



WYOMING LEGISLATIVE SERVICE OFFICE

Memorandum

DATE April 15, 2025

TO Joint Travel, Recreation, Wildlife, and Cultural Resources Committee

FROM Brian Fuller, Deputy Legal Administrator

SUBJECT Topic Summary: Trespass and Corner Crossing

This topic summary provides background information on Wyoming's trespass laws and the act of "corner crossing" from one parcel of public land to another parcel of public land. This summary also includes information on relevant federal law and a recent opinion from the United States Court of Appeals for the Tenth Circuit regarding corner crossing in Wyoming.

Wyoming Trespass Law, Generally

Wyoming has three separate trespass offenses: (1) criminal trespass; (2) game-and-fish trespass; and (3) resource-data trespass. While similar, the three offenses each contain separate and distinct elements (generally differing in the intent for entering the land and having different knowledge requirements).

Criminal Trespass

To be guilty of criminal trespass, a person must enter or remain on or in the land or premises of another person and: (1) knowing the person is not authorized to do so; or (2) after the person is notified to depart or to not trespass.¹ For purposes of this general trespass offense, notice may be given by personal communication to the person by the owner (or an occupant or agent) or law enforcement, or by posting signs that are "reasonably likely to come to the attention of intruders."² Criminal trespass is a misdemeanor punishable by imprisonment for up to six months, a fine not to exceed \$750, or both.³

¹ W.S. 6-3-303(a).

² W.S. 6-3-303(a)(i)–(ii).

³ W.S. 6-3-303(b).

Game-and-Fish Trespass

Wyoming law provides in a separate statute that no person shall "enter upon, travel through or return across the private property of any person to take wildlife, hunt, fish, collect antlers or horns, or trap without the permission of the owner or person in charge of the property."⁴ Unlike the general trespass offense, a person engaging in these game-and-fish related activities does not need to know—or does not need to be first notified—that the person is trespassing to be guilty of game-and-fish trespass, so long as the person has entered the private property of another with the purpose to take wildlife, hunt, fish, collect antlers or horns, or trap.⁵ A violation of this trespass statute is a low misdemeanor (punishable by imprisonment for up to six months, a fine not to exceed \$1,000, or both).⁶

In 2023, the Legislature amended the game-and-fish trespass statute to include the prohibition on traveling through or returning across the private property to hunt. For purposes of this statute, "travel through or return across" is defined to require "physically touching or driving on the surface of the private property."⁷

In 2004, the Wyoming Attorney General issued a letter to the Game and Fish Department that concluded that corner crossing (crossing one parcel of public land to another to hunt on the other public parcel) may not violate the game-and-fish trespass statute, because that statute requires a person to hunt or intend to hunt on private property without permission.⁸ The letter noted, though, that corner crossing may be a criminal trespass under W.S. 6-3-303, depending on the facts surrounding the crossing.⁹

Trespass to Collect Resource Data

Wyoming law also prohibits a person from trespassing to collect resource data (which includes land-use data and data related to agriculture, minerals, and natural resources). A person is guilty of trespassing to unlawfully collect resource data from private land if the person enters onto private land for the purpose of collecting resource data and does not have an ownership interest (or other legal or contractual authorization to enter) or written or verbal permission to enter to collect the specified resource data.¹⁰ Similarly, a person is

⁴ W.S. 23-3-305(b).

⁵ See id.

⁶ Id.; W.S. 23-6-202(a)(v).

⁷ W.S. 23-3-305(b); 2023 Wyo. Session Laws, Ch. 112, § 1.

⁸ Office of the Attorney General, Letter to Terry Cleveland, Director, at *5 (June 8, 2004). The letter is included as a separate document in the meeting materials for this meeting.

⁹ Id.

¹⁰ W.S. 6-3-414(a).

guilty of unlawfully collecting resource data if the person enters onto private land and collects resource data from that land without an ownership interest (or authorization to enter) in the land or permission from the owner to enter to collect the data.¹¹ Like the game-and-fish trespass statute, the resource-data trespass statute does not require a culpable mental state (i.e., knowledge) for conviction, so long as the person is entering private land for the purpose of collecting resource data without ownership, authorization, or permission.¹²

A first violation of this trespass statute is a misdemeanor punishable by imprisonment for up to one year, a fine not to exceed \$1,000, or both.¹³ For a second or subsequent offense, a violation is a misdemeanor punishable by imprisonment for at least ten days and up to one year, a fine not to exceed \$5,000, or both.¹⁴

Other Trespass Offenses

Wyoming law also provides separate penalties associated with skiing on land without permission (although only the section title uses the term "trespass").¹⁵ This separate provision provides a misdemeanor punishable by a fine if a person: (1) skis on land posted as closed; (2) enters public or private land adjoining a ski area when posted as closed; or (3) enters a portion of leased government land knowing that the lessee has deemed the area unsafe or has posted warning signs that prohibit entry and are reasonably likely to come to the public's attention.¹⁶

Finally, Wyoming law provides that a person is guilty of a misdemeanor if the person knowingly and willfully trespasses on land owned or mortgaged by the State Loan and

¹¹ W.S. 6-3-414(b).

¹² A previous provision of this statute also prohibited any person from crossing private land to access adjacent or proximate land where the person collects resource data. W.S. 6-3-414(c). The Tenth Circuit held that this part of the statute regulated protected speech under the First Amendment and, while trespassing does not enjoy First Amendment protection, the provision targeted the "creation" of speech by imposing heightened penalties on those who collect resource data. W. Watersheds Project v. Michael, 869 F.3d 1189, 1191–92 (10th Cir. 2017). The Legislature repealed W.S. 6-3-414(c) in 2023. 2023 Wyo. Session Laws, Ch. 52, § 2.

¹³ W.S. 6-3-414(d)(i).

¹⁴ W.S. 6-3-414(d)(ii).

¹⁵ W.S. 6-9-201.

¹⁶ W.S. 6-9-201(a). The fine cannot exceed \$100. Id.

Investment Board and cuts timber, grass, hay, or grazes or cultivates the land without authority.¹⁷

Civil Trespass

In addition to the criminal remedies for trespassing, Wyoming recognizes a civil cause of action for trespass onto private property.¹⁸ Trespasses are considered to be "invasions of the interest in the exclusive possession of land and in its physical condition."¹⁹ To successfully assert a trespass claim, a plaintiff must show that: (1) the plaintiff was in possession of the property; and (2) the defendant intentionally entered the property.²⁰ Although intent is an element of a trespass claim, proof of actual knowledge that the land is private property is not required.²¹

In addition to the common-law trespass cause of action, Wyoming law has provided statutory causes of action to specific types of trespass, including civil data trespass (associated with a trespass to collect resource data)²² and a right of recovery to damage caused to the surface estate by a mineral-estate owner in split estates for mineral production.²³

Additional Relevant Law

Finally (and important for purposes of the corner-crossing discussion below), Wyoming law specifies that the "ownership of the space above the lands and waters of this state is declared to be vested in the several owners of the surface beneath."²⁴ It does not appear that the Wyoming Supreme Court has interpreted this provision (in the context of trespassing, corner crossing, or otherwise).

Federal law also plays a role in the consideration of corner crossing. The federal Unlawful Inclosures Act provides (in relevant part) that:

¹⁷ W.S. 11-34-130. The penalty is a fine of not less than \$25 and not exceeding \$500, imprisonment for not less than 30 days and not more than six months, or both. *Id.*

¹⁸ *Bellis v. Kersey*, 2010 WY 138, ¶ 19, 241 P.3d 818, 824 (Wyo. 2010).

¹⁹ *Id.* (citation omitted).

²⁰ See *Skane v. Star Valley Ranch Ass'n*, 826 P.2d 266, 268–69 (Wyo. 1992).

²¹ See Wyo. Civ. Pattern Jury Instruction 21.09 (stating that an entry is intentional if the defendant intended to be in that location and even if the defendant mistakenly thought that the defendant had a right to be on the property).

²² W.S. 40-27-101.

²³ W.S. 30-5-401 through 30-5-410.

²⁴ W.S. 10-4-302. This ownership is subject to the right of flight provided under Wyoming law.

No person, by force, threats, intimidation, or by any fencing or inclosing, or any other unlawful means, shall prevent or obstruct, or shall combine and confederate with others to prevent or obstruct, any person from peaceably entering upon or establishing a settlement or residence on any tract of public land subject to settlement or entry under the public land laws of the United States, or shall prevent or obstruct free passage or transit over or through the public lands: Provided, This section shall not be held to affect the right or title of persons, who have gone upon, improved or occupied said lands under the land laws of the United States, claiming title thereto, in good faith.²⁵

This provision of the Unlawful Inclosures Act was enacted in 1885 and does not appear to have been amended.²⁶ There have been several court cases that have interpreted this act, including one that may be relevant to corner crossing. In 1914, the United States Court of Appeals for the Eighth Circuit (which, at the time, included Wyoming) held that warning notices that had the effect of depriving livestock owners a reasonable right-of-way for their livestock to reach public grazing lands were unlawful under the Unlawful Inclosures Act.²⁷

Another federal court of appeals has stated that the Unlawful Inclosures Act is not limited to obstruction by acts of occupancy but also includes obstruction of free passage by force, threats, or intimidation.²⁸ And the prohibition in the Unlawful Inclosures Act is not limited to permanent obstacles; the prohibition applies to "a transient obstacle to passage or transit by particular persons on a particular occasion."²⁹

Corner Crossing

In Wyoming, public and private lands were allocated in a way that resulted in a "checkerboard pattern of land ownership" that persists today.³⁰ These private and public parcels meet at their corners; the points of contact at each corner "meet at an infinitely small point and, 'like a point in mathematics, are without length or width.'"³¹ To gain access to public parcels in this checkerboard layout, persons generally must engage in corner

²⁵ 43 U.S.C. § 1063.

²⁶ 23 Stat. 322.

²⁷ Mackay v. Uinta Development Co., 219 F. 116 (8th Cir. 1914).

²⁸ McKelvey v. United States, 273 F. 410, 413 (9th Cir. 1921), aff'd, 260 U.S. 353 (1922).

²⁹ McKelvey v. United States, 260 U.S. 353, 357 (1922).

³⁰ Iron Bar Holdings, LLC v. Cape, 674 F. Supp. 3d 1059, 1062 (D. Wyo. 2023) (describing how the United States granted railroads every other section of land in hopes of increasing the value of the public parcels for future sale).

³¹ Id. (quoting Mackay v. Uinta Development Co., 219 F. 116, 118 (8th Cir. 1914)).

crossing, which involves traveling by foot from public land to public land at the corners while never touching private land and not damaging private property.

A recent case in Wyoming has provided important clarifications and statements on corner crossing, including holdings that may impact Wyoming's trespass laws. In 2020, hunters engaged in corner crossing from one public parcel to another, despite the presence of posts and chained signs that expressly stated, "no trespassing."³² The hunters crossed by swinging from the poles or jumping from public parcel to public parcel, never setting foot on the private parcels but passing "momentarily" through the airspace of the private parcels.³³ The property manager of the private parcels confronted the hunters, who refused to leave the area.³⁴ The hunters returned in 2021, this time using a steel ladder that touched the two public parcels to corner cross.³⁵

The private-property owner sued the hunters in federal court for trespass. The federal district court granted summary judgment for the hunters, concluding the following:

- Subject to restrictions, a private owner owns the airspace within a reasonable height of the land and has a right to exclude others from that airspace. The district court cited W.S. 10-4-302 to recognize the owner's right to exclude others from the airspace but noted that various laws and ordinances restrict an owner's intended use of property, including any "valid preexisting federal-law limitations on what otherwise would be state-law property rights" that "may inhere in title so as to limit compensable property rights."³⁶
- In this case, there are relevant restrictions on the ownership of airspace and the right to exclude within the checkerboard pattern, including the Eighth Circuit's holding in 1914 that a person should have a reasonable way of passage over private lands to access public lands.³⁷
- The Wyoming Legislature's changes to the game-and-fish trespass statute "plainly demonstrate the Wyoming Legislature's intent to ensure such corner crossing does not constitute a criminal act."³⁸
- The hunters' "temporary incursions" into the airspace at the corners of the owner's parcels "does not constitute trespassing unless actual damages result therefrom."³⁹

³² Iron Bar Holdings, LLC, 674 F. Supp. 3d at 1066.

³³ Id. at 1066.

³⁴ Id.

³⁵ Id. at 1067–68.

³⁶ Id. at 1070–71 (quoting McCutchen v. United States, 14 F.4th 1355, 1365 (Fed. Cir. 2021)).

³⁷ Iron Bar Holdings, LLC, 674 F. Supp. 3d at 1074–75.

³⁸ Id. at 1076.

³⁹ Id.

- In this case, the hunters' corner crossings were not unlawful trespasses, and the owner's installation of posts and chains constituted a violation of the Unlawful Inclosures Act.⁴⁰

The owner appealed the district court's grant of summary judgment to the hunters. The Tenth Circuit affirmed the district court, concluding that the Unlawful Inclosures Act allows corner crossing if access to public lands is otherwise restricted.⁴¹ In affirming the district court, the Tenth Circuit stated the following:

- Similar to the district court, the owner had a right to exclude, including the right to exclude from the airspace over the property.⁴²
- The Tenth Circuit predicted⁴³ that Wyoming would deem the hunters' corner crossing as a civil trespass (reaching this conclusion because Wyoming has adopted the common law and W.S. 10-4-302 concerning the ownership of airspace).⁴⁴
- Although predicting that Wyoming would recognize a civil trespass in this case, federal law has overridden the state's civil trespass regime in the corner-crossing context.⁴⁵ The Unlawful Inclosures Act provides that any inclosure of public land is prohibited, and no person "may completely prevent or obstruct another from peacefully entering or freely passing over or through public lands."⁴⁶
- Reviewing case law, the Tenth Circuit concluded that the Unlawful Inclosures Act proscribes the exclusive use and occupancy of any part of the public lands, and the Act prohibits conduct that prevents or obstructs free passage or transit over or through the public lands.⁴⁷ The court noted that, when "a landowner denies checkerboard access, he imposes a proscribable nuisance under federal law,

⁴⁰ Id. at 1077–78.

⁴¹ Iron Bar Holdings, LLC v. Cape, -- F.4th --, 2025 U.S. App. Lexis 6240, at *3 (10th Cir. March 18, 2025).

⁴² Id. at *20–21.

⁴³ Because Wyoming courts have not considered whether state law would treat the hunters' intrusion as an actionable civil trespass, the Tenth Circuit made an "Erie-guess" as to how the Wyoming Supreme Court would rule on the question. Id. at *21; see also Pehle v. Farm Bureau Life Ins., 397 F.3d 897, 901 (10th Cir. 2005) (requiring federal courts to apply state substantive law when resolving disputes not directly implicating a federal question).

⁴⁴ Iron Bar Holdings, LLC, 2025 U.S. App Lexis 6240, at *22. The Tenth Circuit discounted the district court's reliance on Wyoming's changes to the game-and-fish trespass statute, noting that the statute did not impact or amend Wyoming's civil trespass law. Id. at *22 & n.24.

⁴⁵ Id. at *22.

⁴⁶ Id. at *24.

⁴⁷ Id. at *38–39.

notwithstanding such action may involve an entry upon the lands of a private individual."⁴⁸

- Wyoming law is preempted by the Unlawful Inclosures Act. While states may prescribe "police regulations" applicable to public land areas, those regulations cannot be arbitrary or inconsistent with applicable congressional enactments.⁴⁹ And the Unlawful Inclosures Act supplants conflicting state law since a "different rule would place the public domain of the United States completely at the mercy of state legislation."⁵⁰

As of the date of this summary: (1) the owners do not appear to have filed a petition for reconsideration or en banc consideration (consideration by the entire court) with the Tenth Circuit; and (2) the owners do not appear to have filed a petition for a writ of certiorari with the United States Supreme Court (although the deadline for that petition has not yet lapsed).

Please let me know if you have any questions or would like further information.

⁴⁸ Id. at *39 (quotations and citation omitted).

⁴⁹ Id. at *47 (quoting McKelvey, 260 U.S. at 359).

⁵⁰ Id. (quoting Camfield v. United States, 167 U.S. 518, 525–26 (1897)).