

MINUTES
NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION REVIEW COMMITTEE
TWENTIETH MEETING
DECEMBER 11-13, 2000, NASHVILLE, TENNESSEE

Background

The Native American Graves Protection and Repatriation Review Committee was established under the Native American Graves Protection and Repatriation Act (25 U.S.C 3001), which was signed into law by President George Bush on November 16, 1990.

Per the review committee's charter -- "The duties of the Committee are solely advisory. Specifically, the Committee will be responsible for:

- "1. Monitoring and reviewing the implementation of the inventory and identification processes and repatriation activities required under sections 5, 6, and 7 of Public Law 101-601 to ensure a fair and objective consideration and assessment of all available relevant information and evidence;
- "2. Reviewing and making findings relating to the identity or cultural affiliation of human remains, funerary objects, sacred objects, and objects of cultural patrimony, or the repatriation of such items, upon the request of any affected party;
- "3. Facilitating the resolution of any disputes among Indian tribes, Native Hawaiian organizations, or lineal descendants, and Federal agencies or museums relating to the repatriation of human remains, funerary objects, sacred objects, and objects of cultural patrimony, including convening the parties to the dispute, if deemed desirable;
- "4. 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 disposition of such remains;
- "5. Consulting with Indian tribes, Native Hawaiian organizations, and museums on matters pertaining to the work of the Committee affecting such tribes or organizations;
- "6. Consulting with the Secretary [of the Interior] in the development of regulations to carry out Public Law 101-601;
- "7. Performing such other related functions as the Secretary [of the Interior] may assign to the Committee;
- "8. Making recommendations, if appropriate, regarding future care of human remains, funerary objects, sacred objects, and objects of cultural patrimony which are to be repatriated; and
- "9. Submitting an annual report to Congress on the progress and any barriers encountered in carrying out the Committee responsibilities during the year."

Review committee members are appointed by the Secretary of the Interior from nominations by Indian tribes, Native Hawaiian organizations, traditional Native American religious leaders, national museum organizations, and scientific organizations.

The review committee reports to the Secretary of the Interior. The Assistant Director, Cultural Resources Stewardship and Partnerships, National Park Service or, in the absence of the Assistant Director, a designee will serve as the Designated Federal Official required by section 10 of the Federal Advisory Committee Act, 5 U.S.C. Appendix (1994), to oversee the management of the review committee. Through the Assistant Director, the National Park Service provides administrative and staff support to the review committee on behalf of the Secretary of the Interior.

Additional information about the review committee – including the review committee's charter, membership, meeting protocol, and dispute procedures – is available at the National NAGPRA program Website, <http://www.cr.nps.gov/nagpra/> (click on "Review Committee").

The 20th Meeting of the Review Committee

The 20th meeting of the Native American Graves Protection and Repatriation Review Committee was called to order by Mr. Armand Minthorn at 8:30 a.m., Monday, December 11, 2000, at the Sheraton Music City Hotel, Nashville, TN. The following review committee members and National Park Service (NPS) staff were in attendance:

Members of the review committee:

Mr. Armand Minthorn, Chair
Mr. Garrick Bailey
Mr. James Bradley
Mr. Lawrence Hart
Ms. Vera Metcalf
Mr. John O'Shea
Ms. Rosita Worl

National Park Service staff:

Mr. John Robbins, Assistant Director, Cultural Resources Stewardship and Partnerships, NPS, Washington, DC
Ms. Carla Mattix, Solicitor's Office, U.S. Department of the Interior (DOI), Washington, DC
Ms. Andrea Warren, National NAGPRA consultant, NPS, Washington, DC
Ms. Lesa Hagel, National NAGPRA consultant, NPS, Rapid City, SD

The following persons were in attendance during some or all of the meeting:

Ms. Mary Adair, Museum of Anthropology, University of Kansas, Lawrence, KS
Mr. Lawrence S. Alexander, Department of Defense consultant, Wildwood, GA
Mr. Arthur Ayala, Bureau of Land Management, Cupeno, UT
Ms. Jennifer Azzarezco, Alexander Archaeological Consultants, Wildwood, GA
Mr. Kimball Banks, BOR, Bismarck, ND
Ms. Jennifer Bartlett, State Historic Preservation Office, Nashville, TN
Ms. Ellyn Bigrope, Mescalero Apache Tribe, Mescalero, NM
Mr. Bobby C. Billie, Independent Traditional Seminole Nation of Florida, Daytona Beach, FL
Mr. Arvel E. Bird, Singing Wolf Records, Native American Spiritual Alliance, Nashville, TN
Mr. James Bird, Eastern Band of Cherokee, Cherokee, NC
Mr. David Brown, Bureau of Indian Affairs, Woodbridge, VA
Mr. Robert M. Burden, Jr., Alliance for Native American Indian Rights of Tennessee, La Vergne, TN
Mr. Brian Burgess, Eastern Band of Cherokee, Whittier, NC
Ms. Patricia Capone, Peabody Museum of Archaeology and Ethnography, Harvard University, Cambridge, MA
Mr. Bill Chada, BOR, Nebraska-Kansas Area Office, Grand Island, NE
Ms. Yolanda Chavez, Lake County Intertribal NAGPRA Consortium, Nice, CA
Ms. Vicki Christy, Fallon Paiute-Shoshone Tribe, Fallon, NV
Ms. Barbara Crandell, Native American Alliance of Ohio, Thornville, OH
Mr. Brad Coutant, BOR, Great Plains Regional Office, Billings, MT
Mr. Jeff Denny, National Park Service, Carlsbad Caverns National Park, Carlsbad, NM
Mr. Brian Ewart, Ann Arbor, MI
Ms. Linda Fabbri, University of California, Berkeley, CA
Mr. Nick Fielder, Tennessee State Archeologist, Nashville, TN
Mr. A. Lee Foster, United States Army Environmental Center, Aberdeen PVG GND, MD
Ms. Myra Giesen, Office of Policy, BOR, Lawrence, KS
Ms. Martha Graham, American Museum of Natural History, New York, NY
Ms. Priscilla Grew, Department of Geosciences, University of Nebraska, Lincoln, NE
Mr. David Guldenzopf, Department of the Army, Gunpowder, MD
Ms. Roberta L. Hayworth, Corps of Engineers, St. Louis, MO
Mr. Toye Heape, Tennessee Commission of Indian Affairs, Nashville, TN

Ms. Susan Hirano, University of California, Berkeley, CA
Mr. Richard Hitchcock, University of California, Berkeley, CA
Mr. Robert J. Hozrd, Kansas State Historical Society, Topeka, KS
Ms. Andrea A. Hunter, Repatriation Review Committee, Smithsonian Institution, Northern Arizona University, Flagstaff, AZ
Ms. Barbara Isaac, Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA
Ms. Cheryl Johnston, Ohio Historical Society, Columbus, OH
Mr. Daniel Kirby, Alliance for Native American Indian Rights of Tennessee, Clarksville, TN
Mr. Vernon J. Knight, University of Alabama, Tuscaloosa, AL
Mr. Leigh J. Kuwanwisiwma, Hopi Tribe, Kykotsmovi, AZ
Ms. Shannon Larsen, Ancient Trees, Daytona Beach, FL
Ms. Diana Loren, Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA
Mr. Edward Luby, Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, CA
Ms. Rhonda Lueck, Corps of Engineers, St. Louis, MO
Ms. Carolyn McClellan, Cherokee Nation, Bureau of Indian Affairs, Washington, DC
Mr. Larry McKee, TRC Garrow, Nashville, TN
Ms. Jean McCoard, Native American Alliance of Ohio, Lucasville, OH
Mr. Frank McManamon, National Park Service, Washington, DC
Mr. Ambrose Namoki, Sr., Hopi Tribe, Kykotsmovi, AZ
Mr. John W. O'Heau, Mississippi State University, Mississippi State, MS
Mr. Danny Olinger, Tennessee Valley Authority, Norris, TN
Mr. J. Anthony Paredes, National Park Service, Atlanta, GA
Ms. Martha Potter Otto, Ohio Historical Society, Columbus, OH
Mr. Rick Quesada, Ysleta Del Sur Pueblo, El Paso, TX
Mr. David Rabon, Cherokee Nation, Tahlequah, OK
Ms. Karen Rabon, Cherokee Nation, Tahlequah, OK
Ms. Katherine Ramey, Smithsonian Institution, Washington, DC
Chris Redman, Chickasaw Nation, Ada, OK
Mr. Jason C. Roberts, National Park Service, Washington, DC
Ms. Lenora Rogers, Fallon Paiute-Shoshone Tribe, Fallon, NV
Ms. Donna C. Ropar, Kansas State University, Manhattan, KS
Mr. John Schweikart, Ohio Department of Transportation, Columbus, OH
Ms. Bertie Schweppe, Native American Alliance of Ohio, Cincinnati, OH
Ms. Lenora Shendo, Mescalero Apache Tribe, Mescalero, NM
Mr. Joe Sierra, Jr., Ysleta Del Sur, El Paso, TX
Mr. Gary Selinger, University of Alaska Museum, Fairbanks, AK
Ms. Sarah Sherwood, Middle Tennessee State University, Murfreesboro, TN
Mr. Kevin Smith, Middle Tennessee State University, Murfreesboro, TN
Mr. Vincas P. Steponaitis, Society for American Archaeology, Research Laboratories of Archaeology, Chapel Hill, NC
Mr. James Strider, Ohio Historical Society, Columbus, OH
Ms. Kim Taylor, Museum of Anthropology, University of Kansas, Lawrence, KS
Mr. Clark W. Tenakhongva, Hopi Tribe, Kykotsmovi, AZ
Mr. Jay Thomas, Department of the Navy, Washington, DC
Ms. Lori Thompson, Alexander Archaeological Consultants, Wildwood, GA
Mr. Tim Thompson, Muskogee Creek Nation, Okmulgee, OK
Mr. Phil Walker, American Association of Physical Anthropologists, Department of Anthropology, University of California, Santa Barbara, CA
Ms. Pemina Yellow Bird, Three Affiliated Tribes, Belcourt, ND

Mr. Minthorn welcomed the review committee members and members of the audience and stressed the importance of tribal support and assistance for the efforts of the review committee. Mr. Tim Thompson, Muskogee Creek

Nation, Okmulgee, OK, gave the opening invocation. The review committee members introduced themselves and welcomed Ms. Worl and Mr. Bailey to the review committee.

Mr. Robbins, Designated Federal Official for the review committee, welcomed the review committee members and explained that Ms. Worl and Mr. Bailey were appointed by the Secretary of the Interior on November 21, 2000, due to the conclusion of Ms. Naranjo's and Mr. Sullivan's terms on the review committee.

Review of the Agenda

Mr. Robbins gave a brief review of the agenda. Ms. Worl expressed concern about the number of Federal agencies that had not submitted reports or scheduled a presentation at the meeting. Ms. Worl requested that Federal agencies previously noted as having problems with compliance be asked to provide information. Mr. Minthorn expressed concern for the low number of Federal agencies making presentations to the review committee.

Implementation Update

Mr. Robbins explained that the implementation update in the review committee members' binders covered a wide variety of topics. He explained that a separate binder was provided for press clippings published since the last meeting.

Summaries: Mr. Robbins stated that summaries have been received from 1,058 institutions. In response to a concern of Ms. Worl, Mr. Robbins explained that reporting institutions are self-identified and therefore the total universe of institutions having collections subject to NAGPRA is not known. Mr. Bailey pointed out that a number of small museums may infrequently receive Federal funds and therefore may not be aware of their requirements under NAGPRA. Mr. O'Shea asked whether institutions would be retroactively responsible if they become subject to NAGPRA at a later time. Ms. Mattix explained that situation might fall under the future applicability section of the law, which is not completed. Mr. Bradley stated that it should be possible to determine an estimated total universe of museums through national museum organizations such as the American Association of Museums (AAM) and also to determine the total number of Federal agencies.

Inventories Database: Ms. Hagel explained that the minimum number of individuals (MNI) entered in the culturally unidentifiable portion of the inventory database was approximately doubled from the last meeting, from 11,000 to 23,000, and the number of associated funerary objects in the database increased from 150,000 to 275,000. In response to a question from Mr. Bradley, Ms. Hagel estimated that 25 percent of the culturally unidentifiable human remains information was in the database and, at the present rate, the database would take approximately two years to complete. Since the review committee is charged with compiling this information, Mr. Bradley suggested regular updates on the status of the culturally unidentifiable human remains database.

Federal Register Notices: Mr. Robbins explained that as of December 31, 2000, a total of 936 inventories were logged at the National NAGPRA office. Between January 1 and December 31, 2000, 306 notices were logged; 141 new notices were received during CY2000, and 165 notices received prior to January 1, 2000, were found as part of a records management improvement initiated in June 2000. Of the 936 total notices logged, 587 notices have been published in the Federal Register, at an average rate of 98 notices per year since the 1995 deadline for inventory submission. As of December 1, 2000, the notices backlog was 349 notices, of which 48 were considered priority due to a pending repatriation claim. Of the 48 priority notices, 6 are on hold at the request of the museum or Federal agency, 38 are in process towards publication, and 4 have not yet been assigned to staff. As of December 1, 2000, the maximum period between receipt of notification of a claim and assignment to staff for further processing was six weeks. In June 2000, 41 notices were active, and as of December 1, 2000, 170 notices were active. The notice publication rate increased from 94 notices in CY1999 to 133 in CY2000, of which two-thirds were published between July 1 and December 1, 2000. Mr. Robbins explained that following discussions at the

Juneau review committee meeting, the National NAGPRA office focussed specifically on notices publication, and he noted the increased number of notices logged and active that directly results from these efforts.

Staffing: Mr. Robbins explained the current staffing situation at the National NAGPRA office. CY2000 began with approximately one person devoted to notices and half a person each devoted to grants, database work, and review committee support, plus work underway on regulations. Following temporary hires in June-July 2000 with \$195,000 additional FY2000 funding, three people are devoted to notices, two people to grants, one person to databases, and one person to review committee support, plus work underway on regulations. He pointed out that some individuals are doing a variety of tasks and that these numbers reflect the cumulative total of people working on each task.

Mr. Robbins stated that in FY2001 appropriations, National NAGPRA has a \$400,000 base funding increase, which has been confirmed with the budget office. In FY2001, National NAGPRA has been established as a separate program within the National Center for Cultural Resources, with its own organizational code and account number. Approximately six or seven NPS hires will be advertised in FY2001. The permanent positions will be devoted to grants, education, notices, databases, regulations, and the review committee. The positions will be filled to the full extent that funding allows, and attracting Native American candidates will be emphasized as they were with soliciting candidates for the temporary positions. Mr. Minthorn asked when the positions would be filled. Mr. Robbins explained that the personnel office was currently reviewing the position descriptions. Then the positions will be advertised, an application deadline will be set, and the date will be determined when the positions will be filled following receipt and evaluation of applications.

Ms. Worl asked about Mr. Tim McKeown's (NPS staff) current status and asked for an organizational chart of the NAGPRA staffing. Mr. Robbins explained that in discussions between DOI and NPS, a decision was made to separate Park NAGPRA, which provides assistance for NAGPRA activities within NPS, from National NAGPRA activities. Park NAGPRA remained with the Archeology and Ethnography program of NPS and continues to be the responsibility of the Departmental Consulting Archeologist. Mr. Robbins explained that in order to prevent loss of experience, weekly coordination meetings occur between the staff of the National NAGPRA program, the Park NAGPRA program, and people working on tribal programs, such as the grants managers in the Heritage Preservation Services program.

Mr. Minthorn asked why Mr. McKeown and Ms. Kate Stevenson (NPS Associate Director, Cultural Resources Stewardship and Partnerships) were not at the meeting. Mr. Robbins explained that Mr. McKeown was teaching a NAGPRA course in Hawaii. He is still assigned to the Archeology and Ethnography program and can apply for the new positions in the National NAGPRA office. Ms. Stevenson had a scheduling conflict and was unable to attend. Mr. Minthorn asked about the current staff of the National NAGPRA program. Mr. Robbins explained that the current staff included himself, Ms. Andrea Warren, Ms. Karen Mudar, Ms. Mary Downs, Ms. Jean Kelley, Ms. Jennifer Schansberg, Ms. Tiffany McCarthy-Scott, Ms. Robin Coates, Ms. Lesa Hagel, and Mr. Stuart Speaker. Mr. Minthorn requested a list of the nominations for the review committee positions, and Mr. Robbins stated that he would check whether that was public information.

Newspaper Notices: Mr. O'Shea stated that he feels the database list of newspaper notices for inadvertent discoveries and planned excavations was very useful, and he expressed hope that the contents of each notice would be accessible on the Website due to the limited availability of some of the newspapers. Mr. Robbins explained that this project has been underway for quite some time and is heading in the direction outlined by Mr. O'Shea.

Hopi Tribe/Chaco Culture National Historical Park Dispute: Mr. Robbins explained that NPS is reviewing the process of cultural affiliation determinations servicewide. This review will be undertaken by a subcommittee of the National Park System Advisory Board at the request of the NPS director. The subcommittee will review how determinations of cultural affiliation were made for cultural items included in published notices. The subcommittee will then report its findings to the director, who may then choose to review the Hopi Tribe/Chaco Culture National Historical Park (NHP) matter in light of the servicewide status of cultural affiliation determinations. The subcommittee consists of two advisory board members, who will be assisted by NPS staff. Mr. Bradley expressed

appreciation for the importance of this issue and a concern for timeliness out of respect for people awaiting the decision. Mr. Robbins explained that the subcommittee's report is scheduled for the spring meeting of the advisory board in April 2001.

Mr. O'Shea asked if Chaco Culture NHP was delaying or proceeding with their intended repatriation in light of this review process. Mr. Robbins explained that he would try to confirm what the status of the repatriation action was and report back to the review committee members. Mr. Minthorn stated that the Hopi people have been very patient in reporting regularly to the review committee, and stressed that an important precedent was set when a bureau of DOI goes against the recommendations of the review committee. Mr. Minthorn asked the review committee members to reaffirm their original intent expressed through previous meetings that activity regarding this issue would be put on hold until a decision was made about the dispute. Mr. Bailey abstained given his recent appointment to the review committee. The remaining members agreed with Mr. Minthorn's request. In addition, Ms. Worl suggested as an action item that the review committee would develop a process to deal with conflicts between museums or Federal agencies and the review committee.

Mr. Minthorn suggested that NPS give an update on this issue to the review committee members at the next meeting. Mr. Bradley added that it was difficult to determine who represented DOI, noting that Ms. Stevenson was listed on the agenda but was not present at the meeting. He added that regional directors and park superintendents speak for NPS, while at the same time the review committee operates under the jurisdiction of NPS with counsel from the DOI Solicitor's Office. Mr. Bradley stressed the need for participants in disputes to know whether the review committee has standing to make recommendations that will be followed. Mr. Bailey agreed that when there are conflicts between the review committee and museums or Federal agencies regarding review committee recommendations, the parties should discuss the situation. Ms. Worl asked for all background information on the dispute between the Hopi Tribe and Chaco Culture NHP, and a summary review of any pending disputes. For Ms. Worl's and Mr. Bailey's benefit, Mr. Bradley explained that disputes are not formally recognized until that determination is made for each situation by the review committee chair and the Designated Federal Official. Mr. O'Shea agreed with Ms. Worl's suggestion to develop a procedure to deal with situations where Federal agencies or museums do not follow the review committee's recommendations regarding disputes.

Regulations: Mr. Robbins explained that there are four topics that were reserved in the regulations that still need to be addressed: civil penalties, future applicability, disposition of culturally unidentifiable cultural items, and disposition of unclaimed cultural items. He added that the sections dealing with culturally unidentifiable and unclaimed cultural items were linked in many ways. The review committee finalized their recommendations on culturally unidentifiable human remains at the Juneau review committee meeting in April 2000. Prior to this, a rough draft of the unclaimed cultural items regulations had been prepared. Mr. Robbins projected that work would resume on those two sets of regulations in February 2001, and explained that the National NAGPRA office had focussed on notices work since the Juneau meeting. Mr. Bradley asked that a copy of the recommendations for culturally unidentifiable cultural items developed at the Juneau meeting be provided to the review committee members, which would be particularly helpful for Ms. Worl and Mr. Bailey.

Mr. Minthorn asked about the process for developing regulations on culturally unidentifiable cultural items. Ms. Mattix explained that NPS staff would prepare draft regulations in the proper form, which would then be reviewed within DOI by all affected divisions. Once draft regulations were prepared, the review committee members could review the regulations. The draft regulations would then go through the Federal Register notice and comment process. Ms. Mattix explained that the staff and timing for each of these steps were unknown due to the upcoming administration change and changes in political appointees. Mr. Bradley expressed concern over the length of time that developing these regulations was taking and further concerns over the priority that the various draft regulations was given, particularly that civil penalties were given priority over culturally unidentifiable cultural items regulations. Mr. Robbins explained that was due to the fact that work began on the civil penalties regulations before the review committee finalized their recommendations on culturally unidentifiable cultural items. Mr. Minthorn expressed concern over the delay in progress of the culturally unidentifiable cultural items regulations given the review committee's expectation to finalize these regulations at the Nashville meeting. Ms. Worl added

that the delay gave the appearance of the review committee's dragging its feet and recommended that the draft regulations be developed by the spring meeting. Mr. Minthorn suggested that the review committee members communicate to the administration their frustration with this process, which is causing delays in repatriations and affecting relationships between Indian tribes and museums. Mr. Hart added that even with the delays in the process, work is continuing. Mr. O'Shea suggested that review committee members be given the opportunity to review the draft regulations at the same time that the draft is circulated to the various bureaus within DOI, which hopefully would speed the process.

Ms. Mattix explained that the civil penalties regulations have been in effect as interim regulations, meaning that the regulations did not go through the full Administrative Procedures Act process of notice and comment due to time concerns. Some public comments were received after they were published, and the Solicitor's Office advised NPS that it would be best to get final regulations in force. Changes warranted by the comments need to be made and then the regulations would be reviewed within DOI and published in the Federal Register as a final rule.

Ms. Metcalf and Ms. Worl asked that the review committee members be allowed to review the civil penalties regulations before they are finalized. Ms. Mattix explained that such review might not be possible due to potential ex parte communication issues, but added that she would determine what kind of consultation the review committee members could have at that stage of the process.

Mr. Robbins explained that a draft of the future applicability regulations had been circulated to other bureaus in DOI. Comments need to be incorporated into a proposed version to be reviewed by DOI and published in the Federal Register as a proposed rule. At that point, the review committee members could review the draft of the future applicability regulations. Mr. Robbins added that, in light of comments by the review committee, the order of priority for the remaining regulations work would be civil penalties, disposition of culturally unidentifiable cultural items, disposition of unclaimed cultural items, and future applicability. Mr. O'Shea repeated the review committee members' desire to review all drafts of these regulations.

Budget: Ms. Worl asked Mr. Robbins for a copy of the National NAGPRA program budget, which was provided to the review committee members later in the meeting.

Federal Agency Compliance

U.S. Department of Defense, Department of the Navy: Mr. Jay Thomas, head of the Navy Cultural Resources Office, explained that he represented the Navy and the Marine Corps, both under the Department of the Navy. He explained that review committee members had a copy of the full Department of the Navy report in their binders. Mr. Thomas summarized the highlights of the Navy's report for the review committee. The Navy's identification of archeological and anthropological collections around the country is substantially completed, which represents significant progress from their last report to the review committee. Mr. Thomas reported that some compliance action has been taken for most of the 19 to 22 outstanding cases of collections, usually in the form of an inventory. Approximately 1,600 of the 2,300 individuals in the collections have been repatriated, with most of the remaining individuals being classified as culturally unidentifiable. Cases arising due to inadvertent discovery or through other means are dealt with at the local installation level, although these actions are tracked at the headquarters level. The installation commanders are provided the tools needed to properly comply with NAGPRA, including training courses and integrated cultural resources management plans. Tribal consultation occurs routinely on a variety of issues, and the Navy continues to work on improving consultation. Navy compliance with NAGPRA is incorporated better than ever in the day-to-day activity of project development, and day-to-day management of archeological collections and cultural resource management, as well as NAGPRA compliance's receiving better attention at headquarters. Mr. Thomas expressed appreciation for the letter from Mr. Robbins asking for an update on NAGPRA compliance for the review committee, noting that the letter was a useful tool in compiling an up-to-date report on NAGPRA compliance.

Review Committee Discussion: Mr. Bradley commended the efforts of the Navy regarding NAGPRA compliance, expressed appreciation for the information provided in the Navy's report, and highlighted a table detailing compliance status as a useful model for other agencies and museums. Mr. Minthorn referenced the past report on Navy NAGPRA compliance by Ms. Kathleen McLaughlin and asked about agency compliance at the installation level, the completeness of the inventory process by the U.S. Army Corps of Engineers, and Navy policy dealing with inadvertent discoveries. Mr. Thomas addressed each of these issues. Navy headquarters provides the necessary tools for each installation to be in compliance but does not have sufficient resources to oversee compliance at each installation. The U.S. Army Corps of Engineers was just completing their latest round of investigations and believes that they have located the vast majority of collections for the Navy and other Federal agencies. Navy personnel receive training on how to deal with inadvertent discoveries and the Navy has both a Secretary of the Navy policy and a Chief of Naval Operations instruction on dealing with inadvertent discoveries. Mr. Minthorn asked for an update on the compliance status of each installation at a later date and copies of the Navy's policies on inadvertent discoveries. Ms. Worl thanked Mr. Thomas for his report and asked if the University of Alaska Fairbanks or the Navy compiled the inventory with reference to NAS Adak, as noted on Table 1 in the Navy report. Mr. Thomas explained that the University of Alaska Fairbanks completed that consultation. Mr. O'Shea commented on the positive effects of sending the letter requesting an update on Federal compliance. Mr. Bradley suggested that the review committee members send a letter to the Department of the Navy commending their progress in NAGPRA implementation and suggested that Mr. Thomas make the Navy's report on compliance available to the public.

U.S. Department of the Interior, NPS: Mr. Frank McManamon, manager of the NPS Archeology and Ethnography program, explained that, within NPS, park superintendents have responsibility for NAGPRA compliance at the park level. This includes ensuring that summaries, inventories, and any necessary updates are completed and correct, following NAGPRA regulations in making cultural affiliation determinations and decisions regarding the appropriateness of repatriations, ensuring that NAGPRA definitions are properly applied, and ensuring that appropriate consultation with Indian tribes and Native Hawaiian organizations is undertaken. Regional and support office expert staff provide technical assistance for some of these tasks. The Archeology and Ethnography program staff provides technical assistance in drafting and publishing Federal Register notices and developing national guidance.

Mr. McManamon reported that 103 NPS units control or possess an estimated 6,000 sets of Native American human remains and over 80,000 associated funerary objects. Approximately 75 percent, or 4,500, of the human remains have been culturally affiliated, with the remaining 25 percent being considered culturally unidentifiable at this point. As of the beginning of December 2000, 31 NPS units have published 35 Notices of Inventory Completion, and 41 draft Notices of Inventory Completion were in process. Seven NPS units have published Notices of Intent to Repatriate covering 26 unassociated funerary objects and 328 sacred objects. NPS summaries indicate that an estimated 80 NPS units have or may have unassociated funerary objects, sacred objects, and objects of cultural patrimony in their collections. Four NPS units have published 5 notices in local newspapers related to inadvertent discoveries that cover approximately 5 sets of human remains and 135 associated funerary objects. Mr. McManamon emphasized that NPS is very actively engaged in the implementation of NAGPRA on a number of levels.

Review Committee Discussion: Mr. Minthorn asked about the status of the guidance to Federal agencies for inadvertent discoveries. Mr. McManamon explained that since the introduction of the topic at the Salt Lake City meeting, no further action has been taken towards drafting that guidance. He added that his role in developing these guidelines would not be the same as anticipated at the Salt Lake City meeting, although he believes that further guidance on those kinds of activities is necessary and he has been contemplating undertaking that for NPS. Mr. Robbins agreed to try to determine the status of the guidance and when it could be finalized.

Mr. O'Shea asked if the human remains from Chaco Culture NHP were included in the culturally affiliated portion of NPS collections. Mr. McManamon explained that they were included, but that more information might be available after the NPS process review described earlier by Mr. Robbins is completed, perhaps by the next review

committee meeting. Mr. O'Shea commented that the description of superintendent responsibilities was very good and actually paralleled the review committee recommendations on the Hopi Tribe/Chaco Culture NHP issue. Mr. Bradley asked about the total number of NPS units. Mr. McManamon stated that NPS has a total of 391 units, of which the 103 units on the list provided to the review committee have cultural items covered by NAGPRA. He added that some parks not on the list might control land on which an inadvertent discovery might occur. All NPS units that control or possess collections of cultural items covered by NAGPRA have reported their collections.

Mr. Bradley asked about the process for reviewing decisions of cultural affiliation within NPS. Mr. McManamon explained that NPS has three levels at which final administrative decisions are made, the superintendent, the regional director, and the director. Superintendents are delegated the responsibility to make certain decisions regarding NAGPRA, which typically are final and not formally or administratively reviewed by the regional director or director unless a problem arises. Any disagreements with these decisions would be first addressed with the superintendent, then the regional director, and finally the director. Mr. Robbins added that the director has asked the National Park System Advisory Board, a citizens advisory committee that is separate from the NPS Washington office, to review the process of making cultural affiliation determinations and provide information to the director. He explained that this review is being made on the process servicewide and is not focussed on any particular cultural affiliation or park.

Mr. Bailey asked for an explanation of the process used by NPS to make determinations of cultural affiliation. Mr. McManamon explained that present-day and past entities are identified and then connections are identified between the two using a variety of evidence. Mr. Hart urged the use of the term "Native American" when referencing culturally unidentifiable human remains.

In response to a request by the review committee members, Mr. McManamon gave a brief update on the Kennewick case. The stay placed by the judge has been lifted and the U.S. Army Corps of Engineers made a decision about the treatment that they would propose for the human remains. The administrative record was delivered to the court and all relevant parties on December 1, 2000, which needs to be reviewed by all parties. The judge has scheduled various dates for written legal arguments to be provided and a court hearing for June 19, 2001, for presentation of oral arguments. Documentation concerning the case is posted on the Kennewick Website developed by NPS and DOI.

Ms. Worl asked about funds that superintendents or regional directors are able to provide to Indian tribes relating to cultural resource studies or NAGPRA-related issues. Mr. McManamon explained that within NPS an amount of money is distributed annually for Park NAGPRA, which is used for staffing and activities such as those described by Ms. Worl. Most of the money is distributed to the regional offices. Each regional director allocates the funding in a different manner, establishing their own annual priorities for Park NAGPRA monies. Mr. McManamon stated that each region receives approximately \$200,000 per year. The Intermountain Region, for example, has used these funds in the past for cultural affiliation studies or conferences to discuss cultural affiliation. He suggested contacting the regional offices to determine opportunities for funding in a given region. Ms. Worl expressed concern that the funds would not be distributed equitably among Indian tribes. Mr. McManamon explained that he was not exactly sure but believed the funds were mostly used for joint activities involving both NPS and Indian tribes.

Mr. Bailey asked if it would be possible or useful for NPS to define a process for making determinations of cultural affiliation and subsequent actions following the determination. Mr. McManamon stated he thought it would be possible since all that is currently available is the law and the regulations. The regulations provide advice and suggestions on how to identify earlier groups. Mr. McManamon suggested that the National Park System Advisory Board review on cultural affiliation decisions might serve as a basis for further guidance on this process. Mr. Bailey commented on the complexity of the process given the extensive Federal collections and asked about the formality of the process. Mr. McManamon explained that the process is very localized, with the responsibility given to individual superintendents who rely upon advice and recommendations from experts and utilize information from cultural affiliation studies, ethnographic, archeological, physical anthropological, and other types of information. Mr. Bradley added that the responsibility of Federal agencies and museums to make determinations

of cultural affiliation is a requirement of the statute and the regulations, both of which provide fairly clear guidance for cultural affiliation determinations, including a dispute process. Mr. O'Shea commented on the importance of an acceptable and fair process for dealing with authentically culturally unidentifiable cultural items. Ms. Mattix reviewed the definition of cultural affiliation from Section 2 of the statute, with further elaboration on the definition at 10.14 (c) of the regulations.

Mr. Minthorn explained that the review committee members have cited their concern with the situation involving Chaco Culture NHP and the precedent that could be set. He stressed the importance of the review committee members' maintaining their position and continuing to question the actions of agencies that go against the review committee's recommendations. Mr. McManamon responded that in this situation the park superintendent made a determination of cultural affiliation, which was subsequently challenged by the Hopi Tribe, the Zuni Tribe, and others. The review committee agreed to consider this dispute and made a recommendation after two hearings and reviewing extensive information. The superintendent decided not to follow the advice of the review committee, as was his right or responsibility. The Hopi Tribe has pursued potential administrative remedies by asking the NPS director to review the determinations of the superintendent and regional director in this case, which is currently in process. The review committee could certainly discuss potential steps to take in this situation, but the review committee is an advisory committee. Not all parties are going to agree nor are they required to follow the review committee's recommendations. Mr. Minthorn suggested that the review committee could assist in the National Park System Advisory Board review. Mr. Hart expressed concern about the review committee's considering issues that are undergoing a procedural review.

U.S. Department of the Interior, Bureau of Reclamation (BOR): Ms. Myra Giesen, NAGPRA Coordinator, BOR, welcomed the members of the review committee and began with a brief overview of BOR. Since its inception in 1902, BOR has played a pivotal role in developing water resources in 17 western States, with jurisdiction over approximately 8.5 million acres. BOR serves as America's second largest wholesale water supplier, administering 348 reservoirs with a total storage capacity of 245 million acre-feet. The responsibility for NAGPRA compliance has been delegated to the five regional directors or their designees. Ms. Giesen provided a map of BOR lands, with a list of NAGPRA contacts. BOR submitted a single summary in 1993. Since that time, additional information has necessitated revising the summary to reflect an additional 2 sacred objects and 207 unassociated funerary objects, of which 74 are culturally affiliated. All of the unassociated funerary objects are located at BOR-administered repositories, but the two sacred objects continue to be curated by a non-Federal museum. The various offices are working with non-Federal museums to meet curation standards set forth in 36 CFR 79 and DM 411. The affected offices, including the Lower Colorado Region, the Upper Colorado Region, and the Mid-Pacific Region, are preparing supplements to BOR's summary.

All five BOR regions submitted an inventory by the statutory deadline. New information on the recovery of previously unknown archeological collections has necessitated amendments to the inventory. BOR currently has control of human remains representing 1,755 individuals, of which 910 have been assigned cultural affiliation, and 33,034 associated funerary objects, of which 32,027 are affiliated with modern Indian tribes. Three additional associated funerary objects have been repatriated. The human remains and associated funerary objects came from 194 locations across the 17 western states and are located at 27 non-Federal museums and two Federal museums. All regional inventories will be completed by early 2002. The Great Plains Region will submit part of their revised inventory during their presentation to the review committee at this meeting, with the remainder scheduled to be submitted in January 2002. The Lower Colorado Region submitted a revised inventory just prior to this meeting for affiliated objects, along with a Notice of Inventory Completion for the repatriation of 480 individuals and 2,206 associated funerary objects. The submission included an inventory for their culturally unidentifiable cultural items representing 6 individuals and 22 associated funerary objects. The Pacific Northwest Region is actively consulting with the Confederated Tribes of the Colville Reservation and the Shoshone-Bannock Tribes of Fort Hall Reservation of Idaho and anticipates completing an inventory in late 2001 or early 2002. The Upper Colorado Region submitted a portion of their inventory and a draft Notice of Inventory Completion to NPS on November 20, 2000, for the repatriation of three individuals to the Southern Paiute, and expect to submit a draft Notice of Inventory Completion this month for the repatriation of four individuals to the Navajo Nation. The Upper Colorado

Region is consulting with Indian tribes in order to reach a cultural affiliation determination for the remaining 640 individuals in their control, currently listed as culturally unidentifiable in their inventory. To date, BOR has had one Notice of Inventory Completion published in the Federal Register and has submitted another four draft notices in the past six months to NPS for review and publication.

Regarding inadvertent discoveries and planned excavations, in the past year BOR completed an internal directive, Inadvertent Discovery of Human Remains on Reclamation Lands, that provides mandatory actions by BOR personnel when human remains are discovered on BOR lands. A Preservation of Cultural Resources clause also was completed this year that must be placed in all solicitations and contracts for construction that specifically references NAGPRA and the procedures to be followed in case of a discovery. Both of these documents were provided to the review committee members. Between 1990 and 1995, BOR had 13 inadvertent discoveries that resulted in 12 planned excavations with the recovery of 23 individuals and 18 associated funerary objects. After the regulations were published in 1995, 2 additional inadvertent discoveries have resulted in 1 planned excavation with the recovery of 2 individuals and 11 associated funerary objects. Disposition has occurred or is in process for all of the excavated individuals and associated funerary objects. Intentional excavations of 11 individuals and 4 associated funerary objects have occurred on the Rosebud Reservation in 1996, Fort McDowell Indian Community lands in 1996, and Tohono O'odham Nation lands in 1999, and all human remains and associated funerary objects were returned to the affected Indian tribes.

BOR is consulting with 701 federally recognized Indian tribes on NAGPRA-related issues, with some Indian tribes consulted by more than 1 office. To improve government-to-government relationships in these multiple office consultations, BOR is developing a better network for information exchange between offices and arranging for multiple office consultations when possible. BOR is seeing an increase in face-to-face consultations and information exchange via e-mail. BOR is working with other Federal agencies and Indian tribes on cultural affiliation studies of the Fremont Culture and the Anasazi Culture. The Dakotas Area Office, Great Plains Region, is in the process of finalizing a NAGPRA action plan with the Oglala, Rosebud, and Lower Brule Sioux Tribes in conjunction with a revised Programmatic Agreement for the Mni Wiconi project. BOR is working in partnership with other Federal agencies and museums to facilitate repatriations, in one instance working with 2 Federal agencies, 14 Indian tribes, and 4 museums on the disposition of culturally unidentifiable human remains from the State of Kansas. In addition, NAGPRA-related documents have been widely distributed to Federal preservation officers and are available on the BOR Website. Ms. Giesen provided budget information for NAGPRA-related activities within BOR for FY1998 through FY2000 and projected dollars for FY2001. Ms. Giesen explained that these numbers do not reflect all the funds for NAGPRA-related activities as costs related to inadvertent discoveries are usually not charged to a specific NAGPRA project or activity and are difficult to track.

Review Committee Discussion: Mr. Minthorn explained that in 1998, BOR reported to the review committee that they were working to develop better coordination between the regions and area offices to improve accountability on an agency-wide basis. Ms. Giesen explained that in her position as NAGPRA coordinator, she works with the regional and area offices to communicate the status of NAGPRA implementation. Training has or will occur for cultural resource personnel at both the staff and management levels. Mr. Minthorn then asked about a protocol that was being developed for tribal consultation. Ms. Giesen explained that a guidance document has been completed for working with Indian tribes. Mr. Bailey pointed out that BOR policy applies to both Native American and non-Native American human remains. Mr. Bradley expressed appreciation for BOR's aggressive stance on NAGPRA compliance, and for their representation at this meeting and many past meetings. Mr. Hart commended Ms. Giesen's leadership in this issue. Ms. Worl asked how the determination was made that BOR had two objects that were sacred objects and that they were not objects of cultural patrimony. Ms. Giesen explained that the objects do not fit the definition of objects of cultural patrimony and the affected office consulted with many Indian tribes in making that determination. Mr. Minthorn asked about the process for planned excavations used by BOR. Ms. Giesen explained that all planned excavations are planned in consultation with Indian tribes on a case-by-case basis, follow the standards of ARPA, and usually allow analysis with restrictions on destructive analysis.

U.S. Department of the Interior, Bureau of Indian Affairs (BIA): Ms. Carolyn McClellan, member of the Cherokee Nation, Chief Curator and NAGPRA Coordinator for BIA, explained that part of BIA's mission is to carry out their responsibility to protect and improve the trust assets of American Indians, Indian tribes, and Alaska Natives. BIA is committed to complying with NAGPRA for collections under its control and in the possession of various Federal and non-Federal repositories. Past confusion by BIA over ownership of these collections and funding constraints slowed BIA's progress in NAGPRA compliance. In 2000, new leadership took over the Division of Acquisition and Property Management, which is responsible for museum property. Ms. McClellan was hired in July 2000 and an increased level of funding for the program has been provided. BIA has contracted with the U.S. Army Corps of Engineers to identify repositories with BIA NAGPRA collections, and to date 11 repositories have been identified. Within these repositories, BIA is responsible for approximately 4,393 human remains and 35,160 associated and unassociated funerary objects.

In FY2000, 2 Notices of Inventory Completion were published in the Federal Register representing 25 individuals and 439 associated funerary objects. Between October and December 2000, 3 Notices of Inventory Completion were published representing 6 individuals and 25 associated funerary objects. Other notices are pending publication, including 2 between BIA and the Arizona State Museum for the Snaketown site: a Notice of Inventory Completion representing 175 human remains and 5,912 associated funerary objects, and a Notice of Intent to Repatriate representing 20,448 unassociated funerary objects. Inventories of BIA collections have been completed at the Museum of Northern Arizona, Flagstaff, and the Western Archeological and Conservation Center, Tucson, AZ. Inventories of BIA collections are in progress at the Peabody Museum of Archaeology and Ethnology, Harvard University; the American Museum of Natural History, New York; and Nevada State Museum, Carson City. Consultations with Indian tribes have been planned for 2001 to help determine cultural affiliation. Ms. McClellan expressed her commitment to bringing BIA into compliance with every aspect of NAGPRA with the full support of BIA administration. Ms. McClellan added that the Federal Preservation Officer might not be the appropriate contact for NAGPRA issues in all cases, and suggested contacting the Interior Museum Property committee, which is composed of members of each of the bureaus.

Review Committee Discussion: Mr. Bradley expressed appreciation for the report and BIA's efforts. Mr. Minthorn thanked Ms. McClellan for her report and asked if BIA was in compliance with NAGPRA. Ms. McClellan stated that BIA was not in compliance at this time and added that her goal is to have BIA in compliance by 2007. She explained that she is currently a staff of one, but that BIA is looking at hiring additional personnel. Mr. Minthorn asked if BIA had a budget specifically for NAGPRA. Ms. McClellan explained that although there was no line-item budget, in 2000 her office was given \$247,000, of which approximately \$207,000 went to the U.S. Army Corps of Engineers' contract mentioned earlier. Since then, an additional \$600,000 has been provided, and Ms. McClellan is currently in the process of writing the budget request for the next two-year cycle. Mr. Minthorn then asked about the status of the studies described in the last BIA report to the review committee by Arizona State Museum and the Museum of Northern Arizona. Ms. McClellan explained that part of the Arizona State Museum study related to the Snaketown site described earlier, and the remaining portion is from the Grasshopper site, which is in progress and does not appear to significantly increase the numbers reported earlier as being repositored at the Arizona State Museum. She stated that she did not know the exact status of the other situation, but an itemization of the human remains and associated funerary objects has been completed and the next step is the consultation process. Mr. Minthorn asked that the review committee be kept apprised of the status of BIA's NAGPRA compliance. Ms. Worl asked about the status of the cultural objects listed at BIA's Juneau office. Ms. McClellan stated that she did not know the status of that inventory and would check on that.

U.S. Department of Defense, Department of the Army: Mr. David Guldenzopf, Army Environmental Center, Headquarters, Department of the Army, explained that he would be reporting to the review committee on the status of NAGPRA compliance for the Department of the Army military activities but not the U.S. Army Corps of Engineers civil works activities. The Army is organized basically into three tiers. Headquarters, Department of the Army, is responsible for Army-wide policy and programs. Army major commands are divided by function, such as Army Forces Command for field training soldiers, the Training and Doctoring Command with Army training schools, and the Army Material Command for munitions manufacturing and testing. Installations under the major

commands are directly related to those functions. The Army's NAGPRA compliance policy is contained in Army Regulation 200-4, Cultural Resources Management, promulgated in 1998. The Army's implementing guidelines are Department of the Army Pamphlet AR 200-4, Cultural Resources Management, with guidelines for installation compliance with NAGPRA including Native American consultation guidelines. In addition, each installation is required to have integrated cultural resources management plans with standard operating procedures for compliance with cultural resources laws and regulations, including NAGPRA. Each installation is scheduled to have their plans completed by September 2001.

The Army manages approximately 12 million acres. With approximately one-third of the land surveyed for archeological sites, 54,000 archeological sites have been identified. The Army has over 5,000 cubic feet of archeological artifact collections located at 210 different repositories in 30 States. In 1994, 169 Army installations were reviewed for NAGPRA compliance as part of a centrally managed Army-wide NAGPRA Section 5 and Section 6 report effort. The Army submitted 97 Section 6 summary reports for 97 individual installations and 20 Section 5 inventory reports. Eighteen installations have collections located at 27 repositories in 14 States. These collections include 40 individuals and approximately 10,000 associated funerary objects, with 102 potentially affiliated Indian tribes. Consultation with federally recognized Indian tribes is underway for all installations with human remains and associated funerary objects under their control. The Army has concluded consultation, repatriation, and reburial with Native Hawaiian organizations for Fort Kamehameha and Fort DeRussy in Hawaii. Reburial areas have been established on three Army installations: Fort Benning, GA; Camp Beauregard, LA; and Fort Hood, TX. The Army report to the review committee includes details of Army-wide funds programmed for installation NAGPRA compliance, primarily used to fund consultation efforts. All installations either have a professional archeologist, cultural resource manager, or an individual assigned to these duties, and installations also have access to professional cultural resource services to assist in NAGPRA compliance. An assistance program for installations needing additional funds for Native American consultation efforts is available at the Army Headquarters level. All NAGPRA Section 5 and Section 6 compliance reports are available on the Army Website, aec.army.mil.

Review Committee Discussion: Mr. O'Shea asked the percentage completion of the Army's Section 5 and Section 6 reports. Mr. Guldenzopf stated that the reporting requirements are 100 percent completed and consultation efforts are underway. Mr. Bradley commended the Army's efforts and its report to the review committee, and pointed out the magnitude of work and funding that has gone into the Army's efforts towards NAGPRA compliance. Mr. Guldenzopf explained that in 1994 the Army committed approximately \$1 million to locate collections and prepare the Section 5 and Section 6 reports. He added that cooperative agreements are in place with repositories that will accept collections, including museums, universities, Indian tribes, and other for-profit and nonprofit organizations. Ms. Worl asked whether the Army plans to have reburial areas established on other installations or to consolidate reburials with the three installations described earlier. Mr. Guldenzopf explained that would be determined on a case-by-case basis through consultation with the installation. Mr. Hart asked if reburial of Native American human remains would be allowed if the remains were from the region but not from the military installation. Mr. Guldenzopf explained that an agreement was being signed with associated Indian tribes and Fort Benning the week of the meeting covering that situation. Mr. Hart commented that such an agreement would be a great model. Mr. Guldenzopf added that Fort Benning had to appeal for a waiver to the Army policy of having no new cemeteries established on installations, which was granted. Ms. Metcalf asked about the nature of cooperative agreements with repositories. Mr. Guldenzopf explained that the Army's goal is to eventually house all collections in a professional Army museum. The Army has continuous open announcements for cooperative agreements with stakeholders and federally recognized Indian tribes for cultural resource services on a reimbursable basis. In response to Mr. Mulford's public comment [see public comment section], Mr. Guldenzopf added that these announcements were sent to all federally recognized Indian tribes, State historic preservation officers, and affected universities. He invited any interested tribal representatives to speak with him about these cooperative agreements.

Review Committee Discussion on Federal Agency Compliance

Mr. O'Shea led the discussion on Federal agency compliance with NAGPRA. Ms. Worl asked if all Federal agencies received the letter requesting reports to the review committee, a copy of which was provided in the review committee member binders. Mr. Robbins explained that the letter was sent to all Federal Preservation Officers shown on a list maintained by the Advisory Council on Historic Preservation, as well as all NAGPRA coordinators included on a list maintained by the National NAGPRA office. Mr. Robbins explained that some agencies responded with a written report and others scheduled presentations at the meeting. Mr. Robbins then asked if any additional Federal agencies were present and would like to make a statement, and no Federal agencies responded. Mr. Minthorn suggested another round of letters to Federal agencies requesting information on NAGPRA compliance. Review committee members specifically mentioned U.S. Fish and Wildlife Service, U.S. Department of Energy, Army Corps of Engineers, BLM, U.S. Air Force, U.S. Forest Service, and U.S. Department of Energy as agencies of concern. Mr. Hart suggested an article in CRM magazine focusing on the issue of Federal agency compliance.

Referencing the NAGPRA inventory report in the meeting binder, Ms. Worl asked about the statements of no inventories submitted that were reported by 219 institutions. Mr. Robbins explained that those institutions reported that they did not have collections subject to NAGPRA. Ms. Worl expressed the need for the review committee to know the total universe of Federal agencies that should be reporting on NAGPRA compliance activities and requested that a report on the total number of Federal agencies be added to the action list. Mr. Bailey expressed concern about Federal agency collections in museums and other non-Federal repositories that Federal agencies have basically forgotten. Mr. Bradley expressed great concern that Federal agencies are not held to the same standard of accountability for NAGPRA compliance as museums. Many of the institutions under forbearance repeatedly send representatives to present updates to the review committee, while some Federal agencies do not report or come to the meetings. Ms. Worl stated that members should not emphasize the advisory nature of the review committee but remember that the review committee was created by an act of Congress. The review committee has certain responsibilities and should expect a certain level of accountability. Review committee members agreed unanimously to send a stern letter to all Federal agencies mentioned earlier by members to be of concern and a letter of appreciation to those agencies reporting to the review committee and demonstrating progress in NAGPRA compliance. Following a question by Ms. Worl, Ms. Mattix explained that the review committee was limited to encouraging or urging Federal agency reporting. DOI has no enforcement against other agencies such as there is with civil penalties and museums. Mr. Bradley suggested that the review committee members visit the appropriate committees during the next meeting in Washington, and Mr. Hart suggested including noncompliant Federal agencies in the 2001 Report to Congress.

Discussion of Requests Regarding the Disposition of Culturally Unidentifiable Human Remains

Carlsbad Caverns National Park and Guadalupe Mountains National Park

Mr. Jeff Denny, Curator and Cultural Resource Program Leader, Carlsbad Caverns National Park, explained that he was also representing Guadalupe Mountains National Park and speaking on behalf of the 13 American Indian tribes with which the 2 parks have been consulting during the last 3 years. These 13 Indian tribes include the Mescalero Apache Tribe, Ysleta Del Sur Pueblo, Hopi Tribe, Pueblo of Zuni, Pueblo of Zia, Comanche Tribe, Kiowa Tribe, Jicarilla Apache Tribe, Fort Sill Apache Tribe, White Mountain Apache Tribe, San Carlos Apache Tribe, Apache Tribe of Oklahoma, and Pueblo of Isleta. Mr. Denny introduced the following tribal members present at the meeting: Ms. Ellyn Bigrope, Mescalero Apache Tribe; Ms. Lenore Shendo, Mescalero Apache Tribe; Mr. Rick Quesada, Ysleta Del Sur Pueblo; and Mr. Joe Sierra, Ysleta Del Sur Pueblo.

At the Santa Fe meeting in 1998, Mr. Denny appeared before the review committee on behalf of the 2 parks and 12 Indian tribes seeking a recommendation to repatriate culturally unidentifiable cultural items. The Pueblo of Isleta joined in the repatriation efforts in 1998 following the meeting. Based upon the evidence presented at that time, the

review committee members recommended repatriation of the cultural items. Mr. Denny explained that during a consultation meeting on the repatriation of these individuals early in 2000, a curator from the Academy of Natural Sciences in Philadelphia mentioned that the academy had 14 fragmentary human remains from the same site in their collection. Although documentation is limited, the parks believe that these human remains were transferred to the academy in the 1930s, along with the rest of the paleontological material. They were not identified as human remains until after they were at the museum and curated in Philadelphia, and have not been included on any previous NAGPRA inventory. The academy agreed to transfer the human remains to NPS for the express purpose of repatriation to the Indian tribes. The human remains have been returned to the park, cataloged and stored in NPS collections with the rest of the cultural items. An updated NAGPRA inventory will be prepared in the near future. Mr. Denny stated that the parks and 13 Indian tribes were asking that these 14 fragmentary human remains be repatriated with the 3 individuals originally discussed at the Santa Fe meeting for the following reasons: They were removed from the same site as part of the same excavations conducted in 1934 and 1935; had the parks been aware of their existence, these human remains would have been included in the initial request in 1998; and all the criteria outlined in the initial request for the repatriation also applied to these human remains.

Mr. Denny explained a second issue of concern to the parks and 13 Indian tribes. The 1998 proposal to the review committee included a request to repatriate both human remains and associated funerary objects from the three sites. The discussion and minutes show that the review committee considered the associated funerary objects as part of the repatriation request. The letter that the parks received from Mr. McManamon's office, dated May 25, 1999, acknowledged that the proposal included both the human remains and the associated funerary objects but the specific recommendations of the review committee as written in that letter only addressed the disposition of the human remains. Regardless of the reason for this omission, the 13 Indian tribes are adamant that funerary objects cannot and should not be separated from the individuals with which they were buried, and both parks fully agree with the position of the Indian tribes. The review committee's recommendations on the disposition of culturally unidentifiable Native American human remains published earlier this year state that, although the legal standing of funerary objects associated with culturally unidentifiable human remains is not addressed in NAGPRA, the statute does not prohibit their voluntary repatriation by museums or Federal agencies to the extent allowable by Federal law. Mr. Denny explained that the two parks would be pursuing other administrative means outside of NAGPRA for returning the objects to the Indian tribes along with the repatriated human remains as requested. Fortunately, NPS has deaccession authority for collections under its control but many other Federal agencies do not have that authority. Mr. Denny thanked the review committee members for listening to his presentation.

Ms. Ellyn Bigrope, Curator, Mescalero Apache Cultural Center, Mescalero Apache Tribe, explained that the Mescalero Apache Tribe is historically and culturally affiliated with Carlsbad Caverns and Guadalupe Mountains regions. Oral history shows that the Guadalupe Mountains are sacred and are the aboriginal homelands of the Mescalero Apache Tribe. She expressed respect for the other Indian tribes that are culturally affiliated with these regions and their desire to repatriate the human remains described by Mr. Denny. Ms. Bigrope stated that funerary objects should never be separated from human remains and described the cultural belief that the two should be returned back to the earth together.

Mr. Rick Quesada, War Captain, Ysleta Del Sur Pueblo, explained that Ysleta Del Sur Pueblo was historically and culturally affiliated with the Guadalupe Mountain region. He described burial practices, placing funerary objects with an individual at the time of their death, and the importance of ensuring that these objects remain with the individual so that they can continue their journey. He stressed the importance of including the associated funerary objects with the human remains in the repatriations described by Mr. Denny. He asked for the review committee's help in repatriating the culturally unidentifiable human remains along with the associated funerary objects.

Review Committee Discussion: Mr. Bradley thanked the presenters and commended NPS for bringing the parties together on this issue and thanked the tribal people for traveling to the meetings and for their willingness to work together. Mr. O'Shea pointed out that the discussion of this issue was very prominent in the review committee's recommendations signed in Juneau, Alaska. The review committee viewed the original presentation as a model for a regional approach to deal with this type of repatriation. Ms. Metcalf thanked the presenters and seconded

Mr. O'Shea's comments that this is an excellent model of voluntarily complying with NAGPRA. She asked if the Indian tribes signed a written agreement to this repatriation. Mr. Denny explained that a written agreement signed by all 12 Indian tribes was included in the information for the 1998 request provided to the review committee members, and from all indications the Indian tribes are still comfortable with the repatriation. Ms. Worl commended the Indian tribes for their unified effort and relationship with NPS and the good regional model developed in this situation.

Mr. Minthorn asked about the status of the cultural resources management plans described during the 1998 presentation. Mr. Denny explained that in the last year NPS started rewriting their overall resource management plan, which contains the cultural resource plan, and has changed its guidelines on resource management plans. NPS is looking to finalize this in the next year. He added that NPS has had extensive consultation with Indian tribes regarding security of reburial sites, and in addition NPS has cultural resource protection laws and responsibility to monitor archeological sites. Mr. Minthorn asked if the parks have been working towards establishing or nominating sites to the National Register of Historic Places. Speaking on behalf of Carlsbad Caverns National Park, Mr. Denny explained that, although they do not have an archeologist on staff due to lack of funding, one site in the park has been nominated to and listed on the National Register. He added that the park is working to establish a broader-based cultural resource program. The new superintendent of the park, Mr. Mick Holm, concurs with and supports these efforts. Mr. Minthorn asked about the revised inventory, and Mr. Denny hoped to start that process after the first of the year. Mr. Bradley suggested that Mr. Denny speak with Superintendent Duane Alire at Pecos National Historical Park about any security concerns.

Mr. Hart thanked the presenters and commended the efforts of all parties. He asked if the park felt that these 14 fragmentary human remains were exhaustive of the remains from these sites. Mr. Denny explained that all logical institutions were contacted. Mr. Bailey expressed concern in general that during the historic period Native American was a biological and social identity. He explained a situation of a burial containing some of his ancestors that could have been misidentified due to its location and the presence of shared traits. After discussion, the review committee members unanimously agreed to the repatriation of the additional 14 fragmentary human remains with the human remains from the 1998 request. The review committee members also agreed unanimously to include the associated funerary objects with the remains, although Mr. Bailey expressed his opinion that this type of decision should be made on a case-by-case basis. Mr. O'Shea agreed that the situations should be considered on a case-by-case basis and wanted to reaffirm that the review committee's original recommendation in this repatriation should include the associated funerary objects. Ms. Worl stressed the importance of avoiding this type of misunderstanding in the future. The review committee members asked Mr. Robbins to draft the letter and to explore with the Chair methods to expedite technical changes to previous decisions by the review committee.

U.S. Department of the Interior, BOR, Dakotas Area Office and the North Dakota Intertribal Reinterment Committee

Ms. Pemina Yellow Bird, Three Affiliated Tribes of North Dakota (Mandan, Hidatsa, and Arikara Nations) and the North Dakota Intertribal Reinterment Committee, explained that 5 years ago a joint intertribal claim to 14 culturally unidentifiable individuals and their associated funerary objects was made to BOR. Consultation has been ongoing for five years between tribal groups and BOR on this claim. The first joint claim by North Dakota Indian tribes was made before NAGPRA was passed and resulted in the reburial of over 2,000 individuals and their associated funerary objects. She explained the importance of burial property being reburied with the dead. The Great Plains Tribal Chairman's Association, representing 17 upper Missouri River Indian tribes, produced a resolution showing the agreement of all indigenous nations towards this repatriation of the Native American human remains and their associated funerary objects.

Mr. Kimball Banks, BOR, Dakotas Area Office, explained that the Dakotas Area Office manages lands in North Dakota, South Dakota, and Wyoming. On November 9, 2000, the Dakotas Area Office submitted a letter of request to repatriate the culturally unidentifiable human remains of 14 individuals and 4 associated funerary objects from 9 sites in east-central North Dakota on lands or from projects administered by BOR. Consultation has occurred with

17 Indian tribes, including the 11 Indian tribes in North Dakota and South Dakota. Mr. Kimball explained that they have complied with the draft recommendations regarding the disposition of culturally unidentifiable remains and the North Dakota State statutes in terms of repatriation. At this point, no negative comments or responses have been received regarding the repatriation.

Review Committee Discussion: In response to a question from Mr. Minthorn, Mr. Banks and Ms. Yellow Bird explained that consultation was still in progress with two Indian tribes from Minnesota and one Indian tribe from Montana with favorable results to date. Mr. Minthorn asked about BOR's inadvertent discovery plans. Mr. Banks explained that internal BOR instructions are followed to the point when inadvertent discoveries become a NAGPRA issue and then NAGPRA regulations are followed. In addition, resource management plans for various lands are currently in progress. Mr. O'Shea asked about the archeological context of the burials. Mr. Kimball explained that most were surface finds or from disturbed areas. Mr. O'Shea asked how determinations were made that these were burial objects and not normal site debris. Mr. Banks explained that, since they were not able to establish direct association, after consultation with the Indian tribes the objects were reasonably believed to have been associated funerary objects. Ms. Yellow Bird explained burial traditions that would account for these objects' being considered burial objects. Ms. Mattix reviewed the definition of associated funerary objects.

Mr. Hart asked about BOR's request to the review committee to make a recommendation to the Secretary of the Interior to have the associated funerary objects deaccessioned from their museum property collection. Ms. Mattix explained that this request relates to the review committee's last recommendation with NPS because NPS can repatriate the associated funerary objects in the Carlsbad Cavern situation through a separate statutory deaccessioning authority. She explained that the review committee could make a recommendation to repatriate the associated funerary objects in the spirit of NAGPRA, although BOR may have a different mechanism to repatriate the objects legally. The review committee agreed unanimously that the Native American human remains should be repatriated as requested. On the repatriation request for the associated funerary objects, Mr. O'Shea disagreed, Mr. Bailey abstained, and the remaining members agreed with the request.

BOR, Eastern Colorado Area Office

Ms. Myra Giesen, BOR, representing the Eastern Colorado Area Office of the Great Plains Region, explained a situation in which three bones of an individual were recovered in 1982. In consultation with Indian tribes, BOR subsequently excavated the remainder of the grave due to erosion concerns in 1992. The human remains from each excavation represent one individual. Despite additional information from the second excavation, no lineal descendents have been determined. The site was not on tribal land, and there is no cultural affiliation. Under the discovery provision, the Indian tribes with adjudicated lands in that county in Colorado have the highest priority for making a claim. Consultation has occurred or is ongoing with the Cheyenne-Arapaho, the Northern Cheyenne, and the Northern Arapaho. At the request of the Northern Arapaho, the lead nation in this process, consultation will begin with the United Tribe of Colorado. Providing that there is no objection to the disposition, repatriation of the individual will proceed to the four Indian tribes for the 1992 portion of the excavations. BOR is requesting that the 1982 portion of the excavation be allowed to go through disposition with the rest of the individual.

Review Committee Discussion: The review committee members unanimously agreed to recommend to the Secretary of the Interior that the Native American human remains be repatriated as proposed.

Implementation of the Statute in the Southeast

Tennessee Department of Environment and Conservation: Mr. Nick Fielder, State archeologist, State of Tennessee, explained that the Division of Archeology, part of the Department of Environment and Conservation, was established in 1971 and is responsible for all State-owned lands, municipally owned lands, and the archeological sites that are contained thereon, including all State highway projects. Tennessee has laws that apply to cemeteries, which have applied to prehistoric and historic Native American graves since 1986. Prior to that time it was not

illegal to dig into or remove anything from Native American graves in Tennessee. Prior to the enactment of NAGPRA, the State of Tennessee revised its statutes to include provisions for notification of Native Americans, including Native Americans on the State archeology advisory council, and procedures for the reinterment of Native American graves. The State law that was passed in 1990 required the reinterment of human remains removed from any property in the State, including private property, and allowed for scientific analysis. The statute did not address associated funerary objects. After an excavation, human remains had to be reburied but the associated funerary objects could not be reburied. In 1998, the State convened a meeting with representatives of several southeastern Indian tribes where a recommendation was made to change the law. In 1999 the State archeology statutes were revised to require the reinterment of both human remains and the associated funerary objects. This revision was not retroactive, and a sizable collection representing 78 individuals and 23 burial objects awaits repatriation pending the resolution of the reinterment of the associated objects, at the request of the Chickasaw Nation. The Chickasaw Nation sent a letter to DOI more than a year ago with no response to date. Mr. Fielder asked if it would be appropriate for the State of Tennessee to voluntarily return the associated funerary objects and what procedures would need to be followed.

Review Committee Discussion: Mr. Minthorn asked if all interested parties are in concurrence on this issue.

Mr. Fielder explained that much of the discussion has been with the Chickasaw Nation but all tribal entities that have an interest in the prehistoric remains of Tennessee will be contacted prior to any actions being taken.

Mr. Minthorn asked for a legal opinion on this matter. Mr. Robbins explained that Ms. Mattix was not present at that point but stated that a legal opinion could be considered. Mr. Fielder offered to submit the question to Mr. Robbins or the review committee for a legal interpretation. Mr. O'Shea questioned whether NAGPRA would apply given that the cemetery was on municipally owned lands and no Federal monies were involved. Mr. Fielder explained that the state cemetery law is applied to federally funded highway projects. Mr. Robbins stated that NAGPRA would apply if materials have been accessioned into a collection where the institution receives Federal funds. Mr. Fielder explained that the State of Tennessee does not question the fact that the materials fall under NAGPRA. However, under 43 CFR 10.9 (e), the State would be precluded from repatriating culturally unidentifiable human remains pending promulgation of Section 11 of the regulations unless legally required to do so otherwise. Tennessee State cemetery law requires the remains to be reinterred.

Mr. Bradley asked Mr. Robbins to check on the status of the letter from the Chickasaw Nation and stressed the importance of having counsel present at the review committee meetings. Mr. Bradley stated that he felt the State of Tennessee would be able to proceed with the repatriation as long as all parties agree and there was no conflict with Federal law. Mr. O'Shea expressed concern in this case about a lack of broad consultation and in general about situations involving both NAGPRA and State regulations and when each applies. Mr. Fielder explained that the State of Tennessee is currently dealing with a situation on a federally funded highway project with human remains where there are both Cherokee and pre-Cherokee occupations of the site. In response to a question from Mr. O'Shea, Mr. Fielder explained that under Tennessee cemetery law, the person who owns property containing a cemetery could have the cemetery moved. Next of kin must be notified through a court process. In response to a question from Mr. Bailey, Mr. Fielder explained that all cemeteries, whether Native or non-Native, are treated the same, except that associated funerary objects on historic or modern cemeteries are reburied automatically and do not come under any responsibilities like NAGPRA.

Mr. Hart stated that the Chickasaw Nation was probably acting for the Intertribal Council. Mr. Fielder felt that that was true. Mr. Robbins explained that arrangement would need to be documented, which Mr. Fielder agreed to provide. Mr. O'Shea asked if Federal Register notice publication is required for voluntary return of associated funerary objects for culturally unidentifiable human remains. Mr. Robbins stated in this case that would be required because if the objects have been accessioned into a collection and were separated from the human remains they would be considered unassociated funerary objects. The process would have to include consultation and a cultural affiliation determination. Mr. O'Shea disagreed and felt that unassociated, unaffiliated funerary objects would have no NAGPRA requirement. Mr. Minthorn stressed the importance of having counsel present at the review committee meetings in order to eliminate this type of discussion. Mr. Fielder again agreed to formally submit this question for a legal interpretation.

Tennessee Commission of Indian Affairs: Mr. Toye Heape, Executive Director, Tennessee Commission of Indian Affairs, welcomed the review committee members and public. The Tennessee Commission of Indian Affairs is a State agency that was created by the Tennessee General Assembly in 1984 as an advocacy agency for Indian people in Tennessee. Tennessee has no federally or State-recognized Indian tribes, although there is a sizable Indian population composed of members of federally and State-recognized Indian tribes and unaffiliated groups. One of the commission's purposes is to promote the recognition and right of Native Americans to pursue religious traditions, which is seen as an authorization for the commission to have concern about NAGPRA implementation. Mr. Heape reported that he is not aware of any NAGPRA repatriations in the State of Tennessee, and the commission would like to facilitate the process by assisting federally recognized Indian tribes in the repatriation process. The removal of Indian people from the southeastern United States in the 1800s forced many Indian tribes to relocate quite a distance away. The commission would like to work as a local agency to assist Federal agencies and museums.

The Tennessee Commission of Indian Affairs recognizes that it does not have an official role in NAGPRA implementation and does not wish to take over any role of the federally recognized Indian tribes. Mr. Heape explained that he is the only staff for the commission. The policy of the Tennessee Division of Archeology is to turn human remains excavated under State law over to the Commission of Indian Affairs after the one-year period of study, and the Commission of Indian Affairs arranges the reburial using NAGPRA as a model. The commission tries to determine the Indian tribes that are potentially culturally affiliated with the human remains to give them the opportunity to participate in the reburial, with the commission's acting as a facilitator in the process. Mr. Heape commented on the State cemetery statute described by Mr. Fielder, and clarified that the statute allows termination of a cemetery only if one of three conditions apply, which are abandonment, neglect, or the cemetery is no longer suitable for the resting place of the dead. A judge can then terminate the cemetery and order the removal of the remains. Any relative or person who has any right in the cemetery is an interested person and can oppose removal of the cemetery through the court. The Commission of Indian Affairs maintains that it is an interested person in those situations because of its responsibilities under State law and should be allowed to present testimony. He briefly described a pending court case dealing with this issue. Mr. Heape stated that it was clear that NAGPRA compliance is affected by budgetary restraints, and he added that a political movement is needed to get support for NAGPRA implementation.

Native American Alliance of Ohio: Ms. Barbara Crandell, thanked the review committee for the opportunity to speak and extended her apologies for turning her back on the Native people in the room in order to address the review committee. She described a mound in Ohio where three graves were found when the mound was destroyed. The mound was made of stones which were used to build retaining walls for the reservoir of Licking County over 40 years ago. When part of the reservoir was removed last year, Ms. Crandell requested the stones. Subsequently, four truckloads of stones were delivered to Ms. Crandell's farm. Ms. Crandell described a proposed project to build a memorial park on the Fernald Nuclear Water Management site, where hopefully a monument will be built from the stones with a bronze plaque detailing the history of the mound. In 1861, Mr. David Warwick took a tray of yellow clay from the mound and sent it to the Ohio Historical Society, which the Native American Alliance of Ohio would like to locate and place with the stones. Mr. Warwick also removed animal and human bones and sent them to the Smithsonian Institution. Ms. Crandell has asked for their return, but they have not been located. The Environmental Protection Agency and several federally recognized Indian tribes have agreed to the burial ground.

Ms. Jean McCoard explained that, since she last addressed the review committee, the burial ground of her great-great-great grandfather was destroyed by strip mining operations, the human remains crushed, and all associated objects disappeared. She described the Native American Memorial Park proposed at the Fernald Nuclear Waste Management site in Hamilton, OH. In addition to the memorial, the park would become the sanctuary and final resting place for the ancestors of Native people. The park would be a place of honor and dignity. Approximately 170 acres on the western side of the 1,100-acre site are being set aside for the Native American Memorial Park. The park has the support of grassroots organizations, the Ohio Environmental Protection Agency, Fernald management personnel, Secretary of Energy Bill Richardson, various Congressional and Ohio legislative

representatives, and several federally recognized Indian tribes. A number of Oklahoma-based federally recognized Indian tribes, originally indigenous to the Ohio River valley, plan to reinter their loved ones in their ancient homeland. Certain areas will be dedicated to each of the various Indian tribes who once inhabited the Ohio River valley.

Thousands of ancient Indian human remains taken from Ohio mounds are in Ohio museums and institutions, including approximately 5,000 at the Ohio Historical Society. An area of the park would be set aside for the reinterment of the ancient ones, which not only would allow them to be reburied with respect and dignity but would eliminate the need for the offensive term “culturally unidentifiable” which could be replaced by “commonly shared ancestors.” At this time, federally recognized Indian tribes would need to claim the commonly shared ancestors for reburial. Hopefully, this proposal could become a model for regions of the country where there are no federally recognized Indian tribes, which includes 15 states. Ms. McCoard explained that a curator at the Ohio Historical Society raised the question of an underground vault to store their collection. She asked if reburial with the caveat of future access was an appropriate interpretation of the law. She asked for assistance in finding solutions for the issues of repatriation in the 15 states that have no federally recognized Indian tribes.

Review Committee Discussion: Mr. Minthorn commended the efforts of the Native American Alliance of Ohio in working with the U.S. Department of Energy. He explained that this information could be presented to the DOE in California when the DOE makes their presentation to the review committee. Mr. Bradley expressed appreciation for the presentation and explained that regional solutions will be different for many areas of the country. He thanked the Native American Alliance of Ohio for their efforts. Mr. Hart also expressed appreciation for the presentation. Ms. Worl recommended tracking all Indian tribes that appear before the review committee, as well as the major issues brought by the Indian tribes.

Independent: Ms. Shannon Larsen explained that she was an environmental and human rights activist interested in the protection of environmentally sensitive lands, which often contain indigenous human burials. This work brings her into partnership with Mr. Bobby C. Billie on the protection of sites. In Florida, decisions are often made without sufficient information on the oral history of the indigenous people of the area. Language such as “in control or possession of” should be replaced by “temporarily taking care of” due to the sensitive nature of this issue. The criteria used by archeologists and indigenous traditional people for determining what is significant or not significant is vastly different. The indigenous traditional people that have the necessary knowledge are excluded from consultations and the NAGPRA process in Florida. Ms. Larsen described a situation with the Big Cypress National Preserve where the Independent Traditional Seminole Nation was not notified of an archeological survey and was not allowed to participate in the consultation process due to lack of Federal recognition. The State historic preservation office makes decisions about the significance of ground sacred to indigenous people, which give developers the right to remove indigenous human remains. Traditional indigenous people should have the right to protect sacred burial sites.

Independent Traditional Seminole Nation, Mr. Bobby C. Billie expressed appreciation for being able to make a presentation. He expressed the pain for Indian people of watching the actions of non-Indian people for the past 500 years. When the European people understand the way of life that the Creator has given them, then they can do what they want on their land. Now they are hearing regulation and law prohibitive to the indigenous way of life and taking away the recognition of the indigenous connection to the land, human remains, and artifacts. Mr. Billie will not consult with Dr. Paredes because of lack of respect and Dr. Paredes does not allow Mr. Billie to repatriate his ancestors. Mr. Billie expressed concern about the repatriation efforts of the Seminole Tribe of Florida and the Seminole Nation of Oklahoma. The law has to have respect for the people. The Creator gave the way of life and has instructed to protect life on the earth. No other law can be accepted. Mr. Billie hoped the review committee would support his efforts to return these individuals to the ground and provide protection from the Florida archeologists who continue to dig. Mr. Billie stated that memorials are respected, but yet there is no respect for indigenous people. There needs to be respect for people, cultures, and another way of life. Mr. Billie explained that he never went to school, but he has 40 years of education in his way of life going back over six million years. To him, there is no such thing as culturally unidentifiable remains. The people are known. They still carry that

blood and speak the language. It is the indigenous people's right to bring the people back to the ground. Mr. Billie was before the review committee five years ago and nothing has changed. The same things are still being said. During this time, he has been returning some of the ancient people, which is his purpose to protect the people. Mr. Billie would like the review committee to support his efforts in returning his ancestors to the earth.

Remarks – NPS, Southeast Region

Mr. Anthony Paredes explained that he was speaking on behalf of Mr. Jerry Belson, Regional Director, Southeast Region, NPS, who was unable to attend due to weather. Mr. Paredes presented a prepared report on behalf of Mr. Belson.

The Southeast Region of NPS includes North Carolina, South Carolina, Georgia, Florida, Alabama, Tennessee, Kentucky, Mississippi, Louisiana, Puerto Rico, and the U.S. Virgin Islands. The region contains 63 parks, monuments, and other types of NPS units. The region has many outstanding parks dedicated to history and culture covering U.S. history from the Revolutionary War to the 1970s, and also contains parks representing the Spanish, French, and British Colonial eras. Several units are dedicated to the struggles for African American equality, the pioneering spirit and way of life of the Appalachian Mountain people, the complex mix of cultures represented by Creole peoples, as well as the unique contributions of jazz to the music world. Many units in the region are devoted to American Indian history and culture, including Russell Cave National Monument, AL; Ocmulgee National Monument, GA; Poverty Point National Monument, LA; and Horseshoe Bend National Military Park, AL. Some units in the region have ties to neighboring present-day federally recognized Indian tribes, such as Great Smokies with the Eastern Band of Cherokee Indians, Everglades and Big Cypress with the Seminole and Miccosukee Tribes of Florida, and Jean Lafitte National Historical Park and Preserve with the Chitimacha Tribe in Louisiana. The Trail of Tears originates in the Southeast Region. At least nine federally recognized Indian tribes are located outside the region, principally in Oklahoma, that are culturally associated with parks in the region. Nine federally recognized Indian tribes are still within the boundaries of the Southeast Region of NPS, and at least another five federally recognized Indian tribes are culturally affiliated with the Southeast Region.

Effectively communicating with a wide array of Indian tribes spread over four states outside of the region and six states within the region constitutes one of the challenges in the proper implementation of NAGPRA. The Southeast Region has had a long history of sustained contact between indigenous American people and people from Europe and Asia, as well as an exceptionally rich indigenous artistic culture that has long been an irresistible lure to treasure hunters and amateur archeologists. Many extensive government-sponsored professional archeological undertakings occurred under the Works Projects Administration in the 1930s, many of the collections from which are now held by the NPS archeological center in Tallahassee, FL. For all these reasons, the Southeast Region is mindful of the special difficulties that NPS faces in the southeastern United States for properly implementing NAGPRA.

In behalf of the regional director, the Southeast Region pledges to strive to comply with the spirit as well as the letter of NAGPRA law and regulations, and to act in utmost good faith in all dealings with the sovereign Indian tribes. In his statement, Mr. Belson thanked the review committee for coming to Tennessee and offered to assist the review committee in achieving a fair, just, and honorable implementation of NAGPRA.

Mr. Minthorn expressed appreciation for hearing from a regional director through Mr. Paredes. He hoped to establish a regular communication with the Southeast Region, as well as others, to be kept apprised of the activities taking place within each NPS region.

Discussion of the Review Committee's 1999/2000 Report to Congress

Mr. O'Shea explained that review committee members had copies of the 1998 Report to Congress, which included an attachment discussing Federal compliance with NAGPRA, a summary compiled by Ms. Warren of review committee activities for FY1999, and the recommendations of the review committee members signed at the Juneau, AK, meeting. The review committee members discussed the possibility of producing a joint FY1999/2000 Report to Congress. With clarification from Mr. Robbins and Ms. Mattix, a unanimous decision was made to combine the two reports with the understanding that the review committee would strive to prepare one report per year in the future. Mr. O'Shea pointed out that this report when finalized would not go through any review processes within NPS, with the possible exceptions of formatting or basic fact review. The report represents the opinion of the review committee and not necessarily the opinion of NPS or DOI.

The review committee discussed the substance and organization of the report and assigned specific topics to each member for drafting, which are due to Mr. Minthorn by late March 2001. These topics will then be organized into a rough draft for review and discussion at the spring meeting in May-June 2001. The final report outline and topic assignments were as follows:

1. Introduction
 - a. Background
 - b. Statutory duties of the review committee (Ms. Worl)
2. Committee Activities (National NAGPRA staff)
 - a. Narrative of activities
 - b. Statistical breakdown - figures for 1999 and 2000
3. Committee Duties (Ms. Worl)
 - a. Committee decisions and recommendations
 - b. Advice relating to inadvertent discovery guidelines
4. Committee Recommendations for Disposition of Culturally Unidentifiable Human Remains (Mr. Bradley)
5. Specific Observations
 - a. Staffing and funding (Mr. O'Shea)
 - b. Statute compliance (Mr. Minthorn)
 - i. Compliance by Federal agencies
 - ii. Compliance by non-Federal museums and universities
 - (1) Institutions under forbearance
 - c. Contamination of sacred objects with pesticides and preservatives (Mr. Bailey)
 - d. Reburial on Federal lands (Ms. Metcalf)
 - e. Protection of graves on non-Federal lands (Mr. Bradley/Mr. Hart)
 - f. Status of review committee review in light of the Hopi/Chaco Culture NHP dispute (Mr. O'Shea)
6. Conclusions (Mr. Bradley)
7. Specific Recommendations (Mr. O'Shea)

Certain topics will be separated by year when warranted, such as the statistical breakdown of inventories received, grants issued, and other information provided by the National NAGPRA staff. The narrative of activities should include meeting dates and locations, issues discussed at the meeting, public comment, a summary of the specific cases that were heard regarding culturally unidentifiable Native American cultural items, and a brief synopsis of each meeting. Under the duties and responsibilities section, Ms. Worl suggested information on resolution facilitation, consultation with Indian tribes, and a summary of Indian tribes that have expended time and money to attend the meetings. Review committee members agreed that the topic of guidance for unclaimed human remains, which was initially discussed at the Salt Lake City meeting, should be included in the committee activities section. The review committee members agreed to include the Federal Register version of the recommendations for disposition of culturally unidentifiable human remains in the report and to review the recommendations for possible discussion at the spring 2001 meeting.

Discussion of Changes to Meeting Protocol and Dispute Resolution Procedures

Mr. Robbins explained his proposed edits to the dispute resolution procedures and the meeting protocol, currently available on the NAGPRA Website. On the dispute resolution procedures, Designated Federal Official was substituted for Departmental Consulting Archeologist, and Mr. Robbins' address replaced that of the Departmental Consulting Archeologist. The other changes helped clarify the order of the different steps that need to be followed in the dispute process. The meeting protocol document had two small changes, the addition of the word "that" in paragraph one, and, in paragraph four, written comments received at least 20 days prior to the scheduled meeting date will be provided to the review committee members before the meeting rather than at the meeting.

Mr. Bradley briefly described the purpose of the two documents for Ms. Worl and Mr. Bailey. Mr. Minthorn asked what the process is once the review committee approves them. Mr. Robbins explained that once they are finalized, the Chair will sign them and they will be posted on the Website. Ms. Worl suggested at some point the review committee members might discuss a process to deal with situations where an agency disagrees with review committee recommendations and added that dialogue between the review committee and the agency might be effective. Ms. Mattix and Mr. Robbins explained that the review committee could be available for further discussion but could not require that communication. Mr. Bradley explained that the dispute resolution procedures were a method for outside parties to initiate a dispute. In the situation described by Ms. Worl, the review committee members would initiate the action. He suggested keeping those two functions separate.

Mr. O'Shea suggested that the review committee could address this topic at any given meeting and that the members could agree among themselves that they wish to follow up on these situations, especially when there is the potential of setting precedent. Mr. Bradley also pointed out that once the review committee agrees to hear a dispute and issues a recommendation, their part in the process is completed. Regardless of whether the recommendation is followed or not, the review committee cannot really demand to be part of the process again. In the pending case regarding the Hopi Tribe and Chaco Culture NHP, Mr. Robbins has explained that an administrative review is in progress. The review committee could ask Mr. Robbins for updates on the status and express a willingness to assist. Ms. Worl explained that she was trying to address concern expressed by the review committee members regarding this difference of opinion and lack of communication, but if the review committee members are satisfied that is fine. She added that she is aware of the perception that the credibility of the review committee has been questioned because of this process.

Mr. Hart suggested that in paragraph D on the last page, under conflict of interest the wording should be "situations may arise in which an individual review committee member..." in order to accurately reflect the meaning. The review committee members unanimously agreed to approve the meeting protocol with the noted changes and, with the exception of Ms. Worl, the review committee members agreed to approve the dispute resolution procedures with the noted changes.

Federal Advisory Committee Management

Review committee members were provided copies of the Federal Advisory Committee Act (FACA) and regulations. Ms. Mattix explained that the review committee was formed as an advisory committee as specifically directed in NAGPRA. The regulations require all business of the review committee to be conducted in a public forum, minutes of the meeting have to be kept, and certain requirements relating to public space and publication of the notice of the meeting have to be met. The review committee is permitted to establish subcommittees, with at least one member from the review committee, in order to complete fact-finding tasks. An annual report is required, which is provided to the General Services Administration and ultimately to Congress.

Recommended Amendments to NAGPRA

At the request of the review committee, Ms. Mattix discussed the amendments proposed by the review committee in the 1998 Report to Congress.

The first amendment was a proposal to protect Native American graves on State or private lands from grave robbing and other forms of destruction. Prior discussions among the review committee members and congressional staff members have focussed on the difficulty of this amendment. Although this amendment is not impossible, Ms. Mattix agreed that it would be difficult, citing 14th amendment federalism issues and 5th amendment takings issues.

The second amendment was a proposal to provide monies collected as civil penalties under 43 CFR 10.12 to the Secretary of the Interior to further NAGPRA enforcement activities. Ms. Mattix stated that this is a technical amendment that could happen, and other statutes do provide for penalties to be paid to agencies for use in future enforcement activities.

The third amendment is a proposal to exempt sensitive cultural information from the Freedom of Information Act (FOIA). Ms. Mattix explained that similar exemptions exist in other cultural resource statutes and this type of amendment could be added to NAGPRA.

The fourth amendment is a proposal to expand the review committee's purview to explicitly recognize its role in recommending disposition of funerary objects associated with culturally unidentifiable human remains. Ms. Mattix stated that would be more than a technical amendment to NAGPRA. She reviewed the legislative history and felt that there were specific reasons for that omission but they are not clear. This type of an amendment would cause a lot of discussion and concern.

The fifth amendment is a proposal to 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. Ms. Mattix felt that this was more than a technical amendment but it could happen. She pointed out that reburial on Federal lands is not legally prohibited and some Federal agencies do permit reburial. Currently NAGPRA does not deal with what happens after the transfer-of-ownership aspects of repatriation, but leaves the details of disposition to the Indian tribes. Ms. Mattix suggested that the review committee might prioritize the amendments and added that they could possibly pursue the proposed fifth amendment administratively with individual Federal agencies. Mr. Robbins explained that addressing this issue administratively on a case-by-case basis is already possible without a change to the law. Mr. Bradley asked how the review committee members should address the Federal agencies of greatest concern, which are probably within DOI, specifically citing BLM. Ms. Mattix explained that the review committee could request BLM to appear and provide an explanation for their policy and additional details such as the reason that a policy was chosen and how flexible BLM is regarding their policy. After reviewing the information, if the policy seems unreasonable, the review committee could make a recommendation to the Secretary of the Interior that perhaps a policy should be reconsidered.

Ms. Metcalf expressed concern that if this issue is not addressed as an amendment to NAGPRA and is addressed administratively, problems regarding this issue with BLM will continue in Alaska. The review committee members agreed to cite their concern in a letter to BLM with a request for an explanation of this policy from BLM at the California meeting in May-June 2001. The review committee members agreed to make reburial on Federal lands a priority at the next meeting and include a request for information to be presented at the spring meeting in letters to all Federal agencies. Ms. Worl suggested compiling all formal and informal Federal agency reburial policies. Mr. Hart expressed the importance of the amendment dealing with the exemption of culturally sensitive information, explaining that some Indian tribes are so concerned about disclosing sensitive information that they are reluctant to claim objects.

Discussion of Juneau Minutes

Ms. Worl raised a concern about the fact that the Juneau minutes were signed before being approved by the review committee members and recommended that meeting minutes be considered draft until formally reviewed and adopted by the review committee members at a subsequent meeting. She added that the minutes were very thorough. Ms. Worl suggested that at each meeting review committee members be given a status report for all outstanding issues or requests from previous meetings. Mr. Robbins and Ms. Mattix explained that there is no formal procedure for review and signature of the minutes and the review committee can determine the procedure for approving minutes. Mr. O'Shea expressed concern that Mr. Sullivan signed the Juneau minutes in November 2000, after his term expired and while he was no longer the Chair of the review committee. Mr. Robbins explained that Mr. Sullivan's and Ms. Naranjo's appointments did not end until two new members were appointed to the review committee, and added that Mr. Sullivan chaired the meeting in question.

Specific to the Juneau minutes, Ms. Worl noted certain action items that were not included in the minutes, including a reference to clarification of the consideration of review committee recommendations by agencies within DOI. Another action item was an issue raised by the University of Alaska at the Juneau meeting that the U.S. Coast Guard has not responded to requests for repatriation, although Ms. Worl explained that she understands through informal conversations that that issue has been resolved. Ms. Worl noted two spelling clarifications: David Katzeek on page 23 and Mr. John Martin from the Tenakee Tribe on page 24. Ms. Worl suggested the action list be organized to distinguish which issues were raised at each meeting. Mr. Minthorn stressed the importance of continuing the action list to track ongoing issues. After further discussion about the procedure for approving minutes, the review committee members decided that they would like to have draft minutes included in the meeting binders, to be discussed and approved by all review committee members and signed by the Chair at the meeting. The review committee members agreed to let the Juneau minutes stand as signed. Any changes can be discussed at the following meeting, and the minutes would be amended as necessary.

Discussion of Review Committee Chair

Mr. Minthorn expressed his willingness to remain Chair of the review committee. Mr. Bradley expressed appreciation for Mr. Minthorn's accepting this responsibility and his support of Mr. Minthorn's continuing as Chair. Ms. Worl, Ms. Metcalf, and Mr. O'Shea concurred. Mr. Bailey stressed the importance of a Native American individual's being the chair of this review committee and expressed his acceptance of Mr. Minthorn as Chair, while expressing his appreciation of Mr. Bradley's capabilities. Mr. Bradley concurred that a Native American should be Chair of the review committee. Mr. Hart concurred with Mr. Minthorn's remaining Chair, although he expressed his belief that the issue should be revisited at the next meeting in order to allow the two new members the opportunity to be Chair.

Upcoming Meetings

The spring 2001 meeting is scheduled for May 31, June 1, and June 2, 2001, in Kelseyville, California. After discussion, the review committee tentatively set the fall 2001 meeting for late October or early November 2001 in the northeastern United States. Mr. Robbins suggested that a decision be made in January or February 2001 in order to give ample notice in the Federal Register. Ms. Barbara Isaac offered an invitation to hold the fall 2001 meeting at Harvard University. [The meeting subsequently was set for November 17-19, 2001, at Harvard University, Cambridge, MA.]

Discussion of Agenda for Kelseyville, California Meeting

The review committee recommended that the agenda for the Kelseyville meeting should include the following topics: Federal agency compliance reports, an update on the Spirit Cave human remains, draft regulations on culturally unidentifiable human remains, 1999/2000 Report to Congress, reburial on Federal lands, contamination of sacred objects, and implementation of the statute in the western United States. After further discussion, the review committee agreed to leave the final decisions regarding agenda items to the discretion of the Chair and the Designated Federal Official. Ms. Worl explained that she appreciated the opportunity to comment on the current meeting agenda prior to the meeting and felt that the Chair and Designated Federal Official should have the opportunity to add additional topics to the agenda if warranted.

Action List

The review committee agreed to track items that need to be addressed or monitored for progress by the review committee. The items will be organized into three categories: items of ongoing importance, items from past meetings, and items from the current meeting. The review committee members tried to indicate whether they preferred to be updated on the items on a monthly or meeting basis and whether the National NAGPRA staff or the review committee would be responsible for completing each item. Ms. Worl suggested concentrating on the oldest items first. Mr. O'Shea suggested that, as in the past, the National NAGPRA staff drafts correspondence from the review committee to be sent out under the Chair's signature. The review committee would provide an indication of the contents. Mr. Bradley explained that this would require a close working relationship between the Chair and the staff, as experienced among Ms. Naranjo, Mr. Sullivan, Mr. McKeown, and Mr. McManamon.

Several issues from the past meetings section were incorporated into the ongoing tasks section, including a response to the Hopi Tribe regarding notices published by Mesa Verde National Park and Aztec Ruins National Monument, 1999 Report to Congress, and a request for BLM's burial policy. The National NAGPRA office has not officially received the NCAI resolution PSC-99-128 and so no response can be sent. The review committee asked Mr. Robbins to provide an update on the remaining items from past meetings. Ms. Worl explained that situation regarding the Raven rattle that the Attorney General of Colorado is waiting for action from NPS. She expressed concern about possible statute of limitations issues due to the length of time involved in this situation to date.

Several issues from the current meeting were incorporated into the ongoing tasks section. Specific requests from the current meeting regarding topics of continuing importance were detailed in the current meeting section. Unless otherwise indicated, the review committee asked the National NAGPRA staff to complete the items.

Ongoing Tasks

1. Monthly update reporting any significant change in status of the following:
 - a. Personnel – staff, NPS, DOI
 - b. Budget
 - c. Regulations
 - i. Civil penalties
 - ii. Culturally unidentifiable human remains
 - iii. Unclaimed cultural items
 - iv. Future applicability
 - d. Disputes (six potential)
 - e. Notices backlog
 - f. Correspondence
2. Items of continuing interest (report at meeting)
 - a. Status of publishing Federal Register notices
 - b. Status of summaries and inventories – total numbers, reporting institutions, database progress
 - c. Current status of institutions under forbearance

- d. Incoming correspondence
- 3. Federal agency compliance (report at meeting)
 - a. Document Federal agency policies regarding hiring of Native American religious leaders as experts
 - b. Document Federal agency policies regarding reburial on Federal lands, both formal and informal
 - c. Address issue of Federal agencies that prohibit reburial on Federal lands
 - d. Determine if Federal agencies can be required to prepare discovery plans
- 4. Contamination of cultural items (report at meeting)
 - a. Post information on Website with links to other pertinent sites
 - b. Consider developing guidelines to deal with potentially contaminated cultural items
 - c. Request oversight hearings
 - d. National assessment of problem
 - e. National resource for testing
 - f. E-mail potentially affected parties with collections contamination alert
 - g. Require documentation of contaminated cultural items in grant proposals
- 5. Current status of action list items (report at meeting)

Past Meetings (report at meeting)

- 1. Letter to Pechanga and U.S. Army Corps of Engineers regarding dispute (from Portland meeting)
- 2. Contact FBI regarding sale of skull in Ohio (from Silver Spring meeting)
- 3. Web publication of the newspaper notices (from Juneau meeting)
- 4. Raven rattle (from Juneau meeting)

Current Meeting

- 1. Inventories/Summaries
 - a. Review of institutions to ensure accurate submissions of summary/inventories
 - b. Report on total number of inventories received (by May 2001 meeting)
 - c. Investigate possible processes to deal with international collections with Department of State
- 2. Federal agency compliance
 - a. Report on Federal agency compliance with total number of Federal agencies, including those with no collections (by May 2001 meeting)
 - b. Article in CRM to highlight Federal agencies in compliance
 - c. Develop recommendations for when Federal agencies do not concur with review committee findings and recommendations (future meeting agenda item for review committee consideration)
- 3. Regulations/Guidelines
 - a. Update on status of draft regulations for inadvertent discoveries and planned excavations
 - b. Provide copies of draft regulations on culturally unidentifiable human remains to review committee before final review and adoption by Secretary of the Interior
 - c. Designated Federal Official and Chair to explore technical additions to past recommendations of disposition of culturally unidentifiable human remains
 - d. Finalize dispute resolution procedures and meeting protocol for Chair's signature
- 4. Disputes
 - a. Check current status of Chaco Culture NHP regarding repatriation efforts in light of current review of process of cultural affiliation determinations by National Park System Advisory Board
 - b. Coordination between Chair and Designated Federal Official regarding potential disputes
 - i. Hopi Tribe/Mesa Verde
 - ii. Fallon Paiute-Shoshone Tribe/BLM
 - c. Update regarding status of Spirit Cave Native American human remains at next meeting
- 5. Staffing
 - a. Organizational staff chart for both National and Park NAGPRA
 - b. Estimated hire dates for permanent staff when known
- 6. Outgoing correspondence

- a. Letter expressing appreciation to Federal agencies providing reports to review committee at the current meeting (review committee to draft/National NAGPRA office to send)
 - b. Letter to responsive Federal agencies asking for specific information detailed in the ongoing tasks section of the action list
 - c. Letter of concern to non-responsive Federal agencies, inviting presentations at upcoming meeting and requesting specific information detailed in the ongoing tasks section of the action list (review committee to draft/National NAGPRA office to send)
 - i. Letter to BLM to include concern about current policies prohibiting reburial on BLM land
 - d. Letter to express willingness to provide information to assist in National Park System Advisory Board subcommittee's review (review committee to draft/National NAGPRA office to send)
 - e. Letter regarding disposition of culturally unidentifiable cultural items, Carlsbad Caverns and Guadalupe Mountains National Parks
 - f. Letter regarding disposition of culturally unidentifiable cultural items, BOR, Eastern Colorado Area Office
 - g. Letter regarding disposition of culturally unidentifiable cultural items, BOR, Dakotas Area Office and the North Dakota Intertribal Reinterment Committee – with one negative vote and one abstention regarding associated funerary objects
7. 1999/2000 Report to Congress
- a. Body of report – Review committee
 - b. Statistical and factual sections – National NAGPRA staff
8. Review committee administration
- a. Nashville
 - i. Travel expenses
 - ii. Committee reimbursement
 - iii. Transcript
 - iv. Minutes
 - b. California meeting
 - i. Binder organization
 - ii. Agenda

Public Comment

Mr. James Bird, Cultural Resource Director and Tribal Historic Preservation Officer, Eastern Band of Cherokee, explained that there are no federally recognized Indian tribes in Tennessee. The Cherokee Nation establishes traditional territorial claims to much of Tennessee by treaty law. He stated there were problems repatriating Tennessee Valley Authority (TVA) collections housed at six universities and museums. Mr. Bird noted that TVA did not report at the review committee meeting on their NAGPRA compliance efforts. He discussed a conflict between the regulations and the Act that although the purpose of the Act is to facilitate repatriation, there are some problems with establishing cultural affiliation. He explained numerous problems with repatriation in Tennessee, such as the Cherokee traditional territory's involving portions of eight southeastern States, and limited staff and resources in Tennessee. He described a situation with the University of Alabama's identifying human remains as culturally unidentifiable due to lack of evidence, even though the Cherokee have provided scholarly evidence of occupation in the area. The Eastern Band of Cherokee will work on a regional solution to this issue and are awaiting publication of the review committee's recommendations. Although the standard-of-proof section of the regulations states that claims do not have to establish cultural affiliation with scientific certainty, the other language in the section seems to require that. Even Senate subcommittee hearings' recognizing NAGPRA as Indian law have not helped. Mr. Bird hoped the review committee would consider his concerns when trying to develop regulations to resolve the conflict in cultural affiliation.

Mr. Bobby C. Billie, Independent Traditional Seminole Nation, explained he is frustrated with what the Federal government does to the indigenous people, robbing their belongings, human remains and artifacts, lands, way of life, and language. His people are not federally recognized and so to the government they do not exist. Mr. Billie

stated that they do exist and will continue to protect their way of life and people. They know who these people are and will return them back to their mother. Mr. Billie stated that the white people came from another country and have no connection to their elders so they do not understand. He indicated they have a right to protect their ancestors and no laws can take that right away. He explained that some people will only work with people from federally recognized Indian tribes, which hurts the indigenous people's way of life. Mr. Billie added that, even though it is very difficult to travel to meetings and participate in this process without the recognition of the Federal government, he would continue to be involved as long as human remains and belongings are being disturbed.

Ms. Myra Giesen, BOR, urged that all correspondence to the review committee be forwarded immediately rather than on a monthly basis due to the great efforts expended in fulfilling requests of the review committee in a timely fashion.

Ms. Martha Graham, Director, Cultural Resource Program, American Museum of Natural History, welcomed the review committee members. She explained that the American Museum of Natural History had three quota periods in their period of forbearance: 45 percent completion by August 31, 1999; 70 percent completion by December 31, 1999; and 100 percent completion by June 30, 2000. The final inventories were sent to NPS on June 15, 2000. Ms. Graham stated she would provide the review committee members with copies of the progress and completion letter from the provost's office of the American Museum of Natural History to the Assistant Secretary for Fish and Wildlife and Parks. She explained that the American Museum of Natural History has collections from BLM, U.S. Forest Service, BIA, and the Navy. Discussions with BIA and the Navy are ongoing. BLM has reported on their collections with the exception of some individuals from Nevada. The American Museum of Natural History completed the inventory report on the U.S. Forest Service collections.

Ms. Barbara Isaac, Peabody Museum of Archaeology and Ethnology, Harvard University, expressed appreciation for the opportunity to address the review committee. Concerning the issue of contamination of sacred objects, she stated that the regulations require museums and institutions to inform recipients of any presently known pesticide treatment of cultural items during the repatriation process. The Peabody Museum has provided that information and the first testing for contamination was in conjunction with the Hopi Tribe through an NPS grant. Ms. Isaac introduced two members of the Peabody Museum staff, Ms. Patricia Capone and Ms. Diana Loren.

Ms. Isaac summarized the progress made by the Peabody Museum in fulfilling its forbearance requirements. The Peabody Museum was given until May 31, 2001, to complete its inventory. This requirement was divided into four quota periods with an expected percentage completion required at the end of each quota period. The 3rd quota period was just completed with work being done on collections from 14 States. Collection information is now complete for 37 out of the 45 states with collections subject to NAGPRA. Within the fourth and final quota period, work will continue on collections from Alaska, Colorado, New Mexico, Nevada, Ohio, Oregon, Texas, and Washington. A table was provided to the review committee members with completion details. As of October 31, 2000, the Peabody Museum had identified 3,006 culturally affiliated human remains, 5,426 culturally unidentifiable human remains, 59 non-Native human remains, and 1,138 items not subject to NAGPRA representing 83 percent of the estimated total of 11,587, which is 3 percent above the requirement. In addition, 1,301 culturally affiliated associated funerary objects, 857 unassociated funerary objects, and approximately 8,293 culturally unidentifiable associated funerary objects were identified. During the third quota period, the Peabody Museum identified 143 culturally affiliated human remains, 2,178 culturally unidentifiable human remains, 3 non-Native human remains, 616 unassociated funerary objects, and 4,818 culturally unidentifiable associated funerary objects. During the third quota period, a total of 887 consultation interactions occurred with 155 Indian tribes, an average of 5.7 per Indian tribe. Ms. Isaac explained that time and funding concerns have lowered the consultation rate, which will hopefully improve following completion of the forbearance period. The Peabody Museum has every intention of meeting the final quota period requirements on May 31, 2001.

Review Committee Discussion: Mr. Minthorn thanked Ms. Isaac for her presentation. In response to a question from Mr. Minthorn, Mr. Robbins explained that institutions that were late in completing the statutory requirements for inventories and summaries entered into an agreement with the Assistant Secretary for Fish and Wildlife and

Parks that the Secretary of the Interior would forbear leveling civil penalties. As part of the forbearance agreement, the institutions agreed to complete inventory work according to a schedule set in the forbearance agreement. The schedule and requirements were negotiated individually with each institution. Mr. Bradley expressed concern about the different standards of implementation of NAGPRA, one applying to museums and one applying to Federal agencies. Ms. Isaac added that the Peabody Museum's initial time request in discussions with the Assistant Secretary was cut in half, which had the positive effect of raising the necessary funding within the institution and the negative effect of reducing the number of tribal consultations. Mr. Hart commended the Peabody Museum for achieving the consultation results described by Ms. Isaac. Mr. Minthorn asked for information regarding the other forbearance institutions. Mr. Robbins provided the following completion dates: New York State Museum, April 30, 2000; Ohio Historical Society, May 31, 2001; Phoebe Hearst Museum, June 30, 2000; and the Texas Archeological Research Laboratory, February 29, 2000. Mr. Robbins stated that inventories have been received from those institutions within completed forbearance periods, but added that the inventories have not been reviewed at this point. He explained that Ms. Martha Graham would report on the status of the American Museum of Natural History [see above].

Mr. Dan Kirby, Alliance of Native American Rights of Tennessee, explained that the alliance is a preservation organization that is concerned about inventories of approximately 10,000 and 12,000 human remains from the State of Tennessee. These human remains are from different archeological contexts and are considered culturally unidentifiable. Mr. Kirby expressed additional concern that not all affected institutions have submitted inventories, citing Vanderbilt University as an example. Mr. Kirby described the varied tribal history of the area and expressed the hope that these human remains can be reburied.

Review Committee Discussion: Mr. Bradley urged Mr. Kirby to bring any noncompliance concerns to the attention of NPS and suggested that Mr. Kirby consider the review committee's recommendations for culturally unidentifiable human remains, specifically the section on disposition of Native American human remains on a regional basis.

Mr. Leigh Kuwanwisiwma, director, Cultural Preservation Office, Hopi Tribe, welcomed the new review committee members and commended the efforts of Ms. Naranjo and Mr. Sullivan as former members of the review committee. Mr. Kuwanwisiwma recognized members of the Hopi Tribe present at the meeting: Mr. Ambrose Nemoki representing the Hopi Tribal Council, and Mr. Clark Tenakhongva representing Vice-Chairman Philip Quochoyewa and Chairman Wayne Taylor. He stated that the Hopi Tribe appeared before the review committee twice in 1999 regarding the dispute between the Hopi Tribe and Chaco Culture NHP: in May to present the position of the Hopi Tribe and in November when the review committee made its recommendation. The Hopi Tribe acknowledges that a subcommittee of the National Park System Advisory Board will convene to seemingly address cultural affiliation. The Hopi Tribe has not received any communications beyond Director Stanton's letter, to provide further information on the review protocols. The Hopi Tribe is specifically interested in working with the subcommittee. In terms of protocol, the Hopi Tribe would like to know what their role will be in the review, if any, and the review committee's role in the reassessment of cultural affiliation decisions nationwide, as well as the roles of the Departmental Consulting Archeologist's office and the Stewardship and Partnerships program. Regarding organization of the review, the Hopi Tribe would like to know how the staffing would be organized, specifically with respect to NPS employees, given the concern about potential conflict of interest. The timelines involved are another concern, and Mr. Kuwanwisiwma specifically noted the frustration of all parties involved in trying to resolve and determine finality to the dispute. The Hopi Tribe questions whether the National Park System nationwide review and assessment of cultural affiliation decisions will affect specific determinations. The Hopi Tribe desires to work within the process identified by Director Stanton and is interested in how the subcommittee and the review board will interpret the recommendations of the review committee in November 1999 but has continuing concerns about how the assessment will be used by NPS.

Review Committee Discussion: Mr. Minthorn had a question regarding the correspondence sequence. Mr. Kuwanwisiwma explained that subsequent to the Federal Register publication of the recommendations of the review committee, the Hopi Tribe sent a letter to Director Stanton to see if the original decision on behalf of

Superintendent Wilson would be upheld or reversed. Director Stanton responded by saying that he would convene the subcommittee to assess the cultural affiliation decisions throughout NPS. In response to a question by Mr. Bailey, Mr. Robbins clarified that he was present as the Designated Federal Official to the review committee. He would provide information but was not participating in dispute proceedings. Within NPS, the Director is working on this issue in consultation with the American Indian Liaison Office and the head of NPS policy office, who is the Designated Federal Official for the National Park System Advisory Board. A subcommittee of the National Park System Advisory Board was asked to undertake the special topic of assessing determinations of cultural affiliation system-wide. The Archeology and Ethnography and the National NAGPRA programs will provide information to the subcommittee through the American Indian Liaison Office. Information available from the National NAGPRA program includes all determinations of cultural affiliation described in notices of intent to repatriate, notices of inventory completion, and notices of disposition published in newspapers. Information available from the Archeology and Ethnography program includes files on newspaper notices of disposition.

Mr. Bradley asked if Mr. Kuwanwisiwma feels that there should be a moratorium on repatriation activities. Mr. Kuwanwisiwma explained that the Hopi Tribe does not want to assume responsibility for any ramifications that a moratorium might have relative to the processes under NAGPRA. He added that activities are ongoing in the southwestern United States, which is of particular concern since on more than one occasion the Hopi Tribe has formally filed a dispute against Mesa Verde National Park, with no response to date from either Mr. McManamon or Mr. Robbins. Mr. Bradley asked Mr. Robbins if it would be appropriate to assume that while the internal review is going on the specific parks in question would not take unilateral actions. Mr. Robbins replied that he would find out and report to the review committee. After discussion, the review committee members agreed to send a letter to the National Park System Advisory Board subcommittee expressing the review committee's willingness as a whole or individually to participate or provide information. Mr. Kuwanwisiwma expressed hope that Director Stanton would present a status report on his current decision at the May-June 2001 review committee meeting.

Mr. Kuwanwisiwma explained the efforts of the Hopi Tribe regarding pesticide contamination of cultural items. The Hopi Tribe is the only Indian tribe that has proceeded with actual laboratory work for repatriated items and has since declared a moratorium on the physical return of all objects that may potentially be contaminated. Currently the Hopi Tribe is working on testing 200 items that have been returned to the Hopi people and subsequently have been given to religious practitioners for ceremonial and custodial purposes. One object tested was so heavily contaminated with arsenic that the Hopi Tribe is very concerned about the family who had custody of the object, and hopes to elevate the contamination issue to a national level through public outreach and educational programs. At this time, the Hopi Tribe has engaged in a reservation-wide full retrieval program and the Museum of Northern Arizona is acting as a temporary repository while the items are tested for contaminants or chemicals. Mr. Kuwanwisiwma stressed the importance of understanding the cultural environment to which the objects are being returned and how the items will be used. He pointed out potential future concerns such as the possibility of cleaning or neutralizing contaminated items, and who will bear that cost. Mr. Kuwanwisiwma expressed hope that the review committee would support the Hopi Tribe in their efforts to deal with contamination of cultural items and expressed appreciation for being on the agenda.

Review Committee Discussion: Mr. Minthorn stated that this issue needs to be placed in the action list so the review committee could be kept apprised of contamination issues with Indian tribes, museums, and Federal agencies. He agreed with Mr. Kuwanwisiwma that this issue needs to be dealt with at a national level with an aggressive education campaign. Ms. Worl suggested calling for oversight hearings to examine the extent of the problem and also having some entity such as a national science or museum foundation do an assessment of the extent of the problem. Mr. Robbins suggested that any individuals with knowledge of current activities dealing with the contamination issue might provide that information to the review committee and described an upcoming symposium organized by the Society for the Preservation of Natural History Collections in the spring of 2001. The goal of the symposium is to bring people involved in this topic together towards publishing proceedings that summarize the current research and literature. Mr. Bailey stressed the danger of handling contaminated items. Mr. Hart seconded his concern and expressed appreciation for Mr. Kuwanwisiwma's bringing the issue to the attention of the review committee again. Mr. Bradley suggested that the National NAGPRA Website should create links to informational

sites dealing with the contamination topic. Mr. O'Shea pointed out that this problem is not limited to Native peoples but also affects museum personnel. He stressed the importance of maintaining collection records but added that collections were often obtained from other institutions. Mr. O'Shea suggested a national resource for testing, perhaps utilizing a quick swab test that could indicate when an item is potentially seriously contaminated. Mr. Bailey suggested sending a nationwide alert, possibly by e-mail, pointing out the potential for contamination of repatriated objects. Mr. Minthorn added that contamination of sacred objects would be in the 1999/2000 Report to Congress.

Mr. Edward Luby, Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, explained that he was the former director of the NAGPRA unit at the museum. He introduced the interim NAGPRA director, Mr. Richard Hitchcock. The museum completed their inventories on June 30, 2000, and is continuing consultations with Indian tribes. The NAGPRA program will be incorporated into the main functions of the museum.

Mr. Shawn Mulford, Navajo Nation, explained that he was speaking individually and not on behalf of the Navajo Nation. He expressed concern that a lot of Federal agencies provided a great deal of written information to the review committee members at the meeting, which did not allow adequate time to review the material. He expressed frustration with Federal agencies; they are not doing a good job when they hire one person and say their NAGPRA compliance will take another seven years. The ancient people need to be put to rest. He was disturbed by the actions of NPS that seem to say that NPS will follow the recommendations of the review committee only when NPS agrees with them. This leaves the impression that the review committee is a figurehead with Native American representatives that look good to the public. The Army referenced consultants, archeologists and others experts, but they need to have a Native voice represent the indigenous way of life. Mr. Mulford agreed with Mr. Billie's comments that the meeting was not a good place to discuss spiritual things. Ancestors are not objects and people need to realize they are talking about the spirit of the nations, the spirit of the people, and the spirit of the human race. Mr. Mulford urged the review committee to consider tribal culture and practices when considering the Chair of the review committee and explained that in the Navajo Nation women lead the people. Mr. Mulford added that people are protecting the government, and NPS structures the process in such a way that traditional people do not attend the meetings. He believes the only way anything will be accomplished is for people to look within themselves for their spirit and their connection back to the land. Everyone will have to have respect and take responsibility for his or her actions.

Review Committee Discussion: Mr. Bradley thanked Mr. Mulford for his comments and reality check on the Federal agency reports and NAGPRA compliance progress.

Ms. Lenora Rodgers, Chairwoman, Fallon Paiute-Shoshone Tribe, introduced Ms. Vicki Christy, NAGPRA coordinator, Fallon Paiute-Shoshone Tribe, and expressed appreciation for the opportunity to address the review committee. Ms. Rodgers explained that tribal representatives have testified before the review committee several times over the past several years on the subject of the Fallon Paiute-Shoshone Tribe's request for repatriation of the human remains and associated funerary objects removed from Spirit Cave in 1940. The Fallon Paiute-Shoshone Tribe is the only Indian tribe that seeks repatriation of the human remains and no Indian tribe contests their claim to repatriation. Repatriation of cultural items from Spirit Cave is profoundly important to the Indian tribe. The excavation, display, and continued retention of the Spirit Cave human remains violates core religious and spiritual beliefs. According to spiritual beliefs, graves, human remains, and artifacts are objects that should be avoided and left undisturbed, and bad consequences can happen if they are disturbed. The Indian tribe has a fundamental responsibility to protect burials and ensure the return of all their ancestors, including this ancient one.

The Fallon Paiute-Shoshone Tribe provided the BLM Nevada State director with material to substantiate cultural affiliation through eight reports by experts in the fields of anthropology, biology, burial practices, ethnology, folklore, linguistics, archeology, and DNA. In response to the expert reports provided by the Fallon Paiute-Shoshone Tribe, the director of the Department of Museums, Library and Arts of the State of Nevada wrote that his staff respects the opinions of the scholars retained by the Fallon Paiute-Shoshone Tribe and recommended that their opinions be given serious consideration. The director added that due to changes in the museum staff, the museum is

no longer assuming a lead in scientific studies of the Spirit Cave human remains. On October 15, 2000, eight months after submission of the materials, the BLM Nevada State director announced his preliminary determination that, although Native American for purposes of NAGPRA, the Spirit Cave human remains are not culturally affiliated with existing Native American Indian tribes including the Fallon Paiute-Shoshone Tribe. A 60-page determination was issued explaining the decision, which obviously represents a great deal of work. Without the Fallon Paiute-Shoshone Tribe's knowledge, BLM engaged in additional studies and supplemented the administrative record in the eight months leading up to the decision. Despite BLM's promise to provide copies of all information added to the administrative record and BLM's legal obligation to consult, BLM forwarded materials to the Fallon Paiute-Shoshone Tribe after its decision. BLM provided a 60-day comment period upon issuing its preliminary hearing and denied the tribal request for an extension. The Nevada State director felt that the issues had been debated thoroughly at the Nevada State office level, and referred the Fallon Paiute-Shoshone Tribe to the review committee dispute resolution process.

The Fallon Paiute-Shoshone Tribe strongly disagrees with BLM's decision. Evidence in support of cultural affiliation was either ignored or mischaracterized, while evidence in opposition was given more weight than it deserved. The BLM determination was internally inconsistent and according to anthropologists was based on weak analysis and outdated science. It also appeared that BLM's application of NAGPRA in the case of the Spirit Cave human remains was inconsistent with the Secretary of the Interior's approach with respect to Kennewick man. Pursuant to Section 8 of the Act, the Fallon Paiute-Shoshone Tribe requests that the review committee review and make findings regarding the cultural affiliation and return of the Spirit Cave human remains and associated funerary objects. They also request the opportunity to present a written and oral response to the new materials produced by BLM at the review committee's second meeting of 2001 and that the review committee consult with them in determining the procedures for the review of this matter.

Review Committee Discussion: Mr. Bradley thanked Ms. Rodgers for her presentation and expressed regret that this issue has not been resolved given the many times that the issue has come before the review committee, and added that he believed this was a dispute that the review committee should hear. Mr. Minthorn stated that the persistence shown and information provided by Mr. Alvin Moyle in his numerous appearances before the review committee was very useful and stated that tribal communication with the review committee is very critical. Mr. Robbins confirmed that the next action would be for the Chair and the Designated Federal Official to determine whether the review committee would accept this as a dispute. Ms. Rodgers presented a written version of the Fallon Paiute-Shoshone Tribe's request to Mr. Robbins.

Mr. Gary Selinger, University of Alaska Museum, Fairbanks, raised the issue of international repatriation and stated that the University of Alaska Museum has collections in Japan, Copenhagen, and Moscow. Repeated attempts to work out repatriations with these institutions have been unsuccessful, with no Federal mechanism to deal with international repatriations. In Alaska, 68 or 69 percent of the land is Federal property. This raises another concern since many Native communities want to rebury in the original burial locations, usually on Federal property where reburial is not permitted. He added that this situation was causing a delay in repatriation for human remains that were from BLM lands.

Review Committee Discussion: In response to a question from Ms. Worl, Mr. Selinger explained that years ago the University of Alaska Museum was listed on collecting permits as the repository with the thought that when research was completed the materials would be returned to the museum. Ms. Worl requested that this issue be added to the concerns under Federal agency compliance. Mr. O'Shea asked what percentage of requests to rebury on Federal lands involved locations that have since involved construction or other types of disturbances. Mr. Selinger replied that he was not sure. Mr. Bradley requested that both issues be placed on the action list and specifically asked Mr. Robbins if DOI would be able to explore with the Department of State how the issue of federally owned collections outside of the country might be approached. Mr. Robbins replied that they would consider the request.

Mr. Vincas Steponaitis, Society for American Archeology (SAA), welcomed the new review committee members and expressed appreciation for their willingness to serve on the review committee, as well as his admiration for the

review committee as a whole. Mr. Steponaitis stated that the statutory definition of cultural affiliation is often misunderstood and cited the recent decision that was made by Secretary of the Interior Babbitt in the Kennewick case. The SAA agrees with the Secretary's finding that the Kennewick man was Native American but did not agree that the Kennewick man was culturally affiliated with the five claimant Indian tribes. Enormous amounts of evidence were collected in this case. The SAA felt that the Secretary seemed to substitute his own definition of cultural affiliation for the one that appears in the statute. The law defines cultural affiliation as a relationship of shared group identity. In the Secretary's letter explaining his finding, the Secretary quotes the law but then substitutes simply a cultural relationship or cultural continuity as being sufficient. The SAA would argue that a cultural relationship is not the same thing as a relationship of shared group identity. Mr. Steponaitis asked the review committee to focus its deliberations very carefully on the concept and statutory definition of cultural affiliation, as this concept and its application are key to preserving the balance and compromise that NAGPRA represents between traditional Native American interests and interest in scholarly knowledge of the past.

Ms. Pemina Yellow Bird, Three Affiliated Tribes of North Dakota, explained that she represented the North Dakota Intertribal Reinterment Committee which represents the Standing Rock Sioux Tribe, the Turtle Mountain Band of Ojibwa, the Spirit Lake Sioux, and the Three Affiliated Tribes of North Dakota (Mandan, Hidatsa, and Arikara Nations). She expressed frustration listening to the Federal agency reports on compliance status, especially BIA's report. In the year 2000, there is no excuse for not knowing which repositories hold Native American human remains. She requested that copies of the Federal agency reports given to the review committee be provided to audience members as public documents. Ms. Yellow Bird expressed concern over the lack of adequate representation by Native Americans on the National Park System Advisory Board and subcommittee described earlier by Mr. Robbins and Mr. McManamon. She stated that any determinations made about the review process should be open to the public and reminded the review committee members that NPS is a Federal agency that has to simultaneously comply with the requirements of NAGPRA while having to administer NAGPRA creating an inherent conflict of interest. In response to comments made by the BOR representative regarding development of an internal policy and guidance for inadvertent discoveries, Ms. Yellow Bird stated that neither she nor anyone from the Indian tribes she represents and works with were consulted in the development of that policy. Of further concern is the fact that the policy was being developed at the same time that Indian tribes in North Dakota were asking the regional and area offices of BOR to negotiate and sign a memorandum of agreement to determine the treatment and disposition of all unmarked Native burials located on BOR lands or projects. Ms. Yellow Bird asked how many Indian tribes were funded in the last NAGPRA grants cycle and explained that her Indian tribe has repeatedly applied for and been denied funding. She asked if any grants monies were left at the end of the funding cycle.

Review Committee Discussion: Mr. Robbins explained that there were no grant monies left. Mr. O'Shea stated that in the FY2000 grant cycle 84 Indian tribes submitted grant requests and 31 Indian tribes were awarded grants. In FY2001 the grants total will be \$2.433 million. Mr. Robbins explained that there was a sign-up sheet available for audience members who wished to receive copies of the Federal agency reports submitted to the review committee.

Closing Remarks

Mr. Robbins thanked the review committee members and the members of the audience for participating in the meeting. He urged the review committee members to give the National NAGPRA office feedback on the amount of information they are currently receiving in their binders for future meetings. Mr. Minthorn thanked his fellow review committee members and members of the audience for their effort in attending the meeting. His hope is to use a process that is fair and objective to address all items, issues, concerns, and questions. Each voice and presence adds to a process that is going to have results.

The meeting was adjourned at 1:00 p.m. on Wednesday, December 13, 2000.

Approved:

Mr. Armand Minthorn, Chair
Native American Graves Protection
and Repatriation Committee

Date