

# Committee on Resources

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## Testimony

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Testimony of Congressman Doc Hastings on H.R. 2893  
Committee on Resources, June 10, 1998

Mr. Chairman,

Thank you for the opportunity to testify before the Committee on my legislation to clarify the Native American Graves Protection and Repatriation Act of 1990, known as NAGPRA.

I first became aware of NAGPRA in 1996 when two students discovered a skeleton along the bank of the Columbia River in my district. Although the condition and characteristics of the bones appeared to be relatively modern, preliminary tests indicate that this skeleton is between 9,200 and 9,600 years old. Dubbed "Kennewick Man" in honor of the city in which it was discovered, it is one of the oldest skeletons ever found in the United States.

I read the initial reports of the extreme old age and unusual traits of this skeleton with interest. My curiosity was shared by scientists and the public, who were intrigued by forensic reports that the skeleton possesses characteristics not seen among any existing Indian tribes in the area. In fact, the bones are so different they were initially mistaken for a 19th Century settler.

Specifically, the Kennewick Man skull exhibits characteristics known as caucasoid. This does not necessarily mean that the 9,300 year old man is of European origin, since some very ancient racial groups in Asia also displayed these characteristics. Rather, the Kennewick Man is compelling evidence that the history of human settlement in North America is far more varied and complex than was once thought.

Within days of the skeleton's discovery, however, the U.S. Army Corps of Engineers announced plans to turn the skeleton over to representatives of Northwest Indian tribes for an immediate and secret burial. The Corps claimed that NAGPRA requires them to turn the bones over to any tribe from that geographic area which claims the Kennewick Man or similar remains. I was skeptical of this decision as were many of my constituents. How could the skeleton's ownership be determined before even basic questions such as its age and racial classification had been settled? A number of my colleagues in the Washington State Congressional delegation joined me in writing to the Army Corps of Engineers to request further study before the bones were lost forever. That's when the real shock came. The Corps of Engineers had made its decision without regard to empirical evidence and with no scientific study partly because informed decisions on these matters are actually discouraged under this federal law. Many legal experts -- including some supporters of NAGPRA -- believe that the act itself is at fault, in large part because it is so vague on the subject of very ancient remains of unknown origin.

That a tribe has a claim to the physical remnants of its own forebears certainly makes sense. But can and should the federal government grant any single group exclusive possession of ancient artifacts without even the most basic study to determine their origins? Many scientists certainly don't think so, and a number of prominent archaeologists and anthropologists have sued the Army Corps of Engineers for making its decision without adequate study. Furthermore, it's particularly troubling to me that NAGPRA assumes all

tribes will wish to treat physical remains and cultural items in the same way. Without more exacting standards of identification, we run the risk of granting one tribe authority to make decisions about another's cultural heritage.

After more than a year of considering these questions, and the diminishing likelihood that the federal courts could substantively change NAGPRA, I introduced legislation to amend the law. The goal of my bill (H.R. 2893) is to ensure that when a federal agency repatriates remains, we can be reasonably confident that the remains are affiliated with that particular tribe or group. Moreover, my bill is an attempt to balance the pursuit of knowledge about the past -- which could benefit all mankind regardless of race -- with respect for tribal beliefs. Specifically, my legislation makes the following changes to NAGPRA:

- Designates cultural affiliation based on sound science as the primary factor in determining ownership of human remains and cultural items. This addresses the problem of deciding custody based on geography, because in many cases multiple tribes were present in the same area over time.
- Permits scientific study of human remains to determine the cultural origin or to gather important cultural or historical information. The amount of study permitted depends on whether or not the remains have already been identified as belonging to a specific group. If cultural affiliation has already been determined, only one study may be done and only if it is expected to reveal significant new data. This provision limits study to 180 days.
- Ensures that basic information about all discoveries is recorded and published in the Federal Register. This recording requirement does not mandate destructive tests. Publication in the Federal Register means that tribes and other interested parties will no longer be dependent on direct notification from federal agencies to learn of new discoveries.
- Applies the changes in this bill only to discoveries on federal lands, while NAGPRA applies to discoveries on both federal and tribal lands. Tribal governments will not be required to take actions that may violate cultural mores or religious beliefs.
- Provides a mechanism for halting study when the benefits are outweighed by preservation or cultural concerns.

The changes to NAGPRA contained in H.R. 2893 would allow for scientific study appropriate to the relationship established between the remains and an individual or tribe, while continuing to show consideration and respect for Indian cultures. Furthermore, by clarifying the language in NAGPRA and balancing the interests of both sides, federal agencies such as the Army Corps of Engineers will be relieved of the more burdensome and controversial implementation responsibilities imposed by NAGPRA.

There is no doubt this legislation will further provoke what has already been a heated debate. This is only natural given the fact that NAGPRA was originally conceived and written in the context of human rights. However, this debate should not discourage Congress from revisiting NAGPRA and restoring a sense of balance and equal treatment to federal policy.

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