

# Coal and Culture

## The Office of Surface Mining's Tale of Two Resources

Congress acknowledged a dual purpose when enacting the Surface Mining Control and Reclamation Act of 1977 (SMCRA): a healthy coal mining industry is essential to the national interest, while the industry's surface coal mining operations must be conducted in a manner that protects the environment, including the cultural environment. Many states already had mining programs in place that included provisions for the consideration of cultural resources prior to the passage of this legislation. However, the Act introduced a nationwide, uniform approach to coal mining and reclamation operations. Historic properties were addressed from a national perspective that required applicants for surface coal mining permits to include in their applications accurate maps showing all manmade features and significant archeological sites that are known to exist in the proposed project area. The regulatory authority could designate an area unsuitable for all or certain types of coal mining if it affected fragile or historic lands where such operations could result in significant damage to important historic, cultural, scientific, and esthetic values and natural systems. Surface coal mining operations "which adversely affect any publicly owned park or places

included in the National Register of Historic Sites (sic) unless approved jointly by the regulatory authority and the federal, state, or local agency with jurisdiction over the park or the historic site." were prohibited, as were mining operations within 100 feet of a cemetery. The Act also created the Office of Surface Mining (OSM) as the federal agency responsible for implementing the provisions of the Act, and it provided for the delegation of most responsibilities to coal producing states that want to assume their own regulatory programs.

Two major statutes address the consideration of historic properties affected by surface coal mining operations. In addition to the specific requirements for the protection of historic properties in SMCRA, Section 106 of the National Historic Preservation Act (NHPA) requires federal agencies to take into account the effects of their undertakings on historic properties. While the requirements in Section 106 of NHPA apply only to federal or federally assisted undertakings, the requirements in SMCRA apply to all activities authorized by that Act. Such activities include those a state assumes when it accepts a grant to cover a portion of the cost of its own regulatory program, thereby agreeing to assist the Secretary of the Interior in fulfilling his Section 106 responsibilities. In order to ensure that the requirements in SMCRA are implemented at all levels, including those instances where a state has a responsibility for meeting federal program requirements, OSM developed regulations that contain specific mechanisms for the consideration of historic properties in the context of SMCRA.

States with approved coal mining regulatory programs, called primacy states, must have in place regulations that are no less effective than OSM's regulations governing the consideration and protection of cultural resources. These programs call for the regulatory authority to consult with the State Historic Preservation Officer

*Roadside Mine—Coal Load Out. Photo courtesy Montana Abandoned Mine Reclamation Program.*



regarding information on known cultural resources, including sites listed or eligible for listing in the National Register of Historic Places, regardless of land ownership. The regulations also require permit applicants to provide information on cultural, historic, and archeological resources listed or eligible for listing in the National Register and known archeological sites within the proposed permit area and adjacent areas. In addition, the regulatory authority may require a permit applicant to collect additional information and conduct field investigations or other appropriate analyses, and to protect eligible or listed National Register properties through appropriate mitigation and treatment measures. Prior to issuing a permit for a proposed mining operation, the regulatory authority is required to make a written finding that it has considered the effect of the permitting action on properties listed in or eligible for the National Register.

A second major aspect of SMCRA, the abandoned mine land reclamation program, is covered under Title IV of the Act. The abandoned mine land program provides for the restoration of lands mined and abandoned or left inadequately restored prior to the implementation of the Act. Reclamation of these properties often involves dealing with buildings, structures, and features associated with mining that are more than 50 years old. OSM has always considered the granting of abandoned mine land funds to state and tribal abandoned mine reclamation programs as federal undertakings subject to the full requirements of the NHPA. Historic preservation consultations on thousands of abandoned coal mine sites have been conducted since the program began. Many of the properties have been determined significant and warrant additional preservation work or project redesign.

Abandoned mine land preservation work has ranged from simple recording to complex Historic American Buildings Survey and Historic American Engineering Record documentation, from stabilization to restoration, from simple data recovery programs to full development of museum displays and site development for public tours. A visit to the Montana abandoned mine land program web site allows the viewer to see maps of abandoned mine land sites from over 200 mining districts along with background narratives that place each mine within its historical context: <[www.deq.state.mt.us/mtmines2//inmines.htm](http://www.deq.state.mt.us/mtmines2//inmines.htm)>.

These statutory and regulatory requirements translate into various kinds of OSM activity. An OSM archeologist may visit a field site with a concerned local citizen or consult in the tribal council chambers with the religious elders from an Indian tribe. The archeologist frequently meets with his counterparts in other federal or state agencies to develop strategies for the protection of historic and cultural resources, and sometimes consults directly with state historic preservation officers or the Advisory Council on Historic Preservation in this regard. The archeologist is also the principal instructor in OSM's three-day historic preservation training course that is provided for agency, state, and tribal personnel. This training focuses on the application of federal preservation laws as they relate to coal mine permitting and abandoned mine reclamation. More than 350 students have attended this OSM preservation course since its inception.

Several recent preservation projects illustrate some of the preservation activities that OSM is directly or indirectly involved in. As part of commemorating the 20th anniversary of SMCRA, the Utah Abandoned Mine Reclamation Program was awarded a National Abandoned Mine Land Reclamation Award for its Silver Reef Reclamation Project. One important aspect of the project was the reclamation of a historic mining district that covered 800 acres and included the closure of more than 500 mine openings. Mitigation efforts at a site located on the Cordero Mine in the Powder River Basin of Wyoming drew considerable attention: excavation work at the site recovered components from the Middle Missouri River Valley culture, which were the first of their kind ever identified in the state. Data recovery work at another Powder River Basin site at Belle Ayr Mine fully documented through archival and archeological research the Sawyers Caballo Creek Rifle Pit site. The Caballo Creek Rifle Pit site was occupied on August 9 and again on August 16-18, 1895, by members of the James Sawyer road survey expedition. The rifle pits were constructed in anticipation of attacks by Cheyenne and Sioux raiding parties.

OSM funding supported two award-winning films, *Against the Darkness* (1991) and *Paupers' Dreams* (1992), produced by the Montana Department of Environmental Quality, Abandoned Mine Reclamation Program, which depict the development of coal and metal mining

in Montana. The OSM homepage <<http://www.osmre.gov/osm.htm>> has a cover picture of Ellison's Rock Petroglyph Site, a sandstone rock formation, that contained several outstanding petroglyphs or rock art done by Native Americans. The accompanying text and pictures show the recovery of several of the rock art panels and their relocation to the Northern Cheyenne Tribal Center in Lame Deer, Montana.

On Indian lands, OSM works very closely with tribal governments to protect cultural resources associated with either coal mining or abandoned mine reclamation activities. Such efforts often include ongoing consultations with tribal counterparts, joint visits to archeological sites for field investigations, mutual sharing of information between OSM and the tribes, and respect for a tribe's desire for confidentiality as it pertains to certain information about its cultural and historic past. In conjunction with its Indian trust responsibilities, OSM together with the Bureau of Land Management (BLM) and Bureau of Indian Affairs also offers formal trust training to federal employees from several agencies. One of the specific trust training sessions focuses on traditional cultural properties and how they must be considered. These federal trust responsibilities are the subject of an award-winning film entitled *Sacred Domain: Tribal Perspectives in Land Management* (1998) that OSM produced in partnership with BLM and uses in the trust training program to provide heightened awareness of sacred sites and traditional cultural properties.

There are a number of challenges facing OSM as the agency moves into the 21st century.

Even after 20 years of existence, coordination of cultural resource activities between the various land management agencies, state regulatory authorities, and OSM continues to evolve. For example, in 1987 OSM set forth regulations governing the protection of historic properties, but these regulations were subject to legal challenges by both the coal industry and the preservation community. The court ruled that the regulations were based on the incorrect premise that state permitting actions are not federal undertakings, and then remanded the matter to the Secretary for action to bring OSM into compliance. As a result of this lawsuit and subsequent amendments to the NHPA, OSM in cooperation with the Advisory Council on Historic Preservation and the National Conference of State Historic Preservation Officers is currently pursuing the development of a nationwide programmatic agreement as an instrument for implementing its Section 106 responsibilities relative to state-issued mining permits.

The passage of time also creates other dilemmas for OSM, such as the status of buildings and structures that are more than 50 years old and may have characteristics that would make them eligible for the National Register, but are subject to reclamation under both SMCRA's active and abandoned mine lands programs. The creation of new laws, regulations or executive orders are all actions that trigger OSM involvement. A case in point is the consideration of Executive Order 13007 that concerns Native American cultural and religious beliefs and practices on federal lands. In order to fully implement the order, collection of information and consideration of Native American concerns need to be undertaken at the earliest possible time. This involves the federal land management agency at the coal leasing stage, and also raises the issue of the role that state regulatory authorities have in the application of the executive order under their approved federal lands primacy programs. OSM is working with various parties to clearly define these kinds of roles as well as the many other responsibilities and challenges related to the protection of historic and cultural resources that will continue to be associated with coal mining activity in the approaching millennium.

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*Locust Summit Breaker, anthracite coal region, Pennsylvania. Photo courtesy Office of Surface Mining, Harrisburg, Pennsylvania.*

