



PRIVATE LANDS-PUBLIC ISSUES

106 PROCESS in Wyoming



Boswell Ranch

- 56% of the lands are federal in Wyoming
- split estates, even though the surface of the land is privately held, federal minerals also call the act into play; creates responsibilities regarding non-federal lands too.

CONSULTATION

- The regulations define the level of consultation to mean:
 - The process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the section 106 process.
 - No consulting party has a veto over the project.
 - Provides opportunity for landowners to assure views are heard and considered as part of the process.



ARTS. PARKS. HISTORY.

Boswell Ranch Wyoming State Parks & Cultural Resources

KEY LANDOWNER CONCERNS ABOUT THE PROCESS

- **Most landowners are confronted with 106 process due to:**
 - adjacent to federal lands being developed;
 - development of minerals on split estate lands.





Federal Agency RESPONSIBILITY RELATING TO NON-FEDERAL LANDS

- Can not knowingly grant permits which might impact historic properties on non-federal lands.
- Scope of federal agency's responsibility for taking into account the impact of an undertaking on non-federal lands:
 - dependent on the degree to which agency permitting decision determines or controls location of surface-disturbing activity non-federal lands that could affect historic properties.



“Rule of Reason”

- Agencies use “Rule of Reason” in applying these standards –
 - literature search to determine if known resources located with APE;
 - decide what if any on-site survey required;
 - requires consideration of specific facts in each case concerning relationship of federal and non-federal activity; and
 - as long as reasonable, good faith effort made – should be adequate.

BLM RESPONSIBILITY RELATING TO SPLIT ESTATES

- Common situation – federal minerals underlying non-federal surface
- Raises issue of federal responsibility for actions occurring on non-federal surface
- Federal mineral leasing and permitting constitute federal undertaking:
 - “But for” the federal action, would be no surface disturbance on non-federal surface –
 - potential adverse effects to non-federal surface must be taken into account.





KEY LANDOWNER QUESTIONS

- **What obligations do you have under the Act to make your property available/accessible to project proponents and federal agencies so that they can assess the impact of the project on your lands?**
- **What are the consequences of voluntarily cooperating in the process?**

CAN I DENY ACCESS TO SPLIT ESTATE?

- Mineral estate – dominant estate
- Federal lessee has right to access the property in order to comply with legal requirements to develop the federal lease
- If access denied, lessee may need to obtain court order to gain access for complying with NHPA, e.g. mandatory injunction



Diversion Dam in Fremont County

CAN I DENY ACCESS TO NON-FEDERAL LANDS?

- Denial of access does not relieve BLM of Section 106 responsibility to take into account effects of its actions on historic properties on non-federal lands
- BLM can delay permit until BLM (through project proponent) can fulfill its compliance responsibilities
- Further action to obtain access is project proponent responsibility





WHAT IF I VOLUNTARILY ALLOW ACCESS?


- Does it open my property to public access?
- If something found can Government regulate what I do on my property?
- Who owns the artifacts found?
- Can cultural surveys of my property be kept confidential?



Myth: Anything Discovered on Private Land Becomes the Property of the Federal Agency.

- Truth

- Under the Act, artifacts discovered on private land belong to the landowner and must be returned to them, unless they agree to donate them to a Federally recognized repository (e.g. University of Wyoming and Western Wyoming College).



Myth: If an “Eligible” Site is Located During a Cultural Resource Inventory, the Landowner Must Allow Access to the Public.

- Truth
 - If the “eligible” site is located during 106 survey and will not be impacted by the project, no further work needs to be done and the landowner is not obligated to allow access to the public
 - If the “eligible” site will be impacted, access is limited to those responsible for consultation on mitigation of adverse effects, and access is only until mitigation is complete.



Myth: If a Landowner or Property Owner Owns “Eligible” Buildings or the Buildings Are Listed in the National Register of Historic Places, They Must Allow Access to the Public for Visitation

- Truth

- The status of a property as “eligible” for listing or listed in the National Register is symbolic in nature. The listing in no way obligates a property owner to allow access to anyone. If a building or site is listed in the National Register, the landowner is eligible for certain government grants and tax incentives.



CONFIDENTIALITY

- Agency must withhold information on historic properties if it determines that release would:
 - cause a significant invasion of privacy
 - risk harm to a historic property
 - impede use of a traditional cultural property
- Agencies may withhold information on undertakings to protect privacy of affected parties

Wyoming SHPO Information Access Policy

- Information is released to individuals who meet the Secretary of Interior's standards for Archaeology and Historic Preservation
 - (agency cultural resource professionals, private consultants, and academics)
- Information is released to private landowners on their lands (request must be in writing)
- Site specific/locational information is restricted

What if a Private Landowner decides not to participate in the S106 Process?

- Private Landowner's interests and wishes are not represented
- The process continues between the other parties
- End product can suffer without landowner involvement and expertise

Open Discussion

- Questions
- Comments
- Follow-up needed
- Concerns