacts, long term impacts, of oilfield development on an area where we had a fairly good understanding of the surface archaeology, but not nearly a good enough understanding of the rest of the archaeological records.

Currently we're standing on an archaeological site that was found, actually, during the course of a PBPA project. So the project came to us. It was approved. But other cultural staff, such as range cons on hydrology and biology, they came out to check out the site because even though archaeologists can sign off on a project, all other resources have to have an opportunity to view. So when we came out, found there was a site here. So the site was recorded.

The boundary was delineated, and once we knew where the site was, then we found out that it's a pretty important site. We went to mitigation. So we-- the proposed road was supposed to be almost where I'm standing. So we moved the road outside of the site boundary as far as we could. And then when the construction took place on the road, we would have had a culture monitor here. They would've been working with the construction crew when it was taking place to monitor it to make sure that the site we're on right now wasn't impacted. And that if any inadvertent finds happen with road construction that could be taken care of. So there are still artifacts underneath my feet, so it's kind of cool that it has held over the years.
We've completed 17 major projects since the initiation of the Permian Basin PA. Some of these involve surveys of areas that had high archaeological potential, but that had never been surveyed.

We've also completed a LIDAR survey for ring middens. And we have a project currently underway to do a ground survey for ring middens and for other site types within seven different study areas.

One other important project that we had-- the staff of the Carlsbad Field Office collected 500 radiocarbon samples from sites, primarily in the Mescalero Plain, and also samples for macro botanical and pollen and phytolith studies. The radiocarbon dates allowed us to outline the depth of the prehistoric occupations here, and also the intensity of the prehistoric occupations.

The macro botanical analysis led directly into a project to identify the plants that were used prehistorically, and then to illustrate those plants and to talk about their distribution in the modern landscape.

There was a Traditional Cultural Property study that was undertaken where some of the known areas that the tribe had interested in were looked over, re-surveyed somewhat, and recorded and also speaking with a lot of the traditional folks to determine those areas as well.

There's a lot of different things I'd like to see studied and research done. There's so much within the Permian Basin area that we still have questions about and would like to have further research done that there's many questions and studies that are on the minds of most of the archaeologists within the community that we'd like to see studied. And this allows to have those projects done.

One of the challenges in particular for archaeological contractors and some of the other federal agency archaeologists is understanding that we're not going to be able to identify every archaeological site. So under the Permian Basin Programmatic Agreement, we acknowledge that there are going to be some sites that are lost because we're not doing the traditional survey.

However, we were already losing sites from the standard flag and avoid strategy. They were avoiding archaeological sites by direct impact, by moving the well pad. But what we were finding was that archaeological artifacts were being collected. There was a lot of inadvertent trespass and damage being done to archaeological sites already. So although some archaeologists don't like the thought that we're losing sites because we're not identifying them, I think the trade-off and the amount of research that we have been able to do is beneficial.

The Permian Basin Programmatic Agreement has been a real eye opener for those of us in the Bureau of Land Management in New Mexico, in that we have a lot of support
from industry. I think more than 70% of the industry developers in the Permian Basin are part of the agreement now. SHPO's on board, and we have the opportunity to do some amazing archaeological research.

The Bureau of Land Management has always been interested in people bringing forth new and innovative solutions to things and letting you try it. And this was a big experiment for the Bureau. And it has paid off in so many ways, not the least of which is demonstrating to our own archaeologists and our own agency the value of doing archaeological work in a 106 context goes way beyond getting that APD approved.

It can really provide something for the future. The data that are being generated by the Permian Basin research is serving an archaeological community not just in southeastern New Mexico, but even worldwide.