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Chairman

John M. Fowler  
Executive Director



*Preserving America's Heritage*

May 7, 2018

Esther Wagner  
Vice President – Public Lands  
Petroleum Association of Wyoming  
951 Werner Court, Suite 100  
Casper, Wyoming 82601

Dear Ms. Wagner:

On February 2, 2018, you wrote to the Secretary of the Interior expressing concerns about the federal historic preservation review process as it applies to mineral development in Wyoming. We have also received copies of similar letters from the Governor of Wyoming and local government and industry representatives. At the same time, the Wyoming State Historic Preservation Officer (SHPO) sought our guidance in addressing many of the same issues. I am now pleased to share our response to the SHPO, which addresses these concerns. We have also shared our advice with the Bureau of Land Management (BLM), which acts as the lead federal agency for the subject reviews, and the Secretary of Interior.

Our letter goes into a number of issues in detail, and I would like to call out two major points that were also key issues raised in your letter. First, no provision of the National Historic Preservation Act (NHPA) or the Section 106 regulations require or in any way authorize access to private property absent the prior approval of the land owner. When access is not available, a federal agency may use other methods to gather information about the presence of historic properties so that potential effects to them might be considered in the planning process. Second, while both the NHPA and the regulations mandate federal agency consultation with an Indian tribe when properties of traditional religious or cultural significance to the tribe may be affected by the agency's action, there are provisions within Section 106 that enable the agency to move forward with its decision making when a tribe, or any consulting party, fails to act within specified timeframes for responding to agency findings or determinations or refuses to consult.

The ACHP remains committed to working with the SHPO, BLM, Indian tribes, industry representatives, and other stakeholders to improve the efficiency of the Section 106 process as it relates to federal decision making and mineral development in Wyoming. Please feel free to contact Reid Nelson, Director, Office of Federal Agency Programs, at [nelson@achp.gov](mailto:nelson@achp.gov) with any questions you may have on these issues.

Sincerely,

John M. Fowler  
Executive Director

Attachments