

# **Native American Graves Protection and Repatriation Review Committee**

## **Report to the Congress for 2006**

### **Introduction**

**P**assage of the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA) marked a watershed in the long and often troubled relationship between Native Americans and many of this country's educational institutions, museums, and public agencies. NAGPRA provides for the disposition of Native American cultural items -- human remains, funerary objects, sacred objects, and objects of cultural patrimony -- removed from Federal or tribal lands to lineal descendants or Indian tribes or Native Hawaiian organizations based on geographic or cultural affiliation. NAGPRA also prohibits trafficking of Native American cultural items. Lastly, NAGPRA provides for the repatriation of Native American cultural items in museum and Federal agency collections to lineal descendants or culturally affiliated Indian tribes or Native Hawaiian organizations.

**NAGPRA** directs the Secretary of the Interior to establish and maintain the Native American Graves Protection and Repatriation Review Committee to monitor and review the summary, inventory, and repatriation requirements of the Act. The Review Committee operates in accordance with the Federal Advisory Committee Act and a charter issued by the Secretary of the Interior. The Review Committee's actions and findings are advisory, although they may be admissible in court proceedings.

**T**his report is prepared and submitted to Congress, as required by NAGPRA, to identify progress made and barriers encountered in implementing the summary, inventory, and repatriation requirements of the Act.

### **Review Committee Activities**

**T**his report summarizes the Review Committee's activities for calendar year 2006. The Review Committee convened three times during the reporting period: March 2 teleconference; May 30-31 in Juneau, AK; and November 3-4, 2006 in Denver, CO.

**S**ix of the seven members continued to serve on the Review Committee during calendar year 2006. Members appointed from nominations received from national museum organizations and scientific organizations were Garrick Bailey, Dan Monroe, and Vincas Steponaitis. Members appointed from nominations received from Indian

tribes, Native Hawaiian organizations, or traditional religious leaders were Willie Jones and Rosita Worl, with one vacant position filled by Donna Augustine in October. The seventh member, appointed from a list of persons developed and consented to by all of the other members of the Review Committee, was Colin Kippen.

The Review Committee's activities are prescribed by the Review Committee's charter and the Act. During calendar year 2006 the Review Committee –

- Monitored the inventory and identification process conducted by museums and Federal agencies, including a detailed report on compliance by Federal agencies;
- Attempted to facilitate the resolution of a dispute between the White Mountain Apache Tribe and the Field Museum;
- Monitored the completion of the inventory of culturally unidentifiable human remains;
- Made recommendations regarding the disposition of culturally unidentifiable human remains from Utah and South Dakota;
- Consulted with representatives of the Secretary of the Interior regarding proposed regulations for the disposition of unclaimed cultural items (43 CFR 10.7); and
- Consulted with Indian tribes, Native Hawaiian organizations, museums, and Federal agencies on inventory, identification, and repatriation activities.

## **Progress Made**

**M**ost museums and Federal agencies appear to have carried out the provisions of NAGPRA in good faith.

**S**ection 5 of the Act requires all museums and Federal agencies that have possession or control over Native American human remains and associated funerary objects to compile inventories of such items in consultation with Indian tribes and Native Hawaiian organizations. As of December 31, 2006, inventories had been completed by 550 museums and 266 Federal agencies.

**S**ection 6 of the Act requires all museums and Federal agencies that have possession or control over collections that may contain unassociated funerary objects, sacred objects, or objects of cultural patrimony to complete summaries of such collections. As of December 31, 2006, summaries had been completed by 772 museums and 287 Federal agencies.

**S**ection 7 of the Act requires all museums and Federal agencies to repatriate human remains, funerary objects, sacred objects, and objects of cultural patrimony upon the request of known lineal descendants or culturally affiliated Indian tribes or Native Hawaiian organizations. While the number of actual repatriations is not monitored, notices published in the Federal Register provide a measure of museums and Federal agencies that have agreed to repatriate cultural items. As of December 31, 2006, museums and Federal agencies had published 950 notices of inventory completion accounting for the remains of 32,054 individuals and 669,977 associated funerary objects. Museums and Federal agencies had also published 353 notices of intent to repatriate accounting for 118,261 unassociated funerary objects, 3,584 sacred objects, 296 objects of cultural patrimony, and 764 cultural items that fit both the sacred and cultural patrimony categories.

**I**n 2006, the database of Native American human remains that have been determined to be culturally unidentifiable and associated funerary objects was made was updated on the Web. This database was compiled on behalf of the Review Committee pursuant to 43 CFR 10.10 (g). The database includes information on 118,400 Native American human remains and 828,641 associated funerary objects inventoried by 627 museums and Federal agencies. Among the human remains included here are 3,626 that have been affiliated or transferred since they were first inventoried as culturally unidentifiable. Corrections, updates, and additions to this database will be made as museums and agencies continue to verify the data that have been entered, or submit revised inventories.

## **Barriers Encountered**

**R**eview Committee is very concerned about the costs of compliance. These costs include documentation, consultation, travel, and the transfer of cultural items. Most of these costs are borne by museums, Federal agencies, and tribes. The National NAGPRA Program administers a competitive grant program to assist in funding some of these activities, and the funding for this program has not increased since FY1996. The National NAGPRA Program anticipates awarding grants in FY2007 totaling approximately \$2 million. This amount is only about 54% of what the applicants requested this year. The Review Committee strongly endorses the effectiveness of NAGPRA grants. Also, the Review Committee continues to be concerned that annual shortfalls in overall program funding are made up at the expense of grant awards. This shortfall totaled some \$500,000 in FY2006. With the advent of the culturally unidentifiable database placing information in the inventories on-line and accessible to tribes, it is anticipated that there will be a resurgence of consultation activity on a large scale, putting additional pressure on the grants program.

**M**ore than 15 years after NAGPRA's passage, three key sections of the implementing regulations are still pending. Currently, the proposed rules for disposition of culturally unidentifiable human remains (43 CFR 10.11) are under review within the Department of the Interior. In addition, rules on the disposition of unclaimed human remains, funerary objects, sacred objects, or objects of cultural patrimony (43 CFR

10.7) are still in development, with ongoing consultations. Work on 43 CFR 10.15(b), failure to claim where no repatriation or disposition has occurred, has not yet begun, pending completion of the other rules. The Review Committee believes it is of utmost importance that these rules be completed and implemented as soon as possible. We are particularly concerned that the draft rule for 43 CFR 10.11 has still not been approved; it has been seven years since the committee made its final recommendations.

**T**he Review Committee is concerned that overall Federal agency compliance with NAGPRA has been uneven, difficult to measure, and lacking in transparency despite the huge role Federal agencies play in implementing the terms of the Act. This lack of accurate information about the status of Federal agency compliance makes it difficult to know whether these Federal agencies are meeting their responsibilities to the stakeholders under the Act and impedes the oversight functions envisioned for the Review Committee when the Act was created. This lack of data also makes it impossible to meaningfully evaluate whether the requisite constitutionally mandated government-to-government relationship between Federal agencies and Indian tribes is occurring through the consultation provisions contained within the Act and its related administrative rules.

**T**he committee is encouraged by the organized manner in which civil penalties investigations are proceeding since publication of the final rule on civil penalties (43 CFR 10.12). The committee is concerned, however, that there is a substantial backlog of cases in need of investigation, substantiation, and disposition, and that the present investigator is assigned at the rate of only 10 hours per week. The committee believes that this investigator should be assigned full-time to NAGPRA cases while not decreasing existing funding for enforcement of the Archaeological Resources Protection Act (ARPA).

**T**he ability to rebury as close to the original interment site as possible is an issue of great importance to many Native Americans. Since many of the human remains subject to NAGPRA originate from burials on Federal lands, agencies' reburial policies often determine whether a repatriation can be fully satisfactory. Unfortunately, there is no uniform Federal policy on reburial. The Review Committee recommends that a uniform reburial policy on Federal lands be developed in consultation between Federal agencies and Indian tribes and Native Hawaiian organizations, and adopted.

**A**s a key piece of human-rights legislation, NAGPRA has played an essential role in empowering Native American communities to recover culturally important items from Federal agencies and museums. In so doing it has helped to right past wrongs, and has also fostered new, more productive relationships between Native communities and these agencies and museums. NAGPRA has led to many successes, but its future success depends on continued support from Congress, particularly in overcoming some of the barriers identified above.

## Recommendations

Authorized by the Native American Graves Protection and Repatriation Act [25 U.S.C. 3006], the Native American Graves Protection and Repatriation Review Committee has served since 1992 to monitor and review implementation of the Act. At its April 19-20, 2007, meeting, the Review Committee made the following recommendations:

- 1. Costs to Comply with NAGPRA.** The Review Committee recommends that Congress appropriate the following amounts for FY2008 to ensure continued implementation of the Act:
  - At least \$4.1 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 Review Committee also recommends that the President request the same amounts listed above in the FY2009 budget proposal.

- 2. Definition of Native American.** The Review Committee recommends strongly that Congress amend the definition of "Native American" at 25 U.S.C. 3001 (9) by adding the words "or was" so that it reads: "Native American" means of, or relating to, a tribe, people, or culture that is, or was indigenous to the United States."
- 3. Government Accountability Office (GAO) Study and Congressional Oversight Hearings.** The Review Committee recommends that the Congress immediately call for a GAO study to assess and evaluate the compliance of each and every Federal agency with the provisions of NAGPRA and for Congressional oversight hearings on this subject. The Review Committee also recommends that the GAO consult with the Review Committee and the National NAGPRA Program staff before designing and implementing this study.

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

## **Native American Graves Protection and Repatriation Review Committee Members**

### **Donna Augustine**

term 2006-2010

nominated by Aroostook Band of Micmac Indians of Maine, Houlton Band of Maliseet Indians of Maine, Passamaquoddy Tribe of Maine, and Penobscot Tribe of Maine

### **Garrick Bailey**

term 2001-2006

nominated by American Anthropological Association

### **Alan Goodman**

term 2007-2011

nominated by American Anthropological Association

### **Willie Jones** (traditional religious leader)

term 2004-2008

nominated by Lummi Tribe of the Lummi Reservation, Washington

### **Colin Kippen**

term 2005-2009

nominated by concurrence of other committee members

### **Dan Monroe**

term 1992-1997

nominated by American Association of Museums and Museum Trustees Association

term 2004-2008

nominated by American Association of Museums

### **Vincas Steponaitis**

term 2004-2008

nominated by Society for American Archaeology

### **Rosita Worl**

term 2001-2006

nominated by Huna Heritage Foundation

*chair 2004-present*



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**National NAGPRA**

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This report was prepared by the Native American Graves Protection and Repatriation Review Committee and edited and produced by the National Park Service's National NAGPRA Program.

**National NAGPRA** carries out certain responsibilities for the Secretary of the Interior and Assistant Secretary for Fish and Wildlife and Parks related to implementation of NAGPRA. One of these duties is to provide administrative and staff support to the Review Committee.

**Statements, views, and recommendations** in this report are those of the Review Committee and should not be interpreted as representing the opinions of the U.S. Government.

**Send inquiries** about this report to:

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May, 2007