

**STATEMENT OF KATHERINE H. STEVENSON, ASSOCIATE DIRECTOR,
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PARK SERVICE, DEPARTMENT OF THE INTERIOR, BEFORE THE HOUSE
COMMITTEE ON RESOURCES, CONCERNING H.R. 2893, A BILL TO
AMEND THE NATIVE AMERICAN GRAVES PROTECTION AND
REPATRIATION ACT TO PROVIDE FOR APPROPRIATE STUDY AND
REPATRIATION OF REMAINS FOR WHICH A CULTURAL AFFILIATION IS
NOT READILY ASCERTAINABLE.**

JUNE 10, 1998

Mr. Chairman, thank you for the opportunity to present the views of the Department on H.R. 2893, a bill to amend the Native American Graves Protection and Repatriation Act (NAGPRA) to provide for appropriate study and repatriation of remains for which a cultural affiliation is not readily ascertainable.

We cannot support H.R. 2893 in its current form. We understand the intent of the legislation is to permit the scientific study of the remains of non-identifiable lineal descendants. However, we do not believe this bill achieves this goal nor do we believe it is wise to legislate on this issue, which we feel can best be addressed through regulations and guidance.

Since the enactment of NAGPRA, the Department has worked with representatives of Indian tribes, Native Hawaiian organizations, national museum organizations, and national scientific organizations to implement the law in a balanced way. The regulations issued by the Department in January 1996 provide the necessary guidance and procedures to deal with appropriate study and repatriation of human remains.

Section 1(a) of H.R. 2893 would repeal a provision of NAGPRA addressing disposition of Native American human remains and cultural items excavated or discovered on federal lands. Current law allows disposition of the remains and items to an Indian tribe that is recognized by a final judgement of the Indian Claims Commission or the United States Court of Claims as aboriginally occupying the federal land on which the objects were discovered.

We believe the decisions of the Indian Claims Commission and the United States Court of Claims provide useful guidance for decision-making regarding the disposition of Native American human remains. We, therefore, disagree with the position taken in H.R. 2893 to repeal this section.

Section 1(b) of H.R. 2893 requires those making inadvertent discovery of Native American remains and objects to follow the requirements for disposition mandated for intentional excavation and removal of Native American remains and objects. This requirement already exists in regulations implementing the statute (43 CFR 10.4(d)(v)). Any excavation or removal in cases of inadvertent discoveries must be conducted according to the Archaeological Resource Protection Act (ARPA), cited in section 3(c)(1) of NAGPRA and its regulations (43 CFR 10.3(b)(1)). The use of contemporary, professional scientific archeological methods and techniques is required. Proper professional recording, examination, interpretation, and reporting of the results of the excavation or removal must be carried out by the responsible agency before any disposition of the remains occurs.

Section 1(c) of H.R. 2893 would add a new section 3(f) to NAGPRA. The new section would require human remains inadvertently discovered to be reasonably recorded according to generally acceptable scientific standards. However, the existing regulations reference the requirements of ARPA, which call for a rigorous, less ambiguous standard of recording, examination, interpretation, and reporting than the proposed section might allow. The proposed section might, in fact, reduce the extent of recording presently required by the statute and regulations because the wording is less detailed and less specific than that in ARPA.

We believe the problem of inadequate documentation, analysis, and reporting of inadvertently discovered Native American remains on federal and Indian lands results, in part, from a lack of rigorous implementation of the requirements of NAGPRA by federal agencies rather than from inadequate protections in the law and regulations. The Secretary of the Interior will be addressing this through additional guidance on this topic for use by federal land management agencies and tribes.

Section 2 of H.R. 2893 makes technical changes to NAGPRA.

Section 3 of H.R. 2893 revises section 7(b) of NAGPRA to authorize studies of Native American human remains and cultural items under certain circumstances. We believe the amendment to section 7(b) is unnecessary. In its present form, NAGPRA cannot be used as “authorization for...new scientific studies...” as part of the documentation for

inventories of Native American human remains and funerary objects held in public agency or museum collections. NAGPRA does not prohibit new scientific studies; it simply cannot be used as the authorization for them. Public agencies and museums that hold such remains and objects are permitted to undertake or allow new studies under ARPA and other statutes and regulations. In the case of museums, they are permitted to undertake or allow new studies according to their articles of incorporation, statements of purpose, or other legal statements under which they were established.

In fact, certain kinds of studies are needed for effective implementation of NAGPRA. For example, making determinations of cultural affiliation for Native American human remains and other cultural items in their collections requires agency and museum staffs to investigate a wide range of scientific, historical, and administrative information. The statute identifies ten specific kinds of evidence that should be considered when evaluating whether or not a relationship of cultural affiliation exists: "...geographical, kinship, biological, archaeological, anthropological, linguistic, folkloric, oral traditional, historical, or other relevant information or expert opinion." The process of gathering, evaluating, interpreting, and reaching a decision about cultural affiliation requires study. Similarly, the new excavations and inadvertent discovery requirements of NAGPRA incorporate the conduct of study through use of modern archeological methods and techniques for excavation, analysis, and reporting.

Although NAGPRA is a relatively new law, we have been very successful in working out problems that have arisen through consultation with concerned parties and use of the

current regulations and guidelines. We would be pleased to work with parties who have continuing concerns about particular matters on an individual basis. To reopen the law now could polarize the various interests affected by NAGPRA. We believe this is the time to bring parties together to find mutually acceptable solutions to problems that arise under this Act. We believe through our current regulations and guidelines we can work out many of the problems raised by the scientific community. We feel strongly that these issues should not be legislated.

We understand that this legislation was a result of the litigation over the reported 9,000-year-old skeleton known as the Kennewick Man. We are working closely with the Department of Justice and the U.S. Army Corps of Engineers to sponsor mediation to sort through these issues. The first mediation session is scheduled for mid-June. The mediation holds promise of achieving acceptable resolution under the existing statute. While we cannot be overly optimistic about any mediation process, it provides an alternative forum for discussing these issues with concerned tribal and scientific communities, and makes consideration of amendments to NAGPRA premature.

Mr. Chairman, this concludes my remarks. I would be happy to answer any questions you may have.