



## Columbia Plateau Inter-Tribal Repatriation Group

Testimony presented to the NAGPRA Review Committee  
Washington, DC  
November 28, 2012

### Introduction

We thank the Native American Graves Protection and Repatriation Act (NAGPRA) Review Committee for this opportunity to provide testimony on our experiences with NAGPRA compliance. The Columbia Plateau Inter-Tribal Repatriation Group (CPITRG) consists of the tribes and bands from the Columbia Plateau in the Pacific Northwest states of Washington, Idaho, and Oregon.



*Figure 1 Columbia Plateau in the Pacific Northwest*

The Confederated Tribes of the Colville Reservation, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes and Bands of the Yakama Nation, the Nez Perce Tribe, and the Wanapum Band of Priest Rapids, a non-federally recognized Indian group, have come together to care for our ancestors and ensure that they are returned to the earth as our responsibility to the Creator. We need each other to make this process work. It is through our respect for the land, our people, and our family relationships that we have chosen to work together as descendent communities of the people that have lived on the Columbia Plateau for time immemorial.

We presented to you last on May 10, 2012 in Santa Fe at which time we provided testimony on the period for notice review and publication, repatriation grants, the Ancient One aka Kennewick Man, federal agency compliance, and NAGPRA training. Today we would like to provide information to you on our repatriation work and speak to an issue of concern.

## Repatriation Work

In 2012 we repatriated a minimum number of 132 individuals and 2808 funerary objects from 13 institutions (Appendix A). These repatriations took place over a total period of 25 days for transfer, preparation, and reburial. An additional 27 days were spent in meetings; 15 with museums and agencies, 4 government to government meetings with the US Army Corps of Engineers Walla Walla District and Northwest Division, 3 Columbia Plateau Inter-Tribal Repatriation Group meetings, 1 meeting with a tribal member who has agreed to allow use of his family cemetery on allotment land to rebury CUI from the Burke Museum's statewide CUI project, and a tribal meeting held with Dr. Douglas Owsley regarding scientific findings from the studies completed on the Kennewick Man. It has been a busy year.

## Inadvertent Discoveries

Today we would like to bring to your attention some of the frustrations we have faced related to inadvertent discoveries. The regulations (10.4) pertaining to inadvertent discoveries are to assist federal agencies in carrying out Section 3 (d) of NAGPRA regarding the custody of human remains, funerary objects, sacred objects, or objects of cultural patrimony that are discovered inadvertently on Federal or tribal lands after November 16, 1990. While the regulations are clear in their intent, there are at least four grey areas which often cause unnecessary delays.

First, while, the regulations are clear about the time sensitive nature of inadvertent discoveries with regards to initial notification, securing the site, and stop work orders. The regulations, however, do not ensure a timely resolution. Such words and phrases as “provide **immediate** telephone notification” and “**no later than** 3 working days after the receipt of the written confirmation of the notification” are used in the regulations. But, after the initial notification and consultation, there is no prescribed timeline for moving the process forward. Although, the flow chart, *Discoveries on Federal Lands – Overview*, is very helpful in demonstrating the steps federal agencies need to take to complete the process, one of the largest frustrations we have been faced with is the amount of time taken after the first notification and initial consultation. A majority of inadvertent discoveries we deal with are related to erosion and not planned construction projects. When a “stop work order” for a construction project isn't in place, the sense of urgency lessens. We have experienced the process to take months in the best of instances and sometimes years to complete, especially if there is an intersection with another law such as the National Historic Preservation Act or the Archaeological Resources Protection Act. Some examples include:

- Bureau of Reclamation, Columbia-Cascade District- took over 3 years to complete the process
- US Army Corps of Engineers, Walla Walla District- took over 10 years to return remains.
- U.S. Forest Service- on going, but three years and counting

Second, agencies are not following the regulations or are misinterpreting the law. We have experienced a range of instances where agencies and staff do not follow NAGPRA regulations or regulations are subject to an individual's, or divisions, or agencies' interpretation or misinterpretation of the law and regulations. An example is the human remains which were found at Columbia Park, near Kennewick, Washington on October 24, 2011.

The US Corps of Engineers Walla Walla District (WWCOE) notified the claimant tribes of the inadvertent discovery via email with a follow up phone call. Per the WWCOE “*Guidance on*

*Inadvertent discovery of Human Remains, Funerary Objects, Sacred Objects and Objects of Cultural Patrimony*”, an independent physical anthropologist, Dr. Don Tyler, was contracted to make a determination of Native American. However, the remains were not examined for almost two months and were finally sent to Dr. Don Tyler in December 2011. He determined the remains were Native American dating to approximately 150 to 200 years ago.

The WWCOE continued to give regular updates until February 2012. A Notice of Intended Disposition (NID) was published two times in the Tri-City Herald on March 1 and March 15, 2012. It included information on the nature and affiliation of the human remains and solicited further claims to custody. No additional claimants came forward. The WWCOE put a hold on the disposition of the remains when the WWCOE was contacted by Congressman Doc Hastings’ office.

In early in February of that same year, the Tri-City Herald newspaper contacted the WWCOE about the inadvertent discovery at Columbia Park. Several news articles in Oregon and Washington were subsequently published with comments to the location of the discovery being near that of Kennewick Man. After the new articles were published, the tribes were notified, unofficially by phone, that the WWCOE had been contacted by Congressman Doc Hastings’ office requesting all information pertaining to this inadvertent discovery. It was after this request that the WWCOE began consultation with the St. Louis Corps of Engineers’ Mandatory Center of Expertise for the Curation and Management of Archaeological Collections (MCX-CMAC). The claimant tribes were notified in a meeting, not related to the Columbia Park inadvertent discovery, that a clear cultural affiliation determination could not be made. The reviews, discussions with the MCX-CMAC, and the reversal of the cultural affiliation by the WWCOE were not made in consultation with the claimant tribes. Any face to face communication regarding this issue occurred at the end of unrelated meetings and/or events.

The claimant tribes were not officially consulted about the complete reversal in the WWCOE’s cultural affiliation determination until July 2012. At which time, the tribes were notified that the WWCOE was going to wait until the reserved 10.7 regulations for the *Disposition of unclaimed human remains, funerary objects, sacred objects or objects of cultural patrimony discovered on federal or tribal lands after 1990* were published. A retraction of the NID was not published. The Confederated Tribes of the Colville Reservation informed the WWCOE in a letter dated July 9, 2012 that the claimant tribes were going to request a “Finding of Fact” from the NAGPRA Review Committee. The WWCOE then contracted a professional land surveyor in order to determine if the inadvertent discovery came from federal land or not. The tribes were informed by email that the discovery had been on state land, and they were turning the remains over to the state physical anthropologist. The WWCOE emphatically stated this did not change their official decision regarding affiliation. The tribes were notified of this change in jurisdictional control on August 27, 2012, ten months after the inadvertent discovery. The state physical anthropologist received the transfer on September 9, 2012, two weeks later.

Throughout the process, the claimant tribes requested, on numerous occasions, copies of Dr. Tyler’s report, published notices, the request from Congressman Doc Hastings, and the information provided to Congressman Hastings’ office. The claimant tribes have not received the requested documentation. Additionally, the WWCOE did not provide a written plan of action for this and other inadvertent discoveries from their land. It is the claimant tribe’s assumption that one was not prepared, approved, or signed for the Columbia Park or other inadvertent discoveries we have dealt with. While this example is from the US Corps of Engineers Walla Walla District, it is by no means the only agency that

misinterprets the regulations, takes longer than necessary to complete the process, or does not comply with the law.

Third, with regards to human remain elements vs. complete burials, we have experienced the attitude that single or multiple elements of human remains are either not subject to the law or are not as important as complete burials. Chelan County Public Utility District stated, when pressed to do recovery, that the element found, a human mandible, could have “floated in” from another location and archaeological investigation and recovery may not be necessary. The term “possible” inadvertent discovery was used when referring to the mandible which was recovered from a known archaeological site where previous burials had been recorded. Chelan County Public Utility District waited almost 30 days before conducting recovery and then only with the strong insistence by the tribe. The recovery resulted in a nearly complete individual with just a few elements missing.

Fourth, agencies are not prepared with internal mechanisms for completing the process. All agencies need to be prepared for the event of inadvertent discoveries and most agencies do have some sort of protocol in place albeit in some cases it is a statement that they will follow NAGPRA. Agencies who manage lands where it is common to have at least one or more inadvertent discovery a year have not streamlined their internal process for returning ancestral remains to the tribes in a timely manner. Purchase orders, Memorandum of Agreements, and/or annual contracts with physical anthropologists, tribes, archaeologists, and repositories can be prepared on an annual or standing basis. Once again, after the initial notification and consultation, there can be a prevailing attitude of “we’ll get around to it”. Not having the necessary contracts or agreements in place, templates for plans of action, emails and phone lists all add up to taking longer than it should. While much of the above cannot and should not be addressed in regulations, it should be suggested, pointed out, and encouraged.

## **Conclusion**

In conclusion the CPITRG respectfully suggest that timelines for completing the process of inadvertent discoveries be included in the revision of the regulations. There should be milestone markers and a check list (consultation, examination, report and cultural affiliation by a physical anthropologist, draft of NID to tribes, etc.) instituted. The Written Plan of Action needs to address timelines and readiness, as well as, site treatment such as stabilization. We would like to see specific training developed for agencies on inadvertent discoveries and how to proceed in a judicious manner.

The Columbia Plateau Inter-Tribal Repatriation Group once again thanks the NAGPRA Review Committee for this opportunity to speak about our experiences with compliance of the Native American Graves Protection and Repatriation Act.

Appendix A: 2012 Repatriations for CPITRG

Repatriation Type	Notice Number	Institution	MNI	AFO	UFO	SO	Tribes
NAGPRA	NIC1593	Washington State Parks and Recreation Commission	2	0	0	0	C, NP, U, W, WS, Y
NAGPRA	NIC1590	Thomas Burke Memorial Washington State Museum, University of Washington	27	0	0	0	C, NP, U, W, Lummi, Spokane, Stillaguamish, Suquamish
NAGPRA	NIC1557	Northwest Museum of Arts & Culture	61	576	0	0	C
NAGPRA	NIC1555	Yale Peabody Museum of Natural History	8	0	0	0	U, WS
NAGPRA	NIC1553	Museum of Anthropology at Washington State University	1	0	0	0	C, Spokane
NAGPRA	NIC1542	US Army Corps of Engineers, Walla Walla District and Alfred W. Bowers Laboratory of Anthropology, University of Idaho	7	586	0	0	NP
NAGPRA	NIC1535	Maxey Museum, Whitman College	6	26	0	0	C, NP, U, W, WS, Y
NAGPRA	NIC1531	Central Washington University, Department of Anthropology	1	1	0	0	C
NAGPRA	NIC1527	US Army Corps of Engineers, Walla Walla District and University of Oregon Msueum of Natural and Cultural History	7	0	0	0	C, NP, U, W, WS, Y
NAGPRA	NIR0586	Yale Peabody Museum of Natural History	0	0	114	0	U, WS
NAGPRA	NIR0584	Northwest Museum of Arts & Culture	0	0	374	0	C
NAGPRA	NIR0571	US Army Corps of Engineers, Walla Walla District and Alfred W. Bowers Laboratory of Anthropology, University of Idaho	0	0	826	0	NP
NAGPRA	NIR0564	Maxey Museum, Whitman College	0	0	37	0	C, NP, U, W, WS, Y
NAGPRA	NIR0559	US Army Corps of Engineers, Walla Walla District and University of Oregon Msueum of Natural and Cultural History	0	0	270	0	C, NP, U, W, WS, Y
NAGPRA	NIR0603	Maxey Museum, Whitman College	0	0	-2	0	C, NP, U, W, WS, Y
DAHP	HR12-00020	Wapato High School	3	0	0	0	W, Y
DAHP	HR12-00040	Chelan County Coroner	1	0	0	0	C, W, Y
DAHP	HR11-00040	Benton County Coroner	1	0	0	0	C, U, W, WS, Y
NAGPRA	NID	US Army Corps of Engineers, Walla Walla District	7	0	0	0	C, NP, U, W, Y
			<b>132</b>	<b>1189</b>	<b>1619</b>	<b>0</b>	

C is Colville  
 NP is Nez Perce  
 U is Umatilla  
 W is Wanapum  
 WS is Warm Springs  
 Y is Yakama