

STATEMENT OF DAN WENK, DEPUTY DIRECTOR, OPERATIONS, NATIONAL PARK SERVICE, U.S. DEPARTMENT OF THE INTERIOR, BEFORE THE COMMITTEE ON NATURAL RESOURCES, CONCERNING THE NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT.

OCTOBER 7, 2009

Mr. Chairman and members of the Committee, thank you for the opportunity to appear before you today to present the Department of the Interior's views on the implementation of the Native American Graves Protection and Repatriation Act.

The Native American Graves Protection and Repatriation Act of 1990 (NAGPRA), provides a process for determining the rights of lineal descendants, Indian tribes, and Native Hawaiian organizations to certain Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony.

The Department of the Interior and the several federal agencies and museums that have NAGPRA obligations take their responsibilities seriously. As a result of NAGPRA, thousands of Native American human remains, funerary objects, and other cultural items have been returned to tribes and Native Hawaiian organizations. Consultations between tribes, Native Hawaiian organizations, and federal agencies and museums, which occur as part of the NAGPRA process, result in better relations and have added to the body of knowledge of museum collections.

NAGPRA does not change ownership of items. Rather it asks the question of to whom do these items rightfully belong. Permits, granted by federal agencies for scientific study, confer access to human remains and cultural items for the accumulation of data, but do not transfer possession to the permittee.

Administration of NAGPRA

The Secretary of the Interior is responsible for implementing many of the provisions in NAGPRA under the statute. The Secretary must provide guidance to museums and federal agencies to assist them with their compliance requirements.

The National NAGPRA Program administered by the National Park Service conducts the following activities for the Secretary:

- publishing in the Federal Register inventory and repatriation notices for museums and federal agencies that indicate their decision to transfer control of remains or objects to tribes,
- creating and maintaining a database of Culturally Unidentifiable Human Remains,
- making grants to assist museums, tribes, and Native Hawaiian organizations in consulting on the determination of cultural affiliation and identification of cultural items, and to provide funding for travel and ceremonies associated with bringing ancestors and items home,

- providing support to the Assistant Secretary for Fish, Wildlife and Parks for investigating civil penalty allegations and preparing assessments of penalties on museums that fail to comply with provisions of the Act,
- establishing and providing support to the Native American Graves Protection and Repatriation Review Committee, which resolves disputes and aids repatriation,
- providing technical assistance in those instances where there are excavations and discoveries of cultural items on federal and Indian lands,
- drafting, promulgating, and implementing regulations, and
- providing technical assistance through training, the web, and reports for the Review Committee, as well as supporting law enforcement investigations of illegal trafficking.

The National Park Service also has compliance obligations for parks, separate from the National NAGPRA Program.

Federal Agency and Museum NAGPRA Obligations

Federal agencies and Indian tribes have NAGPRA responsibilities for the prompt disposition of Native American human remains and cultural items excavated or removed after November 16, 1990, when NAGPRA was passed. Notice of the disposition of NAGPRA items to tribes or lineal descendants is posted in newspapers, with copies sent to the National NAGPRA Program. To date, federal agencies have reported 85 dispositions.

NAGPRA requires museums and federal agencies to prepare summaries of their collections that may contain Native American unassociated funerary objects, sacred objects, and objects of cultural patrimony. They must also prepare item-by-item inventories of Native American human remains, with their associated funerary objects. The summaries provide notice to tribes and Native Hawaiian organizations of items of interest in a collection and invite consultation. There have been 1,551 summaries¹ and 460 statements of no summary required² submitted to the National NAGPRA Program. As a result of the summaries, 475 notices of intent to repatriate cultural items claimed by a tribe have been published accounting for 144,163 funerary objects, 4,301 sacred objects, 948 objects of cultural patrimony, an additional 822 objects that are both sacred and cultural patrimony and 292 undesignated items. Not all objects identified in a summary will meet a NAGPRA category or be subject to a claim.

Inventories provide clear descriptions of the cultural affiliation of the Native American human remains of the museum or federal agency and are to be followed within six months with Federal Register publication of a Notice of Inventory Completion that establishes the rights of tribes and Native Hawaiian organizations to request repatriation. There have been 1,043 inventories submitted to the National NAGPRA Program and 1,287 notices of inventory completion

¹ A summary is a description of Native American ethnographic items in a collection. Item by item inventories list human remains and their associated funerary objects.

² “No summary required” means a museum or federal agency has no Native American cultural items.

published, accounting for 38,656 Native American human remains and one million funerary objects.³

Consultation

Consultation with tribes by museums and federal agencies is central to the NAGPRA process, whether the circumstances arise from collections or new discoveries. The National NAGPRA Program website includes maps of current tribal lands, treaty areas with tribes, and areas of tribal aboriginal occupancy. These maps assist museums and federal agencies in determining present-day tribes that may have an interest in items from an area, so that they may be included in consultation efforts. The Consultation Database lists names and addresses of tribal contacts that can also be used as a starting point for consultation.

At the end of the NAGPRA consultation process, the museum or federal agency has the non-delegable duty to make a decision on cultural affiliation and to acknowledge and act on claims for cultural items. A NAGPRA inventory is the product of consultation. Museums that submitted inventories in 1995, but did not initially do consultation, have often gone back to consult with tribes on segments of the collection and update inventory decisions. NAGPRA grants are awarded for this purpose. There were 71 grant requests received this year for a total of \$4.3 million in requests. The full \$1.85 million available was awarded in 37 grants. From 1994-2009, 619 NAGPRA grants were awarded to museums, tribes, and Native Hawaiian organizations, totaling over \$33 million.

Database of Culturally Unidentifiable Native American Human Remains (CUI)

Museums and federal agencies prepare two inventories under NAGPRA. Those individual remains for whom cultural affiliation can be determined are listed on one inventory. If information is lacking to make a reasonable determination, the individual remains are listed on the inventory of culturally unidentifiable Native American human remains, the CUI inventory.

A public access database of CUI was launched in fall 2005 to assist in further consultation and identification. Currently there are the remains of 124,000 individuals listed on the database and 915,783 funerary objects associated with those remains. The number of CUI subsequently culturally identified, or transferred by a disposition to a requesting tribe, without cultural affiliation determination, is 8,136. Pending regulations will specify a process for disposition of CUI to tribes and Native Hawaiian organizations, without requiring requests for recommendations for disposition to be presented to the Review Committee which makes recommendations to the Secretary. Native Hawaiian organizations and federally recognized tribes can then take responsibility for care and reburial of the unidentified Native American remains removed from their graves.

We hope to launch soon a public access database of the culturally affiliated inventories, so that tribes and concerned parties can cross-reference the CUI and affiliated databases to assist in further identification of currently unidentifiable remains. Inventories can be amended at any

³ Large inventories may be reported in several different notices of inventory completion and be organized by a site or culture. Numerous notices may result from a single inventory.

time to reflect updated and more complete decisions. A Notice of Inventory Completion must be published in the Federal Register for all culturally affiliated human remains and associated funerary objects. A recent report from the National NAGPRA Program found the remains of over 1,000 individuals for whom cultural affiliation had been decided, but who were not in published notices.

Withdrawal of Notices

Compliance with the law requires publication of a notice in the Federal Register of a Notice of Inventory Completion and not merely submission to National NAGPRA of a draft document. Failure of a museum or federal agency to provide permission to publish a notice following completion of an inventory halts the repatriation process for the remains of the individuals listed in the inventory.

In spring 2004, there were over 300 drafts of notices submitted between 1996 and 2004 for which the museum or federal agency had not given the National NAGPRA Program permission to publish in the Federal Register. Beginning in 2005, the National NAGPRA Program sent letters to the originators asking that they move forward on abandoned drafts, even if they withdrew them to complete consultation. At this time, there are less than two dozen older drafts, and all are in active preparation for publication. New incoming notices are published within weeks of receipt. In FY 2008, the number of notices almost doubled from prior years to 180 and almost 200 notices have been published in FY 2009. The number of published notices is a reflection of the efforts of museums and federal agencies to consult with tribes and make decisions on cultural affiliation, repatriation of cultural items, and for disposition of the CUI. Abandoned drafts have been replaced with published notices.

Civil Penalties

NAGPRA allows for penalties to be assessed against museums that fail to comply with a number of aspects of the NAGPRA process. Regulations were promulgated in 1997 and, in 2006, the first NAGPRA civil penalties were pursued. To date 70 investigations have been completed and those museums found in violation have come into compliance.

Barriers to Implementation and Current Issues in NAGPRA

- **Curation:** There are issues of access and use of Native American human remains and cultural items that remain in museum and federal agency collections. If the remains are determined to be CUI, the federal agency or museum has determined that there is no federally recognized tribe or Native Hawaiian organization with which to consult on access or use.
- **Collections Audits:** The National NAGPRA Program does not audit federal agency or museum collections to determine that all Native American human remains and cultural items are listed on inventories or summaries. The National NAGPRA Program does not have the authority to survey NAGPRA obligated entities to determine the number of human remains repatriated. Accounting for federal agency collections in non-federal repositories is an agency responsibility. A Government Accountability Office study of federal agency compliance is pending.
- **NAGPRA only applies to those human remains and cultural items that a museum or federal agency determines are Native American.** The U.S. Court of Appeals for the Ninth

Circuit Court, in 2004, ruled that for remains to be deemed Native American there must be a general finding that the remains have a significant relationship to a presently existing tribe, people, or culture. This ruling has created confusion for museums and federal agencies that must make a threshold determination of Native American for ancient remains.

This concludes my prepared remarks. I would be happy to answer any questions that you or other members of the Committee may have.