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NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATIONS ACT

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED SIXTH CONGRESS

SECOND SESSION

ON

OVERSIGHT HEARING TO PROVIDE FOR THE PROTECTION OF NATIVE AMERICAN GRAVES

JULY 25, 2000
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NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT

TUESDAY, JULY 25, 2000

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 10:06 a.m. in room 485, Senate Russell Building, Hon. Daniel K. Inouye (vice chairman of the committee) presiding.

Present: Senator Inouye.

STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII, VICE CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

Senator INOUYE. The committee meets this morning to receive testimony on the implementation of the Native American Graves Protection and Repatriation Act.

It has been almost 10 years since this act was signed into law by the President. With a decade of experience, we would customarily anticipate that there has been substantial progress realized in the repatriation of Native American human remains, funerary and sacred objects, and items of cultural patrimony, but our hearing in April of last year indicated that such progress had not been realized and that more and more tribal representatives who have been dealing with these matters have experienced an increasing hostility on the part of the Department when it comes to repatriation.

As those who were here at the committee's hearing last year know, many of the witnesses called for the re-delegation within the Interior Department of the responsibility for implementing this act. A later reorganization of sorts was effected, but tribal representatives tell the committee that not much has changed.

We are told that one of the key people charged with implementing the act has stated that the Native American Graves Protection and Repatriation Act is not an Indian law.

As a primary sponsor of this act in the Senate, I wish it were true. I wish that we had never had cause to have to enact a law providing for the return of the human remains of Native people of this land.

No other group of Americans has ever needed such protection, but tragically the human remains of American Indians and Alaska Natives and Native Hawaiians have not been accorded the dignity and respect that has always been accorded to their non-Indian counterparts. Instead, the graves of Native people, the ancestors of some of the people in this room, have been desecrated, and the re-

mains, the funerary objects and the sacred objects, and the items of cultural patrimony that were buried with them were sent to museums and scientific institutions and Federal agencies where, sadly, they continue to remain. So let me assure one and all that this is, indeed, an Indian law, and the Federal courts have so stated.

In the past few years, many of us have read about the discovery of human remains that have come to be known as the Kennewick man. What most Americans don't know, however, is that those remains, which, under the act, should have been repatriated, have instead been made the subject of a lengthy court challenge and ultimately a very costly DNA analysis, and that at least one Department official has indicated that the manner in which the Kennewick remains were handled sets a new standard.

By that I suppose it is meant that in the future other remains will not be repatriated until all scientific studies have been exhausted, so I will call upon the Department to inform Indian Country as to the source of the authority upon which this so-called new standard will rely, because it is not to be found in the Native American Grave Protection and Repatriation Act.

However, with that said, I want to also make clear that we are not here to chastise the Department of the Interior and the good people that work there. What we are here to do is assess what progress has been made, what challenges remain to be addressed, and how we can best go about assisting the Department and assure that notices of repatriation are published, and published in a timely fashion; that civil penalties are assessed where appropriate; that conflicts of interest do not exist; and that the policy of the act is honored, not only throughout the Department but throughout the Government.

I would hope that each person who has some responsibility for the implementation of this act might ask themselves, "What if these remains were the remains of my grandmother or my great-grandfather?"

With that, may I call upon the first panel: Armand Minthorn, member, Board of Trustees of the Confederated Tribes of the Umatilla Indian Reservation of Oregon and the Chair of Native American Graves Protection and Repatriation Act Review Committee; Dr. Martin Sullivan, executive director, Historic St. Mary's Commission of Maryland and former chair, Native American Graves Protection and Repatriation Act Review Committee; and Professor Rebecca Tsosie, College of Law, Arizona State University of Arizona.

May I now call upon Armand Minthorn.

STATEMENT OF ARMAND MINTHORN, MEMBER, BOARD OF TRUSTEES, CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION, PENDLETON, OR, AND CHAIR, NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT REVIEW COMMITTEE

Mr. MINTHORN. Good morning, Senator.

First, I want to thank you and encourage any assistance that we can offer as a committee to the words that you spoke with your opening statement. It is true that the NAGPRA law is Indian law

and it has to be treated as such. If there is any assistance, Senator, that the committee can work toward and work with you, please let us know.

My name is Armand Minthorn. I am a member of the Confederated Tribes of Umatilla and chairman of the Cultural Resources Commission.

Over the past 3 years, I have served on the Review Committee established by the Native American Graves Protection and Repatriation Act. At the April 2000, Review Committee meeting I was named interim Chair. During my service to the tribe as well as to the Review Committee, I have witnessed first-hand implementation of NAGPRA. What I have seen over the last 2 years has been very disturbing.

NAGPRA was passed to protect the human rights of Native American tribes and individual lineal descendants; however, agency implementation, particularly at the Department of the Interior, has failed to carryout the intent of NAGPRA, making repatriation more difficult.

I would like to discuss some elements of the implementation of NAGPRA. One is the consultation with tribal governments. Two is the precedent being established by the Park Service's implementation of NAGPRA. Three, the Review Committee.

For illustration, I used the case of Thechaminsh Oytpamanatityt, or the Kennewick man. We have been involved in this case since the first days of release of the carbon dating results in 1996. Since then, we have struggled against Interior, Department of Justice, Corps of Engineers, and the media to have our voices heard and our rights respected. To date, we are not winning this battle.

The statute made it clear that the tribes are to be an integral component of the decisionmaking process through consultation. The regulations written by Interior require that consultation be the foundation of the repatriation process. We are disappointed in the form and the content of the consultation process Interior has decided to pursue in the Kennewick man case.

Rather than engage in collaborate decisionmaking or a meaningful consultation as required by NAGPRA and executive order, Interior has chosen, instead, to inform the five claimant tribes of the decisions made after the fact.

The decision by Interior to go ahead with DNA analysis of the Kennewick man is a good example of the failure of the consultation process. February 2000, Interior made the final determination to conduct DNA analysis on the Kennewick man. All five tribes—Umatilla, Yakima, Nez Perce, Colville, and Wanapum—opposed DNA testing. Interior, however, decided that it was in the best interests to do these tests. They did so, even though their own experts agreed with the tribes that DNA results could not possibly show cultural affiliation, and the insignificant likelihood of the presence of any viable DNA was grounds, alone, not to conduct the tests.

The precedent of using DNA evidence to show cultural affiliation struck a devastating blow to the pursuit of repatriation throughout Indian Country. Interior's reliance on DNA testing is being construed as an open invitation to all Federal agencies and museums to allow such testing on their collections. We have received re-

quests and are aware of other requests around Indian Country to do DNA analysis on Native American remains.

While I will not concede that there will be cases where testing is necessary, the decision must be made with the tribes not for the tribes. Any other avenue removes the tribes from the repatriation process and is contrary to the intent of NAGPRA.

Mr. Inouye and members of the committee, today I have given you some disturbing news about how NAGPRA is being misapplied by agencies at the expense of tribes. I urge you to use whatever methods are at your disposal to inform these agencies that this is unacceptable.

NAGPRA does not need to be amended to accomplish this; however, the agencies and the museums implementing this statute must be made aware, in the strongest terms possible, that NAGPRA was passed to secure the human rights of tribes to protect their ancestors. It was not intended and should not be used as a backhanded way to accomplish scientific study of questionable merit under the guise of determining cultural affiliation.

Senator today I open up with these words to you. Last year the tribes and Native people were here, and you cited what took place last year. We are now at a stage with working with NAGPRA. We are still in the same scenario. Native Americans are having problems with enforcement and implementation of NAGPRA, and sometimes this is at the expense of our sacred human remains. That is not right.

I ask you today, Senator, from my heart to yours, we, as tribes, can only do the best that we can with what we have, and I implore and ask you to assist us, to help us. Strengthen the efforts with NAGPRA so that we, as tribes, can continue to maintain and strengthen our way of life. This is what I ask you today, Senator.

Thank you.

[Prepared Statement of Mr. Minthorn appears in appendix.]

Senator INOUYE. I can assure you, sir, that whatever authority or power that is within the committee will be employed to bring this about.

May I now call upon Dr. Sullivan.

STATEMENT OF MARTIN SULLIVAN, EXECUTIVE DIRECTOR, HISTORIC ST. MARY'S COMMISSION, ST. MARY'S CITY, MD, AND FORMER CHAIRMAN, NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT REVIEW COMMITTEE

Mr. SULLIVAN. Good morning, Senator. I am Martin Sullivan. For 8 years I was a member of the Review Committee overseeing NAGPRA. For 9 years I was the director of the Heard Museum in Phoenix, and in that capacity I have had the privilege of participating in a number of repatriations of human remains, sacred objects, and objects of cultural patrimony.

Like my colleague, Armand Minthorn, I want to express my personal appreciation to you, Senator, and to the members of your committee for your guidance and leadership. This has been a watershed law. It has had its share of frustrations and then some. But, remarkably, much has happened that has, indeed, followed your intent when you enacted the law, and I think that the frustrations that we are hearing on the Review Committee—and some of

which I want to express this morning—simply reflect the fact that these matters are of true urgency to the tribes and of significance, as well, to the Federal agencies and the museums and the universities that fall under its purview.

I'm speaking this morning really to try to sum up what we on the Review Committee have heard over the past 8 years as we have traveled around the country, including to Alaska and to Hawaii and to every region of the country.

There are some themes that have begun to develop that I think encapsulate a growing concern that the administration of the law within the National Park Service at present has begun to fall away from that feeling of urgency and national priority, which I know you established when the law was enacted.

There are five particular things I'd like to speak about. One is the serious concern that many have of the backlog in publishing notices in the Federal Register of intent to repatriate. This is a concern that has been growing because of a staff shortage and perhaps because of other reasons.

Last month we on the Review Committee got a memo from the assistant director of the National Park Service indicating that as of June there were, I think, 236 notices of intent to repatriate that were still pending publication.

What that boils down to is that these are situations in which tribes have reached an agreeable outcome, a satisfactory outcome with museums, Federal agencies, and universities about repatriation, but it can't happen. It can't happen because the backlog is preventing the final authorization from going ahead.

Although the Department has pledged additional resources to put to work on this, we are not seeing a substantial diminishment yet of that backlog.

A related concern is the staffing and the question of whether conflicts of interest can be addressed fairly within the current administrative structure.

Your Senate committee, Senator, last year heard testimony from a number of tribes about their concern that the Park Service, itself, has a number of operating units which are responsible for being accountable to NAGPRA, and which, in the opinion of some tribes, have not been diligent in following the law.

After discussion by the Review Committee and by a number of tribes with senior officials of the Secretary's office, there was a partial reorganization that occurred some months back and people have been shifted around, but we fear that we see two things continuing to happen. The first is an inadequacy of staff. In fact, there have been some well-qualified staff moved out of national NAGPRA compliance and relatively inexperienced contractors, temporary people, brought in to do their jobs. This doesn't seem consistent with the priority that you've established.

Second, there are instances in which operating units of the Park Service appear to be off on their own direction. The committee heard a dispute last year involving the Hopi Tribe and the Chaco Culture National Historical Park about the process that the park used to determine cultural affiliation of somewhat ancient remains. We heard a lot of testimony from both sides and from other parties,

and we deliberated long and hard about what would be the appropriate guidance and advice to offer.

I sent a letter on behalf of the committee to the Inter-Mountain region of the Park Service and to the Chaco Park and received back from them, in about 1 month, a letter that explicitly rejected the suggestions of the Review Committee for reexamining cultural affiliation.

Now, we don't know whether the region consulted actively with the national office and got an opinion or whether the national office was not consulted, but it appears that there is a disparity between what we have tried to understand and interpret as the intent of the law and its processes and what is actually happening.

This is the only instance so far in which a dispute before the Review Committee involving a Federal agency has led to an outcome where that Federal agency has rejected the Review Committee's guidance. As a result, the Hopi Tribe and the other Pueblo Tribes associated with its claim, really have no recourse now except to go to Federal court, which is going to be an expensive and drawn-out proposition, so this is a serious concern for us.

The third of our concerns is that there needs now to be timely action by the Interior Department in promulgating regulations for the disposition of the so-called culturally unidentifiable human remains. The Review Committee has heard testimony, again, throughout the country from tribes and from other interested parties that has offered to us some workable ways of significantly reducing the number of remains that are truly unidentifiable, and many of these techniques have already been at work: Regional coalitions of tribes working together, federally-recognized tribes working with non-federally-recognized tribes where the latter really are the appropriate, legitimate claimants to receive remains.

Our hope is that the regulations will offer some directions that will significantly minimize the number of so-called unidentifiable remains so that the kinds of instances that Mr. Minthorn has described with respect to the Kennewick man will not be repeated on a massive scale.

In a related concern, we are eager for the Department to move ahead with regulations to implement that part of the law that deals with the so-called unclaimed remains—remains that are discovered in the process of archaeological investigation or inadvertent discovery. These have long been in the works and urgently need to be addressed.

Finally, Senator, I want to touch on two other brief points.

It is becoming clearer and clearer that, while a number of museums and universities have put in the necessary resources to compile the inventories of human remains and other cultural items an to begin consultations with the tribes, that the same level of compliance cannot be said to be true about a number of Federal agencies. Whether they are in the Interior Department, the Agriculture Department, or the Department of Defense, there are a number of bureaus and units which are way behind the deadlines. Now, they are not subject to the same deadlines and penalties as non–Federal agencies, but it is a matter of real frustration for the tribes to hear from certain Federal agencies that it may be many, many years,

maybe two decades, before they complete the inventories of the remains that they have in their custody.

And so respectfully I would suggest, on behalf of the Review Committee, that your oversight include a concern about all the Federal agencies that are accountable under NAGPRA, and that they ask for and that they receive the resources to implement programs to get back on track.

Last, Senator, I want to say that the grant program that has been made available through the Congress has been enormously helpful, particularly to the tribes, in doing the research and the travel and the work that is required to carryout repatriations.

We strongly hope that the resources for the grant program can be doubled within the next couple of years. The need is not shrinking. It is increasing. As tribes have the opportunity to look at the materials submitted, the inventories from various museums and agencies, they need assistance to carry out repatriations, as do the museums that have also been applying for grants.

This, too, is an area where, in our view, the National Park Service has not done the job we'd like to see them do in expeditiously making grants available, and I know that Professor Tsosie will have some words to that effect.

Last, I'd like to say, Senator, this year really wraps up my 8 years of direct involvement with NAGPRA, and I must conclude with the thought that this is a good law, that many people are working extraordinarily hard. As a non–Native person, I have been touched to my core by the efforts of Native people to do the right thing, to reclaim and rebury their ancestors, at great expense of time and comfort and often great personal financial expense.

This has also been a law that has caused those of us in the museum field to rethink our ethics and to hold ourselves to a higher standard.

So, Senator, I think I can report that, in general, we believe we are on the right track. We are still very frustrated with the lack of resources and with the conflicts of interest in the Park Service.

[Prepared statement of Mr. Sullivan appears in appendix.]

Senator INOUYE. I thank you very much, Dr. Sullivan.

May I now call upon Professor Tsosie.

STATEMENT OF REBECCA TSOSIE, COLLEGE OF LAW, ARIZONA STATE UNIVERSITY, TEMPE, AZ

Ms. TSOSIE. Yes, Senator Inouye; I am very honored to be here today to address several issues regarding implementation of NAGPRA. And I do thank you for your attention to the statute. I think it is one of the most important statutes that has ever been passed for Indian people, and I really commend the attention that you are spending on it today.

I was asked to focus my comments on the issue of what we refer to as culturally unidentifiable Native American remains, and particularly on my experience with a grant that I've worked with a bit on that issue.

This is a very contentious issue, primarily because the very definition of that phrase, "culturally unidentifiable remains," I think is very contested among Native people, and certainly between the Native and the scientific communities. Because of that, it was sug-

gested that it would be productive to have a type of dialog on that issue between all of those different communities to see what the points of agreement and disagreement were.

That was the subject of a grant that was issued to the Heard Museum in 1998, to hold a 3-day meeting to be called the "Tallbull Forum," in memory of Bill Tallbull, that would be comprised of about 30 participants from those three communities—museum, scientific, and Native communities. Dr. Sullivan actually was the person who was primarily involved in that.

My involvement as the director of the Indian Legal Program at Arizona State University was to help facilitate that forum, which I initially agreed to do until we saw the conditions that were placed on the grant by the National Park Service and the way that it was to be executed raised significant problems, process problems for the Native communities that I was involved with.

Ultimately, we did not go forward with that grant, and Dr. Sullivan ultimately left the Heard to take this other position.

The National Park Service then asked Arizona State University if we would assume responsibility for that grant, and we agreed to do so, again in partnership with the people at the Heard, if the conditions would be changed in a way that would facilitate the sovereignty concerns that we saw posed for the Native communities.

Ultimately, the proposal was accepted, and that's part of what I will be talking about today.

I want to start, though, by reiterating that this statute I think is very important because it does address the cultural, political, and moral rights of Native people, and it does so by acknowledging their legal rights. Because of that, the reserved section for culturally unidentifiable and unclaimed remains, I think we really need to think those through clearly to make sure that they are consistent with those various categories of rights on behalf of Native people.

I think that, you know, for example, the statute does make a place for cultural knowledge and for the role of tribal law and custom in crafting these conceptions of what ownership means, what cultural affiliation means, and I think that we can't let go of that.

I see this statute as one that is clearly designed to further the Federal Government's trust responsibility to Native people, and because of that my primary point to you today is that I think it is absolutely essential that the tribes be consulted with on a government-to-government basis in the exercise of that trust responsibility when we are formulating the final regulations on these categories of culturally unidentifiable and unclaimed remains.

In terms of the main problems with our grant proposal initially, which I do want to address to you, one of the problems was the tremendous amount of oversight authority that the National Park Service placed on the selection of participants and generating the agenda for that forum. We were very uncomfortable with that and felt that it really was not consistent with the Government's trust responsibility to Native people.

The consultation requirement that Mr. Minthorn addressed, that is pervasive. It runs throughout the statute. Yet, we are consistently running into problems with understanding what is an adequate consultation. I'm aware of many cases across the United

States where the tribal governments have not been consulted adequately, and that is something that really does need to change and we need to look at that consultation requirement very carefully.

I'm going to summarize. I know that our time is limited here today. But I would suggest to you that the series of recommendations that has come out of the Review Committee since 1995—there have been various iterations of this—they suggest some of the problems that we are having arriving at a consensus about these issues.

You know, the earliest recommendations placed a primary importance on what Native people want—these are Native American human remains—and that the primary authority should be with Native people.

I think that some of the later recommendations acknowledged the interests of other communities, the scientific and museum communities, in a way that suggests that those communities should be part of the ultimate resolution in these, for example, regional forums. So I think that you see a shift in the thinking there.

One thing that I would like to be absolutely clear about is that I don't think that any law that serves the U.S. Government's trust responsibility to Native people can be a compromise law between various interest groups in which solutions are generated on kind of an ad hoc, case-by-case basis. I think that there need to be clear principles that protect the trust relationship of the U.S. Government with the Indian nations.

I was very interested to see the latest recommendations from the Review Committee, which do explicate on this idea of regional groups deciding solutions, and I think it is a very beneficial movement; however, even there the idea of a disposition agreement that is negotiated among a variety of stakeholders doesn't seem to me clearly protective of the tribes' interests as governments in that process.

Dr. Sullivan talked about the idea of regional coalitions of tribes, which is something that is happening now, and the discussion in those communities is over how sovereignty and trust will be protected within those group meetings.

So, in concluding, I'd like to say that our restructured grant proposal does deal with the need for a national dialogue on these issues, and we structured it in two senses: first, that there be a comprehensive written report about the proceedings so far in terms of guidance to these various groups, but, second, that various forums be organized.

I think it is particularly important that these be organized initially with tribal communities on the idea of consultations, following along with some of those that have been done by the Department of Justice on important policy issues. I think it is very necessary for the tribes to be consulted on that government-to-government basis.

So, in conclusion, that is what I would ask the committee today, to insist that NAGPRA continue to serve the Federal Government's trust responsibility to Native people and to particularly highlight the need for consultations with Native tribal governments on these issues relating to culturally unidentifiable and unclaimed human remains.

Thank you very much.

Senator INOUYE. Thank you very much, Professor.

[Prepared statement of Ms. Tsosie appears in appendix.]

Senator INOUYE. May I now proceed with questioning.

The committee has been advised that the cost of the DNA analysis on the Kennewick man exceeded $1.7 million. Is that the figure that you have been advised, too?

Mr. MINTHORN. I've heard several figures, Senator, but the amount that you've cited is pretty consisted within the amount. Yes.

Senator INOUYE. But it is nothing cheap.

Mr. MINTHORN. Pardon?

Senator INOUYE. It is not inexpensive?

Mr. MINTHORN. No.

Senator INOUYE. I ask this question because, if those numbers are correct, and if the Congress, as it has in past years, continues to fail to appropriate necessary funds, that will mean we will not have funds for DNA analysis and repatriations can be held in limbo in perpetuity.

Mr. MINTHORN. Correct.

Senator INOUYE. It is a frightening thought.

Mr. Chairman, in your testimony you suggested that, as a result of the DNA analysis in Kennewick, several other DNA analysis requests have been made.

Mr. MINTHORN. Correct.

Senator INOUYE. Who has been making these requests?

Mr. MINTHORN. As the interim chair, there have been two requests from two museums. They've indicated at these institutes that the remains they are holding are older than 2,000 years and there have been two tribes that have made their concerns aware to myself about these requests to do DNA analysis. This is in part, Senator, where the concern is in how the effects are being interpreted from the Kennewick man case.

It is true that the Kennewick man case will set a precedent, and it already is, and it is sad that our ancient, sacred human remains have to be considered as such to do tests and to do analysis.

Senator INOUYE. And the DNA requests are made for the purpose of establishing cultural affiliation of the remains?

Mr. MINTHORN. Correct.

Senator INOUYE. What changes do you recommend, Mr. Chairman, in the Department to fulfill the tribal consultation responsibilities under the act?

Mr. MINTHORN. Senator, I would truly like to see within the Interior an accountability process where the Interior can be held accountable for their actions, and those actions would be determined on how the relations would be forming in relationship to the tribes.

There are many problems within Interior and Park Service. One is they have their own interpretation of what consultation is and the tribes have their own. There have been no compromise efforts to reach an acceptable level of consultation government-to-government, and the Kennewick man case is a good example of that.

But I would hope, Senator, that changes within the Interior would truly reflect an action that would look at holding the Park Service and the Interior accountable to not only existing executive

orders but to the consultation process as outlined within the NAGPRA law, itself.

Senator INOUYE. Mr. Chairman, do you have any comment to make to a statement attributed to a spokesperson of the Department—and this is in the aftermath of the Kennewick case—"Consultation does not require approval or disapproval by the tribes." Do you have any thoughts on that?

Mr. MINTHORN. Many thoughts, Senator. This is the kind of principle or theme within the Park Service that is having a detrimental effect in relationships with tribes. There has to be some kind of new or institutional memory formed within the Interior. This spokesperson, as her words were very much the process in how frustrating the tribes are working with, that Interior have their own interpretation of what consultation is, and it is not working.

Senator INOUYE. Thank you very much.

Dr. Sullivan, this sounds almost funny, but am I to conclude that the relationship existing between tribal organizations and the Department in this instance would be adversarial and not collaborative?

Mr. SULLIVAN. Senator, I guess, on the basis of my own experience, I have certainly found the tribes eager to establish long-term, constructive, collaborative relationships with all of the Federal agencies.

I think that much of the frustration that has been expressed through the Review Committee and which we are trying to share with you comes back to the fact that the program administration continues not to be where it ought to be.

We felt very strongly last year that it would make sense to have NAGPRA administered directly under the Secretariat, under the Secretary of the Interior, to set policy for all the operating units of the Department of the Interior and not just the Park Service. That didn't happen. And we gave it the benefit of the doubt and we continue to know that there are good people at work, but the interpretations that we have seen and some of the statements that you have relayed that have been made in public suggest that the kind of consultation or the kind of awareness of tribal sovereignty concerns that we hoped for is not being reflected in the management of the program.

Senator INOUYE. About 10 years ago, while this committee was involved in the enactment of this act, the Society of American Archaeologists, as you will recall, took the position that remains are valuable subjects for scientific inquiry and analysis and should not be returned to the families or tribes of origin.

Is that the position of the society at this moment?

Mr. SULLIVAN. Well, I think, Senator, later today you will hear from Dr. Keith Kintigh, who is the president of that society, and I don't wish to speak for them. I'm not an archaeologist, myself.

Again, as a member of the Review Committee, I think we have seen some heartening trends, one of which is that, by and large, professional archaeologists in this country not only respect the law but have gone through some personal rethinking about the nature of their relationship to the tribes.

That doesn't mean that everything is perfect everywhere, but I do think that, just as people in the museum field have had to

rethink our fiduciary responsibilities, so have working archaeologists.

Senator INOUYE. Do you have any recommendations for restructuring the National Park Service for improving the Service's implementation of NAGPRA?

Mr. SULLIVAN. Senator, I do. And these follow the recommendations of the Review Committee last year and of a number of the tribes.

We continue to think that overall national compliance issues with NAGPRA and the national grant program would be better situated directly in the Office of the Secretary rather than in the National Park Service, to avoid both the practice and even the appearance of conflict of interest.

We think there needs to be additional staffing. We are concerned that the resources that have been put into additional staffing so far are simply bringing in contractors with very limited experience in these issues, far more limited than those in the tribes and out in the community who are trying to work on these issues.

So I guess I would just hope that the Department would have a bit of a wake-up call to the fact that it has to set the tone nationally and put the kind of informed and hard-working resources to work that will enable the tribes and the other interested parties to achieve the intent of the law.

Senator INOUYE. Professor, the committee has quite often heard the charge that there is a conflict of interest in this situation. Is there a conflict of interest involved?

Ms. TSOSIE. I think that, to the extent that the Federal agency policy is dictated by the interests of archaeologists, then yes, I would perceive that.

And the way that I look at it, again, is that Congress enacted this statute in furtherance of the trust responsibility to the tribes, within which I think that there is implicit this idea of cultural protection, protection for cultural rights.

It seems to me that when the archaeological interest is being elevated—and I think that you see that in the Kennewick man case with this push toward scientific testing to determine cultural affiliation—when that becomes the policy, then clearly the cultural rights of the tribe are not being respected.

Senator INOUYE. What you are suggesting is that the conflict of interest has not been diminished in recent years.

Ms. TSOSIE. Well, you know, I don't work as closely with the agencies as some of my colleagues do, but from what I hear that is my impression, that the conflict of interest continues to exist, and I, personally, would favor a solution that would place the responsibility with the Secretary.

Senator INOUYE. In your capacity as the grant recipient, did you experience any difficulties implementing the grant?

Ms. TSOSIE. The grant has been very, very difficult to implement. The restructured proposal took many months to gain final approval, and I think that there was still some question about how we would go about implementing the grant.

My position all along has been in favor of consultations with tribes as governments and not in this kind of multitude of stakeholders all getting together in one forum with select people to dic-

tate policy. I think policy for Native people must be done in consultation with the tribal government.

Senator INOUYE. Was the Department helpful or did they hinder the progress?

Ms. TSOSIE. I would say that my experience depended on the individual that I was dealing with. Some were helpful and some were less helpful.

Senator INOUYE. First, I would like to assure all witnesses that your prepared statements will be made part of the record in total, and that the record will remain open for 3 weeks, during which time you may submit addendums or corrections or any other statements.

Ms. TSOSIE. Thank you very much.

Senator INOUYE. I would like to thank the first panel. Thank you very much.

And now may I call upon the lieutenant governor of the Chickasaw Nation of Oklahoma, Jefferson Keel; the cultural preservation officer of the Three Affiliated Tribes of the Fort Berthold Reservation of North Dakota, Pemina Yellowbird; and the director of the Navajo Nation Historic Preservation Department of Window Rock, AZ, Alan Downer.

May I first recognize Lieutenant Governor Jefferson Keel.

STATEMENT OF JEFFERSON KEEL, LIEUTENANT GOVERNOR, CHICKASAW NATION, ADA, OK

Mr. KEEL. Good morning, Senator. Thank you very much for allowing me to address this important issue.

My name is Jefferson Keel. I am the lieutenant governor of the Chickasaw Nation. I am honored to be selected to appear before this committee.

The Chickasaw Nation considers old graves and contents of the graves of our ancestors as sacred sites. We are aware of thousands of human remains, funerary objects, artifacts, and other funerary goods and burial goods that have been determined to be of Chickasaw origin that have been removed from the graves of our ancestors and still remain in the custody of repositories throughout the country.

Today, in spite of Federal mandates, many States refuse to recognize the rights of Native American tribal governments to consult on this important issue. State agencies often interpret the law to suit their specific needs, particularly regarding construction projects, such as highway or urban development projects. Our requisitions for consultations regarding the construction projects are often ignored or delayed until construction results in the unearthing of human remains.

When States are unwilling to consult with the tribes, then the tribes must turn to the National Park Service, which is a branch of the Fish and Wildlife Service of the U.S. Department of the Interior, which further delays and disrupts the consultation process.

The Park Service is often slow to respond, due to limited staff and the sheer number of requests, possibly lack of knowledge of tribal customs and lack of experience in dealing with Indian tribes.

Items that are considered to be culturally unidentifiable or unaffiliated or those items that lack definite tribal identity due to the age of the item often comes into play in these consultations.

Many scientists and State officials often seek to narrow the interpretation of the law by demanding that present-day federally-recognized tribes prove a biological relationship to an earlier group. The statute provides that, where cultural affiliation is not established in an inventory or summary, that the remains should be expeditiously returned to an Indian tribe which can prove affiliation by a preponderance of evidence based on geographical kinship, biological, archaeological, anthropological, linguistic, folk lore, oral tradition, historical, or other relevant information.

We feel that a determination of affiliation of Native American remains and burial goods should be accomplished by the affected tribes. They must be made in consultation with the tribal governments. We also feel that regional committees of tribal representatives could better define and determine the affiliation of these items, and the regional committees could then report their findings to the National Review Committee for their report to Congress.

We would prefer that the Secretary of the Interior transfer authority for the NAGPRA program from the National Park Service, due to the conflicts of interest that have already been stated, back to the Secretariat of the Department of the Interior, but we recognize that the NAGPRA program must be administered by staff having sufficient seniority, program knowledge, and experience in implementing the statute.

The Chickasaw Nation is very much disturbed by the lack of consultation on the part of the States and other Federal agencies who seek to interpret the law to suit themselves, to suit their needs.

We in the Chickasaw Nation are very much involved in assisting other tribes in developing policy to suit our needs, to help us determine affiliation, particularly from the tribes in the southeast. We are involved in working with other tribes to establish a coalition, which will better help to serve this cultural affiliation or determining the cultural affiliation of those items that are older than the statute recognizes.

Finally, we recognize that some tribes simply do not have the financial means to enter into long negotiations or consultations, and so it is difficult for those tribes to maintain a voice at the national level, so on behalf of those and on behalf of the Chickasaw Nation, I appreciate your time and your interest and I thank you very much.

Senator INOUYE. Thank you very much, Lieutenant Governor Keel.

[Prepared statement of Mr. Keel appears in appendix.]

Senator INOUYE. May I now recognize Ms. Yellowbird.

STATEMENT OF PEMINA YELLOWBIRD, CULTURAL PRESERVATION OFFICER, THREE AFFILIATED TRIBES OF THE FORT BERTHOLD RESERVATION, NEW TOWN, ND

Ms. YELLOWBIRD. [Remarks in Native tongue.]

On this good day that we have been given to speak to one another, I greet you like a relative by using your [Native words], or One Who Helps.

I have said today is a good day. The people of the Three Affiliated Tribes, the [Native Words], thank you for holding this oversight hearing so that we can bring our concerns to you with a good voice.

I am filling in for our chairman, Tex Hall, who could not be with us today. Chairman Hall sends his regards to you and his regrets that he could not attend today's hearing.

My name is Pemina Yellowbird, and I have been one of my tribe's NAGPRA representatives since the law was passed. I am also a member of the North Dakota Inter-Tribal Re-interment Committee. We have been working on issues related to the reburial of our relatives since 1985. For the last 5 years, I have been assisting tribes to organize regional, inter-tribal coalitions for the express purpose of utilizing NAGPRA's mechanism for making joint inter-tribal claims to our so-called unaffiliated remains.

As you know, [Native words], we have our reasons for wanting to take all of our relatives home. We love them. We are grateful to them. We are here today because of them. And it doesn't matter to us how long ago they lived or died. If they are Native, if they were taken from our collective aboriginal homelands, they must be returned to the earth. That is the way our elders taught us, because we have a sacred responsibility to them to protect them from further violation through aggressive scientific study, to restore peace to them.

All of these teachings have been handed down to us for thousands of years by the same human beings who, as we speak, are whirling all about us in this room. They have their arms around you. They have their arms around me. They are pleading with us to help them, and so we are here today to try to help them.

The testimony we submit today, Senator, addresses five important topics. We are concerned about the funding levels to implement the act—in particular, funding for tribes to conduct their NAGPRA business, monies that are not controlled by the National Park Service or a museum or a university.

We remain concerned about the inherent conflicts of interest with the National Park Service staff simultaneously administering the law while having to comply with it and changing the rules as they go along to promote and support a scientific research agenda.

We share and support the NAGPRA Review Committee's concerns raised and recommendations they issued after their Juneau, AK, meeting in April of this year.

We remain concerned about the Smithsonian's solicitation and acceptance of thousands of year old Native remains under the guise of conducting forensic destructive scientific studies on them, as if they were the victims of a prosecutable crime.

Finally, we have an urgent concern about illegal destructive studies of our so-called unaffiliated Native dead that are being conducted every day without the knowledge or permission of tribes, and our testimony today will focus on problems our tribes are encountering in that area.

As you know, the act states that the NAGPRA Review Committee must make a recommendation as to what should be done with our unaffiliated ancestors and Secretary Babbitt must make a final determination based on the committee's recommendation. To our

sorrow, however, tribes are discovering many instances where Federal and state agencies, museums, and universities have not waited for the Secretary's decision and have made unilateral decisions on destructive study of our dead which are contrary to the law.

It is as though the restrictions on study contained in the act never happened. Many have continued with their research agenda as though tribes never raised a voice against it.

Today we want to tell you of a chilling example of how scientists are ignoring our wishes and the law and circumventing the consultation process, which is in the law to protect the interests of tribes.

For our testimony today, however, we are going to focus on only two of these issues, and I want to start with the conflicts of interest.

Although we spoke of this issue in our testimony last April, [Native words], and although there have been some changes in the national implementation of the act since then, our nation finds that the change has not gone far enough and we reiterate our request that implementation of the act be removed entirely from the National Park Service.

You spoke earlier about how much the destructive study on Kennewick man cost. More than 1 million Federal dollars have been spent in the controversy surrounding the Ancient One—1 million Federal dollars, with the U.S. Army Corps of Engineers writing the checks. And for what? For a lawsuit, for staff time, for a destructive study ostensibly to prove what that ancestor's descendants have been saying all along—that he's Native and that he is their relative.

Our northern plains tribes with $1 million could have had all of our deceased ancestors and their burial property home and in the ground by now.

We can't get the Corps of Engineers to spend even one-quarter of that protecting sacred sites along the Missouri River that cradle thousands of our dead, and yet we have over $1 million being spent on one body, alone.

Attached to our testimony today, [Native words], is a news article in which the Departmental consulting archaeologist, Dr. Frank McManamon from the National Park Service, was quoted as saying "the invasive destructive study done on the Ancient One sets a new scientific precedent." We feel that it is a new precedent in the violation of the rights of tribes, maybe. But our nation continues to insist—and no one has refuted us yet—that there are no test methods available today which will conclusively identify a set of Native human remains as to tribal origin. It simply can't be done.

Further, Mr. McManamon, by going to the national media with this statement, has announced very clearly what his agency's intentions are for ancient remains taken from our collective aboriginal homelands, and we are worried. We are very worried. We are worried that, through the Ancient One's violation and study, our sovereign nations are being set up for identical costly battles every time one of our ancient ancestors provokes the curiosity of the archaeoterrorists who will seemingly stop at nothing to regain control of our dead.

We are also deeply worried that, even though the Departmental consulting archaeologist is no longer working on the national implementation of the act, it is our understanding that he is drafting the regulations that will implement the treatment and the final disposition of all unaffiliated Native remains. It is our understanding. That is what we have been told by the National Park Service staff. We are very worried about that.

We add our voice today to those of our relatives from Washington State because we feel for them. Their fight is our fight because we know that actions taken regarding the Ancient One will some day affect us and our ancestors, too. They already are. We can't tolerate the manner in which Federal agencies, State agencies, museums, and universities have declared an open season on our tribally-unidentifiable ancestors for their destructive studies.

It is our nation's position that everything—the money, the authority—must be transferred to an office within the Secretariat, preferably the Office of Policy Management and Budget, which doesn't manage Federal lands and thereby eliminates that inherent conflict of interest where an agency must make decisions over sacred sites that cradle our ancestors' bodies on lands they manage.

We also would like to see implementation of the act for the National Park Service moved to another individual who is both experienced and knowledgeable in NAGPRA but who will not abuse the act to protect a scientific research agenda.

Finally, [Native words], there have been many, many attempts to circumvent NAGPRA, and we at the Three Affiliated Tribes can provide you with one of the more shocking examples today.

Attached to our testimony is a certified letter postmarked July 5 of this year but dated May 31 that our nation received from the Nebraska-Kansas office of the Bureau of Reclamation informing us of three things: No. 1, that they had removed from their culturally-identifiable inventory the skull and jaw bone of an individual taken from a known Pawnee, [Native word], and Wichita Village, and placed it on their culturally-unidentifiable inventory; No. 2, eight sets of remains categorized as woodland, which is an archaeological time period, had been declared by them to be culturally unidentifiable, when everybody who has ever done Missouri River archaeology knows that these remains are ancestral to the Mandan, Hidatsa, Crow, and sometimes the Pawnees, and; No. 3, two physical anthropologists, Douglas Alsley at the Smithsonian Institution and David Glen Smith of U.S. Davis wish to conduct destructive mitochondrial DNA studies on all of these remains.

Instead of consulting with our nation in good faith, they told our nation they would inform us of their decision whether to violate our ancestors through study if we requested it in writing.

Instead of consulting with us on a government-to-government basis, they told us we had 30 days to respond to their letter, although there are no NAGPRA deadlines for tribes and although we received their letter five days after their little illegal deadline had expired.

Instead of working with us and treating us like human beings with human rights, the Bureau of Reclamation prefers to label our dead as "culturally unidentifiable," as though that classification

confers limitless authority and control of those remains to Reclamation.

Our nation has had no opportunity to consult, to make a joint claim with other affected tribes, to even be aware of Reclamation's activities until it was too late. To us, it feels like Reclamation believes they can help themselves to and dispense our deceased ancestors as though they were the inalienable property of that Federal agency, and we are outraged and appalled.

[Native words], the [Native Words] see this shameful act as a blatant challenge to our right to repatriate, rebury, and protect our deceased ancestors. We view this as an act of arrogance—cruel arrogance toward our nation, which has always openly opposed study of our dead; arrogance of the law, of the NAGPRA Review Committee's authority to recommend treatment and disposition of unaffiliated Native dead, and of Secretary Babbitt's authority in making final decisions on these remains.

This is what we meant when we said that Federal agencies are making up rules as they go along. If we were to accept what Reclamation has done, we would accept that Reclamation can, without consulting with our nation, determine whether or not we are related to the remains in question, in violation of section 5(B)(1)(a) of the act, which states, "Inventories and identifications shall be completed in consultation with tribal government officials and traditional religious leaders."

What can we do? Can we make them consult us? Can we force them to treat us like human beings and speak to us about our own relatives?

[Native words], we are worried. We are frightened. We worked hard for the passage of NAGPRA because we were told it would end our ancestors' suffering and because we were told it would keep us out of court, but the law is being twisted away from its original intent to satisfy a political scientific research agenda for those who cannot accept the change in the status quo brought about by NAGPRA.

The time has come to stop this flagrant reinterpretation of the law to protect a research agenda. We respectfully ask you and the Senate Committee on Indian Affairs to communicate with the Bureau of Reclamation and all Federal agencies and insist that they conduct the direct and meaningful consultations with our nations which are required by the act and which trigger a protective mechanism for tribes.

We ask that this directive take place before they violate our dead with destructive new scientific studies—that is, if it is not already too late.

We respectfully ask you and the committee to direct the General Accounting Office to conduct an investigation into the widespread violation of requirements in section five of the act, which deals with consultation, as well as other NAGPRA violations you will hear about today.

We ask that you ensure that it is our nations who make all decisions related to the treatment and disposition of all of our relatives, whether the scientific industry can tribally identify them or not.

We ask that you do this by communicating our concerns to Secretary Babbitt, whose responsibility it is under the law to make the final decision regarding our ancestors' fate.

We are only asking for what is provided for in the law. We want to be consulted before scientific studies take place so that we can protect our ancestors, so we can claim them and bring them home. We only ask for justice for those who have no voice so that we can open the door to the spirit world for them one final time.

[Native words], on behalf of the [Native words], I raise a heart to you today full of thanks and praise for all that you do for us, and I say [Native words]. That means, "That's the way it always was, that's the way it is today, and that's the way it always will be."

Thank you.

[Prepared statement of Ms. Yellowbird on behalf of Tex Hall appears in appendix.]

Senator INOUYE. Your nation has honored me with a name [Native word]. I will do my best to live up to it.

Ms. YELLOWBIRD. [Native word].

Senator INOUYE. And now may I call upon Mr. Downer.

STATEMENT OF ALAN DOWNER, DIRECTOR, NAVAJO NATION HISTORIC PRESERVATION DEPARTMENT, THE NAVAJO NATION, WINDOW ROCK, AZ

Mr. DOWNER. Senator, I am here today. I am Alan Downer. I am the director of the Navajo Nation Historic Preservation Department. I am here today to present the Navajo Nation's testimony.

Edward Begay, the speaker of the Navajo Nation Council, was intending to be here to make this presentation; however, he has been detained in Window Rock and is unable to be here.

The committee has our written testimony, and, rather than read portions of it into the record, I'd like to highlight some of the points that I think need emphasis here.

First of all, I think there is a serious question of conflict of interest. It is both an apparent conflict in our estimation and a real one. We think that there is an inherent problem with an agency overseeing its own operations, and that is effectively what is going on here. Congress has given to the Secretary of the Interior the responsibility of overseeing implementation of this act, and the Secretary has delegated that responsibility to an agency that holds collections and lands, and we think that the most even-handed conduct possible still leaves an appearance of a conflict of interest.

I think that there is a substantial problem that is a historical problem now, but, nevertheless, a problem of giving the lead responsibility for implementation of this within the Department to the Department's chief archaeologist.

Now, there may be perfectly good administrative reasons for doing that, but it sends an ugly message to Native Americans, who view archaeologists as their enemies on this point.

There has been recently a reorganization of this responsibility. It remains to be seen whether this is a real reorganization or simply a shuffling of paper that does nothing more than sort of make it a little bit less apparent what the problem is.

We are deeply concerned, as well, about the pace of repatriation. Last time I checked, notices on something like 19,000 human remains have been published. Of those, that means in a decade 19,000 remains, assuming that those remains have actually been repatriated, in the last 10 years 19,000 remains have been repatriated. There are approximately 200,000 in collections. That means it will take a century to complete this process, assuming that things don't change dramatically.

I think it is fair to suggest that many of the easiest repatriations have been done. We are now starting to work on the ones that are more complicated, more controversial. We have now the precedent that has been set with Kennewick, and I think the Departmental consulting archaeologist has publicly stated that the treatment of the Kennewick man sets a precedent, and I think that, whether or not that is an official policy, it is a public statement that is in the press, and, given the coverage given to it, I think it is a policy, in fact, whether it is actually policy of the agency, and it is going to be very hard to get over that.

Given the amounts of money that we are talking about for one burial, $1 or $2 million, no museum can afford to do this even one time, and certainly they can't do it—for the museums that have hundreds and thousands of remains. If this is a standard they have to meet before they repatriate, repatriation is simply going to come to a halt.

Finally, I'd like to make a remark about consultation. The Park Service has not consulted on Kennewick. I think that has been widely stated. Obviously, the Navajo Nation is not directly involved in that. We do have extensive experience with Federal agencies, the Park Service included, in consultation.

All too often, consultation means a Federal agency has made a decision and then it sends out a letter, or perhaps even sends out a representative to ask a tribe what it thinks, and that's not consultation.

In our view a consultation is a good faith effort to sit down and resolve differences. It doesn't necessarily mean that the differences will be resolved, but a real attempt is going to be made. And making the decision before the fact and then letting everybody know that we are simply coming out to get comments is not, in our estimation, consultation.

As to our recommendations to the committee, first of all, we think that clearly the backlog of notices of intent to repatriate need to be eliminated. During the last year, the Park Service published a little bit over 100 notices. They have some 200 notices in their inbox. That means that there is a two-year backlog to get notices published. We think that is unconscionable.

We believe that the Congress should take advantage of the budget process right now to move the responsibility for the NAGPRA program out of the Park Service. Our recommendation is that it be put into the Assistant Secretariat for Policy, Management, and Budget. They don't manage lands. They don't manage collections, and there would be no conflict, at least within the Interior Department. We think that's the one place that it could be where this conflict of interest would be reduced, to the greatest extent.

And, finally, we think that the committee should call for a GAO study of the handling of the Kennewick situation, both in terms of the expenditure of public funds and in terms of the substantive decisionmaking that's going on there.

I'd be happy to answer any questions, if we can.

Senator INOUYE. Thank you very much.

[Prepared statement of Mr. Downer appears in appendix.]

Senator INOUYE. May I first ask a few questions of the lieutenant governor.

You stated that you have requested the return of objects located in repositories. What is the outcome?

Mr. KEEL. In some cases the repositories or the institutions that are in possession of these items have not completed their inventories, even at this date. We are aware of several thousand artifacts, for instance, in the State of Mississippi, which is our homeland, which have been removed from graves and other archaeological sites that, still—the inventories have not been completed.

We have, in fact, repatriated some items from some different areas, but there remains a number of items that have not been repatriated.

Consultation is very spotty. Only when we request direct consultations or when we travel to that location are we consulted with, in terms of those items. Often, our requests are simply ignored until we followup.

So it is very difficult to answer the question and state the complete outcome, because many of those items are still in question. The cultural identity or cultural affiliation of a number of those items has not been established. We continue to wait on the National Park Service for a determination on cultural affiliation, and it just takes a long time to get an answer.

Senator INOUYE. In your testimony, you have suggested that the Department is being pressured by the scientific community and they are bowing to this pressure. Have they consulted you or received your side of the story?

Mr. KEEL. No, sir; the pressure from the scientific community is that which would enable the scientific community to continue to test or to conduct testing on those human remains to determine age, or identity.

We recognize that the scientific community is involved in the study of these human remains; however, many of these human remains have been in their custody for years and years and they still remain there.

The common thread among all of the tribes that I have talked to throughout this country for the past several years is that of not only repatriation but of reburial. Most Native Americans—in fact, all that I have talked to—believe that all of those human remains that are on the shelves, those in repositories, in cardboard boxes and paper sacks and plastic bags need to be reburied. They need to be returned to tribes that can prove or can present a preponderance of evidence of either a geographical, or just follow the statute—in all those areas of affiliation. Determine the affiliation, return those items to the tribes, and then rebury them. That is what I believe would be the first step.

The next step then involves the artifacts. There are a number of artifacts which are very dear in terms of expense. They bring a good deal of money on the black market. These items, artifacts, burial goods can easily be sold. We often see things on the Internet today advertising for different types of artifacts.

Usually these are burial goods, because those are the things that have been removed from graves, so, in fact, they are funerary objects, but they are not described as such.

The scientific community would want to hang on to these items in order to study them for scientific purposes.

Again, pressure is placed on the NAGPRA community or the tribes to allow the scientific community to retain custody of these items, and it is just a delaying tactic.

Senator INOUYE. Thank you very much.

Now, if I may ask Ms. Yellowbird, can you tell us about your concern with funding? You said the funding levels are insufficient. Do you have any suggestions to make?

Ms. YELLOWBIRD. Yes; let's get a lot more money in there for tribes. More specifically, that the level of funding—the current level of funding I understand has been augmented by 400,000 in this year's appropriation but really tribes need ten times that.

A typical NAGPRA grant funnelled through the National Park Service for tribes is about $75,000, $70,000. With that, a tribe can maybe visit 10 institutions in 1 year's time. But if your tribe is like my tribe and we have our deceased relatives all over the country, that's not going to really add up to much.

We need the funding increased many, many times, and the way the funding is going to tribes also needs to be looked at.

My tribe, for instance, has applied for a NAGPRA grant many times and we have never been funded. It's okay. We'll keep trying. But I do see a trend going to where groups of—for instance, the University of Kansas applied for a NAGPRA grant to do consultation with about 14 or 15 tribes that they needed to talk to, and they brought in Wichita State University, Kansas State Historical Society, and KSU, and we all arrived, and everything was very, very, very controlled by KU. There was very little opportunity for tribes to express themselves, to say what they wanted. It was KU's agenda.

What I'd like to see happen are larger grants that are available to regional, inter-tribal coalitions of tribes and we do the inviting, we identify the Federal and State agencies, the museums and universities that we have to consult with, and we ask them to come to our meeting so we can control the dialogue, we can control how things are going to happen, because we feel like children sitting there, them telling us what is going to happen.

That's an interesting question. The consultation at KU had no more than begun and our tribes were very smugly informed that 16 individuals of our relatives had been subjected to destructive scientific study and that it was not illegal under NAGPRA, and we couldn't even respond because we didn't have the floor.

So that's my reason for putting that in there that we'd like more funding going to tribes so we control the process and we are not at the mercy of these agencies and institutions and museums consulting us according to their definition of consultation.

Senator INOUYE. In your testimony you spoke of a skull——

Ms. YELLOWBIRD. Yes.

Senator INOUYE [continuing]. And a jaw bone.

Ms. YELLOWBIRD. Yes.

Senator INOUYE. And the eight sets of remains categorized as woodland Indians.

Ms. YELLOWBIRD. Yes.

Senator INOUYE. What is the final disposition? Where are they now?

Ms. YELLOWBIRD. Senator, we can't seem to find out. I placed a number of phone calls to various individuals within the Bureau of Reclamation, and I do so because we learned that one of the physical anthropologists mentioned in the testimony, Douglas Alsley, is planning to make a tour through North Dakota, South Dakota, Nebraska, and Kansas, all to look at remains that are in institutions in these States, and, as you know, Senator, those are the aboriginal homelands of the [Native words], so the majority of remains that are housed by these institutions are going to be our relatives, and that's what he is going to look at. So I was trying to find out what has happened with them, and I was unable to reach anybody who could answer my questions, so I don't know.

Senator INOUYE. So as of this moment, although you've indicated interest in these remains, you have no idea where they are?

Ms. YELLOWBIRD. Unable to find out.

Senator INOUYE. We'll find out for you.

Ms. YELLOWBIRD. Thank you.

Senator INOUYE. And now, if I may ask Mr. Downer a few questions.

I'm certain, Mr. Downer, you know that the law gives a responsibility of implementing the act to the Secretary, but the Secretary, as one finds in many, many cases, has decided to delegate this authority to some other sub-agency.

Is it your suggestion that we, by legislation, force the Secretary to delegate it elsewhere?

Mr. DOWNER. Well, yes. I'm suggesting that you use the budget process to take the money that is right now budgeted for that function in the Park Service and move it to another part of the Interior Department.

Senator INOUYE. It is an extreme step to take. I can't recall having been involved in something like that. But I will do my best to discuss this matter personally with the Secretary and see if something can be done to address your concerns.

Do you believe that by transferring the administration of NAGPRA to the other offices, as you suggest, it would improve the implementation of the act?

Mr. DOWNER. It's certainly our hope that that would be the case, and by moving it to an agency—by moving it to a part of the agency that has no vested interest, that has no collections that it views as its own, that simply is in the business of administering policy, we think that it would get more—our hope is that it would be handled more even-handedly.

Senator INOUYE. About 14 months ago we held a hearing on this act. In your opinion, have you noted any improvement in the implementation of the act since then?

Mr. DOWNER. In all honesty, I think things have gotten worse.

Senator INOUYE. Gotten worse?

Mr. DOWNER. I think things have gotten worse. We certainly have seen no improvement. I just—I agree with you, the suggestion that we made about using the funding process to force a change is a drastic change, and we wouldn't suggest it if we thought that what was going on was just sort of incremental improvements and when everybody gets their feet on the ground things will get better. We don't see that happening. We see things getting worse. The backlog is unchanged. We have things—you know, all the things that we've talked have about occurred in the last year, the last 14 months, since this committee had its last hearing. It took close to a year for the Park Service to decide that they would change the person who was nominally in charge of implementation.

So to say that things have gotten better, I mean, I just can't say that. I wish I could. And I can't even say that things have stayed more or less the same.

Senator INOUYE. Because of time constraints, the committee is not able to ask all the questions that we want to, so, if we may, we'd like to submit to you questions for your consideration and response.

Mr. DOWNER. I'd be happy to.

Ms. YELLOWBIRD. We'd be happy to.

Mr. KEEL. We'd like that.

Senator INOUYE. Thank you very much.

Ms. YELLOWBIRD. [Native words].

Senator INOUYE. Our next panel consists of the president of the Sealaska Heritage Foundation of Alaska, Rosita Worl; the president of the Morning Star Institute of Washington, Suzan Shown Harjo; and Robert Gough of Boulder, CO.

Well, Dr. Worl, we see you again.

Ms. WORL. Yes; good to see you.

Senator INOUYE. Welcome. Please proceed.

STATEMENT OF ROSITA WORL, PRESIDENT, SEALASKA HERITAGE FOUNDATION, JUNEAU, AK

Ms. WORL. Thank you, Senator. It is good to see you again.

I believe that Congress took a very bold and courageous step in enacting the Native American Graves Protection and Repatriation Act. I realize that a very few interest groups opposed its enactment and continue to assert that this law challenges the very precepts of science and values of the larger society; however, from the Indian perspective I think that the act moves toward rectifying some of the injustices perpetuated against indigenous people of this continent.

I thank this committee and I thank you, Senator, for your resoluteness and your efforts to ensure the full implementation of this law. I think it is good law.

My objective today is to share with you in a very small way the initial benefits that we have found in implementing NAGPRA and then to outline one of our major concerns, one of our major and most immediate concerns.

In my humble view, the Repatriation Act holds great promise, not only for the Native community but for the larger community,

as well, in terms of the contributions of knowledge that it can offer. However, before I begin, Senator, I am compelled by our own cultural protocols to introduce myself in terms of who I am in our Tlingit society.

My name is Yeidiklats'ok from the [Native word] Clan. I am an eagle from the Thunderbird Clan. I am also from the House Lowered from the Sun in Klukwan, the [Native word] House in Klukwan, and also I am a child of the [Native word] Clan.

I serve as president of the Sealaska Heritage Foundation and as a professor of anthropology at the University of Alaska Southeast.

I am also a member of the board of directors of Sealaska Corporation and also the Alaska Federation of Natives.

Sealaska, as you know, was created by Congress to implement our aboriginal land claims. It is, for the purposes of NAGPRA, a federally-recognized tribe. The Sealaska Heritage Foundation was created by the directives of our elders by Sealaska to address the cultural and educational needs of our 30,000 Indians of southeastern Alaska.

We were most pleased, Sealaska Corporation was most pleased to host the NAGPRA Committee members and staff and the participants in its April meeting in Juneau and to observe and participate in the meetings.

I commend the committee and also the staff for holding its meetings in Indian Country, where people who are most interested in its implementation can participate and observe the proceedings.

I realize that this committee has more often heard of the problems associated with NAGPRA. If I may, Mr. Chairman, I would just like to give you some of the benefits that we see.

Recently, I was invited to a gravesite of the Tlingit who had been reinterred after his repatriation. We could sense his spirit and the spiritual forces in the area. We have known this area as our homeland for thousands of years, and I could tell you that we knew that our spirits were happy to be home.

We Tlingit believe that the spirits of our ancestors remain simultaneously with our human remains and in the land behind the forest. Our ancestors return to us and speak of their needs and their wants, and within our ceremonies we try to attempt to address their needs.

However, in the present period and under the current circumstances—and that is the circumstances associated with the removal of our ancestors from our homes—we are now additionally obligated to try to seek the return of our ancestors' remains and the restoration of their spirits in our homeland.

In this particular case, the return and the spiritual restoration of one of our ancestors was achieved under—in this case, Mr. Chairman, it was under the National Museum of American Indian's law and repatriation. However, the important thing here is the collaborative effort that was established between the National Museum of Natural History and an Indian tribe, and we think that this collaborative effort was beneficial in terms of the kinds of activities that we are doing as a result of this effort.

Right now, we have a project underway to record this particular clan history, the migration, and unexpectedly, as we were involved in the repatriation and visiting the gravesite, we also found some

other things that I think are going to yield some very significant information and perhaps benefits in the field of ethnobotany.

This kind of information has been traditionally transmitted through our oral traditions, but we have now had the occasion to record this kind of information in a tape and it assures us of the transmission to future generations, to those people who don't have the opportunity to learn through oral traditions.

NAGPRA, in this case, facilitated—or repatriation, I should correctly say, facilitated the acquisition and the preservation of knowledge that was previously known only in the minds of our elders and our clan leaders.

I have also been privileged to be involved in the repatriation of other clan objects to their homeland. Although I know that some members of the larger society may not understand or accept our beliefs, it is our belief that the spirit of our ancestors, some of whom may be creatures of the land, sea, and air, reside with our clan objects and crests. We believe that the spirits of our ancestors, who also used these objects, are also associated with the objects.

I wish that you, Senator, could have seen the joy, and sometimes the sadness, laced with tears of sadness, that overcomes our people in the return of our ancestral spirit and the few objects—and the few objects, less than 10—have been repatriated to southeastern Alaska up to this date.

For example, Mr. Chairman, we recently were successful in repatriating the canoe prow of the [Native word]. This canoe had been used in saving the lives of the Angoon people. The Angoon had been bombarded by the Navy. The community was so happy, so joyful to share in this return of this clan prow, this prow, and of the canoe that had ensured their survival.

Perhaps some day you will be able to attend one of our ceremonies. Senator, I want you to know that you are always welcome in our homeland.

But, nevertheless, for now I invite you to share in our happiness and in our hopes for the future through the enactment and the implementation that NAGPRA has made possible.

I'd also just like to note, although it is not included in my testimony, that in other instances we have had benefits. In this case it was associated with our 9,000-year-old person that was found in one of our caves in our homeland. But in this case we had a good consultation between the tribes and the Federal agency. In this instance, it was the Forest Service. The consultation proceeded very well, and right now I would say that I can tell you that we are involved in the scientific investigations that are ongoing in surrounding these remains.

For us, in this instance it reaffirmed to us—these scientific investigations are reaffirming to us and to the public, we think, that we have been in southeastern Alaska since time immemorial, and that is one of the words of our elders.

Mr. Chairman, I must now address a major issue that we have perceived in the Native community, and I know that it has been raised here several times. But, with the permission of Albert Kookesh, who serves as the Chair of the Alaska Federation of Natives, I would like to outline some of the issues that he raised in a letter to our delegation.

The Native American and the Hawaiian community has repeatedly voiced its concern about the responsibility of implementing NAGPRA that has been delegated to the National Park Service. We have come to the conclusion that the Park Service office is reluctant to comply with the objectives of NAGPRA, and in the past we have noted some very specific instances to substantiate our concerns and our assertion.

For the record, I would like to now cite one of those cases in which Park Service has failed to promulgate action to ensure compliance with NAGPRA. In this case, the United States attorney for the district office of Colorado investigated the failure of the Taylor Museum for Southwestern Studies of the Colorado Spring Art Museum to prepare a written summary of the Native American cultural items in its collection as of November 16, 1990, and then to provide this summary to the Department of Interior consulting archaeologist by November 16, 1993.

The U.S. Attorney's office further investigated the Taylor Museum's sale of a Tlingit raven rattle from its collection on November 18, 1993, to a private collector. My understanding, Senator, is that the Attorney General's office in this case thought that the Taylor Museum might be criminally liable. However, instead of pursuing criminal sanctions against the museum, the Attorney General's office recommended to the Secretary of Interior to consider assessing the museum a civil penalty for its failures to comply with NAGPRA. I am also of the understanding that the private collector was to be prosecuted for illegally trafficking in Native American cultural objects subject to NAGPRA.

We have inquired about the dispositions of this case as recently as last April in the NAGPRA Committee meeting in Juneau. The NAGPRA office has yet to advise us of any action.

With all due respect to the Park Service and despite the organizational changes that the National Park Service office has made, we can only be left with the impression that the National Park Service consulting archaeology office has a fundamental conflict of interest in implementing NAGPRA and is adverse to its implementation.

During the course of the April NAGPRA Committee meeting in Alaska, the conflict of interest issue again emerged as a major issue, not only by the Native American members who were present but by the committee, itself.

The NAGPRA Committee—and you have heard Mr. Sullivan talk about this, their recommendation to transfer the NAGPRA office from the Park Service office to the Secretariat's office in the Department of Interior. I understand that the concern over the conflict of interest issue was heightened by the refusal of the Park Service to consider a specific NAGPRA Committee recommendation without even the slightest hint of a discussion with the committee.

Without going into the specifics of the recommendation offered by the NAGPRA Committee, we now believe that even the standing of the NAGPRA Committee has been seriously undermined, and that action must be taken to restore confidence in the NAGPRA process.

We wholeheartedly support the NAGPRA Committee's recommendation that the NAGPRA office be transferred to the Office of the Secretariat of the Department of Interior.

Another continuing problem is inadequate funding, and I know you have heard this before. We say that repatriation holds great promise, but the intent of NAGPRA will not be fulfilled without sufficient funding.

We in Alaska have supported the NAGPRA Committee's recommendation to Congress to appropriate a minimum of $5 million to reduce the backlog and to improve the implementation of NAGPRA. We think that this is a modest request for a national program of great significance.

Our tribal institutions must meet the basic needs of our constituents in addressing their basic needs and also the number of issues, the political and economic issues that continuously threaten our Native communities and rights. More often, repatriation does take a secondary priority to housing and education and the basic welfare of our members.

Although we continue to try to find other monies, we are currently dependent on Congressional funding. This year, the Central Council of Tlingit and Haida Indians of Alaska, which has taken the lead in the implementation of NAGPRA, did not receive funding, and so we are doing our very best at the Foundation to try to pick up the issue.

In a recent region-wide clan meeting, our clan leaders directed that we dedicate ourselves to restoring social and spiritual harmony and balance within our communities. We have adopted this directive as our new millennium objective to ensure our cultural survival as Tlingit, Haida, and Tsimshian people.

Honorable Senator, we know that the return of our ancestors and our clan objects that are sacred in our world are essential to achieve balance and harmony, and we dedicate ourselves to this objective. We implore this Senate committee to ensure full implementation of NAGPRA, and we are forever gratified for the support you have demonstrated.

Goonulcheesh.

Senator INOUYE. I thank you very much, Dr. Worl.

[Prepared Statement of Ms. Worl appears in appendix.]

Senator INOUYE. May I now call upon President Harjo.

STATEMENT OF SUZAN SHOWN HARJO, PRESIDENT, MORNING STAR INSTITUTE, WASHINGTON, DC

Ms. HARJO. Thank you, Mr. Vice Chairman.

NAGPRA is 10 years old. We are older and wiser. And I'm here to confess error; 10 years ago we were policy wise and agency foolish. I was one of two Native negotiators of NAGPRA, and both of the Native negotiators thought it was a good idea to put the implementation of NAGPRA in the National Park Service.

Why? Because the Smithsonian was thwarting the 1989 historic repatriation provision in the National Museum of the American Indian Act and had just stacked its Review Committee for Repatriation against the Indian interest. So, we were pretty desperate to keep the implementation of NAGPRA out of the Smithsonian and were not interested in putting it in the hands of the Bureau of Indian Affairs, but thought that, if placed within the Secretary of the Interior, that the best of the various agencies could be at our disposal.

The negotiators for the American Association of Museums, who were across the table from us, agreed with us about the National Park Service. That's what we brought to you and to other legislators as our compromise for NAGPRA, and that is, in fact, what was enacted.

The Secretary of the Interior has abdicated all responsibility, it seems, to the National Park Service, but it is not irreversible.

As everyone here has pointed out, or nearly everyone, and as the NAGPRA Review Committee has pointed out in its annual report, which has been suppressed by the National Park Service, the National Park Service has not done a terrific job. It has institutionalized racism. It has an inherent conflict of interest.

The Native negotiators for NAGPRA knew this at the time. We thought it was a new day. There were Native American initiatives that were being taken seriously. There was consultation under the authority of the American Indian Religious Freedom Act that were taking place. There was a cultural resources initiative that placed a premium on fair dealings, just dealings with Native peoples. We thought it was a new day, and we were wrong.

We were very wise in many things. I am particularly proud of the language changes that we forced on everyone, although I hear from even the hearing today that a lot of them haven't taken hold. We went from the crass term of commercialism of "grave goods" to "funerary objects." We went from "bones and skeletons" and other terms of disrespect and inaccurate terms to "human remains." That was the hardest-fought term that we had to deal with in the national dialogue of Native American and museum relations.

Why? Because it carried an implication that our people, too, our dead relatives fell under international human rights standards. And, in the national dialogue every single archaeologist and physical anthropologist disassociated themselves from the term "human remains" in a footnote by name. Nonetheless, we did get these changes into the law, and I hope one day into the entire lexicon.

Cultural affiliation was one of those changes, although the National Park Service and others have taken that term and turned it on its head.

My example in my own mind for pressing as hard as I did until we prevailed on cultural affiliation was the situation with the Warm Springs Tribes in Oregon with the Army Corps of Engineers. The Army Corps of Engineers had disinterred people, Native people, from the other side of the river. The Warm Springs people, their religious leaders, went to the Army Corps of Engineers and said, "We want to bury them. We want to re-bury them." They said, "Why?" And they said, "Because they are our relatives." And they said, "No, they're not. They are from the other side of the river."

It was a fascinating debate. The Army Corps of Engineers' scientists could not understand why the Warm Springs religious leaders felt a responsibility for the people they weren't precisely related to, according to the Army Corps of Engineers, on the other side of the river. And the Warm Springs people said, "Don't you think we couldn't cross the river? Don't you think we didn't know them?" So it became a "who speaks for the earth" kind of issue, and the Warm Springs people said, "We will speak for our people over there across the river."

The National Park Service has turned this on its head and has made Indian nations, Indian religious leaders jump through terrible hoops to prove cultural affiliation. It is common sense. It was supposed to be a preponderance of the evidence test.

If you are looking at legislative changes—and it may need a legislative change, eventually—one of them would be to change from preponderance of the evidence to a reasonable belief standard regarding cultural affiliation so that we get back to commonsense stuff.

For the short term, we are proposing that the National Park Service be relieved of the burden of implementing NAGPRA except in the sense that it needs to comply with NAGPRA as an agency.

We want the Secretary of the Interior to take over responsibility for implementing NAGPRA, for its implementation to be placed squarely in the Departmental Secretariat, and for Congress to call for this committee, for this group of Senators, to call for a GAO investigation of Interior and National Park Service's compliance to date with NAGPRA.

I was at the seminal meeting on this subject in 1967, the gathering of Cheyenne, Arapaho, Lakota, Dakota, Winnebago, and other traditional religious leaders and practitioners at Bear Butte, which formed the coalition that started the modern repatriation movement. I wasn't the youngest person there. My daughter, who was 2 years old, was the youngest person there.

I feel like one of those old-time Indians who has children and grandchildren and great-grandchildren and great-great-grandchildren coming to Congress saying, "Please do something about this."

I was here in the 1970's, in the 1980's, in the 1990's, and now in 2000 saying, "Please do something about this." I have to once again confess error in saying we were wrong about the National Park Service and it is time to pin a medal on them and say "Good job" and let's let someone else take a crack at this.

There is something about the pathology of organizations. The National Park Service is a very old organization. It was one of the main implementers of the Secretary of the Interior's civilization regulations that the Secretary put in place unilaterally without Congressional authority in the 1880's. And then another Secretary of the Interior removed those civilization regulations that outlawed Native religions, and through which many of our sacred objects and our sacred lands were confiscated. Another Secretary of the Interior removed those regulations unilaterally in the 1930's. They did a lot of damage in the meantime.

Secretaries of the Interior can do a lot, and I hope your conversation goes well with the Secretary of the Interior and that he sees the wisdom of trying a new approach to the implementation of NAGPRA, if for nothing else to relieve our coming generations of the burden of having to come back over and over again to Congress after Congress saying, "Please do something about this."

Thank you so much.

Senator INOUYE. I thank you very much, Ms. Harjo.

[Prepared statement of Ms. Harjo appears in appendix.]

Senator INOUYE. Now may I call upon Mr. Gough.

STATEMENT OF ROBERT GOUGH, BOULDER, COLORADO

Mr. GOUGH. Thank you, Senator.

While my address reads as Boulder, my home is on the Rosebud Reservation in South Dakota, and I bring you greetings from the Rosebud Sioux Tribe and the tribal government and the family of Tasunke Witko, Crazy Horse.

I am the attorney, and I have the pleasure and privilege of serving as the attorney for the estate of Tasunke Witko, Crazy Horse, the great Lakota leader. I also serve as a member of the Rosebud Sioux Tribe's NAGPRA Committee. It is an honor to appear again before this distinguished committee and on such a distinguished panel on behalf of the estate and the Rosebud Sioux Tribe.

A little over 1 year ago, we appeared before you and this committee on the matter of particular and ongoing concern for the Crazy Horse estate, for the Rosebud Sioux Tribe, and the entire Lakota Nation with regard to the lack of compliance with and enforcement of the notification procedures established under the Native American Graves Protection and Repatriation Act, NAGPRA. The implication of the precedent set in this matter by the actions and inactions by the National Park Service is of concern to all Native American people expecting fair, consistent, and timely administration of NAGPRA by the National Park Service.

If you recall, the issue that we brought before you 1 year ago involved a highly-respected private institution of higher learning, Washington College, in Chestertown, MD, a buckskin shirt fringed with human hair believed to have belonged to Crazy Horse, the lack of compliance by Washington College with either the spirit or the letter of NAGPRA, and the continued lack of enforcement of the threshold provisions or the civil penalty provisions of the Native American Graves Protection and Repatriation Act by the U.S. Park Service for such blatant noncompliance.

Sadly, I must report to this committee that in the intervening year we have seen little more from the National Park Service than a renewed promise to look into the matter.

Beyond a single initial inquiry made by the National Park Service after continued correspondence, phone calls, and appearances before the NAGPRA Review Committee on the part of the estate and the Rosebud Sioux Tribe, I am not aware of any subsequent contact between the National Park Service and Washington College. To my knowledge, there has been no follow-up or determination as to the applicability of NAGPRA to Washington College.

However, I can tell you as the attorney for both the grieved parties that the National Park Service has had no contact with either the established of Tasunke Witko or the Rosebud Sioux Tribe NAGPRA Committee in this matter.

The estate and the Lakota people and other Native peoples have suffered continuing losses due to delays and inaction by the National Park Service.

The concern that we raised 1 year ago we raise again today. It has to do with initial compliance, the threshold matter in NAGPRA. Basically—and I've submitted written testimony which outlines this in detail, and due to time I will just concisely highlight a few matters here—we are not allowed, given the inaction of the National Park Service, to participate under any of the protec-

tions that NAGPRA affords or was designed to afford Native peoples.

Basically, the mandatory language of section 10.8(A) of the act states that "each museum that has possession or control over collections which may contain unassociated funerary objects, sacred objects, objects of cultural patrimony, must complete a summary of these collections based upon available information held by that museum."

We know—we've come to find out, through our own investigations, that the Washington College had such an inventory prepared in its collection since approximately 1977. However, it failed to file that with the Park Service, contact the estate, which had already been in contact with them since they had had this shirt on display, advertising it as belonging, owned, and worn by Crazy Horse, for over 60 years. Trying to get more information from them, we were put off, basically to find out that we were put off long enough for them to be able to arrange for the sale of this shirt on the public auction block through Sotherbys in New York City.

We alerted the Park Service to this. Apparently they alerted the Department of Justice to it. The matter was held in the Department of Justice for about a year, investigating not NAGPRA violations but basically violations of whether or not human remains were being sold, the human remains being the hair attached to this shirt, to the sleeves of the shirt.

As I reported to you 1 year ago, the Department of Justice's inquiry turned on whether or not this was a criminal violation of trading in human remains, and that turned on whether the hair was, in fact, either voluntarily or involuntarily given, contributed to this shirt. It had been advertised and promoted as a scalp shirt.

I raise these particular details in response to the questions with regard to the DNA testing that was done. There was no DNA testing done on this shirt, although this shirt was at that time a matter of criminal investigation, not NAGPRA. A DNA investigation may have determined whether or not a crime was being committed in the sale and transfer of this shirt. Such DNA investigations were not undertaken, so no crime was implicated, the shirt was released. It has been sold to a private party, and we do not know who currently owns this shirt.

I just raise that for this committee's attention, because the Department of Justice, acting under other laws, did not do the kinds of things that might and certainly seem to be encouraged by the Park Service's intent on wanting to see DNA proof used to prove that something is not an Indian remain or not coming under NAGPRA, and yet here is a case where a criminal investigation might well have resulted in a disposition in favor of Native peoples, and that was not proceeded on.

The crucial concern, however, for us with regard to NAGPRA is the fact that if an institution determines unilaterally on its own that it is not—that the objects in its collection do not fall under the categories, then they have freely opted out of the law.

We are here today to report that the Park Service has not moved on this matter. It is in their authority to determine whether or not an institution is in compliance with NAGPRA, in compliance with

the threshold provision. Do they have to participate in the process under the law or not?

The Park Service's inaction basically endorses a policy that, as long as you decide that you are not covered by the law, you needn't provide yourself, avail yourself of the provisions of the law.

We've come before you again to ask where in NAGPRA are federally-funded institutions possessing items which may be subject to the Native American Graves Protection and Repatriation Act allowed to presume that Federal law does not apply to them. Where in the law are such institutions excused or exempt from filing the appropriate summaries and inventories that they may already have in their possession but simply fail to file them? It's not a question of cost of producing them. Where are they, under the law, mandated, based on their own hardly disinterested determinations that such objects and artifacts in their collection are not subject to the act? Where in the law are the Secretary of the Department of the Interior and the National Park Service excused from their statutory duties and trustee responsibilities to protect the legal interests of Native American peoples from the actions of institutions that blatantly profit from purposefully ignoring the law?

I should say this type of shirt, when sold on the open market, fetches between $5,000 and $25,000, ordinarily. This shirt was appraised for between $60,000 and $90,000 by Sotherbys and it sold for $211,000. So we have an institution profiting very handsomely from ignoring Federal law.

Finally, we understand that the National Park Service has been undergoing restructuring, reorganization, and reassignment over the past year. Judging by the ongoing lack of results in this particular case, the National Park Service is still sadly no more effective than the law it refuses to enforce.

Will this committee do everything in its power to relocate the enforcement provisions of NAGPRA to an agency that will execute these sacred duties and responsibilities seriously and consistently in accordance with the statutory and Federal Indian trust responsibility?

I would just close with a suggestion that perhaps we could look to the Indian Arts and Crafts Act, which, in the protection of arts, crafts, and intellectual property of American Indian people, has an enforcement mechanism that moves enforcement, when necessary, over to the Justice Department, an agency that is perhaps willing to enforce compliance with Federal law certainly a bit more than the National Park Service has evidenced.

I have submitted written testimony with further details and background for the committee's information.

Thank you very much.

Senator INOUYE. Thank you very much, Mr. Gough.

[Prepared statement of Mr. Gough appears in appendix.]

Senator INOUYE. Dr. Worl, you have indicated that you believe there is a conflict of interest involved. Can you describe that?

Ms. WORL. Yes; I'll try to do that.

As I understand, it is within the office of the consulting archaeology office, and the individuals or the profession of archaeology and science is to study and to seek knowledge.

From my perspective, it would seem that this whole—the desire, the belief that what they are doing is absolutely the right thing, in terms of seeking knowledge and trying to understand migrations, human evolution, that these are precepts that those scientists have. From my perspective they see their responsibility first to science and then second to the law or to Indian people.

I think that's the driving force, from my perspective.

Senator INOUYE. You believe that in many respects this office has adequately implemented NAGPRA as in the cases you have described to us, but in certain cases you feel that the departmental consulting archaeologist has been an adversary as far as implementing NAGPRA?

Ms. WORL. I think that, insofar as the benefits that I have outlined, those were initiatives that were undertaken by Native people, themselves.

Where we have asked for assistance, where we have asked for compliance with the law, where we have asked for enforcement of the law, particularly in the case that I noted, is that we have seen no action to date.

I know that a letter went from the Attorney General's office in Colorado to the Park Service over a year ago, and I know that the Attorney General did recommend action, civil action, civil penalties in this case, and we've inquired about it but yet have not heard a response.

Senator INOUYE. Have they responded to you?

Ms. WORL. No; I have not—I appeared before the committee, the NAGPRA Committee, in April in Juneau and specifically requested information as to the status of this, and my understanding—I had hoped that the NAGPRA Committee would be able to exert its influence over or with the Park Service and find a response. I have not heard a response.

Senator INOUYE. I thank you very much. We will look into that.

Ms. Harjo, in your statement you have said the following:

> The National Park Service has captured an increasingly larger portion of the monies appropriated for grants to Indian tribes, Native Hawaiian organizations and museums for "administrative costs," despite the fact that Congress appropriated a separate line item to cover such costs.

Could you provide us with statistics and evidence to support this charge?

Ms. HARJO. Yes; I will do my best. And at some point, though, the self-dealing—the evidence of self-dealing runs a little thin, and that is really what prompted my request to you to ask for a GAO investigation, because I think that this is one of the things that will come to light, and that they can find more easily than some of us who are on the outside.

Senator INOUYE. Could you provide the committee with that?

Ms. HARJO. Yes.

Senator INOUYE. You have another quote here.

> The National Park Service included language in its regulations forbidding Federal agencies and museums from repatriating culturally-unidentifiable human remains, despite the clear language in section 11.

Can you provide that, too?

Ms. HARJO. Yes.

Senator INOUYE. You have suggested that the committee initiate a GAO investigation. Instead of a general investigation, are you suggesting some specific investigation on some specific item?

Ms. HARJO. I'm suggesting a——

Senator INOUYE. I ask this question because if it is a general investigation it may take a long, long time. If it is on one or two specific items or issues, it may be resolved much sooner. What are you suggesting?

Ms. HARJO. I'm suggesting that in the administration of NAGPRA that the GAO take a look at where the money went; where the money has gone; how much of it, increasingly, as far as I'm concerned, has gone to the National Park Service, itself; how, in the implementation of NAGPRA, if the National Park Service has been biased against the Indian interest—I believe that they have been and that there is now a decade of experience to support that contention.

An examination of just the allegations that have been made today, together with the supporting testimony to back up those allegations I think would make the case for removing the National Park Service from jurisdiction over NAGPRA.

Senator INOUYE. I thank you very much.

Mr. Gough, what is the present status of the shirt belonging to Crazy Horse?

Mr. GOUGH. The shirt was auctioned in May 1996. It was held for about 1 year while the Department of Justice was concluding some investigation into whether or not it was trafficking in human remains. It was released, it is my understanding about 1 year later, 1997, to Sotherbys, who then turned it over to whomever it was that paid the $211,000 for the shirt. It is gone. We have no idea who bought it. We have no way of tracking that down. Sotherbys keeps that information confidential.

Senator INOUYE. And you have no idea where it is, obviously?

Mr. GOUGH. No, sir.

Senator INOUYE. And do you believe that the Park Service should have imposed civil penalties on this museum, this university?

Mr. GOUGH. I believe they should have, at first, required them to, as the last sentence in the testimony of Katherine Stevenson suggests, NAGPRA redresses the situation by requiring museums and agencies to make available for repatriation human remains and certain kinds of cultural items to the lineal descendants or cultural affiliated Indian tribes.

That's what the law provides. The Park Service has not required Washington College to abide by that requirement, and in so doing, by allowing this precedent to go unaddressed, the National Park Service has effectively rescinded the law as far as it applies to Washington College.

Senator INOUYE. You are the attorney of record. Have you brought this matter to the court's attention?

Mr. GOUGH. Well, there's—we brought it to one court's attention under rights of the family that had donated the shirt to the college many years ago, and their rights had lapsed. Their rights of prosecuting the college for mishandling the collection and the like had lapsed, unfortunately, by the time we were advised and received their permission to go ahead.

Under the rights that the tribe or the estate may have, we first need to go through an administrative process. We are waiting for an agency to make a decision in this particular case. Given the time that has elapsed in waiting for the Park Service to move, some of the rights of the family and the tribe may have been jeopardized.

What we are looking at is an agency action, a determination. Did the law apply to this institution or not? Did it meet its duties or did it fail to do so? We've waited 5 years for that single determination, and it is still not forthcoming.

Senator INOUYE. Is it your contention that the sale and transfer of title of the shirt by Sothebys was legal or illegal?

Mr. GOUGH. I believe that the transfer of this shirt—the ownership rights of Washington College are subject to NAGPRA provisions, but we've not been allowed to get into that process based on the self-interested action of Washington College by opting out.

I would contend that the sale of this shirt was illegal and that the inaction of the Park Service has stalled any immediate legal action under NAGPRA to proceed. I believe that they should find that they are in violation, should require not only the surveys, the summaries, and inventories, but find them in violation of the act and fine stiff civil penalties.

This shirt and this issue appeared in the "Chronicle of Higher Education" alerting every institution of higher education to the fact that if you don't file you needn't worry about the penalties.

Senator INOUYE. I thank you very much, Mr. Gough, and I thank the panel very much.

Now may I call upon the director of the National Museum of the American Indian and the past president of the American Association of Museums, Richard West; the president of Bishop Museum of Honolulu, Donald Duckworth; and representing the Society of American Archaeologists, Keith Kintigh.

Mr. West, it is always good to see you.

Mr. WEST. Thank you.

Senator INOUYE. How is the museum coming along?

Mr. WEST. Well, it is coming right along, as you may be able to see from your place over here in the Capitol Building. We are in the ground and will soon be out of it and coming up.

Senator INOUYE. When is the grand ribbon cutting day?

Mr. WEST. The grand ribbon cutting date is September 23, 2003.

Senator INOUYE. With that, please proceed, sir.

Mr. WEST. Thank you very much.

STATEMENT OF W. RICHARD WEST, DIRECTOR, NATIONAL MUSEUM OF THE AMERICAN INDIAN, AND PAST PRESIDENT, AMERICAN ASSOCIATION OF MUSEUMS, WASHINGTON, DC

Mr. WEST. Mr. Chairman and members of the committee, I am W. Richard West, immediate past chairman of the Board of Directors of the American Association of Museums and director of the Smithsonian Institution's National Museum of the American Indian.

Thank you for the opportunity to present testimony on behalf of the American Association of Museums on the Native American Graves Protection and Repatriation Act, or NAGPRA.

The American Association of Museums represents the broad range of museums from aquaria, art and history museums, to science technology centers, natural history museums and zoos, with more than 16,400 members, of which about 11,000 are museum paid staff or volunteers, 2,000 are independent professionals and suppliers to the museum community, and 3,000 are museums.

As you know, we now have 10 years of experience with NAGPRA. It is an instrument of compromise created through the best collective efforts of museum people working closely with Native Americans, anthropologists, universities, and others. As a compromise, it is not a perfect law for any of the affected parties, but on the whole it has worked well. I think all the parties to the law have found that the repatriation process has been much more demanding, complicated, and costly than anyone had expected.

But museums and tribes have both benefited greatly by the process. In particular, they have set up collaborations that have provided museums with new understanding of the significance of their collections and tribes with awareness of important objects, of whose continued existence they may not have known.

Since 1990, museums have worked very hard to honor not only the letter but also the spirit of the law. In my written testimony, I have provided several specific examples of how the repatriation process has affected museums around the country in recent years, including the museum I direct.

Given our time constraints for oral testimony, I need to pass on to more general comments about the NAGPRA process.

Despite the progress in museum and tribal actions on repatriation that are documented in those examples, there are several current hindrances in the repatriation process relating to funding which need to be cleared away. One of those is the slow rate of publication of notices of NAGPRA inventories in the "Federal Register."

We understand that there is currently a backlog of more than 1 year's worth of notices, despite the efforts of the National Park Service. In fact, we understand that, of the roughly 700 notices submitted, about one-half are still not published.

The President's budget request would provide for a $400,000-increase for general NAGPRA funding, which would allow an increase of staff by five to help process the notices. The museum community strongly urges that additional funds be provided for this purpose.

A second hindrance is insufficient funding for the NAGPRA grant program which is to assist museums and tribes in the repatriation process. The need continues to be great.

In 1994 the AAM conducted a repatriation survey of 500 of its member institutions, including all of its natural history museums and a selected sample of its art and history museums. Of the 43.6 percent that responded, 76 percent of the natural history museums, 43 percent of the history museums, and 23 percent of the art museums had Native American objects.

Those respondents—a little more than 200—alone had almost 3.5 million objects which fell into NAGPRA categories, and that did not include 15 responding natural history museums, including three

large institutions, which could not at that time give an accurate estimate of their NAGPRA-related holdings.

In contrast, in October 1990, at the time of the passage of NAGPRA, the Congressional Budget Office had estimated NAGPRA implementation costs to museums of only $40 million, and to tribes and Native Hawaiian organizations of $5 to $10 million over 5 years, assuming that museums and Federal agencies held between 100,000 and 200,000 Native American remains, and that the cost to inventory and review each remain would be $50 to $100. Those estimates now appear to be very low, in light of our experience since that time.

In the fiscal year 2000 grants round, many projects judged worthwhile could not be recommended for funding because of the limited funds available. The Park Service received 111 proposals requesting over $6 million, but was able to fund only 42 with the $2.25 million available, plus a reserve amount in fund repatriation requests during fiscal year 2000 at smaller dollar amounts. The 42 awards were divided between 13 grants to 13 museums, totaling $617,210 and 29 grants to 26 tribes totaling $1,574,250.

Without increased funding to support projects judged worthy, both museums and tribes are hindered in their efforts to make timely progress in the repatriation process and to deal with issues that arise such as the abatement of pesticides in repatriated objects. The museum community strongly suggests that additional funding be provided here, as well.

Thank you for the opportunity to testify on this issue, and at the appropriate time I would be happy to respond to any questions you might have.

Senator INOUYE. Thank you very much, Mr. West.

[Prepared statement of Mr. West appears in appendix.]

Senator INOUYE. Now may I call upon Dr. Duckworth.

STATEMENT OF DONALD DUCKWORTH, PRESIDENT, BISHOP MUSEUM, HONOLULU, HI

Mr. DUCKWORTH. Thank you, Mr. Chairman. Once again, it is always a pleasure to see you and always a privilege to appear before this distinguished committee.

In April 1999, I had the privilege of appearing here and reporting to the committee on Bishop Museum's endeavors to implement both the letter and the spirit of the Native American Graves Protection and Repatriation Act. I also had the privilege in my position as a member of the Board of Directors of the American Association of Museums to report on behalf of the association.

This year I return to the table primarily to discuss a specific experience that has occurred recently in our ongoing efforts in Honolulu to implement the letter and spirit of the act, and to do so with a certain amount of sadness in that, in my testimony in April 1999, we indicated what we had experienced up to that point with the Park Service's administration of the law, a good relationship, and we cautioned the committee in good faith that in our judgment any attempt to move that responsibility away from the Park Service should not be taken lightly.

I say that I come today with some sadness because since that time our experience in Honolulu has suggested that, indeed, that

endeavor to move and relocate the administration of the act was perhaps not what we see today as sufficiently accurate and appropriate.

I will, in the very small amount of time allotted, ask that you let me give you the details of our experience and why we have come to believe that it is no longer appropriate to continue to administer NAGPRA at the National Park Service cultural stewardship and partnerships.

Bishop Museum is currently facilitating NAGPRA-related repatriation of human remains and funerary objects removed from a cave complex in the Kawaihae District on Hawaii Island. The Hawaii Volcanoes National Park, which is under National Park Service jurisdiction, is also in possession and control of objects from this same cave complex. The Hawaii Volcanoes National Park is not facilitating NAGPRA-related repatriation of these items, and especially not so in concert with our efforts to repatriate the remaining material of these items from these caves.

In our judgment, the conflict of interest in this case is very clear. Bishop Museum has tried, in good faith, to work out solutions in a highly-charged emotional context. Bishop Museum has, often with great difficulty, reached solutions that truly reflect the collaborative spirit of NAGPRA. We are dismayed that National Park Service staff associated with the cultural resource stewardship and partnership's office are interfering with this collaboration, and instead are attempting in strong terms to influence decisionmaking between the museum and the claimants.

Not only are National Park Service staff faxing official letters to the media, they are creating an atmosphere of suspicion and ill will that reaches deep within our institution and outside into our community and beyond.

It also appears, from the tenor of National Park Service letters sent to us that the National Park Service has predetermined instituting a civil penalty proceeding against the museum. Please allow me to give you some background and some examples.

It is important to note the circumstances of the museum's receipt of the Kawaihae Cave human remains and objects. In 1905, three men exploring caves in search of burial treasures discovered a cave in Kawaihae with remains of a chief and others and objects that were wrapped and placed with the remains. The three men, who entered the chief's burial cave and removed the objects and some of the remains, drew straws to divide their bounty three ways. Two of the men sold and traded their shares to Bishop Museum in 1907. The third man kept his share. In 1956, some time after his death, this man's family donated his share of the objects to the Hawaii Volcanoes National Park, where they reside to this day.

This past February the museum, in good faith, made a loan of the objects held in our care to one of the claimants, Hui Malama I Na Kupuna O Hawaii Nei, to facilitate the consultation process. The Office of Hawaiian Affairs, another claimant, alleged that the loan was in violation of NAGPRA and requested that the National Park Service institute a civil penalty proceeding.

In a letter sent from Director Robert Stanton's office on April 7, the museum was informed of the Office of Hawaii Affair's allega-

tion and invited to respond in writing to assist the National Park Service in evaluating the allegations.

We should point out that we feel that Director Stanton's letter was in order and we are grateful we were afforded the opportunity to respond.

We did respond to Director Stanton's request on May 12 responding to his questions and indicating, in our judgment, we had in no way violated the NAGPRA act or process.

Subsequent to the receipt of Mr. Stanton's letter, two other letters were received from Katherine H. Stevenson, associate director, National Park Service, cultural resource stewardship and partnerships. One of the letters was faxed to the "Honolulu Advertiser" and the "Honolulu Star Bulletin" on the same day the museum received it. We were provided copies of those faxes by one of the reporters. The source of the fax to the newspapers was the Honolulu National Park Service office, which also faxed copies of correspondence between our NAGPRA project manager and a claimant to one of our staff archaeologists, and I might add that archaeologist had nothing to do with the NAGPRA process that was underway.

The letters from Katherine Stevenson included statements such as:

> I hope you are able to take action to assert the direct control the museum has over the security and safety of the objects. It is your museum's responsibility to ensure that the objects are preserved and protected against all threats. As long as the objects are out of your possession, the objects, which would be worth millions of dollars on the black market, are subject to substantial threat of theft. They are also threatened by damage of insects, humidity, and other natural factors.

We found these statements to be inappropriate in that they interfere with the museum/claimant consultation process and infer a predetermination on the part of the National Park Service that a civil penalty proceeding will be instituted. The National Park Service letters were quoted liberally by the newspapers and included the statement regarding the monetary worth of the objects.

We feel that it is highly inappropriate for the National Park Service to compromise the security of the objects with statements regarding their worth. We also feel that it was inappropriate for the National Park Service to assume that the monetary worth of the objects and the maintenance of museum quality environmental controls were, in this case, more important than the spiritual significance and ceremonial context of the objects.

Finally, we are concerned whether the placement of such high monetary value over these objects is influencing National Park Service decisions regarding the other portion of the objects that are in this NAGPRA-related repatriation which are in the National Park Service's collections and control at Volcano National Park.

It seems Bishop Museum has been the subject of such keen scrutiny by the National Park Service staff because the NPS is in possession and control of the remaining third of the objects removed from the Kawaihae burial cave in 1905.

Although we have enjoyed a long and productive relationship with the Honolulu National Park Service office, we are dismayed with the actions of the archaeologist assigned to that office. It is well known in Honolulu that he continues to support one of the potential claimants because that claimant is questioning the status of the objects as burial related or even as NAGPRA related.

We understand, furthermore, that the National Park Service has not responded to claims for the objects held in their possession, made some time ago, by Hui Malama, the Department of Hawaiian Home Lands, and the Hawaii Island Burial Council.

In closing, we reiterate our commitment to fulfilling the spirit and intent of NAGPRA. We stand by our belief that the meaningful collaboration that Bishop Museum has enjoyed with Native Hawaiians as a result of NAGPRA has been most valuable and significant.

We support any effort made by this distinguished committee to ensure the NAGPRA program is administered with objectivity, cultural sensitivity, and in keeping with the spirit and intent of the act.

As is always the case, it is a pleasure and a privilege to appear before you. Thank you for this opportunity to testify.

Senator INOUYE. I thank you very much, Dr. Duckworth.

[Prepared statement of Mr. Duckworth appears in appendix.]

Senator INOUYE. May I now call on Professor Kintigh.

STATEMENT OF KEITH KINTIGH, SOCIETY OF AMERICAN ARCHAEOLOGY, WASHINGTON, DC

Mr. KINTIGH. Senator Inouye, the Society for American Archaeology thanks the committee for this opportunity to comment.

SAA is the Nation's leading organization of professional archaeologists. In 1990, SAA led the Coalition of Scientific Organizations that strongly supported NAGPRA's enactment. Joining SAA in this testimony is one of those organizations, the American Association of Physical Anthropologists, the Nation's leading organization of physical anthropologists.

Ten years ago I stood before this committee to present SAA's testimony on NAGPRA. Looking back, the committee should be proud of what has been accomplished. Repatriation is being accomplished routinely. Cooperation between tribal people and members of the scientific community has greatly expanded. Indeed, I'd like to provide the committee with copies of "Working Together," a book recently published by SAA that highlights exactly this cooperation.

I now turn to a brief discussion of several issues.

First, full compliance by some Federal agencies remains the largest stumbling block in implementing NAGPRA. Most conspicuous are failures to complete the inventories due 5 years ago. More pernicious problems lie in determinations of cultural affiliation made without reasonable efforts to compile and weigh the evidence.

While some agencies are moving too slowly, problems also arise when an agency moves hastily. For example, in its rush to repatriate the remains of Kennewick man, the court has found that the Corps of Engineers failed to satisfy the legal requirements, which included establishing cultural affiliation. The unfortunate consequence—the involvement of the courts and a lengthy lawsuit.

As you heard from Marty Sullivan, last November the Review Committee found that the assessments of cultural affiliation by Chaco Canyon National Historical Park were utterly inadequate. They recommended the park redo its inventory with appropriate consultation and attention to the evidence.

While the scientific community, nearly all of the affected tribes, and the Review Committee agreed on all the key points in this case, the NPS regional director saw fit to dismiss the Review Committee's recommendations.

Second, tribes have expressed dismay that repatriation is taking so long; however, lack of speedy reburial does not necessarily indicate that the process has gone awry. Universal reburial was never NAGPRA's goal. Indeed, tribes have only requested repatriation of a small fraction of the remains that have been culturally affiliated.

Lack of repatriation may represent a tribal decision to have museums maintain custody or may reflect tribal priorities and lack of funding. For tribes in the Southwest, for example, repatriation associated with ongoing excavations generally takes precedence over repatriation from existing collections, for understandable reasons.

The lack of necessary resources continues to delay the implementation of NAGPRA. Tribes need increased funding for NAGPRA grants. There is currently no Federal support for tribal implementation of repatriation associated with ongoing excavations, also covered by NAGPRA, and the NAGPRA office within NPS needs increased funding to accomplish its legal mandates.

Third, we discuss culturally-unidentifiable human remains. The committee should recognize that many human remains currently classified as culturally unidentifiable could be affiliated with additional consultation and research. In denying extensions to museums making good faith efforts last year, the Department of the Interior directed them to complete their inventories using available information, precluding adequate research or consultation.

While the Review Committee issued its recommendations regarding the disposition of culturally-unidentifiable human remains less than 2 months ago, a coalition of southeastern tribes has offered an alternative. They suggest empowering a consortium of tribes to determine disposition.

Because many culturally-unidentifiable remains have the potential to be affiliated, empowering tribal consortia to decide quickly on the disposition would bypass the rights of affiliated tribes. Furthermore, this approach fundamentally upsets the balance embodied in NAGPRA in which decisions are shared by representatives of the scientific, museum, and Native American communities.

Notably, the Review Committee's recommendations also include use of tribal consortia and regional consultation, but, consistent with NAGPRA, they include museums and agencies in consensus-based decision-making.

Fourth, scientific interests in human remains and cultural items derive from their ability to inform on our human heritage. The next fundamental step in the human genome project will be to chart variation within the human genome. Study of Native American human remains will be invaluable to this important medical research and to many other worthy efforts.

We do not suggest that scientific interests outweigh those of tribes; we simply point out that NAGPRA appropriately recognized the legitimacy of scientific interests, as well.

Finally, the recent reorganization of the NAGPRA function within the Department of the Interior has removed, in our minds, the appearance of a conflict of interest. Repatriation issues associated

with the parks, themselves, have been separated from those associated with the national implementation and the Review Committee.

At this point, I think we should all just work with Mr. Robbins and his staff toward the effective implementation of NAGPRA.

In conclusion, we offer three recommendations. First, we ask that Congress bring Federal agencies into full compliance with NAGPRA, attending particularly to the importance of tribal consultation and evidentially-based determinations of cultural affiliation.

Second, once the Department of the Interior responds to the Review Committee's recommendations regarding the disposition of culturally-unidentifiable human remains, this committee can better evaluate whether additional action is needed.

Third, we ask that Congress address the insufficient funding of tribal, museum, scientific, and agency repatriation programs.

The Society for American Archaeology and the American Association of Physical Anthropologists thank you for your consideration of our concerns.

Senator INOUYE. I thank you very much, Dr. Kintigh.

[Prepared statement of Mr. Kintigh appears in appendix.]

Senator INOUYE. Mr. West, the National Park Service, as you have heard from testimony, conducted DNA analysis on the Kennewick remains. It has been alleged by witnesses appearing before us this morning that the Park Service intends to increase the use of DNA analysis to determine cultural affiliation of human remains. My question is: what is the current standard of proof used to determine cultural affiliation of human remains under NAGPRA?

Mr. WEST. I guess I would like, first of all, to reiterate the position that the AAM presented last year during the April oversight hearings, and then that will lead directly to the question that you have asked, because I think it all fits together.

The position of the American Association of Museums is that DNA testing in this particular context is a very, very distant last resort, and the reason that it is such is the following—and I would offer three points in support of that particular position.

The first is that, notwithstanding the extensive discussion you've heard today about the fact that the NAGPRA legislation was a compromise between scientific interests, on the one hand, and the Native community's interests, on the other hand, the fact is that this compromise represented a paradigm shift along the line, and the legislation really is reflective of a much heightened consideration on the part of the Congress in support of Native cultural and human rights. I think that is the beginning point.

The second point is that, if you take that as the premise, DNA testing is abhorrent to many Native communities, and therefore I think that must be taken into consideration.

Third, I would also say that, in trying to define what we mean by cultural affiliation, as the NAGPRA legislation makes very clear, the evidentiary scope that we are supposed to try to research is extremely broad, and I think that it is very dangerous, given the spirit of the NAGPRA legislation, to focus on a particular piece of evidentiary finding which may be scientific in nature.

The fact is that Native people, themselves, as has been pointed out in abundance at these hearings, have many methods for trying to chart the affiliation between their communities and human remains that may be found in their aboriginal areas.

Senator INOUYE. Then you disagree with the departmental consulting archaeologist? He has stated that this sets a new standard, a new precedent.

Mr. WEST. I would be very skeptical of that kind of position, given what I understand to be the Congressional intent that sits behind the NAGPRA legislation. It is a much more complicated matter than that simple statement.

Senator INOUYE. And it is your contention that a DNA analysis is to be used, if at all, under the most extreme situations?

Mr. WEST. That is correct, and then maybe even not there, given the objections that some Native communities have to this kind of defilement of human remains.

Senator INOUYE. If the current standard of proof is changed to the new standard described by the departmental consulting archaeologist as a member of associations board will this have an effect on museums and their costs incurred to effectuate the law?

Mr. WEST. I think it would have a rather direct impact on the cost that would be incurred by museums, because, as you, yourself, have noted in the course of this morning's testimony, the cost of this particular kind of research is extremely great.

Senator INOUYE. Do you believe that when we enacted this law there was any intent that DNA analysis would be employed at all?

Mr. WEST. I don't know that I can answer the question whether somebody had specifically in mind that DNA would be a part and parcel of the research. What I do know, from what I understand of the Congressional intentions behind the NAGPRA legislation, it was a piece of legislation that said to all parties involved, both museums and Native people, that, in trying to determine what constituted cultural affiliation, the evidentiary base should be extremely broad and should be done in close consultation, not just with scientists whose domain this had been previously, but with Native people, themselves, and to make sure that this legislation, in its processes, tapped the knowledge that Native people, themselves, have about the matter of cultural affiliation.

Senator INOUYE. I'm not certain whether you can respond to this, but I noted that you were sitting here throughout the session. Is it your belief that these witnesses who have many complaints have grounds to do so?

Mr. WEST. If I were to venture a position based upon what I have heard this morning, I would have to say that there are matters well worth this committee's exploration in determining whether NAGPRA is actually on the ground, at least in respect to the work of certain Federal agencies, operating in the manner that it should be.

Senator INOUYE. I thank you very much, Mr. West.

Dr. Duckworth, what is the present status of the remains in issue?

Mr. DUCKWORTH. The remains at issue are not really remains in this sense, Senator. Some year or so ago—this repatriation process

has been going on since 1994. Both human remains, EV, and unassociated burial objects, goods, were involved in this.

A little over 1 year ago, the four claimant groups at that time—Hui Malama, Office of Hawaiian Affairs, Department of Hawaiian Home Lands, and the Hawaii Island Burial Council—all agreed that the consultation process would be facilitated by the lending of the EV to Hui Malama and having the EV placed in a temporary location on the Big Island in the district that the burial caves occur in to facilitate what, as you know, is a very serious and demanding cultural and spiritual discussion that must take place.

That happened with no concerns whatsoever.

A similar request was made to Bishop Museum earlier this year by Hui Malama, assuring us that they had the concurrence—I should predicate this by saying discussion had been held again by the claimants concerning the associated burial goods, and discussions alluding to the fact that it would facilitate the overall consultation once again if those items were lent and treated as the EV had been 1 year earlier.

We were assured that all four claimants were in agreement and we lent the objects in question to Hui Malama.

Later, the Office of Hawaiian Affairs and others refuted that they had, admitting they had discussed the issue with Hui Malama but they had not come to an agreement, and thus the controversy ensued.

We have indicated that we wanted to work with the claimant groups, all four. My board passed a resolution asking the four claimants to comment on the materials. The materials are sequestered on the Big Island of Hawaii in the burial caves from which they were taken. That's well known to all four claimants. The four claimants have indicated to us that they would like to continue to have discussions concerning the material. Three of the four have commented they would like the material kept exactly where it is at the moment, while the new claimants that have come into the process—and there are six new claimants that have emerged as a result of these discussions and the controversies—they would like to continue the consultations with the ten now legally-recognized consultants or claimants before anything.

We have inspected the site. We are comfortable that the material is in an appropriate circumstance with security and the appropriate conditions.

I'm sorry to take so long. It was a little detailed.

Senator INOUYE. Are you optimistic that this matter will be resolved?

Mr. DUCKWORTH. I am confident, Senator, while it has not been an easy process—as you know, it has not been an easy process from the beginning. All of us involved, including Bishop Museum, have made many mistakes along the way. I can say without any hesitation from the museum's standpoint that the mistakes we've made have never been made with malice. They have been made solely in our efforts to deal with the implementation of the law and its spirit, and I'm confident that in this case, given the time and given a diminished media presence in large part stimulated by the factors that I indicated in my testimony, I'm confident that the claimants and the museum, working together, will reach a solution that will

be in everyone's best interest, as we have in all the previous repatriation processes that we have been engaged in.

Senator INOUYE. I thank you very much.

Dr. Kintigh, you, too, have been sitting through the testimony. You have heard several witnesses speak of conflicts of interest. Do you believe that the departmental consulting archaeologist has been involved in any conflict of interest in issuing his directive on the disposition of some of these remains?

Mr. KINTIGH. As you know, the authority has now moved up a level from the departmental consulting archaeologist. That authority no longer rests with him.

It is my belief that the departmental consulting archaeologist not only tried but, largely succeeded in dealing effectively with the resources he had available. And, while I certainly can understand the argument that there was an appearance of a conflict of interest, I don't think that it was really there. I think that that appearance is partly because people see the National Park Service as a unitary body, when, in fact, as you know, it has many pieces. In fact, the individual parks, as Mr. Duckworth has referred to, and as Marty Sullivan and I talked about in the case of the Chaco-Hopi dispute, the individual parks have been responsible for their own inventories. I think they've completed them, often probably at odds with the advice of the NAGPRA office.

The parks have that responsibility the way Park Service authority is delegated, and so I think more problems than are really appropriate have been laid at the doorstep of the NAGPRA office. Thus I don't think there has been a conflict of interest, although I agree that there has been an appearance of one.

I think the decision by the Department to move that office attempted to deal with that.

Senator INOUYE. Is there any conflict involved when the departmental consulting archaeologist provides a grant to your association?

Mr. KINTIGH. I'm sorry? When he does what?

Senator INOUYE. When the Society of American Archaeologists received a grant from the consulting archaeologist who is a member of the Society's Board, was there a conflict of interest?

Mr. KINTIGH. In the giving a grant to the Society? I don't believe so. The departmental consulting archaeologist has many responsibilities, and, in fact, no longer has the NAGPRA one, but even apart from that he is responsible for implementing the national program for archaeology and ethnology, and furthering those goals.

One of the grants—in fact, a grant that we just finished expending the money on—was a grant to facilitate cooperation between Native Americans and archaeologists. And I just was at a meeting last Friday in which we had four Native people and three members of the Society of American Archaeology, and it was chaired by Professor Tsosie, to try to really see where we could come down, not in terms of NAGPRA, but in terms of just talking about how archaeology can be done better to serve the needs of Native people and to improve archaeology.

Senator INOUYE. Do you concur with Mr. West's response to the question on the use of DNA analysis?

Mr. KINTIGH. I think I largely do. It seems to me that the involvement here of the courts has had a big impact on this. I think that, had the Corps of Engineers gone about this in the way that they should have—that is, going through the statutory requirements—we wouldn't end up where we are today.

I think that why we have this very extensive study and all the attention to this case is because it is a lawsuit. I think it is unfortunate that it came out that way, but I think that there are really two issues involved. There are a number of issues that the plaintiffs have raised—and the SAA is not a party to this lawsuit at all.

But the plaintiffs have raised two key issues. One is that Kennewick man is not Native American. Both the Department of the Interior and the Society for American Archaeology have asserted that, in fact, Kennewick man is Native American under the act. I firmly believe that's the case. I think that's what the law says and I think that's what the law intends.

However, the court seems to have taken seriously the argument of the plaintiffs that Kennewick man is not Native American, and, given that, it seems to me that the court might find the DNA evidence relevant to determinations both of Native Americaness and cultural affiliation.

I think it will be less informative on cultural affiliation. I by no means think that this suggests that DNA analysis will become a routine part of cultural affiliation studies.

Senator INOUYE. Do you believe that this now establishes a new standard of proof?

Mr. KINTIGH. No; and I have a hard time believing that the departmental consulting archaeologist, if he said that, intended that—that he intended that this meant that DNA studies would now be the standard by which cultural affiliation was judged.

You can ask him, but I don't think that was the case. I don't think that ought to be the case and I don't think it will become the case.

Senator INOUYE. So you still believe that the standard of proof as set forth in the law is the preponderance of evidence?

Mr. KINTIGH. Absolutely, including consideration of all the evidence.

Senator INOUYE. And am I correct in assuming that from your testimony you believe the departmental consulting archaeologist has done a credible job?

Mr. KINTIGH. I think he has done a credible job with the resources that have been available to him. I think a lot of the problems with Federal agencies and lack of compliance by other Federal agencies and, indeed, compliance by units within the Park Service which are not under his control at all, have ended up being set at his doorstep, and they are things over which he really did not have control.

Senator INOUYE. Do you believe from the testimony that the committee has received that there is some justification for GAO to look into this?

Mr. KINTIGH. This hearing was the first I had heard of any allegations of financial mismanagement, which I take to be the major impetus behind that argument. I'm not aware of any evidence that there has been financial mismanagement. I think there has been

a strain on resources. No one doubts that. But, based on the evidence of which I am aware, I don't see any cause for that. No.

Senator INOUYE. I thank you very much, sir.

Mr. KINTIGH. Thank you.

Senator INOUYE. And I thank the panel very much.

And now, for our final witness, may I call upon the Associate Director of the Cultural Resource Stewardship and Partnerships, National Park Service, Katherine Stevenson.

STATEMENT OF KATHERINE H. STEVENSON, ASSOCIATE DIRECTOR, CULTURAL RESOURCE STEWARDSHIP AND PARTNERSHIPS, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR, WASHINGTON, DC, ACCOMPANIED BY FRANK McMANAMON, DEPARTMENTAL CONSULTING ARCHAEOLOGIST

Ms. STEVENSON. Mr. Chairman, thank you for the opportunity to appear before you to discuss the National Park Service/Department of Interior views on the administration of the Native American Graves Protection and Repatriation Act enacted in November 1990.

I'd like to summarize my testimony and then answer any questions you may have.

I have organized my comments to parallel the act itself. I will highlight the actions of the National Park Service, as well as the work of Federal agencies, museums, and tribes.

First, as regards the regulations, in 1995 the National Park Service published regulations covering many important activities. These regulations were developed in close consultation with the Review Committee and with substantial public comment.

At that time, it was determined that some areas were most sensitive, and that we wanted to have additional consultation and more progress so that we could proceed on those at a later date.

Four sections are presently in preparation: Civil penalties, which was published for effect and has final regulations yet to come, and proposed regulations are in preparation; culturally-identifiable human remains; future applicability; and disposition of unclaimed cultural items.

As relates to the inventory, as you know, each Federal agency and each museum with Native American human remains and associated funerary objects had 5 years to develop their inventory. We have received 736 of these inventories, have gotten back to 213 institutions about the completeness of their inventories, and have published 355 notices of completion. That leaves a backlog of about 250 inventories.

Let me give you some perspective on those inventories.

There are about 150 linear feet of files, which is about 10 big filing cabinets of four drawers each. This is not a small matter in to which to look.

The summaries—each Federal agency and each museum, for unassociated funerary objects and sacred objects, have not less than 3 years to send their summaries. There have been 1,042 institutions that have sent those, and I might mention, for both the inventory and for the summaries, the National Park Service has completed its inventories and its summaries, with one exception—a park which has agreed with one of the potentially claimant tribes

not to send in their inventory until they've received Federal recognition.

Repatriation—the responsibility, as you know, lies with the Federal agency or with the museum working with the tribes or the Native Hawaiian or Alaska Natives. The cultural affiliation is the test here in all cases to determine to whom to repatriate. For example, in May 1999, after documentation and extensive consultation and negotiations, the Jemez Pueblo, the National Park Service, the Peabody Museum at Harvard, the Peabody Museum at Phillips Academy, and several New Mexico museums were able to repatriate 2,000 individuals and numerous culturally-significant objects to Jemez. They were repatriated and reburied at Pecos.

The Review Committee was chartered and appointed in 1991, and, as many people have told you, it has had 19 meetings thus far, and it has assisted in resolving three major disputes between claimants and holders of the material.

As to penalties, the final regs are in preparation, as I mentioned. We've identified six institutions that have failed to comply, and we have granted limited periods of forbearance. Those institutions are on time with their agreed-upon schedules.

We have seven assertions of failure to comply which are under investigation now, and we have three assertions under review, additionally under review.

As to the grants program, since 1994 we have given $15 million in grants to assist in carrying out the responsibilities. Two-thirds of those have gone to Indian tribes and Native Hawaiian organizations, and about one-third have gone to museums. I would be able to provide you specifics on those, if you wish.

In terms of administrative actions, we are well aware of the frustrations and delays expressed here today. In March 2000, we received $195,000 additional funding, which we have used to concentrate on publishing the inventories, which seems to be the most pressing need, as well as getting the civil penalties regulations out in final.

The President's 2001 budget has a base increase request of $400,000, but, of course, that is not finalized yet.

Passed in 1990, NAGPRA was not funded until 1993. From 1994 until this past spring, the amount available to spend on NAGPRA for this activity has been level at $270,000 base per year. Of that base, $40,000 is spent every year on publications in the "Federal Register." That is the actual publication cost. And it costs about $100,000 to support the Review Committee activities. As you can see, that leaves a very, very small amount in order to support the NAGPRA activities.

Mr. Chairman, those of us who are working on all aspects of this important program are well aware of the frustrations of the tribes, the Alaska Native villages, and Native Hawaiian organizations, museums, and agencies. We have taken the steps I've just described to reduce the delays, particularly in the backlog of public notices and civil penalties. We fully recognize that NAGPRA is a law that attempts to right some of the wrongs regarding the treatment of Native American human remains and cultural objects. NAGPRA requires museums and agencies to identify remains and cultural objects in their possession so that lineal descendants or

culturally-affiliated tribes, Alaska Native villages, and corporations or Native Hawaiian organizations may repatriate them.

Mr. Chairman, this concludes my remarks. I will be very happy to answer any additional questions you may have.

Senator INOUYE. I thank you very much, Ms. Stevenson.

[Prepared statement of Ms. Stevenson appears in appendix.]

Senator INOUYE. Before I proceed, I would like to thank you for agreeing to let us setting aside Senate protocol by accepting our recommendation that you speak at the end. We thought that it might be helpful to you if you heard the testimony of the others preceding you.

Ms. STEVENSON. And it was.

Senator INOUYE. As you know, we invited the departmental consulting archaeologist, Frank McManamon and John Robbins, the new head of the NAGPRA, to appear as witnesses, but we were advised last week that they are on leave at this time.

Ms. STEVENSON. Actually, they are here with me, sir, and I supervise both of their activities, and I thought it was appropriate for me to be here answering your questions, but they are here to advise me if you have specific questions that they can assist in answering.

Senator INOUYE. Ms. Stevenson, several witnesses have touched upon the Kennewick case on the use of DNA analysis conducted, and several have indicated that the Interior experts opposed DNA analysis on the Kennewick remains, as did the claimant tribes.

It has been suggested that, notwithstanding this opposition, the DNA analysis was conducted on the Kennewick remains, and now your written testimony states that a second stage of investigation is underway to determine whether the cultural affiliation of these remains can be determined and to recommend treatment of the remains, and that additional DNA analysis will be conducted for this purpose.

What bearing does DNA analysis have on cultural affiliation?

Ms. STEVENSON. I'd like to address the first part of your question first, if I may.

There was considerable—let me start before that. At the time that the departmental consulting archaeologist agreed, on behalf of the Department or with the Department's agreement, that we would work closely with the Corps of Engineers to assist them in determining the disposition of the Kennewick remains, several processes went into effect.

We decided, as a means of policy, to approach this in a manner that would be the gentlest means possible in proceeding forward. As a result of that, our first action was to consult with the tribes and to hear their concerns about the disposition of the remains.

Over the course of the period that we have been working with, I believe we have consulted with the tribes something like six times in face-to-face meetings, and I can get you that specific number.

The first investigation was a physical anthropological investigation, as well as investigation with the tribes of what they believed the age of the human remains was.

The result of those analyses—and I should say each of these steps was taken in a very slow and orderly process so that we did

not jump forward to conclusions before each of these processes had been exhausted. The result of that analysis was inconclusive. As a result, we felt it was necessary, in order to determine whether these remains were of a certain age, to proceed with carbon 14 testing.

That certainly gave us certain results, but, as a result of that, to proceed further with the cultural affiliation we proceeded then to do contracts with several experts and to further consult with the tribes.

The result of those were three papers which we made public as soon as they were available, and there was a broad and very deep discussion within the Department of the Interior on what those results meant.

Those results were also conveyed to the Justice Department because, as you know, this is part of ongoing litigation.

The result of this long discussion within the Department of the Interior with very differing views expressed and tribal reviews expressed, clearly both from our face-to-face meetings and our understanding of that, as well as tribal reviews within the Department, resulted in the Departmental decision that it would be extremely useful for cultural affiliation determination for us to have DNA testing done.

Senator INOUYE. You've already had one DNA analysis, and you are seeking another. Why do you need the second one? Are the results of the first one not sufficient?

Ms. STEVENSON. I think I may have to look for help for that one, if I may invite Dr. McManamon to the table. May I do that?

Senator INOUYE. You think it is necessary to have two?

Ms. STEVENSON. No, sir; I'd like to ask Dr. McManamon to assist me in the answer with that. Would that be acceptable?

Senator INOUYE. Please.

Mr. MCMANAMON. Good afternoon, Senator.

Senator INOUYE. The question was: Is it necessary to have another destructive analysis? You've already had one DNA.

Mr. MCMANAMON. I think there is some confusion about Kate's answer to the question and the written testimony. We have taken samples and the DNA testing is underway, but once that is finished we don't anticipate any additional DNA. There is not a second round of DNA that we have proposed. The text in the testimony refers to the initial DNA analysis.

Senator INOUYE. I asked the question because it says here, "As part of this effort, Interior has decided to utilize DNA testing of additional small pieces of the skeleton." Isn't that a second one?

Mr. MCMANAMON. No, sir; I'm sorry. The text may be a bit confusing. The "additional" refers to the earlier use of small pieces of bone for the carbon 14 dating, so we have done two destructive tests, one the carbon 14 dating. We had to take additional bone to do the DNA testing, but there is no third set of bone that we anticipate taking.

Senator INOUYE. Maybe I should ask you how much has this cost now?

Ms. STEVENSON. We'd have to get those figures from the Corps of Engineers. We don't have an accounting of those figures. It is a Corps of Engineers project.

Senator INOUYE. Well, according to this, it is $1,173,000. Would that be about right?

Ms. STEVENSON. I really have no idea, sir. I'd have to provide that for the record.

Senator INOUYE. That is as of this moment.

[Information follows:]

The estimates we received from the three laboratories conducting the tests ranged from $1,000 to $5,000. The labs are completing their tests this week and we can expect final bills sometime after their final reports are received. The total cost for the tests could range from $9,000–$15,000.

Senator Inouye. Is it your contention that this does not set a new standard of proof?

Ms. STEVENSON. Correct, sir. I do not believe it sets a standard of proof.

Senator INOUYE. And that the standard of proof still remains the preponderance of evidence?

Ms. STEVENSON. Yes, sir.

Senator INOUYE. And, sir, you believe that DNA analysis is necessary to determine cultural affiliation?

Mr. MCMANAMON. No; not in most cases. That is not what is needed. As several of the witnesses have said and as the Senator knows well, there is a broad range of types of evidence that the law calls for to look at in terms of cultural affiliation—archaeology, oral tradition, history, geography. It includes biology, which is where you might include DNA analysis.

Senator INOUYE. In this case it was necessary?

Mr. MCMANAMON. In this case, due to the extraordinary circumstances, we felt it was important that we had that kind of evidence, as well, but we have looked at all of the other types of evidence or are in the process of looking at all the other types of evidence, too.

Senator INOUYE. Then you are not in complete accord with the statements attributed to the Departmental consulting archaeologist?

Mr. MCMANAMON. I believe, sir, the statements that have been attributed to me are a misquotation or a misinterpretation of some statements that I made at a press conference. The point I was trying to make in that presentation was, in the—what the Kennewick case shows is that we need to be careful in identifying evidence and weighing evidence, and that was what we were trying to accomplish and have tried to accomplish in this process.

Senator INOUYE. If I may continue, Ms. Stevenson, as you've indicated, the Congress has appropriated funds for NAGPRA since 1994 and has included separate funding for grant administration costs, but, as you've heard in one of the testimonies, the National Park Service is diverting some of the funds appropriated for actual NAGPRA grants to cover grant administrative costs. Is that correct?

Ms. STEVENSON. Yes, sir; it is correct. Within the powers of the administrative procedures that the Department can use, we can take—we can move around money, up to a small amount, between accounts in order to address pressing needs. I believe it is very clear that $270,000 minus the money for the Federal Register and the Review Committee was not enough to support even the most

minimal program for NAGPRA. Therefore, we requested through our budget office to be able to move additional small amounts into the actual administration of the NAGPRA program for many of those years.

I would be able to tell you which of those years we've done it for.

Senator INOUYE. I understand that in November 1999 the assistant secretary of Fish and Wildlife created a plan that directed the Park Service to make certain changes in how the act was administered. Can you provide me with a copy of that plan?

Ms. STEVENSON. Yes; I would be happy to do so.

Senator INOUYE. Including documentation of staffing and organizational structure, et cetera?

Ms. STEVENSON. Yes, sir.

Senator INOUYE. I would appreciate that.

[Information follows:]

Copies of the August 3, 1999 and the November 30, 1999 memorandums outlining recommended alternatives for implementation of the Secretary's responsibilities under the NAGPRA are attached.

Senator INOUYE. Can you inquire of the Corps of Engineers as to the cost of the Kennewick analysis?

Ms. STEVENSON. I will, sir.

Senator INOUYE. NAGPRA allows a museum to appeal to the Secretary for extension of time to complete the inventory process as set forth in the act. Have all museums and Federal agencies completed their inventories? It has been 10 years now.

Ms. STEVENSON. Yes; I would say the vast majority have completed their inventories. As I told you before, six institutions were granted forbearance, which means that we have told them that we have not allowed them to extend, but instead we have told them that we know that they have failed to comply and we have worked out an agreed-upon schedule.

Additionally, we have 10 assertions by people that ten additional institutions have failed to comply, and we are pursuing those.

In terms of Federal agencies, we know what is going on in terms of the Department of the Interior, but I believe that we probably cannot give you an accurate accounting of each Federal agency outside the Department of the Interior. I can tell you what is happening inside the Department. I can give you that for the record, if you'd like.

Senator INOUYE. Have all other Federal agencies completed their inventory?

Ms. STEVENSON. I would have to say no.

Senator INOUYE. No? And this law applies to them, doesn't it?

Ms. STEVENSON. It does, sir, but I don't believe that it sets a time limit the way it does for other institutions.

I'm sorry. I need to correct something for the record.

Our latest Review Committee report does have an accounting of Federal agencies reporting, and I can provide that for the record.

[Information follows:]

The most detailed description of the ways in which various Federal agencies have dealt with their NAGRPA inventory requirements can be found in the "Federal Compliance with the Native American Graves Protection and Repatriation Act [NAGPRA]." This report was included as appendix 1 of the NAGRPA Review Committee's Report to Congress, which was sent in August 1999. I have enclosed a copy

of this report for the committee. It also can be found on the Internet at: http://www.cast.uark.edu/other/nps/nagpra/rccong.html

Senator INOUYE. Can you tell us what agencies have and what agencies have not completed the inventory?

Ms. STEVENSON. I will have to provide that for the record.

[Information follows:]

The list of Federal agencies and museums that have completed and submitted to the National Park Service copies of their NAGRPA inventories is attached. A copy of the state-by-state list can be found on the Internet at: http://www.cast.uark.edu/products/NAGPRA/DOCS/invsubmi.html

Senator INOUYE. You mean you have no idea?

Ms. STEVENSON. We have a list of them, but I can't tell you them off the top of my head. I'll provide them for the record.

Senator INOUYE. Is it a long list of Federal agencies? You mean our Federal agencies are not complying with the law of the land?

Ms. STEVENSON. Yes, sir.

Senator INOUYE. I thought we would be the first to follow the law. [Laughter.]

When do you anticipate that this review process will be completed?

Ms. STEVENSON. The review of the inventory, sir?

Senator INOUYE. The complete——

Ms. STEVENSON. It depends on two factors. It depends on being able to get the additional $400,000 for next year, which will mean that we can get full-time staffing added to our base, so that will be a determining factor, and it depends on how quickly museums can get back to us on the information that we have on hand in order to get their inventories there and published.

Senator INOUYE. And $400,000 would do it?

Ms. STEVENSON. The $400,000 will make a big dent in it.

Senator INOUYE. Has Smithsonian fulfilled its requirement under the law?

Ms. STEVENSON. I'm told they are not covered by NAGPRA.

Senator INOUYE. We have heard allegations this morning that the Park Service has refused to publish certain notices. Can you identify the provision in the law which would allow the Park Service to refuse to publish notices?

Ms. STEVENSON. There is only one instance where we've refused to publish a notice. We have had a disagreement with the Peabody Essex Museum in Salem about the text of a draft notice. We objected to one paragraph in the draft which we believe misinterprets a letter from us to the museum, and we have asked the museum to remove this paragraph from the notice because it is incorrect, and then we will then publish the notice.

Senator INOUYE. So you are contending that all notices have been published?

Ms. STEVENSON. No; I'm not saying all notices have been published, because I told you there has been a backlog, but we haven't refused to publish any except for this one. We're just way behind in publishing them.

Senator INOUYE. Is there any situation in which the United States would have a property interest in Native American human remains that is superior to that of a federally-recognized tribe?

Ms. STEVENSON. That is a policy matter that we have not investigated yet, sir, and we will have to review it more thoroughly and provide you an answer.

Senator INOUYE. Are there any Indian employees who work in the Park Service who work on NAGPRA issues?

Ms. STEVENSON. Yes, sir; there are.

Senator INOUYE. At what level?

Ms. STEVENSON. There are presently two employees who work on NAGPRA. I don't have their grade levels, but both of them are working on the NAGPRA. One of them is a recent employee and the other is a long-term employee of the Park Service.

Senator INOUYE. How many employees do you have in NAGPRA?

Ms. STEVENSON. I'm sorry, sir?

Senator INOUYE. How many employees are there in NAGPRA?

Ms. STEVENSON. Seven.

Senator INOUYE. Seven? And of the seven, two are Natives?

Ms. STEVENSON. Yes, sir; both are contractors.

Senator INOUYE. What are the three major disputes that NAGPRA Review Committee has resolved?

Ms. STEVENSON. Go ahead.

Mr. MCMANAMON. Senator, if I could identify those, there was a dispute between Native Hawaiian organizations and the P.B. Hirsch Museum at the University of California at Berkeley, which was the first dispute that the committee became involved with, and actually the Bishop Museum and Dr. Duckworth played an instrumental role in assisting with the facilitation of resolution of that.

There was a second dispute between the Oneida Nation and the Oneida Tribe. The Oneida Nation of—well, they had a disagreement over the repatriation of a wampum belt, and the committee heard their presentations at one of its meetings and, as the result of those presentations, before the committee really even had a chance to issue a finding, the tribes agreed that they would work together to try to resolve that issue, and, as far as I know, they've worked something out, although we haven't heard that formally.

The third dispute was again an issue from Hawaii, where there was an item held at a museum in Providence, RI, that was claimed as a sacred object by several Native Hawaiian groups.

The committee heard the sides on that, issued a finding, and eventually, after some further discussion—I think quite a bit of further discussion, the museum and the Native Hawaiian groups were able to work out an agreement.

Those would be the three.

Senator INOUYE. I must apologize to you. I have just been informed that you are the departmental consulting archaeologist.

Mr. MCMANAMON. Right.

Senator INOUYE. I was advised that you were on leave. Welcome back, sir.

Mr. MCMANAMON. Thank you. [Laughter.]

It is nice to be here.

Senator INOUYE. Apparently, you have been using DNA analysis on other cases; is that correct? the *Chaco* case, Chaco Canyon?

Mr. MCMANAMON. Sir, I don't believe so. I think—certainly, in any of the cases that I have had a role in, this is the first time we have utilized DNA.

Senator INOUYE. So the only DNA analysis that you are aware of is the Kennewick case?

Ms. STEVENSON. Well, there was DNA analysis done elsewhere in the United States for situations, but the only one in which we have been involved is Kennewick.

Senator INOUYE. So you are not aware of the *Chaco Canyon* case?

Mr. MCMANAMON. I am not aware of DNA being part of that case, Senator.

Ms. STEVENSON. We'd be happy to pursue that, if that's an issue.

Senator INOUYE. Can you check it out for me, please?

Ms. STEVENSON. Yes.

[Information follows:]

No new testing for ancient or modern DNA was done for the Chaco Culture National Historic Park cultural affiliation determination. Existing DNA evidence from other investigations was utilized for a portion of the determination analysis.

Senator INOUYE. I am certain you were here when Dr. Sullivan testified, and at that time he testified that there are 236 agreements between tribes and museums and/or scientific institutions for repatriation that have not been published as notices.

Is there any decisionmaking authority on your part to determine whether you publish or not publish these notices?

Ms. STEVENSON. Money is the only factor.

Senator INOUYE. What?

Ms. STEVENSON. Money is the only factor. We simply haven't had the staff to publish the notices.

Senator INOUYE. So if you had the money, these 236 would be published?

Ms. STEVENSON. Yes, sir.

Senator INOUYE. So it is not a question of your deciding it is not worthy of publication?

Ms. STEVENSON. No, sir; in fact, we are giving priority to those situations where there has been an agreement between the institution and the tribe to try and get those out in the Federal Register as soon as possible.

Senator INOUYE. If the $400,000 is appropriated, those would be published?

Ms. STEVENSON. Yes, sir.

Senator INOUYE. Well, I thank you very much. It has been a long day. I thank all of you for your patience. I thank all of the witnesses, and my apologies to you, Mr. McManamon.

Mr. MCMANAMON. Yes, sir; thank you.

Senator INOUYE. With that, the committee will adjourn, but the record will be kept open for 3 weeks. If you have any addendum or new statements, please free to submit them.

Thank you.

[Whereupon, at 1:36 p.m., the committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF ARMAND MINTHORN, MEMBER, BOARD OF TRUSTEES, CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION

Good morning, Mr. Chairman, and members of the committee. I am Armand Minthorn, member of the Board of Trustees and chair of the Cultural Resources Commission of the Confederated Tribes of the Umatilla Indian Reservation. Over the past 3 years, I have served on the Review Committee established by the Native American Graves Protection and Repatriation Act (NAGPRA). At the April 2000, Review Committee meeting, I was named the Interim Chair of that committee. During my service to the tribe as well as to the Review Committee, I have witnessed firsthand the implementation of NAGPRA. What I have seen over the last 2 years has been disturbing. NAGPRA was passed to protect the human rights of Native American Tribes and individual lineal descendants, However, agency implementation—particularly that of the Department of the Interior—has failed to carryout the intent of NAGPRA making repatriation more difficult.

I would like to discuss four elements of the implementation of NAGPRA: (1) consultation with tribal governments; (2) the precedents established by the National Park Service's implementation of NAGPRA; (3) the Review Committee; and (4) the guiding Trust Responsibility of Federal agencies toward the tribes. For illustration, I will use the case of Thechaminsh Oytpamanatityt, or the "Kennewick man," as he is more commonly referred to. We have been involved in this case since the first days of the release of the carbon dating results in 1996. Since then, we have struggled against the Department of the Interior, the Department of Justice, the Corps of Engineers and the media to have our voices heard and our rights respected. To date, we are not winning this battle.

First, when NAGPRA was passed in 1990, the legislation broadly announced that Native American Tribes do indeed have a right to protect their ancestors. The statute made it clear that the tribes are to be an integral component of the decision-making process through consultation. In the provisions of NAGPRA dealing with intentional excavation, inventories, summaries, and repatriation, consultation is required. The regulations written by Interior require that consultation be the foundation of the repatriation process. We are disappointed in the form and content of the consultation process Interior has decided to pursue in the "Kennewick man" case. Rather than engage in collaborative decisionmaking or meaningful consultation as required by NAGPRA and Executive Order 13084, Interior has chosen instead to inform the. five claimant tribes of the decisions made after-the-fact, and tried to convince us that they are doing this "for our own good." This is not consultation as required by NAGPRA.

The decision by Interior to go forward with DNA analysis of the "Kennewick man" is a good example of the failure of the consultation process. On February 18, 2000, the Department of the Interior made the final determination to conduct DNA analysis on the "Kennewick man." All five claimant tribes—the Umatilla, Yakama, Nez Perce, Colville, and Wanapum—uniformly opposed DNA testing, even to the point that we were willing to go forward with a cultural affiliation determination without

DNA results and defend that decision in court. Interior, however, decided that it was in its best interests to do those tests. They did so even though their own experts agreed with the tribes that DNA results could not possibly show cultural affiliation, and the insignificant likelihood of the presence of any viable DNA was grounds alone not to conduct the tests.

The precedent of using DNA evidence to show cultural affiliation struck a devastating blow to the pursuit of repatriation throughout the Native American community, a reality that is only now becoming clear. Interior's reliance on DNA testing is being construed as an open invitation to all Federal agencies and museums to allow such testing on their collections. We have received requests, and are aware of other requests around the country, to do DNA analysis on Native American skeletons. While I will concede that there will be cases where testing is necessary, the decision must be made with the tribes, not for the tribes. Any other avenue removes the tribes from the repatriation process and is contrary to the intent of NAGPRA.

Interior has not only ignored the tribes in implementing NAGPRA. I serve on the Review Committee as the Interim Chair and recently we made recommendations to the National Park Service and Interior staff in furtherance of the implementation of NAGPRA. These recommendations for administrative reorganization have been ignored. On other occasions the Review Committee recommended additional appropriations to tribes for the implementation of NAGPRA, a recommendation the Park Service failed to support. In short, I have witnessed serious problems within Interior in their effort to insure compliance and implementation of the law. Something must be done to remedy this inadequate performance of Interior.

I would also like to discuss the Trust Responsibility of the Federal agencies implementing NAGPRA. Certainly fulfilling the Trust Responsibility involves following the letter and the intent of the laws passed to benefit Indians. The Trust Responsibility requires more, however. It requires that the agency implementing the statute resolve ambiguities in the law in favor of tribal interests. Interior has not been acting in the best interests of the Tribes nor has it been making decisions which further the preservation of tribal culture. What should be a cooperative process is a constant battle and I cannot believe that the members of this committee that supported NAGPRA intended this result.

Interior's decisions directly conflict with the plain meaning and the intent of NAGPRA. Because of the nature of archaeology, a science based in part on conjecture, the further back in time you go, the more difficult it is to show a high level of certainty. We are not going to achieve certainty in this case. We acknowledge the difficulty in showing cultural affiliation for remains that are 9,000 years old. The "Kennewick man" litigation has exposed the difficulty in achieving NAGPRA's intent in returning ancient remains to their claimant tribes. Nevertheless, we have submitted evidence which, under prevailing archaeological theories and NAGPRA, should be sufficient to indicate a cultural affiliation to our ancestor.

Unfortunately, we are now faced with scientists who wish to reexamine and redefine every theory about the peopling of the Western Hemisphere. Many new theories have little foundation, yet they wish to study, dissect and destroy our ancestors to prove or disprove these theories. This focus in physical anthropology and archaeology has resulted once again in tribal ancestors being used as test subjects in experiments. Additionally, tribes are forced to disprove these theories in order to show archaeological continuity for cultural affiliation. NAGPRA placed the burden on the tribes to prove cultural affiliation to support a claim for repatriation. NAGPRA was not intended to force tribes to prove their entire history in order to justify repatriation.

Mr. Chairman, members of the Committee, today I have given you some disturbing news about how NAGPRA is being misapplied by agencies at the expense of the tribes, primarily to avoid litigation. I urge you to use whatever methods are at your disposal to inform these agencies that this is unacceptable, NAGPRA does not need to be amended to accomplish this. However, the agencies and museums implementing this statute must be made aware, in the strongest terms possible, that NAGPRA was passed to secure the human rights of tribes to protect their ancestors. It was not intended, and should not be used, as a backhanded way to accomplish scientific study of questionable merit under the guise of determining cultural affiliation. Thank you.

PREPARED STATEMENT OF JEFFERSON KEEL, LIEUTENANT GOVERNOR, CHICKASAW NATION

Good Morning.

Thank you for the opportunity to address this important issue concerning Native people. My name is Jefferson Keel and I am the Lieutenant Governor of the Chickasaw Nation. I am honored to be selected to appear before this honorable committee.

The Chickasaw Nation considers all graves and contents of the graves of our ancestors as sacred sites. We are aware of thousands of human remains, funerary objects, artifacts and other objects that have been determined to be of Chickasaw origin, that have been removed from the graves of our ancestors and still remain in the custody of repositories throughout the country.

The Native American Graves Protection and Repatriation Act [NAGPRA] mandates that all institutions or agencies which receive Federal assistance and who are in possession of these items to provide inventories of those items to tribes, and allows tribes to present claims to these items. Other Federal laws and regulations require all Federal agencies and agencies that receive Federal funds to consult with Indian tribes on all issues concerning NAGPRA or actions that may affect Native American graves or sacred sites.

Today, in spite of Federal mandates, many States refuse to recognize the rights of Native American tribal governments to consult on important issues. State agencies often interpret the law to suit their individual needs, especially regarding construction projects, such as highway or urban development projects. Our requests for consultations regarding the construction projects are often ignored or delayed until construction results in the discovery of human remains. When states are unwilling to consult with Indian tribes, the tribes must seek assistance through the National Park Service, a branch of the Fish and Wildlife service of the U.S. Department of the Interior, which further delays or disrupts the consultation or negotiation process.

The National Park Service is often slow to respond due to limited staff and the sheer number of requests, a lack of knowledge of tribal customs, and/or a lack of experience in dealing with Indian tribes. There are also pressures by the scientific community to conduct lengthy and unreasonable studies of our ancestors and artifacts. The Native American Graves Protection and Repatriation Review Committee is appointed by the Secretary of the Interior to settle disputes that arise when more than one tribe makes a claim for remains, artifacts, or any grave goods. The committee is also charged with the responsibility for actions to be taken on items that are considered to be "culturally unaffiliated," or items that lack definite tribal identity due to the age of the item.

NAGPRA defines cultural affiliation as "a relationship of shared group identity that can be reasonably traced historically or prehistorically between a present day Indian tribe or Native Hawaiian organization and an identifiable earlier group." Many scientists and state officials seek to narrow this interpretation by demanding that present day federally recognized tribes prove a biological relationship to an earlier group. The statute provides that where cultural affiliation is not established in an inventory or summary, "the remains should be expeditiously returned where the requesting tribe can show cultural affiliation by a preponderance of evidence based on geographical, kinship, biological, archaeological, anthropological, linguistic, folkloric, oral tradition, historical, or other relevant information or expert opinion."

The Chickasaw Nation feels that the determination of cultural affiliation of Native American human remains, funerary objects, artifacts, and objects of cultural patrimony should be accomplished by the affected tribes. Determination of cultural affiliation must be made in consultation with Native American tribal governments, Alaskan Native communities and Native Hawaiian organizations. We feel that regional committees of tribal representatives could better define and determine the affiliation of all of these remains, artifacts, and burial goods. The regional committees could then report their findings to the National Review Committee for finalization and report to Congress.

We would prefer that the Secretary of the Interior transfer authority for the NAGPRA program from the National Park Service to the Secretariat of the Department of the Interior, and that the NAGPRA program be administered by staff having sufficient seniority, program knowledge, and experience implementing the statute. We request that Congress ensure that the re-delegation to the Secretariat of the Department of the Interior is completed in its deliberations regarding the 2001 budget for the Department of the Interior. Again, thank you for this opportunity to appear before this body today.

PREPARED STATEMENT OF ROSITA WORL, PH.D., SEALASKA CORPORATION AND SEALASKA HERITAGE FOUNDATION WASHINGTON, DC

I believe that Congress took a very bold and courageous step in enacting the Native American Graves Protection and Repatriation Act. I realize that a few interest groups opposed its enactment and continue to assert that this law challenges the very basic precepts of science and the values the larger society. However, from the Indian perspective, I think that the act moves toward rectifying some of the injustices perpetuated against the indigenous people of this continent. I thank this committee for its resoluteness and its efforts to ensure the full implementation of this law.

My objective today is to share with you in a small way the initial benefits we have found in implementing NAGPRA and to outline one of our most immediate concerns. In my humble view, the Repatriation Act holds great promise, not only for the Native community, but to the contributions of knowledge it offers to the greater public.

However, before I begin, I am compelled by our cultural protocols to advise you who I am in our society. For the record, my name is Rosita Worl. Within the Tlingit community, I am also known as Yeidiklats'ok of the Eagle Chilkat moiety. I am a member of the Thunderbird Clan from the House Lowered from the Sun in Klukwan. I serve as President of the Sealaska Heritage Foundation and as a professor of anthropology at the University of Alaska Southeast. I am also a member of the Board of Directors of the Alaska Federation of Natives and Sealaska Corporation.

Sealaska Corporation was created by Congress to implement the settlement of the aboriginal land claims in Southeast Alaska. It is a federally recognized tribe for the special statutory purposes of NAGPRA. The Sealaska Heritage Foundation addresses the cultural and educational issues of the 30,000 Indians of Southeast Alaska on behalf of Sealaska Corporation.

Sealaska was most pleased to host the NAGPRA Review Committee members and participants in its April meeting in Juneau and to observe and participate in its committee meetings. I commend the committee and NAGPRA staff for holding its meetings throughout the country where Native Americans, who have great interest in the success of repatriation, reside.

I realize that this committee has more often heard of the problems associated with NAGPRA. I would like to provide a glimpse of its benefits.

Recently, I was invited to a gravesite ceremony of a Tlingit who had been reinterred after his repatriation. We could sense his spirit and the spiritual forces, which abounded in the area which we have known as our homeland for thousands of years. We Tlingit believe that the spirits of our ancestors remain simultaneously with their human remains and in the land behind the forest. Our ancestors return to us to speak of their needs and wants. We attempt to respond to them in our ceremonies. In the present period, and under the current circumstances or the removal of our ancestors from their home, we are now additionally obligated to seek the return of our ancestors' remains and restoration of their spirits to their homeland.

In this particular case, the return and the spiritual restoration of our one of our ancestors was achieved under NAGPRA. However, a collaborative effort between the Tlingit and the National Museum of Natural History continues that will yield multiple benefits that otherwise might not have occurred. A project is underway to record clan histories, migrations, and unexpectedly, additional information in the field of ethnobotany. This information has been traditionally transmitted through oral traditions, but we now have the occasion to record this information and ensure its preservation and transmission to future generations who may not have the same opportunities to learn through oral traditions. NAGPRA, in this case, facilitated the acquisition and preservation of knowledge that was previously known only in the minds of a few elders and clan leaders.

I have also been privileged to be involved in the repatriation of clan objects to their homeland. Although I know that some members of the larger society may not understand nor accept our beliefs, we know that the spirits of our ancestors—some of whom may be creatures of the land, sea and air—reside with our clan objects and crests. We belief that the spirits of our ancestors, who used these objects in their life, are also associated with the objects.

I wish that members of this committee could see the joy, but sometimes laced with tears of sadness that overcomes our people in the return of our ancestral spirits and the few objects that have been returned and repatriated. Perhaps it may be that someday you will be able to attend one of our ceremonies to which you will always be welcome, but nevertheless, for now I invite you to share in our happiness and in our hopes for the future that you, through the enactment and implementation of NAGPRA, have made possible.

I must now address a major problem that we have perceived in the Native community. With the permission of Albert Kookesh, chairperson of the Alaska Federation of Natives, I share with you an issue that he has raised with the Alaskan Congressional Delegation.

The Native American and Hawaiian Community has repeatedly voiced its concerns that the responsibility of implementing NAGPRA has been delegated to the National Park Service Consulting Archaeology Office by the Secretary of Interior. We have come to the conclusion that the Consulting Archaeology Office is reluctant to comply with the objectives of NAGPRA, and in the past we have noted specific instances to substantiate our assertion.

For the record, I would like to cite one of those cases in which the Park Service has failed to promulgate action to ensure compliance with NAGPRA. The U.S. Attorney for the District of Colorado investigated the failure of the Taylor Museum for Southwestern Studies of the Colorado Spring Art Center to prepare a written summary of Native American cultural items in its collection as of November 16, 1990 and then to provide this summary to the DOI Consulting Archaeologist by November 16, 1993. The U.S. Attorney's office further investigated the Taylor Museum's sale of a Tlingit Raven Rattle from its collection on November 18, 1993 to a private collector.

My understanding is that the Attorney General's office thought that the Taylor Museum might be criminally liable. However, instead of pursuing criminal sanction against the museum, the AG's recommended to the Secretary of the Interior to consider assessing the museum a civil penalty for its failures to comply with NAGPRA. I am also of the understanding that the private collector was to be prosecuted for illegally trafficking in Native American cultural items subject to NAGPRA.

We have inquired about the disposition of this case as recently as last April in the NAGPRA committee meeting in Juneau. The NAGPRA office has yet to advise of any action. We can only be left with the impression that the NPS Consulting Archaeology Office has a fundamental conflict of interest in implementing NAGPRA and is adverse to its implementation.

During the course of the April NAGPRA Committee meeting in Alaska, the conflict of interest issue again emerged as a major concern, not only by the Native American participants, but this time by the Committee itself. The NAGPRA Committee adopted a recommendation to transfer the NAGPRA Office from the National Park Service to Office of the Secretariat of the Department of the Interior. I understand that concern over the conflict of issue was heightened by the refusal of the Park Service to consider a specific NAGPRA Committee recommendation without even the slightest hint of discussion with the Committee.

Without getting into the specifics of the recommendation offered by the NAGPRA Committee, we believe that the standing of the NAGPRA Committee has been seriously undermined and that action must be taken to restore confidence in the NAGPRA process. We wholeheartedly support the NAGPRA Committee's recommendation that the NAGPRA office be transferred to the Office of the Secretariat of the DOI.

A continuing problem is inadequate funding to implement NAGPRA. Repatriation holds great promise, but the intent of NAGPRA will not be fulfilled without sufficient funding. We in Alaska have supported the NAGPRA Committee's recommendations to Congress to appropriate a minimum of $5 million to reduce the backlogs and improve the implementation of the act. We think this is a modest request for a national program of great significance.

Our tribal institutions must meet the basic and immediate needs of our tribal members in addition to addressing a myriad of political and economic issues continuously threatening our communities and our rights. More often, repatriation, understandably, takes a secondary priority to housing, education, and the basic physical welfare of our members. Although we continue to attempt to find other funds, we are currently dependent on Congressional funding. This year, the Central Council of Tlingit and Haida Indians of Alaska, which has taken the lead in implementing NAGPRA, did not receive funding.

In a recent region-wide clan meeting, our clan leaders directed that we dedicate ourselves to restoring social and spiritual harmony and balance in our communities. We have adopted this directive as our New Millennium objective to ensure our cultural survival as Tlingit, Haida, and Tsimshian Indians. Honorable Senators, we know that the return of our ancestors and our clan objects, that are sacred in our world, are essential to achieve balance and harmony, and we dedicate ourselves to this objective. We implore this Senate Committee to ensure full implementation of NAGPRA, and we are forever gratified for the support you have demonstrated.

Goonulcheesh.

United States Senate Committee on Indian Affairs
Testimony of Martin E. Sullivan
Member and former Chairman
Native American Graves Protection and Repatriation Review Committee
July 25, 2000

My name is Martin E. Sullivan. I am presently chief executive officer of Historic St. Mary's City, the museum of history and archaeology at the site of Maryland's first colonial capital. Formerly I was director of the Heard Museum in Phoenix, Arizona, from 1990-1999.

I've served for the past eight years as a member of the Review Committee overseeing implementation of the Native American Graves Protection and Repatriation Act (NAGPRA). My first five-year appointment to the NAGPRA Review Committee came through nomination by the American Association of Museums. Together with another original member, Tessie Naranjo, I was named by Secretary Babbitt to an additional three-year term that expires this year, and I served as chairman for the past year. I have personally participated in a large number of repatriations of Native American and Native Hawaiian human remains, sacred objects, and objects of cultural patrimony.

It is a particular honor to offer these remarks to the distinguished members of the Senate Committee on Indian Affairs. Your leadership in enacting NAGPRA and your continuing concern for its proper implementation have been indispensable sources of guidance and support to all those who support its goals, as I do.

I wish to comment on five specific topics:

- a serious concern among many tribes and museums that the National Park Service has failed to act expeditiously to reduce backlogs in the processing of NAGPRA business, especially publication in the Federal Register of notices of intent to repatriate;

- a related concern that the recent reorganization of NAGPRA staff seems to have increased, not diminished, the problem of conflict of interest between the Park Service's internal operations and its national oversight responsibilities for NAGPRA compliance;

- the need for the Department of the Interior to take action soon on regulations regarding disposition of unclaimed remains and so-called "culturally unidentifiable" human remains;

- the disturbingly uneven levels of compliance with NAGPRA by Federal agencies, including units of the Interior Department, the Department of Defense, and the Agriculture Department; and

- the continuing need for more adequate funding of the national grant program, enabling tribes and museums to research and carry out repatriations.

The Review Committee's formal recommendations on these and related issues are outlined in the attached document signed by all of our members on April 4, 2000, when the Committee met in Juneau, Alaska. (Attachment 1)

- As to the first concern about backlogs in processing repatriation actions, the Committee calls to your attention a memo dated June 2, 2000, from Mr. John Robbins, Assistant Director of the National Park Service for Cultural Resources Stewardship and Partnership. (Attachment 2)

He indicated that as of that date there was a backlog of 236 notices for Federal Register publication, of which the Park Service designated 38 as "priority." What this means is that, in at least 236 instances, repatriations were unable to be completed in a timely manner despite agreement between the claimant tribes and the museums or federal agencies involved.

At its hearing last spring, your Committee heard testimony about the backlog that existed then, and about the National Park Service's stated intention to solve the problem. Unfortunately, the problem continues to grow. NPS took nearly nine months to accomplish an internal restructuring of its NAGPRA unit, and only recently has it begun to hire additional contractual staff to clear up the accumulated backlog of notices. The Review Committee realizes that this is a daunting administrative task, and we have expressed our commendation for the hard work of Dr. Frank McManamon, Dr. Timothy McKeown, and their National Park Service staff colleagues who were charged with implementing the law nationally.

However, it seems to me and my colleagues on the Review Committee that *the spirit of urgency and national priority that once characterized NAGPRA in its early years is being seriously compromised by this growing stack of unprocessed repatriation actions.* We respectfully urge the Senate Committee on Indian Affairs to consider the consequences of the backlog.

- The Review Committee's second concern is also related to National Park Service oversight. In 1999 members of the Committee met with senior officials of the Department of the Interior to voice our concern about the conflict of interest we foresaw between NPS's national oversight of NAGPRA compliance standards and its own internal compliance obligations at the level of individual parks and regions.

A specific case that demonstrates this serious problem of conflict of interest is a dispute heard by the Review Committee in 1999 between the Hopi Tribe and Chaco Culture National Historical Park.

In a letter dated January 10, 2000, the Review Committee made advisory findings and recommendations urging Chaco Culture Park to withdraw its published Notice of Inventory Completion on human remains because the Committee believed unanimously that the consultation process and the determination of cultural affiliation made by the Park is not consistent with the standards anticipated in the NAGPRA legislation. We reached this conclusion only after lengthy careful review of materials submitted by both parties to the dispute.

On February 18, 2000, I received a letter to the Review Committee from Ms. Karen P. Wade, director of the Intermountain Region of the National Park Service, explicitly rejecting the Review Committee's proposed recommendations for re-evaluation of cultural affiliation. This is the first instance in which a party to a NAGPRA dispute has declined to accept the Review Committee's findings.

Essentially, the Intermountain Region of NPS chose to make an independent interpretation of the law's requirements. The NAGPRA national oversight office, also administered within the National Park Service, has either not provided internal policy advice to the Region director or has acquiesced in her position.

Thus, the Hopi Tribe and other Pueblo tribes who support the Hopi claim in this dispute now have no alternative but to take the dispute to Federal court, an obviously expensive and drawn-out process. I well recall that, when NAGPRA was being debated ten years ago, the Senate and the House of Representatives hoped to minimize litigation by setting up the dispute resolution mechanism under the purview of the Review Committee. Now a unit of the National Park Service itself is taking a stand that makes litigation the only remaining option.

As noted in item 3 of our attached Recommendations of April 4, 2000, the Review Committee continues to believe that implementation of NAGPRA would be strengthened, and the possibility of conflict of interest minimized, by placing the national oversight office within the Secretariat of the Department of Interior rather than retaining it in the National Park Service. This view is also held by a number of Indian tribes and Native Hawaiian organizations that have communicated their concerns to you.

We on the Review Committee were disappointed in the partial NPS reorganization that occurred earlier this year. NAGPRA administrative responsibilities were divided among several managers. General NAGPRA compliance, including policy guidance to the tribes, museums, and Federal agencies, has been assigned to the Assistant Director for Cultural Resources Stewardship and Partnerships in the National Park Service, a manager with no prior experience or expertise in the complexities of NAGPRA.

Some of us gave this arrangement the benefit of the doubt, but as time passes it is becoming clear that the new structure is, to say the least, not an improvement. Senior NPS program officers who do have extensive experience and who have earned the confidence of the field have been shifted out of this critical area of responsibility only to be replaced by consultants with minimal experience. I know that most if not all of my colleagues on the Review Committee agree that this is not the solution we expected, and it certainly does not deal with the pressing need for well-informed, objective guidance to the field.

- As to our third concern, the legislation specifically charged the Review Committee with "compiling an inventory of culturally unidentifiable human remains that are in the possession or control of each Federal agency and museum, and recommending specific actions for developing a process for disposition of such remains."

For nearly five years, the Review Committee received testimony from interested individuals, tribes, and organizations at meetings held in all parts of the United States, including Hawaii and Alaska. We carefully reviewed several hundred written comments on drafts of the proposed standards for disposition. We heard from scores of Native American people who urged respect for the remains of the dead and for the claims of their descendants.

At its last meeting in Juneau, Alaska, the Review Committee completed a final draft of its recommendations, which have now been forwarded to the Secretary of the Interior. Our recommendations acknowledge that very ancient remains such as the so-called Kennewick Man and the Spirit Cave ancestor do pose difficult questions about cultural affiliation that need to be resolved on a case by case basis in consultation with the tribes that occupy or formerly occupied the lands where such remains are found.

However, we on the Committee believe strongly that most designations of remains as "culturally unidentifiable" stem from much more common situations such as the possibility of multiple potential claimants, or the absence of Federal recognition by an otherwise qualified tribal claimant. *We believe it is essential to encourage actions that reduce the number of truly unidentifiable remains to an absolute minimum.*

Thus, the Review Committee endorses the creation of regional coalitions of tribes to act collectively in making claims for Native American remains from their regions, as well as agreements among Federally recognized tribes that support the repatriation claims of non-Federally recognized tribes in order to enable otherwise legitimate claimants to participate in the process.

As I indicated, the recommendations of the Review Committee are now in the hands of the Department of the Interior. Two actions are now urgently required. The Interior Department needs to allocate staff resources to compile the national inventory of so-called unidentifiable remains, based on records submitted by museums and federal agencies, and to distribute that national inventory to all Indian tribes and Native Hawaiian organizations with standing under NAGPRA. Secondly, the Secretary must promulgate regulations (43 CFR 10.11) that enable all affected parties to move ahead in resolving the disposition of unidentifiable remains. We urge the Senate Committee on Indian Affairs to communicate the urgency of these actions to the Secretary.

We are equally anxious to see progress on the promulgation by the Secretary of regulations (43 CFR 10.7) on the disposition of unclaimed human remains from intentional archaeological excavations or inadvertent discoveries. No draft text has yet been made available to the Review Committee or to other interested parties for review and comment.

- The Review Committee's fourth concern is the growing body of evidence that a number of Federal land management agencies within the Departments of Interior, Defense, and Agriculture are not allocating adequate resources or internal management priority to NAGPRA compliance.

Since 1997 it has become increasingly apparent to the Review Committee that some agencies or regional management units of agencies are far behind the timetable set forth in the law in compiling inventories of their collections, consulting with tribes, and implementing disposition of existing collections or consultation processes for new discoveries. Most agencies have been forthcoming in their submission of data, but they report an inability to move faster in complying with the law's requirements. One agency indicated that its existing level of resources will not enable it to complete inventories until as long as twenty years from now!

Museums and universities whose primary funding does not come from the Federal government have, by and large, succeeded in finding the resources to meet the timetable set forth in the law. Only six such institutions out of many hundreds are not yet in compliance, and all six appear to be making progress under administrative forbearance from the Interior Department. *It is dismaying that Federal agencies are, in some cases, so far behind their non-Federal counterparts, and we strongly hope that each agency will request adequate budget appropriations to accelerate their compliance efforts.*

- The last topic of this testimony is the continuing need for an increase in funding for the NAGPRA grant program to enable Indian tribes, Native Hawaiian organizations, and museums to conduct research and consultation. The Committee urges that at least $5 million be available annually for this purpose, doubling the currently available amount.

We noted that $2,472,000 was made available by the Interior Department for such grants in FY 2000, and $2,496,000 in FY 1999. The Review Committee was pleased to learn that two-thirds of each year's funding has gone to Indian tribes and Native Hawaiian organizations. *We expect that, far from diminishing, the need for NAGPRA grants will grow as more information about collections becomes available to Indian tribes and Native Hawaiian organizations.*

However, we are concerned at what appears to be an unexpected internal reallocation of grant funds into administrative costs. In FY 2000, for example, an analysis provided to us by NPS reports that only $2,252,000 of the $2,472,000 intended for grants was actually encumbered for that purpose, and that the remaining $220,000 was used for grants administration on top of an additional $169,000 already budgeted for grants administration. A similar practice was apparently followed in FY 1999, when $160,000 in grant funds were added to the already-existing administrative line. I know that the charges for publication of notices in the Federal Register have gone up as the amount of business has increased, but I do wonder if it is considered appropriate to transfer money earmarked for grants into an administrative line item.

Distinguished members of the Committee, in conclusion I wish to offer some brief personal remarks about what has happened since the passage of NAGPRA in November of 1990, ten years ago. At that time it was described by many as a long-overdue human rights initiative. After ten years of personal experience, I emphatically agree.

NAGPRA does not provide perfect answers to every issue it addresses. The concerns I have described today are evidence that improvements are needed, perhaps even requiring amendment of the legislation. However, NAGPRA has in my opinion done what its framers in the United States Congress hoped for. It has provided a balanced, deliberate, and consistent process for documenting sensitive collections and discoveries, mandating appropriate consultation, and facilitating repatriations and reburials. In the big picture, the law works.

Contrary to the fears of many of my museum colleagues a decade ago, NAGPRA has not led to a hasty, highly politicized "raiding" of important research collections. If anything, it has become clear that the questions surrounding repatriation are at least as challenging for Indian tribes and Native Hawaiian organizations as they are for curators and museum directors. The burden of accepting responsibility for proper care and repose of long-separated dead relatives and powerful spiritual objects is an immense one for Native people, and this somber business will not be finished for a long time.

I salute the courage and persistence of those in Native communities who regularly sacrifice their time and privacy, and even their personal financial resources, to carry on the work of repatriation. For those of us whose careers are in museums, I must add that NAGPRA has radically redefined the ethical standards and practices of our profession, perhaps an unanticipated outcome but one that has made museum workers wiser and better stewards of this nation's cultural patrimony.

Those of us, just a dozen people in total, who have served on the NAGPRA Review Committee agree that we have traveled together on a most remarkable journey during this past decade. We've engaged in inter-cultural encounters that have sometimes been painful but profoundly moving. We've discovered new dimensions of tolerance, patience, and mutual respect, I will always appreciate the honor of participating in this experience, and I thank this committee and your colleagues in both houses of the Congress.

Martin E. Sullivan
Chief Executive Officer
Historic St. Mary's City
P.O. Box 39
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Attachment 1

RECOMMENDATIONS OF THE NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION REVIEW COMMITTEE
April 4, 2000

Authorized by the Native American Graves Protection and Repatriation Act (P.L. 101-601), the Native American Graves Protection and Repatriation Review Committee has served since 1992 to monitor and review implementation of the statute. At its April 2-4, 2000 meeting, the committee made the following recommendations:

1. Cost to Comply with NAGPRA. The committee recommends that Congress appropriate the following amounts for FY 2001 to reduce backlogs and improve implementation of the statute:

- At least $5 million in grants to Indian tribes, Native Hawaiian organizations, and museums;
- The amounts requested by the administration that are targeted for each Federal agency's compliance efforts.

The Committee also recommends that the President request the same amounts listed above in his FY 2002 budget proposal.

2. Cost of Administering NAGPRA. The committee recommends that Congress appropriate the President's request of an additional $400,000 in FY 2001 to improve administration of the statute, and that the President request the same amount be continued in his FY 2002 budget. The committee urges that priority in the use of funds be given to completion of the inventory of culturally unidentifiable human remains required under Section 8(c)(5) of the statute.

3. Administrative Structure Within the Department of the Interior. The committee recommends that the Secretary of the Interior place the NAGPRA administrative structure within the Secretariat of the Department of the Interior, rather than retaining it in the National Park Service, in order to address continuing concerns about administrative conflict of interest. The committee further urges the Secretary of the Interior to assure that the NAGPRA program is administered by staff having sufficient seniority, program knowledge, and experience in implementing the statute. We recommend that Congress consider these issues in its deliberations regarding the FY 2001 budget for the Department of the Interior.

4. Federal Compliance. The committee reiterates its concern that Federal agencies have lagged far behind non-Federal museums in complying with NAGPRA, thus creating serious impediments to Indian tribes in their dealings with these agencies, and it recommends that the Designated Federal Official and the respective oversight committees of the Senate and the House of Representatives renew their scrutiny of Federal agency compliance.

5. Amendments. The committee recommends that Congress amend the statute to:

- Protect Native American graves on state or private lands from grave robbing and other forms of destruction;
- Provide monies collected as civil penalties under 43 CFR 10.12 to the Secretary of the Interior to further enforcement activities;
- Permit Indian tribes and Native Hawaiian organizations to carry out reburial of repatriated human remains on Federally managed lands from which those remains were originally taken;
- Exempt sensitive cultural information from the Freedom of Information Act (FOIA) when it involves material that is presented by an Indian tribe or Native Hawaiian organization solely for the purpose of documenting cultural affiliation or asserting a right to specific sacred objects or items of cultural patrimony.
- Expand the Committee's purview to explicitly recognize its role in recommending the disposition of funerary objects associated with culturally unidentifiable human remains.

The committee respectfully submits these recommendations with the full and unanimous support of all members.

James Bradley

Lawrence Hart

Armand Minthorn

Vera Metcalf

Tessie Naranjo

John O'Shea

Martin Sullivan, committee chair

Juneau, Alaska April 4, 2000

Attachment 2

JUN-6

United States Department of the Interior

NATIONAL PARK SERVICE
1849 C Street, N.W.
Washington, D.C. 20240

IN REPLY REFER TO:

H30(2251)

JUN 2 2000

Memorandum

To: Chair, Native American Graves Protection and Repatriation Review Committee

From: Assistant Director, Cultural Resources Stewardship and Partnerships

Subject: Report of general NAGPRA activities

The following information is provided per item 4 of the Action List developed at the April 2-4, 2000 review committee meeting. If you have questions regarding this information, please let me know and we will seek to clarify the information in subsequent reports.

a. Backlog in publishing Federal Register notices: As of May 25, 2000 -- 236 notices, of which 38 are "priority."

b. Current status of six institutions under "forbearance": See attachment 1

c. 1) Current status of civil penalties: See attachment 2.
   2) Verification of statute of limitations: See attachment 3.

d. FY1999 and FY2000 NAGPRA appropriations and FY1999 actual expenditures: See attachment 4.

e. FY2000 NAGPRA workplan: See attachment 5.

f. Current status of Spirit Cave decision: I discussed this with Marilyn Nickels of the Bureau of Land Management, who discussed the matter with BLM staff responsible for Nevada. BLM is evaluating information provided in December by the tribe. A decision is in process and probably will be available in early Summer.

g Status of regulations

1) Civil penalties (43 CFR 10.12): Revision of the interim regulation (published in Federal Register, January 13, 1997), based on public comments to the interim regulation, are nearly completed. Once NPS approves the revision, review and approval by DOI and OMB will follow, then publication of the final regulation in the Federal Register.

2) Future applicability (43 CFR 10.13): Text of the section as proposed rules, drafted in consultation with the review committee, has been reviewed within DOI. After comments from this review are addressed, the revised proposed rule section will be reviewed and approved by NPS and DOI, then sent to OMB for review and publication in Federal Register for public comment.

3) Disposition of unclaimed human remains ... (43 CFR 10.7), and disposition of culturally unidentifiable human remains (43 CFR 10 11). Between May and December 2000, draft texts for proposed regulations will be developed for discussion with the review committee at its December meeting. The review committee's recommendations to the Secretary will be considered in drafting these regulations.

4) Amendments to clarify sections on intentional archeological excavations (43 CFR 10.3) and inadvertent discoveries (43 CFR 10 4): We are considering whether to make amendments providing for additional information about consultation with tribes, the factual basis needed for decision-making, and documentation relevant to these sections. This also might be handled by developing less formal guidance, as discussed with the review committee at the Salt Lake City meeting. We will attempt to have either draft text for proposed regulation amendments or draft guidance text for the review committee in December.

h. (incorporated in g. above)

i. Incoming correspondence· Eastern Band of the Cherokee Nation, dated May 16, 2000 (see attachment 6) NPS received prior correspondence from the West Virginia Division of Culture and History (West Virginia's State Historic Preservation Office) with questions regarding definitions and responsibilities under NAGPRA NPS is replying to WV-SHPO and assisting WV-SHPO with these questions.

Attachments

cc. NAGPRA Review Committee Members w/attachments

FY2000 NAGPRA funding

Funds available

2,472,000	NAGPRA grants
169,000	NAGPRA grants administration
195,000	Supplemental NAGPRA funds provided by NPS
270,000	2275-0002-669 (NAGPRA base)
3,106,000	*Total available*

Funds distributed

2,252,000	NAGPRA grants
195,000	2251-CGZ (NPS supplemental)
169,000	2275-672 (NAGPRA grants administration)
270,000	2275-0002-669 (NAGPRA base)
220,000	2275-0001-669 (NAGPRA grants administration)
3,106,000	*Total distributed*

FY1999 NAGPRA funding

Funds available

2,496,000	NAGPRA grants
159,000	NAGPRA grants administration
284,000	2275-669 (NAGPRA base)
2,939,000	*Total available*

Funds distributed

2,336,000	NAGPRA grants
159,000	2275-672 (NAGPRA grants administration)
284,000	2275-669 (NAGPRA base)
160,000	2275-0001-669 (NAGPRA grants administration)
2,939,000	*Total distributed*

Revised May 30, 2000

The Native American Graves Protection and Repatriation Act

Testimony of Rebecca Tsosie
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United States Senate Committee on Indian Affairs
Oversight Hearing
July 25, 2000

I have been invited to address the Committee on current issues related to implementation of NAGPRA, and I appreciate the opportunity to share these comments with you. I will focus my comments on the disposition of "culturally unidentifiable" Native American human remains. As you know, the NAGPRA Review Committee has followed the statute's mandate by issuing a series of recommendations for the disposition of these remains, although none of these recommendations has yet resulted in a final set of rules. The most recent set of these recommendations was published in the Federal Register on June 8, 2000. This issue is also the subject of a National Park Service Grant issued to the Heard Museum in 1998 which sought to hold a three-day meeting (the "Tallbull Forum") involving a group of 30 participants, composed of representatives from the Native American, Museum, and Scientific communities. I would like to tell you a bit about the history and current status of this grant, before addressing the broader substantive issues related to disposition of culturally unidentifiable remains.

Martin Sullivan was the Director of the Heard Museum in 1998, and he put together the grant proposal for the Tallbull Forum. Mr. Sullivan requested the assistance of the ASU Indian Legal Program in facilitating this meeting. We initially agreed to do so, but

became concerned when we saw nature of the grant conditions and began to gain a broader appreciation of the concerns of many Native people over the process that was to be used in setting up the Forum. Ultimately, Mr. Sullivan decided not to proceed with the grant. When Mr. Sullivan left his position, the NPS approached the Indian Legal Program about assuming responsibility for the grant. We agreed to do so only if the grant was significantly restructured to accommodate the legitimate concerns of the Indian Nations. Our proposal was approved late this Spring, and we are now in the process of structuring a national dialogue on the issue of disposition of culturally unidentifiable Native American human remains. We believe that this dialogue is necessary and important. We also believe, however, that the product of this dialogue must facilitate the broader goals of NAGPRA, which involve the federal government's trust responsibility to Native people and the interests of Native Nations as sovereign governments.

I. Culturally Unidentifiable Human Remains: What are the Issues at Stake?

NAGPRA is a statute which protects the cultural, political, and moral rights of Native people by recognizing their legal rights to ancestral human remains, funerary objects, sacred objects and objects of cultural patrimony. As a scholar of federal Indian law, I would like to discuss several aspects of the statute's implementation which bear on the rights of Native peoples.

First, I would like to highlight the importance of NAGPRA as one of the only statutes in the history of this country to issue

enforceable protections for the cultural rights of Native people. NAGPRA is perceived by many commentators as "human rights legislation" which guarantees "equal rights" to Native people, for example by ensuring their rights to control the disposition of ancestral human remains and funerary objects. I do not disagree with this assessment but would like to emphasize the importance of NAGPRA as a statute which explicitly makes reference to tribal cultural knowledge and the role of tribal law and custom in shaping the standards of "ownership" and "cultural affiliation." In that sense, NAGPRA embodies the federal government's trust responsibility to ensure Native peoples' cultural survival by protecting their unique cultures and ways of understanding themselves as the indigenous peoples of this land. In short, NAGPRA protects Native American peoples and their distinctive cultures, and the legal standards encompassed within the statute and its regulations must be responsive to these goals.

I am concerned about the tendency of certain groups in contemporary society to regard NAGPRA as a "compromise" piece of legislation which must serve the "collective interests" of Indian people, museums, and scientists. As a scholar of federal Indian law, I see NAGPRA as an exercise of Congress's plenary power undertaken in an effort to meet its unique trust responsibility to Native people. I commend Congress for its sensitivity to the interests of other Americans. This sensitivity is reflected, for example, in the composition of the Review Committee, which acts as an Advisory body and assists in the implementation of the statute.

However, I think it bears repeating that Congress's trust responsibility is to Native people, and the Committee's attention today should be on whether that duty is currently being met in the implementation of the statute.

One significant issue related to this, which already has been the topic of hearings before this Committee, is whether the statute's administration by the National Park Service is set up in a way that serves the federal government's trust responsibility to the tribes. Moreover, a significant concern has been raised over whether the intensive involvement of archaeologists within the National Park Service, at the highest administrative levels, has in fact skewed the implementation of the statute to the disadvantage of the tribes. This proved to be one of the fundamental problems with the Tallbull Forum, as it was initially structured. In the original grant proposal, the managers of the National Park Service's Archaeology and Ethnography Program retained authority to approve the final participant list and to prepare an agenda for the meeting. This level of supervision and control by archaeologists seemed completely inconsistent with the nature of the NAGPRA process as one designed to serve the federal government's trust responsibility to Native people.

The second point that I would like to make is that implementation of NAGPRA must support the government-to-government relationship between the Indian Nations and the United States government. Indian tribes are not part of the multitude of "stakeholders" who assert an interest in such remains. They are

separate governments who claim repatriation of their Ancestors as a political right, much as the United States seeks to repatriate its dead from war zones such as Vietnam. The physical custody of the remains may rest with federal museums and agencies. However, the political right of repatriation rests with the Indian people. Because of this, the NAGPRA implementation process must respond to the needs of Indian Nations for adequate consultation. Again, this was one of the main problems with the Tallbull Forum as it was initially structured. Many Indian nations did not believe that a select group of individual Indians (probably not more than 10, since the grant specified a "balanced representation" from the tribal, museum and scientific communities) could fairly represent the interests of all of the sovereign Native Nations in this country. The Department of Justice is among the entities that has consistently held full consultations with the Indian nations on important policy matters. This model should be followed for NAGPRA implementation.

Finally, it is clear that the legal right to culturally unaffiliated Native American human remains must build from the Indian peoples' moral right to control those remains. Several categories of "culturally unaffiliated" remains trigger substantial moral issues which must become a factor in the dialogue. For example, a mere century ago, many Indian Nations were officially at war with the United States. The deceased Ancestors who are in the custody of the museums and agencies are in many cases the victims of that bitter war. They may be "culturally

unidentifiable" because their removal from the battlefields to the museums was done without the appropriate care to preserve their actual identity. They may also be "culturally unaffiliated" because the remains belong to a group that did not survive into the present. Some would argue that if a tribe was "exterminated," no contemporary group can claim the remains. However, on moral grounds, a contemporary Native group that survived this genocidal history and claims kinship with the other group may well have the right to step in and claim the remains. And what about the remains of very ancient Ancestors? These remains may be claimed by Native people based on a cultural or traditional understanding of kinship rather than some demonstrated "genetic" descendency. Moreover, Indian Nations may possess treaties with the United States government in which they were assured that their cession of land did not entail a cession of rights to care for their deceased Ancestors. Nothing in those treaties conditions this right on subsequent genetic testing to prove "cultural affiliation." Nor does NAGPRA have such a provision. Rather, the statute specifically allows "cultural affiliation" to be established based upon geographical, kinship, folkloric, oral tradition, historical, or other relevant information or expert opinion." And the canons of construction applicable to both treaties and federal statutes concerning Native people specifically provide that ambiguities must be construed in favor of the Native people.[1]

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[1] See Cohen's Handbook of Federal Indian Law 221 (1982 ed.). See also Choctaw Nation v. United States, 318 U.S. 423, 431-32 (1943) (treaties should be liberally construed in favor of the

II. The Review Committee's Recommendations:

The Review Committee has issued draft recommendations on several occasions. The history of this process illustrates some of the tensions over the disposition of culturally unidentifiable human remains, and thus I will briefly summarize the history of these recommendations for you before addressing the current situation. In 1995, the Review Committee recognized a "principle in the act that assigns responsibility for what happens to human remains and associated funerary objects to lineal descendants and culturally affiliated tribes." Building on this principle, the Committee acknowledged that unaffiliated remains are "nonetheless Native American, and they should be treated according to the wishes of the Native American community." The Committee recommended that the ultimate decision about disposition of such remains "should rest in the hands of Native Americans," although non-Natives could have input in the process. The Committee acknowledged that the scientific and other values asserted by various interest groups could not supersede the "spiritual and cultural concerns of Native American people" who had the closest general affiliation to the Native American remains. The 1995 draft recommendations suggested possible procedures for deciding the disposition of unidentified remains, which would permit tribes across the nation to establish

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Indians and as the Indians would have understood them); United States v. Winans, 198 U.S. 371, 380 (1905) (treaties should be construed "as justice and reason demand, in all cases where power is exerted by the strong over those to whom they owe care and protection"); Choate v. Trapp, 224 U.S. 665 (1912) (applying rules of construction to Congress's presumed intent in enacting a statute affecting Indian rights).

"affinity" with the remains and make a request for repatriation.

The 1996 Draft Recommendations responded to the commentary on the earlier set of recommendations. The Committee concluded that clarifying the meaning of statutory terms such as "shared group identity" could facilitate the disposition of many sets of remains currently classified as "culturally unidentifiable." The Committee explored the idea of regional or cultural associations based on "shared group identity," and also probed ways to work with non-Federally recognized tribes who could establish cultural affiliation to human remains. The 1996 recommendations are responsive to the principles established in the 1995 recommendations, but attempt to analyze the statute's requirements in light of the tribes' needs. The important feature about both sets of recommendations, however, is that the Review Committee appeared to generate a presumption that Native people should have the paramount right to decide disposition of Native American human remains, regardless of formalistic determinations of "cultural affiliation." This assertion clearly responded to the cultural, political, and moral rights of Native peoples within the broader framework of federal-tribal relations.

In 1998, the Review Committee generated yet another set of draft recommendations. This set of recommendations suggested four "principles" which should serve as the foundation for any set of regulations, which asserted that the disposition of culturally unidentifiable human remains should be (1) respectful; (2) equitable; (3) doable; (4) enforceable. The Committee ultimately

recommended two models for disposition of such remains. The first model suggested disposition according to "joint recommendations" by institutions, federal agencies and the "appropriate claimants." The second was a "regional consultation" model, which would guide disposition according to solutions proposed by the respective federal agencies, institutions and Indian tribes within particular regions.

Finally, in June of 1999, the Review Committee generated its latest set of recommendations. This set of recommendations suggests three "guidelines" for disposition of culturally unidentifiable remains: first, respect for all such remains; second, flexibility in fashioning the appropriate solutions based on particular circumstances (e.g. where the remains are uncovered on tribal or aboriginal land of a tribe, or where the contemporary group is identifiable but not recognized), and third, the ability of the review committee to generate other criteria in a given case.

The Committee expanded on its earlier proposed models for disposition based on (1) joint recommendations of particular federal agencies, museums and claimants in a given case, and (2) joint recommendations emerging from regional consultations with federal agencies, museums and Native groups. These recommendations have assisted us in thinking about the best structure for a National dialogue on these issues. We are hopeful that the dialogue will probe some of the more controversial issues before regulations are enacted to implement the Review Committee's recommendations. The Committee's recommendations offer general

guidance on these important issues. However, the regulations will turn this general guidance into binding rules that will govern the Indian nations in their dealings with agencies and museums. Because of this, adequate tribal input is vital before the regulations are enacted.

III. Structuring the National Dialogue:

Our restructured grant proposal first identified the need for a concise written summary of the law and proceedings governing disposition of culturally unidentifiable Native American human remains, which would identify the salient issues, legal and policy framework, and points of agreement and disagreement among the interested communities. This document would then be used to facilitate a discussion among the communities. Thus, our grant proposal has two main components. The first goal is to prepare a comprehensive legal and policy study of the issues, legal framework, and proceedings thus far on the issue of disposition of "culturally unidentifiable" Native American human remains. This study, which is currently being prepared by participants in the Indian Legal Program, includes a legal review and assessment of the various recommendations of the Review Committee, and discusses the models of resolution that have been proposed by the Review Committee, including relevant case studies that have already been concluded.

The second goal is to facilitate a forum or forums which will accomplish the following goals: (1) allow Indian Nations to discuss the substance of the Report as it implicates tribal sovereignty and

the government-to-government relationship with the United States; (2) support efforts to engage the museum and scientific communities in a dialogue about the Report; and (3) facilitate an integrated dialogue among the tribal, museum and scientific communities that might lead to a set of written regulations to guide the disposition process. We envisioned that the first part of the process would be completely open and inclusive, while the final part of this process would involve a smaller working group that might make policy recommendations based on the wider input solicited during the first phase of the project.

The budget of the grant may not support the inclusive tribal consultations that we have proposed. However, I think that this is a vital part of the process for the following reasons. First, NAGPRA is a statute that is intended to serve the pluralistic values of Native peoples within the American federal system. Cultural knowledge is vital to the definition of categories of remains and objects that merit protection. The only way to elicit this knowledge is through dialogue with the various Indian Nations, including their religious leaders and elders. Secondly, the regional consultation model proposed by the Review Committee's latest recommendations intersects closely with contemporary tribal efforts to establish regional intertribal coalitions. Of course, the relevant regions have yet to be established. The Review Committee's model depends upon an initial effort by the Indian tribes and Native Hawaiian organizations which will define the relevant regions within which such solutions could be generated.

Once defined, the appropriate federal agencies, museums and Native groups will consult together and develop a framework and schedule to develop and implement the most appropriate model for their region.

Many Indian Nations across the country are exploring the idea of regional intertribal coalitions which will take an active role in repatriation issues. This is an important effort and is related to the Review Committee's regional model, but it clearly involves sovereignty considerations. Can a regional intertribal coalition act on behalf of sovereign tribal governments? The input of the Indian Nations as governments is vital at the outset of this process. In fact, the very form of the ultimate "agreement" between "the tribes" and the "museums or agencies" has considerable implications for the sovereign status of Indian Nations within the consultation process. Finally, Indian Nations must be able to respond to the wider implications of the regional consultation model, given the legal and moral framework for Indian rights in this country. Will the process be based on the government-to-government relationship that frames Native rights in this country, or will it be a negotiated, ad hoc process among equally situated "stakeholders"? The disposition of "culturally unidentifiable remains" may seem amenable to an ad hoc, case by case process involving equal input from all interested "stakeholders." However, from a tribal sovereignty standpoint, the legal process which guides implementation of a statute that serves the federal government's trust responsibility MUST protect the unique interests

of the tribes as governments in protecting their rights to land, natural and cultural resources.

The implementation of NAGPRA implicates many fundamental interests of the tribal communities related to both political and cultural autonomy. An "ad hoc" process involving all "stakeholders" would hardly be protective of tribal interests in protecting their lands and natural resources. Nor can such a process adequately protect tribal interests in caring for their Ancestors, who, after all, are part of this land. In fact, although tribal cultural views are varied and distinctive, Native people share a common view of themselves as peoples related through time and tradition to the lands that nurtured them.

In conclusion, I would ask the Committee to insist that the implementation of NAGPRA serve the federal government's trust responsibility to protect Native cultures and their legal rights. We cannot address NAGPRA in isolation. This statute is part of the pervasive set of federal laws that governs the relationship between Native peoples and the United States government. The rights of Native peoples are "sui generis" and the relationship between the federal government and the indigenous peoples of this land implicates both cultural and political rights. It is the Committee's charge to ensure that the implementation of NAGPRA is consistent with the broader relationship between the federal and tribal governments.

Similarly, we cannot take one issue within NAGPRA, in this case, that of "culturally unidentifiable" remains, and generate a

"solution" through some administrative rule-making process that enforces a "compromise" between Native groups and other Americans. That is not how the federal government serves its trust responsibility to Native people, and I do not think that the Congress which enacted NAGPRA would have intended such a result. Rather, we must identify the important interests and rights at stake, and generate solutions that are responsive to Native peoples' legal rights, and to their interests in protecting and preserving their cultural resources. The input of other interested groups is a necessary and important part of this process, as it is in the variety of other situations, such as environmental regulatory jurisdiction or gaming rights, which implicate the interests of both Native and non-Native people. I am not suggesting that museums and scientists do not have legitimate interests in knowing about the past. However, those interests are not coextensive with Native peoples' cultural, political and moral rights.

The implementation of NAGPRA must first serve Native rights, and then accommodate other interests that are consistent with those rights. It is my hope that the national dialogue on culturally unidentifiable Native American human remains will clarify the intricate balance of concerns that underlies the controversy over this issue. That controversy is vividly represented by the series of recommendations that has emerged from the NAGPRA Review Committee over the past five years, which vacillates between recognition for tribal rights and an effort to meet the broader

interests of all stakeholders. It is also my hope that the National Dialogue will support a set of final recommendations on the consultation process and the framework for adjudicating particular cases that is consistent with the ideals necessary to achieve justice for Native people in this Country. Thank you for inviting me to share these thoughts with you. I appreciate the Committee's time and attention to these important issues.

TESTIMONY OF THE NAVAJO NATION
N THE IMPLEMENTATION AND ADMINISTRATI N
BY THE NATIONAL PARK SERVICE OF PROGRAMS UNDER THE
NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT (NAGPRA)

BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS

July 27, 2000

INTRODUCTION

The Navajo Nation is the largest Indian Tribe in the United States, having approximately 200,000 enrolled members. The Navajo Nation encompasses roughly 25,000 square miles in the States of Arizona, New Mexico, and Utah. The Navajo people have been the subject of study by anthropologists since the mid-19th century, certainly qualifying us as one of the most intensively studied peoples on earth. Thousands of archaeological projects have been conducted on Navajo Nation lands. As a result of this lengthy and intensive research interest, museum and archaeological collections of Navajo materials are very extensive.

The Navajo Nation Historic Preservation Department (HPD) serves as the Navajo Nation's point of contact on matters pertaining to the Native American Graves Protection and Repatriation Act (NAGPRA). More than 326 museums have contacted HPD and provided us with preliminary notices required under NAGPRA. For many museums, including the Smithsonian Institution, the Navajo collection is their largest holding.

For these reasons the Navajo Nation has a direct interest in the implementation and administration of the NAGRPA program. NAGPRA assigns lead responsibility for implementation to the Secretary of the Interior, who has delegated this responsibility to the National Park Service (NPS). The Navajo Nation is deeply troubled about the way in which NPS is implementing and administering the NAGPRA program.

THE ORIGINS OF NAGPRA

NAGPRA was enacted in 1990 as the culmination of a decade of legislative activity that had been aimed at resolving the disposition of the skeletal remains of hundreds of thousands of Native Americans held in museum and federal agency archaeological collections. Native Americans had been trying for decades to obtain the return of those

remains for proper and respectful disposition in accordance with tribal customs. To varying degrees, museums, archaeologists, and physical anthropologists had actively resisted those efforts. This resistance had been largely successful, even in some particularly egregious instances where the remains were of a known individual and the details of the grave robbing were notorious.

Native Americans asserted the basic human right to bury their dead and to the dead's right of repose, and by extension, the right to reburial of remains that (for whatever reason) had been disinterred. Archaeologists and physical anthropologists argued for retention of collections because they asserted that these materials were a potential source of scientific information. Museums contended that they owned the material in their collections, and they could not divest themselves of their property without violating the public trust (which, they claimed, provided the legal basis for their existence as not-for-profit entities). Although public forums had been held to provide for discussion among the various parties, by and large they were all talking past one another.

Prior to the passage of NAGPRA, the Senate Indian Affairs Committee sponsored a "national dialogue" among representatives of the professional archaeological community, museums, and Native Americans. The result of that "dialogue" was a report that was essential to the drafting of NAGPRA.[1]

In passing NAGPRA, Congress was fully aware of the competing claims on these human remains and the nature of the controversies among the various parties. The Senate Committee on Indian Affairs had considered and held numerous hearings on various bills relating to this matter throughout the 1980s. NAGPRA was crafted with full knowledge of the disagreements and with the benefit of the "national dialogue." The result was a carefully considered balancing of all of these competing claims and interests. It is certainly true that Native Americans viewed NAGPRA as a victory for their basic human rights. But NAGPRA was recognized in Indian country for the compromise

[1] *Report of the Panel for a National Dialogue on Museum/Native American Relations.* Submitted to the Senate Committee on Indian Affairs February 28, 1990. Reprinted *Arizona State Law Journal.* 24(1):487-500. (1992).

that it was, and few Native Americans or Indian Tribes were completely happy with the compromises struck. From the start it was clear that the professional archaeological community was dissatisfied with the outcome. The archaeological community objected in part to the report of the national dialogue.[2] The Society for American Archaeology gave NAGPRA only qualified support during its consideration by Congress.

PROBLEMS AND ISSUES

APPEARANCE OF A CONFLICT OF INTEREST. From the time of the initial consideration of NAGPRA, the Navajo Nation has been concerned with the conflict of interest apparent in the assignment of principal responsibility for NAGPRA program development and oversight to the Secretary of the Interior. The apparent conflict arises because NPS is charged with providing guidance and oversight for NAGPRA implementation, yet at the same time NPS holds considerable collections of archaeological and ethnographic materials, some which are subject to repatriation under NAGPRA. This problem is exacerbated by the fact that day-to-day administration of the program within NPS has been assigned to the Departmental Consulting Archaeologist (DCA), in effect the chief archaeologist of NPS and the Secretary's principal advisor on archaeological matters.

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[2] Two of the archaeologists and a physical anthropologist on the panel formed a minority whose disagreements with the consensus reached by the rest of the panel were noted in footnotes in the report.

The minority's most significant point of disagreement concerned the need for a federal law on this matter: "they do not think that federal legislation is needed" (Panel Report, pg. 488). The minority even disputed the notion that resolution of the repatriation questions where cultural affiliation was clearly established should be in accordance with the wishes of the affiliated tribe. They argued "that American Indian groups should be given full opportunity to present their concerns and to otherwise be included in the decision making process. Decisions in such situation should be made on a *case-by-case* basis by the institution involved after input from the American Indian, *scientific and museum communities*" (emphasis added; pg. 487).

The minority wrote a "Minority Report," arguing that NAGPRA amounts to reverse discrimination because it permits culturally affiliated tribes to control the remains of their ancestors, which was appended to the Society for American Archaeology's "Statement" in *Hearing before the Senate Committee on Indian Affairs (101st Congress, 2nd Session) on S. 1021 and S. 1980*. May 14, 1990, Washington, D.C.

The Navajo Nation believes that NPS's NAGPRA program administration and oversight, no matter how evenhanded, will always be tainted by this apparent conflict of interest. Although there may be ways to minimize this appearance of conflict, because many Interior agencies besides NPS hold archaeological collections that include human remains and items of cultural patrimony,[3] delegation of NAGPRA program responsibility will be problematic as long as Congress chooses to assign principal responsibility for NAGPRA to the Interior Department.

RECENT IMPLEMENTATION PROBLEMS. Until recently, NPS generally seemed to approach NAGPRA matters fairly and openly. In the Navajo Nation's experience at least, this statement remains true with respect to the Park units. Unfortunately, it is no longer true with respect to the central office.

For example, several years ago Pueblo religious leaders identified a number of items in the collection of a particular National Park that were needed for the practice of traditional religion. The Park agreed to repatriate the items, but the repatriation was halted when the DCA refused to sign the Notice of Repatriation. Only after the issue was brought to the NAGPRA Review Committee's attention were the Notice published and the items repatriated.

This example illustrates both the disparity between the attitudes of the parks and those of the central administration as well as use of the notification process by the NPS administration to attempt to halt repatriation.

ADMINISTRATIVE DELAYS. As of April 20, 1999, when the Senate Committee on Indian Affairs held an oversight hearing on NAGPRA implementation, there was a two-year backlog in publishing Notices, the final step before an agency or museum can return items of cultural patrimony to an Indian tribe claiming them. This backlog remains undiminished.

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[3] The Bureau of Land Management and the Bureau of Reclamation both have substantial archaeological collections. The Fish and Wildlife Service has much smaller holdings, but they include remains as old or older than the Kennewick find, and certainly destined to be as controversial.

A Notice is prepared by an agency or museum only ***after*** it has reached agreement with an Indian tribe that particular materials in its possession are items of cultural patrimony or human remains, and that the tribe making the claim has a "repatriation right" to them under NAGPRA. Reaching this point is often an arduous and harrowing experience for both the tribe and the agency/museum. Certainly, it almost always takes far too long. The Notice represents the culmination of this process. It is outrageous that the NPS adds a two-year delay to this process because they cannot or will not expedite the publication of these Notices in the *Federal Register*. Publication of the Notice is not required by NAGPRA, it is imposed by NPS's regulations. This backlog reflects the refusal to allocate the resources necessary to accomplish the task.

In another example, a museum agreed to repatriate items stripped from bodies after the massacre at Wounded Knee, but again the Notice went unsigned until the review committee become involved. Both this and the example provided earlier illustrate the fact that NPS is using its own requirement for publication of Notices as a way to review the content and completeness of the Notice *as well as* the substance of the decision being made by a museum/agency. It is apparent that, if the NPS disagrees with the decision, the Notice is not signed.

Since 1990 when NAGPRA was enacted, Notices have been published that involve about 18,900 human remains.[4] The best available estimates are that museums and federal agencies hold the remains of approximately 200,000 Native Americans.[5] In the decade since NAGPRA was enacted, less than 10 percent of all human remains in museum/agency collections have been have been repatriated. *At this pace, repatriation of current museum/agency holdings of Native American human remains will not completed for at least another 100 years.*

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[4] It is not possible to know how many of these have actually been repatriated, as there is no requirement that a Tribe or a museum/agency notify anyone of completing a repatriation. Only notice of intent to repatriate is required. For illustrative purposes, the Navajo Nation assumes that all of these repatriations have been completed.

[5] Meeting Transcript, NAGPRA Review Committee. Juneau, Alaska, April 2-4, 1999.

Furthermore, the Navajo Nation believes that, *absent dramatic changes in policy and program implementation, it will take far more than a mere century to complete the process of repatriating existing collections.* The remains identified for repatriation so far are most likely the ones involving the least controversy—the ones for which there is little or no reasonable question about cultural affiliation. Where questions arise about affiliation, the process will certainly take even longer.

Recently, NPS has hired contractors to supplement the tiny staff assigned to NAGPRA matters. But it is unclear what degree of administrative or technical NAGPRA expertise the contractors actually possess. It is also unclear whether NPS will provide the leadership necessary to improve this situation or even that the contractors will be left alone to do what needs to be done. In short, NPS has not been effective at reducing the backlog in the past 15 months. The Navajo Nation believes that this reflects a policy decision to slow repatriation rather than being the result of meager resources or inept administration.

ANTI-REPATRIATION BIAS IN PROGRAM ADMINISTRATION. Until quite recently, the DCA was the NPS staff leader on NAGPRA matters. The DCA is highly respected in and intimately involved with the professional archaeological community. The most vocal members of the professional archaeological community have taken an increasingly anti-repatriation stance. The most visible members of this group, are of course, the plaintiffs in the so-called Kennewick Man case. While some archaeologists assert that these people do not represent the profession as a whole, the professional community has done little or nothing to repudiate their actions or claims.

In 1988, the DCA said "I continue to feel, as I've already stated a couple of times, that what we need is a situation by situation analysis concerning burial and reburial and I think it is a mistake in the long run for this society, including Native Americans, to reinter all human remains from archaeological sites...." [6]

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[6] "Discussion," *Preservation on the Reservation: Native Americans, Native American Lands and Archaeology.* Anthony L. Klesert and Alan S. Downer (eds), Navajo Nation Papers in Anthropology No. 26:404. Navajo Nation Archaeology Department and Navajo Nation Historic Preservation Department: Window Rock, AZ (1990).

More recently, the DCA informed Justice Department attorneys that NAGPRA is not an "Indian" law; that is, it is not for the benefit of Native Americans. The DCA asserted a variation of this at a recent training for U.S. Department of Justice staff when he pointed out the need to "balance" the public interest in materials covered by NAGPRA with the interests of Native Americans. As stated above, Congress struck that balance in enacting NAGPRA. *Nothing* in NAGPRA suggests that a further balancing is required or that NPS is authorized to engage in such a balancing of interests in developing, implementing, and administering NAGPRA policy and guidance (and procedures? regulations?). NAGPRA envisions no such balancing of interests. The only issue is whether or not a tribe making a claim has a legitimate one under the criteria established by NAGPRA. Once cultural affiliation is determined, control of the remains passes to the tribe, and Congress declared *this* to be the proper outcome of balancing the various interests in Native American human remains.

The DCA's apparent role in NAGPRA program development and administration has recently been reduced. Lead responsibility has been assigned to the Assistant Associate Director for Stewardship and Partnerships (AAD). We have three concerns with this delegation. First, the term "Stewardship" is normally used to refer to the management of "resources"—our ancestors are not resources. In addition all to often in our experience, "Partnerships" with federal agencies mean the federal agency talks to the tribe, and then the "partners" do whatever the federal agency thinks should be done. Finally, the AAD openly admits to having no expertise in NAGPRA matters. Given the AAD's lack of expertise, is seems inevitable that DCA (whose office adjoins the AAD's) will continue to play a principal role in the NAGPRA program. This "redelegation" must be regarded as little more than cosmetic.

DE FACTO POLICY SETTING. NPS is developing NAGPRA policies and standards in an ad hoc fashion, without any input from Native Americans. The context for this is the so-called Kennewick Man case. Although the Navajo Nation has no direct interest in the Kennewick case, the Navajo Nation is gravely concerned about the way in which NPS appears to be allowing this case to shape national policy. The evolving ad hoc standards advance the anti-repatriation cause at the expense of Native Americans and our ancestors.

Since assuming responsibility from the Corps of Engineers for resolving the case, NPS has led a massive research effort. It is difficult to imagine the plaintiffs conducting studies any more extensive, detailed or destructive than those being conducted by the Government, which are ostensibly justified by the need to identify cultural affiliation.

Recently, this research has turned to DNA testing, which is being conducted despite the fact that the Interior Department's experts recommended against DNA testing because in their judgment the probability that the remains contain DNA is extremely small.[7] Furthermore, while DNA, if present, might provide some interesting information on biological relationships—perhaps even on lineal descent—it is completely useless for determining cultural affiliation.

Nevertheless, the DCA asserts that the research project being carried out on the Kennewick remains represents the standard that should be met any time there is a dispute.[8] This is disturbing for a number of reasons. First, these research-friendly precedents and standards are being set in the absence of *any* consultation with Native Americans in general or the tribes claiming cultural affiliation with the Kennewick remains in particular. It bears repeating that the DNA testing is being carried out even though the Government's experts view it as fruitless. If present, DNA testing might reveal some interesting information about what groups the Kennewick remains are related to ***genetically***. But cultural affiliation is social or cultural matter, which is virtually independent of biology, genetic data, even if recoverable, can not answer what is, after all, a social and cultural question. As far as we can tell, DNA tests are being run solely for the sake establishing the precedent for doing DNA testing whenever archaeologists create a dispute over repatriation.

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[7] Noreen Tuross and Connie Kolman. *Potential for DNA Testing of Human Remains from Columbia Park, Kennewick, Washington.* Report to DOJ and DOI, February 3, 2000. Published at www.cr.nps.gov/kennewick/tuross_kolman.htm.

[8] "Kennewick Man sets key research precedent, expert says." Tom Paulson, *Seattle Post-Intelligencer*, April 26, 2000.

Second, that this research, much of it destructive, is being conducted at all at this juncture can only be justified by the assumption that other sources of information, such as tribal traditions, will not provide a sufficient basis for making a determination of affiliation. Proceeding with this research based on such an assumption shows NPS's pro-archaeology bias. Ethnohistorical information or tribal traditions are being discounted *a priori* as a reliable means of determining affiliation since the "scientific" studies were planned and are being conducted prior to any analysis of the traditional evidence presented by the tribes. The research will be complete and the precedent, however ad hoc and haphazard, will be set long before NPS even proposes a decision on the matter of cultural affiliation.

Furthermore, it appears that the Corps of Engineers' original decision that the Kennewick find was from Umatilla lands was correct. Although the original decision by the Indian Land Claims Commission excluded the land from which the Kennewick skeleton came from those lands for which the Umatilla would be compensated, the Umatilla appealed that original decision. On appeal, a settlement was reached which vacated the original decision, but never specified what lands were covered by the settlement. The lands from which the Kennewick remains were recovered fall within the boundaries of the Umatilla Reservation as originally designated. Thus, it appears likely that the Umatilla have a valid claim to the remains because they were found on Umatilla tribal lands. Absent another tribe making a claim and showing that those remains are more closely culturally affiliated to them than to the Umatilla, the remains should be repatriated to the Umatilla. In addition, in the absence of another tribe making a claim, the question of cultural affiliation does not arise. None of the tests completed, underway, or planned is necessary to resolve affiliation unless NPS intends its research to demonstrate that notwithstanding the clear language of NAGPRA, cultural affiliation must demonstrated to the satisfaction of the NPS. All of the information on the land claim case is a matter of public record. It is inconceivable that NPS *and* the Justice Department have prepared so poorly that they are unaware of these facts.

NAGPRA does address controversies over cultural affiliation. Nothing in the Act, however, suggests that *archaeologists* have a right to question issues of affiliation. These are questions the Act reserves to the Indian Tribes and the museums with which

they are dealing. Disputes may arise under the terms of NAGPRA, but only if more than one tribe makes a claim for the same human remains or items of cultural patrimony or if the museum determines that a tribe's claim is not substantiated.

A controversy clearly exists over Kennewick. *But it is not a NAGPRA controversy.* Two issues have been raised, one procedural and one Constitutional. The procedural issue is legitimate: the Corps of Engineers followed no identifiable process to reach its decision to repatriate the remains. This procedural fault must be remedied, but the remedy NPS is pursuing is out of proportion to the effort actually necessary to correct the error. On the other hand, the Constitutional claim appears without merit. There is no obvious answer to the question of why the Government has not addressed the procedural questions in as rapid and straightforward a fashion as possible, opting instead for the most elaborate set of tests purportedly to determine cultural affiliation when the record reveals no evidence that determining cultural affiliation was ever question to anyone other than plaintiffs. Likewise, why the Government has not responded to and sought dismissal of the Constitutional claim is, at best, obscure.

CONCLUSIONS

NPS's administration of the NAGPRA program has been seriously flawed. It has taken as an operational premise the false assumption that NAGPRA decisions must be made in a fashion that balances the interests of all parties who purport to have an interest in Native American human remains. This premise is utterly false: Congress itself has already balanced the interests, and Congress did not direct the Secretary of the Interior to engage in a further balancing of the human rights of Native Americans against the research "rights" of archaeologists and physical anthropologists. This is precisely the sort of balancing that archaeologists, and particularly the Society for American Archaeology and its officers, have argued for in every instance.[9] It is also the approach recommended by the DCA prior to the passage of the Act. This approach was

[9] See, for instance, the *Panel Report*, or the Society for American Archaeology's comments on the bill that became NAGPRA. Keith Kintigh, Statement for the Society for American Archaeology. *Hearing before the Senate Committee on Indian Affairs (101st Congress, 2nd Session) on S.1021 and S. 1980.* May 14, 1990, Washington, D.C.

considered by Congress but was not adopted. Yet the NPS has clearly sought to inject this "balancing of interests" in spite of the determination of Congress.

NPS has also injected itself into the decision making process that Congress has clearly reserved for the tribes, museums, and federal agencies holding collections that include Native American human remains and/or items of cultural patrimony. It has done so by creating via regulations a burdensome reporting requirement as a prerequisite to publication of a Notice of Intent to Repatriate, and then by choosing not to sign Notices when it does not agree with the decisions that were reached. This is a particularly egregious violation of the intent of Congress, which clearly contemplated that these decisions would, as far as possible, be made directly by the tribe(s) making claims and the organization holding items subject to repatriation under NAGPRA.

NPS has taken advantage of the controversy surrounding the Kennewick remains to further advance its pro-archaeologist agenda. NPS has pursued a course of action that requires a very high level of scientific study. Since the remains were found within the original boundaries of the Umatilla Reservation, they came from tribal lands and there is in fact no real question about cultural affiliation to be resolved. Setting a precedent that "raises the bar" so as to make repatriation more difficult and result in lengthy delays is clearly the real reason behind the current NPS approach to the Kennewick situation.
The studies undertaken thus far will undoubtedly cost well over $1 million. If this really is the research standard required to resolve a dispute, as the DCA asserts, repatriation will come to a halt. Many, perhaps most, museums could barely afford to complete the required NAGPRA inventories. We know of no museum or federal agency that has the resources to engage in a level comparable to the Kennewick studies even once, let alone dozens or perhaps hundreds of times.

RECOMMENDATIONS

In order to begin to correct the problems identified here, the Navajo Nation believes that the following steps should be taken.

1. *The backlog in Notices of Intent to Repatriate needs to be eliminated.* With recent budget increases, NPS no longer has the excuse of not having the resources to do the job. Now the question becomes whether or not Interior can limit itself to reviewing the completeness of the proposed Notices and leave the substantive decision making to the Tribes and the museums/agencies.

2. *Congress should act to ensure that the NAGPRA Program is transferred from NPS by deleting NAGPRA funds from NPS and assigning them to the Secretary's office or to the office of the Assistant Secretary for Policy, Management, and Budget, a neutral branch of the Department of the Interior that manages neither land nor collections.* Although NPS was put on notice over a year ago about problems in NAGPRA implementation, including the apparent conflict of interest, to date no meaningful steps have been taken to resolve any of these problems. The Navajo Nation believes that neither NPS nor the Department of the Interior will take any action to correct the problems identified here. Congressional action is required if these problems are to be resolved.

3. The Committee should call for a Government Accounting Office study of the Kennewick case, both to examine the expenditure of public funds and to review the way in which NPS has fulfilled its responsibilities under NAGPRA in this instance. The research project being undertaken with respect to the Kennewick man is extremely intensive and extensive. The costs of these studies, which the DCA regards as precedent setting, should be closely examined by Congress.

   The Kennewick man case is perhaps the best known case involving NAGPRA issues, even though NAGPRA issues have yet to be joined. NPS's activities appear to be problematic and inconsistent with the letter and spirit of NAGPRA. Yet NPS claims to be setting standards with its handling of the matter. The Navajo Nation believes that NPS's handling of the substantive issues also needs to be thoroughly investigated by GAO.

THE NAVAJO NATION

KELSEY A. BEGAYE
PRESIDENT

TAYLOR MCKENZIE, M.D.
VICE-PRESIDENT

August 14, 2000

The Honorable Ben Nighthorse Campbell
Chairman
Senate Committee on Indian Affairs
United States Senate
Washington, DC 20510-6450

RE· Extended Remarks on the Implementation of NAGPRA

Dear Senator Campbell:

The Navajo Nation has reviewed the written testimony of the other witnesses who participated in the Oversight Hearing on NAGPRA Implementation on July 25, 2000 and wish to add the following remarks as an addendum to the Navajo Nation's oral and written testimony (which was provided to the Committee prior to the Hearing) for that hearing.

First, several of the witnesses commented on the frustration Indian Tribes have with the repatriation process This frustration is real and the fact that a decade after NAGPRA was enacted this frustration is *increasing* illustrates the significance of the problem. Many of the problems mentioned in the testimony should have been resolved long ago. The fact that they were not, and indeed, that resolving was never really a priority until nearly a year after the Committee's first oversight hearing, reflects, at best, a lack of commitment on the part of NPS

NPS's testimony before the Committee simply did not address the issue. NPS essentially defends its position as manager of this program on claims of technical expertise and experience We don't question NPS's technical expertise. If, however, that expertise is not applied with commitment and vigor it is useless. Furthermore, NPS's solution to many of these problems has been to belatedly assign contractors with unknown levels of technical expertise and experience in NAGPRA matters to crucial tasks, while decreasing the role of NPS staff with demonstrated expertise and experience. The NPS claims are simply inconsistent with its action and performance. Dr. Kentigh urges that we wait and see what happens under the so called reorganization. Given NPS's performance to date, we see no way to support a wait and see attitude.

Several witnesses brought up the so called dispute between the Hopi Tribe and NPS's Chaco Culture National Historic Park as evidence of the problems with NPS implementation and the conflict of interest. While the Navajo Nation agrees that this so called dispute illustrates a

HISTORIC PRESERVATION DEPARTMENT P.O. BOX 4950 WINDOW ROCK, ARIZONA 86515 520.871.7148 (v) 520.871.7886 (fax)

problem, we do not agree with *any* of the other witnesses as to the nature of the problem illustrated. We believe that claims being made about this issue represent a substantial misunderstanding of the facts involved in the matter, and ignore the most fundamental point, which is that, despite the Hopi Tribe's claim that they have been wronged as a result of the process the Chaco Park used to reach its decision, the Chaco Park proposes to repatriate all of the remains the Hopi claim to the Hopi. In fact, the only thing holding up this repatriation is the so called dispute the Hopi Tribe has created. So far as we are aware the Hopi Tribe has never made a representation in any forum that remains they claim are being repatriated to another tribe or that remains being repatriated to any other tribe as a result of this process are being repatriated to the wrong tribe

We believe that this matter is being badly misrepresented and that the Chaco Park has acted conscientiously and properly throughout. The facts are complex and, despite the fact that it has been mentioned by several witnesses, we do not believe this so called dispute is particularly relevant to the matter the Committee is currently considering so we will not go into them here. Nevertheless, the Navajo Nation would welcome the opportunity to discuss this matter further with the Committee whenever the Committee would like to arrange for it.

Sincerely,

Alan Downer, Ph.D.
Director

STATEMENT OF SUZAN SHOWN HARJO, PRESIDENT OF THE MORNING STAR INSTITUTE, ON IMPLEMENTATION OF THE NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT, BEFORE THE COMMITTEE ON INDIAN AFFAIRS, UNITED STATES SENATE, IN THE HEARING OF JULY 25, 2000, WASHINGTON, D C

Mr Chairman, Mr Vice Chairman and Members of the Committee, it is with deep respect and great appreciation that I greet you and commend your sincere efforts to work with Native Peoples to make a better world for our coming generations and to bring honor to the United States in its dealings with us

Thank you for inviting The Morning Star Institute to testify on implementation of the Native American Graves Protection and Repatriation Act. Morning Star is a national Native rights organization that is governed by a board of traditional and tribal leaders, cultural rights specialists and artists Founded in 1984, Morning Star is devoted to Native Peoples' cultural and traditional rights and arts promotion

I am Cheyenne and Hodulgee Muscogee, and a citizen of the Cheyenne & Arapaho Tribes of Oklahoma. My involvement in issues related to the return of our dead relatives, living beings and cultural property has been lifelong and paramount, personally and professionally Since the 1960s, I have worked with Native Peoples hemisphere-wide to defend and advance our cultural and traditional rights

I was privileged to have been a part of the historic gathering of traditional religious leaders and practitioners at Bear Butte in 1967, which lead to the development of the religious freedom and repatriation laws In the mid-1970s, I was an organizer of the World Council of Indigenous Peoples and an author of its foundation statement on cultural and religious rights During the Carter Administration, as Special Assistant for Indian Legislation & Liaison, I was principal author of the President's Report to Congress on American Indian Religious Freedom (1979) and coordinator of the year-long 50-agency implementation of the American Indian Religious Freedom Act of 1978

During the 1980s, I was Executive Director of the National Congress of American Indians and a Trustee of the Museum of the American Indian I selected the Native participants for and joined the National Dialogue on Native American/Museum Relations, the recommendations of which are embodied in the Native American Graves Protection and Repatriation Act I was one of two Native negotiators of both the repatriation provision of the National Museum of the American Indian Act of 1989 and the Native American Graves Protection and Repatriation Act of 1990 A Founding Trustee of the National Museum of the American Indian (1990-1996), I was the principal author of the NMAI Trustees Statement on Repatriation (1991)

Slightly over ten years ago, I testified before the Committee, urging expeditious passage of the Native American Graves Protection and Repatriation Act The NAGPRA was widely supported throughout Native America The museum community, as represented by the American Association of Museums, supported NAGPRA The Society for American Archaeology, Archaeological Institute of America and the American Association of Physical Anthropologists supported NAGPRA

In the end, only the Department of the Interior opposed the Act. In a letter of October 2, 1990, to Representative Morris K Udall, Interior Deputy Assistant Secretary Scott Sewell objected to several critical sections of the repatriation legislation He recommended

deleting the definition of "sacred object" from Section 2 and not requiring the return of sacred objects.

. deleting language from Section 3 (a) establishing aboriginal territory as a basis for determining ownership of cultural items excavated or discovered on federal or tribal lands

deleting language for Section 5 (b)(2) specifying that nothing in the Act may be construed to authorize the initiation of new scientific studies or other means of acquiring or preserving additional scientific information

. changing Section 5 (c) to provide extensions of the inventory deadline to federal agencies.

deleting the requirement in Section 8 (c) that the Review Committee compile an inventory of culturally unidentifiable human remains in the possession or control of each federal agency

deleting the authorization in Section 10 for grants to Indian tribes, Native Hawaiian organizations and museums involved in the repatriation process

Over the objections of the Interior Department, the Senate and House unanimously passed the Native American Graves Protection and Repatriation Act, and President Bush signed NAGPRA into law on November 16, 1990

Primary implementation of NAGPRA was assigned to the Secretary of the Interior The Secretary assigned it to the National Park Service, as recommended by the negotiators of NAGPRA We Native negotiators, in particular, can be blamed for this We observed the way in which the Smithsonian Institution was implementing the 1989 repatriation law, was disregarding the spirit of the policy and had stacked its repatriation committee against the Native interest We insisted that implementation of NAGPRA be housed elsewhere

The National Park Service was being widely commended in Indian country at the time for its Native American cultural initiatives and their promise of new relationship with Native Peoples We bought it, the museum negotiators agreed, Congress embraced our recommendation and NPS became the lead agency under NAGPRA

We ignored the lengthy history of NPS's institutionalized racism against Native Peoples and its conflicts of interest with repatriation, naively believing that it was a new day in Interior and NPS The past ten years have provided numerous examples of NPS's repatriation conflicts and its inherent conflict of interest in implementing a law that specifically benefits Native Peoples

The NPS has refused to publish some *Federal Register* notices for sacred objects, effectively vetoing agreements made between Indian tribes and museums or agencies, and requiring the parties, such as the Pueblo of Cochiti and the Cheyenne River Sioux Tribe, to appeal for relief to the Review Committee

In determining the ownership of human remains found along the banks of the Columbia River near the town of Kennewick, Washington, the NPS has interpreted the meaning of aboriginal territory in an overly narrow fashion, not only refusing to recognize the binding Treaty between the Umatilla Tribe and the United States, but actually using a vacated decision by the Indian Claims Commission to determine that the remains did not come from Umatilla aboriginal territory

NPS's top representative has made the pronouncement, in the context of the federal agencies developing their position in the Kennewick case, that NAGPRA is not a law enacted to benefit Native Americans

The NPS has consistently pushed for additional scientific study of the remains of our dead, including techniques that destroy parts of their bodies, in contradiction of NAGPRA, as well as the standard rules of informed consent required of legitimate research of human remains

The NPS has delayed publication of the annual report of the Review Committee that was highly critical of federal agency compliance with NAGPRA

The NPS, which is delegated to provide staff support to the Review Committee, has failed after ten years to complete the inventory of cultural unidentifiable human remains required by the law

The NPS has captured an increasingly larger portion of the monies appropriated for grants to Indian tribes, Native Hawaiian organizations and museums for "administrative costs," despite the fact that Congress appropriated a separate line item to cover such costs

The NPS included language in its regulations forbidding federal agencies and museums from repatriating culturally unidentifiable human remains, despite the clear language in Section 11 (1) that nothing in the Act shall be construed to limit the authority of any federal agency or museum to return or repatriate Native American cultural items to Indian tribes, Native Hawaiian organizations or individuals.

Implementation of NAGPRA was initially assigned to the Departmental Consulting Archeologist, the senior federal representative of one of the primary constituencies impacted by the Act. More recently, it is reported that implementation has been moved to the Assistant Director for Cultural Resource Stewardship and Partnerships

There is a saying in the Cheyenne language that, roughly translated, means "the fox is in the hen house " The conflict of interest in having the NPS implement NAGPRA is quite real The record of the NPS shows that it has actively and knowingly frustrated the will of Congress The NPS is thwarting the law we worked so hard to put in place for the protection of our dead relatives and our sacred, living beings and our cultural property These are not archeological or cultural "resources " They do not require NPS "stewardship "

The NAGPRA was an agreement on national policy and a compromise on process. Implementation of this policy and process has gotten off course Our dead relatives are not "missing in action." Now, due to the many inventories completed by museums as required by NAGPRA, we know exactly where most of them are. However, they remain prisoners to a federal agency that values "science" over the rights of our dead people to rest in peace

We ask you today to get the fox out of the hen house Actually, we ask you to move the hen house out of reach of the fox Please allow us to honor our dead relatives in our own way

We urge you to advocate for the transfer of FY2001 monies designated for NAGPRA's implementation from the NPS to Interior's Departmental Secretariat.

We also urge you to initiate a General Accounting Office investigation of the way in which the NAGPRA has been administered and implemented and complied with over the past ten years.

We were wrong ten years ago about assigning implementation of NAGPRA to NPS, but I do not believe that we are wrong about ending it today before any more harm is done.

Again, thank you for your sincere efforts on our behalf in this most important part of Native Peoples' lives and future well-being

Aho

UNITED STATES SENATE
COMMITTEE ON INDIAN AFFAIRS

OVERSIGHT HEARING ON
THE NATIVE AMERICAN GRAVES PROTECTION
AND REPATRIATION ACT

Washington D.C.
July 25, 2000

Statement of:
Robert P. Gough, Attorney at Law
P.O. Box 25
Rosebud, South Dakota 57570

On Behalf of
The Estate of Tasunke Witko
and
The Rosebud Sioux Tribe NAGPRA Committee

Good morning. My name is Robert Gough and I have the privilege of being the attorney for the Estate of Tasunke Witko, or Crazy Horse, the great Lakota leader. I also serve as a member of the Rosebud Sioux Tribe's NAGPRA committee. It is indeed an honor to appear again before this distinguished committee on behalf of both the Estate of Crazy Horse and the Rosebud Sioux Tribe.

A little over one year ago, I appeared before this committee to address a matter of particular and ongoing concern for the Estate of Crazy Horse, the Rosebud Sioux Tribe, and the entire Lakota Nation, with regard to a lack of compliance with, and enforcement of, the notification procedures established under the Native American Graves Protection and Repatriation Act ("NAGPRA"). The implication of the precedent set in this matter is of concern for all Native American people expecting fair, consistent and timely administration of NAGPRA by the National Parks Service. This is a matter involving:

- A respected, private institution of higher learning, namely, Washington College of Chestertown, Maryland;
- A buckskin shirt, fringed with human hair, believed to have belonged to Crazy Horse;
- A lack of compliance by Washington College with either the spirit or the letter of the NAGPRA; and
- A continued lack of enforcement of the threshold provisions or the civil penalty provisions of the Native American Graves Protection and Repatriation Act by the U.S. National Park Service for blatant non-compliance.

Sadly, I must report that in the intervening year, we have seen little more from the National Parks Service than a renewed promise to look into the matter.

As you are no doubt aware, the National Park Service published an interim rule in the Federal Register to establish procedures for assessing civil penalties on January 13, 1997. At that time the Secretary of the Interior decided it was not in the public interest to delay the effective date to accommodate notice and comment procedures because such a delay would likely result in further loss or inability to remedy losses which had already occurred.

Beyond a single, initial inquiry made by the National Parks Service after continued correspondence on the part of the Estate and the Rosebud Sioux Tribe, I am not aware or any subsequent contact between the National Parks Service and Washington College – to my knowledge there has been no follow-up or determination as to the applicability of NAGPRA to Washington College. However, I can tell you, as attorney

for both aggrieved parties, that National Parks Service has had no contact with either the Estate of Tasunke Witko or the Rosebud Sioux Tribe NAGPRA committee in this matter.

Unfortunately, I am also aware that the estate of Tasunke Witko is not alone in its frustration with the lack of action or inconsistent action by the National Parks Service. I understand that at least one other museum has failed to complete summaries of its collection, and then subsequently sold items from its collection. The Tlingit people in the Pacific northwest are still waiting for National Parks Service to respond. We have no idea how many collections in smaller institutions who may be subject to NAGRPA have improperly disposed of small, but culturally significant collections through the lack of initial compliance.

It also appears that other museums have repatriated human remains to non-Federally recognized groups without doing the required notices. The Cherokee and Chickasaw people are still waiting for National Parks Service to respond. In the only case that I know of where the NPS has responded, a museum loaned funerary objects to a Native Hawaiian organization, and has received numerous letters from NPS officials. Coincidently, the NPS has items from the same burial site in its collection. While I am not aware of any direct conflict of interest in the Crazy Horse shirt matter, with regard to the National Parks Service, their inaction has allowed Washington College to flaunt the compliance provisions of NAGPRA in their own financial self interest.

The Estate and the Lakota People, and other Native Peoples have suffered the continuing losses due to delays and inaction by the National Parks Service reference in the Secretary's concern noted above.

INITIAL COMPLIANCE IS A CRITICALLY IMPORTANT THRESHOLD ISSUE

The NAGPRA was initially designed:

– to provide a procedure within which the rights of ownership of Indian, Alaska Native, and Native Hawaiian ("Native American") human remains and artifacts, including funerary objects, religious artifacts, and objects of cultural patrimony, found on Federal or tribal lands could be clarified;

– to establish criminal penalties for the sale, purchase, or transport of Native American human remains or cultural artifacts without a legal right of possession;

– to direct federal agencies and museums receiving federal assistance to identify the geographic and tribal origins of human or cultural artifacts in their collections, and to require the return of the remains or artifacts to the appropriate tribe or

Native American organization upon request;

– to establish a Department of Interior advisory committee to review the identification and repatriation processes for Native American human remains and cultural artifacts held by federal agencies and federally assisted museums; and, finally,

– to establish civil penalties for museums failing to comply with requirements of this act.

During the congressional hearing on the proposed NAGPRA legislation held May 14, 1990, distinguished members of this committee recognized the important human rights issues at stake in the legislation:

Senator McCain noted that NAGPRA outlined "a process that provides the dignity and respect that our Nation's first citizens deserve".

And, Senator Conrad noted that as proposed, NAGPRA provided a cross-cultural "lesson in etiquette, in manners, about how people treat each other. If you read this report, it is almost a rule book on how you treat others with respect."

However, for these goals of dignity and respect to be realized, compliance with the threshold provisions of the act must be ensured. Our concern today raises the crucial question of initial compliance by federally funded institutions in submitting the initial summaries or inventories required under the law. Institutional compliance with the initial disclosure notifications must be ensured so that interested Native American tribes and descendants can participate in the federally outlined process and review those objects and artifacts held by museums and other such institutions. Museums simply can not unilaterally pre-determine that particular objects or artifacts fall outside the specific NAGPRA categories and thus exempt themselves from compliance with the process. Yet, this is exactly what the National Parks Service has allowed to occur in this case.

The mandatory language of Section 10.8 (a) of the act is abundantly clear:

> (E)ach museum that has possession or control over collections which may contain unassociated funerary objects, sacred objects, or objects of cultural patrimony must complete a summary of these collections based upon available information held by the museum. Federal agencies are responsible for ensuring that these requirements are met for all collections from their lands or generated by their actions whether the collections are held by the Federal agency or by a non-Federal institution.

No proper determination of the applicability of the categorical provisions of the act can occur without institutional compliance with the threshold notice provisions.

This is a critical procedural concern, for without institutional compliance in providing the required summaries and inventories, Native participation and federal regulation are pre-empted and the entire process is rendered ineffective. Without initial compliance, based either upon the good faith cooperation of the subject institution, or upon the diligent enforcement by the federal agency charged with carrying out the requirements of this law, all subsequent provisions of this balanced and diligently crafted act are rendered hollow.

It appears from the record -- which has now been on file with the National Park Service since 1996 -- that, for the past 60 years, Washington College has held a collection of Native American artifacts, including a shirt said to be trimmed with "human scalp" and purported to have belonged to the famed Lakota leader, Crazy Horse. The Estate and Tribe made repeated attempts to examine the objects and artifacts in this collection and related documentary evidence as to its provenance. Washington College knowingly ignored these requests and proceeded to sell the bulk of this collection, including the shirt, through Sotheby's Auction House in New York City on May 21, 1996, without having filed either a summary or inventory of their collection, as required under NAGPRA.

Apparently, Washington College unilaterally decided, based upon "expert advice" and a written, legal opinion, that it did not need to comply with the requirements of federal law. Incredibly, the College presumed on its own and without the benefit of input from known and interest Native parties, that the objects and artifacts in its Native American collection were not subject to the requirements of the act. Having unilaterally and erroneously opted out of any compliance requirements, the College then apparently concluded that it was free to sell these objects and artifacts to the highest bidder.

Again, the Estate of Crazy Horse and the Rosebud Sioux Tribe asks this distinguished committee:

Where in the law are federally funded institutions possessing items which <u>may</u> be subject to the Native American Graves Protection and Repatriation Act, allowed to presume that federal law does not apply to them?

Where in the law are such institutions excused or exempted from filing the appropriate summaries or inventories of their collections mandated under NAGPRA based upon their own -- hardly disinterested -- determination that such objects and artifacts in their collections are not subject to the act?

Where in the law are the Secretary of the Department of the Interior and the National Parks Service excused from their statutory duties and trustee responsibilities to protect the legal interests of Native American peoples from the actions of institutions

that blatantly profit from purposefully ignoring the law?

Finally, we understand that the National Parks Service has been undergoing restructuring, reorganization and reassignment over the past year. Judging by the ongoing lack of results in this matter, the National Park Service is still sadly no more effective than the law it refuses to enforce. Will this committee do everything in its power to relocate the enforcement provisions of NAGPRA to an agency that will execute these sacred duties and responsibilities seriously and consistently in accordance with its statutory and federal Indian trust responsibility?

WASHINGTON COLLEGE AND THE CRAZY HORSE SHIRT

We have noted that Washington College would appear to be an institution of higher learning, pursuant to 45 CFR Section 10.2(3). And further, pursuant to 45 CFR Section 10.2(3), we understand that Washington College, like most such institutions, has received federal funds after November 16, 1990. It no doubt continues to benefit from such federal education support.

Since long before the passage of the NAGPRA, this College, name for the first President of the United States, has had possession or control over a collection, called the "Albee Collection", which contains Native American objects and artifacts which may be subject to the act, pursuant to 45 CFR 10.8(a), namely, unassociated funerary objects, sacred objects, or objects of cultural patrimony, or pursuant to 45 CFR 10.9, human remains and associated funerary objects. Washington College failed to comply with the timely filing of either a summary or inventory, as required by the law.

Further, such failure resulted in the sale of the Albee Collection without proper notice to the Tribe or Estate, who are parties known to Washington College as having an affiliation, association and interest in the collection. This sale materially damaged the Tribe and the Estate through the loss of any opportunity to examine, investigate, research or potentially repatriate such items.

The matter of particular concern to us today is the critical need for action by the United States National Park Service in enforcing the civil provisions of NAGPRA. To date, we are not aware of any enforcement proceedings initiated under the civil penalty provisions of the act. We seek a determination that Washington College has failed to comply with NAGPRA, and that such failure has ultimately resulted in the College's sale, and subsequent disposal, of the Albee Collection.

We have requested that the Secretary of the Department of the Interior and the National Park Service make an official determination of non-compliance and assess the appropriate civil penalties, pursuant to 45 CFR Section 10.12, to hold Washington

College accountable for its failure to provide a summary and/or inventory by November 16, 1995 or any time thereafter, prior to its sale of the Albee Collection on May 21, 1996.

We first brought this matter to the attention of the National Park Service in writing on June 4, 1996, and have followed-up with letters to the Secretary of the Department of the Interior on June 11, 1997 and a then again on June 25, 1998, with copies to our congressional delegation, by way of personally appearing before the NAGPRA Review Committee at their meeting convened on December 10, 1998, in Santa Fe, New Mexico and at the Senate Oversight Hearing on The Native American Graves Protection and Repatriation Act held in Washington, DC on April 20, 1999. In addition, through lawyers with the law firm of Greenberg Traurig, LLP, the Estate has corresponded with the National Park Service on this matter as recently as March 24, 2000.

BACKGROUND INFORMATION

While there are many issues involved in this case, I would again like include for the committee's information, a statement prepared by Ms. Amanda Burt, a paralegal with Rudnick, Wolfe, Epstien, and Zeidman, of Washington D.C., who provided some background information in this matter to the NAGPRA Review Committee in Santa Fe, on December 10, 1998.

From Ms. Amanda Burt's December 10th presentation:

> *Good afternoon. I would first like to thank the Review Committee for the opportunity to express our concerns in this forum. Specifically, we are here to address the question of Washington College's compliance with the procedural provisions of NAGPRA, as well as the National Park Service's intended course of action in this matter.*
>
> *For the record, my name is Amanda Burt. I am currently a paralegal with the law firm of Rudnick, Wolfe, Epstien & Zeidman in Washington, D.C. I am also a 1993 graduate of Washington College.*
>
> *Most people in this room are probably not familiar with Washington College. As I am well-acquainted with Washington College, I thought it would be helpful to provide some background information about the school. It is located in Chestertown, on Maryland's Eastern Shore and is a private liberal arts institution of approximately 1,000 students. For its part, Chestertown is a small, quiet community comprised of Chesapeake Bay watermen, farmers, retirees, and, for nine months out of the year, college students. Chestertown is <u>not</u> the kind of place that immediately comes to mind as being a "flashpoint" for Native American issues. And yet, this is absolutely crucial to understanding why this case is so important – especially where future instances of non-compliance with NAGPRA are concerned.*

For approximately 60 years, Washington College possessed the Albee Collection, a sizable assemblage of Native American artifacts, most notably of which included a beaded and fringed shirt attributed to legendary Lakota warrior, Crazy Horse, in addition to a headdress said to have belonged to Chief Red Cloud. Interestingly, the placard next to the Crazy Horse shirt proclaimed that it was "trimmed with human scalp."

The Albee Collection would likely have gone unnoticed were it not for a visit to the college in 1992 by the Cheyenne poet, Lance Henson. Henson, who had been invited to the College to read from his poetry, literally stumbled across the Albee Collection – housed in two shabby trophy cases in an obscure corner of Washington College's library. I have provided photographs for your reference. Aware of NAGPRA, Henson raised the question of the College's rightful ownership of the collection.

At the time, I was working for the student newspaper, The Washington College Elm. I wrote a story about Henson's "discovery" and his concern, especially in light of the recently enacted federal repatriation law, that the artifacts should be returned to the appropriate tribes. Since that time, I have been working together with members of the Crazy Horse family and the Estate to obtain more information about the shirt.

Sadly, the Albee Collection – including the Crazy Horse shirt – were sold at Sotheby's in May, 1996, due, in large measure, to Washington College's failure to comply with the requirements of NAGPRA. Although attributed in the auction preview catalogue to an "Important Plateau Man," the shirt sold for a price tag of over $200,000 – more than ten times what similar shirts are worth, in dollars.

Today, the question of Washington College's compliance with NAGPRA still remains unanswered. The National Park Service's failure to make a determination in this matter sends the unfortunate message that other institutions like Washington College do not have to comply with the law because they will not be held accountable for their actions, or lack thereof.
[End of Ms. Burt's statement]

Thus, for approximately the past 60 years, Washington College has had in its possession various objects and artifacts, including a so-called "scalp shirt" believed to have been owned and worn by Crazy Horse, i.e. Tasunke Witko. They also held a double-train eagle feather headdress attributed to Red Cloud, along with numerous other items from the estate of Captain Albee.

EFFORTS TO OBTAIN COMPLIANCE

On November 7, 1995 and again on May 12, 1996, on behalf of the Estate of Tasunke Witko and the Rosebud Sioux Tribe NAGPRA Committee, I contacted Washington College to obtain more information about the Albee Collection, including the Crazy Horse shirt and was directed to Mr. Alexander "Sandy" Jones, Chairman of the Washington College Legal Affairs Committee. I informed Mr. Jones that I represented the Estate of Tasunke Witko and the Rosebud Sioux Tribe NAGPRA Committee. I advised him that certain objects and artifacts in the Albee collection may be subject to NAGPRA. I provided him with a copy of the repatriation act, with what I believed to be the relevant sections marked and highlighted. We made no formal request for repatriation at that time, and sought only to examine the objects, artifacts and any documentation of its provenance.

My initial request to view the objects and artifacts was denied on the grounds that the shirt was not presently on campus, as it was undergoing appraisal and conservation at an undisclosed location. My follow-up request was denied because the collection had been sold at auction in New York City. It would appear that sometime after being apprised of the appraisal and potential market value of the collection, Washington College decided to profit from its sale rather than comply with the procedural requirements of NAGPRA. This decision of Washington College, made with full knowledge of Native interest in the collection, is shameful and unworthy of the name of its "founding father."

Since that time, Washington College has unilaterally taken the position that it had no duty to comply with the requirements of NAGPRA. The College's position is apparently based upon three grounds:

- That Washington College is not a museum.
- That the objects and artifacts in its possession did not fall within the objects covered by NAGPRA, pursuant to 43 CFR 10.2(d).
- That Washington College held good title to the Albee Collection.

The claim that Washington College is not a museum, and therefore, not subject to compliance with the requirements of NAGPRA, is purely a question of semantics. While Washington College may not be a museum in the generally accepted meaning of that word, Washington College is not relieved from its obligation to comply with applicable federal law or the specific definition of museum provided under NAGPRA.

In his June 8, 1998, letter to Dr. Francis P. McManamon, of this Committee, in his capacity as Director of the Archeological and Ethnology Program of the National Park Service, Mr. John Toll, President of Washington College, states initially that:

> "Although we are not required to respond to your inquiry, we hope that our response will refute the allegations made by Mr. Gough and will foreclose the need for further action."

President Toll provides no reason, nor offers any grounds upon which to base his belief that Washington College is not required to respond. However, on several occasions in the past, Washington College has claimed that it is not a museum.

It is of interest to note that in the Sotheby's sale catalogue of Tuesday, May 21, 1996, a photograph of lot item # 172 described as "A Small Plains Dance Ornament" from the "Albee Collection" is shown with an apparently well-worn label tag proclaiming: "Washington College Museum."

In any case, Section 10.2 (3) defines the term "museum" as follows:

> *Museum* means any institution or State or local government agency (including any institution of higher learning) that has possession of, or control over, human remains, funerary objects, sacred objects, or objects of cultural patrimony and receives Federal funds.

We contend that Washington College is included in any applicable definition of the term "museum" under NAGPRA.

In his response to Dr. McManamon, with regard to the National Park Service inquiry as to whether Washington College has completed a summary or an inventory under 10.8 or 10.9, President Toll admitted that Washington College had done neither. Further, Washington College denied refusing to have repatriated any "Native American items" in violation of 43 CFR 10.10, and denied that it had sold any "Native American items" in violation of 43 CFR 10.12(b)(i).

As grounds for these denials, President Toll expressed Washington College's position as follows:

> "(I)t has consistently been the position of Washington College that the Native American items in its possession did not fall within the categories of Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony within the meanings outlined by 43 CFR 10.2(d)."

This has been the consistent position of the College. The Jones' 1995 letter to Dr.

Krupat concluded with the remark that:

> "It (Washington College) should then seek expert advice to the Board concerning the condition and value of the Indian artifacts and its responsibility, if any, under the Native American Graves and Repatriation Act of 1990, as amended, and its regulations. Armed with this information the Board will make a determination of its proper course of action."

The critical nature of initial compliance concerns is underscored by the Estates recently failed attempt to regain the shirt or damages for the sale of the shirt through litigation. The Estate brought a claim for unlawful conversion of the shirt in Federal Court in Maryland. Because of Washington College's own statement of ownership of the Shirt, the case was barred by the statute of limitations. As a result, Washington College's own self-serving statement of Legal possession prevented the Estate from pursuing its rights to the Shirt.

Our concern today is precisely with this kind of self-interested self-exclusion – clearly practiced by Washington College – from the requirements of NAGPRA. Institutions cannot be allowed to by-pass or ignore Native input in a determination of NAGPRA applicability. Without compliance prior to any sale of objects or artifacts, there is no way of assessing the validity of Washington College's claims under the NAGPRA regulations.

Again, Section 10.8 (a) provides that:

> (E)ach museum that has possession or control over collections which may contain unassociated funerary objects, sacred objects, or objects of cultural patrimony must complete a summary of these collections based upon available information held by the museum. Federal agencies are responsible for ensuring that these requirements are met for all collections from their lands or generated by their actions whether the collections are held by the Federal agency or by a non-Federal institution.

Washington College's non-compliance and sale of its collection, without notice to identified interested parties, effectively prevented any fair and open determination of what may or may not satisfy the NAGPRA categorical requirements. The position of Washington College only satisfied its own self- interest and financial gain. The prospect of an institution evading its legal duty and financially profiting from the sale of human remains or sacred objects or objects of cultural patrimony is reprehensible and unlawful.

The collection remained in the possession of Washington College throughout most of the century. The placard in the College's display case provides all the basic information

needed to complete a summary under 10.8(c). This is not a case of lack of information or lack of adequate funding necessary to complete the required summary. Further, Washington College can not and does not claim ignorance of the existence of the Native American Graves Protection and Repatriation Act, or of its the requirements, amendments or regulations. Consequently, Washington College cannot be allowed, in its own self-interest, to claim a presumed exemption from its responsibility to comply with those requirements and regulations of the Native American Graves Protection and Repatriation Act.

CONCLUSION

Mr Chairman and distinguished members of the Senate Indian Affairs Committee:

Unfortunately, another year has passed since the Estate of Crazy Horse and the Rosebud Sioux Tribe last brought this crucial matter of lack of enforcement of the legal protections and rights accorded to Native Americans under the Native American Graves Protection and Repatriation Act to your attention.

Under the hard-fought and carefully balanced provisions of NAGRPA, the rights of museums and Native Americans, and the governmental responsibilities of the National Park Service are clearly spelled out. However, when the Secretary of the Department of the Interior and National Parks Service officials fail to faithfully, timely, diligently or consistently perform their statutory duties or live up to their responsibilities to protect the rights of all parties under the Act, only those museums and other institutions that would circumvent the law for their own self-interest and monetary profit are protected.

Sadly, in this case, five years have now passed since the National Parks Service was first requested to meet its responsibilities under NAGRPA with respect to this Washington College matter. These requests have come through telephone calls, letters, public statements presented to the NAGRPA review committee, and congressional testimony.

In five years, the National Parks Service apparently cannot even determine whether the threshold requirements of NAGRPA are met by an institution that has placed objects the auction block which were publicly touted as associated with the slain leader Crazy Horse and with other respected Lakota leaders, which are deemed sacred and part of the Lakota cultural patrimony, and which fetched extraordinarily higher prices because of that association.

Again, as I understand it, since we met last year, the National Parks Service has been undergoing restructuring, reorganization and reassignment over the past year. Judging by the results in this matter, the National Park Service is still no more effective than the

law it refuses to enforce.

As we observed one year ago, the past and present position of Washington College essentially stands for the following proposition:

> That any institution which acknowledges receipt of federal funds and which has Native American objects and artifacts in its possession may unilaterally choose whether it wishes to comply with or opt out of the threshold summary or inventory requirements of the NAGPRA, based upon its particular self-interest, privately obtained expert advice, undisclosed legal opinions, or other financial determinations made at the sole discretion of that institution's board of directors. This unilateral determination may be made without input from any other of the Native American parties who may have legal interests under NAGPRA.

It is precisely this prospect -- that is, leaving the question of whether an institution has a duty to comply with federal law up to that institution's own self-interested discretion -- that we find setting a most troubling precedent. Allowed to stand, this precedent effectively and completely pre-empts any tribal participation in the NAGPRA process. Also, if we may judge by the inaction of the National Parks Service, it appears to foreclose any possibility of federal regulation under the NAGPRA. By allowing this precedent to go unaddressed, the National Parks Service has effectively rescinded this Act of Congress.

In short matter has come to stand for the proposition: If you purposefully ignore the law out of private self-interest, the law can not and will not be applied to you. This is a powerful message, endorsed by the inaction of National Parks Service.

In closing, we have sought the assistance of the NAGPRA Review Committee in moving the Secretary of the Department of the Interior and the National Park Service to make a determination regarding Washington College's admitted non-compliance with the procedural provisions of NAGPRA. Further, we have asked that the Secretary and the National Park Service to assess appropriate civil penalties against Washington College for its failure to complete a summary and/or inventory by November 16, 1995, or any time prior to its sale of the Albee Collection on May 21, 1996, and for that subsequent sale.

Again, we have not brought this matter before you for resolution of these issues on the merits of the case. Details of this case have been included here only to represent the level of administrative information that has been available to the National Parks Service for over five years. We have been and remain completely willing to proceed through appropriate administrative channels. We seek only effective compliance with, and diligent enforcement of, the federal protections provided under the law; but those channels have been effectively blocked by the unexplained inaction of those statutorily

charged with administrating the law.

We bring this matter again to the attention of this oversight committee in the hope of remedying this problem of initial threshold compliance and the lack of administrative action in the face of non-compliance. One year ago, we suggested that a technical amendment to require that no sale of any objects or artifacts which may be subject to the provisions of NAGPRA can occur without a written certification of compliance with the summary and inventory provisions of NAGPRA from the National Park Service, as applicable federal agency. This would provide notice and assurance to the various auction houses and other venues trafficking in Native American objects and artifacts that their participation in the sale of such items would not aid, abet or promote willful non-compliance with the NAGPRA. I am not aware of any legislative actions taken in this regard.

To date, there have been no enforcement actions taken under the civil penalty provisions of the present act. This should not be taken as an indication that there are no problems with institutional compliance. Lack of enforcement in such cases as this means that institutions holding objects and artifacts of significant cultural import can effectively evade the balanced legal protections envisioned for all parties under NAGPRA.

This lack of enforcement may be evidence that the National Park Service is ill-equipped or ill-disposed to properly carrying out the threshold provisions and enforcement functions under the Native American Graves Protection and Repatriation Act. The failure of the National Park Service to adequately respond in accordance with the express provisions of the act further compounds the evasion and denigration of this all too necessary federal legislation.

Neither the Secretary of the Department of the Interior or the National Parks Service are excused from faithfully and consistently carrying out their statutory duties and trustee responsibilities to protect the legal interests of Native American peoples from the actions of our American cultural institutions that blatantly profit from purposefully ignoring the law. If the National Park Service is going to ignore its statutory duties and responsibilities under the law, then a more appropriate federal agency, perhaps located within the Department of Justice, civil or human rights divisions, should be charged with upholding federal law. Judging by the ongoing lack of results in this matter, the restructured, reorganized and reassigned National Park Service is still no more effective in the protection of Native American Rights, than is the law it refuses to enforce in any consistent or expedited manner.

Again, we ask this committee do everything in your power to relocate the enforcement provisions of NAGPRA into an agency, perhaps located within the Department of Justice, that will execute these sacred duties and responsibilities to Native Americans

seriously, consistently and in a timely fashion.

On behalf of the Estate of Tasunke Witko and the Rosebud Sioux Tribe NAGPRA Committee, I offer you my appreciation for the opportunity to again bring this issue before the Senate Indian Affairs committee.

Respectfully submitted this 25th day of July, 2000.

Statement of
W. Richard West
Immediate Past Chair of the Board
American Association of Museums
and
Director
National Museum of the American Indian

Mr. Chairman and members of the Committee: I am W. Richard West, immediate past chair of the board of directors of the American Association of Museums, and director of the Smithsonian Institution's National Museum of the American Indian. Thank you for the opportunity to present testimony on behalf of the American Association of Museums on the Native American Graves Protection and Repatriation Act (NAGPRA).

American Association of Museums (AAM) represents the broad range of museums, from aquaria, art and history museums to science-technology centers, natural history museums and zoos, with more than 16,400 members of which about 11,000 are museum paid staff or volunteers, 2,000 are independent professionals and suppliers to the museum community, and 3,000 are museums.

As you know, we now have ten years of experience with NAGPRA. It is an instrument of compromise, created through the best collective efforts of museum people working closely with Native Americans, anthropologists, universities and others. As a compromise, it is not a perfect law for any of the affected parties, but on the whole it has worked well. I think all the parties to the law have found that the repatriation process has been much more demanding, complicated and costly than anyone had expected. But museums and tribes have both benefited greatly by the process. In particular, they have set up collaborations that have provided museums with new understanding of the significance of their collections and tribes with awareness of important objects of whose continued existence they may not have known.

Since 1990, museums have worked very hard to honor not only the letter but also the spirit of the law. Here are several examples of how the repatriation process has affected a number of museums in recent years.

The Buffalo Bill Historical Center (Cody, Wyoming).

Since 1979, when the Plains Indian Museum at the Buffalo Bill Historical Center was opened, the Director and Board of Trustees have taken a cooperative approach to working with Plains and other Native people. In 1976 an Advisory Board was established consisting of representatives from Plains tribes that guided the content and design of the Museum. Prior to the establishment of NAGPRA, one object of ceremonial importance had been returned to a tribe, and intermittent visits were made by tribal members to study the Museum's collections.

In 1991, a policy related to the care, exhibition, and repatriation of culturally sensitive objects was developed by the curator and Advisory Board members and endorsed by the Historical Center Board of Trustees. This policy not only outlined a process of complying with NAGPRA requirements but also officially addressed other

concerns and procedures related to the handling of sacred objects. Although numbers of tribal visits and consultations have occurred in the past ten years, to date there have been three requests for repatriation. Probably more meaningful are the exchanges of information that have taken place between Museum staff and tribal members which have brought about informed traditional care of collection objects for the Museum and assistance in cultural preservation projects for the tribes. On June 17, the Plains Indian Museum opened newly installed galleries that reflect the Museum's philosophy of cooperation and recognition of the roles of Native people in telling their own stories related to collections.

The Peabody Museum of Archaeology and Ethnology (Harvard University, Cambridge, Massachusetts)

The Peabody Museum is one of a handful of museums with an usually large number of human remains. It is on schedule with its mandate from the Department of Interior to complete 60% of its inventory of an estimated 11,587 human remains by the end of April 2000, having completed inventory of 62% by that date, and it expects to meet the October 2000 goal of 80% completion. The museum continues to employ 18 personnel in addition to its regular staff in order to meet the requirements of the consultation process and the production of final reports.

Over the 6-month period from November 1999 to April 2000, the museum's staff worked on human remains and funerary objects from fifteen states, having 1,681 consultative interactions with 163 tribes or consortia of tribes. The accelerated timetable in the Department of Interior mandate and lack of funding, however, prevented consultation visits during this period. Responding to requests from some tribal NAGPRA officers for more consultation, the museum has committed to additional significant consultation with these tribes, to allow more time for the museum and the tribes to exchange more precise information about cultural affiliation of human remains and objects.

The Natural History Museum of Los Angeles County

Between NAGPRA passage and 1998, when the museum completed its inventory on a three year extension, its Anthropology staff devoted about one-third of its staff time to NAGPRA activities. Since enactment of the law, virtually all of the collection management activity in those parts of the museum has been devoted to its North American collections, allowing almost no time for management of its extensive collections from elsewhere. Except for a single $38,000 National Park Service grant, all funding for this effort came from the museum itself.

In the course of this effort, museum staff were visited for consultations by, or went on visits to, 13 Native groups; these visits lasted from 1 - 3 days each. The museum also wrote letters of support to assist 7 tribal groups to get federal funding. In addition, it

returned a number of remains and/or artifacts that had been on long-term loan from other institutions (both museum and federal agency) so the record-owner institution could complete its NAGPRA process for the artifacts. By 1998, the museum had completed 9 inventories, of which NPS has published 8. The published inventories have resulted in 5 repatriations, including 3 to a Native Hawaiian group, representing a total of human remains of 155 individuals, plus 814 associated funerary objects.

One example of the cooperation engendered in the museum's repatriation process involved the Coquille tribe. The museum had in its collection artifacts from Oregon which museum staff could not affiliate because the objects had been received long ago with minimal records. A recently recognized tribe, the Coquille, visited the museum as part of their own ethnographic efforts and were able to provide museum staff with significant additional documentation (maps, pioneer diaries, a tribal linguistic expert, etc.). Museum staff also consulted with 3 other tribes in the area to confirm the likely Coquille affiliation, a process that took approximately 3 weeks of full-time work for the museum's Curator of Anthropology and collection manager. The excellent cooperation of all involved culminated in the museum's affiliation of the objects with the Coquille and identification of the objects as associated funerary objects. After museum staff repatriated the artifacts, they received a letter from the Coquille expressing the tribe's appreciation and confirming that it had reburied the artifacts in accordance with its traditions.

I would also like to say a few words about the museum that I direct, the National Museum of the American Indian (NMAI.) Of the approximately 1,600 objects that NMAI has repatriated to the tribes, the majority have been human remains and funerary objects. NMAI currently has approximately three hundred human remains in its possession, representing an estimated seventy-five indigenous groups. Our priority is to repatriate all those human remains and their associated funerary objects to their respective indigenous communities, both domestic and international. We project the repatriation of all human remains by the end of 2003.

Concurrent with the repatriation of human remains and associated funerary objects, the NMAI Repatriation Office is processing and researching tribal claims for sacred and ceremonial objects, and objects of cultural patrimony. We are currently preparing for returns to twelve indigenous communities in Nevada, Arizona, Colorado, South and North Dakota, British Columbia, Alaska, Montana, Alberta, and Oklahoma.

In the course of our work on repatriation, we are seeing more and more tribes working together for return of cultural materials and human remains. Tribes are also looking increasingly to Federal agencies for help in re-interment. As you know, many tribes originally from the southern and eastern parts of the United States were re-located. In some cases, tribes are looking to re-inter on their original lands, some of which are now privately owned or Federally owned, and they are seeking help from Federal

agencies to re-inter on Federal land that is on or near to the tribe's original lands. NMAI has been pleased to help facilitate some of these discussions.

Despite this progress in museum and tribal actions on repatriation, there are several current hindrances in the repatriation process relating to funding which need to be cleared away. One of those is the slow rate of publication of notices of NAGPRA inventories in the *Federal Register*. We understand that there is currently a backlog of more than a year's worth of notices, despite the best efforts of National Park Service staff. In fact, we understand that of the roughly 700 notices submitted, about half are still not published. The President's budget request would provide for a $400,000 increase for general NAGPRA funding, which would allow an increase of staff by five to help process the notices. The museum community strongly urges that additional funds be provided for this purpose.

A second hindrance is insufficient funding for the NAGPRA grant program, which is to assist museums and tribes in the repatriation process.

The need continues to be great. In 1994, AAM conducted a repatriation survey of 500 of its member institutions, including all of its natural history museums and a selected sample of its art and history museums. Of the 43.6 % that responded, 76% of the natural history museums, 43% of the history museums and 23% of the art museums had Native American objects. Those respondents—a little more than 200—alone had almost 3.5 million objects which fell into NAGPRA categories, and that did not include 15 responding natural history museums, including 3 large institutions, which could not, at that time, give an accurate estimate of their NAGPRA-related holdings.

In contrast, in October 1990, at the time of the passage of NAGPRA, the Congressional Budget Office had estimated NAGPRA implementation costs to museums of only $40 million and to tribes and Native Hawaiian organizations of $5-10 million over 5 years, assuming that museums and federal agencies held between 100,000 and 200,000 Native American remains and that the cost to inventory and review each remain would be $50-100. Those estimates now appear to be very low in light of our experience since that time.

In the FY2000 grants round, many projects judged worthwhile could not be recommended for funding because of the limited funds available. The Park Service received 111 proposals requesting over $6 million but was able to fund only 42 with the $2.25 million available, plus a reserve amount to fund repatriation requests during FY2000 at smaller dollar amounts. The 42 awards were divided between 13 grants to 13 museums, totaling $617,210, and 29 grants to 26 tribes, totaling $1,574,250. Without increased funding to support projects judged worthy, both museums and tribes are hindered in their efforts to make timely progress in the repatriation process and to deal with issues that arise, such as abatement of pesticides in repatriated objects. The museum community strongly urges that additional funding be provided here as well.

Thank you for the opportunity to testify on this issue. I would be happy to respond to any questions you might have.

Statement of
W. Donald Duckworth, Ph.D., President and CEO
Bishop Museum, Honolulu, Hawai'i
on the Native American Graves Protection and Repatriation Act
U.S. Senate Committee on Indian Affairs, Washington, D.C.
July 25, 2000

Mr. Chairman and members of the Committee I am W Donald Duckworth, Ph D , President and CEO of the Bishop Museum in Honolulu, Hawai'i, presenting testimony on behalf of my institution.

On April 20, 1999, I presented testimony to this distinguished committee on the experiences of Bishop Museum as it worked to fulfill both the letter and spirit of the Native American Graves Protection and Repatriation Act (NAGPRA). Since that testimony, we have continued our work and have also continued to benefit from collaboration with Native Hawaiian elders and cultural experts We have enjoyed a long and productive working relationship with the National Park Service (NPS) staff that administered NAGPRA and have received grants from NPS, for which we are most grateful in that they have helped us significantly in achieving our obligations under NAGPRA. During the past few months, however, Bishop Museum's experiences with the NPS have raised concerns regarding the appropriateness of continuing to administer NAGPRA at the Archaeology and Ethnology Program at the NPS I would like to comment on the current situation and on those experiences.

The Museum is currently facilitating the NAGPRA-related repatriation of human remains and funerary objects removed from a cave complex in Kawaihae District on Hawai'i Island The Hawai'i Volcanoes National Park, which is under NPS jurisdiction, is in possession and control of objects from this same cave complex. The Hawai'i Volcanoes National Park is not facilitating NAGPRA-related repatriation of these items.

The conflict of interest in this case is very clear. Bishop Museum has tried, in good faith, to work out solutions in a highly charged emotional context. NAGPRA has provided the Museum with opportunities to collaborate with Native Hawaiians and Bishop Museum has, often with great difficulty, reached solutions that truly reflect the collaborative spirit of NAGPRA. We are dismayed that NPS staff associated with the Archaeology and Ethnology Program are interfering with this collaboration and instead, are attempting in strong terms to influence decision making between the Museum and the claimants. Not only are NPS staff faxing official letters to the media, they are creating an atmosphere of suspicion and ill will. It also appears from the tenor of NPS letters sent to Bishop Museum from its National Center for Cultural Resource Stewardship and Partnerships that NPS has predetermined that a civil penalty proceeding against the Museum would be instituted. Background information and examples follow.

The State Museum of Natural and Cultural History
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The circumstances of the Museum's receipt of the Kawaihae cave human remains and objects are important. In 1905, three men, exploring caves in search of burial treasures, discovered a cave in Kawaihae with the remains of a chief and others, and objects that were wrapped and placed with the remains The three men, who entered the chief's burial cave and removed the objects and some of the remains, drew straws to divide their bounty three ways Two of the men sold and traded their shares to Bishop Museum in 1907 The third man kept his share In 1956, some time after his death, his family donated his share of the objects to the Hawai`i Volcanoes National Park, where they reside to this day

This past February, the Museum, in good faith, made a loan of the objects to one of the claimants, Hui Malama I Na Kupuna O Hawai`i Nei, to facilitate the process of consultation The Office of Hawaiian Affairs alleged that the loan to Hui Malama was in violation of NAGPRA and requested that the NPS institute a civil penalty proceeding In a letter sent from Director Robert Stanton's office on April 7th, the Museum was informed of OHA's allegation and invited to respond in writing to three questions to assist NPS in evaluating OHA's allegations. We feel that Director Stanton's letter was in order and we are grateful we were afforded the opportunity to respond Interestingly, we also received a telephone call on May 8th made by the NPS Consulting Archaeologist at 11 04 p.m Washington D C time inquiring whether we had received Director Stanton's letter and whether we intended to respond. The Museum responded to Director Stanton's requests on May 12th, providing answers to the three questions and attaching additional information and documents as suggested

Subsequently, two other letters were received from the NPS. One was dated April 13th and the other June 2nd Katherine H. Stevenson, Associate Director, sent the letters from the NPS National Center for Cultural Resource Stewardship and Partnerships.

The letter of April 13th included the following statement· "I hope you will take every possible step to recover and take back into direct care by the Museum any artifacts that may be covered by NAGPRA that may have been given to other organizations with [sic] following the proper procedures required by NAGPRA " We found this statement inappropriate in that it interferes with the decision making process between the Museum and the claimants and that it infers that NPS has predetermined that a civil penalty proceeding would be instituted. The Museum responded in a letter dated May 13th requesting clarification of this statement. Clarification was provided in the letter dated June 2nd, signed for Katherine Stevenson, and faxed to the Museum on June 7th

The letter of June 2nd was faxed to the two Honolulu dailies, the *Honolulu Advertiser* and the *Honolulu Star Bulletin*, on the same day the Museum received them (June 7th) We were provided copies of those faxes by one of the reporters The source of the fax to the two Honolulu newspapers was the Honolulu NPS office, which also faxed to one of our staff (not involved in NAGPRA) copies of correspondence between our NAGPRA project manager and a claimant.

The June 2nd letter from NPS included the following statements.

- "I hope you are able to take action to assert the direct control the museum has over the security and safety of the objects."
- "As you are aware, until repatriation, it is your museum's responsibility to ensure that the objects are preserved and protected against all threats."

- "As long as the objects are out of your possession, the objects, which would be worth millions of dollars on the black market, are subject to a substantial threat of theft. Whether the objects are in a cave, as reported, or elsewhere, they are also threatened by damage by insects, humidity and other natural factors."

The statements are inappropriate in that they interfere with the Museum-claimant consultation process and infer that NPS has predetermined that a civil penalty proceeding will be instituted. The letter also indicated that our response of May 13th to Director Stanton on the civil penalty proceedings was not received by the National Center for Cultural Resource Stewardship and Partnerships.

The NPS letter of June 2nd was quoted liberally by the Honolulu newspapers, and included the statement regarding the monetary worth of the objects. We feel that it was inappropriate for the NPS to send this letter to the media and thus compromise the security of the objects with statements regarding their worth. We also feel that it was inappropriate for NPS to assume that the monetary worth of the objects and the maintenance of museum-quality environmental controls were, in this case, more important that the spiritual significance and ceremonial context of the objects. Finally, we are concerned whether the placement of such high monetary value over these objects is influencing NPS decisions regarding other NAGPRA-related objects within their control.

It seems Bishop Museum has been the subject of such keen scrutiny by staff of the Archaeology and Ethnology Program of NPS because the NPS is in possession and control of the remaining third of the objects removed from the Kawaihae burial cave in 1905. These objects, as noted above, are stored in a repository located at the Hawai'i Volcanoes National Park, over which NPS has jurisdiction. Although we have also enjoyed a long and productive working relationship with the Honolulu NPS office, we are dismayed with the actions of the archaeologist assigned to that office. It is well known in Honolulu that the NPS Pacific Islands Support Office archaeologist continues to support one of the potential claimants, because that claimant is questioning the status of the objects as burial related, or even as NAGPRA-related. We understand furthermore, that NPS has not responded to claims for the objects made some time ago by Hui Malama, the Department of Hawaiian Home Lands, and the Hawai'i Island Burial Council. Although the administration of NAGPRA seems to have been transferred to new NPS staff, the academic biases of archaeology and ethnology remain the same.

In closing, we reiterate our commitment to fulfilling the spirit and intent of NAGPRA and we stand by our belief that the resulting levels of collaboration that Museums have enjoyed with Native Americans and Native Hawaiians as a result of NAGPRA has been most valuable and important. We support any effort made by this distinguished committee to ensure that the NAGPRA program is administered with objectivity, cultural sensitivity, and in keeping with the spirit and intent of the Act.

Thank you for the opportunity to testify on this issue. I would be happy to respond to any questions you might have.

SENATE COMMITTEE ON INDIAN AFFAIRS

Oversight Hearing:
Native American Graves Protection and Repatriation Act

Tuesday, July 25, 2000, 10:00 a.m., 485 Russell Senate Bldg.

STATEMENT OF THE SOCIETY FOR AMERICAN ARCHAEOLOGY AND THE AMERICAN ASSOCIATION OF PHYSICAL ANTHROPOLOGISTS

Keith W. Kintigh, Ph.D., SAA President

Mr. Chairman, the Society for American Archaeology (SAA) thanks the Committee for this opportunity to comment on the current state of NAGPRA implementation. SAA is the leading organization of professional archaeologists in the United States. Starting in 1989, SAA led the scientific community in working with congressional staff on the language of NAGPRA. We provided testimony at Senate and House Committee hearings and helped form a coalition of scientific organizations and Native American groups that strongly supported NAGPRA's enactment. Since that time, we have closely monitored its implementation and have consistently provided comment to the Department of the Interior, to the NAGPRA Review Committee, and to this committee. We urge our members always to work toward the effective and timely implementation of the Act. We are joined in this testimony by the American Association of Physical Anthropologists (AAPA), which is the leading organization of physical anthropologists in the United States and which also supported the enactment of NAGPRA.

- Ten years ago, I stood before this committee to present SAA's testimony on S1980, the bill that became NAGPRA. Despite the problems that remain, reflecting on the last ten years, I think the Committee should be proud of what NAGPRA has accomplished.
- Over a thousand museums and federal agencies submitted summaries to tribes, and more than 700 have submitted inventories.
- While we more often hear about the difficult and confrontational cases, repatriations of human remains and cultural items, from both museum collections and new excavations occur routinely. Most of these repatriations result from mutual agreements between tribes and museums and agencies.
- Consultations mandated by NAGPRA have led to the development of improved understandings between tribal people, museum personnel, and scientists. Many cooperative ventures not required under the law have been successfully pursued.

In the interests of improving NAGPRA's implementation, we now turn to a brief discussion of several issues relating to the current implementation of NAGPRA.

Federal Agency Compliance

In last year's testimony before this committee, SAA and AAPA expressed dismay over the lack of compliance of some federal agencies with the plain requirements of NAGPRA. While there has been some good work by agencies, lack of compliance by some federal agencies remains the single largest stumbling block in implementing NAGPRA. This has frustrated tribes and scientists alike.

The most obvious problem has been the lack of completion of the inventories that were due five years ago. A less obvious but more pernicious problem is that determinations of cultural affiliation are often made without adequate consultations with tribes and without reasonable efforts to compile and weigh either the scientific or the traditional sources of evidence.

While some Federal agencies are moving too slowly in repatriation matters, problems also arise when an agency moves too quickly, or without adequate consultation or consideration of the evidence. Two examples will suffice. In the well-known case of Kennewick Man, the court found that in its haste to repatriate the remains, the Corps of Engineers failed to satisfy the legal requirements. The unfortunate consequence has been a lengthy lawsuit.

More recently, the Review Committee found unanimously that Chaco Canyon National Historical Park had utterly failed to do adequate assessments of cultural affiliation and recommended that the Park redo its inventory with appropriate consultation and attention to the scientific and traditional evidence. In the Chaco case, the scientific community, nearly all the affected tribes, and the Review Committee agree on *all* the key points. Unfortunately, the NPS Intermountain Regional Director saw fit to dismiss the Review Committee's recommendations, arguing in effect that the job the Park had done was good enough.

As NAGPRA provides no enforcement provisions affecting agencies, we would ask Congress to employ the means at its disposal to induce or to compel full agency compliance. In pursuing this objective, the Committee should insure that agencies do not achieve compliance with NAGPRA at the expense of other critical cultural resource programs.

Speed of the Repatriation Process

At Review Committee meetings, tribes have expressed considerable unhappiness with the length of time it is taking to achieve repatriation of Native American human remains. Clearly, there have been problems and federal agency compliance is a key issue that must be addressed.

However, a lack of speedy reburial is not a necessary indicator that the process has gone awry. It must be remembered that universal reburial was never NAGPRA's goal. Its objective is to provide culturally affiliated tribes with the *right to determine disposition* of remains of their ancestors. Repatriation is only one of many possible dispositions. The fact is that tribes have requested repatriation of only a small fraction of the remains that have been culturally affiliated by museums and agencies.

The lack of repatriation requests is probably due to several causes. Tribes are entitled to choose not to request repatriation or to have a museum continue to hold remains and objects. In other cases lack of repatriation of culturally affiliated human remains may reflect tribal priorities or a lack of funding. In the Southwest, and probably throughout the West, concern with the ongoing excavations of human remains (those on federal and Indian lands are covered by NAGPRA's Section 3) generally take precedence over repatriation of human remains from

museum or agency collections because the ongoing excavations are viewed as presenting the most pressing problems.

Culturally Unidentifiable Human Remains

The disposition of culturally unidentifiable human remains continues to be an issue of concern. We offer several observations:

1) *Possibility of Affiliating Remains now Classified as Culturally Unidentifiable.* Under NAGPRA, it is the strength of relationship as indicated by cultural affiliation that provides the legitimacy to claims for repatriation. The plain language of NAGPRA and its legislative history make clear that, whenever possible, control over disposition should be granted to the tribe or tribes that have cultural affiliation.

The Committee should recognize that many of the remains currently classified as culturally unidentifiable could, with appropriate consultation with tribes and research by scientists, be culturally affiliated. This point was specifically recognized by the NAGPRA Review Committee in its recent recommendations regarding culturally unidentifiable human remains. The problem of remains that can be affiliated but that are now categorized as culturally unidentifiable was exacerbated a year ago when the Department of Interior denied museums that were making good faith efforts additional extensions. The Department directed the museums to complete their inventories based on information currently at hand, thus precluding adequate consultation for many collections. In many cases this has led to determinations that remains are culturally unidentifiable where the museums readily acknowledge that it may be possible, with more tribal consultation and more research, to make determinations of affiliation. Because of DOI's shortsightedness, a much larger burden now rests with tribes to pursue further consultation and to show that a preponderance of the evidence supports cultural affiliation.

2) *Review Committee Recommendations.* NAGPRA charged the Review Committee with "recommending specific actions for developing a process for disposition of [culturally unidentifiable human] remains." (NAGPRA Section 8(c)(5)). This language reflected Congress' uncertainty about the proper treatment of culturally unidentifiable human remains in light of the lack of agreement among tribes and between tribes and the museum and scientific communities on this question. Congress also hoped that our experiences in determining the disposition of affiliated remains could provide important models for the resolution of the disposition of culturally unidentifiable human remains. The Review Committee issued its recommendations less than two months ago (Federal Register, June 8, 2000 65(111)). At this point we need to see how those recommendations fare.

3) *Permitting Tribal Consortia to Determine the Disposition of Culturally Unidentifiable Human Remains.* A coalition of Southeastern tribes has offered an alternative approach to determining the disposition of culturally unidentifiable human remains. Their suggestion is to empower regional consortia of tribes to determine the disposition of these remains.

As discussed above, many remains now classified as culturally unidentifiable have the strong potential to be affiliated. Empowering tribal consortia to decide quickly on the disposition of culturally unidentifiable human remains would result in a serious disservice to the tribes that could show affiliation. This solution violates the rights of lineal descendants and culturally affiliated tribes that are specifically privileged by NAGPRA because of the closeness of their relationship.

Furthermore, this approach fundamentally upsets the balance and spirit of compromise that is embodied in NAGPRA and that is reflected in the composition of the Review Committee. Decisions about disposition must be made jointly by representatives of the scientific, museum, and Native American communities. In fact, the Review Committee's recommendations include use of tribal consortia in regional consultations on the disposition of culturally unidentifiable human remains, but consistent with NAGPRA, their recommendations include museums and federal agencies in the consensus-based decision-making.

Scientific Interests

Congress carefully crafted NAGPRA to balance diverse interests in Native American human remains and cultural items. NAGPRA was supported by the tribes and by scientific and museum organizations because it represented a reasoned compromise among diverse interests. Scientific interests in human remains and cultural items derive from their ability to tell us about our nation's, and indeed, our human heritage. For example, the human genome project is opening up the potential for important medical research. The next fundamental step in this research will be charting the variation within the human genome. Also, there is enormous public interest in understanding the original peopling of the Americas. The study of Native American human remains will be essential to these and many other worthy efforts. We do not suggest that these interests necessarily outweigh those of tribes; we simply point out that scientific interests are appropriately recognized as legitimate by NAGPRA.

Location of the NAGPRA Function Within DOI

The NAGPRA function within the Department of the Interior was reorganized in response to a perceived conflict of interest by the tribes. The current organization removes this appearance of conflict. At this point, we believe that the best course is for all of us to work with Mr. Robbins and his staff toward the effective implementation of NAGPRA.

Financial Support

Implementation of NAGPRA continues to be delayed by the lack of necessary resources. There is a need for increased funding for NAGPRA grants to tribes to effect repatriation and further consultations with museums. There is a complete lack of federal support for tribal implementation of Section 3 repatriation issues (new excavations and inadvertent discoveries).

There is an additional need for new federal funding to assist scholars in assessing cultural affiliation of items classified as culturally unidentifiable (such funding is not permissible under the NAGPRA grants language). Roger Echo-Hawk has argued (2000, *American Antiquity* 65(2): 267-290) that research into Native American traditional histories, which can help establish cultural affiliation, is a legitimate and productive subject of scholarship.

The NAGPRA office within NPS needs increased funding to accomplish its mandates under the law, including timely publication of notices of inventory completion, compiling the inventory of culturally unidentifiable human remains, and keeping its Native American Consultation Database up to date.

Cultural Affiliation

Thorough case by case assessment of cultural affiliation based on full consultation with the tribes remains the key to implementing NAGPRA as Congress intended. Cultural affiliation is a cornerstone of NAGPRA because it provides the legitimacy for most repatriation claims. A

critical problem in NAGPRA implementation is the widespread expansion, by both agencies and museums, of the statutory definition of cultural affiliation beyond legally defensible limits. Further, while the law requires evidence demonstrating cultural affiliation, agencies and museums often offer little or no evidence or argument supporting their determinations. The evidentiary problem has three components: (1) insufficient consultation with tribes and consideration of traditional evidence they can offer; (2) inadequate attention to collecting readily available scientific evidence; and (3) a lack of thoughtful weighing of this evidence to arrive at a sound determinations of cultural affiliation.

Conclusion

In conclusion, we offer four recommendations.

- We ask that the Congress apply the means at its disposal to bring federal agencies into compliance with NAGPRA.
- Once we see how the Department of Interior responds to the Review Committee's Recommendations Regarding the Disposition of Culturally Unidentifiable Native American Human Remains, we will all have a better basis for evaluating whether any additional steps need to be taken.
- We ask that the Committee address the insufficient funding of tribal, museum, scientific, and agency programs to deal with repatriation issues.
- Finally, we ask that the Committee work toward improving both agency and museum adherence to the letter and to the spirit of NAGPRA, particularly in making evidentially based determinations of cultural affiliation.

The Society for American Archaeology and the American Association of Physical Anthropologists thank you for your consideration of our comments on the implementation of NAGPRA.

Attachment: Review Committee Recommendation for Amendments to NAGPRA

The Review Committee has recommended consideration of several amendments to NAGPRA. SAA lists three of the recommendations and offers a comment on each.

- Protect Native American graves on state or private lands from grave robbing and other forms of destruction;

  SAA strongly supported language to this effect in 1990 and continues its strong support of this idea. Such an amendment would be an enormously effective tool in reducing looting of Native American grave sites.

- Permit Indian tribes and Native Hawaiian organizations to carry out reburial of repatriated human remains on Federally managed lands from which those remains were originally taken;

  SAA has long argued with federal agencies to achieve this end and would support such an amendment.

- Exempt sensitive cultural information from the Freedom of Information Act (FOIA) when it involves material that is presented by an Indian tribe or Native Hawaiian organization solely for the purpose of documenting cultural affiliation or asserting a right to specific sacred objects or items of cultural patrimony.

  SAA would support such an amendment as long as there are reasonable safeguards for appropriate, confidential, review of this information with respect to its relevance to the implementation of the Act.

ADDITIONAL STATEMENT OF KEITH W. KINTIGH,
PRESIDENT OF THE SOCIETY FOR AMERICAN ARCHAEOLOGY
For Insertion in the Printed Record of the July 25, 2000
Senate Committee on Indian Affairs Hearing on NAGPRA
August 17, 2000

At the July 25, 2000 hearing, Senator Inouye asked a question of Martin Sullivan concerning the position of the Society for American Archaeology (SAA) on NAGPRA. As I recall, the Senator noted that the Society had opposed the passage of NAGPRA and inquired as to the Society's current position. Dr. Sullivan responded that he was not in a position to speak for SAA.

I would like to take this opportunity to respond to the Senator's query. In 1990, I chaired the Society for American Archaeology's Task Force on Reburial and presented oral testimony at hearings held by the House Interior Committee and the Senate Select Committee on Indian Affairs. Since that time, I have continuously been a member of the relevant SAA committee (now the Committee on Repatriation) and am quite familiar with SAA's history on this issue.

A review of the record will show that the Society for American Archaeology never opposed NAGPRA. Indeed SAA worked toward its passage and it continues to strongly support the Act. Starting very early in the legislative process, the Society worked constructively with the staff of both committees in crafting the language in NAGPRA.

The opening sentence of my oral statement to the Senate Select Committee (from the printed record of the May 14, 1990 hearing, p. 68) was: "Mr. Chairman, the Society for American Archaeology is grateful for this opportunity to express our general support for the draft substitute of S.1980 [the then-current draft] and to raise a few concerns." If you will review our testimony, I think that you will find that it was quite positive and constructive. Our testimony strongly endorsed many of the key aspects of NAGPRA and suggested expanding provisions

concerning unauthorized excavation of Native American graves to all lands of the United States [in that draft, as in NAGPRA, these provisions apply only to Federal or Indian lands].

Subsequent to that hearing, representatives of SAA, the Native American Rights Fund (NARF), and the Association on American Indian Affairs (AAIA) met at the Native American Rights Fund's Washington office. The result was a five page memo dated September 12, 1990 from SAA, NARF, AAIA, and the National Congress of American Indians (NCAI) to the Senate Select Committee on Indian Affairs that provided unanimous recommendations for changes to the then-current draft legislation, NAGPRA. Many of these suggestions, including a revised definition of cultural affiliation, were incorporated in NAGPRA.

On October 12, 1990 SAA co-signed a letter with NARF, AAIA, and NCAI endorsing the House bill, HR 5237. A November 2, 1990 letter urging President Bush to sign the bill was signed by SAA and these same Native American organizations along with the American Anthropological Association, the American Association of Physical Anthropologists, the Archaeological Institute of America, the National Conference of State Historic Preservation Officers, the National Trust for Historic Preservation, Preservation Action, the Society for Historical Archaeology, and the Society of Professional Archaeologists.

Since its passage, SAA has consistently worked toward the effective implementation of NAGPRA and has urged its members to fully comply with the letter and spirit of the law. Shortly after the law's passage, my report to SAA's membership said "Most of the decisions will be made not by a judge in a courtroom, but by museum processionals, Indians, and archaeologists around a table. From almost any perspective, the outcome will be better if all these constituencies can accept the law's compromise, genuinely respect the views of other interested parties, and work

cooperatively toward the resolution of differences." While there are exceptions, I think that the archaeological community has been and is generally supportive of NAGPRA.

Finally, I would note that the Society's official position on repatriation, established in 1986, is consistent with NAGPRA. The "SAA Statement on the Treatment of Human Remains" recognizes archaeologists' obligations both to the archaeological record *and* to the sensitivities of living people. It views both scientific and traditional interests in the past as legitimate and argues that they must be weighed, on a case by case basis, in order to determine appropriate disposition of human remains. In this formulation, scientific value is weighted by the potential to yield scientific information, and traditional interests are weighed by their closeness of relationship to the remains.

Thank you for this opportunity to clarify the record.

STATEMENT OF KATHERINE H. STEVENSON, ASSOCIATE DIRECTOR, CULTURAL RESOURCE STEWARDSHIP AND PARTNERSHIPS, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR, BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS CONCERNING THE OVERSIGHT OF THE NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT.

July 25, 2000

Mr. Chairman, thank you for the opportunity to appear before you today to discuss the Department of the Interior's views on the administration of the Native American Graves Protection and Repatriation Act (NAGPRA).

NAGPRA was enacted on November 16, 1990. The law assigned the Secretary of the Interior several general responsibilities for implementation, principal among them are:

- developing regulations implementing the statute,
- administering a grants program to assist museums, Indian tribes, and Native Hawaiian organizations in complying with their responsibilities under the statute, and
- creating and administering a review committee of seven citizens to advise on regulations and assist in implementing some of the other parts of the statute.

In the nearly 10 years since the enactment of the law, the National Park Service has carried out these general responsibilities on behalf of the Secretary. The National Park Service has the experience and mandate for working with other public agencies and museums, as well as Indian tribes, Alaska Native villages and corporations, and Native Hawaiian organizations in other aspects of our national archeological and historic preservation program. The National Park Service also has expertise in ethnography, archeology, collections management and curation, history, and other subjects needed in implementation of the statute. Its staff includes qualified professionals who are experts in the types of information relevant to reaching decisions (e.g. geography, kinship, biology, archeology, linguistics, oral tradition, and history). The National Park Service also has expertise and programs that are relevant to procedural areas covered by NAGPRA, such as inadvertent discoveries, archeological and ethnographic collections, grants programs to Native Americans, and tribal historic preservation programs.

Since the Native American Graves Protection and Repatriation Act was enacted in 1990, the National Park Service has assisted in implementing the Secretary of the Interior's NAGPRA responsibilities. The National Park Service's NAGPRA duties have included technical assistance to tribes, museums, other Federal agencies, and parks; training and public awareness efforts; drafting regulations and guidelines; assisting museums with

inventories and Federal Register notices; developing and administering a NAGPRA grants program; and providing administrative support for the Native American Graves Protection and Repatriation Review Committee.

Between 1990 and 1999 important progress was made in implementation of the law. The Department of the Interior issued written guidance in 1993 and 1995 to assist museums, agencies, Indian tribes, Alaska Native villages and corporations, and Native Hawaiian organizations as they prepared summaries and inventories required by the law. In 1995 regulations covering many of the important activities called for by NAGPRA were issued after a careful process of development that included close consultation with the Review Committee established by the law and substantial public comment. The Review Committee, chartered and appointed by the Secretary of the Interior in 1991 has, through the 19 meetings it has held so far, familiarized thousands of members of the public with the requirements of the statute. Through a formal process, the committee has helped to resolve three major disputes among museums, tribes, Alaska Native villages and corporations, and Native Hawaiian organizations. The committee has assisted in the repatriation of specific sets of "culturally unidentifiable" Native American human remains.

Since 1994, the NPS has been able to provide over $15 million through the NAGPRA grants program to Indian tribes, Alaska Native villages and corporations, and Native Hawaiian organizations and museums to assist them in carrying out their responsibilities under the law. Of the total funds, roughly two-thirds have gone to Indian tribes, Alaska Native villages and corporations, or Native Hawaiian organizations. Many of the grants have been for cooperative projects in which tribes, Alaska Native villages and corporations, or Native Hawaiian organizations have worked together with museums or agencies, thereby supporting the development of improved relationships between these groups The National Park Service also has provided thousands of individuals and organizations with technical assistance in their own efforts to implement the law through formal training sessions, information on our World Wide Web site (http://www.cr.nps.gov/aad/nagpra.htm), and through presentations at dozens of organizations' meetings.

The National Park Service was aware of the concern that existed about its dual role of both administering the NAGPRA program while also having to comply with it as a federal agency Following an oversight hearing by this committee in April 1999 that raised concerns about the manner in which the NPS was administering the Secretary's responsibilities, the NPS was directed by the Secretary to consider alternatives for administering these duties. Three alternatives were developed. In November 1999, the Secretary's office directed the National Park Service to proceed with Alternative II which assigns the general NAGPRA function directly to the Assistant Director, Cultural Resources Stewardship and Partnerships. This action removes the function from supervision by an archeologist, and places it at a higher level in the agency. Implementation of NAGPRA within the National Park System -- Park NAGPRA -- was assigned to the manager of the Archeology and Ethnography Program. We believe that this reorganization of responsibilities should lessen concerns that have been expressed.

In addition to the park and general NAGPRA functions, a special project involving the ancient remains found in Kennewick, Washington was underway prior to the November 1999 direction from the Secretary's office. Substantial comments have been made concerning the Department's actions in the Kennewick case We are glad to have a chance to provide some information related to this subject. In March 1998, the Secretary of the Interior and the Secretary of the Army entered into an agreement concerning the set of human remains found in Kennewick, Washington. The Secretary agreed to assist in the case by: (1) determining if the human remains found in the Columbia River near Kennewick, Washington, are Native American within the meaning of NAGPRA; and, (2) if these remains are found to be Native American, determine their disposition under the terms of the statute and its implementing regulations.

The remains had been recovered from the Columbia River in July and early August of 1996. Over 380 human bones were gathered over a period of several weeks by repeatedly wading in the water and picking up bones observed on the river bottom. It is inferred that the remains eroded from the riverbank near the area where they were found. These remains were recovered from an extremely disturbed context and a number of facts had to be established by examining and analyzing the remains carefully.

Since the Department of the Interior has become involved in this case, six face-to-face meetings have been held with representatives of the concerned Indian tribes to discuss with them the Department's plans and seek their advice and comments. The initial meetings were held in May and July 1998. At these meetings, tribal representatives expressed concern about handling and testing of the remains. Interior representatives agreed to design the initial investigation in stages that would first gather necessary information using non-destructive methods and techniques. Considerable information was obtained following non-destructive methods; however, in order to obtain sufficient chronological information, it was necessary to use small pieces of bone for radiocarbon (C-14) testing. This information was key in establishing that these remains should be considered "Native American" and therefore, NAGPRA would apply in this case.

A second stage of investigation is underway in the Kennewick case to attempt to determine whether the cultural affiliation of these remains can be determined and to recommend treatment of the remains. As part of this effort, Interior has decided to utilize DNA testing of additional small pieces of the skeleton. Because of the unique circumstances in this case, the DNA testing conducted on Kennewick Man does not have a precedential effect on other NAGPRA cases. In all of the activities undertaken by Interior in this matter, meetings with the concerned tribes have been undertaken as part of our planning and decision making.

I would like to share an example that highlights the successful collaboration that can occur under NAGPRA. In May 1999 after careful documentation, extensive consultation, and successful negotiations had occurred among the Jemez Pueblo, the National Park Service, the Peabody Museum of Archeology and Ethnology at Harvard University, the Peabody Museum of Archeology at Phillips Academy and several New Mexico

museums, the remains of over 2,000 individuals and numerous culturally significant objects, culturally affiliated with the Jemez were repatriated and reburied according to tribal customs at Pecos National Historical Park At daybreak, more than 600 individuals escorted the truck carrying the boxed remains for the last mile into the park. Over 1,000 people including members from 12 tribes participated in the event. All parties involved with the repatriation were pleased with the results and the level of respect displayed during the negotiations. A portion of the documentation, consultation, and repatriation costs were funded by NAGPRA grants to the tribe and to involved museums.

The National Park Service is aware of the frustration faced by some tribes who are seeking to repatriate their culturally affiliated ancestors, but who have faced a delay in the process. In March 2000, the National Park Service provided to the general NAGPRA function emergency funding to begin to eliminate backlogs in the implementation of NAGPRA and to cover essential services for FY 2000 using existing staff and additional consultants.

In considering the backlog of actions needing attention, the National Park Service determined that the general NAGPRA function should use all possible resources towards reducing the backlog of Federal Register notices, particularly those notices for which a legitimate claim had been acknowledged. In addition, the newly hired staff is focusing on improvements to the administration of the Review Committee, writing new sections of regulations, ensuring the most effective use of information from the grants projects, and compiling information for improvements in the implementation of the law.

As part of the President's FY 2001 proposed budget, the Department of the Interior has requested a $400,000 base increase to carry out the general NAGPRA implementation. If appropriated, these funds would be used to increase the permanent full-time National Park Service staff by 4 full time equivalents (FTEs) and 2 consultant positions to carry out the needed work. Positions that have been identified include a grants manager, a Federal Register Notice specialist, a civil penalties investigator, and a Review Committee liaison.

Certainly, those of us in the National Park Service working on all aspects of this important program are aware that tribes, Alaska Native villages and corporations, Native Hawaiian organizations, museums, and agencies have experienced some frustrations in implementing the law. We are taking steps to reduce these delays and reduce the backlog of public notices required before repatriation can occur. In addition, we are developing new sections of regulations to deal with particularly difficult situations, finalizing the civil penalties section of the regulations, and expanding the effectiveness and use of the results of grants projects

NAGPRA is a law that attempts to right some of the wrongs regarding the treatment of Native American human remains and cultural objects, visited upon Indian tribes, Alaska Native villages and corporations, and Native Hawaiians in all periods of American history.

Certainly, Native American human remains must be treated with dignity and respect. In considering the legislation that became NAGPRA, Congress found that many agencies and museums had large numbers of Native American human remains and cultural items in their collections. NAGPRA redresses the situation by requiring museums and agencies to make available for repatriation human remains and certain kinds of cultural items to lineal descendents or culturally affiliated Indian tribes, Alaska Native villages and corporations, or Native Hawaiian organizations.

Mr. Chairman, this concludes my prepared statement. I would be happy to answer any questions the committee might have.

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

Memorandum

To: Director

From: Assistant Secretary, Fish and Wildlife and Parks — NOV 30 1999

Subject: NAGPRA Administration Alternatives

Attached you will find the memo of decision regarding organizational restructuring for NAGPRA implementation. This decision does not affect the internal park NAGPRA function that will remain in the Archeology & Ethnology Program.

You will see that Ms. Shields has decided on Alternative II, the alternative that has the general NAGPRA function report directly to the Assistant Director, Cultural Resource Stewardship and Partnerships. I believe some explanation of this decision would be useful. The Division of Archeology & Ethnography has done an excellent job of initiating actions to implement the law in spite of limitations on personnel and funding. I would like to particularly commend Dr. Frank McManamon for his leadership, fairness and continued hard work on this difficult task. As you are well aware, the implementation of NAGPRA is a highly charged issued with the tribes and with the museums. Frank has been a key spokesperson, valuable thinker and eminently reasonable and even-handed in his dealings with all. We will continue to rely upon him for his expert advice, long experience and clear thinking on NAGPRA.

The perception, fair or unfair, in the tribal community, is that an archeologist cannot separate him or herself from this discipline in leading the implementation of this statute. In order to avoid this perception, we have decided to have the general NAGPRA function supervised directly by the Assistant Director.

Attachment

United States Department of the Interior

NATIONAL PARK SERVICE
1849 C Street, N.W.
Washington, D.C. 20240

IN REPLY REFER TO
A5419(0001)

AUG 5 1999

Go with Alternative II

MEMORANDUM

To: Chief of Staff, Office of the Secretary

Through: Assistant Secretary, Fish and Wildlife and Parks

From: Director Bob Stanton

Subject: Recommended Alternatives for Implementation of Secretary's Responsibilities under the Native American Graves Protection and Repatriation Act (NAGPRA)

In response to recent criticisms from Native American groups and internal discussions within the Department, the National Park Service has reviewed its governmentwide implementation of the Native American Graves Protection and Repatriation Act. We propose certain corrective actions to address the concerns that have been identified, thereby implementing the Act more effectively.

In the matter of organization, the National Park Service affirms its belief that it is the most appropriate bureau in the Department of the Interior to carry out the Secretary's responsibilities for the implementation of the Native American Graves Protection and Repatriation Act. The National Park Service is recognized, governmentwide, as the lead agency in providing guidance and expertise in the preservation of cultural resources. The Bureau has qualified professionals who are expert in the types of data that the law requires consideration of when reaching decisions (i.e., physical anthropology, archeology, cultural anthropology, folklore, geography, kinship, history, linguistics, and oral tradition). We also have special expertise and programs that are relevant to procedural areas covered by NAGPRA, especially inadvertent discoveries, archeological and ethnographic collections, illegal trafficking, grants programs to Native Americans, and tribal historic preservation programs. No other governmental agency has a similar breadth of coverage or national mandate.

The attachments describe and compare three organizational alternatives; locate the program in: (Alternative I) the Archeology and Ethnography program; (Alternative II) the National Center for Cultural Resources Stewardship and Partnership Programs; or (Alternative III) the office of the Associate Director for Cultural Resource Stewardship and Partnerships. In all cases, the internal Park NAGPRA function would remain in the Archeology and Ethnography Program. Proposed supervision and staffing are summarized in Table 1 and the organizational charts I-III (attached). Our preference is for Alternative I.

The need for additional funding and staff is recognized widely by all parties, and any of the proposed alternatives will require an infusion of funding and additional FTE by the National Park Service.

Attachments

Corrective Actions

Corrective actions are proposed for each of the alternatives, as appropriate, to address the concerns that have been expressed to the Department

Concern (1): *The Archeology and Ethnography program, an office within the NPS, is biased in favor of NPS units.*

Actual Situation: Within the National Park Service, compliance with the collections (25 USC 3003-3005) and new excavations (25 USC 3002) requirements of NAGPRA is the responsibility of individual superintendents. As part of the delegation of authorities, park superintendents have direct and unambiguous responsibilities to make decisions concerning objects subject to NAGPRA, cultural affiliation, and repatriation or disposition of NAGPRA objects and remains.

NPS units have inventoried nearly 6,000 Native American human remains in NPS collections. Thirty-one public notices have been published announcing the completion of NAGPRA inventories for 27 (37%) of the 73 NPS units with reported culturally affiliated human remains. These public notices are the official notice that the NPS unit is prepared to repatriate the remains and objects described in the public notice to the affiliated tribe if a request is made. This is a higher percentage of published notices than other Federal agencies.

There has been only one dispute related to the National Park Service brought to the Review Committee in the eight years that the Committee has been working.

> Corrective Action (a): Provide clear information in writing and on the WWW pages for NAGPRA showing that the Archeology and Ethnography Program office is not responsible for NPS compliance with NAGPRA.
>
> Corrective Action (b): Organize the NAGPRA program within Archeology and Ethnography to separate the functions related to assistance to NPS units from the general NAGPRA activities. Ensure that effective communication occurs, but provide for independence of staff working in the Park NAGPRA and General NAGPRA areas. This organization is shown on Table 1.
>
> Corrective Action (c): Provide clear information in writing and on the WWW pages for NAGPRA to show that the Archeology and Ethnography Program carries out policy and technical assistance functions. It does not manage collections that have objects or remains subject to NAGPRA, nor does it manage archeological sites or land for which NAGPRA consultations might be required.
>
> Corrective Action (d): For those rare times when a dispute before the NAGPRA Review Committee involves a NPS unit, the Designated Federal Official will recuse himself/herself and a non-NPS liaison will be substituted for that specific matter.

Concern (2): *The Archeology and Ethnography program is headed by an archeologist, and this creates a bias in favor of scientific requirements of NAGPRA and against Native American interests.*

Actual Situation: The Archeology and Ethnography Program manager is an archeologist and functions as the Departmental Consulting Archeologist. However, the key to fair implementation of the law is to follow the uniform regulations and the statute, not the background of the person in charge of the

implementation. NAGPRA requires a balance between Native American interests, educational interests, and scientific interests.

NAGPRA is a law for all Americans, not only Native Americans. NAGPRA calls for balance in all directions; certainly, the law recognizes that Native American human remains should be treated with dignity and respect. Congress found that many federal agencies and museums had large numbers of Native American human remains and cultural items in their collections, some of them not well cared for. NAGRPA attempts to redress this situation by allowing for the repatriation of human remains and certain kinds of cultural objects to lineal descendents or culturally affiliated Indian tribes or Native Hawaiian organizations. However, the relationships of lineal descent or cultural affiliation must be determined using various kinds of scientific, historical, and cultural information. The law represents a consensus reached among representatives of Native Americans, scientists, and museum officials.

The law also recognizes the potential educational and scientific value of the investigation of these kinds of remains and cultural objects. For example, if excavations and analysis are undertaken, either as part of a new investigation or in the case of inadvertent discovery of archeological deposits, these activities are to follow the requirements of the Archaeological Resources Protection Act. It is balancing these diverse, important aspects of American culture that is the challenge of implementing NAGPRA effectively and fairly.

It is advantageous to have an expert oversee the general NAGPRA implementation and NAGPRA grants function which the Secretary of the Interior is responsible for carrying out. Some of the provisions of NAGPRA are in the Native Americans' interests; others require scientific approaches. Multiple lines of evidence are considered under NAGPRA when making determinations. Threshold issues and documentation requirements focus on educational, legal, and scientific matters. Providing expert assistance in all of these areas is desirable to help prevent disputes due to decisions based on lack of information, incorrect information, or improper interpetation of information.

Supervision of the function by an expert with experience and expertise in the subject matter requirements for NAGPRA implementation: i.e., archeology, ethnography, collections management, public lands management, resource protection, and tribal concerns makes implementation more effective.

Due to its expertise and experience, the Archeology and Ethnography program brings substantial amounts of established infrastructure to the implementation effort, such as a national network of public agency, museum, and tribal contacts and a quarterly magazine that reaches 15,000 individuals. The program also has developed substantial amounts of information about NAGPRA and its implementation activities in electronic formats and on the WWW. The program has implemented NAGPRA for 10 years and has an infrastructure, i.e., the NAGPRA portion of the National Archeological Database, the Native American Consultation Database, other in-house databases, publications, and guidance documents.

> Corrective Action (e): Establish a DOI advisory group with one representative from each of the Assistant Secretary's offices concerned with this issue: FNP, IA, and PMB to meet quarterly with the NPS program officials implementing NAGPRA for an exchange of information, to raise and resolve controversial issues, and to provide more direct and timely information to the Assistant Secretaries.

> Corrective Action (f): Make every effort to include Native American individuals in the candidate pool for selection of new employees, consultants, and interns applying for positions in Archeology and Ethnography.

Corrective Action (g): Provide clear information in writing and on the WWW pages for NAGPRA showing that the key to fair implementation of the law is following the uniform regulations and the statute.

Concern (3): *Inadequate funding and staff is available to carry out the many tasks needed for effective implementation of NAGPRA.*

Actual Situation: In FY 1992 the DOI and NPS received new funding and staff to begin implementation of the Secretary's responsibilities for NAGPRA. These funds were used to establish the NAGPRA Review Committee, develop implementing regulations, and provide assistance to agencies, Indian tribes and Native Hawaiian organizations, and museums as they began to work with the new law. In FY 1994, the NAGPRA grants program was funded and administrative funds were provided to carry out that function. Since these additions of base funding, no new funds have been provided to carry out the increasing workload that had accumulated since NAGPRA began to function (see summary of funding in Table 2).

Corrective Action (h): NPS will provide $260,000 in emergency funding at the end of FY 1999/beginning of FY 2000 to begin to eliminate backlogs in the implementation of NAGPRA and cover essential services for FY 2000 using existing staff and additional consultants, and interns.

Corrective Action (i): DOI and NPS will seek $400,000 as a base increase beginning in FY 2001 to carry out NAGPRA implementation, and will increase permanent full-time NPS staff by 4 FTE and 2 consultant positions to carry out the needed work.

Organizational Alternatives

Alternative I. Archeology and Ethnography Program

- Take all corrective actions described above.
- Retain supervision of the government-wide implementation of NAGPRA and NAGPRA grants with the Archeology and Ethnography Program.

Advantages:

- All the program's professional staff has experience and expertise in the subject matter requirements for NAGPRA implementation: i.e., archeology, ethnography, collections management, public lands management, resource protection, and tribal concerns.
- The program has a national network of public agency, museum, and tribal contacts that makes collection and distribution of information easier.
- The program has implemented NAGPRA for 10 years; during this time staff have developed substantial expertise and experience in working with the statute and regulations and the kinds of situations that NAGPRA was passed to resolve.
- The program has an existing infrastructure that included national databases available via the WWW and a system of electronic and paper publications for the quick distribution of information, guidance, and technical assistance.

Disadvantages:

- The Archeology and Ethnography manager is an archeologist and functions as the Departmental Consulting Archeologist. Diligence is required to ensure that actions are balanced and presented as such forcefully.

Alternative II: National Center for Cultural Resources Stewardship and Partnership Programs

- Take all or most of the corrective actions described above.
- Retain Park NAGPRA function in the Archeology and Ethnography Program
- Reorganize the supervision of the government-wide implementation of NAGPRA and NAGPRA grants with the Archeology and Ethnography Program directly under the Manager of the National Center for Cultural Resource Stewardship and Partnership Programs.

Advantages:

- New NAGPRA unit reports to higher level of NPS organization, perception of more high-level attention to issues.
- Unit is not supervised by an archeologist

Disadvantages:

- The National Center represents all cultural resource disciplines. There will be a new Assistant Director and Manager of the Center in FY 2000 who will have training in one of these disciplines (archeology, architecture, curation, history, etc.).
- No national network of public agency, museum, and tribal contacts for collection and distribution of information.
- No direct experience in implementing NAGPRA.
- No existing infrastructure.

Alternative III: Associate Director, Cultural Resource Stewardship and Partnerships

- Take all or most of the corrective actions described above.
- Retain Park NAGPRA function in the Archeology and Ethnography Program

- Reorganize the supervision of the government-wide implementation of NAGPRA and NAGPRA grants with the Archeology and Ethnography Program directly under the Associate Director, Cultural Resource Stewardship and Partnerships.

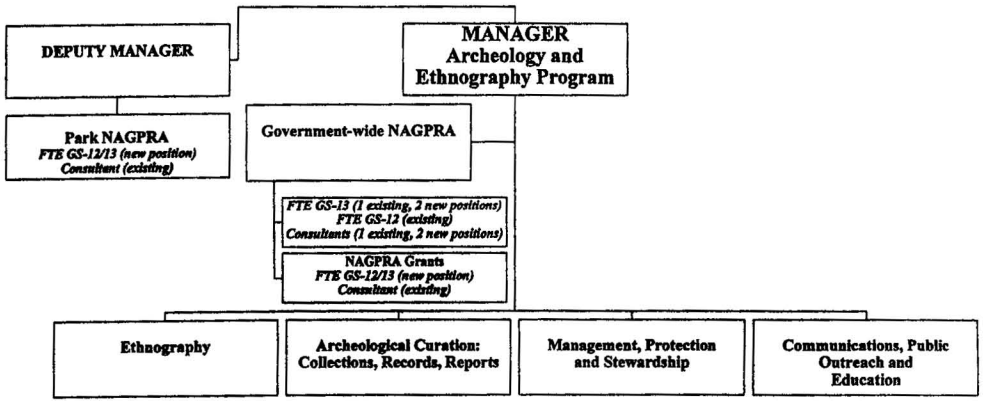
  Advantages:
  - New NAGPRA unit reports to higher level of NPS organization, perception of more high-level attention to issues.
  - Unit is not supervised by an archeologist.

  Disadvantages:
  - The Associate Director represents all cultural resource disciplines. The present Associate Director is a historian.
  - No national network of public agency, museum, and tribal contacts for collection and distribution of information.
  - No direct experience in implementing NAGPRA.
  - No existing infrastructure.

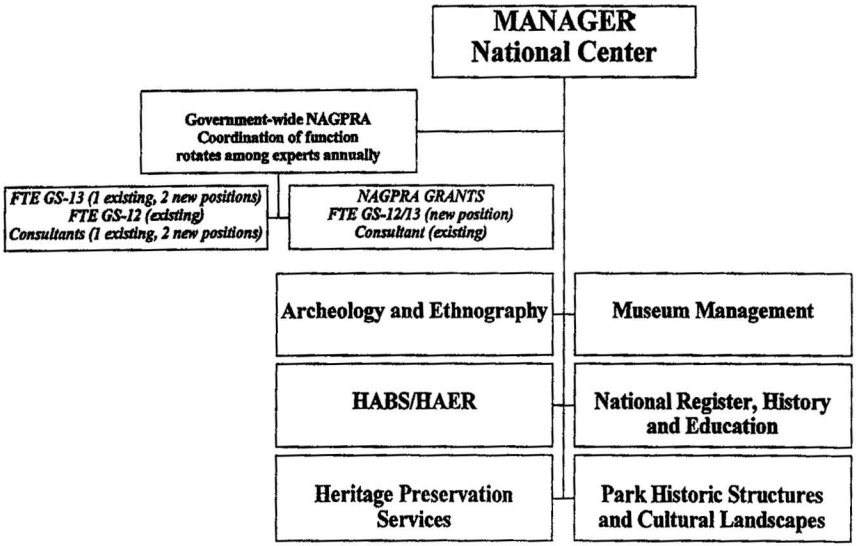
Table 1: Alternatives for Organizing NAGPRA Implementation		
Alternative I-Recommended	**Alternative II**	**Alternative III**
Supervision Manager, Archeology and Ethnography Program	Supervision Manager, National Center for Cultural Resources Stewardship and Partnership Programs Responsibility for coordination of the NAGPRA activities would be rotated annually among the senior staff members.	Supervision Associate Director, Cultural Resource Stewardship and Partnerships. Day-to-day coordination of the NAGPRA activities would be provided by one of the staff members; this responsibility would be rotated annually or quarterly.
Functions and Staff: • Park NAGPRA—Provide technical assistance to parks; draft and recommend park system policy and guidance. 1 FTE PFT (needed); consultant (1 existing), interns as possible.	Functions and Staff: • Park NAGPRA—Retain in Archeology and Ethnography	Functions and Staff: • Park NAGPRA—Retain in Archeology and Ethnography
• General NAGPRA—Draft and recommend regulations and guidance; provide support and liaison with NAGPRA Review Committee; provide general information and maintain NAGPRA databases; investigate allegations of noncompliance under civil penalties provisions; provide technical assistance and training. FTE PFT (2 available; 2 needed), consultants (1 existing; 2 needed); interns as possible.	• General NAGPRA—Draft and recommend regulations and guidance; provide support and liaison with NAGPRA Review Committee; provide general information and maintain NAGPRA databases; investigate allegations of noncompliance under civil penalties provisions; provide technical assistance and training. FTE PFT (2 available; 2 needed); consultants (1 existing, 2 needed); interns as possible.	• General NAGPRA—Draft and recommend regulations and guidance; provide support and liaison with NAGPRA Review Committee; provide general information and maintain NAGPRA databases; investigate allegations of noncompliance under civil penalties provisions; provide technical assistance and training. FTE PFT (2 available; 2 needed); consultants (1 existing; 2 needed); interns as possible.
• NAGPRA Grants—Advertise, promote, and provide technical assistance for potential proposals; evaluate proposals and make recommendations for selection; monitor grant activities; publicize useful products from grant projects. 1 FTE PFT (needed); consultants (1 existing); interns as possible.	• NAGPRA Grants—Advertise, promote, and provide technical assistance for potential proposals; evaluate proposals and make recommendations for selection; monitor grant activities; publicize useful products from grant projects. 1 FTE PFT (needed); consultants (1 existing); interns as possible.	• NAGPRA Grants—Advertise, promote, and provide technical assistance for potential proposals; evaluate proposals and make recommendations for selection; monitor grant activities; publicize useful products from grant projects. 1 FTE PFT (needed); consultants (1 existing); interns as possible.
• Secretarial/clerical support—1 FTE PFT (available).	• Secretarial/clerical support—1 FTE PFT (available).	• Secretarial/clerical support—1 FTE PFT (available).
Total Need: 4 FTE PFT; 2 consultants.	Total Need: 3 FTE PFT; 2 consultants	Total Need: 3 FTE PFT; 2 consultants

Table 2: Funds and Staff Resources for General NAGPRA and NAGPRA Grants	
Funding	**Staff FTE**
As of FY 1994, the last year the NAGPRA implementation funds were kept separate from the general funding account for Archeology and Ethnography, the amount available was $284,000. As of FY 1999, the amount available for NAGPRA grants administration is $159,000. FY 1999 Review Committee Expenses FR Notices-- $40,000 RC* Fees-- 29,600 (2 meetings/FY) RC* Travel-- 25,000 (2 meetings/FY) Meeting Costs-- 5,000 (2 meetings/FY) TOTAL-- $99,600	In FY 1992 three FTE were provided for general NAGPRA implementation. No additional FTE have been provided for this activity. FY 1999 Payroll FTE McKeown-- $87,000 Ball-- 67,000 Secretary-- 36,000 Sub-total 190,000 Consultants Kelley-- $64,000 Mahoney-- 58,000 HPS Grants Administration-- 25,000 Sub-total 147,000 TOTAL $337,000
Archeology and Ethnography Program Infrastructure • National Archeological Database (NAGPRA and the Native American Consultation Database--online) • Archeology and Ethnography Web Site • *Common Ground* NAGPRA theme issues and news department • NAGPRA databases (mailing lists, tracking and monitoring modules for summaries and inventories, NAGPRA contacts) • NAGPRA Coordination with Archaeological Resources Protection Act (ARPA), especially trafficking, looting, and vandalism • NAGPRA Coordination with 36CFR79, "Curation of Federally Owned and Administered Archeological Collections" • NAGPRA Coordination with Ethnography in consultation with Native Americans	

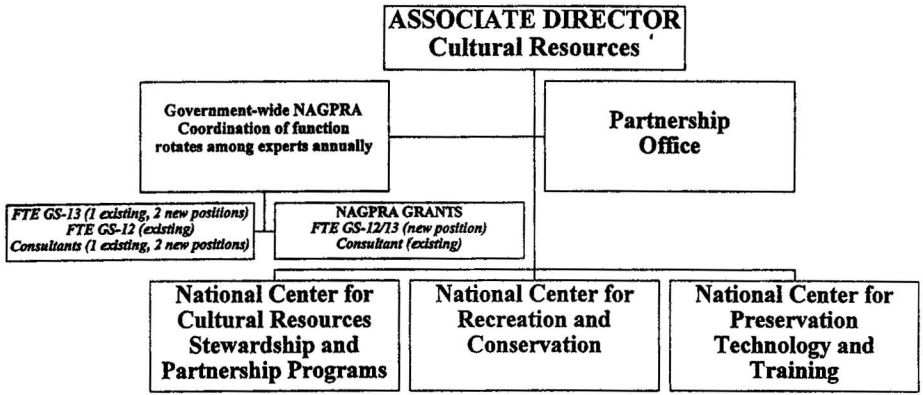
NAGPRA Alternative I



NAGPRA Alternative II



NAGPRA Alternative III



National NAGPRA

National Park Service
National Center for Cultural Resources

Report to Congress on 1998 Activities

Native American Graves Protection and Repatriation Review Committee

August 1999

Introduction

Passage of the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA) marked a watershed in a long and often troubled relationship between Native Americans and many of America's cultural, educational, and public agencies and organizations. The statute provides for the repatriation to lineal descendants and affiliated Indian tribes and Native Hawaiian organizations of Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony in museums and Federal agency repositories or that may be excavated or inadvertently discovered on Federal or Indian land in the future. The statute also provides a means for lineal descendants, Indian tribes, and Native Hawaiian organizations to repatriate funerary objects, sacred objects, and objects of cultural patrimony that were acquired by museums and Federal agencies without the approval of those who had authority to alienate them. The statute provides greater protection of Native American graves located on Federal or tribal lands. Lastly, the statute prohibits trafficking in Native American human remains and, in certain situations, funerary objects, sacred objects, and objects of cultural patrimony. The statute affects all Federal agencies and all institutions that receive Federal funds.

Committee Activities in 1998

This year saw a major change in the composition of the review committee. The terms for four original members of the review committee, Rachel Craig, Jonathan Haas, Dan Monroe and Phillip Walker, expired. They were replaced by James Bradley, Vera Metcalf, Armand Minthorn, and John O'Shea; each to serve a six-year term. In addition, the terms of two original members, Tessie Naranjo and Martin Sullivan were extended for three years. These continuing members, along with Lawrence Hart whose term runs until the year 2001, have provided important continuity to the working of the review committee.

The newly constituted review committee held three meetings in calendar year 1998Cin Washington, DC; Portland, Oregon; and, Santa Fe, New Mexico--at which we heard reports from representatives of a number of Federal Agencies, considered several disputes, discussed the disposition of culturally unidentifiable human remains, and heard from many people around the country about how the statute is being implemented. Written summaries of each of these meetings can be found on the World Wide Web: www.cast.uark.edu/other/nps/nagpra/rcm.html; this series of pages allows you to Aclick@ and view or print the agenda and summary minutes of all NAGPRA Review Committee meetings for which the minutes have been approved.

A common thread ran through much of the testimony we heard. Many Native Americans anticipate that repatriation will ultimately provide meaningful, long-term benefits to individuals of Native American

descent and to Indian tribes and Native Hawaiian organizations. These repatriations have helped restore a sense of spiritual and cultural integrity to participating Native American people.

Through the required consultation, the statute has also fostered an increased understanding and respect by museums and Federal agencies for Native American people and cultures. At the same time, it is clear that there is still considerable misunderstanding among Native American people, Federal agencies and museums regarding what NAGPRA does, and does not, require. Confusion seems particularly marked as regards how to meet the law=s expectation of the required consultation with Native people, the definition of *sacred*, and the permissibility of research on culturally unidentified human remains.

Most museums and Federal agencies appear to be carrying out the provisions of the statute in good faith. As of December 31, 1998, 1032 museums and Federal agencies have distributed summaries of their Native American collections as required under section 6 of the Act, and 733 museums and Federal agencies completed inventories of human remains and associated funerary objects in their collections. Two hundred thirty-eight Notices of Inventory Completion and 99 Notices of Intent to Repatriate have been published in the Federal Register. These notices announced the availability for repatriation of the remains of 13,481 individuals, 326,463 funerary objects, 758 sacred objects, 408 objects of cultural patrimony, and 281 items identified as both sacred objects and objects of cultural patrimony.

To conclude, nearly all parties are generally implementing the statute in good faith. Some difficulties, identified below, need to be addressed and resolved to fully implement the intent or purpose of the Native American Graves Protection and Repatriation Act.

Specific Observations

Cost to Comply with NAGPRA: In 1990, the Congressional Budget Office estimated that implementation of the statute would cost the Federal government between $20 million and $55 million over five years. This figure does not include the cost of compliance borne by museums and Indian tribes.

The exact number of human remains held by museums and Federal agencies is still not known. However, information obtained through the grant and inventory process reveals that 175 museums currently hold 110,029 Native American human remains. This figure does not include human remains held by museums that never applied for a grant or by Federal agencies. Based on these data, the Congressional Budget Office=s estimate of 200,000 human remains seems reasonable.

The initial appropriations for grants to museums and Indian tribes came in FY1994, and have now totaled approximately $10.7 million, with awards of $6.5 million to Indian tribes and Native Hawaiian organizations, and $4.2 million to museums.

The demand for consultation between museums, Federal agencies, Indian tribes, and Native Hawaiian organizations continues unabated. Yet, neither Indian tribes and Native Hawaiian organizations nor museums are financially able to support all of these costs. Absent a reasonable amount of Federal support, the statute will not be adequately implemented due to lack of funding and the United States will have failed to make a reasonable and fair effort to help return Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony to lineal descendants, Indian tribes, and Native Hawaiian organizations who rightfully have control over them.

The review committee strongly recommends that Congress appropriate the following amounts for FY 2000 to ensure continued implementation of the Act:

> At least $5 million in grants to Indian tribes, Native Hawaiian organizations, and museums. This represents a doubling of the current allocation, but is a more accurate representation of the actual needs of Indian tribes, Native Hawaiian organizations and museums, and
>
> The amounts requested by the administration that is targeted for each Federal agency's compliance efforts (see discussion below).

The review committee recommends that the President request the same amounts listed above in his FY2001 budget proposal.

Cost of Administering NAGPRA: Administration of the statute was delegated to the Secretary of the Interior. Appropriations to support these responsibilities--including promulgation of regulations, publishing notices in the Federal Register, providing staff support to the review committee, compiling an inventory of culturally unidentifiable human remains, grant administration, and assessing civil penalties--were initiated in FY1992. Shortage of funding has resulted in severe administrative problems

> Federal agencies and museums may not repatriate items until a notice is published in the Federal Register [43 CFR 10.10 (a)(3) and (b)(2)]. Current staffing levels cannot meet the review necessary for the Federal Register publication requirement. A total of 110 notices were published in FY1998 The current backlog of draft notices is in the range of 250-260, with 3-5 arriving weekly.
>
> The review committee averages two meetings per fiscal year. At least three meetings per year will be necessary for the review committee to fulfill its responsibilities to assist in the resolution of an increasing number of disputes [25 U S.C. 3006 (c)(4)]
>
> Over one thousand summaries and 700 inventories have been received from museums and Federal agencies. While most of the summaries have been evaluated, only about half of the inventories have been reviewed.

Section 8 (c)(5) of the statute requires compilation of an inventory of all culturally unidentifiable human remains [25 U S C. 3006 (c)(5)]. The software application is ready, but at current staff level, completion of this database will require a number of years and shifting effort from other priority actions. The completion of this database is an essential component for implementing recommendations for the disposition of culturally unidentifiable human remains.

Accountability is essential to the success and integrity of the Grants Program. Yet at current staffing levels, the ability to monitor grants is rudimentary at best, particularly compared with other Federal programs, such as the National Institute of Health, National Science Foundation, or National Endowment for the Humanities.

Civil penalty regulations went into effect on February 12, 1997 [43 CFR 10.12]. The Office of the Solicitor has estimated that a single civil penalty assessment may cost the department $100,000 in staff time and resources. There is currently no appropriation to cover these assessment costs and as a result no actions have been taken. The Secretary is responsible for enforcement.

One complaint against the Secretary in Federal district court [City of Providence v. Babbitt] has been dismissed, but the Department is now a defendant in a new suit [Bonnichsen/Asatru Folk Assembly v. United States Army Corps of Engineers, et al.]. The demands on staff time and resources for litigation are heavy and are expected to increase.

The review committee is extremely concerned that inadequate staffing of the Archeology and Ethnography Program is delaying the repatriation of Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony. It also is undermining the trust of Native peoples in the NAGPRA process. It is essential that the program receive an additional eight full time equivalent (FTE) targeted to specific critical tasks. The following proposed allocation of effort represents a possible apportionment of these FTEs to the mission critical tasks of the Program.

3 FTE	Monitoring summaries/inventories and publishing notices
1 FTE	Grants administration
1 FTE	Civil penalties and liaison with Department of Justice on trafficking.
1 FTE	Review Committee support
1 FTE	Administrative support
1 FTE	Training and technical assistance, regulations, and coordination

Along with these targeted FTE's, the review committee recommends that Congress appropriate an additional $500,000 to the National Park Service FY2000 budget to enhance administration of the Act. The crucial need for this additional allocation was repeatedly cited in testimony at the NAGPRA Oversight Hearings of the Senate Committee on Indian Affairs in April of 1999. The review committee recommends that the President request the same amounts listed above in his FY2001 budget proposal.

Federal Compliance: The review committee remains deeply concerned about the failure of Federal agencies to comply with the deadline for the submission of inventories of human remains and associated funerary objects, and with inconsistencies in the application of NAGPRA requirements, particularly in the area of tribal consultation. At the January 29-31, 1998 review committee meeting, we invited Federal Preservation Officers to provide updates on their agencies' compliance activities. Representatives from numerous agencies within the Department of the Interior, Department of Transportation, Department of Agriculture, Department of Defense, Department of Commerce, Department of Energy, and the General Services Administration made presentations to the review committee. These presentations were summarized in a report titled *Federal Compliance with the Native American Graves Protection & Repatriation Act (NAGPRA)*. The review committee discussed this summary report at its Santa Fe meeting. In March, 1999, Federal agency representatives were asked to update the information in the summary report. New or edited text was provided by the Bureau of Land Management, Bureau of Reclamation, Army Corps of Engineers, Air Force, and Tennessee Valley Authority, and were added to the report. This summary report is included as Appendix 1 of this report.

While it is clear from the Federal agency reports that progress is being made, both in the recognition of agency compliance responsibility and in the actual completion of inventories, Federal compliance still falls well short of statutory requirements and lags far behind equivalent progress by non-Federal museums.

Some indirect explanations were offered for the failure of the Federal agencies to comply. In particular, it was pointed out that the agencies did not receive separate budgetary allocations to complete their inventories and were trying to work with what limited funds and resources were available. The review committee finds this excuse to be singularly unconvincing.

The vast majority of non-Federal museums across the country submitted their inventories by the deadline given in the statute. Those institutions that did not submit inventories specifically applied for extensions and met the stringent criteria for having those extensions granted. Many of these institutions were operating under far more restricted budgetary constraints than any of the Federal agencies. The continuing failure of the Federal agencies to meet the standard set by non-Federal museums is inexcusable.

The review committee noted three specific requirements that must underlie future Federal agency compliance efforts:

NAGPRA compliance must be an agency priority, and adequate funds must be earmarked to support compliance activities;

NAGPRA compliance goes beyond simple documentation and inventories, and must include long-term tribal consultation on a government-to-government basis, and

Agencies must be accountable.

Congressional Oversight Committees should hold agencies accountable for failure to comply with the provisions of NAGPRA, and should take failure to comply with NAGPRA into account when assessing agency performance.

Recommended Amendments: Although the statute provides protection for Indian graves found on Federal and tribal lands, it does not provide similar protection for graves that may occur on private or state lands. The review committee has heard a substantial amount of testimony from representatives of Indian tribes and Native Hawaiian organizations regarding disturbance, destruction, deliberate excavation, or grave robbing of Native American graves on private or state lands. Some states have passed legislation to protect graves on non-Federal lands, but many states lack such legislation. Federal attention needs to be given to protect Native American graves from grave robbing and other forms of destruction or disruption.

Under the NAGPRA regulations, monies may be collected as civil penalties from museums that are found by the Secretary of the Interior to be out of compliance with NAGPRA. The costs of such enforcement activities are significant, however, particularly given the limited funds available for the overall NAGPRA program. A reasonable solution is to allow the monies collected as civil penalties to be retained by the Department of the Interior to be used to support continued enforcement.

The review committee has also heard considerable testimony reflecting concerns on the part of Native peoples that information provided to Federal agencies, museums and the review committee in the course of establishing claims of cultural affiliation, or establishing rights to sacred objects or objects of cultural patrimony, could be accessed or made available to the general public via a Freedom of Information Act (FOIA) request. There is a genuine fear that sensitive cultural information could easily be misused, and this fear has caused some to hesitate coming forward to make rightful claims. Information relating to the location of archaeological sites is exempted from FOIA requirements due to a compelling public interest in protecting sites from looting and destruction. It would seem reasonable to extend similar protection to particularly sensitive cultural information relating to the location of sacred sites and to confidential religious or ritual information that is presented solely for the purposes of making a claim under NAGPRA.

The review committee recommends that Congress amend the statute to:

Protect Native American graves located on state or private lands from grave robbing and other forms of destruction;

Provide any monies collected as civil penalties under 43 CFR 10.12 to the Secretary of the Interior to further enforcement activities; and

Exempt sensitive cultural information from the Freedom of Information Act (FOIA) when it involves material that is presented by an Indian tribe or Native Hawaiian organization solely for the purpose of documenting cultural affiliation or asserting a right to specific sacred objects or items of cultural patrimony.

Finally, the review committee has faced an increasing number of instances in which traditional religious leaders have been unable to repatriate sacred objects because their beliefs prevent them from making known details of the ceremonies or rites for which the objects are required. While we appreciate that there must be a standard in the law by which the appropriateness of a claim can be evaluated, we do not believe that it should be necessary for a traditional leader to compromise religious principles in order to repatriate a needed sacred object.

It would seem reasonable to allow the traditional religious leader of an Indian tribe or Native Hawaiian organization to affirm a statement indicating an awareness of the legal standard (specific ceremonial objects which are needed by traditional religious leaders for the practice of traditional Native American religions by their present-day adherents), and to certify that the specific object meets this standard. The statement would then be considered as evidence supporting the claim, without requiring details of particular rites or religious practices. While we do not believe this requires amendment of the law, the review committee encourages the adoption of this standard in the evaluation of future requests.

Conclusions

NAGPRA has, on whole, been successful. It has helped rectify the injustice Native American people have suffered as a result of having their ancestors= remains removed from their graves and located, without permission of relatives or Indian tribes, in museums and Federal agencies. The process of implementing the statute has increased knowledge and understanding of Native American people and cultures within museums and federal agencies. This increased knowledge and understanding will eventually be shared with the public, thereby increasing their respect for and sensitivity to the rights, values, and perspectives of the first Americans. Finally, the statute has helped Native American people and cultures regain a sense of integrity and dignity. It has helped renew or continue traditional Native American religions. And it may ultimately help remedy the corrosive and tragic effects involved in the clash of cultures and the loss of land, culture, and lifestyle Native Americans have endured. It is critically important that the benefits and rights accorded to Indian tribes be extended to all Indian groups and that Congress appropriate sufficient funds to help implement this statute. The review committee respectfully submits this report to Congress with the full and unanimous support of its members.

RECOMMENDATIONS OF THE

NATIVE AMERICAN GRAVES PROTECTION

AND REPATRIATION REVIEW COMMITTEE

May 5, 1999

Authorized by the Native American Graves Protection and Repatriation Act [P.L. 101-601], the Native American Graves Protection and Repatriation Review Committee has served since 1992 to monitor and review implementation of the statute. At its May 3-5, 1999 meeting, the committee made the following recommendations:

_____ **Costs to Comply with NAGPRA.** The committee recommends that Congress appropriate the following amounts for FY2000 to ensure continued implementation of the statute

- At least $5 million in grants to Indian tribes, Native Hawaiian organizations, and museums;
- The amounts requested by the administration that is targeted for each Federal agency=s compliance efforts.

The committee also recommends that the President request the same amounts listed above in his FY2001 budget proposal

2. **Costs of Administering NAGPRA.** The committee recommends that Congress appropriate eight FTE and $500,000 to the Department of the Interior for FY2000 to enhance administration of the statute. The committee also recommends that the President request the same amounts in his FY2001 budget proposal.

_____ **Federal Compliance.** The committee recommends that Congress hold oversight hearings to ensure Federal agency compliance with the statute.

_____ **Amendments.** The committee recommends that Congress amend the statute to:

- Protect Native American graves on state or private lands from grave robbing and other forms of destruction;
- Provide monies collected as civil penalties under 43 CFR 10.12 to the Secretary of the Interior to further enforcement activities;

- Exempt sensitive cultural information from the Freedom of Information Act (FOIA) when it involves material that is presented by an Indian tribe or Native Hawaiian organization solely for the purpose of documenting cultural affiliation or asserting a right to specific sacred objects or items of cultural patrimony; and

The committee respectively submits these recommendations with the full and unanimous support of all members.

James Bradley /S/

James Bradley

Lawrence Hart /S/

Lawrence Hart

Armand Minthorn /S/

Armand Minthorn

Vera Metcalf /S/

Vera Metcalf

Tessie Naranjo /S/

Tessie Naranjo, committee chair

John M. O=Shea /S/

John M. O=Shea

Martin Sullivan /S/

Martin Sullivan

NATIVE AMERICAN GRAVES PROTECTION REVIEW COMMITTEE

PURPOSE: Monitor and review the implementation of the inventory and identification process and repatriation activities required under sections 5, 6, and 7 of the Native American Graves Protection and Repatriation Act.

AUTHORITY: Section 8 of Public Law 101-601, November 16, 1990

TERMS: Three or six years.

MEMBER	TERM EXPIRES	NOMINATING SOURCE
Dr. James Bradley Robert S. Peabody Museum Phillips Academy Andover, Massachusetts 01810 telephone: (978) 749-4490 fax. (978) 749-4495 email: jbradley@andover.edu	June, 2003	American Association of Museums
Mr. Lawrence H. Hart Route 1, Box 3130 Clinton, Oklahoma 73601 telephone: (580) 323-5320 fax: (580) 323-6225	September, 2001	Cheyenne and Arapaho Tribes Forest County Potawatomi Community
Mr. Armand Minthorn Confederated Tribes of the Umatilla Indian Reservation P.O Box 638 Pendleton, Oregon 97801 telephone· (541) 276-3165 fax: (541) 276-3095	June, 2003	Confederated Tribes of the Umatilla Indian Reservation
Ms. Vera K Metcalf NAGPRA Coordinator Bering Straits Foundation P.O. Box 1008 Nome, Alaska 99762 telephone: (907) 443-5252 fax: (907) 443-2985 email: nsvkm@aurora.alaska.edu	June, 2004	Concurrence of six committee members

MEMBER	TERM EXPIRES	NOMINATING SOURCE
Dr. Tessie Naranjo P. O. Box 1807 Española, New Mexico 87532 telephone: (505) 753-3736 fax: (505) 747-3389	June, 2000	Pueblo of Acoma Hui Malama I Na Kupuna O Hawai=i Nei
Dr. John O=Shea Museum of Anthropology University of Michigan Ann Arbor, Michigan 48109-1079 telephone: (734) 763-5795 fax. (734) 763-7783 email: joshea@umich.edu	June, 2003	Society for American Archaeology American Museum of Natural History LA County Natural History Museum Peabody Museum-Harvard University P.A. Hearst Museum-UC Berkeley
Dr. Martin E. Sullivan Historic St. Mary=s City P.O. Box 39 St. Mary=s City, MD 20686 telephone: (301) 862-0960 fax: (301) 862-0968	June, 2000	American Association of Museums Hui Malama I Na Kupuna O Hawai=i Nei

APPENDIX 1:

FEDERAL COMPLIANCE WITH THE NATIVE AMERICAN GRAVES PROTECTION & REPATRIATION ACT (NAGPRA)

June 1999

INTRODUCTION

The Native American Graves Protection & Repatriation Act (NAGPRA) requires all Federal agencies and institutions that receive Federal funds to:

1) provide Indian tribes and Native Hawaiian organizations with summaries of their collections that may include unassociated funerary objects, sacred objects, and objects of cultural patrimony with which they may be culturally affiliated; and

2) compile inventories of human remains and associated funerary objects in their collections and, in consultation with Indian tribes and Native Hawaiian organizations, determine the cultural affiliation of those items.

3) provide copies of the summaries and inventories to the National Park Service.

In addition to these requirements, Federal agencies are required to consult with Indian tribes and Native Hawaiian organizations regarding the disposition of human remains, funerary objects, sacred objects, and objects of cultural patrimony discovered or excavated on Federal lands.

As a result of concerns regarding Federal compliance with NAGPRA, the Native American Graves Protection & Repatriation Review Committee invited Federal agencies to report on their activities. Federal agency reports were made at the review committee's 14th meeting on January 29-31, 1998, in Washington, DC. Bureaus within the Departments of Interior, Transportation, Agriculture, Defense, Commerce, and Energy, as well as the General Services Administration, presented reports.

The National Park Service staff maintains a listing of all the Federal agency NAGPRA summaries (Table 1) and inventories (Table 2) that had been received. Since the January, 1998 meeting, Federal agency officials have been provided with an opportunity to update the information they presented. Several have, and these updates are noted in the text.

Department of the Interior

National Park Service: Ms. Jennifer Schansberg, a contractor working with the National Park Service (NPS), reported that the NPS has met the relevant deadlines for completion of summaries and inventories. A single summary was compiled for the entire agency and was distributed to all Indian tribes, Alaska Native villages and corporations, and Native Hawaiian organizations on October 27, 1993. Five Notices of Intent to Repatriate have been published in the Federal Register. Each park with human remains and associated funerary objects completed a separate inventory. One hundred were completed, of which 55 included human remains and associated funerary objects identified as being culturally affiliated with particular Indian tribes or Native Hawaiian organizations. Twenty-six Notices of Inventory Completion have been published in the Federal Register. The remaining 39 Notices of

Inventory Completion are under review. Sixty-eight of the park inventories included culturally unidentifiable human remains.

Memoranda providing detailed step-by-step instructions for compliance with the statute have been sent to all parks superintendents. A video and workbook has also been completed and has been sent to parks and Indian tribes. Ms. Schansberg added that the NPS is committed to maintaining the government-to-government relationship between the United States and Indian tribes in all consultations.

Fish and Wildlife Service: Mr. Kevin Kilcullen, Federal Preservation Officer for Fish and Wildlife Service (FWS), explained that the agency's primary goal is to protect and restore the Nation's wildlife populations and their habitat. Two key FWS programs are directly involved with NAGPRA: the land management aspect and the law enforcement division. FWS has field offices in every state and most territories and possessions of the United States, including seven regional offices, over 700 field offices, 500 national wildlife refuges and almost 100 national fish hatcheries, encompassing over 92 million acres of land. FWS is a decentralized organization with most of the decisions being made at the regional office level or lower. All FWS offices are expected to follow the guidance set out in the cultural resource management and museum collection sections. Mr. Kilcullen reported that with FWS, day-to-day responsibility for compliance with NAGPRA rests at the regional office level with funding coming from general funding for maintenance of museum collections. There is no separate NAGPRA line item.

Mr. Kilcullen reported that FWS is in compliance with NAGPRA summary and inventory requirements. FWS has completed its summary and will submit a copy to the NPS. FWS completed its inventory in 1996 and submitted it to the NPS. NPS has since requested additional information and revisions. He conceded that the agency would never be totally in compliance with the excavation and discovery requirements of the statute due to the ongoing nature of these activities.

Mr. Kilcullen then outlined several problems faced by the FWS regional offices in complying with NAGPRA. There has been some problem in determining which Indian tribes should be consulted. This has been of particular concern in the Southeast United States. The lack of information regarding existing collections is also a problem. Some tribal claims have caused difficulties, particularly those reflecting a misunderstanding of the statute or those situations where more than one Indian tribe has made a claim. Lastly, FWS is also faced with an active land acquisition program resulting in almost 100,000 new acres per year.

Bureau of Reclamation: At the January 1998 NAGPRA Review Committee meeting in Washington, DC, Mr. Terry Zontek, NAGPRA Coordinator for the Great Plains Region, and Ms. Myra Giesen, NAGPRA Coordinator for all of the Bureau of Reclamation (Reclamation), presented information on Reclamation compliance with NAGPRA. Since that time, Ms. Giesen has reported again to the review committee on two separate occasions (i.e., Portland in June 1998 and Santa Fe in December 1998) The information presented below reflects NAGPRA status information as of April 1999.

A history of Reclamation was provided to the Review Committee at the January 1998 meeting. Since its inception in 1902, Reclamation has played a pivotal role in developing water resources in the 17 western states. Reclamation has jurisdiction over approximately 8.6 million acres, of which just less than 1 million has been inventoried with respect to cultural resources. These lands are used for many different purposes including dams, reservoirs, irrigation facilities, operations, recreation, fish and wildlife, agriculture, grazing, environmental enhancement, education, flood control, transportation, and power generation. Reclamation serves as America's second largest wholesale water supplier, administering 348 reservoirs with a total storage capacity of 245 million acre-feet (an acre-foot, 325,851 gallons of water, supplies enough water for a family of four for one year). The responsibility for NAGPRA compliance rests with Reclamation's regional directors and area managers. Maps of Reclamation boundaries and NAGPRA contact information were distributed to committee members and the public at both the January 1998 and December 1998 meetings.

Summary Status - Section 6: A single Reclamation summary was submitted in November 1993. On earlier versions of Table 1, Reclamation's summary appeared as originating out of Colorado. In March 1999 Reclamation requested NPS to revise its listing to include recognition of all states from which the summary covers, including Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming. This revision is particularly important as summary submissions information is available via NPS at their internet site http://www.cast.uark.edu on a state-by-state basis. A total of 18 unassociated funerary objects, 1 sacred objects, and 1 object of cultural patrimony were reported in Reclamation's summary. These objects are culturally unidentifiable and have not been repatriated to tribes; they remain part of Reclamation's museum property collection.

Inventory Status - Section 5: All five regions within Reclamation submitted an inventory by the statutory deadline; however, new information or the discovery of a previously unknown archeological collection require amendments to all inventories. Reclamation should be completed with revising all their NAGPRA inventories by summer 2000. To date, Reclamation has inventoried human remains that represent at least 1,564 individuals. This number is likely to increase as final inventories are completed on Reclamation collections at a number of museums. Of the 1,564 individuals reported, 1,497 individuals, at this time, are considered to be culturally unidentifiable, 60 individuals affiliated with the Arikara, Pawnee, and Wichita, and 7 individuals affiliated with the Nambe Pueblo. It is likely culturally unidentifiable items on Reclamation's inventories will be assigned a cultural affiliation as consultations continue and affiliation studies come to a close.

Following the publication of an inventory completion notice for the Nambe Pueblo items, human remains from seven individuals and three dog burials (associated funerary objects) were repatriated in 1996. The Pawnee, Arikara, and Wichita tribes have not yet made a decision regarding the repatriation of their NAGPRA items.

Reclamation has inventoried approximately 60,000 culturally unidentifiable associated funerary objects and roughly 1,100 culturally affiliated associated funerary objects. The human remains and associated funerary objects come from 178 archeological sites and are being curated at 25 different repositories.

Similar to our request for summary information to be available on a state-to-state basis, in November 1998 Reclamation requested NPS provide state information for their inventory submissions. Instead of being listed as complete for each of the 17 western states, Reclamation inventories only appear for five states: California, Idaho, Montana, Nevada, and Utah.

Ms. Giesen expressed concerns with double reporting of inventories by federal agencies and museums This is to say, museums are reporting on federal collections. In December 1998 she gave the example of the University of Nebraska, Lincoln inventorying and reporting on Reclamation's collections. Reclamation is trying to obtain information on double reporting, but it has been difficult at best.

Inadvertent Discoveries and Planned Excavations: Reclamation's Manual/Directives and Standards LND 02-01 for Cultural Resources Management states that in order "to meet the intent of Section 3 of NAGPRA, the responsible office will have in place a plan for intentionally excavated and inadvertently discovered Native American cultural items. These plans will include a step-by-step outline of what to do when Native American cultural items are encountered." Some regions are working toward initiating comprehensive agreements; Reclamation currently is not tracking this information. Reclamation as a whole does not have specific written guidance on the treatment of human remains.

The Great Plains Region (GP) adopted Policy Directive No. 11, *Inadvertent Discovery of Human Remains on Reclamation Land*, on November 17, 1998. This policy states that all human remains discovered on Reclamation controlled land will be treated with equal respect regardless of cultural affiliation or antiquity. The GP's Policy Directive No.11 is under modification for application across all of Reclamation. Currently, human remains as well as all NAGPRA objects are handled as museum property. They are curated to standards approaching or, in most cases, exceeding those outlined in 36 CFR 79 and DM 411. Until final disposition can be determined, NAGPRA items generally are stored with restricted access. They are treated with respect and are not available for display or study without prior written approval of Reclamation in consultation with the appropriate tribes Some, but not all regions, restrict photographing human remains.

Recent NAGPRA initiatives: Reclamation hired Ms. Giesen on a part-time permanent basis to deal exclusively with NAGPRA at a bureau-wide level. Reclamation has had two bureau-wide NAGPRA meetings, one in June 1998 and one in December 1998. The June meeting had a day of NAGPRA training provided by Mr. Tim McKeown. Ms. Giesen briefed area managers about NAGPRA at their quarterly meeting in March 1999.

NAGPRA Budget: Reclamation's expended $159,041 in FY 1998 for NAGPRA compliance. For FY 1999, Reclamation has budgeted $322,600 for NAGPRA compliance.

Consultation: Reclamation consulted with approximately 80 tribes while completing their NAGPRA inventories. Currently, efforts are being made to better communicate within Reclamation about which tribes have been consulted and by which office within Reclamation. For example, in the past, offices within a single region might have consulted with the same tribes without communicating with each other.

In another case, two different regions consulted with the same eight tribes. To address this concern, Ms. Giesen has gather information on NAGPRA consultation histories from each office within Reclamation. Results of this investigation are available to all officials tasked with NAGPRA responsibilities, thus allowing for better government-to-government relations in future consultations. Reclamation's Native American Affairs Office completed a guidance document *Protocol Guidelines: Consulting with Indian Tribal Governments* in February 1998.

Bureau of Land Management: Dr. Stephanie Damadio, National Curator, and Dr. Marilyn Nickels, Group Manager, reported for the Bureau of Land Management (BLM). Dr. Damadio identified BLM's primary responsibility as managing public lands, including authorized mineral extraction, timber operations, recreational development, and protection of the natural and cultural environment. BLM is the largest Federal land-managing agency, with 270 million acres or approximately 41% of all Federal lands under its control. Constant land transfers in and out of Federal control have complicated the search for NAGPRA materials.

Since 1812, individuals and institutions have been conducting scientific expeditions on public lands, excavating and collecting millions of objects, which were then transported to hundreds of non-Federal repositories, including universities, museums and historical societies. Since 1906, permits for archeological excavations on public land were issued under the Antiquities Act. BLM has had authority to issue permits for excavation on its own lands only since the mid-1980s.

The resources available to the BLM to accomplish NAGPRA tasks are limited. The BLM has 13 individuals primarily involved with NAGPRA, most of who are also responsible for a variety of other tasks. Specific written guidance distributed bureau-wide (not including extensive guidance issued from individual state offices to the field) consists of a handbook and 15 policy documents providing policy, guidelines, templates, protocols, summary information, as well as copies of secretarial orders, statutes, and regulations.

Inventories and summaries are complete for internal bureau collections. BLM has also completed a multiyear effort to locate outside repositories holding bureau collections. This has resulted in the identification of 186 non-Federal repositories, located in 34 states from Alaska to Florida. BLM has established a cooperative process with those museums where NAGPRA materials were found in order to complete inventories. In some instances this work has been accomplished in cooperation with other Federal agencies. At this point, the majority of these inventories are completed, and in many instances the materials have already been repatriated to Indian tribes. Dr. Nickels felt that the inventory task would take decades to complete and that it is an expression of the BLM's commitment to keep working on the job until it is complete.

To date, the BLM has formally identified 627 human remains and over 14,153 associated funerary objects as subject to repatriation or transfer under NAGPRA. To date, 19 notices have been published in the Federal Register, with three more awaiting publication. This task has required thousands of hours of inventory and analysis by non-Federal museums and BLM staff, as well as tribal consultation. This work has involved interaction with over 200 museums and approximately 150 Indian tribes and Native

Alaskan villages and corporations. Dr. Damadio stated that due to the vast number of individual occurrences of excavations that took place, the exact number of human remains and funerary objects which originated from BLM lands may never be known. She explained that BLM feels it is in compliance with NAGPRA since it is continuing NAGPRA work to the best of its ability. She added that the BLM collections are being cared for in a professional manner and that study will be necessary to help determine affiliation.

Regarding the inadvertent discovery and excavation of Native American human remains and cultural items on BLM lands, Dr. Damadio indicated that the agency has been informing Indian tribes of all NAGPRA related items and proactively contacts them to begin consultation. To date, 22 notices of custody determination disposition have been published in newspapers.

Bureau of Indian Affairs: Mr. Donald Sutherland, Federal Preservation Officer for the Bureau of Indian Affairs (BIA), explained that all human remains and cultural items recovered from land under BIA control are held in non-Federal repositories. The agency has funded a four-year study by the Arizona State Museum to assess a collection of between three and four thousand human remains and the associated funerary objects. He also described a pilot project with the Museum of Northern Arizona to assess repatriation costs. Indian tribes are being consulted in each of these efforts.

Department of Transportation

Federal Aviation Administration: Ms. Ann Hooker, Federal Preservation Officer with the Federal Aviation Administration (FAA), described her agency's functions as regulating commercial spaceport operations and space launches, navigable air space, air craft and airmen, with a primary mission of safety. She explained that the FAA actually owns very little land, as most airports are privately owned and are open for public use, with the exception of Washington National and Dulles airports. She explained that the FAA does not currently have any objects or human remains that fall under the provisions of NAGPRA, and added that the FAA is currently working on developing guidelines for inadvertent discoveries found on FAA land.

Federal Highway Administration: Mr. Bruce Eberle, Federal Preservation Officer for the Federal Highway Administration (FHA), explained that the FHA is a grant-and-aid agency and is not a land-managing agency. The FHA generally works as a contractor for Federal agencies building roads on Federal, tribal and state-owned lands. Discussions concerning any materials recovered during construction occur between the Federal or state agency on whose land the objects were found and the appropriate Indian tribe. Mr. Eberle explained that some states are aggressive in setting up periodic meetings with different Indian tribes, while other states coordinate with tribes on a case-by-case basis when there are proposed projects in certain areas of the state. FHA is working to develop an initiative that will inform more people about FHA public outreach and public participation programs.

Department of Agriculture

Natural Resources Conservation Service: Ms. Kathleen Schamel with the Natural Resources Conservation Service (NRCS), formerly known as the Soil Conservation Service, works directly with private landowners to implement conservation practices on their lands. NRCS does not own any land and has very few collections from cultural resource projects Each NRCS employee who will be on private lands is required to undergo a week long cultural resource-training program familiarizing them with the resources, the laws, and their responsibilities under these laws. Ms. Schamel explained that if cultural resources are found, NRCS tries to leave the resource in place if possible. Otherwise, a cultural resource specialist evaluates the resource and proceeds with mitigation and consultation with appropriate Indian tribes. NRCS has identified five collections in its control that are currently housed in state or local museums. These collections consist of items not covered by NAGPRA. In addition, human remains of three individuals were found in New Mexico, two of which were reburied at the site in consultation with the local Indian tribe. The third has been retained by the state police lab as part of a homicide investigation. Ms. Schamel also explained that in each state, the NRCS has an agreement with the State Historic Preservation Office to address inadvertent discoveries of human remains, and provided two examples of these state level agreements to the Committee members. She described one successful project with the Klamath Tribe that resulted in permanent protection of burials exposed by erosion.

Rural Housing Service / Rural Business Cooperative Service: Ms. Sue Wieferich, Environmental Protection Specialist and Federal Preservation Officer for the Rural Housing Service (RHS) and Rural Business Cooperative Service (RBS), explained that these two agencies, along with the Rural Utility Service, constitute the Department of Agriculture Rural Development. She explained that RHS and RBS are both grant and loan guarantee agencies for private individuals and businesses and do not own or possess lands, unless in the rare situation of foreclosure. She added that in those instances, all three agencies are required to follow the provisions of the Natural Environmental Policy Act (NEPA) requiring environmental assessments before resale of any acquired property, including appropriate measures to protect any cultural resources present on the site. Ms. Wieferich explained that neither RHS nor RBS have any collections, and therefore, have not filed any summary or inventory reports with the NPS.

Rural Utility Service (RUS): Mr. Larry Wolfe, Senior Environmental Protection Specialist and Federal Preservation Officer for RUS, explained that the RUS provides financing through its insured and guaranteed loan programs for construction and expansion of facilities that distribute electric power in rural areas and the development of water and waste disposal facilities in rural areas and small towns with populations of less than 10,000. The RUS does not own land and does not have any collections of Native American cultural items, and therefore, did not file any summary or inventory reports with the NPS. Further compliance with NAGPRA on each project includes consultation with the appropriate agency officials with jurisdiction on the land resource; including SHPOs for private land, tribal historic preservation officers (THPO) for tribal land, and the appropriate cultural resource specialist of the Federal agency for Federal land.

Forest Service (FS): Mr. Evan DeBloois, Federal Preservation Officer for the Forest Service (FS), explained that the agency was established in 1905 and is the land-managing agency of the Department of Agriculture. FS currently manages 191 million acres of public land. The FS is a multiple-use agency, accounting for approximately 25% of the recreational use of Federal lands in the US, as well as timber areas, watershed management for municipal water systems, mining interests, and grazing. The FS is divided into nine regional offices with approximately 120 forest administrative units.

Activities on FS land can either be initiated by the agency or conducted by another party under FS permit, such as installation of power lines or oil and gas pipelines. The majority of FS collections from prehistoric sites came from permitted activities, such as museums and universities doing research. In the mid-1980s, FS initiated a nationwide effort to identify all agency collections. Collections were identified in approximately 135 museums in the United States and elsewhere, include some collections in Russia, Switzerland, and Sweden.

Mr. DeBloois reported that summaries and inventories have been completed for all but six National Forests. The largest number of human remains B approximately 5,500 individuals – were identified in the Southwest Region. Repatriation efforts are underway for approximately one third of these remains, including 450 human remains recovered during the Roosevelt Dam construction in the 1920s. Approximately 1,100 human remains have been excavated since 1990. Consultation has been conducted with 52 Indian tribes in preparation for determining proper disposition. The California Region has 150 human remains and has consulted with 40 tribes in the repatriation process. Half of these remains have been repatriated. The Alaska Region has identified 42 human remains and is prepared to repatriate them to the culturally affiliated Alaska Native villages and corporations. Lack of response and intertribal conflicts has delayed any repatriation of these remains. The remaining regions have relatively small numbers of human remains. Intermountain Region identified no human remains or cultural items. Region One identified one individual. Great Basin Region identified 17, of which half were repatriated and the remainder are in process. Pacific Northwest Region identified less than 12 human remains. These human remains are primarily in museum collections, which in some cases is the cause of the delay. He added that in Alaska, a number of human remains were repatriated directly from the museum to the tribes; the FS was only involved due to requests for reburial on FS land. Mr. DeBloois reported the FS has completed 90 to 95 percent of their NAGPRA responsibilities, and is well on the way to repatriating the human remains and cultural items that have been identified and requested by Indian tribes. He added that he needs to clarify the discrepancies between the NPS list of completions and the FS lists to ensure the NPS has the complete information available.

Mr. DeBloois explained that the FS has fiscal concerns regarding NAGPRA in Alaska due to tribal requests to rebury human remains in caves on agency land. Prior to reburial, the FS is responsible to ensure the reburials will have no effects on other cultural resources. He explained that the FS funded one full-time position to do the inventories. He added that an estimated cost for the FS to finance the reburials of human remains was $5.5 million, but so far no Indian tribes have requested that the FS fund reburials. Mr. DeBloois added that NAGPRA was a budget priority in the FS, but not a specific line item.

Mr. DeBloois indicated that there are problems regarding tribal consultation within the FS, and added that the FS is drafting a set of consultation guidelines to strengthen performance at the field level, including the need for decision-making FS personnel at consultations. Mr. DeBloois also said that NFS has a NAGPRA training course for their Heritage Specialists, which they are trying to offer in every NFS region, and are trying to establish a heritage management training course for line managers covering a variety of cultural resource acts.

Department of Defense

Army: Mr. Lee Foster, Native American Program Coordinator with the US Army Environmental Center, explained that his primary concern is cultural and natural resources on the 12 million acres managed by the Army. The Army's primary mission is to maintain a combat-ready trained force, calling for intensive management of Army lands. In 1994, the Army Environmental Center initiated a centrally funded nationwide program to bring the Army into documentary compliance with NAGPRA, assisted by the Center for Expertise for the Curation and Management of Archaeological Collections (CX-CMAC), St. Louis District. Of the 167 installations investigated, 97 required preparation of a summary, which were completed in September of 1996. These reports included listings of Indian tribes potentially interested and affiliated with NAGPRA items. Twenty installations required inventory reports, which were completed in September of 1997. Individual installations were responsible for initiating consultation and affecting repatriation to the appropriate tribes. In an effort to comply with NAGPRA, the Army developed Army Regulation 200-4, directing installation commanders to comply with NAGPRA requirements as well as the full range of statutory and regulatory requirements of concern to Native Americans. He added that the Army has used examples from other agencies in developing processes and MOAs.

Army Corps of Engineers: The Army Corps of Engineers' report was provided by Mr. Paul Rubenstein, Federal Preservation Officer, and Dr. Michael Trimble, Center for Expertise for the Curation and Management of Archaeological Collections (CX-CMAC). In March, 1999, Mr. Rubenstein provided additional editorial comments. Mr. Rubenstein stated that the Corps' primary mission includes navigation, flood damage control, recreation and environmental management, and manages roughly 10% of total Federal lands. The Corps is organized into 39 districts overseeing 459 lakes and other operating projects. Individual Corps districts pursued first steps toward NAGPRA compliance in 1993, with a Corps-wide program initiated in December of 1994 managed by the CX-CMAC. The Corps reviewed an estimated 141,000 cubic feet of archaeological collections with an estimated 3,660 skeletal remains. NAGPRA was funded as a line item beginning FY 1995.

Mr. Rubenstein stated the CX-CMAC's missions include NAGPRA compliance, management of archaeological collections for the Corps, and assisting other Department of Defense services and government agencies, which will be accomplished through a wide range of specialists within CX-CMAC. One of the biggest jobs related to the NAGPRA process is locating the collections within the various curation facilities around the country. To date, all Corps collections have been identified in the

Western and Central parts of the country, and slightly more than half have been identified in the eastern part of the country.

Of the 39 Corps districts, all have begun preparation of summaries and 46% have been completed. Sixty-four percent of the districts have begun preparation of inventories and 14% have been completed. Consultation has been initiated in 75% of the districts. The Corps is working on consultation guidelines similar to those of the Army, designed to promote better understanding within the individual districts regarding consultation and developing consultation processes. The Corps estimates all collections will be located by FY 1999, all inventories will be completed by FY 2007, and all reports to Indian tribes and the NPS will be completed by FY 2008. Mr. Rubenstein added that even though NAGPRA is a line item, the Corps still does not have adequate funding to properly execute NAGPRA processes, although they are trying to increase the amount yearly.

Dr. Trimble explained that the CX-CMAC is responsible for curation, collections management, and the Corps NAGPRA program. He stated that since many Federal agencies do not have the resources to do this type of work, the CX-CMAC has agreed to do curation and NAGPRA-related work for Federal agencies, including the BIA and BLM. He explained the four-step program that the CX-CMAC has found to be the most effective in researching and locating Federal collections: 1) extensive research at the Federal agency level; 2) extensive research at the State Historic Preservation Office (SHPO) level; 3) aggressively compare the data from both of these sources; and 4) compare the data with collections currently in museums.

Navy: Ms. Kathleen McLaughlin, Consultant with the US Navy, stated that the Navy is a decentralized organization, with NAGPRA responsibility delegated to the commanding officer at each installation. Each installation received a program note outlining responsibilities under NAGPRA. Individual institutions can request funding to bring themselves into compliance. An informal survey found the majority of Navy collections containing NAGPRA items to be in the western United States. The Navy contracted with Corps of Engineers CX-CMAC to inventory all Navy collections for NAGPRA components and complete summaries and inventories when indicated. Most Navy collections in the western United States have completed inventories as of January 1998. The eastern United States has yet to be inventoried, although those installations feel they have very few objects applicable to NAGPRA. The CX-CMAC report on Navy collections is expected to be completed in September of 1999 detailing the locations of NAGPRA objects, at which time applicable summaries and inventories will be completed. Handouts were provided to Review Committee members detailing Naval installation compliance with NAGPRA.

The Navy is currently working on training personnel to deal with inadvertent discoveries, due to problems with inadvertent discoveries found on Navy installations. The Navy has developed extensive training and guidance programs including an introductory class presenting an overview of all historic preservation legislation, including NAGPRA; a historic preservation law and section 106 class, which includes a two-hour NAGPRA section; a week-long Native American Traditions and Cultures course, developed in consultation with Keepers of the Treasures, with at least 50 percent of the instructors being Native American. The Guidance includes development of the US Navy and Marine Corps Guide

to Native American Groups, which contains tribal information and consultation guidance, and the Twentieth Century Warriors brochure, designed to break down barriers between military personnel and Native Americans.

Air Force: The Air Force provided a written summary of the January, 1998 meeting, and additional information in April, 1999, of its efforts to implement the statute. The Air Force has cultural resource management responsibilities for approximately 9 million acres of land in the United States. One of the many facets of the Air Force cultural resource management program is compliance with NAGPRA. Since its passage, the Air Force has had a number of initiatives designed to ensure NAGPRA compliance. These range from integrating NAGPRA consultation guidelines into the Air Force cultural resource management instruction, AFI 320065, to participating in a DOD wide Legacy Resource program initiative to analyze the condition of collections as well as analyzing the content of some of the collections.

The Air Force has participated in several repatriation efforts. The first occurred in the fall of 1991. The Air Force initiated consultation concerning the repatriation of human remains, resulting in the reburial of Quapaw remains on Eaker AFB, Arkansas.

A significant repatriation success story involved the former Williams AFB, in Arizona. In 1997, the Air Force encountered Native American human remains during runway expansion a few months before Williams AFB was converted to Williams Gateway Airport and immediately initiated consultations with several interested Indian tribes. The Air Force developed a plan of action pursuant to NAGPRA for excavation, removal, inventory, description, limited study, report preparation, and repatriation of these and other possible discoveries of human remains during the construction project. The plan of action identified Gila River Indian Community as the primary tribal contact for the Williams runway expansion. The plan was reviewed and signed by five Arizona Indian tribes and by the Federal Aviation Administration. The human remains and associated funerary objects were repatriated to the Gila River Indian community in 1998.

The Air Force's most recent repatriation occurred at Avon Park Bombing Range. In March, 1999, Avon Park completed it first repatriation ceremony. In keeping with the solemnity of the occasion the ceremony was low profile and private, with only the Vice Wing Commander and a representative of the Seminole Tribe of Florida in attendance.

Vandenberg AFB, California, has one of the Air Force=s premier Native American Programs. The base has developed an excellent relationship with the nearby Santa Ynez Chumash Band based on trust, rapport, and teamwork. Cultural resource personnel participate in quarterly meetings with the Santa Ynez Chumash Elders Council were issues of mutual concern are discussed and the elders are informed of future projects. This forum affords the base the opportunity to resolve concerns early in the planning stages of a project.

When human remains are encountered or when unanticipated archeological discoveries occur, Vandenberg immediately notifies and consults with the elders. Human remains that are exposed and

likely to remain so for an extended period of time are reported to the coroner and base law enforcement and then recovered, documented, and identified in accordance with NAGPRA and the base's Memorandum of Agreement with the Santa Ynez Chumash Band. If the remains are identified as being Native American, the Chumash rebury them in designated areas. This policy effectively precludes vandalism of exposed remains.

The Air Force continued to strive to improve guidance for NAGPRA compliance. The upcoming revision of the cultural resource management AFI will provide more detailed instructions to assist our installations in NAGPRA compliance.

Department of Commerce

Ms. Stephanie Klodzen, Office of Real Estate Policy and Major Programs, stated that the Department of Commerce is a diverse agency comprised of 12 bureaus, two of which are land-holding agencies, the National Institute of Centers and Technology (NICT) and the National Oceanic and Atmospheric Administration (NOAA). Combined, NICT and NOAH control about 14,000 acres and do not have any collections of Native American human remains. She described one project in Boulder, Colorado where a successful Memorandum of Agreement was developed to deal with inadvertent discoveries on a project, although none were found, and one situation where a proposed NOAA laboratory in Alaska was relocated to avoid disturbance of Native American artifacts.

Department of Energy

Mr. Andy Wallo explained that the Department of Energy (DOE) has a comprehensive cultural resource management program, which covers NAGPRA. Site-specific cultural resource management plans will be prepared for each site under the guidance for the DOE-wide program. In addition, field offices are provided guidance from the NPS, general NAGPRA information, and other agencies in order to achieve comprehensive programs and compliance. The Federal Historic Preservation Officer for the DOE is responsible for managing the cultural resource management program, including NAGPRA compliance. The DOE sites have been informed about and directed to proceed with NAGPRA requirements, and all major sites have compiled summary and inventory information. The designated historic preservation contact at each DOE site ensures compliance with consultation requirements of NAGPRA. DOE sites are strongly encouraged to seek and identify Native Americans who have cultural affiliations with the sites and DOE controlled lands.

Site management mechanisms are developed to provide tribal representatives with information regarding all site activities. Tribal committees developed by the tribes are involved in NAGPRA-related decisions where multiple tribes are affiliated with a site. The DOE currently has MOAs with tribes regarding the Nevada, Idaho, and Washington sites, and the sites are required to undertake comprehensive archaeological survey work to discover locations of archaeological sites and likely locations of burials in the early planning stages of any land-use decisions. On-site monitors at many sites include tribal

representatives. The DOE attempts to identify Indian tribes and Native Hawaiian organizations that might have affiliation with an area that could be disturbed by a project. DOE has provided guidance and cultural sensitivity training for all personnel, in most instances with tribal representatives participating in the training. A long-term initiative that the DOE is considering is including their cultural resource program guidance and policy statements in a DOE directive.

Mr. Wallo indicated that the DOE is trying to have NAGPRA integrated into the mission of the DOE program and each site would have NAGPRA as part of their operations, rather than a stand-alone item. DOE is working to get all sites at similar levels of understanding and compliance, through the DOE directive and active steps with individual sites.

General Services Administration (GSA)

Ms. Constance Ramirez, Federal Preservation Officer for the GSA, reported that the GSA has no NAGPRA collections.

Tennessee Valley Authority (TVA)

Mr. J. Bennett Graham, Senior Archeologist and Deputy Federal Preservation Officer for the TVA reported that the agency filed NAGPRA summaries with ten Indian tribes and furnished a copy of the summary to the Departmental Consulting Archeologist by letter dated June 22, 1994.

Inventories of human remains and associated funerary objects removed from TVA land have also been conducted. All collections of human remains and associated funerary objects removed from TVA lands are curated at either the University of Tennessee-Knoxville or the University of Alabama, Alabama State Museum. With the exception of one small collection, potentially culturally affiliated Indian tribes have been notified regarding inventory of TVA collections at the University of Tennessee by that institution. It recently came to our attention that the University of Alabama did not notify potentially affiliated tribes regarding the inventory of collections from TVA lands held at that institution. TVA is in the process of verifying the inventory of collections from TVA lands conducted by the University of Alabama and experts to provide the inventory to culturally affiliated or potentially culturally affiliated Indian tribes by January, 1998.

The collections of human remains from TVA lands consists of approximately 10,000 sets of individual remains. The vast majority of these are greater than 1,000 years of age and are not considered to be culturally identifiable with a present-day Indian tribe.

Discussion on Federal Compliance

Review Committee members expressed their appreciation for the number of Federal agencies reporting to the Committee, but were concerned about the difference between the perceived level of compliance at the top of agencies and the reality of compliance at the field levels. The committee was particularly concerned with the compliance activities of NPS, BLM, Army, COE, Navy, and Marine Corps, and FS. Committee members were struck by the many questions left unanswered in the agency reports. In particular, there was concern regarding the location and care of artifacts and human remains held in non-Federal repositories.

The Review Committee concluded that three specific requirements must underlie future Federal Agency compliance efforts:

1) NAGPRA compliance must be an agency priority, including the necessary funding and staff to carry out the responsibilities established by the law and regulations;

2) NAGPRA compliance goes beyond simple documentation and inventories, and must include long-term tribal consultation on a government-to-government basis;

3) Agencies must be accountable.

Under the first two headings, the Committee noted that there are opportunities for interagency cooperation and assistance, including the sharing of expertise, databases, training workshops, and guidance. There also seems to be potential for agencies to cooperate in funding strategies.

Under agency accountability, the Review Committee believes that Congressional Oversight Committees are best situated to hold agencies accountable for failure to comply with the provisions of NAGPRA. At the same time, the Committee will continue to monitor agency compliance by requesting periodic update reports from agencies reflecting their compliance activities. This first report will provide a baseline against which agency progress can be measured.

TABLE 1: FEDERAL AGENCY SUMMARIES ON FILE [June, 1999]

Department of Agriculture

Forest Service.

- Alaska Regional Office (no summary submitted, stated reasons), AK
- Chugach National Forest, AK
- Tongass National Forest, Chatham Area, AK (no summary submitted, stated reasons)
- Tongass National Forest, Ketchikan Area, AK
- Tongass National Forest, Stikine Area, AK
- Angeles National Forest, CA
- Cleveland National Forest, CA (incomplete)
- Eldorado National Forest, CA
- Inyo National Forest, CA
- Klamath National Forest, CA (no summary submitted, stated reasons)
- Lake Tahoe Basin Management Unit, CA
- Lassen National Forest, CA
- Mendocino National Forest, CA
- Modoc National Forest, CA
- Plumas National Forest, CA
- San Bernardino National Forest, CA
- Sierra National Forest, CA (incomplete)
- Six Rivers National Forest, CA
- Stanislaus National Forest, CA
- Tahoe National Forest, CA
- Chippewa National Forest, MN
- Kootenai National Forest, MT
- Lolo National Forest, MT
- Cibola National Forest, NM
- Southwest Region, NM (incomplete)
- Rogue River National Forest, OR
- Umpqua National Forest, OR
- Winema National Forest, OR (no summary submitted, stated reasons)

Soil Conservation Service:

- Georgia
- North Carolina

Department of Commerce

Economic Development Administration, DC (no summary sent, stated reasons)

Department of Defense

Air Force:

- Hurlburt Air Field, FL (no summary submitted, stated reasons)
- Patrick Air Force Base, FL (no summary submitted, stated reasons)
- F.E. Warren Air Force Base, WY (no summary submitted, stated reasons)

Army:

- Fort Hunter Liggett, CA
- Fort Carson (No summary submitted, stated reasons)
- National Museum of Health & Medicine of the Armed Forces Institute of Pathology, DC
- White Sands Missile Range, NM
- Fort Sill, OK
- 45th Infantry Division Museum, OK (no summary submitted, stated reasons)
- Fort McCoy, WI

Corps of Engineers:

- Mobile District, AL (incomplete)
- Little Rock District, AR
- Rock Island District, IL
- Newport Army Ammunition Plant, IN
- Lake City Army Ammunition Plant, MO (incomplete)
- St Louis District, MO
- Tulsa District, OK (incomplete)
- Pittsburg District, PA
- Memphis District, TN (no summary submitted, stated reasons)
- Galveston District, TX
- Walla Walla District, WA

Forces Command:

- Fort Irwin, CA
- Presidio of San Francisco, CA
- Fort McPherson, GA
- Fort Stewart, GA
- Hunter Army Airfield, GA
- Fort Riley, KS
- Fort Campbell, KY
- Fort Polk, LA
- Fort Devens, MA
- Sudbury Training Annex, MA
- Fort Dix, NJ
- Fort Bragg, NC
- Fort Indiantown Gap, PA
- Fort Lewis, WA
- Vancouver Barracks, WA
- Yakima Training Center, WA

Material Command:

- Coosa River Storage Annex, AL
- Redstone Arsenal, AL
- Yuma Proving Ground, AZ
- Pine Bluff Arsenal, AR
- Sierra Army Depot, CA
- Pueblo Depot Activity, CO
- Rocky Mountain Arsenal, CO
- Joliet Army Ammunition Plant, IL
- Rock Island Arsenal, IL
- Savanna Army Depot, IL
- Indiana Army Ammunition Plant, IN

Jefferson Proving Ground, IN
Iowa Army Ammunition Plant, IA
Sunflower Army Ammunition Plant, KS
Lexington-Blue Grass Activity, KY
Louisiana Army Ammunition Plant, LA
Cornhusker Army Ammunition Plant, NE
Hawthorne Army Ammunition Plant, NV
Fort Monmouth, NJ
Picatinny Arsenal, NJ
Fort Wingate Depot Activity, NM
Seneca Army Depot, NY
Ravenna Army Ammunition Plant, OH
Letterkenny Army Depot, PA
Holston Army Ammunition Plant, TN
Milan Army Ammunition Plant, TN
Lone Star Army Ammunition Plant, TX
Longhorn Army Ammunition Plant, TX
Red River Army Depot, TX
Dugway Proving Ground, UT
Tooele Army Depot, UT
Radford Army Ammunition Plant, VA
Vint Hill Communications and Electronics Support Activity, VA
Woodbridge Research Facility, VA
Badger Army Ammunition Plant, WI
Medical Command:
Fitzsimons Army Medical Center, CO
Walter Reed Army Medical Center, DC
Fort Detrick, MD
Camp Bullis Training Site, TX
Fort Sam Houston, TX
Military Academy:
West Point Military Reservation, NY
Military District of Washington:
Fort George G Meade, MD
Fort A.P. Hill, VA
Fort Belvoir, VA
Pacific Command:
Fort DeRussy, HI
Fort Kamehameha, HI
Fort Shafter, HI
Kahuku Training Area, HI
Makua Military Reservation, HI
Pohakuloa Training Area, HI
Waianae Army Recreation Center, HI
Reserve Command:
Fort Douglas, UT
Fort Pickett, VA
Traffic Management Command:
Military Ocean Terminal Sunny Point, NC
Training and Doctrine Command:
Fort McClellan, AL
Fort Rucker, AL
Fort Huachuca, AZ
Aberdeen Proving Ground, MD
Adelphi Laboratory Center, MD
Blossom Point Field Test Facility, MD
Army Materiels Technology Laboratory (Watertown Arsenal), MA
Fort Chaffee, AR
Fort Ord, CA
Presidio of Monterey, CA
Fort Benning, GA
Fort Gordon, GA
Fort Benjamin Harrison, IN
Fort Leavenworth, KS
Fort Knox, KY
Fort Leonard Wood, MO
Carlisle Barracks, PA
Fort Jackson, SC
Fort Bliss, TX
Fort Eustis, VA
Fort Lee, VA
Fort Monroe, VA
Fort Story, VA
Navy:
North Island Naval Air Station, CA
Pacific Division, Naval Facilities Engineering Command, HI
Marine Corps:
Camp Pendleton, CA

Department of Energy
Naval Petroleum Reserves, CA
Rocky Flats Office, CO (no summary submitted, stated reasons)
Western Area Power Administration, CO
Idaho Operations Office, ID
Fermilab, Fermi National Accelerator Laboratory, IL (no summary submitted, stated reasons)
Nevada Operations Office, NV
Yucca Mountain Site Characterization Project, NV (no summary submitted, stated reasons)
Princeton Area Office, Princeton Plasma Physics Laboratory, NJ (no summary submitted, stated reasons)
Los Alamos Area Office, NM
Brookhaven Area Office, NY (no summary submitted, stated reasons)
Bonneville Power Administration, OR (no summary submitted, stated reasons)
Savannah River Operations Office, SC (no summary submitted, stated reasons)
Superconducting Super Collider Project Office, TX (no summary submitted, stated reasons)
Richland Field Office, WA
Naval Petroleum and Oil Shale Reserves, WY

Department of the Interior
- Bureau of Indian Affairs:
  - ANCSA Office, AK
  - Division of Property Management, DC (no summary submitted, stated reasons)
- Bureau of Land Management.
  - For entire agency, DC (no summary submitted, stated reasons)
  - Arizona State Office, AZ
  - Anasazi Heritage Center, CO (no summary submitted, stated reasons)
  - Idaho State Office, ID
  - New Mexico State Office, NM
  - Oregon State Office, OR
- Bureau of Reclamation
  - For entire agency, CO: covering Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming.
- Fish and Wildlife Service·
  - Minnesota
- Holocaust Memorial Museum, DC (no summary submitted, stated reasons)
- Indian Arts and Crafts Board
  - Washington, DC
  - Museum of the Plains Indian & Crafts Center, MT
  - Southern Plains Indian Museum & Crafts Center, OK
  - Sioux Indian Museum & Crafts Center, SD
- Interior Museum, DC
- National Park Service:
  - For entire agency, DC
  - Alaska Support Systems, AK
  - Bering Land Bridge National Preserve, AK
  - Glacier Bay National Park and Preserve, AK
  - Katmai National Park and Preserve, AK
  - Northwest Alaska Areas, AK
  - Sitka National Historical Park, AK

Department of Transportation
- Coast Guard Museum, CT

National Archives and Records
- **Administration**Presidential Libraries [*incomplete*]

Tennessee Valley Authority

TABLE 2: FEDERAL AGENCY INVENTORIES ON FILE [June, 1999]

U.S. Department of Agriculture

Forest Service:
- Chugach National Forest, AK (incomplete)
- Tongass National Forest, Chatham Area, AK (incomplete)
- Tongass National Forest, Ketchikan Area, AK
- Tongass National Forest, Stikine Area, AK (incomplete)
- Angeles National Forest, CA
- Mendocino National Forest, CA (incomplete)
- San Bernardino National Forest, CA (incomplete)
- Stanislaus National Forest, CA (incomplete)
- Southern Region, GA
- Chippewa National Forest, MN
- Custer National Forest, MT (incomplete)
- Kootenai National Forest, MT
- Lolo National Forest, MT (no inventory submitted, stated reasons)
- Santa Fe National Forest, NM
- Southwestern Region, NM
- Malheur National Forest, OR (no inventory submitted, stated reasons)
- Rogue River National Forest, OR
- Winema National Forest, OR (No inventory submitted, stated reasons)
- Manti-LaSol National Forest, UT
- Unita National Forest, UT
- Gifford Pinchot National Forest, WA

Department of Commerce
- Economic Development Administration, DC (No inventory submitted, stated reasons)

Department of Defense
- Air Force:
  - F. E. Warren Air Force Base, WY (No inventory submitted, stated reasons)
- Army:
  - Armed Forces Institute of Pathology, National Museum of Health and Medicine, DC (incomplete)
  - Armor Center and Fort Knox, KY (No inventory submitted, stated reasons)
  - Corps of Engineers:
    - Rock Island District, IL (incomplete)
    - Newport Army Ammunition Plant, IN (No inventory submitted, stated reasons)
    - Tulsa District, OK (incomplete)
    - Pittsburgh District, PA (incomplete)
    - Seattle District, WA
  - 45th Infantry Division Museum, OK (No inventory submitted, stated reasons)
  - Fort Douglas, UT
  - Fort Kamehameha, HI
  - Fort McCoy Headquarters, WI (no inventory submitted, stated reasons)
  - Fort Pickett, VA (No inventory submitted, stated reasons)
  - Pueblo Chemical Depot, CO
  - White Sands Missile Range, NM
- Navy
  - Naval Air Weapons Station, China Lake, CA
  - West Coast Naval Facilities Engineering Command, CA (incomplete)
  - Pacific Division, Naval Facilities Engineering Command, HI
  - Naval Air Station, Fallon, NV (incomplete)
  - Port Hadlock Detachment, WA

Department of Energy
- Nevada Operations Office, NV
- Fernald Environmental Management Project, OH
- Savannah River Operations Office, SC
- Richland Operations Office, WA

Department of Health & Human Services
- Office of Environmental Health & Engineering, AK (No inventory submitted, stated reasons)

Department of Interior
- Bureau of Indian Affairs
  - ANSCA Office, AK (no inventory submitted, stated reasons)
- Bureau of Reclamation
  - Mid-Pacific Region: California, Nevada, and Oregon
  - Pacific Northwest Region: Idaho, Montana, Nevada, Oregon, Utah, Washington, and Wyoming
  - Lower Colorado Region: Arizona, California, Nevada, New Mexico, and Utah
  - Great Plains Region: Colorado, Kansas, Montana, Nebraska, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming
  - Upper Colorado Region: Arizona, Colorado,

Nevada, New Mexico, Texas, Utah, and Wyoming
Fish and Wildlife Service
For entire agency, DC (incomplete)
Mountain-Prairie Region, CO
Stillwater National Wildlife Refuge, NV (incomplete)
Geological Survey
For entire agency, VA (No inventory submitted, stated reasons)
Holocaust Memorial Museum, DC (No inventory submitted, stated reasons)
Indian Arts and Crafts Board
Museum of Plains Indian and Crafts Center, MT
National Park Service
Horseshoe Bend National Military Park, AL
Russell Cave National Monument, AL
Glacier Bay National Park and Preserve, AK
Katmai National Park and Preserve, AK
Noatak National Preserve, AK
Sitka National Historical Park, AK
Canyon de Chelly National Monument, AZ
Casa Grande National Monument, AZ
Fort Bowie National Historic Site, AZ
Glen Canyon National Recreation Area, AZ
Grand Canyon National Park, AZ
Hubbell Trading Post National Historic Site, AZ
Montezuma Castle National Monument, AZ
Navajo National Monument, AZ
Organ Pipe Cactus National Monument, AZ
Petrified Forest National Park, AZ
Pipe Spring National Monument, AZ
Saguaro National Park, AZ
Tonto National Monument, AZ
Tumacacori National Historical Park, AZ
Tuzigoot National Monument, AZ
Walnut Canyon National Monument, AZ
Western Archeological and Conservation Center, AZ
Wupatki National Monument, AZ
Arkansas Post National Monument, AR
Buffalo National River, AR
Channel Islands National Park, CA
Death Valley National Park, CA
Joshua Tree National Park, CA
Lassen Volcanic National Park, CA
Pacific West Field Area, CA
Yosemite National Park, CA
Bent's Old Fort National Historic Site, CO
Dinosaur National Monument, CO
Hovenweep National Monument, CO
Mesa Verde National Park, CO
Rocky Mountain National Park, CO
Fort Washington National Park, DC
Big Cypress National Preserve, FL
Canaveral National Seashore, FL
De Soto National Monument, FL
Everglades National Park, FL
Fort Caroline National Monument, FL
Fort Mantanzas National Monument, FL
Gulf Islands National Seashore, FL
Southeast Archeological Center, FL
Cumberland Island National Seashore, GA
Fort Frederica National Monument, GA
Ocmulgee National Monument, GA
Haleakala National Park, HI
Hawaii Volcanoes National Park, HI
Pu'uhonua o Honaunau National Historical Park, HI (no inventory submitted, stated reasons)
Pu'ukohola Heiau National Historic Site, HI (no inventory submitted, stated reasons)
Effigy Mounds National Monument, IA
Cumberland Gap National Historical Park, KY
Mammoth Cave National Park, KY
Jean Lafitte National Historical Park and Preserve, LA
Acadia National Park, ME
Chesapeake and Ohio Canal National Historical Park, MD
Cape Cod National Seashore, MA
Isle Royale National Park, MI
Grand Portage National Monument, MN
Voyageurs National Park, MN
National Scenic Riverways, MO
Natchez Trace Parkway, MS
Vicksburg National Military Park, MS
Grand-Kohrs Ranch National Historic Site, MT
Little Bighorn Battlefield National Monument, MT
Agate Fossil Beds National Monument, NE
Scotts Bluff National Monument, NE
Great Basin National Park, NV
Lake Mead National Recreation Area, NV
Aztec Ruins National Monument, NM
Bandelier National Monument, NM
Carlsbad Caverns National Park, NM
Chaco Culture National Historical Park, NM
El Morro National Monument, NM
Fort Union National Monument, NM
Gila Cliff Dwellings National Monument, NM
Pecos National Historical Park, NM
Salinas Pueblo Missions National Historical Park, NM
Southwest Regional Office, NM
Statue of Liberty National Monument, NY
Blue Ridge Parkway, NC
Fort Union Trading Post National Historic Site, ND

Knife River Indian Villages National Historic Site, ND
Hopewell Culture National Historical Park, OH
Chickasaw National Recreation Area, OK
Delaware Water Gap National Recreation Area, PA
Badlands National Park, SD
Big South Fork National River and Recreation Area, TN
Shiloh National Military Park, TN
Alibates Flint Quarries National Monument, TX
Amistead National Recreation Area, TX
Big Bend National Park, TX
Guadalupe Mountains National Park, TX
Padre Island National Seashore, TX
San Antonio Missions National Historical Park, TX
Canyonlands National Park, UT
Capitol Reef National Park, UT
Zion National Park, UT
Colonial National Historical Park, VA
Fort Vancouver National Historic Site, WA
Olympic National Park, WA
San Juan Island National Historical Park, WA
Yellowstone National Park, WY

Department of Veterans Affairs

For entire agency, DC (No inventory submitted, stated reasons)

National NAGPRA

National Park Service | National Center for Cultural Resources

NAGPRA Grants

Legal Mandates and Guidance

Native American Consultation Database (NACD)

Inventories and Summaries

Notices

Review Committee

Kennewick Man

Contact National NAGPRA

National NAGPRA assists the Secretary of the Interior with some of the Secretary's responsibilities under the Native American Graves Protection and Repatriation Act, and focuses on NAGPRA implementation outside of the National Park System National NAGPRA is a program of the National Park Service's National Center for Cultural Resources.

Among its chief activities, National NAGPRA develops regulations and guidance for implementing NAGPRA, provides administrative and staff support for the Native American Graves Protection and Repatriation Review Committee, assists Indian tribes, Native Hawaiian organizations, and museums with the NAGPRA process; and manages a NAGPRA grants program that supports repatriation activites.

The Assistant Director, Cultural Resources Stewardship and Partnerships is responsible for the National NAGPRA program

Many of the links from the National NAGPRA web site go the National NAGPRA Database hosted at the Center for Advanced Spatial Technologies, University of Arkansas, through a cooperative agreement with the National Park Service

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Last Modified Fri, Aug 18 2000 11:08:00 am EDT

MJB

ParkNet
National Park Service

Inventories and Summaries

To comply with NAGPRA, Federal agencies and museums that receive Federal funding shall **complete inventories and summaries** of their Native American and Native Hawaiian holdings or collections by dates specified in the Act For definitions of NAGPRA terminology, see documents in Legal Mandates and Guidance

Museums and Federal agencies that have submitted inventories and summaries to the National Park Service as of March 2000 are listed below National Park Service review of inventories and summaries is not current, so an evaluation of whether inventories and summaries are complete is not available

Museums and Federal Agencies that have submitted a NAGPRA Inventory
Museums and Federal Agencies that have submitted a NAGPRA Summary

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Last Modified Fri, Aug 18 2000 07 55 26 am EDT

MJB

National NAGPRA

National Park Service
National Center for Cultural Resources

MUSEUMS AND FEDERAL AGENCIES
THAT HAVE SUBMITTED A NAGPRA INVENTORY
736 as of March 10, 2000

ALABAMA

Anniston Museum of Natural History (Incomplete)
Auburn University (Incomplete)
Discovery 2000 Museum
Iron and Steel Museum of Alabama, Tannehill Historical State Park (No inventory submitted, stated reasons)
Jacksonville State University
U.S. Department of Interior, National Park Service, Horseshoe Bend National Military Park
U.S. Department of Interior, National Park Service, Russell Cave National Monument
University of Alabama, Office of Archeological Services
University of South Alabama, Center for Archaeological Studies

ALASKA

Anchorage Museum of History and Art
Homer Society of Natural History and Pratt Museum (Incomplete)
Kenai Visitors and Convention Bureau (Incomplete)
State of Alaska, Department of Education, Alaska State Museum.
State of Alaska, Office of History and Archeology (Incomplete)
U.S. Department of Agriculture, Forest Service, Alaska Region, Chugach National Forest (Incomplete)
U.S. Department of Agriculture, Forest Service, Alaska Region, Tongass National Forest, Chatham Area (Incomplete)
U.S. Department of Agriculture, Forest Service, Alaska Region, Tongass National Forest, Ketchikan Area
U.S. Department of Agriculture, Forest Service, Alaska Region, Tongass National Forest, Stikine Area (Incomplete)
U.S. Department of Health and Human Services, Office of Environmental Health and Engineering (No inventory submitted, stated reasons)
U.S. Department of Interior, Bureau of Indian Affairs, ANSCA Office (No inventory submitted, stated reasons)
U.S. Department of Interior, National Park Service, Glacier Bay National Park and Preserve
U.S. Department of Interior, National Park Service, Katmai National Park and Preserve
U.S. Department of Interior, National Park Service, Noatak National Preserve
U.S. Department of Interior, National Park Service, Sitka National Historical Park
University of Alaska, Anchorage, Department of Anthropology (Incomplete)
University of Alaska, Anchorage, Department of Anthropology, Dr. Douglas W. Veltre
University of Alaska Museum, Fairbanks

ARIZONA

Arizona State University, Department of Anthropology (Incomplete)
Bead Museum (No inventory submitted, stated reasons)
Cochise College (Incomplete)
Eastern Arizona College Museum (Incomplete)
Heard Museum

Mesa Southwest Museum
Museum of Northern Arizona
Navajo Nation (No inventory submitted, stated reasons)
Pueblo Grande Museum, City of Phoenix (Incomplete)
Sharlot Hall Museum
U.S. Department of Interior, National Park Service, Canyon de Chelly National Monument
U.S. Department of Interior, National Park Service, Casa Grande National Monument
U.S. Department of Interior, National Park Service, Fort Bowie National Historic Site
U.S. Department of Interior, National Park Service, Glen Canyon National Recreation Area
U.S. Department of Interior, National Park Service, Grand Canyon National Park
U.S. Department of Interior, National Park Service, Hubbell Trading Post National Historic Site
U.S. Department of Interior, National Park Service, Montezuma Castle National Monument
U.S. Department of Interior, National Park Service, Navajo National Monument
U.S. Department of Interior, National Park Service, Organ Pipe Cactus National Monument
U.S. Department of Interior, National Park Service, Petrified Forest National Park
U.S. Department of Interior, National Park Service, Pipespring National Monument
U.S. Department of Interior, National Park Service, Saguaro National Park
U.S. Department of Interior, National Park Service, Tonto National Monument
U.S. Department of Interior, National Park Service, Tumacacori National Historical Park
U.S. Department of Interior, National Park Service, Tuzigoot National Monument
U.S. Department of Interior, National Park Service, Walnut Canyon National Monument
U.S. Department of Interior, National Park Service, Western Archeological and Conservation Center
U.S. Department of Interior, National Park Service, Wupatki National Monument
University of Arizona, Arizona State Museum
White Mountain Apache Tribe (No inventory submitted, stated reasons)

ARKANSAS

Archeological Assessments, Inc.
Arkansas State University Museum
Henderson State University (No inventory submitted, stated reasons)
Shiloh Museum of Ozark History (Incomplete)
State of Arkansas, Hampson State Museum and Park
U.S. Department of Interior, National Park Service, Arkansas Post National Monument
U.S. Department of Interior, National Park Service, Buffalo National River
University of Arkansas, Arkansas Archaeological Survey (Incomplete)
University of Arkansas, Department of Anthropology
University of Arkansas, University Museum (Incomplete)
University of Central Arkansas, Department of Geography, Political Science and Sociology (Incomplete)

CALIFORNIA

Bowers Museum of Cultural Art (Incomplete)
California Academy of Sciences (Incomplete)

California State University, Bakersfield (Incomplete)
California State University, Chico, Museum of Anthropology (Incomplete)
California State University, Dominguez-Hills, Department of Anthropology (Incomplete)
California State University, Fresno, Department of Anthropology (Incomplete)
California State University, Fullerton, Museum of Anthropology (Incomplete)
California State University, Long Beach, Division of Academic Affairs (Incomplete)
California State University, Northridge, Center for Public Archaeology (Incomplete)
California State University, Sacramento, Office of Academic Affairs (Incomplete)
Catalina Island Museum Society, Inc.
City of Riverside Museum (Incomplete)
County of San Diego, Department of Public Works (No inventory submitted, stated reasons)
Crocker Art Museum
de Saisset Museum, Santa Clara University (Incomplete)
Diablo Valley College (Incomplete)
Eastern California Museum of Inyo County (Incomplete)
Effie Yeaw Nature Center (No inventory submitted, stated reasons)
Fine Arts Museum of San Francisco (Incomplete)
Foothill-De Anza Community College District
Headon Inman House, Santa Clara Facility
Institute of Dental History and Craniofacial Study (Incomplete)
Lindsay Museum
Los Angeles County Museum of Art (No inventory submitted, stated reasons)
Maturango Museum
Montgomery Gallery, Pomona College (Incomplete)
Natural History Museum of Los Angeles County (Granted an extension until 11/16/98)
Oakland Museum
Palm Springs Desert Museum (No inventory submitted, stated reasons)
Placer County Department of Museums (No inventory submitted, stated reasons)
Plumas County Museum (No inventory submitted, stated reasons)
Raymond M. Alf Museum
Richmond Museum of History
Rotary Nature Center, City of Oakland, Office of Parks and Recreation (Incomplete)
Sacramento Museum of History, Science and Technology (Incomplete)
San Diego Mesa College (Incomplete)
San Diego Museum of Man (Incomplete)
San Diego State University (Incomplete)
San Francisco State University (Granted an extension until 5/31/98)
San Jose Museum of Art (No inventory submitted, stated reasons)
San Jose State University, Department of Anthropology (Incomplete)
Santa Barbara Museum of Natural History (Incomplete)
Santa Cruz City Museum
Sonoma State University, Anthropological Studies Center (Incomplete)
Southwest Museum (Incomplete)
Stanford University, Planning Office (Incomplete)
State of California, Department of Parks and Recreation (Incomplete)
U.S. Department of Agriculture, Forest Service, Angeles National Forest
U.S. Department of Agriculture, Forest Service, Mendocino National Forest (Incomplete)
U.S. Department of Agriculture, Forest Service, San Bernardino National Forest (Incomplete)
U.S. Department of Agriculture, Forest Service, Stanislaus National Forest (Incomplete)

U.S. Department of Interior, Bureau of Reclamation, Mid-Pacific Regional Office (Incomplete)
U.S. Department of Interior, National Park Service, Channel Islands National Park
U.S. Department of Interior, National Park Service, Death Valley National Park
U.S. Department of Interior, National Park Service, Joshua Tree National Monument
U.S. Department of Interior, National Park Service, Lassen Volcanic National Park
U.S. Department of Interior, National Park Service, Pacific West Field Area
U.S. Department of Interior, National Park Service, Yosemite National Park
U.S. Department of the Navy, Naval Air Weapons Station, China Lake
U.S. Department of the Navy, West Coast Naval Facilities Engineering Command (Incomplete)
University of California, Berkeley, Phoebe Hearst Museum (Granted an extension until 11/16/98)
University of California, Davis, Department of Anthropology Museum (Incomplete)
University of California, Los Angeles Fowler Museum of Cultural History (Incomplete)
University of California, Santa Barbara, Department of Anthropology
University of California, Santa Cruz, Archaeology Archives
Ventura County Museum of History and Art, Ventura Historical Society (No inventory submitted, stated reasons)

COLORADO

Adams County Museum & Cultural Center (No inventory submitted, stated reasons)
Animas Museum (Incomplete)
Buffalo Bill Memorial Museum (Incomplete)
Colorado Springs Pioneers Museum (Incomplete)
Colorado Historical Society
Delta County Historical Society Museum (Incomplete)
Denver Museum of Natural History (Incomplete)
Denver Art Museum (Incomplete)
Fort Lewis College (Incomplete)
Frontier Historical Society (No inventory submitted, stated reasons)
Koshare Indian Museum, Inc. (Incomplete)
Loveland Museum and Gallery, City of Loveland (No inventory submitted, stated reasons)
Metropolitan State College, College of Denver, Department of Anthropology
Museum of Western Colorado
Tread of Pioneers Museum
Trinidad State Junior College
U.S. Department of the Army, Fort Carson (No inventory submitted, stated reasons)
U.S. Department of the Army, Pueblo Chemical Depot
U.S. Department of the Interior, Bureau of Land Management, Anasazi Heritage Center (Incomplete)
U.S. Department of Interior, National Park Service, Bent's Old Fort National Historic Site
U.S. Department of Interior, National Park Service, Dinosaur National Monument
U.S. Department of Interior, National Park Service, Hovenweep National Monument
U.S. Department of Interior, National Park Service, Mesa Verde National Park
U.S. Department of Interior, National Park Service, Rocky Mountain National Park
University of Colorado at Denver

University of Colorado at Boulder (Incomplete)
University of Denver, Department of Anthropology (Incomplete)
Western State College (Incomplete)

CONNECTICUT

The Barnum Museum (Incomplete)
Bridgeport Public Library (No inventory submitted, stated reasons)
Bruce Museum
Mattatuck Museum (No inventory submitted, stated reasons)
New London County Historical Society (Incomplete)
Stamford Museum and Nature Center (Incomplete)
University of Connecticut, Museum of Natural History (Incomplete)
Wesleyan University (Incomplete)
Yale University, Peabody Museum of Natural History (Incomplete)

DELAWARE

Hagley Museum and Library (No inventory submitted, stated reasons)
State of Delaware, Delaware State Museums, Division of Historical and Cultural Affairs

DISTRICT OF COLUMBIA

U.S. Department of the Army, Armed Forces Institute of Pathology, National Museum of Health and Medicine (Incomplete)
U.S. Department of Interior, U.S. Fish and Wildlife Service (Incomplete)
U.S. Department of Interior, National Park Service, Fort Washington Park
U.S. Department of Veterans Affairs (No inventory submitted, stated reasons)
U.S. Department of Commerce, Economic Development Administration (No inventory submitted, stated reasons)
U.S. Holocaust Memorial Museum (No inventory submitted, stated reasons)

FLORIDA

Charlotte Harbor Environmental Center, Inc.
Cornell Fine Arts Museum, Rollins College (No inventory submitted, stated reasons)
Crowley Museum and Nature Center, Inc. (Incomplete)
Eckerd College (Incomplete)
Florida Atlantic University
Florida State University, Department of Anthropology (Incomplete)
Florida History Center and Museum (Incomplete)
Graves Museumof Archaeology and Natural History
Historical Association of Southern Florida
Key West Art & Historical Society (No inventory submitted, stated reasons)
Orange County Parks and Recreation Department, Fort Christmas Museum and Park (No inventory submitted, stated reasons)
Sarasota County Department of Historic Resources
State of Florida, Division of Historical Resources (Incomplete)
Suwannee County Historical Museum (No inventory submitted, stated reasons)
U.S. Department of Interior, National Park Service, Big Cypress National Preserve
U.S. Department of Interior, National Park Service, Canaveral National Seashore
U.S. Department of Interior, National Park Service, De Soto National Monument
U.S. Department of Interior, National Park Service, Everglades National Park

U.S. Department of Interior, National Park Service, Fort Caroline National Monument
U.S. Department of Interior, National Park Service, Fort Mantanzas National Monument
U.S. Department of Interior, National Park Service, Gulf Islands National Seashore
U.S. Department of Interior, National Park Service, Southeast Archeological Center
University of Florida, Gainesville, Florida Museum of Natural History (Incomplete)
University of South Florida, Department of Anthropology (Incomplete)
University of West Florida, Archaeology Institute (Incomplete)

GEORGIA

Atlanta History Center (No inventory submitted, stated reasons)
Augusta College, Department of History and Anthropology (Incomplete)
Chieftain's Museum (No inventory submitted, stated reasons)
Columbus Museum (Incomplete)
Coosawattee Foundation (Incomplete)
Emory University, Michael C. Carlos Museum
Georgia Southern University, Department of Sociology and Anthropology (Incomplete)
Georgia State University
State of Georgia, Department of Natural Resources
State of Georgia, Department of Transportation
State University of West Georgia [formerly West Georgia College] (Incomplete)
U.S. Department of Agriculture, Forest Service, Southern Region (Incomplete)
U.S. Department of Interior, National Park Service, Cumberland Island National Seashore
U.S. Department of Interior, National Park Service, Fort Frederica National Monument
U.S. Department of Interior, National Park Service, Ocmulgee National Monument
University of Georgia, Department of Anthropology

HAWAII

Bishop Museum (Incomplete)
Friends of 'Iolani Palace (No inventory submitted, stated reasons)
Kauai Museum Association, Ltd. (No inventory submitted, stated reasons)
Lyman House Memorial Museum (Incomplete)
Maui Historical Society
Mission Houses Museum (No inventory submitted, stated reasons)
U.S. Department of the Army, Fort Kamehameha
U.S. Department of the Army, Wainanae Army Recreation Center
U.S. Department of the Army, Pohakuloa Training Area
U.S. Department of the Army, Fort Shafter
U.S. Department of Interior, National Park Service, Haleakala National Park
U.S. Department of Interior, National Park Service, Hawaii Volcanoes National Park
U.S. Department of Interior, National Park Service, Pu=uhonua o Honaunau National Historical Park (No inventory submitted, stated reasons)
U.S. Department of Interior, National Park Service, Puukohola Heiau National Historic Site (No inventory submitted, stated reasons)
U.S. Department of the Navy, Pacific Division, Naval Facilities Engineering Command
University of Hawai'i, Hilo, Department of Anthropology (Incomplete)
Waimea Valley, Home of Waimea Falls Park (No inventory submitted, stated reasons)

IDAHO

Archaeological Survey of Idaho, Idaho State Historical Society
College of Southern Idaho, Herrett Center for Arts and Sciences
Idaho State Historical Society, Historical Museum (Incomplete)
Idaho Museum of Natural History
U.S. Department of the Interior, Bureau of Reclamation, Pacific Northwest Region (Incomplete)

ILLINOIS

Buffalo Grove Park District (No inventory submitted, stated reasons)
Center for American Archaeology, Kampsville Archeological Center (Incomplete)
Elgin Public Museum
Field Museum of Natural History and Science (Incomplete)
Geneva Historical Society (No inventory submitted, stated reasons)
Grundy County Historical Society (No inventory submitted, stated reasons)
Illinois Historic Preservation Agency (No inventory submitted, stated reasons)
Illinois State Museum, Research and Collections
Illinois State University, Normal, Department of Anthropology (Incomplete)
Lakeview Museum of Arts and Sciences (No inventory submitted, stated reasons)
Lombard Historical Society
Macon County Conservation District (No inventory submitted, stated reasons)
Madison County Historical Society
Northern Illinois University (Incomplete)
Rockford College Gallery (No inventory submitted, stated reasons)
Southern Illinois University
Tinker Swiss Cottage Museum (No inventory submitted, stated reasons)
U.S. Department of the Army, Corps of Engineers, Rock Island District (Incomplete)
University of Illinois, Chicago
University of Illinois, Urbana-Champaign, Department of Anthropology
University of Illinois, Urbana-Champaign, World Heritage Museum (No inventory submitted, stated reasons)
Western Illinois University (Incomplete)

INDIANA

Allen County, Fort Wayne Historical Society
Ball State University, Department of Anthropology
Elkhart County Historical Museum (No inventory submitted, stated reasons)
Goshen College (Incomplete)
Henry County Historical Society
Indiana State Museum (Incomplete)
Indiana State University
Indiana University, Bloomington, Department of Anthropology (Incomplete)
Indiana University, Glenn A. Black Laboratory of Archeology
Indiana University, William Hammond Mathers Museum (No inventory submitted, stated reasons)
Indianapolis Children's Museum (No inventory submitted, stated reasons)
Indianapolis Museum of Art (No inventory submitted, stated reasons)
Marion Public Library
Miami County Historical Society (Incomplete)
New Harmony Workingmen's Institute (Incomplete)
Northern Indiana Center for History

Purdue University
Sheldon Swope Art Museum (No inventory submitted, stated reasons)
Snite Museum of Art, University of Notre Dame (No inventory submitted, stated reasons)
State of Indiana, Department of Natural Resources, Division of Historic Preservation and Archaeology (Incomplete)
Sullivan County Historical Society, Inc. (Incomplete)
Tippecanoe County Historical Association (Incomplete)
U.S. Department of the Army, Corps of Engineers, Newport Army Ammunition Plant (No inventory submitted, stated reasons)
University of Indianapolis, Archeology and Forensics Laboratory (Incomplete)
University of Notre Dame, Department of Anthropology

IOWA

Grout Museum of History and Science (Incomplete)
Kinney Pioneer Museum (No inventory submitted, stated reasons)
Palmer Foundation for Chiropractic History
Putnam Museum of History and Natural Science
Sioux City Public Museum (No inventory submitted, stated reasons)
State Historical Society of Iowa (Incomplete)
U.S. Department of Interior, National Park Service, Effigy Mounds National Monument
University of Iowa (Incomplete)
Vesterheim, The Norwegian-American Museum (No inventory submitted, stated reasons)

KANSAS

Fellow-Reeve Museum of History and Science (No inventory submitted, stated reasons)
Fort Hays State University, Sternburg Museum of Natural History
Historical Museum of Wichita-Sedgwick County
Kansas State Historical Society (Incomplete)
Riley County Historical Society and Museum
University of Kansas, Department of Anthropology (Incomplete)

KENTUCKY

Filson Club Historical Society (Incomplete)
Hardin County Coroner
J.B. Speed Art Museum
Kentucky Historical Society
Louisville Science Center (No inventory submitted, stated reasons)
Murray State University, Archaeology Service Center (Incomplete)
Murray State University, Wicklife Mounds Research Center
U.S. Department of the Army, U.S. Army Armor Center and Fort Knox (No inventory submitted, stated reasons)
U.S. Department of Interior, National Park Service, Cumberland Gap National Historical Park
U.S. Department of Interior, National Park Service, Mammoth Cave National Park
University of Kentucky, Webb Museum of Anthropology
University of Louisville
Western Kentucky University, Kentucky Museum (Granted extension until 11/16/98)
Western Kentucky University, Department of Modern Languages and Intercultural Studies (Granted extension until 11/16/98)

LOUISIANA

Louisiana State Exhibit Museum
Louisiana State University, Department of Anthropology
Louisiana State University, Museum of Natural Science (Incomplete)

Northeast Louisiana University (Granted an extension until 12/31/97)
Northwestern State University of Louisiana, Department of Social Sciences, Williamson Museum(Incomplete)
State of Louisiana, Department of Culture, Recreation, and Tourism (Incomplete)
U.S. Department of Interior, National Park Service, Jean Lafitte National Historical Park and Preserve
West Baton Rouge Museum (No inventory submitted, stated reasons)

MAINE

Bowdoin College, Peary-Macmillian Arctic Museum and Arctic Studies Center
Maine Archaeological Society, Inc.(Incomplete)
Maine Historical Society
Maine State Museum
Pejepscot Historical Society
Spratt-Mead Museum
U.S. Department of Interior, National Park Service, Acadia National Park
University of Maine, Department of Anthropology (Incomplete)
University of Maine, Hudson Museum (Incomplete)
York Institute Museum

MARYLAND

Baltimore Museum of Art (No inventory submitted, stated reasons)
Maryland Historical Society (Incomplete)
Maryland Historical Trust, Archaeology Office
U.S. Department of Interior, National Park Service, Chesapeake and Ohio Canal National Historical Park

MASSACHUSETTS

Berkshire Museum (Incomplete)
Children's Museum (Incomplete)
Framingham Historical and Natural History Society
Fruitlands Museums
Harvard University, Peabody Museum of Archaeology and Ethnology (Granted an extension until 11/16/98)
Historical Society of the Town of Hampden, Inc. (No inventory submitted, stated reasons)
Marblehead Historical Society
Museum of Science, Boston (Incomplete)
Nantucket Historical Association (Incomplete)
Natick Historical Society and Museum
Old Dartmouth Historical Society and Whaling Museum (No inventory submitted, stated reasons)
Peabody Essex Museum (Incomplete)
Phillips Academy, Robert S. Peabody Museum (granted extenstion until 11/16/98)
Pilgrim Hall Museum, Pilgrim Society (Incomplete)
Plimoth Plantation
Smith College Museum of Art (No inventory submitted, stated reasons)
Springfield Science Museum (Incomplete)
Swansea Historical Society, Inc. (Incomplete)
U.S. Department of Interior, National Park Service, Cape Cod National Seashore
Wistariahurst Museum
Worchester Historical Museum

MICHIGAN

Alma College (Incomplete)
Central Michigan University, Center for Cultural and Natural History

Cranbrook Institute of Science (Incomplete)
Detroit Institute of Arts
Gardner House Museum (No inventory submitted, stated reasons)
Grand Valley State University (Incomplete)
Historic Charlton Park Village and Museum
Holland Historical Trust (No inventory submitted, stated reasons)
Jesse Besser Museum (Incomplete)
Kalamazoo Public Museum
Kingman Museum of Natural History (Incomplete)
Mackinac State Historic Parks (Incomplete)
Michigan Historical Center (Incomplete)
Michigan State University Museum
Michigan Technological University
Muskegon County Museum
Public Museum of Grand Rapids (Incomplete)
Romulus Historical Museum (No inventory submitted, stated reasons)
U.S. Department of Interior, National Park Service, Isle Royale National Park
University of Michigan Museum of Anthropology (Incomplete)

MINNESOTA

A.M. Chisholm, Duluth Children's Museum
Anoka County Historical Society (No inventory submitted, stated reasons)
Becker County Historical Society & Museum
Bemidji State University (No inventory submitted, stated reasons)
Brown County Historical Society
Goodhue County Historical Society (Incomplete)
Lyon County Historical Society (No inventory submitted, stated reasons)
Minnesota Indian Affairs Council
Minneapolis Institute of Arts (Incomplete)
Minnesota Historical Society (Incomplete)
Moorhead State University (No inventory submitted, stated reasons)
Science Museum of Minnesota
U.S. Department of Agriculture, Forest Service, Chippewa National Forest
U.S. Department of Interior, National Park Service, Grand Portage National Monument
U.S. Department of Interior, National Park Service, Voyageurs National Park
University of Minnesota, Minneapolis, Department of Anthropology
University of Minnesota, Duluth, Department of Pathology & Laboratory Medicine (Incomplete)
Walker Art Center (No inventory submitted, stated reasons)

MISSOURI

Central Missouri State University
History Museum for Springfield Greene County (Incomplete)
Kansas City Museum (completion pending approval)
Missouri Historical Society (Incomplete)
Southwest Missouri State University, Center for Archaeological Research
Still National Osteopahic Museum
U.S. Department of Interior, National Park Service, National Scenic Riverways
University of Missouri, Columbia (Incomplete)

MISSISSIPPI

Cobb Institute of Archaeology
Mississippi Department of Archives and History, Historic Preservation Division

Mississippi State University (No inventory submitted, stated reasons)
U.S. Department of Interior, National Park Service, Natchez Trace Parkway
U.S. Department of Interior, National Park Service, Vicksburg National Military Park
University of Southern Mississippi (Incomplete)

MONTANA

Beaverhead County Museum (No inventory submitted, stated reasons)
Historical Museum at Fort Missoula (No inventory submitted, stated reasons)
Miracle of America Museum, Inc.
Montana State University, Bozeman, Department of Sociology
Montana State University, Museum of the Rockies (Incomplete)
Peter Yegen/Yellowstone County Museum (No inventory submitted, stated reasons)
State Historic Preservation Office, Montana Historical Society (Incomplete)
U.S. Department of Agriculture, Forest Service, Custer National Forest (Incomplete)
U.S. Department of Agriculture, Forest Service, Kootenai National Forest
U.S. Department of Agriculture, Forest Service, Lolo National Forest (No inventory submitted, stated reasons)
U.S. Department of the Interior, Bureau of Reclamation, Great Plains Region
U.S. Department of the Interior, Indian Arts and Crafts Board, Museum of Plains Indian and Crafts Center
U.S. Department of Interior, National Park Service, Grand-Kohrs Ranch National Historic Site
U.S. Department of Interior, National Park Service, Grand Portage National Monument
U.S. Department of Interior, National Park Service, Little Bighorn Battlefield National Monument
University of Montana, Forensic Anthropology Collection (No inventory submitted, stated reasons)
Valley County Pioneer Museum (No inventory submitted, stated reasons)
Western Heritage Center (No inventory submitted, stated reasons)

NEBRASKA

Cass County Historical Society
Dawes County Historical Society, Inc. (No inventory submitted, stated reasons)
Furnas County Historical Society Museum (No inventory submitted, stated reasons)
Gage County Historical Society (No inventory submitted, stated reasons)
Hastings Museum (Incomplete)
Joslyn Art Museum (No inventory submitted, stated reasons)
Nebraska State Historical Society
Stuhr Museum of the Prairie Pioneer (Incomplete)
U.S. Department of Interior, National Park Service, Agate Fossil Beds National Monument
U.S. Department of Interior, National Park Service, Scotts Bluff National Monument
University of Nebraska-Lincoln, University of Nebraska State Museum
Western Heritage Museum (No inventory submitted, stated reasons)

NEVADA

Clark County, Department of Parks and Recreation
Nevada State Museum (Incomplete)
Truckee Meadows Community College

U.S. Department of Energy, Nevada Operations Office
U.S. Department of Interior, Bureau of Reclamation, Lower Colorado Regional Office
U.S. Department of Interior, Fish and Wildlife Service, Stillwater National Wildlife Refuge (Incomplete)
U.S. Department of Interior, National Park Service, Great Basin National Park
U.S. Department of Interior, National Park Service, Lake Mead National Recreation Area
U.S. Department of the Navy, Naval Air Station, Fallon (Incomplete)
University of Nevada, Las Vegas, Department of Anthropology
University of Nevada, Reno, Department of Anthropology (Incomplete)

NEW HAMPSHIRE

Hood Museum of Art, Dartmouth College
New Hampshire Division of Historical Resources
University of New Hampshire, Anthropology Program (Incomplete)

NEW JERSEY

Jersey City Museum (Incomplete)
Lambertville Historical Society (Incomplete)
Montclair Art Museum (Incomplete)
Morris Museum (Incomplete)
New Jersey State Museum (Incomplete)
Newark Museum
Princeton University (Incomplete)
Rutgers University, Geology Program (Incomplete)

NEW MEXICO

Carlsbad Museum and Art Center (Incomplete)
Folsom Museum, Inc. (No inventory submitted, stated reasons)
Historical Museum and Art Center (Incomplete)
Museum of New Mexico, Laboratory of Anthropology, Anthropology Laboratory and Museum of Indian Arts and Cultures
New Mexico Highlands University, Anthropology Laboratory
New Mexico State University Museum (Incomplete)
Salmon Ruin Museum, San Juan County Museum Association (Incomplete)
School of American Research (Incomplete)
U.S. Department of Agriculture, Forest Service, Santa Fe National Forest
U.S. Department of Agriculture, Forest Service, Southwestern Region
U.S. Department of the Army, White Sands Missle Range
U.S Department of Interior, National Park Service, Aztec Ruins National Monument
U.S. Department of Interior, National Park Service, Bandelier National Monument
U.S. Department of Interior, National Park Service, Carlsbad Caverns National Park
U.S. Department of Interior, National Park Service, Chaco Culture National Historical Park
U.S. Department of Interior, National Park Service, El Morro National Monument
U.S. Department of Interior, National Park Service, Fort Union National Monument
U.S. Department of Interior, National Park Service, Gila Cliff Dwellings National Monument
U.S. Department of Interior, National Park Service, Pecos National Historical Park
U.S. Department of Interior, National Park Service, Salinas Pueblo Missions National Historical Park
U.S. Department of Interior, National Park Service, Southwest Regional Office

University of New Mexico, Maxwell Museum (Incomplete)
Western New Mexico University

NEW YORK

Akin Hall Association (No inventory submitted, stated reasons)
American Museum of Natural History (Incomplete)
Brooklyn Children's Museum
Brooklyn Museum of Art (formerly the Brooklyn Museum) (Incomplete)
Buffalo & Erie County Historical Society (No inventory submitted, stated reasons)
Buffalo Museum of Science/Buffalo Society of Natural Sciences (Incomplete)
Buffalo State College
Cayuga Museum (Incomplete)
Chemung County Historical Society (Incomplete)
Cornell University
Fort Ticonderoga (Incomplete)
Fryer Memorial Library and Museum (No inventory submitted, stated reasons)
Geneva Historical Society
Hartwick College (Incomplete)
Historical Society of Rockland County (No inventory submitted, stated reasons)
Nassau County Department of Parks and Recreation
New York State Museum (Granted an extension until 11/16/98)
Old Fort Niagara (No inventory submitted, stated reasons)
Oneida County Historical Society
Pember Museum of Natural History
Roberson Museum
Rochester Museum and Science Center (Incomplete)
Rome Historical Society
Seneca Falls Historical Society
Skidmore College(Incomplete)
South Street Seaport Museum (No inventory submitted, stated reasons)
Southold Historical Society (No inventory submitted, stated reasons)
Staten Island Institute of Arts & Sciences (Incomplete)
State University of New York, Binghamton, Department of Anthropology
State University of New York, Buffalo, Department of Anthropology (Incomplete)
State University of New York, College at New Paltz, Department of Anthropology
Syracuse University, Department of Anthropology (No inventory submitted, stated reasons)
Tioga County Historical Society
U.S. Department of Interior, National Park Service, Statue of Liberty National Monument

NORTH CAROLINA

Appalachian State University, Appalachian Cultural Museum (Incomplete)
Belhaven Memorial Museum, Inc. (No inventory submitted, stated reasons)
Discovery Place Nature Museum (Incomplete)
Mint Museum of Art (No inventory submitted, stated reasons)
Schiele Museum of Natural History
U.S. Department of Interior, National Park Service, Blue Ridge Parkway
University of North Carolina at Chapel Hill, Research Laboratories of Anthropology
University of North Carolina at Charlotte, Dept. of Sociology, Anthropology and Social Work (No inventory submitted, stated reasons)
Wake Forest University, Archeology Laboratories
Wake Forest University, Museum of Anthropology (Incomplete)

NORTH DAKOTA

U.S. Department of Interior, National Park Service, Fort Union Trading Post National Historic Site
U.S. Department of Interior, National Park Service, Knife River Indian Villages National Historic Site

OHIO

Allen County Historical Society (Incomplete)
Allen County Museum
Cincinnati Art Museum (No inventory submitted, stated reasons)
Cincinnati Historical Society
Cincinnati Museum Center, Museum of Natural History & Science (Incomplete)
Clark County Historical Society
Cleveland Museum of Natural History
Cleveland State University, Department of Anthropology
Dayton Museum of Natural History (Incomplete)
Hardin County Historical Museums
Heidelberg College, Archaeological Laboratory
Ohio Historical Society (partial submission, Incomplete)
Ohio University, Department of Sociology and Anthropology
Sandusky Library, Follett House Museum
Sullivan-Johnson Museum of Hardin County
Toledo Zoological Society
U.S. Department of Energy, Fernald Environmental Management Project
U.S. Department of Interior, National Park Service, Hopewell Culture National Historical Park
University of Cincinnati, McMicken College of Arts and Sciences
University of Toledo
Western Reserve Historical Society (Incomplete)
Wood County Historical Society Museum (No inventory submitted, stated reasons)

OKLAHOMA

Gilcrease Museum (Incomplete)
Mabee-Gerrer Museum of Art
Oklahoma Historical Society
U.S. Department of the Army, Corps of Engineers, Tulsa District (Incomplete)
U.S. Department of the Army, 45th Infantry Division Museum (No inventory submitted, stated reasons)
U.S. Department of Interior, National Park Service, Chickasaw National Recreation Area
University of Oklahoma, Oklahoma Archeological Survey
University of Oklahoma, Oklahoma Museum of Natural History

OREGON

Benton County Historical Society
Clatsop County Historical Society
High Desert Museum
Lane County Historical Museum (Incomplete)
Pacific Northwest Museum of Natural History
Oregon Historical Society (Incomplete)
Oregon State University, Department of Anthropology
Southern Oregon Historical Society
U.S. Department of Agriculture, Forest Service, Malheur National Forest (No inventory submitted, stated reasons)
U.S. Department of Agriculture, Forest Service, Rogue River National Forest
U.S. Department of Agriculture, Forest Service, Winema National Forest (No inventory submitted, stated reasons)

University of Oregon Museum of Natural History

PENNSYLVANIA

Bryn Mawr College (No inventory submitted, stated reasons)
Bucks County Historical Society (No inventory submitted, stated reasons)
California University of Pennsylvania (Incomplete)
Carnegie Museum of Natural History (Incomplete)
College of Physicians of Philadelphia, Mutter Museum
Everhart Museum
Lackawanna Historical Society
Lehigh County Historical Society (No inventory submitted, stated reasons)
Lenni Lenape Historical Society, Museum of Indian Culture (No inventory submitted, stated reasons)
North Museum of Natural History and Science
Pennsylvania State University, Maston Museum of Anthropology (Incomplete)
Reading Public Museum (Granted an extension until 11/16/98)
State Museum of Pennsylvania
Temple University
Tioga Point Museum (Incomplete)
U.S. Department of the Army, Army Corps of Engineers, Pittsburgh District (Incomplete)
U.S. Department of Interior, National Park Service, Delaware Water Gap National Recreation Area
University of Pennsylvania Museum
Wagner Free Institute of Science (Incomplete)
Warren County Historical Society
Wistar Institute

RHODE ISLAND

Brown University, Haffenreffer Museum of Anthropology
Museum of Natural History (Incomplete)
Rhode Island Historical Society
Sydney L. Wright Museum, Jamestown Philomenian Library (Incomplete)

SOUTH CAROLINA

Charleston Museum
State of South Carolina, Department of Parks, Recreation, and Township (No inventory submitted, stated reasons)
U.S. Department of Energy, Savannah River Operations Office
University of South Carolina, Institute of Archaeology and Anthropology

SOUTH DAKOTA

Adams Museum (No inventory submitted, stated reasons)
Custer County 1881 Courthouse Museum (No inventory submitted, stated reasons)
South Dakota Historical Society
South Dakota State Archeological Research Center (Incomplete)
U.S. Department of Interior, National Park Service, Badlands National Park

TENNESSEE

Cheekwood Tennessee Botanical Gardens and Museum of Art (No inventory submitted, stated reasons)
Memphis Pink Palace Museum
State of Tennessee, Department of Environment and Conservation, Division of Archaeology (Incomplete)

Tennessee Valley Authority
U.S. Department of Interior, National Park Service, Big South Fork National River and Recreation Area
U.S. Department of Interior, National Park Service, Shiloh National Military Park
University of Memphis, Department of Anthropology (Incomplete)
University of Memphis, Chucalissa Museum (CH Nash Museum)
University of Tennessee, Chattanooga, Jeffrey L. Brown Institute of Archaeology
University of Tennessee, Knoxville (Incomplete)
University of Tennessee, Knoxville, Frank H. McClung Museum (Incomplete)
Vanderbuilt University (Incomplete)

TEXAS

American Cotton Museum, Inc. (No inventory submitted, stated reasons)
Baylor University, Strecker Museum Complex (Incomplete)
Brazos Valley Museum of Natural History
Corpus Christi Museum of Science and History (Incomplete)
Dallas Historical Society
Dallas Museum of Art (No inventory submitted, stated reasons)
Dallas Museum of Natural History (Incomplete)
Fort Concho National Historic Landmark (Incomplete)
Fort Worth Museum of Science and History
Hutchinson County Historical Museum
Layland Museum (Incomplete)
Museum of the Southwest (Incomplete)
Museum of Texas Tech University, Texas Tech University (Incomplete)
Panhandle-Plains Historical Museum
Red River Valley Museum (No inventory submitted, stated reasons)
Rice University, Department of Anthropology (Incomplete)
Scurry County Museum
Southern Methodist University, Department of Anthropology
Southern Methodist University, Fort Burgwin Research Center
Southwest Texas State University, Department of Anthropology
State of Texas, Fort Hood Archeological Laboratory
Sul Ross State University, Museum of the Big Bend
Texas A&M University, Department of Anthropology
Texas A&M University, Health Science Center (No inventory submitted, stated reasons)
Texas A&M University, Center for Environmental Archaeology (CEA)
Texas Department of Transportation, Cultural Resources Management (Incomplete)
Texas Historical Commission, State Agency for Historic Preservation
Texarkana Museum System (Incomplete)
U.S. Department of Interior, National Park Service, Alibates Flint Quarries National Monument
U.S. Department of Interior, National Park Service, Amistead National Recreation Area
U.S. Department of Interior, National Park Service, Big Bend National Park
U.S. Department of Interior, National Park Service, Guadalupe Mountains National Park
U.S. Department of Interior, National Park Service, Padre Island National Seashore
U.S. Department of Interior, National Park Service, San Antonio Missions National Historical Park
University of Texas, Austin, Texas Archeological Research Laboratory (Granted an extension until 11/16/98)
University of Texas at El Paso, The Centennial Museum(Incomplete)
University of Texas at San Antonio, Institute of Texan Cultures
Wilderness Park Museum
Witte Museum

UTAH

Brigham Young University, Museum of Peoples and Cultures (Incomplete)
College of Eastern Utah, Prehistoric Museum
Nora Eccles Harrison Museum of Art, Utah State University (No inventory submitted, stated reasons)
State of Utah, Department of Natural Resources, Anasazi Indian Village State Park
State of Utah, Department of Natural Resources, Edge of the Cedars/Goosenecks State Parks
U.S. Department of Agriculture, Forest Service, Manti-LaSal National Forest
U.S. Department of Agriculture, Forest Service, Unita National Forest
U.S. Department of the Army, Fort Douglas
U.S. Department of Interior, Bureau of Reclamation, Upper Colorado Regional Office
U.S. Department of Interior, National Park Service, Canyonlands National Park
U.S. Department of Interior, National Park Service, Capitol Reef National Park
U.S. Department of Interior, National Park Service, Zion National Park
Utah Field House of Natural History, Dept. of Natural Resources, State of Utah
Weber County Daughters of Utah Pioneers Museum (No inventory submitted, stated reasons)

VERMONT

Shelburne Museum (No inventory submitted, stated reasons)
State of Vermont, Agency of Development of Community Affairs, Division of Historic Preservation
University of Vermont, Robert Hull Fleming Museum

VIRGINIA

Association for the Preservation of Virginia Antiquities
Bayly Art Museum (No inventory submitted, stated reasons)
College of William and Mary, Department of Anthropology
Commonwealth of Virginia, Department of Historic Resources
Fredericksburg Area Museum and Cultural Center
Loudon Museum (No inventory submitted, stated reasons)
U.S. Department of the Army, Fort Pickett (No inventory submitted, stated reasons)
U.S. Department of Interior, National Park Service, Colonial National Historical Park
U.S. Department of Interior, U.S. Geological Survey (No inventory submitted, stated reasons)
Valentine Museum of the Life and History of Richmond (No inventory submitted, stated reasons)

WASHINGTON

Central Washington University (Incomplete)
Cheney Chowles Museum
Cowlitz County Historical Museum (Incomplete)
Ilwaco Heritage Museum (No inventory submitted, stated reasons)
Karshner Museum, Puyallup School District
King County Dept. of Public Health, King County Medical Examiner (Incomplete)
Seattle Art Museum
U.S. Department of Agriculture, Forest Service, Gifford Pinchot National Forest
U.S. Department of the Army, Seattle District, Corps of Engineers
U.S. Department of Energy, Richland Operations Office
U.S. Department of Interior, National Park Service, Fort Vancouver

National Historic Site
U.S. Department of Interior, National Park Service, Olympic National Park
U.S. Department of Interior, National Park Service, San Juan Island National Historical Park
U.S. Department of the Navy, Port Hadlock Detachment
U.S. Department of the Navy, Whidbey Island Naval Air Station
University of Washington, Department of Anthropology
University of Washington, Thomas Burke Memorial Washington State Museum (Incomplete)
Washington State Historical Society
Washington State University, Department of Anthropology
Western Washington University, Department of Anthropology
Whitman College Museum
Yakima Valley Museum and Historical Association

WEST VIRGINIA

Davis & Elkins College
Huntington Museum of Art (No inventory submitted, stated reasons)
Sunrise Museum (No inventory submitted, stated reasons)

WISCONSIN

Kenosha Public Museum
Lawrence University
Menominee County Historical Society (No inventory submitted, stated reasons)
Milwaukee Public Museum (Granted an extension until 11/16/97)
Mississippi Valley Archaeology Center, Univ. of Wisconsin, La Crosse
Neenah Historical Society (No inventory submitted, stated reasons)
Neville Public Museum
The Paine Art Center and Arboretum (No inventory submitted, stated reasons)
State Historical Society of Wisconsin, Division of Historic Preservation
State Historical Society of Wisconsin, Museum Division
U.S. Department of the Army, Fort McCoy Headquarters (No inventory submitted, stated reasons)
University of Wisconsin, Madison, Department of Anthropology
University of Wisconsin, Madison, Medical School (No inventory submitted, stated reasons)
University of Wisconsin, Milwaukee, Department of Anthropology
University of Wisconsin, Oshkosh (Incomplete)

WYOMING

Jim Gatchell Memorial Museum
Laramie Peak Museum (No inventory submitted, stated reasons)
Plains Indian Museum, Buffalo Bill Historical Center (Incomplete)
U.S. Department of the Air Force, F. E. Warren Air Force Base (No inventory submitted, stated reasons)
U.S. Department of Interior, National Park Service, Yellowstone National Park
University of Wyoming, Department of Anthropology (Incomplete)
Wyoming State Museum (No inventory submitted, stated reasons)

Bold = Complete
(Incomplete) = Incomplete letter sent
Plain Text = Yet to be reviewed

Back to the top

Back to National-NAGPRA

Written Testimony
of
Priscilla C. Grew
NAGPRA Coordinator
University of Nebraska-Lincoln
Lincoln, Nebraska 68588

Submitted August 11, 2000 to the
Committee on Indian Affairs
United States Senate

for the record of the hearing July 25, 2000 on the Implementation of the
Native American Graves Protection and Repatriation Act (P.L. 101-601)

Mr. Chairman, and Members of the Committee:
I am Priscilla Grew, NAGPRA Coordinator for the University of Nebraska-Lincoln. I have served as NAGPRA Coordinator for the University since July 1998. I was Vice Chancellor for Research for the University of Nebraska-Lincoln from 1993 to 1999, and I have held a concurrent appointment as Professor in the Department of Geosciences since 1993.

Thank you for the opportunity to submit written testimony for the record of your July 25, 2000 hearing on the Implementation of the Native American Graves Protection and Repatriation Act (P.L. 101-601).

In the course of implementing NAGPRA at the University of Nebraska-Lincoln, we have experienced substantial delays in processing our Notices of Inventory Completion in the Federal Register. In my testimony I wish to indicate the support of the University of Nebraska-Lincoln for the recommendations of the NAGPRA Review Committee made on April 4, 2000 in Juneau, Alaska to address the problem of these delays. We hope that your Committee will encourage the Department of the Interior to act on the Review Committee's recommendations in order to reduce regulatory delays in processing NAGPRA notices for the Federal Register.

The University of Nebraska-Lincoln has been working with tribes toward the repatriation of all the physical remains of over 1,700 Native American individuals that were present in the historic archaeological collections on campus at the time NAGPRA was enacted in 1990. Since 1990, we have conducted three repatriations of culturally affiliated remains and associated funerary objects: one to the Omaha Tribe of Nebraska, and two jointly to the Ponca Tribe of Nebraska and the Ponca Tribe of Oklahoma. We intensified our repatriation efforts in 1998 by convening four major tribal NAGPRA meetings on campus, entirely funded by the university, and by submitting revised inventory notices to the Park Service based on tribal input. Our 1998 notices fully updated the university's formal NAGPRA inventory of human remains and associated funerary objects originally filed with the National Park Service in compliance with the federal statutory deadline of November 1995.

Since the tribal meetings in 1998, we have published five routine notices for culturally affiliated remains and associated funerary objects and one notice for cultural items in the Federal Register, including one notice covering over 1,000 individuals. However, two large notices for remains claimed jointly by a group of 16 Great Plains tribes are still pending. We believe that these latter notices, if approved, will set a national precedent. To the best of our knowledge, we were the first university in the country to request repatriation of our entire archaeological collections of culturally unidentified remains that could not be determined under NAGPRA regulations to be distinctly affiliated with any single federally recognized tribe. Even after 10 years, final federal regulations are not yet in place that govern NAGPRA repatriation of culturally unidentified remains, so filings for such remains are still handled on a case-by case basis by the National Park Service. We decided to attempt repatriation of these remains in partnership with a large number of tribes with historic and/or prehistoric presence in the area of the present state of Nebraska.

On September 1, 1998 the University signed an agreement in Lincoln with representatives of 17 Great Plains tribes, including the tribes represented in repatriation matters by the North Dakota Intertribal Reinterment Committee of the Four Tribes of North Dakota. Since that agreement, one tribe has withdrawn, leaving the group of 16 tribes that we refer to as the "signatory tribes." At the meeting, the signatory tribes claimed all the previously culturally unidentified remains in our 1995 NAGPRA inventory, including undocumented remains from unknown locations, and those with documentation showing that they had been collected from the present area of Nebraska.

The 16 signatory tribes claiming these remains are: the Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; the Iowa Tribe of Oklahoma; the Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; the Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; the Omaha Tribe of Nebraska; the Pawnee Nation of Oklahoma; the Ponca Tribe of Nebraska; the Ponca Tribe of Indians of Oklahoma; the Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; the Santee Sioux Tribe of the Santee Reservation of Nebraska; the Winnebago Tribe of Nebraska; the Yankton Sioux Tribe of South Dakota; and the North Dakota Intertribal Reinterment Committee, which represents the Standing Rock Sioux Tribe of North and South Dakota; the Spirit Lake Tribe, North Dakota; the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; and the Turtle Mountain Band of Chippewa Indians of North Dakota.

We experienced a regulatory delay of 18 months in National Park Service review of our NAGPRA draft notice for the Nebraska group of 491 individuals that we submitted on September 30, 1998. The draft was returned with Park Service comments on March 27, 2000. We responded to the requests for revision and additional information, and submitted the revision on May 23, 2000. On July 7, 2000 we were notified that the Park Service requires additional documentation and revisions in the Notice as to how the remains were determined to be Native American. We are currently working on responding to this requirement. The second large notice, for the culturally unidentified remains, was also revised and resubmitted on May 23, 2000. After additional revisions requested by Park Service staff, a signed approval copy was faxed to the Park Service on June 30, 2000. As of August 10, it has not yet appeared in the Federal Register.

We believe that the Nebraska notice, when published, will be another national precedent for a university because it proposes repatriation of archaeologically documented culturally unidentified remains. The signatory tribes made their claim of shared group affiliation with the Nebraska remains by relying on the principles of shared aboriginal homelands and oral history. The University accepted their joint claim and endorsed the notice language proposed by the tribes, stating in our draft notice for the Federal Register that "all of the signatory tribes do consider these lands [the present state of Nebraska] as representing as a whole or in part their aboriginal homelands." Furthermore, the University acknowledged that the signatory tribes "have produced oral tradition evidence substantiating that there does exist a shared group identity" between these modern federally recognized tribes and the remains found by archaeologists in Nebraska, because tribal creation stories acknowledge "a common origin for all Indian people that recognizes their ancient kinship as one people before diversifying into several distinct cultural groups."

Tribal concerns about the unacceptable 18-month regulatory delay of the Nebraska notice within the National Park Service have been the subject of several newspaper articles in Lincoln, and the delay has strained our relationships with the signatory tribes with whom we are working to accomplish repatriation of Native American human remains under federal law. Comments made by the NAGPRA Committee members in Juneau indicate that such delays involving Federal Register notices have become a national problem, and that some tribes have had to wait two and three years for repatriation of their remains.

NAGPRA regulation is a highly complex task, so we join the NAGPRA Review Committee in urging the Secretary of the Interior and Congress to ensure that the NAGPRA program is administered by staff having "sufficient seniority, program knowledge, and experience in implementing the statute." The delay we experienced was in our view not caused by the NAGPRA program staff, but was imposed by National Park Service administrators.

If conflict were to be generated by our controversial notices, NAGPRA intends that such conflict is to be engaged once the Federal Register notice is published, and then the NAGPRA conflict resolution procedures go into effect pursuant to federal regulations. To delay the notice from even entering the public domain in the Federal Register is in our view contrary to the intent of the Act.

The apparent policy roadblock, which delayed the review of our draft notice for 18 months, may well have reflected the "administrative conflict of interest" within the National Park Service that was cited by the NAGPRA Review Committee in making its recommendations. The Park Service is simultaneously charged with regulating NAGPRA compliance by museums and universities, and with managing its own archaeological NAGPRA collections and NAGPRA remains from Park Service lands. The rationale of the Review Committee recommendations is to assure that no such potential conflict of interest affects the program. We concur with the Review Committee that it would be desirable to move the NAGPRA program unit out of the National Park Service entirely and into another administrative setting within Interior, so that NAGPRA regulation would be conducted closer to the level of the Secretariat.

Our experience with NAGPRA at the University of Nebraska-Lincoln has caused us to share the serious concerns about current NAGPRA implementation that have been cited by the NAGPRA Review Committee. We respectfully ask for your support in ensuring that the Review Committee's concerns and recommendations are addressed by the Department of the Interior in a timely manner. We strongly concur with the NAGPRA Review Committee that (1) the delays in processing repatriation notices in the Federal Register must be reduced; (2) the arrangements in Interior for the NAGPRA program must be kept free of administrative conflict of interest; and (3) Interior should expedite the rulemaking process for the disposition of culturally unidentified remains.

On behalf of the University of Nebraska-Lincoln, I thank the distinguished Chairman and Members of this Committee for your oversight of national NAGPRA implementation, and for your invitation for us to provide our perspective to the Committee in connection with your July 25 hearing. Please contact me if you would like me to provide additional information about NAGPRA compliance activities at the University of Nebraska-Lincoln.

TESTIMONY BEFORE THE
SENATE COMMITTEE ON INDIAN AFFAIRS
NAGPRA OVERSIGHT HEARING

SUBMITTED BY
TEX G. HALL, CHAIRMAN
FOR
THREE AFFILIATED TRIBES
MANDAN, HIDATSA AND ARIKARA NATIONS
AND FOR THE
GREAT PLAINS TRIBAL CHAIRMENS' ASSOCIATION

JULY 25, 2000

Nawah. Doh shad-ze, A gu wa gux dish. Mah be zagidz.

On this good day we have been given to speak with one another, I greet you like a relative by using your Hidatsa name, A gu wa gux dish, One Who Helps, and I have said, "Today is a good day." The people of the Three Affiliated Tribes, the Mandan, Hidatsa and Arikara Nations, thank you for holding this Oversight Hearing so that we can bring our concerns to you with a good voice.

I am filling in for our Chairman, the Honorable Tex Hall, who could not be with us today. Chairman Hall sends his regards to you, A gu wa gux dish, and his regrets that he could not attend today's hearing.

My name is Pemina Yellow Bird, and I have been one of my tribe's NAGPRA representatives since the law was passed. I am also a member of the North Dakota Intertribal Reinterment Committee; we have been working on issues related to the reburial of our relatives since 1985. For the last five years, I have been assisting tribes to organize regional, intertribal coalitions for the express purpose of utilizing NAGPRA' s mechanism for making joint, intertribal claims to our so-called "unaffiliated" remains.

As you know, A gu wa gux dish, we have our reasons for wanting to take **all** of our ancestral remains home: we love our relatives, we are grateful to them, we are here today because of them, and it does not matter to us how long ago they lived or died. If they are Native, if they were taken from our aboriginal homelands, they ***must*** be returned to the earth in a good way. That is the way our elders taught us, because we have a sacred responsibility to them, to protect them from further violation through aggressive scientific study, to restore peace to them. All of these teachings have been handed down to us for thousands of years, by the same human beings who, as we speak, are whirling all about us in this room, they have their arms around you and around me, they are pleading with us to help them. We are here to try to help them, to speak for them today.

The testimony we submit today, Senator, addresses five important topics. (1) We are concerned about increasing the funding levels to implement the Act, in particular funding for tribes to conduct their NAGPRA business, monies that are not controlled by the NPS or a museum or university. (2) We remain concerned about the inherent conflicts of interest with National Park Service staff simultaneously administering the law while having to comply with it, and changing the rules as they go along, to promote and support a
scientific research agenda. (3) We share and support the NAGPRA Review Committee's concerns raised in recommendations they issued after their Juneau, Alaska meeting in April of this year. (4) We remain concerned about the Smithsonian's solicitation and acceptance of thousands-of-years-old Native remains under the guise of conducting "forensic," destructive scientific studies on them, as if they were the victims of a prosecutable crime.

(5) Finally, we have an urgent concern about illegal, destructive studies of our so-called "unaffiliated" Native dead that are being conducted every day without the knowledge or permission of tribes, and our testimony today will focus on problems tribes are encountering in that area. As you know, the Act states that the NAGPRA Review Committee must make a recommendation as to what should be done with our "unaffiliated" ancestors, and Secretary Babbitt must make a final determination based on the Committee's recommendation. To our sorrow, however, tribes are discovering many instances where federal and state agencies, museums and universities have not waited for the Secretary's decision, and have made unilateral decisions on destructive study of our dead which are contrary to the law. It's as though the restrictions on study contained in the Act never happened; many have continued with their research agenda as though tribes never raised a voice against it. Today, we want to tell you of a chilling example of how scientists are ignoring tribes' wishes and the law and are circumventing the consultation process **which is in the law to protect the wishes of tribes.**

In our oral testimony today, we will focus on two of these issues, and will discuss the rest in our written testimony.

CONFLICTS OF INTEREST

Although we spoke of this issue in our testimony last April, Agu wa gux dish, and although there have been some changes in the national implementation of the Act since then, our Nations find that the change has not gone far enough, and we reiterate our request that implementation of the Act be removed entirely from the National Park Service. We ask you to consider the following:

More than one million federal dollars have been spent in the controversy surrounding the Ancient One, who is also known as Kennewick Man. **One million federal dollars**, with the U.S. Army Corps of Engineers writing the checks, and for what? For a lawsuit, for staff time, for destructive study, ostensibly to "prove" what that ancestor's descendants have been saying all along: that he's Native, and that he's their relative. Our Northern Plains tribes, with one million dollars, could have had ***all*** of our deceased ancestors and their property home by now, and restored to their rest. We can't get the Corps of Engineers to spend even a quarter of that amount protecting the sacred sites which cradle our ancestors' bodies along the shoreline of the Missouri River, yet over a million dollars have now been spent on one body alone! **Our tribe credits the involvement of the National Park Service with this incredible spending, and we assert that it was done in the name of promoting an almost renegade research agenda in full defiance of tribes' wishes as well as mandates in the Act.**

Attached to our testimony is a news article in which Frank McManamon, Departmental Consulting Archeologist for the NPS, states that the invasive, destructive study done on the Ancient One, "sets a new scientific precedent." A new precedent in the violation of the rights of tribes, maybe, but our Nation continues to insist, and no one has refuted us

yet, that there are no test methods available today which can conclusively establish tribal affiliation for a set of Native remains. Further, Mr. McManamon, by going to the national media with this statement, has announced very clearly what his agency's intentions are for ancient remains taken from our collective, aboriginal homelands, and we are worried, Members of the Committee. We are deeply worried that, through the Ancient One's violation and study, our sovereign Nations are being set up for identical, costly battles every time one of our ancient ancestors provokes the curiosity of the archeo-terrorists who will seemingly stop at nothing to regain control of our dead.

Our Nations add our voices to those of our relatives from Washington state because we feel for them; their fight is our fight because we know that the actions of the NPS and its staff will affect us and our ancestors, too.

We need your help, Senator, and that of the Committee, to make the law do what it was intended to do - to help us bring home all of our beloved ancestors and end their suffering. We cannot tolerate the manner in which federal employees, state agencies, museums and universities have declared an "open season" on our "tribally unidentifiable" ancestors for their destructive studies.

It is our Nation's position that the National Park Service and those members of the scientific industry who exploit our dead have arbitrarily reconfigured the rules which we all must follow, i.e., the Act itself. It is our position that federal employees within the National Park Service have willfully taken steps to protect and promote a research agenda not provided for in NAGPRA. We cannot have a federal agency simultaneously administer the law while supposedly complying with it - the money, the authority, **everything** must be transferred to an office within the Secretariat, preferably a department like the Office of Policy, Management and Budget, which does not manage federal lands, thereby eliminating an inherent conflict of interest in the treatment of our relatives. And the implementation of the Act for the National Park Service must be moved to an individual who is experienced and knowledgeable in NAGPRA and its programs, and who will not abuse the Act to protect a research agenda.

BUREAU OF RECLAMATION

Agu wa gux dish, there have been many, many attempts to circumvent the law, and we at Three Affiliated Tribes can provide you with one of the more shocking examples.

Attached to our testimony today is a certified letter postmarked July 5 of this year but dated May 31, that our Nation received from the Nebraska-Kansas Area Office of the Bureau of Reclamation informing us of three (3) things: (1) that they had removed from their "culturally identifiable" inventory the skull and jawbone of an individual taken from a known Pawnee, Arikara and Wichita village and placed it on their "culturally unidentifiable" inventory, (2) that eight sets of remains categorized as "Woodland," (an archeological time-period), had been declared by them to be "culturally unidentifiable,"

when everyone who's ever done Missouri River archeology knows that these remains are ancestral to the Mandan, Hidatsa, Crow and Pawnee, and that (3) two physical anthropologists, Douglas Owsley of the Smithsonian Institution and David Glen Smith wish to conduct destructive studies of all of these remains.

Instead of consulting with us in good faith, they told our sovereign Nation they would inform us of their decision whether to violate our ancestors with study **if we requested it in writing.** Instead of consulting with us on a government-to-government basis, they told us we had 30 days to respond to their letter, although there are no NAGPRA consultation deadlines for tribes, and although we received their letter five days after their illegal deadline had expired! Instead of working with us and treating us like human beings with human rights, the Bureau of Reclamation prefers to label our dead as "culturally unidentifiable," as though that classification confers limitless authority and control of these remains to BOR! **Our Nations had no opportunity to consult, to make a joint claim with other affected tribes, to even be aware of BOR's activities until it was too late.** To us, it feels like Reclamation believes they can help themselves to and dispense our dead as though they were the inalienable property of that federal agency, and we are outraged and appalled.

Agu wa gux dish, the Mandan, Hidatsa and Arikara Nations see this shameful act as a blatant challenge to our right to repatriate, rebury and protect our deceased ancestors. We view this as an act of arrogance - cruel arrogance toward our Nation, which has always openly opposed study of any kind on our relatives; arrogance of the law, of the NAGPRA Review Committee's authority to recommend treatment and disposition of "unaffiliated" Native dead, and of Secretary Babbit's authority in making final decisions on study of these Native remains.

Senator Inouye and Members of the Committee, this is what we meant when we said that federal agencies are making up the rules as they go along. Decisions on destructive study of our dead are being made by federal employees who are blatantly waving their research agendas in the faces of tribes who are known to oppose study of our dead. **If we were to accept what Reclamation has done, we would accept that Reclamation can, without consulting with our Nation, determine whether or not we are related to the remains in question, in violation of Sec. 5, (b) (1) (a), which states "inventories and identifications . . . shall be completed in consultation with tribal government . . . officials and traditional religious leaders."** Somewhere along the line, both the National Park Service and the Bureau of Reclamation have decided they do not need to follow the law and consult with all tribes who may have an interest in remains they currently possess, or wait for Secretary Babbitt's decision on study of our dead - it seems they have simply decided that as long as they declare our dead to be "tribally unidentifiable," they have unobstructed, unsupervised access to them.

Agu wa gux dish, what **can** we do? Can we **make** them consult us? Can we **make** them understand that sending us a letter with an illegal, arbitrary, ***expired*** deadline does not constitute consultation? Can we **force** them to treat us like sovereign Nations, made up

of fellow human beings, and make them sit down with us and talk to us? And if we could force them to do these things, what method would we use? Do we use our precious tribal dollars on lawyers and legal fees, and go to the courts, when we have elders still living in log houses with no running water and no electricity? We tribes worked hard for the passage of NAGPRA because we were told it would end our ancestors' suffering, and **because we were told it would keep us out of court**. But the law is being twisted away from its original intent to satisfy a political, scientific research agenda for those who can not accept the change in their status quo brought about by NAGPRA.

The time has come to stop this flagrant reinterpretation of the law to protect a research agenda by ignoring the protections to tribes granted in the statute. We respectfully ask you and the Senate Committee on Indian Affairs to communicate with the Bureau of Reclamation, and insist that they conduct the direct and meaningful consultations with our Nation which are required by the Act, and which trigger a protective mechanism for tribes. We ask that this directive take place before they violate our dead with destructive, new scientific studies, that is, if it is not already too late. We respectfully ask you and the Committee to direct the General Accounting Office to conduct an investigation into the widespread violation of requirements in Section 5 of the Act, which deals with consultation with tribes, as well as other NAGPRA violations you will hear about today.

We ask that you ensure that it is <u>our Nations</u> who make <u>all</u> decisions related to the treatment and disposition of <u>all</u> of our relatives, whether the science industry can tribally identify them or not. <u>We ask that you do this by communicating our concerns to Secretary Babbitt, whose responsibility it is to make the final decision regarding our ancestors' fate.</u>

<u>We are only asking for what is provided for in the law - we want to be consulted BEFORE scientific study decisions are deliberated by the keepers of our dead, so that we can protect them, so we can claim them and bring them home.</u> We cannot protect what we don't know about, and we won't know what federal agencies and institutions have or what they're doing with what they have, until they consult with us.

We only ask for justice for those who have no voice, so we can open the door to the Spirit World for them, one last time.

Agu wa gux dish, on behalf of the Mandan, Hidatsa, and Arikara Nations, I raise a heart full of thanks and praise for all that you do for us, and I say to you:

we duT dunst shtuT,
or
That's the way it always was
That's the way it is now
That's the way it will always be

ATTACHMENTS

1. Copy of May 31, 2000 letter and certified envelope with postmark of 7/5/00

2. Copy of news article with McManamon quote, "new scientific precedent"

3. Copy of former Chairman Tom Knife Chief, Pawnee Nation, sent to all federal agencies/institutions instructing them on Pawnee's opposition to all forms of study on Pawnee remains

4. Copy of the North Dakota Intertribal Reinterment Committee's official position, which embodies categorical opposition to all form of study on our relatives

5. Statement of Debra Harry, Director, Indigenous Peoples Council on Biocolonialism, NAGPRA Review Committee Meeting, 11-19-99, re: DNA studies of Native people.

United States Department of the Interior

BUREAU OF RECLAMATION
Great Plains Region
Nebraska-Kansas Area Office
P O. Box 1607
Grand Island, Nebraska 68802-1607

IN REPLY REFER TO

NK-500

MAY 31 2000

Pemina Yellow Bird
P. O. Box 1524
Belcourt ND 58316

Subject: Changes in the Bureau of Reclamation, Great Plains Region NAGPRA Inventory and Proposed Research on Culturally Unidentifiable Human Remains

Dear Ms. Yellow Bird:

This letter is a follow up to a letter the Bureau of Reclamation (Reclamation) sent the Pawnee Tribe of Oklahoma, the Three Affiliated Tribes, and the Wichita and Affiliated Tribes on January 15, 1998. In that letter, we announced that we were reassigning some of the human remains reported in the Great Plains (GP) inventory entitled *Inventory of Native American Human Remains and Associated Funerary Objects in the Possession or Control of the Great Plains Region of the Bureau of Reclamation considered Cultural Affiliated with the Northern Caddoan (Pawnee, Wichita, or Arikara)*. The human remains (a skull and jaw) reported as being from 25FT20, a known Central Plains Tradition site, were reassigned to a nonspecific 25FT– site designation that lacks a cultural affiliation The remains will be listed in Reclamation's inventory of culturally unidentifiable Native American human remains.

The letter also provided a research proposal from Dr. Douglas Owsley, Smithsonian Institution, to photograph and measure the skull of 25FT– and the partial remains of eight individuals from archaeological site 25FT21. Reclamation has determined that the remains from 25FT21 are most likely from the Plains Woodland period and are about 1,000 to 2,000 years old. These remains appear in our inventory of culturally unidentifiable remains.

In the letter, we asked the tribes to evaluate the rationale for the change in cultural affiliation and to provided their views on Dr. Owsley's research proposal. Reclamation has not received any written comments regarding the research request, nor were objections voiced in follow up phone conversations with tribal NAGPRA coordinators.

Dr. Owsley also has made an oral request, and is in the process of preparing a written proposal, to obtain carbon 14 dates from the 25FT– skull. Obtaining a carbon 14 date would require destroying about 10 grams of bone. The purpose of this request is to

provide a more accurate determination of the age of the remains. Dr. Owsley maintains this is particularly important given the possibility the collection is archaic or paleoindian (between 2,000 and 11,500 years old).

Dr. David Glenn Smith, University of California – Davis, also has requested permission to conduct destructive analysis on the 25FT– skull. He requests about 2 to 4 grams of bone from the skull in order to study the mtDNA in the bone. The result of this study can be used to address questions on the peopling of the Americas and movements of Native American populations within the Americas.

Since the human remains from 25FT– and 25FT21 are considered to be culturally unidentifiable, we are sending letters to the Apache Tribe of Oklahoma, the Arapaho Tribe of the Wind River Reservation, the Cheyenne-Arapaho Tribes of Oklahoma, the Kiowa Indian Tribe of Oklahoma, the Lower Brule Sioux Tribe, and the Northern Cheyenne Tribe informing them of the research requests and are asking them to provide us their views on all research requests We invite you to provide your written comments within 30 days.

Reclamation will decide whether to allow the research on the remains after all the parties involved have had the opportunity to respond with their opinions. We will provide a copy of the decision to the tribes upon request. Either Mr. Bill Chada or Dr. Myra Giesen will follow up this letter with a telephone call. Please mail your responses to: Bureau of Reclamation, Nebraska-Kansas Area Office, PO Box 1607, Grand Island NE 68802-1607.

We look forward to working with you and appreciate the time you take in preparing your statement on this matter. Meanwhile, please feel free to contact Mr. Chada at 308-389-4622, extension 219, or Dr. Giesen at 785-843-0160.

Sincerely,

Acting for Fred R. Ore
Area Manager

308 389 4622

cc:

Reclamation NAGPRA Coordinator
Attention: Myra Giesen (3612 West Timber Ct., Lawrence KS 66049-2149)

Land, Recreation, and Cultural Resource Office, Denver, CO
Attention: D-5300 (Edward Friedman, Federal Preservation Officer)

Regional Director, Billings, MT
Attention: GP-1130, Special Assistant for Native American Affairs, Billings
GP-2100 (Brad Coutant)

Consultation List

1. Robert Chapman, President
   Pawnee Indian Tribe of Oklahoma
   PO Box 470
   Pawnee OK 74058
   918-762-3621
   918-762-2389 FAX

2. Francis Morris, NAGPRA Coordinator
   Pawnee Indian Tribe of Oklahoma
   PO Box 470
   Pawnee OK 74058
   918-762-3621
   918-762-2389 FAX

3. Tex G. Hall, Chairman
   Three Affiliated Tribes (Mandan, Hidatsa, & Arikara Nation)
   PO Box 220
   Fort Berthold Reservation
   New Town ND 58763-9402

4. Elgin Crows Breast, NAGPRA Coordinator
   Cultural Preservation Office
   HC3 Box 2
   New Town, ND 58763

5. Pemina Yellow Bird
   PO Box 1524
   Belcourt ND 58316

6. Gary McAdams, President
   Wichita & Affiliated Tribes
   PO Box 729
   Anadarko OK 73005
   Phone: (405)247-2425
   Fax: (405)247-2430

7. Virgil Swift, NAGPRA Coordinator
   Wichita & Affiliated Tribes
   PO Box 729
   Anadarko OK 73005
   Phone: (405)247-2425
   Fax: (405)247-2430

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Kennewick Man sets key research precedent, expert says

Wednesday, April 26, 2000

By TOM PAULSON
SEATTLE POST-INTELLIGENCER REPORTER

The latest, and perhaps most tedious, stage in the ongoing scientific analysis of the 9,000-year-old, Native American skeleton known as Kennewick Man got under way yesterday at Seattle's Burke Memorial Washington State Museum.

The primary goal is to determine if DNA testing can be done on the bones to determine if they are linked to any modern tribes.

But one task has already been accomplished, if only by default. The lead government scientist on this controversial case said yesterday that he believes Kennewick Man has set a precedent that will force similar scientific study of any other disputed skeletal remains discovered in the future.

"Hopefully, that's the kind of precedent that will be set here," said

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Francis McManamon, chief archaeologist for the National Park Service and lead investigator representing the U.S. Department of the Interior.

REALLY
NOT FOR PARENTS!
CHAT, POLLS AND MORE!

But are not these the same bones that scientists were refused access to in 1996 by the federal government, which claimed them on behalf of local tribes opposed to scientific study of the remains? The scientists that sued for access to the bones have not yet been allowed to do any analysis.

It is the scientists appointed by the federal government doing the studying, and neither the tribes nor the scientists who filed suit are very happy about it.

"At first, the government wasn't going to allow any study of the bones," said Alan Schneider, the Portland attorney representing the scientists who filed suit. "If they had let us study it, the lawsuit would be over."

Jeff Van Pelt, a cultural resource manager for the Confederated Tribes of the Umatilla Indian Reservation, said the tribes feel hoodwinked by the Kennewick Man episode.

The tribes oppose studying the bones of someone they believe is an ancestor, Van Pelt said. They especially oppose taking samples and performing destructive analysis, such as DNA testing.

"This will set a damaging precedent," he said. "It's a precedent set to appease the scientific community."

When the ancient remains tumbled out of the Columbia River in July 1996, they were seized by the Army Corps of Engineers. The corps had planned to "repatriate" the remains to the tribes, as apparently required under the Native American Graves Protection and Repatriation Act of 1990.

The law states that any remains deemed Native American should be returned to the appropriate "culturally affiliated" tribe. After years of study amid the legal wrangling, the scientific team headed by McManamon has determined the remains are indeed Native American, at least as defined in law.

The goal of doing the DNA testing, he said, is to see if scientists can also find biological evidence showing the remains are Native American. While it is unlikely the DNA tests will be able to show any direct link with modern tribes, McManamon said they can still contribute to the body of evidence.

In addition to looking for adequate DNA samples by studying the collagen, a type of connective tissue in the remains, the scientists gathered at the Burke this week are looking for other evidence that could provide value in assessing cultural affiliation.

For example, an earlier assessment of the bones indicated the possible

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presence of ocher -- a pigmented mineral -- which might mean Kennewick Man was ceremonially buried after death.

The scientists are also studying fractures in the bones, rodent gnaw marks and other aspects of the remains.

Yesterday, in the basement of the Burke on the University of Washington campus, the scientists set out to do their best to answer these questions.

"R17-Charlie," said Dr. Phillip Walker of the University of California at Santa Barbara, an expert on taphonomy, the science of studying remains to determine lifestyles. "R17-Dog."

And on it went, all day yesterday, as the blue-ribbon team of experts on ancient Americans conducted a detailed inventory of each of the 380 bones. Numbers called out, repeated and logged.

"I wanted to scream, 'You sunk my battleship,'" joked Joseph Powell, a physical anthropologist at the University of New Mexico, referring to a board game based on coordinates.

P-I reporter Tom Paulson can be reached at 206-448-8318 or tompaulson@seattle-pi.com

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Pawnee Tribe of Oklahoma

P. O. Box 470
Pawnee, Oklahoma 74058
918/762-3621

May 4, 1994

Karl Reinhard
Department of Anthropology
University of Nebraska
126 Bessey Hall
Lincoln, Nebraska 68588-0368

Dear Dr. Reinhard:

I am writing to share some important concerns about your research involving human remains from the Central Plains and to fully inform you about the wishes of the Pawnee Tribe with regard to the appropriate treatment of our ancestral skeletal remains.

On the advice of our tribal historians and archeological consultants, the Pawnee Tribe has sought, since the late 1980's, the "Central Plains tradition" -- societies that dwelt in Nebraska and Kansas between AD 900 and 1400. This includes such groups as the Smoky Hill Phase, Upper Republican Phase, Nebraska Phase, Loup River (Itskari) Phase, St. Helena Phase, and the Steed-Kisker Phase. As you already know, we consider ourselves to also be descended from more recent groups known as the Lower Loup Phase and the Historical Pawnee.

Our tribal historian, Roger Echo-Hawk, has informed us that he recently came across a book, In the Wake of Contact: Biological Responses to Conquest (1994), which includes a chapter listing you and several of your graduate students (Karin Sandness, Christiana Miewald, and Sandra Barnum) among others, as co-authors (Chapter 6). This chapter describes destructive analysis (p. 69-70) which was conducted on human remains from "St. Helena Phase" skeletons.

We presume that at the time these tests were conducted, you either did not know of the Caddoan cultural affiliation of the St. Helena Phase, or you were unaware of our policy opposing destructive or invasive skeletal analysis of any kind on the bones of our ancestors. We request an apology from you and direct you to contact Karin Sandness, Christiana Miewald, and Sandra Barnum, sending them copies of this letter and asking them to issue us an apology. In any future publications (or reprints) involving the use of these data, we request that all of you include the following statement in the test, acknowledgements, or notes:

> The Pawnee Tribe registers an objection to unauthorized analysis involving physical damage or destruction of bone tissue from the remains of tribal ancestors. The invasive procedure/destructive analysis described here [specify if appropriate] was conducted without the approval of the Pawnee Tribe or other Caddoan governmental authority, and the author [specify if appropriate] was requested to issue an apology to the Pawnee tribe and to append this statement to this paper.

We further request that you contact any other students whose graduate work may have involved destructive analysis of Pawnee or Caddoan remains under your direction and provide them with a copy of this letter in order to fully apprise them of our concerns.

Should your planned repatriation research or University of Nebraska skeletal collections involve the use of destructive test or invasive techniques, please know that we hereby direct you to cease and desist from applying any such procedures to the groups of skeletal remains listed in the second paragraph of this letter.

Sincerely,

Tom E. Knife Chief
Vice-President
Pawnee Tribe

cc: Hugh Genoways, UN-L NAGPRA Coordinator
Thomas Meyers, UN-L Repatriation Project
Leslie Freund, UN-L Repatriation Project
LuAnn Wandsnider, UN-L Repatriation Project
Shelley Burgess, UN-L Repatriation Project
Walter R. Echo-Hawk
Roger Echo-Hawk
James Riding In
Pawnee Reburial Committee

POSITION OF THE NORTH DAKOTA INTERTRIBAL REINTERMENT COMMITTEE
OFFICIAL REPRESENTATIVES
OF THE TRIBAL GOVERNMENTS
OF THE
STANDING ROCK SIOUX TRIBE
TURTLE MOUNTAIN BAND OF CHIPPEWA
THREE AFFILIATED TRIBES
DEVILS LAKE SIOUX TRIBE

1. We are categorically opposed to the excavation, curation, and study of all Indian remains and grave goods found in our homelands. We submit that these activities are ethnocentric and extremely racist, and violate our religious beliefs.

2. We want released to us all excavated ancestors and their personal belongings taken from our homelands for immediate reburial on Indian lands.

3. We reject any arguments that scientific analysis must be done on remains to establish tribal identity and assert that we do not have to prove we are related to Indian remains taken from our homelands. We further submit that there is no scientific test available today which conclusively identifies Indian remains as to tribal origin, and that any such findings made by science are strictly of a speculative nature.

4. There will be no subsequent disinterment of reburied ancestors or their belongings taken from our homelands for further study in the future.

5. The bodies and belongings of our relatives are not the property of any individual, institution, or government.

Note: It was mutually agreed that the position of the North Dakota Intertribal Reinterment Committee would be attached to the MOA. This does not reflect the policy of Knife River Indian Villages National Historic Site, National Park Service and is not considered to be a part of, or incorporated into, the MOA.

Comments on the Draft Principles of Agreement of the NAGPRA Review Committee

By Debra Harry, Director,
Indigenous Peoples Council on Biocolonialism
Salt Lake City, UT - November 19, 1999

My comments are submitted on behalf of the Indigenous Peoples Council on Biocoloniàlism (IPCB), an organization dedicated to assist indigenous peoples in the protection of their genetic resources, indigenous knowledge, cultural and human rights from the negative affects of biotechnology.

The IPCB strongly encourages the Review Committee to protect the intent of NAGPRA, legislation designed to assist tribes in repatriating the remains of their ancestors, and other items, being held in museums around the country. Its purpose is not to accommodate the curiosity or interests of scientists.

It is clear from recent events including the proposed Hastings amendments to NAGPRA, the legal challenge to the repatriation of the one known as Kennewick Man, and several other cases, that the ultimate goal of a small sector of the scientific community is to secure freedom to do scientific study on so-called "culturally unidentifiable" remains. Most of the scientific interest is focused primarily on the oldest remains of our ancestors.

My comments are regarding Section C (3) (b) Guidelines for disposition of culturally unidentifiable human remains, and in particular relating to the inappropriate application of scientific research in determining cultural affiliation.

With regard to cranial research, several experts have researched cranial variation, and have found there to be diverse variation of ancient remains, without making unfounded and irresponsible assumptions of origins, such as in the Kennewick and Spirit Cave repatriation cases. Alan Goodman (Hampshire College, 1998) points out that racial variation in cranial form of prehistoric Native Americans is well attested from earlier studies. He says, "Hooten observed a number of markedly diverse cranial types, found in varying proportions at all periods." The point is that cranial variation is great, in nearly any population across time.

American Indian Ritual Object Repatriation Foundation

AN INTERCULTURAL PARTNERSHIP

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August 7, 2000

Senator Ben Nighthorse Campbell, Chairman
United States Senate Committee on Indian Affairs
838 Senate Hart Office Building
Washington, DC 20510

Dear Senator Campbell,

We are submitting this testimony for the record of the July 25, 2000 Senate Select Committee on Indian Affairs Oversight Hearing in order to express our concern regarding developments within the National Park Service and it's implementation of the Native American Graves Protection and Repatriation Act (NAGPRA)

The American Indian Ritual Object Repatriation Foundation was founded in 1992 as a non-federally funded intercultural partnership committed to assisting in the return of ceremonial material to the appropriate American Indian Nation, clan or family, and to educating the public about the importance of repatriation. Since inception we have assisted in repatriations of ceremonial material from private collections, dealers, auction houses, and corporations from every part of the country

Our work involves acting as a liaison between Native peoples and non-Native collectors, archaeologists, art dealers, and others holding Native American material. The intent of NAGPRA was to build bridges among these groups. In the past nine and a half years we have been witness to the birth of a new understanding and cooperation between Native peoples and those who currently hold collections of Native American material, both public and private NAGPRA has also set a standard in the international community for dealing with the cultural and religious rights of indigenous people.

However, over the years, we have witnessed a growing concern from many Native Nations, and Museums regarding the backlog of NAGPRA related business handled by the National Park Service. This backlog is hindering the expeditious repatriation of hundreds if not thousands Native American human remains and sacred objects and must be addressed

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Moreover, during this time we have seen a conflict of interest growing within the agency charged with the responsibility of implementing NAGPRA The recent reorganization of the internal operations of the Park Service dedicated to NAGPRA implementation has revealed that those responsible for NAGPRA implementation are not fully committed to the implementation of NAGPRA as intended by Congress This law, which was passed in response to a human rights crisis that was impacting the Native community, is increasingly being viewed through an archeological prism and the conflict between the National Park Service's internal operations and archeological interests and its national oversight responsibilities for NAGPRA compliance has never been greater. This conflict of interest is a threat to the proper implementation of NAGPRA

Thus, the American Indian Ritual Object Repatriation Foundation strongly endorses the recommendations made by the NAGPRA Review Committee on April 4, 2000 stating that:

> The committee recommends that the Secretary of the Interior place the NAGPRA administrative structure within the Secretariat of the Department of the Interior, rather than retaining it in the National Park Service, in order to address continuing concerns about administrative conflict of interest. The committee further urges the Secretary of the Interior to assure that the NAGPRA program is administered by staff having sufficient seniority, program knowledge, and experience in implementing the statute.

The NAGPRA Review Committee was created by NAGPRA and established by the Secretary of the Interior in order to mediate and resolve conflicts regarding repatriation on a case-by-case basis. Its members include Native Americans, scientists and museum professionals. Its concerns about Park Service administration must be taken seriously.

The recent refusal of a local Park Service official to follow Review Committee recommendations is an indication that the Park Service in not unbiased in regard to these issues. And when senior Park Service NAGPRA program officers with extensive experience and strong relationships with Native communities are shifted out of the program, only to be replaced by consultants with minimal experience, it is clear that the Interior-driven restructuring is not designed to improve the administration of NAGPRA from the perspective of those on whose behalf it was enacted – Native Americans

NAGPRA is not a perfect law and does not provide perfect answers to many of the complex problems raised by repatriation, but it has had an enormously positive impact. NAGPRA has established a process for the documentation, inventory, and repatriation of Native American human remains and sensitive materials. It has encouraged museums and Native Nations to work together and foster relationships based upon mutual understanding. The spirit of NAGPRA continues to be the human right of Native peoples to bury their dead respectfully, carry on their traditional religious practices and enjoy the same peace of mind that other Americans possess: that their ancestors will be free from unwanted disturbance and desecration.

In order for the administration of NAGPRA to be carried out properly, the American Indian Ritual Object Repatriation Foundation urges the Senate Select Committee on Indian Affairs to advocate the transfer of Fiscal Year 2001 dollars appropriated for NAGPRA's implementation from the National Park Service to the Department of the Interior's Departmental Secretariat. We also ask you to call for a General Accounting Office examination of the management of NAGPRA by the National Park Service.

The American Indian Ritual Object Repatriation Foundation thanks and recognizes the service, dedication and hard work of this Committee in its continuing role in advocating for the human rights of the indigenous peoples of the United States.

Submitted Respectfully,

Elizabeth Sackler, Ph.D.
President

SEMINOLE
TRIBE OF FLORIDA
anthropology & genealogy

August 3, 2000

United States Congress
Senate Committee on Indian Affairs
Attn.: Ms. Eleanor McComber
838 Hart Senate Office Building
Washington, DC 20510

Dear Ms. McComber:

The Seminole Tribe of Florida is a sovereign nation, and recognized as such by the government of the United States. As a representative of The Seminole Tribe of Florida, I wish to enter the following statement into the official record of the US Senate's Committee on Indian Affairs oversight hearings on the Native American Graves Protection and Repatriation Act (NAGPRA).

"The original premise of NAGPRA was the ostensible resolution of a cultural conflict of interests. The fact that the resolution was ostensible rather than real is the basis of the continuing conflict of interests that has given rise to these oversight hearings. Consequently, the resolution of these conflicts must turn on matters of culture, confirmed by law, rather than on cultural responses adjudicated by law.

For more than a century, archaeologists in the United States have reserved to themselves the right to assign culture and cultural affiliations to Native American material culture remains based solely upon the narrowest and most sterile of evidences. That is, without feeling the need to resort to, or rely upon, any form of consultation with the descendents of those very Native Americans whose ancestors produced the remains. This is cultural chauvinism of the most egregious sort.

Despite its ostensible aim – the recognition of Native American cultural primacy in the control and disposition of these Native American material culture remains, antithetical interests in the US scientific community, specifically the archaeological community, have used every political means at their disposal to forestall debate over this issue and to undermine the broad application of NAGPRA. By assigning the implementation of NAGPRA to the archaeological community within a political agency, the National Park Service (NPS), the US Congress unwittingly abetted this process. Some evidences of the patterns that make this process transparent are the following:

- the repeated willingness of the NPS to permit extensions in the compliance process;
- the unwillingness of the NPS to require compliance with the law from federal agencies, especially the US military and the US Corps of Engineers;
- the failure of the NPS to publish completed inventories, on the grounds of insufficient funding, coupled with the failure of the NPS to target sufficient funding as a priority budgetary issue;

Department of Anthropology & Genealogy
Seminole Tribe of Florida • 6300 Stirling Road • Room 421 • Hollywood, FL 33024 • 954.966.6300 phone • 954.967.3425 fax

- the chronic underfunding of Tribal historic preservation programs, coupled with the NPS's diversion of earmarked Tribal funds to its own administrative purposes;
- the obvious unwillingness of the NPS to follow the US Supreme Court's canons of treaty construction in the interpretation of NAGPRA, as demonstrated by their continuing recalcitrance on the issue of "culturally unidentifiable" human remains and the issue of Tribal consortia and the repatriation of Native American human remains by descendents in interest;
- the complicity of the NPS in the determination to seek DNA testing on Kennewick Man remains, in a setting where numerous of their own colleagues in the archaeological field have denounced such testing as inappropriate, ineffectual, and patently incapable of providing viable information, and where the burden of the cost of such testing upon the American taxpayer is insupportable, and where the appearance created by such actions is a transparent determination to thwart the stated desires of the Native descendents, all for the purpose of unwarranted scientific testing;
- and, finally, the abject failure of the NPS to exercise not only their legal but their fiduciary responsibility to preclude the national embarrassments occasioned by such controversies as those engendered by Kennewick Man and the White Swan debacle, and other instances in which agencies of the US government have chosen to place themselves above the laws of the United States.

The interests of both the Native Americans and the citizens of the United States would be served best by the removal of NAGPRA implementation from the NPS and its placement directly within the Secretariat. Further, the US government should demonstrate its own good faith by providing sufficient staffing and funding as to ensure the ability of the NAGPRA staff to implement the Act. Finally, the US government should move rapidly and decisively to increase funding for Tribal historic preservation programs. In this manner, the higher objectives of the Act and the greater good of all Americans would be served, as the US government would confirm its own commitment to an inclusive, pluralistic society. Finally, and above all, the actions of the US government to secure the implementation of the Act would make clear a national understanding of the cultural issues that constitute the parameters of this discussion. By accepting the rights of the Tribes to protect their own heritage actively, you affirm the inalienable rights of all nations to act in their own best interests, and reaffirm the position of the United States as the great protector of those rights."

Respectfully Submitted,

Patricia R. Wickham, Ph.D.
Director

cc: Mr. Bruce Babbitt
Secretary of the Interior of the United States

○