

**NATIVE AMERICAN GRAVES REPATRIATION PROTECTION ACT
DIALOGUE
REGARDING THE DISPOSITION OF UNCLAIMED CULTURAL ITEMS**

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The consultation meeting was designed to address dialogue between Indian Tribal Representatives and Representatives of Museums and Institutions. The meeting was set up to address questions listed in the Federal Register Volume 72, No.155, published August 13, 2007, emphasizing the *Consultation and Dialogue on Regulations Regarding the Deposition of Unclaimed Native American Human Remains, Funerary Objects, or Objects of Cultural Patrimony Excavated or Discovered on Federal Lands or Tribal Lands After November 16, 1990, Pursuant to Provisions of the Native American Graves Repatriation and Protection Act*. The session was attended by approximately 22 American Indian individuals representing 13 Indian Nations. Museums and institutions were represented by five individuals representing the Society for American Archeology, the Colorado State Historical Society and the University of Colorado Museum at Boulder.

Participants in the consultation meeting were asked to comment on the following issues:

- 1) How should the regulations address the distinctions between:
 - a) human remains, funerary objects, sacred objects, or objects of cultural patrimony remaining in federal care for which ownership or control is with the lineal descendent or an Indian tribe or native Hawaiian organization on whose lands the cultural items were discovered?
 - b) human remains, funerary objects, sacred objects, or objects of cultural patrimony remaining in federal care for which an Indian tribe or Native Hawaiian organization has stated a claim based on cultural affiliation, aboriginal land, or cultural relationship?
 - c) human remains, funerary objects, sacred objects, or objects of cultural patrimony remaining in Federal care for which a non-federally recognized Indian group has stated a claim based on a relationship of shared group identity?
 - d) human remains and associated funerary objects remaining in federal care for which no claim has been made?

- 2) Do current regulations regarding the curation of Federally-owned and administered archeological collections (36 CFR 79) adequately address the management, preservation, and use of human remains, funerary objects, sacred objects or objects of cultural patrimony remaining in federal care?

Recommendations:

1. For those remains with lineal descendants on or off of tribal land it was stressed by tribal representatives that the care of these remains should be addressed in full consultation with the tribes and any further analysis should be addressed only with tribal consent. Tribes should have access to all burial records regardless of where they originate from. The Salt River Pima Maricopa Indian Community recommended that control must remain with that group and they must determine proper and respectful deposition of remains, funerary objects, sacred objects or objects of cultural patrimony.
2. For those remains where there has been a claim based on either cultural affiliation, aboriginal land or cultural relationship consultation with the tribes must take place and further analysis of those remains with tribal consent only. Tribes should have access to all burial records regardless where they originate from. Tribal representatives also stressed that when cultural affiliation has been established tribal regional representatives delegate a lead tribe to address consultation. An example was given from Colorado where consultation of cultural affiliation and shared group identity has resulted in reburial for tribes in Colorado with the Ute Mountain Ute Tribe delegated as the lead tribe in the region. According to Colorado tribal representatives, memorandums of understanding and agreement make the consultation process easier between states, universities and the tribes. A similar situation was presented by the Great Basin NAGPRA Coalition in Nevada where in the Truckee Meadows a joint use area by Great Basin Tribes where burial remains were found the Reno-Sparks Colony was delegated as the tribal regional representative due to the close proximity of where the remains were found. An example was brought forth in the Great Basin case that to follow proper burial procedures required long tedious meetings with federal agencies which at times results in splitting the tribes in negotiating who has the greater rights to the remains. It was also stressed that from a traditional perspective it is hard to understand ownership according NAGPRA language. It was stressed that the concept of ownership is difficult for traditionalists to comprehend meanwhile museums and universities embrace the concept of ownership. Another major viewpoint was emphasized by tribal representatives that it is difficult to conduct research to determine cultural affiliation without economic and human resources.
3. From the perspective of the tribal representatives, if there is no claim the treatment of these remains must be treated with utmost respect (no consultation due to lack of claim or ownership). From the perspective of the Society for American Archeology there should be no statute of limitations on NAGPRA claims. Curation should continue in accordance with applicable law unless/or until a lineal descendent or group authorized by NAGPRA directs otherwise. All parties should be encouraged to communicate with applicable institutions regarding their rights and interests, however, in order to reduce the risk of other claimants with lesser rights obtaining repatriation due to an institutions lack of knowledge of the existence of higher-level rights holders.

4. Tribal leaders were in consensus that when an Indian tribe or Native Hawaiian organization has stated a claim based on cultural affiliation, aboriginal land or cultural relationship the remains must be housed in accordance with specifications determined through consultation with the culturally affiliated group until the culturally affiliated group makes a decision regarding permanent disposition. If the culturally affiliated tribe does not wish to repatriate the remains, funerary objects, objects of cultural patrimony, or sacred objects, the culturally affiliated group must be consulted on proper and respectful housing for the remains or objects.
5. In response to when a non-federally recognized Indian group states a claim based on a relationship of shared group identity the Salt River Pima Maricopa Indian Community (SRPMIC) stated that non-federally recognized groups share cultural affinity with remains or objects. The remains must be housed in accordance to specifications determined through consultation with the culturally affiliated group (regardless of federal status of the tribe) until a decision regarding permanent disposition can be reached. Consensus was reached by tribal representatives that the position of the SRPMIC that asserts that the remains or objects should be repatriated to the lineal descendent or an Indian Tribe or Hawaiian organization most closely affiliated with the remains for appropriate care and handling regardless of the federal status of the tribe or group. If the culturally affiliated group does not wish to repatriate the remains funerary objects, objects of cultural patrimony or sacred objects, the culturally affiliated group must be consulted on proper and respectful housing for the remains or objects. Here again the tribes stressed the importance of delegating tribal regional representatives to address shared group identity and cultural affiliation especially after it has been established.
6. In the discussion for which no claim has been made the SRPMIC emphasized recognition and respect for all human remains, funerary objects, sacred objects, and objects of cultural patrimony have spiritual energy associated with the cultural and religious beliefs of Native American people and humanity as a whole. The tribes by consensus acknowledged that many tribes do not have information or resources necessary to receive remains or other collections and may not be able to place a claim. There was also detailed discussion that strongly emphasized that, federal agencies, institutions, universities, and states must consider the inherent sovereignty of Native American people which pre-dates existing laws. There is also a need to discuss what is true consultation regarding the diversity of traditional based knowledge. In regard to the care for human remains, funerary objects, sacred objects and objects of cultural patrimony that have not yet been claimed it was strongly recommended by the tribes that all human remains and potential human remains deserve and are treated with respect and dignity at all times. “Respect and dignity” include the following aspects of treatment.
 - Avoidance of separation of human remains from associated funerary objects.

- Avoidance of any unnecessary disturbance and avoidance of unnecessary handling of human remains and funerary objects.
- Under all circumstances transport of human remains must be minimized.
- Avoidance of physical modifications of human remains and associated funerary objects.

7. The following question was posed by the tribes. Do current regulations regarding the curation of federally owned and administered archeological collections [36 CFR 79] adequately address the management preservation and use of human remains, funerary objects, sacred objects or objects of cultural patrimony remaining in federal care? The SRPMIC took the lead in the discussion and recommended amendment of the current regulations regarding the curation of federally owned and administered archeological collections[36 CFR 79] to adequately address management, preservation and “use of human remains funerary objects, or objects of cultural patrimony remaining in federal care.

- The SRPMIC recommended and drew consensus from the other tribes that the term “owned” should not be used because human beings cannot be owned. The tribes agreed that the term currently used by the SRPMIC and four tribes in Arizona “house/housed” to describe human remains, funerary objects, sacred objects, and objects of cultural patrimony remaining in federal care was better than the term “owned.”

Under section 79.5 (Management and preservation of collections)

- Consensus among tribes was drawn that regulations should include provisions on the treatment of collections to reduce unnecessary handling and disturbance of sensitive collections prior to repatriation, or in the case of existing collections for which there has not been a claim or in cases of “culturally unidentified” remains.
- Human remains and funerary objects that are in federal care should be kept separate from all other collection materials, and should not be subjected to public viewing to protect against harm caused by unprotected exposure, and to minimize disturbance of remains.
- Human remains and funerary objects should not be separated and burials that are associated should be kept together to maintain spiritual connections that may be present.
- Under all circumstances transport of human remains will be minimized to prevent further disturbance of displaced burials or cremations.
- Avoidance of physical modifications of human remains and associated funerary objects for any purpose. This includes archeological processing of human remains and associated funerary objects. For example washing of human remains or funerary objects is prohibited because it constitutes unnecessary disturbance.
- Sacred objects and objects of cultural patrimony should not be housed with funerary objects and other collections.

Under Section 79.10 Use of Collection

- (a) Again the SRPMIC took the lead drawing consensus from the other tribal representatives emphasizing that the tribes do not wish federal agency officials to make NAGPRA eligible collections available for scientific or educational purposes due to the sensitive nature of the materials. The tribes felt it is necessary to protect and preserve the dignity and spirit of human remains and funerary objects.
 - (b) The tribes object to the practice of loaning NAGPRA eligible collections as it violates traditional religious and cultural values associated with the continuing worldview of our tribes. Although federal agency officials may recognize certain individuals as qualified professionals, the tribes again by consensus object to the study, loan, and use for such purposes as in-house and traveling exhibits, teaching, public interpretation, scientific analysis and scholarly research.
 - (c) The tribes agreed that religious remains in a collection should be repatriated to the appropriate parties for use in religious ceremonies or spiritual activities. All tribal representatives recommend that items of religious interest be rightfully designated to spiritual practitioners and other religious persons from Indian tribes, Alaskan Native Corporations, Native Hawaiians, and other indigenous and immigrant ethnic, social and religious groups that have aboriginal or historic ties to the lands from which the remains were recovered and have traditionally used the remains or class of remains in religious rituals or spiritual activities and should have control and possession of the items.
8. In regard to working with individual states the tribal representatives recommended that despite federal laws like NAGPRA tribes need to work closely with states on proposed legislation addressing state burial laws which are unique to each state. Another major question was posed by asking, who makes the determination regarding cultural affiliation which are in possession of state institutions like museums and universities? Prompting this question was the discussion of the culturally unaffiliated data base indicating that there are 118,000 individual unidentified remains.

