

Native American Graves
Protection and Repatriation
Review Committee

Report to Congress
1995-1997

June, 1998

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Overview

Passage of the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA) marked a watershed in a long and often troubled relationship between Native Americans and many of America's cultural, educational, and public agencies and organizations. The statute provides for the repatriation to lineal descendants and affiliated Indian tribes and Native Hawaiian organizations of Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony in museums and Federal agency repositories or that may be excavated or inadvertently discovered on Federal or Indian land in the future. The statute also provides a means for lineal descendants, Indian tribes, and Native Hawaiian organizations to repatriate funerary objects, sacred objects, and objects of cultural patrimony that were acquired by museums and Federal agencies without the approval of those who had authority to alienate them. The statute provides greater protection of Native American graves located on Federal or tribal lands. Lastly, the statute prohibits trafficking in Native American human remains and, in certain situations, funerary objects, sacred objects, and objects of cultural patrimony.

The statute affects all Federal agencies and all institutions that receive Federal funds. Through an intensive effort on the part of the National Park Service's Archeology and Ethnography Program, which administers the statute for the Secretary of the Interior, museums and Federal agencies holding Native American collections have been notified of their compliance responsibilities.

Our two previous reports to Congress have covered the years 1992, and 1993-1994. This report covers activities during 1995-1997. Two events have dominated this period:

- o On November 16, 1995, all museums and Federal agencies were required to complete inventories of Native American human remains and associated funerary objects. Museums and Federal agencies were required to notify culturally affiliated Indian tribes and Native Hawaiian organizations of the inventory results by May 16, 1996.
- o On December 4, 1995, final regulations implementing the statute were published in the *Federal Register*. These regulations went into effect on January 3, 1996.

A great number of other activities supported these two major events. This committee held five meetings -- in Los Angeles, Anchorage, Billings, Myrtle Beach, and Norman -- at which we considered several disputes, discussed the disposition of culturally unidentifiable human remains, commented on draft regulations, and heard from many people around the country about how the statute is being implemented. A common thread ran through much of the testimony we heard. Many Native Americans anticipate that repatriation will ultimately provide meaningful, long-term cultural and economic benefits to individuals of Native American descent and to Indian tribes and Native Hawaiian organizations. These repatriations have helped restore a sense of spiritual and cultural integrity to participating Native American people. Through the required consultation, the statute has also fostered an increased understanding and respect by museums and Federal agencies for Native American people and cultures.

Most museums and Federal agencies appear to be carrying out the provisions of the statute in good faith. Over one thousand museums and Federal agencies have distributed summaries of their Native American collections as required under section 6 of the Act. Over 700 museums and Federal agencies completed inventories of human remains and associated funerary objects in their collections. Two

hundred and fifty seven notices have been filed in the Federal Register regarding repatriations. These notices announced the availability for repatriation of the remains of 9,763 individuals, 296,321 funerary objects, 512 sacred objects, 176 objects of cultural patrimony, and 113 items identified as both sacred objects and objects of cultural patrimony.

To conclude, all parties are generally implementing the statute in good faith. Some difficulties, identified below, need to be addressed and resolved to fully implement the intent or purpose of the Native American Graves Protection and Repatriation Act.

Specific Observations

Cost to Comply with NAGPRA: In 1990, the Congressional Budget Office estimated that implementation of the statute would cost the Federal government between \$20 million and \$55 million over five years. That estimate assumed that:

- o museums and Federal agencies hold between 100,000 and 200,000 Native American human remains and that documenting and determining their cultural affiliation would cost between \$50 and \$150 per individual set of remains;
- o summaries of unassociated funerary objects, sacred objects, and objects of cultural patrimony and inventories of associated funerary objects would cost between \$10 and \$15 million over five years;
- o grants to Indian tribes and Native Hawaiian organizations would cost between \$5 and \$10 million over five years;

The exact number of human remains held by museums and Federal agencies is still not known. However, information obtained through the grant and inventory process reveals that 175 museums currently hold 110,029 Native American human remains. This figure does not include human remains held by museums that never applied for a grant or by Federal agencies. Based on these data, the Congressional Budget Office's estimate of 200,000 human remains seems reasonable.

The initial appropriations for grants to museums and Indian tribes came in FY1994, and have totaled approximately \$9 million over the past four years.

The demand for consultation between museums, Federal agencies, Indian tribes, and Native Hawaiian organizations has increased dramatically since the inventories of human remains and associated funerary objects were completed in 1995. Neither Indian tribes and Native Hawaiian organizations nor museums are financially able to support all of these costs. Absent a reasonable amount of Federal support, the statute will not be adequately implemented due to lack of funding and the United States will have failed to make a reasonable and fair effort to help return Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony to lineal descendants, Indian tribes, and Native Hawaiian organizations who rightfully have control over them.

The committee strongly recommends that Congress appropriate the following amounts for FY 1999 to

ensure continued implementation of the Act:

- o At least \$5 million in grants to Indian tribes, Native Hawaiian organization, and museums; and
- o The amounts requested by the administration for each Federal agency's compliance efforts.

The committee recommends that the President request the same amounts listed above in his FY2000 budget proposal.

Cost of Administering NAGPRA: Administration of the statute was delegated to the Secretary of the Interior. Appropriations to support these responsibilities -- including promulgation of regulations, publishing notices in the Federal Register, providing staff support to the review committee, compiling an inventory of culturally unidentifiable human remains, grant administration, and assessing civil penalties -- were initiated in FY1992 and have totaled approximately \$1.5 million over the past 6 years. Shortage of funding has resulting in several administrative problems:

- o Federal agencies and museum may not repatriate items until a notice is published in the Federal Register [43 CFR 10.10 (a)(3) and (b)(2)]. Current staffing levels cannot meet the review necessary for the Federal Register publication requirement. The current backlog of draft notices numbers 83, with 3-5 arriving weekly.
- o The review committee averages two meetings per year. At least three meetings per year will be necessary to fulfill the committee's responsibilities to assist in the resolution of an increasing number of disputes [25 U.S.C. 3006 (c)(4)].
- o Over one thousand summaries and 700 inventories have been received from museums and Federal agencies. The summaries have all been evaluated, but over half of the inventories still need to be reviewed.
- o Section 8 (c)(5) of the statute requires compilation of an inventory of all culturally unidentifiable human remains [25 U.S.C. 3006 (c)(5)]. The software application is ready, but at current staff level, completion of this database will require a number of years and shifting effort from other priority actions.
- o Civil penalty regulations went into effect on February 12, 1997 [43 CFR 10.12]. The Office of the Solicitor has estimated that a single civil penalty assessment may cost the department \$100,000 in staff time and resources. There is currently no appropriation to cover these assessment costs. The Secretary is responsible for enforcement.
- o Two complaints have been filed against the Secretary in Federal district court [California State University v. Babbitt-dismissed 1996; City of Providence v. Babbitt-ongoing]. The demands on staff time and resources due to litigation are expected to increase.

The committee recommends that Congress appropriate an additional \$500,000 plus 8 FTE to the National Park Service FY 1999 to enhance administration of the Act. The committee recommends that the President request the same amounts listed above in his FY 2000 budget proposal.

Federal Compliance: The committee is deeply concerned about the failure of Federal agencies to comply with the deadline for the submission of inventories of human remains and associated funerary objects. The deadline for the submission of these inventories, as clearly stated in the statute, was November 16, 1995. Yet by the end of 1997, several major agencies, responsible for many thousands of human remains, had failed to submit their inventories. Furthermore, they failed to submit to the committee even a brief explanation of why they did not meet the mandated deadlines.

In reviewing the inventories that had been received by the end of 1997, it was clear that several agencies in particular were not complying with the Act. The Bureau of Land Management is specifically singled out for non-compliance as well as the Corps of Engineers and the National Forest Service (with important, but limited exceptions, such as the Southwest Regional office of the Forest Service). These agencies did not reply to requests for information about their inventories and did not send representatives to the committee meeting in Norman, Oklahoma, to explain their actions. It should also be noted that the National Park Service is to be commended for its singular dedication to full compliance.

Some indirect explanations were offered for the failure of the Federal agencies to comply. In particular, it was pointed out that the agencies did not receive separate budgetary allocations to complete their inventories and were trying to work with what limited funds and resources were available. The committee finds this excuse to be singularly unconvincing. The vast majority of non-Federal museums across the country submitted their inventories by the deadline given in the statute. Those institutions that did not submit inventories specifically applied for extensions and met the stringent criteria for having those extensions granted. Many of these institutions were operating under far more restricted budgetary constraints than any of the Federal agencies. The early 1990s were a time of shrinking attendance and budgets for museums across the country. Yet these institutions had to and did comply with the NAGPRA requirements. The failure of the Federal agencies to meet the standard set by non-Federal museums is inexcusable.

There are indications that the Federal agencies are still plodding along slowly trying to produce inventories eventually. However, their lack of compliance with the simple mandate of meeting a reasonable deadline bodes very poorly for the future of Federal compliance with the statute. It would appear that the agencies believe themselves exempt from the statute and its associated regulations and that they are not following the standards set by the leadership of the non-Federal agencies. The committee recommends that the Secretary of the Interior take appropriate steps to insure that its agencies, particularly the Bureau of Land Management, immediately come into full compliance with NAGPRA. It also recommends to Congress that hearings should be held to request a full explanation from all the agencies that did not meet the November 16, 1995 deadline for submitting inventories and gain assurances that these agencies will comply with NAGPRA in the future.

Recommended Amendments: Through the provisions of the statute, many, but not all, Native American people -- lineal descendants, Indian tribes, Alaska Native villages and corporations, and Native Hawaiian organizations -- gain a means to remedy inadvertent and intentional injustices done them and their ancestors through the activities of the United States.

Sixty Indian tribes, formally recognized by the United States government, were terminated under

provisions of various termination acts passed in the 1950s and 1960s. Terminated tribes can only be restored by an act of Congress. To date, 43 tribes have been restored. Most of the remaining 17 tribes are presently seeking restoration. Many other Indian groups, especially in California, were never recognized, notwithstanding treaties between these tribes and the US government that were not honored or adopted by Congress.

All Indian groups that are not recognized by the Department of the Interior are excluded from fully participating in NAGPRA. Though it is possible to identify human remains that are culturally affiliated with many of these Indian groups in museum and Federal agency collections, the Department of Interior's interpretation of the meaning of "Indian tribe" disenfranchises many Native American people from the repatriation process.

The committee does not believe that Congress intended to prevent all non-Federally recognized Indian groups whose ancestor's remains, funerary objects, sacred objects and objects of cultural patrimony are in museums and Federal repositories from repatriating these items simply because they are not presently recognized by the Department of the Interior.

Although the statute provides protection for Indian graves found on Federal and tribal lands, it does not provide similar protection for graves that may occur on private or state lands. The committee has heard a substantial amount of testimony from representatives of Indian tribes and Native Hawaiian organizations regarding disturbance, destruction, deliberate excavation, or grave robbing of Native American graves on private or state lands. Some states have passed legislation to protect graves on non-Federal lands, but many states lack such legislation. Federal attention needs to be given to protect Native American graves from grave robbing and other forms of destruction or disruption

The committee recommends that Congress amend the statute to:

- o Allow Indian tribes and Native Hawaiian organizations to repatriate funerary objects that are associated with culturally unidentifiable human remains;
- o Protect Native American graves located on state or private lands from grave robbing and other forms of destruction;
- o Provide any monies collected as civil penalties under 43 CFR 10.12 to the Secretary of the Interior to further enforcement activities; and
- o Decide upon a procedure that would allow legitimate, non-Federally recognized Indian groups to repatriate human remains, funerary objects, sacred objects, and objects of cultural patrimony with which they are culturally affiliated.

Conclusion

NAGPRA has, on whole, been successful. It has helped rectify the injustice Native American people have suffered as a result of having their ancestors remains removed from their graves and located, without permission of relatives or tribes, in museums and federal agencies. The process of implementing the Act has increased knowledge and understanding of Native American people and cultures within museums and federal agencies. This increased knowledge and understanding will eventually be shared with the public, thereby increasing their respect for and sensibility to the rights, values, and perspectives of the first Americans. Finally, the Act has helped Native American people and cultures regain a sense of integrity and dignity. It has helped renew or continue traditional Native American religions. And it may ultimately help remedy the corrosive and tragic effects involved in the clash of cultures and the loss of land, culture, and lifestyle Native Americans have endured. It is critically important that the benefits and rights accorded to Indian tribes be extended to all Indian groups and that Congress appropriate sufficient funds to help implement this Act. The Committee respectfully submits this report to Congress with the full and unanimous support of its members.

NATIVE AMERICAN GRAVES PROTECTION REVIEW COMMITTEE

PURPOSE: Monitor and review the implementation of the inventory and identification process and repatriation activities required under sections 5, 6, and 7 of the American Indian Graves Protection and Repatriation Act.

AUTHORITY: Section 8 of Public Law 101-601, November 16, 1990.

TERMS: Five years.

MEMBERSHIP: Seven members.

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