NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION

REVIEW COMMITTEE MEETING

8:30 a.m.
Thursday, November 19, 2015
Riverwind Hotel and Casino
Club, Diamond, Heart and Spade Room
Norman, OK

COMMITTEE MEMBERS PRESENT:
Mr. Armand Minthorn - Chair
Ms. Heather Edgar
Ms. LindaLee (Cissy) Farm
Mr. Patrick Lyons
Mr. Dennis O’Rourke
Mr. Steve Titla
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CALL TO ORDER

MELANIE O'BRIEN: Mr. Chair, would you like to call the meeting to order?

ARMAND MINTHORN: Okay. We’ll call the meeting to order at 8:30. Today is Thursday, November 19. Just like with every meeting, we always try the best we can to open with invocation or prayer, and we’ll do that this morning. I’m going to ask the Elder here if he can lead us in prayer this morning.

OPENING INVOCATION

MARIO GARZA: (Native American language.) Our Creator, we thank You for bringing us here together this morning. We ask for Your guidance. We ask for You to guide us, guide the committee to make some good decisions. We ask You to bring the Native people that are here to come together in fellowship and friendship. We ask You for Your guidance, and we thank You for Your blessings.

(Native American language.)

ARMAND MINTHORN: Melanie.

ACTION ITEM: SUBCOMMITTEE DISCUSSIONS AND APPOINTMENTS

MELANIE O'BRIEN: Okay. The first item on the agenda this morning is a discussion by the Review
Committee of its subcommittees and any changes or appointments that need to be made to that subcommittee list.

The committee should have a copy of the current subcommittees that were formed as of your last meeting. As you are all aware, there have been some changes in your membership since the last meeting, and you might want to take a look at appointing new members to some of these subcommittees.

The first subcommittee that was formed at the March meeting, I believe, was a subcommittee to draft the 2015 report to Congress. The membership of that committee is currently Dennis O’Rourke. The other committee member was Shannon O’Loughlin.

I’ll let you take it from here, Mr. Chair.

ARMAND MINTHORN: So currently, Melanie, we have five subcommittees? Four?
MELANIE O’BRIEN: We have on record a total of seven.

ARMAND MINTHORN: Seven?
MELANIE O’BRIEN: Yes.

ARMAND MINTHORN: Well, I guess a question for the committee is do we need all of these subcommittees?
DENNIS O'ROURKE: I think some of the subcommittees we don’t need any longer. My own preference – I’ll just state it for further discussion – is that we could – I mean we certainly need some subcommittees where subcommittees act and bring information and things back to the committee. I think if we met a little more regularly as a committee of the whole or a subcommittee of the whole, through telephonic meetings throughout the year, we could accomplish more, rather than having so many subcommittees. That’s just my opinion. I would also just note to further the discussion that we have had a subcommittee on dispute procedures. Maybe that’s still necessary, although we have finalized the dispute procedures, and the subcommittee’s work mostly was to draft and bring those to the committee. So I don’t know if that’s necessary.

ARMAND MINTHORN: Any more discussion?

Cissy.

LINDALEE FARM: Yes, I agree with Dennis that it would probably be more productive to have subcommittees of the committee of a whole, and to meet more regularly as that subcommittee
telephonically to discuss some of these issues. I also agree that the subcommittee on the dispute procedures is probably no longer necessary, since the goals of that committee have been accomplished. And we have much gratitude to Sonya Atalay, a former member, for all of her hard work that she did on that committee. And we can have further discussion on the other subcommittees, but I do agree that a subcommittee of the committee of the whole will function and be more productive than having a lot of these other subcommittees.

ARMAND MINTHORN: So I guess I would agree with Cissy, just as too the subcommittee on the issue of balance, do we need this committee?

DENNIS O'ROURKE: I personally don’t think so, but that’s up for other discussion.

ARMAND MINTHORN: Okay.

STEVE TITLA: I second that motion.

ARMAND MINTHORN: Cissy?

LINDALEE FARM: I would concur that we do not need that.

ARMAND MINTHORN: Okay. Let’s strike that one. Subcommittee on lands for reburial?
Understanding, Melanie, that past discussions on this were to look — or not look, but to discuss
Federal lands as far as reburying ancestors on
Federal lands. Is that correct?

MELANIE O'BRIEN: That's correct. And you
have, as a committee, received a report. You
received it in draft form at your last meeting and
you have it in final form at this meeting,
particularly about that issue of lands for reburial
through Federal agencies and what capacities
different Federal agencies have. So that is
included in its final form as a part of your
meeting materials. The subcommittee was created in
part to review that report and to make any
recommendations to the larger committee related to
the content of that report.

ARMAND MINTHORN: Well, it would seem that the
subcommittee on lands for reburial could be
addressed by the committee, rather than a
subcommittee.

DENNIS O'ROURKE: I agree.

ARMAND MINTHORN: Okay. So let's strike
subcommittee on lands for reburial.

Subcommittee to consider ambiguities in the
statute?

MELANIE O'BRIEN: Yes, sir.

ARMAND MINTHORN: Do we need this subcommittee,
DENNIS O'ROURKE: I don’t feel strongly about it. Again, I think to the degree that we identify ambiguities that should be addressed we can and maybe should do that as maybe a subcommittee of the whole through full discussion.

ARMAND MINTHORN: Cissy?

LINDALEE FARM: I would concur. That could be one of the agenda items for the subcommittee on the committee of the whole to talk about the ambiguities as they come up or as the individual members feel that there are ambiguities.

ARMAND MINTHORN: Okay. So do we want to keep this committee?

LINDALEE FARM: Chair, I guess my sense is I think the issue should be kept alive, but I don’t think there’s a necessity for having a separate subcommittee to address that.

ARMAND MINTHORN: All right. And again, this would probably be similar to Federal lands. If there’s any differences or concerns about the statute, it should be discussed as a whole by the committee. So Melanie, we’ll strike this subcommittee as well.

Subcommittee on reports, culturally
unidentifiable and —

MELANIE O'BRIEN: Yes, that subcommittee was developed in relation to the two reports that the National NAGPRA Program has produced, looking at inventories. I think that the intent of that committee was to assist the National NAGPRA Program if we needed it, in any efforts at creating that report or communicating with the institutions and agencies listed on those reports. In addition, at your last meeting in March, there was some discussion about how those two reports might be used in conjunction with developing guidelines for museums and Federal agencies on consultation related to the content of those two reports.

ARMAND MINTHORN: Well, just what Melanie has outlined in these two reports, and certainly we heard about those reports yesterday. Again, there’s some similarities here that these reports need to be dealt with by the full committee rather than the subcommittee.

DENNIS O'ROURKE: I think that would be productive.

ARMAND MINTHORN: Okay, Melanie, all the heads are shaking here. So let’s strike the subcommittee on the culturally unidentifiable and the CA.
MELANIE O'BRIEN: Okay.

ARMAND MINTHORN: And then number seven, subcommittee to arrange meeting with the Assistant Secretary? Carla, can you help us on this one?

MELANIE O'BRIEN: I'm sorry. I'm back. I'm sorry, we were discussing which one? The final one. Right, to arrange a meeting with the Assistant Secretary for Indian Affairs. Again the intent here was for a small group, representing the committee to arrange to travel to Washington and meet with the Assistant Secretary for Indian Affairs to discuss issues related to the committee and to your work here.

ARMAND MINTHORN: Well, yesterday, the lady that was here, Cheryl, we expressed that very invitation to not only have [the Assistant Secretary - Indian Affairs] come here, but also to Cheryl as well. It was expressed many concerns that the committee has, as far as budget, etcetera, etcetera. So again, it would seem that if there were a group or a portion of this committee that would make that visit, certainly we could decide with you and with the participants that come to the meeting. We certainly don't need to have a subcommittee to decide that.
CARLA MATTIX: I think the only issue of having the smaller group hold the meeting with the Assistant Secretary is that the full committee would have to approve the topics of discussion for that smaller group, and that maybe that was the intent behind having the subcommittee figure that out and then bring that to the whole committee for the whole committee’s approval.

ARMAND MINTHORN: Well, the only thing about that, Carla and Melanie, is schedule and availability. It’s going to be kind of Catch 22, trying to confirm and see which committee members can make such a meeting. So that would be the challenge. But as far as the agenda and topics with the Assistant Secretary, that’s fairly easy what those would be. But the challenge is which committee members would be able to do that.

LINDALEE FARM: Mr. Chair?

ARMAND MINTHORN: Cissy.

LINDALEE FARM: I think one of the reasons for having that subcommittee was so that it didn’t get lost in the shuffle, so that someone took on the responsibility to actually arrange for the meeting and to move forward with setting it up. And perhaps with the introduction to Ms. Andrews-
Maltais yesterday, that was helpful and sufficient and that there can be some follow through. And I don’t know if it’s necessary for the Review Committee to have a subcommittee to do that or if there can be follow up through the Program or coordination with the Program and individuals or with the chair to actually follow through on that.

MELANIE O'BRIEN: We can certainly take that up for the committee and arrange the details in terms of identifying a time that the Assistant Secretary might be available, as well as whoever among you might be available. As Carla mentioned, the important thing for you to do as a committee in this setting is to identify those issues that you want to address with the Assistant Secretary. I would recommend perhaps as you work on the report to Congress that identifies specific issues you want to address to Congress, that you might take a vote to agree that those are the same topics or issues that you might want to address with the Assistant Secretary.

LINDALEE FARM: That being said, I guess there is no need for the subcommittee. That would be my sense.

ARMAND MINTHORN: I would agree. Okay, again,
Melanie. All the heads are shaking.

Number one, subcommittee on report to Congress?

DENNIS O'ROURKE: Well, I'm going to be speaking about that in just a moment. I'm the sole member of that subcommittee at the moment. Somebody has to draft that thing. I wouldn't mind - I think it has been tradition on the committee in the past, I was the junior member of that subcommittee until Shannon O'Loughlin left the committee, and the responsibility fell to me to prepare that for the committee. I wouldn't - I think it might be appropriate to have a second person on that, with the expectation that me and one other person would not only complete the preparation but certainly anticipate the preparation of it next year.

ARMAND MINTHORN: I would agree, Dennis. Volunteers? Are you volunteering?

PATRICK LYONS: Mr. Chair, I am volunteering.

ARMAND MINTHORN: Okay. All right. So we do have two members here, Melanie, for the report to Congress.

MELANIE O'BRIEN: Thank you. Stepping back for a minute to your subcommittee of the whole, is it
my understanding that you would like to arrange regular teleconferences of that subcommittee that you might meet by telephone in between this meeting and your next public meeting?

    ARMAND MINTHORN: Yes.

    MELANIE O'BRIEN: And would you like for the Program to arrange those teleconferences for you?

    DENNIS O'ROURKE: I think that would be useful.

    MELANIE O'BRIEN: We'd be happy to do that for you.

    ARMAND MINTHORN: Okay. Thank you.

    Okay. Melanie, anything else on subcommittee?

    MELANIE O'BRIEN: No, I think that takes care of that item.

    ARMAND MINTHORN: Okay. Moving on.

    MELANIE O'BRIEN: The next item is an initial discussion of your – the Review Committee’s 2015 report to Congress. Just for your information and those in the audience, I’ll remind you that you report to Congress annually on a calendar year basis. So your report should cover the activities of the Review Committee from January to December 2015, which would include the March meeting held in Amherst, Massachusetts, and this meeting here in Oklahoma.
ACTION ITEM: INITIAL DISCUSSION OF THE REVIEW

COMMITTEE 2015 REPORT TO CONGRESS

DENNIS O'ROURKE: I think it falls to me to present some material to initiate some discussion or what has transpired so far. As the committee knows, a draft – a rough draft of a report to Congress was circulated to the committee prior to the committee meeting. I received some feedback from other committee members regarding revisions.

Historically, the reports have sort of had the same structure and flavor and oftentimes the same message, and that’s likely to be true this time simply because the barriers encountered and the recommendations for overcoming those barriers don’t change much from year to year, and we still view them as important.

The one major change in the report this year is simply structural. In the past, there has been a recitation of several pages of the committee’s activities over the year, and then the report concluded with significant barriers encountered by the Program, the Review Committee, tribes, Native Hawaiian organizations, agencies, museums, etcetera. And then concluding with a list of recommendations. We’ve changed it this year, at
least so far. We’ve put those problems, the
barriers encountered, at the very front of the
report, following an executive summary, an
abbreviated executive summary. The logic being
that reports to Congress may not often get the
attention that we would like them to, and that
burying our message at the end might not be the
best strategy. So we’ve moved those important
issues to the front of the report. I would just
like to read the list of barriers that are included
in the report and the brief list of recommendations
to Congress so that anyone can add to those. I’ll
be happy to edit and add materials to the report,
but let me just go through the section on barriers
encountered, which now in the current draft of the
report begins the second paragraph of the report.

So the first one is lack of adequate staffing
and support, and that’s to both the National NAGPRA
Program itself, to the Review Committee, and to
tribes and Native Hawaiian organizations, museums
and Federal agencies. And the lack of funding is
seen as a serious impediment to full implementation
of the Act.

There is a section on failure to properly
report inventories from museums and agencies.
There are three components of that. These were all identified in last year’s report, and I’ve elected to keep them in until I get feedback from others about whether or not this is still perceived to be important issues. One of these is failure to properly inventory federally controlled collections that are curated in non-Federal repositories. We have seen some movement and progress on this in reports presented yesterday. A second is failure to properly report the scope of consultation activities with lineal descendants, Indian tribes, or Native Hawaiian organizations regarding culturally unidentifiable remains and funerary objects. A third is failure to submit Notices of Intent to Repatriate for culturally affiliated human remains and funerary objects. And each of these topics, there is some verbiage, a paragraph or two explaining in more detail and providing examples, the issues of why these remain impediments to the full implementation of the Act.

So there is documentation. This isn’t just a listing of issues.

Another independent topic that is viewed as—has been viewed in the past as a barrier, an impediment, is lack of appropriate locations for
reburial. And I have some verbiage related to that. We’ll add to that and revise it with the report we hear at this meeting. There—in the past, and I would seek guidance from attendees and certainly other Review Committee members. In the past, there has been a section in barriers relating to additional layers of administrative review by the National Park Service. I personally don’t recall hearing much about that in discussion in the last year or so, and I don’t know if that still needs to be a part of this report or not. I would ask for some advice in this regard. And finally, there is a short section on the possible need for amendments to the Act and its regulations in order to provide clarity. I have one example that has come up for discussion at this meeting or among the Review Committee members, but additional information there might be useful. There’s a short section on progress, not nearly as long as the barriers. That too will be revised as we receive reports at this meeting.

And finally, the recommendations to Congress have been fairly constant over the last couple of years. I will just read the ones in the current draft. One is to fulfill the statutory
requirements of NAGPRA by providing adequate and consistent staffing and support to the National NAGPRA Program. Two, continue to support and increase grant funding, especially to Indian tribes and Native Hawaiian organizations, that will build institutional capacity and meet the requirements of Congressional policy of Indian self-determination. Three, to enact legislation to further and consistently protect Native American burials by providing methods to protect public lands or allow tribes to acquire public lands in order to provide areas for reburial. Four, to support broader opportunities for reburial of Native American ancestors on Federal lands, including National Parks. Five, support Federal agency compliance with NAGPRA, including expedited completion of inventories of Federal collections in non-Federal repositories. And finally, support stronger enforcement measures by the Review Committee and the National NAGPRA Program, as well as the Secretary of Interior to better deal with compliance issues.

My plan is to elaborate a bit on each of those by either providing examples or some additional explanatory material. I’m hesitant to try to write
too much regarding each of those, mostly because I
think the longer and wordier the document gets, the
less impact it’s likely to have. That’s my
personal view, and I’m open to suggestions.

PATRICK LYONS: Mr. Chair, may I?

DENNIS O'ROURKE: Yes.

PATRICK LYONS: I would just like to start by
saying thank you to Dr. O’Rourke for all of that
great work, and I would say that in my view it’s
really pretty focused, what’s in there right now.
That’s all I would say at this point.

ARMAND MINTHORN: Dennis, this report, this
draft report to Congress and as it relates to last
year’s report to Congress, there is some
similarity. Too, it would be worth considering how
this report could be shortened, as well. And if we
as a committee here today can possibly work toward
a final draft today that would be great.

DENNIS O'ROURKE: I completely agree, and I
will say I’m very concerned about length. The
initial draft was substantially longer. It’s been
 pared down by a third. I see places where I think
I can make edits and change the wording, and
actually Patrick has provided me some editorial
suggestions that I think will help in that regard.
I would like to see it shortened as well, and I’m going to work toward that by focusing it even more and shortening some of the verbiage in the report.

ARMAND MINTHORN: Well, just to add, Dennis, item four, amendments to the Act, again, this is the statute where it cites associated funerary objects and unassociated funerary objects and their disposition and the discretion that Federal agencies, museums and universities have to repatriate or not repatriate.

DENNIS O'ROURKE: Thank you. If you could provide some wording for me there so it’s stated in a way that’s clear and informative, I’d appreciate it.

ARMAND MINTHORN: Okay. Carla, it is in the statute. What part of the statute is that?

CARLA MATTIX: (Inaudible comment.)

ARMAND MINTHORN: Yes.

CARLA MATTIX: We were just discussing what you might be able to do. We were discussing how you might be able to finish working on this, perhaps at lunch, with your subcommittee to work out the wording changes.

ARMAND MINTHORN: Okay.

CARLA MATTIX: Because you’re going to have
another time in the agenda this afternoon to work
on this as well, so some of the wording changes
could be worked on at lunch time.

ARMAND MINTHORN: Okay.

DENNIS O'ROURKE: All right. That's good.

ARMAND MINTHORN: But Dennis, again, that would
be just an example of the report that would include
or address amendments to the Act.

STEPHEN SIMPSON: Sure. And to answer your
question, Mr. Chair, the mention of culturally
unidentifiable human remains is in section 8 (c) of
the statute, which is one of your list of duties.

ARMAND MINTHORN: Okay. Steve.

STEVE TITLA: Chairman, regarding the question
by Mr. O'Rourke regarding additional layers of
administrative review by the National Park Service,
he asked whether that should remain. I think that
that should remain in the report because I think
that by the National NAGPRA Program, we're within
the National Park Service, and that adds some
additional layer of bureaucracy and expenses to the
Program, and the reasons put there are still valid,
I think, even though we may not have discussed it
recently. This situation causes notices,
recommendations from the Secretary and other
implementation activities to be delayed. I think that if the National NAGPRA Program were by itself, then that might better serve the Program, being directly under the Secretary of the Interior. So I would recommend that that remain in the report.

DENNIS O'ROURKE: Thank you, Steve. That’s exactly the kind of feedback I was hoping for.

ARMAND MINTHORN: Okay. So as far as the report, Dennis, we’re moving forward. And if we can make time this afternoon to come back and possibly look at a final draft.

DENNIS O'ROURKE: Sure. We’ll do our very best. I’m hoping we can do that.

ARMAND MINTHORN: Okay. All right. Anything else on the report to Congress?

PATRICK LYONS: Mr. Chair, may I ask a question?

ARMAND MINTHORN: Sure.

PATRICK LYONS: As a new member of this body, but as someone who has served on the Society for American Archaeology Repatriation Committee, I know that in the past there’s been discussion on and off about amendments to the definition of Native American in the statute. Is that a topic that this body has addressed or may address in these
recommendations?

    CARLA MATTIX: That is a topic that has come up in the past. I don’t know if it’s in the current version? Can you hear me? I’m not sure – it is a topic that has been addressed in the past, and there has been quite a bit of discussion about it. I don’t know if it’s in the current version.

    DENNIS O’ROURKE: It is not in the current version.

    PATRICK LYONS: Thanks.

    ARMAND MINTHORN: Okay. Melanie, anything else?

    MELANIE O’BRIEN: I would just recommend that anyone who is here that would like to give information to the Review Committee about any of these barriers or recommendations should participate in the public comment period that we have this afternoon. That is in particular why we have those open slots for public comment, so that the public can hear what the Review Committee is considering and make any comments that they would like to regarding that report to Congress.

    ARMAND MINTHORN: Okay.

    MELANIE O’BRIEN: I would also just like to make one recommendation to the committee related to
some of these topics. I would like to remind you and state again very clearly that over the last year we had a significant increase in the number of applications for NAGPRA grants. It was almost a 67 percent increase in the number of requests for funding. And while certainly there are staffing issues within the National NAGPRA Program, we have a plan to address those, and we have guaranteed support from the National Park Service to fill those vacancies. I would encourage the committee to think about the structure of that barrier and what is listed first when you’re discussing the lack of staff and support. It is clear to me that there’s a great need for additional funding for NAGPRA constituents who are trying to fulfill their NAGPRA responsibilities. That’s why they’re applying for grants through the National NAGPRA Program, and there is clearly a demonstrated need there from both tribes and museums for additional funding through the NAGPRA grant program.

PATRICK LYONS: May I ask a clarifying question, Chairman?

ARMAND MINTHORN: Sure.

PATRICK LYONS: So does that – may I restate that and try to make sure that I understood what
you said? So relative to the priorities that have
been expressed so far in the draft report, the
assessment of National NAGPRA is that the priority
in terms of being able to have good compliance
would be more funding toward the grant program?
MELANIE O’BRIEN: That’s correct.
PATRICK LYONS: Thank you.
STEVE TITLA: Chairman?
ARMAND MINTHORN: Yes, Steve.
STEVE TITLA: I agree with Madam DFO’s
statement about more funding for the grantees, and
I will talk about what I know about in the nation.
I’m from Arizona, and the Apache, from San Carlos
Apache Tribe. I know that the Western Apache
group, composed of the White Mountain Apache, San
Carlos Apache, Yavapai Nation, Tonto Apache. Those
tribes are always trying to get funding, and they
apply every year, so I know the need for that. And
so I think that the priority for grantees is
paramount in our area, and so I would recommend
that we put that as number one in the barriers that
we have. Thank you.
ARMAND MINTHORN: Okay. Anything else,
Melanie?
MELANIE O’BRIEN: No, that’s the end of my
comments related to your report. If there are additional items you want to discuss or take up at this time, you do have time allotted now. I would again recommend that perhaps if we are ahead of schedule, which we are, that you might have additional time over the lunch break for the subcommittee to work on a draft and then there is a slot this afternoon where you could take action on that draft report. It is structured so that the subcommittee should do the work on that report. However, they’re not restricted from inviting the rest of you to join them as they work through that draft during lunch.

ARMAND MINTHORN: Okay.

MELANIE O'BRIEN: So we are a bit ahead of schedule, but our next presentation is ready. The next item on the agenda is an action item for the Review Committee to hear a disposition request by the National Park Service. Presenting to you is Larry Turk, the Superintendent for Chaco Culture National Historical Park.

ACTION ITEM: CUI DISPOSITION REQUEST, NATIONAL PARK SERVICE

PRESENTATION

LAWRENCE TURK: Good morning, Mr. Chair,
members of the committee. My name is Larry Turk, Superintendent of Chaco Culture National Historical Park. With me today are Timothy Begay of the Navajo Nation Historic Preservation Department, and Karen Wurzburger, National Park Service Intermountain Region Office of Indian Affairs and American Culture. Leigh Kuwanwiswma, the Director of the Hopi Cultural Preservation Office, was unable to join us in Oklahoma this week. This is an executive summary of the request by the National Park Service, Chaco Culture National Historical Park, for a recommendation from the regional – from the Review Committee in support of the proposed disposition of the culturally unidentifiable remains of two individuals and eight associated funerary objects in the control of Chaco Culture National Historical Park.

Now I'm going to turn it over to Karen Wurzburger to present the details of this request.

KAREN WURZBURGER: Thank you, Larry.

Good morning, Mr. Chair and members of the committee. Chaco Culture National Historical Park proposes to transfer control of the remains and funerary objects of two individuals jointly to the Hopi Tribe of Arizona and the Navajo Nation of
Arizona, New Mexico & Utah. This summary supplements the information provided to the Review Committee in preparation for this meeting. Chaco Culture National Historical Park is located in northwestern New Mexico, in a remote canyon cut by the Chaco Wash, inhabited from around 800 to 1200 A.D. The national monument was established in 1907, expanded to a national historical park in 1980, and added to the UNESCO World Heritage List of Cultural Properties in 1987 to preserve the vast network of archeological sites which compose the extensive Pre-Columbian cultural complex. Many present-day Indian tribe and Pueblo members are descended from the Chacoans, and refer to Chaco Canyon and its features in their traditional histories and migration stories. Some tribes regard the canyon as sacred ancestral land. The descendants of Chacoan people remain connected to and committed to Chaco Canyon through ongoing traditions and government-to-government consultation. Members of at least 25 Indian tribes continue to consult, advise, and take an active role in the stewardship of the park today. We are grateful for the tribes’ continued guidance and collaboration on many of the ongoing projects at
Chaco.

In 1938, Chaco Canyon National Monument took custody of two individuals and eight associated funerary objects as part of the Harkness Collection, believed to have been collected from within a hundred-mile radius of Shiprock, New Mexico. The Harkness Collection was initially documented as a temporary loan, however no official loan paperwork has been located and there were no copies of correspondence with Mr. Harkness after 1938. In 1958, the National Park Service undertook a serious pursuit of Mr. Harkness to discuss the status of the loan, but he was unable to be located and letters initiating contact were returned as undeliverable. In 1959, the National Park Service wrote to the General Services Administration claiming title to the Harkness Collection through voluntary abandonment on park land. Following a three-year waiting period to allow Harkness or his heirs to dispute the claim, the General Services Administration determined in 1963 that the National Park Service could consider the Harkness Collection abandoned property with title vested in the National Park Service.

Documentation for the Harkness Collection did
not include any specific dates of removal nor information based on information regarding archeological context and no provenience information for these individuals. Because the disposition of culturally unidentifiable human remains under section 10.11 of the NAGPRA regulations requires provenience information to determine tribal land or aboriginal land and because that information here is lacking with the exception of the hundred-mile radius, we were unable to follow the process set forth in NAGPRA under section 10.11 for these individuals.

Physical anthropological and textile analysis have determined these remains to be Native American but have yielded conflicting information regarding the age and potential cultural affiliation of these individuals. A cranial analysis conducted in 1998 by Dr. Joseph Powell identified the remains of one of the individuals as historic Navajo. In 2001, a carbon-14 analysis of a textile bag associated with the remains yielded prehistoric dates ranging from 350 to 50 B.C.E. Because of this inconsistency, the park conducted a reassessment of the physical anthropological data in 2002, which concluded that the remains were most likely prehistoric.
Basketmaker. Uncertainty and direct contradictions in these analyses made it difficult for park management to determine – to make a determination on the likely age or cultural affiliation of either of these individuals.

Over the past two years, Chaco Culture National Historical Park has engaged in 3 separate face-to-face tribal consultations with 18 traditionally associated tribes regarding these individuals and their associated funerary objects. An additional 13 tribes were contacted to consult but were unable to participate in the face-to-face consultations. With careful consideration of, one, the lack of specific provenience or contextual information for these remains; two, the conflicting osteological and textile analyses yielding vastly different date estimates; and three, the information and recommendations provided by consulting tribes, Chaco has determined these remains to be culturally unidentifiable. Due to their documented connections to and aboriginal lands within the 100-mile radius noted in the collection records for the Harkness Collection, the Hopi Tribe of Arizona and the Navajo Nation of Arizona, New Mexico & Utah have agreed to jointly
accept control of the two individuals and eight
associated funerary objects on behalf of all of the
consulting tribes. Ohkay Owingeh, New Mexico;
Pueblo of Acoma, New Mexico; Pueblo of San Felipe,
New Mexico; and Tonto Apache Tribe of Arizona have
provided letters in support of this disposition.
The consultation process, requests for repatriation
and letters of support constitute the agreement
among the consulting tribes. No consulting tribes
have expressed opposition to the joint disposition
to the Hopi Tribe and the Navajo Nation.

On behalf of Chaco Culture National Historical
Park and the National Park Service, we are
respectfully requesting a recommendation from the
Review Committee that the NPS move forward with the
proposed transfer of control of these two
culturally unidentifiable individuals and eight
associated funerary objects to the Hopi Tribe of
Arizona and the Navajo Nation of New Mexico –
Arizona, New Mexico & Utah. If the Review
Committee recommends proceeding and the Secretary
of the Interior concurs, disposition is expected to
take place in 2016 following the required public
notification.

Thank you all very much, and I will now turn
the mic over to Timothy Begay of the Navajo Nation Historic Preservation Department, who has a few words to share with you all, as well.

TIMOTHY BEGAY: Good morning, Chair and members of the committee and audience. Today we come to you for a simple recommendation of making what was done wrong right and putting these remains back into the ground where they belong. As you all are aware from our neck of the woods, anytime you get Navajo Nation and the Hopi Nation to agree it should be taken as gospel, so you know, we come simply to say we want these remains back in the ground and that the remains continue on their journey. So with that, we thank you for your time and your understanding in this situation. (Native American language.)

REVIEW COMMITTEE QUESTIONS AND DISCUSSION

ARMAND MINTHORN: Question, Karen, during your report there was a word that I would ask you for clarification. The word "abandoned," never heard that before in a report like this. Could you explain a bit more on abandoned?

KAREN WURZBURGER: Yes, regarding the collection that was - so my understanding was that - and that was part of the collection history for
these remains is that these remains were placed on
a temporary loan back in the thirties to the
monument, and the loan paperwork, my understanding,
is not great. And so about twenty years later, the
Park Service realized that these – this collection
was still in their physical custody and so took
pursuit to try to locate the individual who had
loaned them and they were unable to find that
individual or any of his heirs, and therefore the
collection was determined by the General Services
Administration to be abandoned property, and that’s
the terminology I believe GSA used and under which
the Park Service was able to kind of take legal
control of that collection.

ARMAND MINTHORN: So again, Karen, this report
is referencing two individuals and two unassociated
or associated?

KAREN WURZBURGER: Eight associated funerary
objects.

ARMAND MINTHORN: Oh, eight. Eight associated.

KAREN WURZBURGER: Yes.

ARMAND MINTHORN: All right. Committee?

STEVE TITLA: Chairman?

ARMAND MINTHORN: Steve.

REVIEW COMMITTEE MOTION
STEVE TITLA: Karen, Lawrence, Mr. Begay, I'd like to commend you for a thorough report. It sounds like you did consultations with all the necessary parties in the region around the Chaco Culture National Historical Park. I've heard a lot about it, never been there but hope to get there soon. At any rate, it sounds like you did the necessary consultation and I wish that all parties that come before us would make that kind of thorough consultation with the tribes that's necessary. I agree with our chairman. He said that consultation is not a letter. It's not a phone call. It's a face-to-face meeting like we are talking today. So I commend you for a good report and I make the motion that they are requesting for this CUI disposition, Mr. Chairman.

ARMAND MINTHORN: Is there a second?

DENNIS O'ROURKE: I second the motion.

ARMAND MINTHORN: Discussion?

Just to add to what Steve was saying, this is a good example of tribes working together. And like you were saying, sir, gospel. It's good when two tribes like this can work with each other and decide with each other disposition for our sacred human remains. And especially when the tribes can
have meaningful consultation and this consultation resulted with this disposition, this action here today. So I commend the Park Service for this here due diligence and especially the consultation. It’s vital. It’s key. It’s important, and it does - it never ends, consultation. So I commend you and the Hopi and the Navajo for working for this big result.

Any more discussion?

DENNIS O'ROURKE: Call the question.

ARMAND MINTHORN: All those in favor of the motion raise your right hand.

MELANIE O'BRIEN: Those in favor, Dennis O’Rourke, Steve Titla, Patrick Lyons, LindaLee Cissy Farm, and Heather Edgar.

ARMAND MINTHORN: Those opposed?

Abstain?

Motion carries. Thank you.

KAREN WURZBURGER: Thank you.

MELANIE O'BRIEN: Next we have another disposition request, this one brought to you by the Tennessee Valley Authority. We have Patricia Ezzell, who is the tribal liaison with the TVA.

**ACTION ITEM: CUI DISPOSITION REQUEST, TENNESSEE VALLEY AUTHORITY (TVA)**
PRESENTATION

PATRICIA EZZELL: Thank you, Melanie. Good morning, Mr. Chairman and members of the Review Committee. My name is Pat Ezzell. I serve as the Tribal Liaison for the Tennessee Valley Authority or the TVA. I will be presenting this morning, along with my coworker, Dr. Tom Maher. He is our NAGPRA Coordinator. Observing with us is Ms. Marianne Shuler, who is one of our staff archaeologists. We would like to thank the NAGPRA review board for this opportunity to present to you today. We would also like to thank The Chickasaw Nation for their hospitality that has been extended to us while we have been here.

As we get started, I feel I need to introduce you to TVA. You may remember us from your middle school history class, but it’s been a little while. So TVA was established as a Federal corporation to help develop the Tennessee Valley region. It was established in 1933. The region that I refer to includes all of Tennessee and parts of the six surrounding states, Alabama, Georgia, Kentucky, Mississippi, North Carolina and Virginia. We were created during President Roosevelt’s first one hundred days of the New Deal to provide flood
control, navigation and affordable electricity to the people of the region. By providing these things, it was TVA’s goal to improve the quality of life of people in the Tennessee Valley. Now, while our tasks have changed through the years, TVA’s fundamental mission as outlined in the TVA Act has not changed. Today, as in 1933, we are still committed to serving the people and improving the quality of life in the valley in the areas of energy, environment and economic development. Certainly, energy is a central focus for us, but we are much more than a power company. We also have sweeping responsibilities for managing the resources of the Tennessee Valley and being a partner for economic growth and prosperity in our region.

Now, TVA is a little unique in the world of Federal agencies. Certainly, we’re owned by the people of the United States to serve the people. We are governed by a nine-member policy making board appointed by the President and confirmed by the Senate. It’s a part-time board. Our daily operations are led by our President and CEO. One of the things that make us the most unique in the world of Federal agencies is that we are
financially self-supporting. We do not receive any appropriated dollars. The TVA power system has been financially self-supporting since 1959, and our non-power operations such as our flood control, our resource stewardship and our economic development work, we have not received any taxpayer funding since Fiscal Year 1999. These programs are funded entirely by power sales. Again, that makes us extremely unique as a Federal agency.

Now, when TVA was created in 1933, they went to work building a system of locks and dams to provide flood control and navigation with electricity as a by-product. During the construction of these locks and dams, hundreds of archeological sites were excavated from Federal land. TVA continued its power construction building fossil plants and nuclear plants, which also led to archeological excavations. I do want to point out that it is primarily from these hydro projects, these dam projects, that the majority of our collections were excavated. At this time, I want to turn the presentation over to Dr. Maher.

THOMAS MAHER: Thank you, and good morning. In the 1970s, TVA was planning to build multiple nuclear power plants simultaneously. TVA’s plan
was to build 17 nuclear plant units; however, with
the recession of the 1980s and the decrease in
energy demand, many of TVA’s nuclear plant projects
were deferred and then ultimately canceled.

Hartsville Nuclear Plant, located adjacent to the
Cumberland River in middle Tennessee was one of
these canceled plants. You can see it just barely
up there in the upper end as a little red dot. The
construction of the Hartsville Nuclear Plant was
canceled in 1984. You can see the outer shell of
one cooling tower had been completed by this time.

The Dixon Creek site, 40SM113, was first
identified during a surface survey of the planned
nuclear power plant in 1972. Additional survey and
excavations took place from 1974 to 1976. In April
1976, four test units were excavated. One test
unit revealed a single adult male interred in a
semi-flexed position in a 5- by 4-foot burial pit.
Two shell-tempered ceramic vessels were associated
with this individual. A reconstruction of the
excavations indicates that the Dixon Creek site was
occupied repeatedly from approximately 500 B.C.
through A.D. 1450. There are no radiocarbon dates
associated with these cultural items. The only
chronological evidence is provided by the two
funerary objects. One is a small shallow, thick-walled shell-tempered bowl. The other is a broken vessel with thin shell-tempered walls. It may have been a water bottle, but it is missing its distinctive cylindrical upper rim. Neither has any exterior or interior surface decoration. This burial seems to date from the Middle Cumberland Mississippian period ranging from A.D. 1050 to A.D. 1450. TVA has both control and possession of these NAGPRA items.

TVA initiated consultation on January 29, 2015, with Native American tribes who indicated that Smith County, Tennessee, is an area of interest. TVA made available all documents relating to the archeological site and the NAGPRA cultural items. We asked for a response within 30 days as to which tribes wished to consult further. The Native American liaison, Pat, scheduled a telephone consultation on April 24th, 2015, and representatives of the United Keetoowah Band of Cherokee Indians in Oklahoma, the Eastern Band of Cherokee Indians, and The Muscogee (Creek) Nation attended. Archeological, historical and traditional knowledge regarding this geographic area was discussed during consultation. Although
clearly a prehistoric Native American burial, it was agreed that there was not sufficient evidence to culturally affiliate these NAGPRA cultural items to a federally recognized Native American tribe or tribes.

We then turned to the regulations regarding the repatriation of culturally unidentifiable NAGPRA cultural items. As you know, these regulations provide a priority order for the disposition of NAGPRA cultural items determined to be culturally unidentifiable. This is a portion of the 1993 United States Geological Survey map illustrating judgments of the Indian Claims Commission, the ICC, and the U.S. Court of Claims. The ICC judgment recognizing the area as the aboriginal lands of the Cherokee extends only to the southern bank of the Cumberland River in Smith County, Tennessee. I believe this judgment is based on the 1785 treaty between the Cherokee and the U.S. Government, signed at Hopewell, South Carolina. Site 40SM113 is north of the Cumberland River, placing it outside of the area recognized by a judgment of the ICC or the U.S. Court of Claims.

In the absence of a judgment of the ICC or the U.S. Court of Claims, treaties are the next source
of information that can be used to determine the aboriginal occupation of an area. This 1884 map created by C. C. Royce indicates the area north of the Cumberland River is covered by a March 14th, 1775 treaty. This is kind of the light gray area you see there that has the numeral 7 in it, and again a red dot just below the border between Tennessee and Kentucky represents the Hartsville area. Historians have labeled this treaty as either the treaty of the Sycamore Shoals or the Treaty of Watauga. It was a land deal between Cherokee chiefs and the Transylvania Company headed by Carl Richard Henderson to form a fourteenth colony. Based on this treaty, this consultation concluded with a consensus agreement that the NAGPRA items were from the aboriginal lands of the Cherokee.

A Notice of Inventory Completion was drafted for submission to the National NAGPRA Program. A review of the draft NIC by TVA’s Office of General Counsel revealed a flaw in our reasoning. In the preamble to the final regulations regarding culturally unidentifiable human remains and funerary objects there is a response to a comment on the final rule. To quote, “Treaties signed
before the establishment of the United States between the various colonial governments and Indian tribes may be used to identify areas aboriginally occupied by Indian tribes,” based on the acknowledgement of the validity of these treaties by the United States.

The agreement between the Cherokee chiefs and the Transylvania Company was signed in March 1775. There is a letter from the North Carolina Archives from James Hawk, who was the Transylvania Company representative describing his trip to the Colonial Congress in Philadelphia in October of 1775. On behalf of the Transylvania Company, he spoke with many representatives, including John Adams and Thomas Jefferson, seeking their support of Transylvania as the fourteenth colony. He failed to convince them. In fact, in 1778 the Virginia legislature declared the Transylvania purchase void, and in 1783, the North Carolina legislature did the same. Both states claimed that portions of the Transylvania Territory were part of their original colonial charter. Ultimately this area became part of the states of Kentucky and Tennessee. So this treaty was never acknowledged by the Government of the United States and can’t be
used to identify aboriginal land under the CUI regulations.

Following the advice of the staff of the National NAGPRA Program, we’ve brought this issue to you, the NAGPRA Review Committee. We’ve developed an agreement with interested tribes for a joint disposition of these NAGPRA cultural items. We have signed agreements with the Cherokee Nation, the Eastern Band of Cherokee Indians, the United Keetoowah Band of Cherokee Indians in Oklahoma, the Shawnee Tribe, The Muscogee (Creek) Nation, and the Thlopthlocco Tribal Town. There is a pending agreement with the Eastern Shawnee Tribe, also. No tribe has objected to this joint disposition.

We’re seeking the Review Committee’s support for a Notice of Inventory Completion for the disposition of these NAGPRA items to all interested tribes. And that’s our presentation. Any questions?

**REVIEW COMMITTEE QUESTIONS AND DISCUSSION**

ARMAND MINTHORN: Committee, any questions, comments to the report?

I do have some questions. Tennessee Valley, this is a very big agency. In your report you were citing excavations that took place and the approximate time period of those excavations. Were
these excavations due in part to constructions on the rivers?

THOMAS MAHER: Well, this particular situation was that a nuclear plant, power plant was being planned for this area, north of the Cumberland River, and the excavations did take place because that entire area would have been – was impacted. And they identified this particular site and others, but this is the only site that produced any NAGPRA items.

ARMAND MINTHORN: Okay. And what year again did these excavations take place?


ARMAND MINTHORN: Okay. So does Tennessee Valley currently house collections?

THOMAS MAHER: Tennessee Valley Authority has control over many – thousands of NAGPRA objects – human remains and tens of thousands of funerary objects, but we possess almost none. This is one of the few. Most of the – as Pat referenced, most of the excavations that generated this large collection took place in the thirties and the early forties as part of the hydrological – the hydro dam projects. And this was a three-part partnership, you might say, between the Tennessee Valley, the
Works Progress Administration, and local universities, particularly the University of Tennessee, the University of Alabama and the University of Kentucky, where TVA was purchasing land and building dams and reservoirs. The archeologists at these universities were concerned about the permanent inundation and damage to these archeological sites that they knew about. And the Work’s Progress Administration was, of course, trying to find gainful employment for the many, many people who were unemployed during the Depression. So a lot of the excavations, archeological excavations were used to employ people. And the end results, the objects, the NAGPRA objects and other archeological information moved from the field to WPA-funded laboratories and then directly to the universities. However, in the vast majority of consequences this came from TVA Federal land. So these collections are under TVA’s control. We just partner with the universities who have physical possession.

ARMAND MINTHORN: So to understand that TVA is a Federal agency, and like with other Federal agencies that have NAGPRA, including ancestral remains in their possession, there’s a process to
work with tribes in disposition. And it sounds as though this Tennessee Valley has a very large collection. So that would be a question too is, like other Federal agencies, how is TVA going to work for proper disposition of the collection that TVA has?

THOMAS MAHER: We have been working with the Federal tribes that have shown and expressed an interest in the greater TVA area, which includes the river valley but also the larger power service area of TVA. And we’re in the process of doing consultations with these tribes, primarily site-by-site, and repatriating the NAGPRA items to tribes we can culturally affiliate to or using the culturally unidentifiable regulations. It’s going to take a few years because of the size of these collections, but we have good partners and good inventories at the University of Tennessee, and we are validating and improving our inventories at the University of Alabama and there are small amounts at the University of Kentucky. So we periodically have face-to-face consultations. We have one planned for this February on site at the curation facilities of the University of Alabama in Moundville, where we can consult, benefit from the
information that the tribes provide and reach
decisions and proceed forward. But given the size
it will take some years.

ARMAND MINTHORN: Well, in your presentation on
the page of tribal consultation in January of 2015
and then it says April 2015, you indicated that
tribal consultation was by phone. And then just
the last question you said what tribes expressed an
interest. So again, it’s not the tribes that need
to express an interest to initiate the
consultation. It’s the Federal agency that
initiates that dialogue and initiates that process.
It also is concerning that the tribal consultation,
as you cited, took place by phone.

PATRICIA EZZELL: Let me speak to that. When
we do a consultation, we do - TVA does initiate the
consultation and we invite all those - we typically
consult with the 18 federally recognized tribes who
have told us that the Tennessee Valley area is
significant to them. And so dependent on where in
the valley, we do try to contact – we don’t try, we
contact all the tribes that have an interest in
that area and we do our best to schedule a time
where everyone that is interested can be on the
call, because we are located in Knoxville,
Tennessee. It is hard to get everybody together for face-to-face consultations, so we do use conference calls. It may not be the best way but at least we are communicating and we are doing our best to get everybody who has an interest on the phone so that we can hear their comments. We do send out notes, not only to the people who were on the phone but to those parties who may have an interest and they do have an opportunity to contact us. Those who would not be on the phone call have an opportunity to contact us to provide any comments. So that is what we do with the current consultations, and then we have face-to-face consultations when we can.

ARMAND MINTHORN: Okay. Well just – again, just some comments. As an example, because I’m not very familiar with Tennessee Valley, like the other Federal agencies, whether it be BLM or Forest Service or Army Corps, from experience in working with these Federal agencies and they hear it over and over that consultation needs to be initiated and it doesn’t ever end, but the best consultation is face-to-face. And within those Federal agencies, they delegate the capacity to consult to their field stations. So not to say that it’s an
excuse because you’re in Knoxville, and if
television conferencing can work that’s fine. But
if Tennessee Valley has a capacity to delegate that
consultation to a field station or to somebody out
in the field, that would immensely help. So that’s
an example. That’s how we work with Federal
agencies in the Northwest, and it does work.

But again, you know, another comment, you
know, just like the Army Corps of Engineers at
home, they built dams, but prior to them dams being
built, they excavated numerous burial sites along
the Columbia River, including archeological sites,
and those collections are throughout the nation.
We continually tell the Corps of Engineers that
those known burial sites and those known
archeological sites are connected and they need to
be protected with plan or plans, through cultural
resources management plans, sacred sites protection
plan, which would include burial sites. That’s
what – that’s a constant work with the Federal
agencies in the Northwest. And I don’t know if
Tennessee Valley has similar processes and similar
workings within your agency, I don’t know. But to
understand that for us as tribes, cultural
resources sites, archeological sites, burial sites,
sacred sites, they’re all connected. They can’t be
separated from each other. They’re all connected.
So that as a comment, and again because not
familiar with the Tennessee Valley.

PATRICIA EZZELL: Thank you for your comment.

STEVE TITLA: Chairman.

ARMAND MINTHORN: Steve.

STEVE TITLA: Thank you to the TVA - can I call
you that? - representatives for the report. I
liked your PowerPoint and the shiny paper it’s on.
Thank you. But based upon your research and the
report, it sounds like to me, based upon the
judgment of the Indian Claims Commission and their
area, you said that 40SM113 is just north of the
boundary of that Indian Claims Commission boundary,
right? How far north is that?

THOMAS MAHER: Frustratingly, it’s just about a
hundred yards north of the north bank of the
Cumberland River, and the ICC agreement seems to
stop at the south bank.

STEVE TITLA: Okay. Based upon the judgment of
the Indian Claims Commission and the 1775 Treaty of
Sycamore Shoals, Area 7, that’s within that area?

THOMAS MAHER: It is within that area.

STEVE TITLA: It sounds like the Cherokee
Nation would have that area then.

THOMAS MAHER: And we thought that initially, but under the culturally unidentifiable regulations, a treaty has to have been acknowledged by the U.S. Government, and the 1775 Treaty of Sycamore Shoals was never acknowledged by the U.S. Government and was specifically disavowed by two state legislatures. And so we found ourselves in a position where we didn’t know how to go forward, and that’s why we’ve come to you or reached agreement with a number of tribes to dispose of these NAGPRA items to all of them. And then they, of course, will choose who will be the lead tribe and we will work with them on the ultimate reinternment.

STEVE TITLA: It sounds like you did some consultation, like you said, with various tribes in the area. And like our chairman, I’m not familiar with Tennessee, the state of Tennessee or TVA, being from out West. But the tribes that you have agreements signed or pending, Cherokee Nation, Eastern Band of Cherokee Indians, United –

THOMAS MAHER: Keetoowah.

STEVE TITLA: – Keetoowah Band of Cherokee Indians in Oklahoma, Shawnee Tribe, Muscogee
(Creek) Nation –

THOMAS MAHER: Thlopthlocco.

STEVE TITLA: - Thlopthlocco Tribal Town, Eastern Shawnee Tribe of Oklahoma. Have you had any personal consultations with these tribes?

THOMAS MAHER: Oh yes, we’ve spoken with each and every one.

STEVE TITLA: You met with them face-to-face?

THOMAS MAHER: On this particular topic, we didn’t meet with each and every one face-to-face, no.

STEVE TITLA: But you have agreements pending with them?

THOMAS MAHER: I have a pending agreement from the Eastern Shawnee. I have in hand signed agreements from all of those other tribes. In your packet, which was sent some time ago, it’s missing the most recent ones from The Muscogee (Creek) Tribe and the Thlopthlocco Tribal Town. But got those last week.

STEVE TITLA: Okay. I think that - I think that’s good that you have agreements signed or pending. The lack of personal meeting with the tribes concerned is an issue that I’m thinking about, and I don’t know the distances and the
location of these tribes in Tennessee or in nearby states, but I think it would have been good if you can meet with them personally, reach out to them, travel to them. For example, in the prior presentation of the Chaco Culture National Historical Park and the National Park Service Intermountain Region and the Navajo Nation, I know that that distance is a pretty long distance they have there, and Hopi is located in Arizona. I don’t know if you’re familiar with Arizona. Hopi is in Arizona, central north Arizona. Navajo Nation is in four states, but they’re still located in Arizona also. The distance I think is pretty far from Chaco Canyon to their location, but it seems like they still met with them on a personal basis and had agreements, and a Navajo member came to the meeting. So I would recommend that you meet with these tribes on a personal basis, reach out to them, go to the places wherever they’re at, if they’re nearby in Tennessee or nearby states. Where are they located?

PATRICIA EZZELL: Most of them are located here in Oklahoma, so it’s a little more than a drive, and we do try to reach out and visit as much as we can. We do not visit for every single
consultation, but I have heard the comments so I appreciate your comments and I can take those back.

STEVE TITLA: Yes, from an Apache point of view, and I think maybe from a lot of natives’ point of view in the nation, I think that we like person-to-person contact rather than telephone or email or what have you, whatever else, Facebook or I don’t know. But anyway, your report is good though, and what you have is the pending agreements, so I think that’s good also.

Chairman, do we need a motion here?

REVIEW COMMITTEE MOTION

STEVE TITLA: I make a motion.

PATRICK LYONS: I would second.

ARMAND MINTHORN: Discussion?

Again, thank you for your report. And again, not being familiar with TVA, and certainly we’ll read up and become familiar with your agency, all Federal agencies, BLM, Army Corps, Forest Service, Department of Energy, they all have a policy that guides them on consultation with tribes. Could I get a copy of your policy that guides you on consultation with tribes?

PATRICIA EZZELL: Yes, I can send you our process. I hesitate to call it a policy, because
policies have to go before our board of directors, and we have not sent a policy to the board of directors but it is the process that we do consultation under, and I would be glad to provide that to you.

ARMAND MINTHORN: Carla, clarification, TVA is a Federal agency and it sounds like there may be a difference between TVA and the other Federal agencies. That’s a perception.

CARLA MATTIX: It is a unique type of Federal agency, and I’m honestly not really familiar with its statutory enabling framework. But it is a different – just from the description and the little I know about it, it more of an independent type Federal agency, because it doesn’t have the same Federal funding and some of the same requirements. But I can’t fully answer your question because I don’t know at this point.

ARMAND MINTHORN: Okay. That only muddled the puddle even more. Well, because this committee and because our people with the Program aren’t familiar with TVA, we need to understand TVA more, particularly as another Federal agency. But it’s concerning that you, as a Federal agency, have a process rather than a policy to guide you on
consultation. There are Federal agencies that use a policy and use it very well, but there are some Federal agencies that ignore it completely and don’t use that policy in guiding them on consultation with tribes.

But in particular too, because TVA has a very, very large collection, it would be critical for this committee to become familiar with how TVA is going to work with those collection or collections and how and what will guide them with disposition of these collections in relation to tribes. So we as a committee are going to make some plans in the future for this committee when it meets to plan and invite very strongly Federal agencies to come here and report on the progress and their challenges, but also including our museums that are out of compliance with NAGPRA. We are going to also discuss how we’re going to meet with those museums. But in particular with TVA, we need to continue meeting and so we can understand what TVA is, who you are and what you do.

STEVE TITLA: Chairman? I think Mattix has muddied the waters for me, but anyway, TVA being a Federal agency, should they have followed the regulation under the NAGPRA, under Federal law, and
if they have a process in place and not a policy is that consistent with the NAGPRA regulations and the Federal law, Mattix?

CARLA MATTIX: The different agencies have implemented the Presidential Memorandum of 2009 in different ways, so I just am not familiar with the way TVA has implemented that memorandum. It is not absolutely consistent amongst Federal agencies or Federal independent agencies. And again, I don’t know exactly how TVA defines itself as far as some subset of Federal agencies, so we can look into this and get back to you, but I can’t tell you that right now because I’m just not familiar with the probably many hundred types of Federal agencies under the Federal government.

STEVE TITLA: Chairman, I think that based upon that, we should seek clarification in this matter, and I’d like to withdraw my motion until we can get clarification from our esteemed attorneys, Mattix and Steve and also the Madam DFO.

CARLA MATTIX: I think just one other aspect of your question, you asked does NAGPRA require a consultation policy. Was that part of your question? I might not have caught all of it?

STEVE TITLA: No, I think that the fact that
TVA has informed us that they have a process in place but not a policy, is that process consistent with the NAGPRA policy in Federal law?

CARLA MATTIX: I believe that they are required to follow the NAGPRA regulations –

PATRICIA EZZELL: And we do, as well as when we’re consulting with Section 106 issues, we follow the regulations. I mean, we do follow the law.

STEVE TITLA: I guess my question is whether the process you have is the same as a policy.

CARLA MATTIX: So NAGPRA, the NAGPRA regulations spell out some specific requirements for consultation under the regulations for NAGPRA, and that’s unique to NAGPRA. There are other types of consultation policies that Federal agencies may have in a general sense, not just for NAGPRA but for all different types of consultation. And that’s what – it’s not clear to me if there’s a consultation policy or process in that general sense that the TVA might have, but as far as NAGPRA and the process under NAGPRA, they do have to follow the consultation process spelled out in the NAGPRA regulations. Does that help answer your question?

STEVE TITLA: Were you able to look at the
process, the written process they have?

    CARLA MATTIX: No, what I do know is that
NAGPRA has regulations that they have to follow. I
do not know what TVA’s own individual consultation
process might be in general. But they do have to
follow the NAGPRA consultation process.

    DENNIS O'ROURKE: Mr. Chair?

    ARMAND MINTHORN: Dennis.

    DENNIS O'ROURKE: I was just going to say,
irrespective of whether we call it a policy or a
process, it seems to me that the engagement with
multiple tribal groups in consultation on this
issue has followed the spirit and the letter of the
NAGPRA Act, at least as I understand it, and is
similar, if not identical, to other cases that we
heard before the committee. I’m perfectly happy to
continue to take action on the motion, unless it
was rescinded, in which case I’ll make it again.

    ARMAND MINTHORN: Yes?

    PATRICK LYONS: I was going to say exactly the
same thing. I understand our colleagues’ concern
about policy versus procedure, but from what I see
it looks like TVA has done what’s required of them
under the statute and under the regulations.

    ARMAND MINTHORN: Cissy.
LINDALEE FARM: I would concur with that. I have a question. You had stated that there are approximately 18 tribes that you deal with on a regular basis who have an interest in this area. Why don’t you give us a little bit of background as to your relationship with the tribes and the interactions that you have had with them.

PATRICIA EZZELL: I would be glad to, and thank you for that question. In 2005, I was asked if I would become the Tribal Liaison for TVA. We – I think as Kirk Perry pointed out yesterday, we had not had the best record with relations with our tribal partners. I accepted that position. In 2005, we did travel to Oklahoma and we met with, off the top of my head I – many of the tribes who were in – who now the governments are now in Oklahoma. I can think of the Choctaw. The Chickasaw was the first tribe that we actually met with face-to-face, Ms. Gingy Nail. And then so we over 2005 to 2006, we met with all of the 18 individuals who at that time were in those roles of either THPO or cultural resource people.

We invite the tribes to what we call consultation workshops every five years. That started in 2002. We had that in 2007, 2012, and
we’re going to have another big meeting 2017. In between those large meetings, we oftentimes have face-to-face consultations, but we don’t have face-to-face consultations for each individual NAGPRA issue because we have so many. I like to think that I have a – that I built good relationships with the tribes. Our coworkers, Tom, Marianne, all of the archeologists that we work with, we take our positions very seriously. We come to the To Bridge a Gap conference in Oklahoma every year to meet with folks, and so it’s not that we never come to visit or we never have those face-to-face consultations, but we do not have every consultation that we have. This year we had 156 separate Section 106 undertakings, and you know, we had a variety of NAGPRA issues that came up.

And because we have worked to build those relationships, they know us; they know who we are at TVA. When I pick up the phone, they know me. When they call me, I respond. I mean, I like to think – and there are some folks here and you may ask, but I like to think that we have pretty good relationships and that we’ve worked hard to build those relationships, and that we talk about our consultation process, we talk about what’s not
I have a monthly call. We instituted that last year I believe, so that any of the folks who want to can call in. We have it the third Thursday, and you’re all welcome to join us. We have it the third Thursday of every month, which is today. I had to cancel because it’s at the same time today, but typically we’re on the phone and we go over everything that’s going on in our consultation world. So because of the long distance, I think that we are doing a lot to build those relationships and to consult and to get peoples’ feedback. So I don’t know. I hope that answers your question somewhat.

ARMAND MINTHORN: There were other presenters yesterday that we asked if they could keep us updated. Would like very much if TVA could keep us updated as a committee, and understand too that as we begin to work on our calendar, we will be strongly inviting you back to report so we can understand more who TVA is.

PATRICIA EZZELL: I’m also the corporate historian, so I could really – I could – I’ll be glad to introduce you to TVA. So thank you.

ARMAND MINTHORN: Okay. Final question,
Melanie or for TVA, like every Federal agency, you have to submit summaries and inventories. Did TVA – do we have these?

MELANIE O’BRIEN: Yes.

ARMAND MINTHORN: Okay. All right.

STEVE TITLA: Chairman?

ARMAND MINTHORN: Steve.

STEVE TITLA: Ma’am, earlier you mentioned agreements signed or pending with the tribes and the tribes contacted – I thought that you indicated that you had not had any face-to-face meetings with these tribes. And a while ago in answer to my esteemed colleague Cissy’s question, it sounds like you met with a lot of them in Oklahoma and you come out here and you meet with them and they know you. And see, that’s what we didn’t get in the initial presentation, so I thought that this was all on telephone and consultation. But as you indicated, you’ve been to Oklahoma before and you reach out to them and meet with these tribes. And that’s what the concern of the Chairman is and that’s my concern too, that the consultation be followed thoroughly with face-to-face meetings, and it sounds like you’re doing that. So that alleviates my concern as far as consultation is concerned.
Thank you.

PATRICIA EZZELL: I appreciate that comment and I’m sorry to cloud the issue. For this particular consultation, we did not come to Oklahoma, but we have in other times.

IAN THOMPSON: Mr. Chair, I wonder if I might speak.

ARMAND MINTHORN: Yes.

IAN THOMPSON: My name is Ian Thompson. I serve as the Tribal Historic Preservation Officer for the Choctaw Nation of Oklahoma, and I would just like to add to what TVA has said. They have worked to create a strong relationship with us. They have come out to see us. One of the issues is the distance between us, and at times we’ve requested to do meetings by phone because it is so far and because they have worked to build great relationships with us. So I just wanted to put in a word for them.

ARMAND MINTHORN: Thank you.

We have a motion on the floor.

DENNIS O'ROURKE: Can I call the question?

ARMAND MINTHORN: Yes. All those in favor of the motion, raise your right hand.

MELANIE O'BRIEN: Those in favor, Dennis
O’Rourke, Steve Titla, Patrick Lyons, LindaLee
Cissy Farm, Heather Edgar.

ARMAND MINTHORN: Opposed?
Abstain?
Motion carries. Thank you.
Melanie, we’re going to take a break.
MELANIE O’BRIEN: Certainly, sir. Fifteen minutes?

BREAK

MELANIE O’BRIEN: The next item on the agenda is another disposition request from Texas State University. We have Todd Ahlman from Texas State University.

ACTION ITEM: CUI DISPOSITION REQUEST: TEXAS STATE UNIVERSITY

PRESENTATION

TODD AHLMAN: I would like to thank the Chair and the Review Committee for allowing Texas State University to present our disposition request regarding human remains from archeological sites 41HY161 and 41HY163 in San Marcos, Hayes County, Texas. I plan to briefly discuss the recovery of the remains and the history of NAGPRA consultation in regards to identifying cultural affiliation, a disposition request from the Miakan-Garza Band of
the Coahuiltecan People, a nonfederally recognized Indian group, and subsequent consultation with federally recognized tribes, and finally, a competing request for cultural affiliation and repatriation of the remains by the Caddo Nation of Oklahoma. I’ve asked the Caddo Nation and the Miakan-Garza Band to be present and offer additional insight in the territorial, historical and cultural associations with the area that is today known as Hayes County to aid in the Review Committee’s consideration of our request.

I’ll begin with a discussion of the human remains from 41HY161. In the fall of 1982, two burials were encountered at site 41HY161 during construction and maintenance of the Texas State University campus in the City of San Marcos. The human remains were disinterred in February 1983 and osteological analysis was conducted by a biological anthropologist and the remains were found to be of pre-contact Native American ancestry. Radiocarbon dating in 2010 found that one set of the remains is around 3,500 years old and the other is around 500 years old. No known individuals were identified. No associated funerary objects are present.

Consultation was conducted in 1995 with tribes
having aboriginal connections in Texas. There
currently are no federally recognized tribes with
aboriginal or tribal lands in Hayes County, Texas.
At that time, the remains were determined to be
culturally unaffiliated with any federally
recognized tribe.

In July 2014, the Miakan-Garza Band of the
Coahuiltecan People, a nonfederally recognized
Indian group, submitted a request for disposition
of the human remains to their group. During face-
to-face meetings and email discussions with the
Miakan-Garza Band, Texas State University
determined that this group has a connection to the
remains based on oral tradition, geography and
similar cultural practices. In August 2015, Texas
State University engaged in consultation with 26
federally recognized tribes regarding the proposed
disposition of the remains to the Miakan-Garza
Band. The Choctaw Nation of Oklahoma and the Osage
Nation of Oklahoma responded indicating that site
41HY161 is outside of their ancestral territory.
On September 16, 2015, the Caddo Nation of Oklahoma
submitted a request asking that the human remains
from 41HY161 be culturally affiliated with the
Caddo Nation. In October 2015, we requested
additional information from the Caddo Nation and Miakan-Garza Band for us to assess cultural affiliation, and this information has been provided to the Review Committee.

After review of the information, it is Texas State’s belief that the Miakan-Garza Band has the strongest claim for disposition of the remains and Texas State is asking the Review Committee to consider our request for disposition to the Miakan-Garza Band.

Now, I’ll go right into the next site. In February 2008 and April 2009, human remains representing at minimum four individuals were removed from site 41HY163 in Hayes County, Texas. Archeological human skeletal remains were inadvertently discovered during a construction project for expansion of the City of San Marcos’ Wonder World Drive and later excavated by Texas State University’s Center for Archaeological Studies. Osteological analysis of the remains by physical anthropologists from Texas State University Department of Anthropology found the remains to be of pre-contact Native American ancestry. These remains date from approximately A.D. 645 to A.D. 735. No known individuals were
identified. No associated funerary objects are present.

Consultation by the City of San Marcos, Texas, in cooperation with the Center for Archaeological Studies and representatives of seven tribes with aboriginal territory in Texas, was conducted in March 2010. At that time, the human remains were determined by the City of San Marcos to be culturally unaffiliated with any of the consulted tribes. The human remains and archeological materials recovered from site 41HY163 are currently curated with the Center for Archaeological Studies at Texas State University.

In July 2014, the Miakan-Garza Band of the Coahuiltecan People, a nonfederally recognized Indian group, submitted a request for disposition of the human remains to their group. During face-to-face meetings and email discussion with the Miakan-Garza Band, Texas State University determined that this group has a connection to the remains based on oral tradition, geography and similar cultural practices. In February 2015, Texas State University engaged in consultation with 26 federally recognized tribes regarding the proposed disposition of the remains to the Miakan-
Garza Band. The United Keetoowah Band of Cherokee Indians in Oklahoma, The Muscogee (Creek) Nation, and The Choctaw Nation of Oklahoma indicated they have no ancestral connections to Hayes County, Texas, and deferred consultation. The Ysleta del Sur Pueblo, the Delaware Nation, and the Tonkawa Tribe of Oklahoma expressed support of the disposition of the human remains from 41HY163 to the Miakan-Garza Band. In March 2015, the Comanche Nation of Oklahoma requested additional information about the site and human remains and were provided the complete excavation report and human remains analysis to the Comanche Nation in March 2015. We contacted the Comanche Nation via telephone and email in March through August 2015 to follow up on the request but received no response. It was our conclusion that the information in the report satisfied the Comanche Nation’s request and they had no further comment on the disposition request.

On September 16, 2015, the Caddo Nation of Oklahoma submitted a request asking that the human remains from 41HY163 be culturally affiliated with the Caddo Nation. In October 2015, we requested additional information from the Caddo Nation and the Miakan-Garza Band for us to assess cultural
affiliation. And again, this information was provided to the Review Committee. After review of the information, it is Texas State’s belief that the Miakan-Garza Band has the strongest claim for disposition of the remains, and Texas State is asking the Review Committee to consider our request for disposition to the Miakan-Garza Band.

In sum, Texas State University is requesting that the Review Committee approve our request for disposition of the human remains from archeological sites 41HY161 and 41HY163 to the Miakan-Garza Band of the Coahuiltecan People, a nonfederally recognized group.

If this request cannot be approved today, we ask for your guidance in how to proceed in the repatriation process. We have asked the Caddo Nation and the Miakan-Garza Band to present information to the Review Committee regarding historical and cultural ties to past peoples in the area that is now Hayes County and to comment on the disposition request. I hope this information will foster discussion and help inform your decision regarding our request.

First, Dr. Mario Garza of the Miakan-Garza Band will present some information.
MARIO GARZA: Okay. I have a short PowerPoint presentation, and I’m waiting for it to come up.

Okay. Again, I’m Mario Garza from the Miakan-Garza Band of Texas. We’re only one – we’re one of only four State-recognized tribes of Texas. The State of Texas has recognized us as an original Texas tribe. “Coahuiltecan” is the name given by ethnologists and linguists to a large number of minor tribes on both sides of the Rio Grande. So there’s a lot of small tribes that collectively were called “Coahuiltecan” because we spoke the common language that linguists called Coahuiltecan language family. And there’s a myth that the Coahuiltecsans were absorbed into the Spanish population and lost all of their culture. But we retained a lot of our Native culture. We retained purification lodges. We have been doing sweat lodges all these years. We also retained our dances, or dance, which to us are another form of prayer, and we have continued the use of doing our peyote ceremony, which we believe became – the Native American Church developed from our peyote ceremony.

Hostilities toward the Indigenous people in Texas, the Texas Rangers were founded in 1823 by
Stephen F. Austin to protect Anglo settlers from Mexicans and Indians. The second president of the Republic of Texas, Mirabeau B. Lamar, instituted a policy of total extinction or total expulsion of Texas Indians to make the land available to Whites. By that time, a lot of the Indians had been colonized by the Spaniards, so a lot of us were able to remain in our traditional land and we were able to pass as Mexicans and we used that for the sake of survival. And one of the things that happened, which happened all over the United States at that time, that they were removing a lot of the native people from their native traditional land, and a lot of them ended here in the state of Oklahoma. And now we have a situation that a lot of the remains were being removed from their original burial sites and coming to other states.

So we have lived in the Spring Lake area, in which you know Dr. Ahlman was referring to as Hayes County. So we believe that we emerged as “The People” from the sacred springs in this area in San Marcos, Texas. And we believe that our creation story is documented by a rock art that is called the White Shaman Panel. This – about six years ago, this friend of mine kept insisting that I
should go look at this rock art that is called the
“White Shaman Panel,” and so we started looking at
it and we started noticing that it had all the
elements of our creation story, the creation story
that had been passed to us orally for hundreds of
years. And another interesting thing that we
noticed about the rock art was that it had all the
elements and the instructions of our peyote
ceremony.

The White Shaman Panel has been carbon-dated
to be over 4,000 years old, and it’s located at the
confluence of the Pecos and the Rio Grande rivers
near Comstock, Texas. It’s about 30 feet in length
and about 15 feet high. And we know that the White
Shaman Panel was created by our ancestors because
for one thing it is in the Coahuiltecan homeland.
It is about our creation story, and it is about our
peyote ceremony. And that area in red is the
Coahuiltecan homeland. As you can see, where you
see the star, I don’t know if you can see it, but
that’s where the White Shaman Panel is located.

So the White Shaman Panel is about a lot of
things. It’s a lot of information. I mean, it
even predicts the next comet when it’s going to
happen. It has a lot of the area about the
geography, but I’m just going to – because of the
time situation, I’m just going to concentrate how
it relates to the creation story. So most of the
books that you read on Native people, they say that
we did not have a written language but we did have
a written language. The rock art was just one of
them. Reading the White Shaman Panel, and we
cannot read it the way we were taught to read in a
linear fashion. We have to read it in a circular
fashion, the global fashion, and we have to try to
conceptualize the way our people used to
conceptualize thousands of years ago and the way a
lot of us still conceptualize.

They call it the White Shaman Panel, but we
call it “Napako.” In our language, it means “our
journey.” I’m going to just mention a few elements
of our creation story. It shows the upper and the
underworld. There’s a wiggly line that you see.
It’s white until it touches the figure there on the
left of the panel and then it starts turning black.
That shows that’s the summer solstice. It’s got
five figures, the five figures of creation. It’s
got the eagle, rabbit, snake, deer and jaguar. It
shows the White Shaman Panel figure loses its head,
it becomes the moon that was sacrificed, that
figure did for our creation. And at midnight, the
force of the moon pulls on the Earth and the Earth
Mother figure, the Creation Spirit of Mother Earth, 
or as we call it “Tap Tai,” through the four
elements of fire, water, soil and air, and with the
sacrifice of Grandmother Moon, we were created in
the world at midnight during - we were created at
midnight, and that also relates to our all-night
peyote ceremony, that at midnight that’s when we
bring in the midnight water because that’s when the
time that we became humans.

And according to our creation story, we
followed the deer and came out into this world
through springs of water, and we believe that these
are the springs that we call the Sacred Springs at
San Marcos, Texas. And before I show you the four
springs on this panel, I wanted to point this out,
we have that figure that we call “Panama Pilam
Xam,” which represents the human and peyote as one.
And you can see he’s got the small black dots on
the antlers and that represents our sacred
medicine, the peyote. And Panama Pilam Xam is
coming out of the underworld and it represents that
life coming in, that we the people have with the
medicine, that we were created at the same time.
In other words, we believe that we are the peyote and the peyote is us, according to our spiritual beliefs.

Another thing that relates to the ceremony, you can see the figure coming out of the U-shaped altar with a peyote Chief in the middle, like in this image, that’s another one of our instructions. We built our altar where we do our ceremony in a U-shape, which people call the half-moon altar. And there’s a lot of other information on that figure that relates to the ceremony, but we don’t have time to go into all of them. Okay.

We have four sacred springs, and they’re in the panel, circled under the red circle you see the four springs. So there’s the first – the four springs, the one on top is the one in Austin, Texas. The second one is the one in San Marcos. The third one is the one in New Brussels, and the last one is the one in San Antonio. And you can see the line coming out that separates the upper world from the underworld, and you can see that it shows that we came out at the Sacred Springs, which is the one in San Marcos. And if you take an aerial photograph and superimpose it on the drawing on the panel, so you see the Barton Springs in
Austin on top, then you see the Sacred Springs in San Marcos. You see Coman Springs in New Brussels, and then you see San Pedro Springs in San Antonio. So over 4,000 years when the panel was painted, you can see that it lines, pretty much it’s still the same.

And so it shows us coming out at the Sacred Springs in San Marcos. So that’s why San Marcos is our most sacred site that we have, and that’s where we do our ceremonies now. That’s even where we have our annual pow-wow. And this property is now owned by the Texas State University, and we had to - we were paying three hundred dollars every time we wanted to go there and pray, wanted to get to do a ceremony. But after negotiating with the president of the university, now we don’t have to pay when we go and pray. We used to go and sneak there and do some of our ceremonies, because we do several ceremonies during the year.

I’m going to skip the next part, which talks about our peyote ceremony, and that’s the only area in the world where peyote grows and you can see it’s at the border of - the present border of Texas and most of it is in Mexico. Briefly the four required songs for the - any roadman running the
peyote ceremony has to sing those four songs. The Opening Song, the Midnight Song, and the Morning Water Song are in Coahuiltecan. The last one is in Comecrudo, which is one of the dialects of the Coahuiltecan language. And there’s a dictionary you can download free online that you can look up the words and see that when I say they’re in Coahuiltecan, they’re actually in Coahuiltecan. 

Real fast, one of the most commonly used words is “yana wana.” The common closing formula for most of the prayers are “xanē yohui,” which in our language means “with all that I am” or “with all that there is.” So with always pray with all the essence in creation. There were two manuals that the Catholic Church used for over 260 years to do away with that ceremony, and the first one was a manual that was used for confession, and it was published – where’s the date – in 1732. So one of the things that they did, the recorded our language the way they heard it, so they provided all this language. All these manuals that have become our dictionaries and helped us analyze the make of our language. And the other one was a manual to administer all the sacraments of the Catholic Church.
So in summary, the medicine only grows in the Coahuiltecan homelands. So for the first people to start doing the ceremony had to be people that were in that land. The four required songs in our language, the common peyote songs are in Coahuiltecan. Most peyote songs contain words of our water songs. There’s a lot of CDs that you can buy online that are called “intertribal” but they’re actually in our language, in Coahuiltecan language. One of the common songs I had it on the slide, a song that I have heard, every single peyote ceremony that I have done. And that simple says with the spirit of the – all the waters of the spirit. That’s the whole song, and I have heard that song in every language in every ceremony that I have gone to, regardless of if it’s run by a Navajo, if it’s run by an Apache, if it’s run by a Sioux, whatever. I have heard that song at every peyote ceremony that I have attended.

Okay, this is another important thing that I wanted to show you. The City of – if you look at the blue area there, that’s where the springs are. And one thing that I wanted to mention also about the area, archeologists have documented that that area is the oldest continuously inhabited area in
North America. So our people used to live there for thousands and thousands and thousands of years, until the Europeans came and started pushing us out and started killing us.

And the City of San Marcos owns – if you look at the green area, the City of San Marcos owns a 264-acre national preserve, and they’re allowing us to have 2 acres in that land, which is right adjacent to the property that is owned by Texas State University where the sacred springs are, where the remains were removed from. And they gave us those two acres, and also they’re giving us any needed additional land if we need to expand our repatriation cemetery, because San Marcos is right now one of the fastest growing small cities in the United States and there’s a lot of construction. Right now they’re doing an overpass real close to the area because of the trains, so they’re doing an overpass so people can drive over the current trains. And a lot of us fear that they’re going to be uncovering more human remains because we consider that area one of our old burial sites. And if you consider that people lived there for – continuously for, some people say 13,000, some people say 19,000, depending on what study you
looked at, there’s a lot of human remains there. And if they’re going to keep doing more
construction, they’re going to unearth more remains. But the City of San Marcos has given us
land so we can do – so we can repatriate these remains as close as possible from where they were
removed. And I feel that it was wrong to move the people away from their homeland, but I feel that
it’s even worse to move the remains from where they were initially buried away from that. So if we get
the remains, we will reinter them as close as possible to where they were removed. So again
we’re asking you to let us have the remains and return them to where they were – as close as
possible where they were removed. And hopefully, this will be the last time you see me. I hope that
they do not remove – unearth any more remains that we have to come here, because this is really hard
and stressful for us to be dealing with this, with repatriation. So thank you.

TAMARA FRANCIS-FOURKILLER: I want to thank you for coming up here and saying all that, I really
appreciate that. That’s my consensus also is the main point is to have them reburied as closely as
possible. I also believe that the whole point of
our being here is to make sure that the ancestors
do get reburied. Unfortunately, when I did give my
report to the NAGPRA committee, I also being
Chairman, I did not have enough time to complete my
report. I was only able to give you what I was
prepared so far. I had to attend a couple of
meetings and I had to just submit what was ready.
If I may, let me go ahead and continue.

According to our Caddo history and our oral
traditions, the Caddo people have lived in
Arkansas, Louisiana, Texas, Oklahoma and the
Missouri area for thousands of years. Our people
have actually carried on with the peyote traditions
for thousands of years also. We’ve traveled down
into the Mexico area to gather this button, this
little button, peyote button for us to have our
traditions, for us to have all of these ceremonial
spiritual rituals that our Elders have carried on
for thousands of years now. I can recall oral
traditions from my grandparents, my great-
grandfather who is still living today, of them
going down to actual Mexico to gather this. I have
written documentation of different persons talking
about them going down into Texas and having
different alliances with tribes, Henri Joutel in
1687 recorded 50 allies in south-central and west Texas. The Coronado documents also show that they had a group called the Taos that tattooed themselves that were an alliance of the Hasinai people who were the Caddo. And these groups, they spread for hundreds of miles to the east and the southeast. These groups were all over in Texas.

The connection of the Caddo people were far flung into the Southwest and into far south Texas. Datura vessels found at post-A.D. 1450 sites in the Great Bend area and in east Texas argue that the Caddo had participated in Datura shamanism. Motifs on Caddo pottery in east Texas sites after A.D. 1430 suggest that Caddo peyote symbolism of Caddo people being familiar with peyote and peyote ceremonialism, which then suggests that the Caddo groups, either through others or their own journeys, had knowledge of their peyote gardens in southern Texas before the horse was introduced.

This also leads to the questions of the connection between the Caddo and the aboriginal societies of Mesoamerica. There was also Mexican obsidian tools that were also found at Spiro, that was a well-known Caddo site. We’ve got all kinds of things that lead to the Caddo people being connected with
Mesoamerica. So there’s nothing that says that we weren’t traveling back and forth, we weren’t going through that area, we weren’t connected with it.

According to the Missionary Francisco Hidalgo, the Caddo used the mescal bean as early as 1716. Hidalgo implied that the peyote and the mescal have been used interchangeably for shamanism or war ceremony. Sacramental use of the spineless cactus peyote was found growing friskily in the Rio Grande Valley in present-day Mexico and in Texas. It was believed to have originated with the Carrizo, the Lipan Apache, the Mescalero Apache, the Tonkawa and the Caddo. In 1649, an account supports the Carrizo peyotism, which was then diffused to other tribes. So that means that it wasn’t just with one group. There was all sorts of tribes that did use peyote. It wasn’t one group.

Now, the Caddo, they consisted of several subdivisions. A lot of their allies, like I said before, there were different - as many as 50 subdivisions. And when they allied with different groups, most of those allies went and they would often tattoo their faces, because Caddo were known for having the spools in the ears and stuff, the tattooed faces, the tattooed bodies and stuff. All
of their allies, and stuff, would then go ahead and they would do the same thing. Throughout Texas, throughout southeast Texas, southwest Texas, on into Mexico, there were a lot of these tribes and groups that did that to show their alliance to the Caddo and the Caddo Confederacy. We were there. We were there throughout hundreds of years.

As far as the peyote and the peyote songs and things like that, when we sing our peyote and our peyote songs, they are in our own language and we have sung them for thousands of years. That is connected to our people. We have pottery and things that have been found along the different sites along the gulf of Texas there, where there – they have references, the Caddo pottery has references to peyote on them. How will the Caddo pottery have the peyote designs on them if we were not using peyote, and how would they be that far south if we were not down there, if we were not trading with peoples down in that area? As far south as Galveston, as far south as Corpus Christi, that’s how far south our Caddo pots have been found. There’s documentation of them even going into Mexico and our pots being found in Mexico.

I don’t have a PowerPoint or anything like
that to show you that our Caddo peoples lived here, lived there, did all of this. We also have a creation story where we came up out of the water. With our creation story, the water got—it was shut at a certain point, but it was shut by coyote, who kept the rest of our people from coming up, and that's word of mouth, passed down generation by generation by our people. But it's not up to me and my people, my one tribe to claim a wall art that belongs to many tribes.

We're a peaceable group. We know where we've been. We know how large the Caddo Confederacy actually was. We know we stretched for states. We know we had many allies, and we know that we have burials that stretch in so many different directions that we can't even fathom right now how far they are.

Right now, I've only been in office as chairman for nine months, and I've been doing so much back work to try to correct a lot of things that have been done wrong in the past three to five years for our people. But a lot of the things that I've done in the past ten years, I was the Tribal Historic Preservation Officer for the Delaware Nation, so I do know a lot about research and I do
know a lot about burials and things. And I do know about the law, and I do know about researching archeologically and how to connect the dots and things.

And as a Caddo person, I have been researching my Caddo archeology since I was a small child, and I have followed around the different archaeologists my entire life, and I do know that our connections reach far down into Mesoamerica. And that’s not just something that now as an adult I know from oral tradition, but something that now as an adult I can connect the dots from looking at the actual objects that we find at different mound sites where we look at objects like this where it has things like this on it, and you see how it’s got the hands and things like that, and the circles. It looks very Mesoamerican, doesn’t it? Why would it look so Mesoamerican if we weren’t connected to it?

I’ve studied this my whole life. I have no intention of discrediting this this gentleman here, this Elder. My whole intention is to prove that my Caddo people were there and to keep my tribe’s traditions alive, our oral histories alive, and to prove that we were there. But the point of us being here today is to make sure that those
ancestors are reburied and they stay as close as possible to where they need to be, and that is in the area where they were. Thank you.

REVIEW COMMITTEE QUESTIONS AND DISCUSSION

ARMAND MINTHORN: Thank you. Any comments, questions from the committee?

LINDALEE FARM: Mr. Chair.

ARMAND MINTHORN: Cissy.

LINDALEE FARM: Ms. Francis-Fourkiller, is that correct?

TAMARA FRANCIS-FOURKILLER: Yes, ma’am.

LINDALEE FARM: Do you object to the Garza having the remains?

TAMARA FRANCIS-FOURKILLER: Only that they are not a federally recognized tribe.

LINDALEE FARM: You need to have it closer to you.

TAMARA FRANCIS-FOURKILLER: Me?

LINDALEE FARM: Yes, thank you.

TAMARA FRANCIS-FOURKILLER: Only that they are not a federally recognized tribe.

LINDALEE FARM: But other than the fact that they are not a federally recognized tribe, do you have any objection to them taking possession of the remains and interring them, as has been presented?
TAMARA FRANCIS-FOURKILLER: Yes.

LINDALEE FARM: What is your objection?

TAMARA FRANCIS-FOURKILLER: As far as I have seen, yes, they are a group but I do not believe that they have proven themselves to be a – per se, a tribe.

LINDALEE FARM: Okay. I guess I don’t quite understand what you mean by that, if you could explain that a bit more?

TAMARA FRANCIS-FOURKILLER: While my people have been here for thousands of years, we have stories. We have our traditions and stuff that date back thousands and thousands and thousands of years. We have oral traditions, and that’s who we are. I’m not understanding why they are just coming into being present now.

LINDALEE FARM: Go ahead, Patrick.

PATRICK LYONS: Mr. Chair, may I?

First, I have a question for Dr. Ahlman, and then I have a question for Ms. Francis-Fourkiller. So first, Dr. Ahlman, is it – is my understanding – based on the documents that were submitted, is my understanding correct that the Caddo Nation of Oklahoma was indeed consulted in this process?

TODD AHLMAN: Yes, they were. I don’t know if
they were consulted for the remains from 41HY161 during the initial consultation in 1995, but when we received the disposition request and after our discussions with the Miakan-Garza Band, we did consult with them. And then for the remains from 41HY163, they were one of the seven tribes initially consulted with by the City of San Marcos. For some reason, the City of San Marcos no longer retains those records, and I’m not sure what their response was or if there was a response from the Caddo Nation. And we did consult with them regarding this disposition request.

PATRICK LYONS: Thank you.

TODD AHLMAN: Sure.

PATRICK LYONS: Okay. One more question for Ms. Francis-Fourkiller, am I understanding the documentary record correctly as has been presented to us that the Caddo Nation did not make a claim of cultural affiliation during the initial consultations but that the action that the Caddo Nation is taking now is a result of the disposition request?

TAMARA FRANCIS-FOURKILLER: The action that the Caddo Nation is taking now is the result of my being in the position of Caddo Nation Chairman and
THPO and my reorganizing the Caddo Nation area of interest due to research. The previous boundaries of the Caddo Nation were incorrect.

ARMAND MINTHORN: Mr. Ahlman, to understand clearly that throughout the presentation there has been mention of two sites.

TODD AHLMAN: That is correct.

ARMAND MINTHORN: And from these two sites, there are artifacts.

TODD AHLMAN: That is correct.

ARMAND MINTHORN: So the distinction between these two sites is becoming a bit confusing as the two of you talk. So to understand as well that ancestral remains have come from both of these sites.

TODD AHLMAN: That is correct. There are two human remains from site 41HY161 and then there are four individuals from 41HY163.

ARMAND MINTHORN: Okay. So we’re looking at five individuals.

TODD AHLMAN: Six.

ARMAND MINTHORN: Six. Okay.

UNIDENTIFIED INDIVIDUAL: (Inaudible comment.)

ARMAND MINTHORN: Okay. So again, Mr. Ahlman, it’s critical that and how consultation is carried
out. So to understand too that Texas State has
made a determination, and have the Caddo submitted
all their information as well in helping and
assisting the university in making a determination?

TODD AHLMAN: Yes, the information that you
have is the information we received from the Caddo
Nation. The information that we heard this morning
was not part of that information package we
received in October.

ARMAND MINTHORN: Okay. Well, to understand
also, and then Carla, you can help here, is this
committee, we can have a motion as an option for
consideration for Texas University. And if that
motion goes forward then the Caddo would then be in
a position to strengthen the testimony that was
given this morning and to demonstrate clearly their
connection to these ancestral remains. And then it
would go back to the university to reevaluate that
information, and then the university will be either
confirming or having another decision. Is that
generally what could happen?

CARLA MATTIX: So maybe back up a little bit.
I may have missed what your recommendation would
be, because based on what your recommendation is
will determine how the process moves forward. So
your motion would be for a recommendation for – one option is to move forward with the Texas State University’s request to provide disposition to the Miakan-Garza Band. That’s their specific request. Another option for a recommendation would be to continue to consult with the Caddo Nation based on some of the additional information they may have, as they presented today, since that was not provided already to Texas, but you have a couple of options with your recommendation.

We’re in the section of the regulation dealing with culturally unidentifiable remains, but it’s my understanding unless there’s some new information that this is not a 10.11, 43 CFR 10.11 area of culturally unidentifiable because there is no tribal land or aboriginal land identified. So therefore it falls into 10.16 and there is more leeway here because we don’t have the tribal land or aboriginal land priority order. So you have some leeway in your recommendation with respect to the State-recognized tribe or other options. Depending on your recommendation, that recommendation actually goes to the Secretary of the Interior for this category of human remains, and the Secretary of Interior will review that
recommendation and then decide how to act on this request.

ARMAND MINTHORN: Dennis.

DENNIS O'ROURKE: Can I just ask a question?

Both of you indicated that the primary concern was the reinternment of these individuals as close as possible to where they were removed. Would it be a consideration that you might jointly request, take responsibility, and have them reinterred at the site that’s been identified adjacent to where they were recovered, rather than competing claims?

TAMARA FRANCIS-FOURKILLER: My concern is that when the Caddos do a repatriation and a reburial, when we do it, we do it very quietly, humbly, and no one knows when we do it. We go in. It’s done. There are no news reports. There are no pictures, nothing. It’s done. We leave. We come back. The ancestors are undisturbed. That is why we want to reclaim these ancestors so they will receive the proper respect and be reinterred the proper way.

The things that I have read in the newspapers about previous reinternments - well, the previous reinternment, I’m sorry, but it didn’t make me happy. When we do things, we do things the proper way and we do things because that’s the way we’re
supposed to do them, not for any kind of glory, not
for any kind of photo op, not for any kind of thing
to impress anyone. We are who we are, because
that’s the way God made us. I don’t have to put up
any kind of flag or banner or anything like that.
I’m Caddo. I was born Caddo. My people have
always been Caddo. I don’t have to put up a flag,
a banner, or anything like that to prove it. And
when I bury my people, no one knows about it. No
one knows when I come into town or anything like
that.

ARMAND MINTHORN: And it is true, your words,
all the tribes respectfully rebury their ancestors,
all of them do. All of them do, and it’s because,
just like your words before from our old people and
from tradition and custom, our language and song,
all tribes are similar in some manners with
tradition and culture. Would the Caddo Tribe agree
to rebury these ancestors at the site that was
specified?

TAMARA FRANCIS-FOURKILLER: Yes, we would.

ARMAND MINTHORN: Thank you.

Steve.

STEVE TITLA: Chairman, from your position I
don’t think you see it, but there’s a lady that’s
raising her hand over there. And so I think she wants to make a comment or something.

ARMAND MINTHORN: We do have time for the audience to make comments on the agenda. Is that correct?

MELANIE O'BRIEN: We are close to our scheduled lunch break, but that’s at your discretion.

ARMAND MINTHORN: Cissy.

LINDALEE FARM: I have a question for you, Dr. Garza. I’m looking at the documentation that was provided to us, and there seems to be a discrepancy as to how many individuals because you said one femur, four individuals.

MARIO GARZA: No, it was five. I’m sorry. I meant five.

LINDALEE FARM: Okay, five. And your letter that’s dated July 21, 2014, actually says two individuals on site 61 and three individuals on site 63. And what I hear from Dr. Ahlman is there are four individuals.

UNIDENTIFIED INDIVIDUAL: (Inaudible comment.)

LINDALEE FARM: All right.

TODD AHLMAN: So when I reviewed - the consultation that was conducted in 2010 and the final CUI inventory that was completed was
completed before I became director for the Center for Archaeological Studies, and my review of the case and review of the report and discussion with other people who know NAGPRA a little bit more than me, they pointed out that actually there were four individuals identified in the osteological report, and we are in the process of updating our inventory to reflect four individuals from 41HY163.

LINDALEE FARM: Can I just follow up? Okay, so Dr. Garza, are you requesting all of the individuals at issue, given the updated inventory?

MARIO GARZA: Yes, all the individuals, whatever number they happen to be, yes.

LINDALEE FARM: Thank you.

HEATHER EDGAR: I have a question. I have a couple of questions. One, the first one I’m not sure, Dr. Ahlman, just a clarification because I must have missed this in my reading, I think you said for site 161 that the two individuals, one represented solely by a femur, one dates to 500 years ago and the other one to 3,500 years ago. Is that correct?

TODD AHLMAN: That is correct.

HEATHER EDGAR: And can you please remind me what that dating is based on?
TODD AHLMAN: Radiocarbon dating.

HEATHER EDGAR: Radiocarbon dating. That’s quite - that strikes me as quite a large difference in dating between those two.

TODD AHLMAN: Both of those remains were found during construction improvements and I believe, you know, that we have a multi-component site where those were found. We know for sure that there are remains that date from - that there are artifacts that date to 11,000, 12,000 years ago. As the archeologists in San Marcos say, it’s the longest continuously inhabited location. We say that there’s 13,000 years of occupation there. And so it does not surprise me that they date - that they’re so far apart in dating at one site.

HEATHER EDGAR: “Continuous” is an interesting word because it implies a permanent settlement.

TODD AHLMAN: Yes, I know.

HEATHER EDGAR: And maybe that’s stretching.

TODD AHLMAN: Yes, I know that too. It is good marketing technique for the City of San Marcos.

HEATHER EDGAR: And good marketing technique, while interesting and useful, is maybe not the best approach to using the archeological evidence with
this committee. My next – the other question I have is about the pictograph panel. I believe that Dr. Garza mentioned that the pictograph panel dated to 4,000 years ago also from radiocarbon dating.

TODD AHLMAN: I believe that there’s a technique for radiocarbon dating the pigments used in rock art now, and I’m not – I’m far, far from an expert on it but I think that that’s how that was used.

HEATHER EDGAR: Okay. I believe that there’s a lot of error associated with those methods, and I also don’t know when that date of 4,000 – if that’s a newly arrived –

TODD AHLMAN: It’s a fairly new date. It’s been in the last couple years.

HEATHER EDGAR: Okay. One final archeological question is about Caddo pottery or other associated artifacts, artifacts that might be considered Caddoan cultural, are there ones in – are there Caddo artifacts at archeological sites in the San Marcos area, as far as you know?

TODD AHLMAN: None that we can directly associate with the Caddo.

HEATHER EDGAR: Thank you very much.

ARMAND MINTHORN: There is a lady in the back.
She keeps raising her hand. Who is that? Can you come up and identify yourself and briefly?

HOLLY HOUGHTON: Yes, my name is Holly Houghton. I’m the Historic Preservation Officer and NAGPRA Coordinator for the Mescalero Apache Tribe, and I just wanted to say that Texas State University in their — his description of it, he said that there are no tribal or aboriginal lands within that southern part of Texas, and I disagree with this. We have claimed that area for quite a long time. The Mescalero Apache Tribe is made up of the Lipan Apache, Chiricahua and Mescalero Apache. And the Lipan were in that area. It’s documented in the historic record. There’s treaties that are signed. Also the Mescalero signed some of those treaties as well.

And we did receive a letter regarding the consultation. We called at one point and said that we were against it going to this nonfederally recognized tribe, and we never — I have not heard that or seen that in the documentation that was presented, and I didn’t have any follow up from the university after that time. And I was a little upset then when I saw it on this agenda that it was being presented then already, because it was only
in September when we received the letter – or
actually, it was the beginning of October when we
received the letter from the university. And I
just don’t feel that there was enough consultation
for such a decision to be made.

I am glad that the Caddo have come forward and
offered, and we are fine with that. We would just
like to see that it stays within the federally
recognized tribes.

I would also request that some Federal agency,
perhaps the Park Service or that determine – there
are several groups within Texas that claim they are
State-recognized tribes. When I’ve talked with the
Texas Historical Commission, they say they are not
State recognized. The State has acknowledged that
they existed within the state of Texas, but they do
not have State recognition, which is a different
legal stature. And several of those groups are
going around saying that they are State-recognized
tribes within Texas. Yes, there was a resolution
passed by the State of Texas, but as I said, it
just says that they acknowledge that their
ancestors were within the Texas territory in the
past. And I think that is going to come up again
in future repatriations where tribes are saying
they’re State recognized by the State. So I have been trying to get an affirmation from the State government of Texas but at this point have not been able to.

The other – we have in the past done repatriations and have repatriated remains within that immediate area of south Texas from the University of Texas and we actually did one jointly, I believe, with this same band where we did the formal repatriation and then together we did the reburial, and that is something else that we are for within that area, or as I said we’re in support of the Caddo if they’re the ones who wish to go ahead and proceed. Thank you for allowing me to speak.

ARMAND MINTHORN: Thank you.

TODD AHLMAN: Chairman, might I ask a question of this person?

ARMAND MINTHORN: Yes.

TODD AHLMAN: Ma’am, could I ask you a question? So it’s your contention that there is information about Indian Claims Commission findings and/or ratified treaties that place this archeological site within aboriginal lands as defined by those particular aspects of law?
HOLLY HOUGHTON: For the Lipan Apache, yes. And as I said, that we are the only federally recognized tribe that has Lipan Apache. I mean, the White Mountain, there’s probably some intermarriage between some of those other ones, but they were brought from one of the mission areas within Texas in 1870 – no, eighties. I’m sorry, I don’t remember the exact year, but they were brought to the Mescalero reservation and made part of that community during their expulsion campaign.

TODD AHLMAN: Just to clarify, the reason I ask the question is because of the part of the regulations that we’re in. Everyone understands why I’m asking that question? Okay.

ARMAND MINTHORN: Thank you. What are the wishes of the committee?

STEVE TITLA: Chairman.

ARMAND MINTHORN: Steve.

STEVE TITLA: I have a question for Steve. Steve, our Chairman here indicated that maybe one of the options is to refer it back to Texas State University for reevaluation based upon the recent information we received from Caddo Nation and also the young lady that came up from Mescalero with her information. I don’t think we have that.
Is that an area – is that an option that can be done?

STEPHEN SIMPSON: Yes, as Carla indicated earlier, you can – the committee can recommend to the Secretary that the Secretary further recommend that the Texas State University consult with the Caddo Nation and the Mescalero Apache Tribe based on – further consult with them based on the information that we have heard today. That is an option for the committee.

REVIEW COMMITTEE MOTION

STEVE TITLA: Chairman, I make that motion to refer it back to Texas State University, and based upon what the esteemed counsel said.

ARMAND MINTHORN: Is there a second?

DENNIS O'ROURKE: I’ll second it.

ARMAND MINTHORN: Discussion?

What Texas University has presented, along with Miakan-Garza Band, and what the Chairwoman has said as well, that there be no disagreement on the reburial site. This was one of the original intended actions that we had here. And yes, the Caddo have presented new information demonstrating and documenting the areas of use. Still there’s no disagreement, because the Chairwoman indicated
there would be no problem with reburying at the
site specified. So for the committee, we don’t
have a disagreement here. We don’t. However, we
have a concern by another tribe for the
university’s process for consultation. And
certainly, that needs to be worked on by the
university. So again, committee, we do not have a
disagreement here. We can proceed forward with the
original intent because the two tribes here at the
table are both agreed.

STEVE TITLA: Chairman, I think that what the
Chairman from Caddo Nation indicated was that the
manner of reburial. She described a certain manner
of reburial, and I don’t know whether that is the
same manner of reburial as the –

MARIO GARZA: There’s several basic agreements
between most of the tribes, but then there’s
several differences. And everybody, every tribe
has their own way of doing certain ceremonies, and
a lot of people think that their way is the only
right way, that anybody who does it different is
wrong. And here, there were some assumptions made
on the way we do our repatriations. The way we do
our repatriations, we prepare the remains and we
spend – we do a private ceremony, just among our
tribe with the remains. We do an all-night peyote
ceremony with the remains, and that’s a private
ceremony that only our tribe, tribal members
participate in, and it’s not made public.

And then the actual repatriation is something
different, and then we do it on a different day or
the following day or whatever. And the
repatriations that we have done, we have not had
any photo ops or any of all the other accusations
that were made about the way we bury our people.
That was very insulting and very disrespectful to
make that accusation about the way we buried our
people, because we respect our people and we don’t
do it the way she said.

ARMAND MINTHORN: We need to understand that
however an ancestor is reburied it’s done
respectfully. But the intent is all the same for
everybody here, get the ancestors back and offer
disposition, whatever that may be, including
reburial. And it’s not for any tribe to say to
another tribe what you do is wrong, no. It’s just
like non-Indians telling another non-Indian what
you believe in is wrong. No one can say that.

Back home we have several tribes. Our old
people have told us and reminded us, maybe this
ancestor has shown itself for you as a tribe and
this other group as a tribe to get along with each
other. Maybe that’s what this ancestor is saying.
We’re reminded of that when we do our work back in
the Northwest, about those words. So it’s not for
us. It’s for the care of that ancestor or
ancestors. And in order for the care for that
ancestor or those ancestors to go forward, I have
to get along with you, and we will get along with
each other to take care of these ancestors. So
these are just some words that we remind ourselves
back home how important it is. So again,
committee, we do not have a dispute here.

STEVE TITLA: Chairman.

ARMAND MINTHORN: Steve.

STEVE TITLA: I think that earlier, Texas State
University indicated – and correct me if I remember
wrong. He indicated that there was no aboriginal
lands from Caddo Nation in the area that we’re
talking about. Is that true?

TODD AHLMAN: That is true, and I use the term
“aboriginal land” based on the language in the law,
in NAGPRA.

STEVE TITLA: Okay. Then also Mescalero has
indicated that the Apache Tribe, that they have the
Lipan Apache as aboriginal land that they claim, is what the lady said a while ago.

TODD AHLMAN: My information was based off the National NAGPRA website that you can search their database and it's set up by county. If there are aboriginal or tribal land claims, and I looked for Hayes County, and speaking with Melanie O'Brien.

STEVE TITLA: So it seems as if there is some disagreement on the aboriginal land status. So today if we agree on disposition, the Mescalero representative indicated that she had no disagreement with Caddo Nation reburial, and Caddo Nation seems to indicate that they have no disagreement with the site of the reburial. Is that correct, Chairman? And that is a site that Garza speaks about the same site? Is that the same site? What site are we talking about?

MARIO GARZA: The City of San Marcos, which is the city where the remains were found, has given the Miakan-Garza Band two acres in their national preserve to use as a repatriation cemetery. And they also said that if needed, they would give us more land for that. So we do have the land for repatriations. We don’t like to call it a repatriation cemetery. We call it a reburial,
sacred site, where we can reinter the remains that
were removed from that area. So does that answer
your question?

STEVE TITLA: So there’s no disagreement on the
site then, and Mescalero agrees with that, I think.
I think that’s what the young lady indicated a
while ago.

HOLLY HOUGHTON: (Inaudible comment) agreement
on the land, whether it will be protected in
perpetuity (inaudible comment). And I don’t know,
I almost think it would be better if the land was
perhaps given to the university or some sort of
institution or government rather than a private
group of individuals. So that would be my concern.
Or if it still stayed as city property but it was
delegated to be used as a reburial location, that
would be my only issue, so that it is protected and
we won’t have to deal with trying to find a home
back for those remains once again.

TODD AHLMAN: I would just like to comment that
Texas – in the state of Texas, universities cannot
own cemeteries. It would require an act of
legislature to allow a cemetery for the university
to own it or to have one on our property. And I
believe that the City intends to set this land
aside as, quote/unquote, “a perpetual care
cemetery,” and that it will, I believe, and Dr.
Garza can correct me if I’m wrong, be maintained by
the City of San Marcos in perpetuity.

ARMAND MINTHORN: Thank you.

PATRICK LYONS: Yes, Chairman, thank you. So I
guess one comment I would make is we’re lucky in
this situation that the representative from Caddo
Nation is also the Chairwoman, and so there’s an
opportunity here to get an immediate resolution of
this issue, it would seem, rather than in some
cases where people might have to go back to talk to
a decision maker. So I think that this is a good
thing.

ARMAND MINTHORN: Dennis or, I guess, Steve,
Dennis. We do have a motion on the floor.

DENNIS O'ROURKE: I wanted to ask one question,
just clarification from counsel. Twice we’ve heard
concern about the Miakan-Garza Band not being a
federally recognized tribe. Is that an issue at
all in the disposition request?

CARLA MATTIX: It’s not in the area of the
NAGPRA regulations that we’re in, culturally
unidentifiable outside of 10.11.

DENNIS O'ROURKE: Okay. So that’s not an issue
for consideration for the committee.

ARMAND MINTHORN: Steve.

STEVE TITLA: Chairman. Steve, esteemed counselor.

STEPHEN SIMPSON: Yes.

STEVE TITLA: It seems like we have disagreement on aboriginal land. Texas State University states that Caddo Nation is not in the area of aboriginal land, and Mescalero Apache Tribe and Lipan Apache said that’s their aboriginal land too. And Texas State University seems to indicate that it isn’t. So if the CUI disposition request is made today, are we agreeing on aboriginal land status? Does that go along with the disposition request, if we approve the request?

PATRICK LYONS: Chairman, may I ask the question in a slightly different way?

ARMAND MINTHORN: Yes.

PATRICK LYONS: I think I know what – so I guess maybe what we’re both wondering is are we still in a position to make a recommendation about disposition given our lack of knowledge up here about the question of Lipan Apache aboriginal lands. Is that –

STEVE TITLA: Thank you, esteemed colleague.
STEPHEN SIMPSON: And thank you both. Yes, you can. One – I mean, there was – we discussed earlier an option for you to make a recommendation for Texas State to continue consultation. Another option, which is I think where the Chairman was heading a little while ago although I’m not sure, was to recommend disposition perhaps to all three of these entities with burial to be at the agreed-upon site. Something like that would not make a difference. There is also – or some other recommendation. This – the issue of whether a tribe has aboriginal land under NAGPRA in a particular area or not is not really – it’s a matter for the evidence and a legal call to a certain extent, and is not really dependent upon the outcome of a particular disposition.

ARMAND MINTHORN: Yes.

MARIO GARZA: Okay. We seem to have an agreement on the burial site. But if you grant the remains to three different tribal entities, which of the tribes is going to prepare the remains according to their tradition? Which of the tribes is going to do the ceremony with the remains according to their tradition that is going to be satisfactory to the other two? Which of the tribes
is going to be the actual one that is going to lay
their remains on the ground? And it would seem to
be having, you know, our burial – our burial rites
or ways were already questioned without even
attending one of our burial sites or without
knowing what our burial sites are. You know they
have already been criticized and offended. So with
that already happening, what’s going to happen if
the remains are given to the three or to three
tribal entities? And also we seem to be getting
hung up on Federal recognition. You know, what is
Federal recognition? Right now, we only consider
real Indians the ones that have Federal
recognition, and what is that? Some White
government saying who is Indian and who is not.
Some White government that decided to do a treaty
with a group of Indians so they could take the land
away, so they could send them away from the
traditional lands. So we’re getting tied to that
situation about who’s the real Indian. Is that
what gives us the definition and tells us who a
real Indian is, the only ones that have Federal
recognition?

I mean, we have been doing our ceremonies for
thousands and thousands of years. We have been
praying in our language for thousands and thousands of years, but we’re not considered real Indians because we’re not federally recognized and now we’re saying – now they’re saying that we’re not even State recognized? I mean, we had a very different history, the Indians in northern Mexico and in Texas. And we ended up staying in our traditional homeland, but even because of land we lost about – we lost being federally recognized. So we’re pretty much the only Indians that’s still in our traditional homelands but we’re not considered real Indians because we’re not federally recognized. But that happened because of unique history of being colonized by the Spaniards.

ARMAND MINTHORN: Thank you. So the actual reburial and/or ceremonies is not for us to decide. That’s for the tribes to decide.

TAMARA FRANCIS-FOURKILLER: Can I have a rebuttal, please?

I am in my traditional homelands. I am a Caddo. This is Oklahoma. This is my traditional homelands. As far as keeping my traditions and everything, this is where the Caddo people are. The middle of downtown Oklahoma City, you want to have an archeological dig or something like that,
you’ll find Caddo remains, ear spools, everything like that. Like I said before, the Caddo Confederacy spread a long way. Our homeland was all over the place. And as far as the burials and things, the only reason I knew about it was because it was in a newspaper.

ARMAND MINTHORN: So committee, we do have another consideration is to amend or have consideration for another motion to include the three tribes.

HEATHER EDGAR: I just had a quick clarification. If I remember correctly, the Caddo are actually seeking cultural affiliation with these remains - is that correct? Do you guys remember from the paperwork? - as opposed to disposition under CUI.

MELANIE O'BRIEN: That was the initial request that was presented in the materials, yes, was a cultural affiliation.

HEATHER EDGAR: Okay. Because that’s kind of a different -

PATRICK LYONS: May I ask a further clarifying question? And would that not sort of restart the whole process?

MELANIE O'BRIEN: Yes, it would be a - it’s a
different process. It would –

CARLA MATTIX: What’s before you is a CUI request. This is not a finding of fact or cultural affiliation determination. And if that is something the Caddo Nation would like to bring, they can make that request of the Review Committee.

ARMAND MINTHORN: What are the wishes of the committee?

PATRICK LYONS: I think it’s good to take advantage of the fact that there seems to be consensus among the parties that they want what probably everyone wants; to see the remains reburied as closely as possible whence they came.

TODD AHLMAN: I would just like to point out that we have sent multiple letters to the Mescalero Apache regarding this. They did call us once. We returned their phone calls multiple times, and I don’t remember the person who called us. That was back in April. We have not received a formal response to either of our consultations, either in March 2015 for the one site or the letters that we sent at the end of September for the other site.

LINDALEE FARM: Can I make a motion?

ARMAND MINTHORN: Cissy.

REVIEW COMMITTEE MOTION
LINDALEE FARM: I move that we recommend disposition pursuant to the request under 43 CFR 10.16.

ARMAND MINTHORN: Is there a second?

STEVE TITLA: Chairman, I think there’s a prior motion in place already I think, and there was a second to that motion.

ARMAND MINTHORN: Okay. Was there another motion on the floor?

MELANIE O’BRIEN: Yes, the motion that was made by Mr. Titla and seconded by Mr. O’Rourke was to recommend further consultation among the tribes and the university.

TODD AHLMAN: And I would just like to say for the university that that is something that we would be happy to undertake as well.

LINDALEE FARM: May I ask another question?

ARMAND MINTHORN: Yes.

LINDALEE FARM: Dr. Garza, would you be happy to undertake further consultation?

MARIO GARZA: Well, if that’s – like everybody else, our first intent would be to repatriate the remains as soon as possible and to repatriate them as close as possible to where they were removed. And we’ll be willing to do whatever it takes to get
that done.

LINDALEE FARM: And that includes further consultation.

MARIO GARZA: If that’s the only option, I mean, there’s nothing I can do about it. I mean, that’s not my first option, but I’m not the one making the decision for you guys.

LINDALEE FARM: Let me rephrase, you would not object to -

MARIO GARZA: I would not object, no.

LINDALEE FARM: How about Ms. Francis-Fourkiller, would you object to further consultation?

TAMARA FRANCIS-FOURKILLER: (Inaudible comment - no objection.)

LINDALEE FARM: And the individual who was speaking earlier, did you want to be involved - did your tribe want to be involved in consultation?

HOLLY HOUGHTON: (Inaudible comment.)

LINDALEE FARM: All right, because based upon the documentation that we have, you were listed as having been involved in consultation and no objection having been made. So I just want to make sure that the record is clear that you want to be involved in further consultation.
HOLLY HOUGHTON: Yes, the consultation I believe you’re referring to was –

LINDALEE FARM: I just want a “yes” or a “no,” do you want to be involved?

HOLLY HOUGHTON: Yes.

LINDALEE FARM: All right. Thank you.

ARMAND MINTHORN: Okay. Carla, we have two motions on the floor here, so –

LINDALEE FARM: Mr. Chair?

ARMAND MINTHORN: Yes.

LINDALEE FARM: I’ll withdraw my motion.

ARMAND MINTHORN: Okay. Now we have one motion on the floor.

HEATHER EDGAR: I’ll call a vote.

ARMAND MINTHORN: Okay. Again, restate the motion.

MELANIE O'BRIEN: The motion is to recommend further consultation between Texas State University and the Caddo Nation of Oklahoma, the Mescalero Apache, and the Miakan-Garza.

LINDALEE FARM: Could I add a slight amendment to that motion? I would like to put a deadline that consultation take place and that we be advised of the outcome of consultation by our next meeting, which is anticipated to be in June of 2016. And if
resolution has happened between – before then, just let us know.

MARIO GARZA: Question of clarification. So then the decision is going to be made by Texas State or does it come back to you guys and you guys make a recommendation to the Secretary of the Interior and she makes the decision? What is going to be the process?

LINDALEE FARM: I’ll defer to legal counsel on that, but I believe you have to come back and go to the Secretary.

CARLA MATTIX: It will likely depend on the results of the consultation. If there is some more information on aboriginal land that maybe brings it into – under 10.11, that could change things, so it’s really going to depend on the information that comes out at consultation. But if it does not bring it into 10.11, then yes, they will have to come back to the Review Committee.

LINDALEE FARM: I just want to make sure everybody understands how that works. Okay, I see nodding heads.

ARMAND MINTHORN: Any more discussion?

DENNIS O'ROURKE: Call the question.

ARMAND MINTHORN: All those in favor of the
motion raise your right hand.

MELANIE O'BRIEN: In favor, Dennis O'Rourke, Steve Titla, Patrick Lyons, LindaLee Cissy Farm, and Heather Edgar.

ARMAND MINTHORN: Abstain?
Opposed?
Motion carries. Thank you.
Melanie, we’re going to break for lunch.
MELANIE O'BRIEN: Yes, we’ll reconvene at 1:00 o’clock.

LUNCH

MELANIE O'BRIEN: Please take your seats so we can resume. The next agenda item is a CUI disposition request from the University of Denver Museum of Anthropology, Anne Amati.

ACTION ITEM: CUI DISPOSITION REQUEST, UNIVERSITY OF DENVER MUSEUM OF ANTHROPOLOGY

PRESENTATION

ANNE AMATI: Good afternoon, Mr. Chair, members of the committee. My name is Anne Amati, and I am the NAGPRA Coordinator for the University of Denver Museum of Anthropology. Here with me today are Southern Ute Indian Tribe representatives Alden Naranjo and Cassandra Naranjo. Ute Mountain Ute representative Terry Knight is not able to join us
We are here seeking your support to move forward with the disposition of culturally unidentifiable Native American human remains and associated funerary objects for which a tribal land or aboriginal land provenience cannot be determined. The University of Denver Museum of Anthropology is a teaching museum dedicated to educating students about the ethical practices of conservation, interpretation, and administration of anthropological collections. The goal of the museum’s NAGPRA program is the repatriation of all NAGPRA cultural items in the collection through meaningful consultation with tribes. The museum strives to be proactive in accomplishing this goal. Since 2010, the museum has focused on consulting on the disposition of culturally unidentifiable individuals.

The human remains included in our request today consist of 96 individuals and 12 associated funerary objects with no provenience information that are included on the NAGPRA culturally unidentifiable inventory. The museum has determined the individuals are Native American based on the broader collecting practices of the
Museum of Anthropology. This finding was maintained by a physical anthropologist employed by the University of Denver prior to November 1995.

In February 2015, the museum invited tribes with a legacy of occupation in Colorado to consult with the goal of developing a disposition plan for these 96 individuals and 12 associated funerary objects. Although there is little to no documentation associated with these 96 individuals, Colorado has been their home for approximately 20 to 70 years. Through consultation, the Southern Ute Indian Tribe and Ute Mountain Ute Tribe requested transfer of control and to take the lead in reburial if no other tribes came forward. The museum received letters from 18 tribes documenting support for the proposed disposition and decided to move forward under 43 CFR 10.16.

In June, the Northern Cheyenne Tribe requested further consultation, and representatives from Northern Cheyenne, Cheyenne and Arapaho Tribes of Oklahoma, Northern Arapaho Tribe, and the Southern Ute Indian Tribe met at the University of Denver in July. At that meeting, the Northern Cheyenne representatives introduced their interest in DNA analysis of the 96 individuals. In a letter
received by the museum in September, the Northern Cheyenne Tribe requested that the proposed disposition to the Ute Mountain Ute and Southern Ute Indian Tribe be postponed so DNA analysis of the 96 individuals could be carried out. As a general rule, the museum does not allow testing or research on human remains in the museum’s possession or control. Because this request was part of NAGPRA consultation, the museum sought the input of the consulting tribes in order to evaluate the request and make a decision. Of the 48 consulting tribes, 24 tribes responded that they opposed genetic testing of the human remains and requested the museum move forward with the NAGPRA process under the proposed disposition plan. Four tribes responded that they did not oppose genetic testing in this case. And three tribes responded that they were not willing to take a position on the question at this time. Based on the feedback received from the consulting tribes, the museum decided not to pursue genetic testing and instead go forward with the decision to present the disposition request to the Review Committee. The museum notified all of the consulting tribes, including the Northern Cheyenne, of the decision in
late October.

This consultation work was made possible through the financial support of a NAGPRA consultation grant. I’d like to thank all the consulting tribes, especially the Southern Ute and Ute Mountain Ute for their participation and leadership throughout this process. I would also like to thank the National NAGPRA Program staff for their guidance and responsiveness.

At this time, I will turn the microphone over to my colleagues.

ALDEN NARANJO: Good afternoon, ladies and gentlemen. We come here to not plead or beg or anything like that, but to give you information of what we have been doing in the last few years since we have communication with the University of Denver, and the things that we have done to repatriate and reinter some of the remains and some of the artifacts that needed to go back into the ground.

The problem is that sometimes we have agencies, Federal agencies and state agencies that have questions of where these remains come from. So in order to alleviate and expedite the process, we try to work with all the consultant tribes to
make sure that we are following the right paths
that has been set aside under NAGPRA and also under
the laws that has been passed a few years back.

One of the things that we also do not want and
we’ve stressed this and there’s several other
tribes, consultant tribes, that have said that we
do not want any DNA testing or any physical
analysis of the human remains that are found, but
if it was possible that there would be no DNA or
any kind of physical analysis done on any of the
artifacts or any of the remains. That’s our stand
that we have. Southern Ute has made that stand and
we’re still making that stand. So I’m just giving
you a little information of where we are at and
we’ll continue to work with you all and also with
all the Federal agencies and the universities and
the museums and whatever, concerning remains,
concerning artifacts, concerning our ancestors.

One of the things that we have a question on
is that before the coming of the Europeans into
this country and before the establishment of what
is now the United States Government, those lands
where our ancestors were found belonged to them,
belonged to our people. But in order to satisfy
and in order to work with the government, we have
to go through this process, which has always been a question in my mind why do we have to go through that process. But in order to have our ancestors put back into the ground then we have to follow this.

And so maybe somehow or some way there would be a chance that some of this what I call “red tape” would be eliminated so the process of putting these folks back into the ground as soon as possible could be done. Maybe not within my lifetime, but maybe within the lifetime of my grandkids. So that’s my concerns that I have, but I’m very glad that I can work with Anne Amati here, and the University of Denver and the rest of the Federal agencies that we work with in the state of Colorado. And I think that we have a good, very good working relationship with all the Federal governments, especially the universities, and I don’t think that I could complain too much about that. Thank you.

CASSANDRA NARANJO: Good afternoon, members of the Review Committee. My name is Cassandra Naranjo, and I’m an Apprentice NAGPRA Coordinator. And in the two years that I’ve worked in this capacity, I have noticed a great relationship that
we have had with DU. The one thing that we come
before you is with these CUIs. It’s a fact that
they’ve been sitting on the shelves from between 20
to 70 years, and in my mind that is a long time. I
have seen processes, we just got done with a
reburial that had – of some individuals, and I have
been doing that for the past two years. But these
ancestors, these people have been sitting on these
shelves, and I know they don’t have no provenience,
but since Colorado has been their home, we think
it’s only right that they go back and that they
need to be reinterred in a timely fashion.

One of those things – and so that is why, one
of the reasons why we are more than happy to take
the lead and to be able, with our sister tribes, to
be able to put those ancestors back into the ground
and to find a home and place for them so that they
may make their journey back and our circle will be
complete.

So with that, I would – even though there
isn’t DNA testing, that is against policy, our
policy, our tribal policy, DNA testing is also
something that we frown upon because in order for
that to happen you take a piece of that person.
And in our belief system, that takes away from them
as a whole, so they are not whole anymore. So that’s one of the bases – one reason, not all of the reasons, of why we are opposed to genetic testing and DNA testing. And the place – the other thing is we don’t know how those people are going to be handled by the scientists, how they will protect them or how they will be prepared or where they will be stored at. Those things are unknown factors to us, so therefore we’re still opposed to it because maybe they’re not – won’t be done with respect. So with that, that is another reason. But we would come before you to move forward with this disposition so that we may return those ancestors that had been sitting on those shelves for so very long. Thank you.

REVIEW COMMITTEE QUESTIONS AND DISCUSSION

ARMAND MINTHORN: Anne, so Mr. Terry Knight is not here?

ANNE AMATI: No, he – his flight out of Durango yesterday, he had trouble with it, so he is not able to join us unfortunately.

ARMAND MINTHORN: So Anne, in your report you’re citing 96 individuals?

ANNE AMATI: Correct.

ARMAND MINTHORN: And 12 associated or
unassociated?

ANNE AMATI: Associated, 12 associated funerary objects.

ARMAND MINTHORN: Okay. Has there been a place chosen where these ancestors may be reburied?

ANNE AMATI: Yes, a place has not been chosen but the process of identifying something has started. It has been proposed that we would present it to the Colorado workgroup, the Colorado Lands Reburial group for a recommendation from them. I believe the plan is to be able to rebury next October.

ARMAND MINTHORN: Well, just as a note, sometimes when we can understand or even participate with another group it makes it easier to get along with each other. And I would strongly recommend for the committee members that have not been to a reburial ceremony, please participate if you can because it’s truly a monumental time for the tribes and the participating agencies to get these sacred remains back in the ground. And us, as Indian people, wherever we come from, we’ve adapted our culture and our way of life to take care of our ancestral remains. We haven’t changed anything within our lives in our cultural ways of
life. We’ve only adapted. And the tribes throughout the nation are going through this same thing. So again, I would urge the committee members, any, if you could participate at this one or any future reburial that the tribes may conduct, please go and participate.

Any other comments or questions from the committee?

DENNIS O'ROURKE: Mr. Chairman?

ARMAND MINTHORN: Dennis.

DENNIS O'ROURKE: I guess I just have two. One is, would the interment that takes place be open to public attendance or would it be closed?

ARDEN NARANJO: It’s closed to the public, but the tribes that are interested can attend. But to the public, media or anything, it’s all closed, because I think it’s one of the sacred times of putting these remains back into the ground and that’s why we don’t like to have public. But we’ll invite the consulting tribes, if they want to send somebody there to be also there or if they want to participate, that’s okay, too.

DENNIS O'ROURKE: I just wanted that as a point of clarification. I also wanted to ask another question. Did the Northern Cheyenne indicate why,
the reasons for their request for genetic analysis of the remains, and did they know that there were multiple policies against that kind of analysis?

ANNE AMATI: So in regards to the Northern Cheyenne’s reason for requesting genetic testing, what the tribal representative indicated to me was that they requested genetic testing because they believe that some of the individuals may be Northern Cheyenne ancestors. In terms of the policy question, as a general rule we don’t allow testing. It’s not a written policy. It’s a standard operating procedure. And as I said, we did consult with the tribes on their request. We carefully considered their request, and based on the feedback from the consulting tribes we decided to not pursue the genetic testing.

DENNIS O'ROURKE: Thank you.

ANNE AMATI: You’re welcome.

ARMAND MINTHORN: Cissy.

LINDALEE FARM: Since you wrote to the Northern Cheyenne on October 19, 2015, I’m assuming you notified them.

ANNE AMATI: Correct.

LINDALEE FARM: Did you hear a response back from them?
ANNE AMATI: Yes.

LINDALEE FARM: And what was their response?

ANNE AMATI: They’re not happy.

LINDALEE FARM: Is anyone here today from the Northern Cheyenne Tribe? I don’t see a response. So they knew – well, based upon your letter to Ms. O’Brien, you informed them that you would be proceeding today.

ANNE AMATI: Correct.

LINDALEE FARM: And no one is here.

ANNE AMATI: Correct.

LINDALEE FARM: Okay. Thank you.

ARMAND MINTHORN: Any other further comments or questions from the committee?

PATRICK LYONS: Mr. Chairman, I would just – this is another case where we have, what, 48 tribes involved in consultation?

ANNE AMATI: Yes, so there are 48 tribes that are identified as having a legacy of occupation in Colorado. We decided to consult with those 48 tribes based on the idea that these individuals, while we don’t know where they’re from, their home is Colorado because that’s where they are now. I invited 48 tribes to consult. I did not talk to all 48 tribes. So I don’t – maybe you could –
PATRICK LYONS: Well, I just wanted to comment that this is a really good faith effort, I think, in my opinion, to really reach out and try to make sure you’re getting to all the right people in that area.

ANNE AMATI: Thank you.

ARMAND MINTHORN: What are the - what’s the recommendation of the committee?

**REVIEW COMMITTEE MOTION**

DENNIS O'ROURKE: Move we approve the disposition request.

ARMAND MINTHORN: Is there a second?

LINDALEE FARM: Second.

ARMAND MINTHORN: Discussion?

All those in favor of the motion, raise your right hand.

MELANIE O'BRIEN: Those in favor, Dennis O’Rourke, Steve Titla, Patrick Lyons, LindaLee Cissy Farm, Heather Edgar.

ARMAND MINTHORN: Opposed?

Abstain?

Motion carries. Thank you.

ANNE AMATI: Thank you.

ALDEN NARANJO: Thank you.

ARMAND MINTHORN: Okay. Moving on.
MELANIE O'BRIEN: The next item on the agenda is the Colorado Lands for Repatriation and Reburial Workgroup, Sheila Goff.

PRESENTATION: COLORADO LANDS FOR REPATRIATION AND REBURIAL WORKGROUP

PRESENTATION

SHEILA GOFF: All right. Good afternoon, Chairman, members of the committee. My name is Sheila Goff and I’m the current NAGPRA Liaison at History Colorado in Denver. And I’m a member of the Colorado Lands for Repatriation and Reburial Workgroup, and I’m here on their behalf to just give an update over what has happened since the MOU that was signed at the end of December 2013 went into effect.

Some of you have heard of this. Some of you are new to the committee, so just a very brief piece of background on that. The workgroup was established to improve the process for identifying State, tribal and Federal agency lands within Colorado that are suitable for reburial of Native American human remains and funerary objects in the possession of Colorado museums and/or that originated in the state of Colorado that have been repatriated or dispositioned to tribes under
NAGPRA. The formation of the workgroup, I need to emphasize, was tribally driven. The Southern Ute Indian Tribe and the Ute Mountain Ute Tribe were facing the issue of finding suitable reburial locations in Colorado, and they called forth a meeting of state and Federal agencies to discuss this problem. They also brought forth the issue in 2012 in Santa Fe at the NAGPRA Review Committee meetings. And just as a reminder, I’ll tell you who the signatures to this MOU are. It’s three agencies from the State of Colorado – the Colorado Commission of Indian Affairs, the Department of Natural Resources, and my agency, History Colorado; the Ute Mountain Ute Tribe; the Southern Ute Indian Tribe, the United States Department of Agriculture, Forest Service, Rocky Mountain Region; the U.S. Department of Interior, National Park Service, Intermountain Region; the Bureau of Land Management, Colorado State Office; and U.S. Fish and Wildlife Service, Mountain-Prairie Region. And I do have to point out that all signatories to the agreement are bound by certain authorities within their respective agencies or tribes.

Thus far, entities making requests for assistance with finding lands for reburial include:
the University of Colorado, the University of Denver, History Colorado, and Denver Museum of Nature and Science. I want to make a little side note too. Some of you have heard about our state process for taking care of culturally unidentifiable individuals that come from state and private lands. We do, as a State, have set aside lands for the disposition and reburial of those individuals but it doesn’t cover all of the other cases, such as the affiliated individuals that come under the control of my agency, as well as other museums.

So far, the workgroup has met five times. It’s received 19 requests. We’ve been able to resolve 9 of those requests – I have to take that back, now 10. We ended up being able to do a reburial in the fall of this year just recently. And of those 19 cases then, we have plans for another reburial underway and then we have 2 requests that are still under or requiring some additional research. That left us with eight cases that are unable to be resolved, and that is because of the authorities that we’re all bound by. That largely involves individuals that either originated outside of the state of Colorado but ended up being
in institutions within the state of Colorado or
those with unknown origin. I’ll talk about that in
just a second.

Right now as it stands then, we hope, all of
us in general, that the signatories to this MOA
will go back and be able to look at their policies
and their procedures and see if there is some way
to become a bit more flexible to allow reburial of
the individuals that don’t currently fit under the
authorities that they must follow. And I’m not
sure where to go with this, just a second, you can
help me out, okay?

For a second to conclude then, I just want to
say we really appreciate your time, the entire
group, listening to the issues that we’ve had over
the last couple of years, bringing this forth to
Congress so that hopefully some sort of resolution
or improvement can occur, not only for us in
Colorado but across the nation.

And then I guess I’ll say in response to the
request or the authorization that I hope will go
forward for the University of Denver, while those
individuals do not currently fit under the criteria
for the signatories, we have some – we’re
undergoing some discussions to come up with an
alternative that will be acceptable to the tribes
and that won’t violate anyone’s authorities. Let
me just say that.

So having said that, I’ll turn this over to
our tribal partners to make any comments that they
wish to make.

ALDEN NARANJO: Again, thank you, members of
the committee and all the ones that came here from
far and near. We’ve established this workgroup
with the Federal government and some of the museums
and universities because of the problem of trying
to find places where we can reinter our ancestors.
It took a while for us to finally come together to
sit at one table. For all the Federal agencies
within the state of Colorado to come and sit at one
table along with the consultant tribes and also
different entities that are interested in the human
remains and also all of that – you know, the
process of trying to go through and find places to
reinter these folks.

We’ve come a long ways. I think it’s been
maybe 15, 10 or 15 years in order for us to finally
sit at one table. Because of our perseverance in
trying to sit together and discuss this and try to
find grounds and land and places where we can
reinter our ancestors has been a long process. We’ve followed the law. We followed the State process. We’ve followed all the things that we could, so now we come to a time that some of the universities doesn’t and some of the places don’t fit under the criteria that we have or the process that goes with it. So that’s why we have this Colorado Lands Group to consult tribes and the two tribes, the Southern Ute and Ute Mountain.

I guess one of the things that we want to do is to continue to make this stronger, and to continue to make it a process that can be done throughout the state with all the Federal agencies, from the west side of Colorado to the east side of Colorado, because sometimes agencies have their own ideas of what should be done. But following along with History Colorado and the work that Sheila does and the Colorado Commission of Indian Affairs, we’ve come a long ways putting this together, making it a reality for ourselves and also for our ancestors. So now we want to continue that process. We want to go forward. We want to expedite the process of putting our ancestors away, so what we want is that somehow that we can also continue to build upon what we have built, this
Colorado Lands Workgroup, so that maybe eventually it would become a model throughout the United States, because I think it’s good that we can sit together with the Federal Government and all the agencies and everybody to come together and be on the same page. So that’s what we’re hoping that we can do and hopefully that we can continue this process, but we have been working together for a good number of years, so that’s part of what we’re doing, so thank you.

BETSY CHAPOOSE: Good afternoon. I’m Betsy Chapoose. I’m the Cultural Rights and Protection Director for the Ute Tribe in Utah. Our homelands or the heart of our homelands is in Colorado. We were forcibly removed to Utah. So for this land committee, it’s very important to us because we have ancestors in Colorado and culturally we like to reinter as close as we can, and not having any lands that are given to us, we have to rely to our two sister tribes, the Ute Mountain Utes and Southern Utes to assist us in doing the reinternment there.

And so this process has been something that has been very important, I think, for a lot of tribes, as they mentioned, 48 tribes that were in
the region. And so it’s very important that we do find lands that can be utilized, whether they’re State, Federal or any type of lands like that because one of the things is our ancestors didn’t have any political boundary lines. So that’s one thing about this reinternment, that if we can find lands as close as possible, it’s very hard.

In Utah, I sit on the Utah State Human Remains Review Committee, and we are going through this process of trying to find appropriate lands to reinter our ancestors on that the State holds. So this committee has been very important in watching them and how they have worked through the process. And although it’s a timely process to get to the point that they have been, we are trying to – we’re not making much headway, but we’re trying to replicate what Colorado is doing. I thank you for your time.

CASSANDRA NARANJO: And I just want to reiterate what my colleagues have said and concur with what they have said. I think one of the obstacles and that we might have to get inventive with is finding lands for those that are against policies that are so stringent, that are really nonflexible, and that might be – I think that’s our
next step is to figure out how to go forward when there are Federal guidelines and state guidelines within each respective agency, within each region, that some are not flexible as far as the lands go. And I think part of that is that we at the workgroup are going to have to either go back, because we have - we have remains that are affiliated that are right over the state line but that we know are Ute, but we cannot put them in our - we cannot reinter in Colorado because of those guidelines and because of those policies. And so that is something I think that needs to be looked at, I guess at a higher level than where we’re at, as far as how can those things be picked especially when it comes to reinternment and especially when it comes to those state line boundaries, because like it was mentioned before that aboriginal lands didn’t have a boundary, you know. They weren’t - there were no states then.

And the other thing is that I think that we have come a long way, that I am new to the - I am new, but I was there when the signing was for the MOU for that workgroup. And I think as I’ve sat on that workgroup, I’ve seen a lot of good things come out of it and I’ve also seen some of the
difficulties of having to turn away or table something because of those guidelines that we are bound by in our MOUs and within those – within the policies of the State. Thank you.

REVIEW COMMITTEE QUESTIONS AND DISCUSSION

ARMAND MINTHORN: Sheila, just offhand and there’s no need to mention all of them, but what Federal agencies are in the state of Colorado?

SHEILA GOFF: We have BLM, Park Service, Fish and Wildlife, who am I forgetting, BOR, Bureau of Rec, U.S. Forest Service, did I say them? I think that’s it off the top of my head.

ARMAND MINTHORN: Is there Army Corps?

SHEILA GOFF: Army Corps? There are some Army – that’s true. There are Air Force and Army bases there.

ARMAND MINTHORN: Okay. Well, this working group, there’s a need to commend the work that you do. It’s good work. And if there’s anything that the committee can do to help, let us know. It is a struggle to find places to rebury our ancestors. We have on our agenda our report to Congress, and we’re going to cite this in the report, again to Congress that we need to work with Congress to help find places for reburial of our ancestors on
Federal lands or elsewhere.

From experience, and we can certainly learn from each other and that’s part of the tone of this meeting here it to learn from each other, and to try to help each other the best that we can with the effort of taking care of our ancestors. As an example, at home in the Northwest, in the general principle that we follow is we try to rebury the ancestor at or near the original site they came from. The circumstance with us is we reburied one of our ancestors in a non-Indian cemetery. There was no objection, because the ancestor was put near the original site that they were uncovered. So that was an example. Another example is again in the Northwest, we’ve done numerous reburials on National Park land, numerous. And there are numerous parks in the state of Oregon but we’ve done reburials on National Park lands.

I don’t know how it is with the state of Colorado. They have state parks. The state of Oregon, too, we have state parks, and we’ve done numerous reburials in state parks as well. Then the final example is when we can’t rebury at or near the original site because of circumstances that are beyond our control, we go to our Indian
cemeteries at home. We’ve done many reburials in our cemeteries on the reservations. So those are examples of places and circumstances that we’ve done reburials, so if that may help that would be great, but these are just examples that we’ve gone through and experiences in reburying our ancestors.

SHEILA GOFF: And if I could just say one other thing from my experience that is particularly moving to me. I don’t want to say tribes’ names or places, because I’m not comfortable doing that. But we have had two situations now where a tribe, one tribe is occupying the aboriginal territory of a former tribe and that tribe has offered land up for folks to go back to where they were, even though it’s no longer their reservation and, I mean, that level of collaboration is amazing to me.

PATRICK LYONS: Chairman?

ARMAND MINTHORN: Yes.

PATRICK LYONS: And again, I’m not going to mention tribes, individual tribes or places either, but that same sort of thing is going on in Arizona right now, and it’s really great to see.

ARMAND MINTHORN: Any other comments, questions? Yes.

ARDEN NARANJO: Is there a possibility that the
committee could make a recommendation to the Secretary of Interior that there would be maybe a uniform policy for reburials? I know that’s kind of almost an impossible deal but I know that’s one of the things that we’ve kicked around in our discussions over the years. Is there a possibility that there would be a uniform process of taking care of the ancestors? We have state process. We have NAGPRA. We have all of that, but sometimes that’s not adequate. And so because of that our hands are tied sometimes, and because of that, we have frustrations. And because of that, we have not animosities but we have become upset with one another because of claims that have been made.

And the other thing is that – one more thing is that because of history, ancestral lands and all this have come and the recent amendment to NAGPRA is that why was the land commission findings the most important when because prior to that treaties were made with different tribes over the years prior to that. So my question has been how did that come about that the land commission’s findings were more important than the treaties that was made with the United States Government? That’s my question.
ARMAND MINTHORN: Well, Carla, you can help here. To understand the Secretary of Interior has oversight over lands specifically with Interior, including U.S. Fish and Wildlife, Forest Service - no? Okay. But anyway, the point being is the Secretary has jurisdiction over certain Federal lands, so we can certainly make that request to the Secretary, but the other Federal agencies too, we are going to put on the schedule for them to report regularly to this committee, and it will be raised to each Federal agency how can you help tribes with reburial on your Federal lands. Carla?

CARLA MATTIX: You don’t need me. That’s the answer. And also what you’ve mentioned before in your report to Congress, Congress certainly has the ability over more Federal agencies – the ability to make changes in statutes that do restrict some of these types of things, so that’s the place is in your report to Congress and recommendations in there, for some sort of uniform approach to this issue.

ARMAND MINTHORN: So finally, and again, thank the Colorado Workgroup for your report. Please keep us updated, and again if there’s anything that the committee can do in addition to getting the
attention of the Secretary, let us know. We’ll do what we can to help you. Thank you.

MELANIE O’BRIEN: We’re right on time, Mr. Chair. Next on the agenda is Mary Carroll with the National Park Service.

PRESENTATION: NATIONAL PARK SERVICE, PARK NAGPRA

PRESENTATION

MARY CARROLL: Sorry, bear with me. I want to make sure everybody can hear. I just need to experiment to make sure I hit the right button to go forward and back. Yes.

Okay, thank you. Good afternoon, Mr. Chairman and members of the committee. Thank you for the opportunity to update the committee on the status of NAGPRA compliance within the National Park Service. My name is Mary Carroll, and I’m the Program Manager for the Park NAGPRA Program, the office that oversees NPS’s compliance responsibilities under NAGPRA. Park NAGPRA is part of the Tribal Relations and American Cultures Office, which is a division of the Washington office’s Cultural Resources, Partnerships and Science Directorate. While the Park NAGPRA office is located in Denver, Colorado, we provide technical advice, guidance and training in close
cooperation with regional NAGPRA coordinators to all National Park units, centers and regions across the country, from Maine to Hawaii. Sorry, it’s a little awkward holding this and trying to read my presentation.

The National Park Service continues to work in partnership with Indian tribes and Native Hawaiian organizations to achieve NAGPRA’s goals. Since the law was enacted 25 years ago this week, NPS has published 163 Notices of Inventory Completion that describe at least 4,930 individuals and 90,108 associated funerary objects; 4,368 of those individuals and 42,671 of those associated funerary objects have been repatriated to the appropriate lineal descendants, Indian tribes or Native Hawaiian organizations; 562 individuals and 47,437 associated funerary objects have not been returned. While the number of funerary objects not yet repatriated appears quite high, more than 43,000 of those items are individual beads associated with 18 individuals from 3 different parks.

It’s important to understand why these human remains and funerary objects are still in Park Service control. We expect to repatriate 43 individuals and 493 associated funerary objects
later this fiscal year; 206 individuals and 523 funerary objects are accounted for by pending or recently published notices or notice corrections. Competing claims and withdrawn claims account for 10 individuals and 67 associated funerary objects. And finally, no claims have yet been received by the parks for 303 individuals and 46,354 associated funerary objects. The NPS is committed to repatriating all Native American human remains and associated funerary objects in its control and parks continue to work with Indian tribes and Native Hawaiian organizations to care for their ancestors appropriately and respectfully, and to return them home when the tribes are ready to receive them.

I’d like to turn now to the General Accountability Office’s 2010 Review of Federal Agency Compliance. The GAO’s final report described NPS as one of the top three agencies for compliance. However, the GAO did find that some National Park Service draft Notices of Inventory Completion submitted years ago had not yet been published. In light of how much time had passed since the notices were originally written, these unpublished drafts had been withdrawn from the
publication process so that the parks could verify
their NAGPRA inventories, consult with Indian
tribes, confirm or revise the determinations of
cultural affiliation, and complete notice
publication. Eight of the ten parks that were
identified in the GAO report have since published
the notices. Only two, Lake Meade National
Recreation Area and Canyon de Chelly National
Monument, have not yet published a Notice of
Inventory Completion. A notice for Lake Meade is
in progress and nearing completion. Canyon de
Chelly is the subject of an ongoing lawsuit which
contests the park's legal authority to undertake
the NAGPRA process, and so notice publication is
unavoidably delayed.

In order to facilitate NAGPRA compliance
across the service, Park NAGPRA has implemented
several initiatives over the past ten years. In
2005, Park NAGPRA initiated an internship program
to provide opportunities for students to work in
park centers and offices nationwide on NAGPRA
projects and give hands-on help to parks with
immediate NAGPRA needs. The program was project
oriented in that we solicited proposals from parks
for projects that addressed high-priority NAGPRA
needs. Recipient parks were responsible for hiring interns and were encouraged to solicit applications from Native American students. The interns’ salary, benefits and travel expenses were paid by Park NAGPRA. The intern program was a valuable tool for helping parks comply with NAGPRA and for providing a variety of learning opportunities for students, but unfortunately, it has been on hiatus since 2012 due to a lack of funding.

In 2008, Park NAGPRA implemented a training program targeted to park superintendents and resource managers, as well as archeologists, curators, and other NPS staff with NAGPRA duties. The one-and-a-half-day training sessions provide a comprehensive overview of NAGPRA and prepare participants to respond to inadvertent discoveries and plan for intentional excavations as prescribed by the law. There have been at least two to three face-to-face classes, either at parks or in regional offices, each year until 2014. Unfortunately, travel restrictions have had a negative effect on our ability to conduct face-to-face training and only one classroom session occurred in 2015. So the focus for future training will be more distance learning via online webinars,
as well as classes in regional offices or parks as possible. The first training via webinar was initiated in September 2014 and two more were conducted in 2015. Registration for all of the webinars so far has been at or over the enrollment cap indicating that there is still a strong need in the field for NAGPRA guidance.

Another way we are addressing that need is through Park Service’s online Cultural Resources Career Academy. Still in development, the career academy is an effort to provide internal online resources and networking in one place for cultural resource professionals throughout the Park Service.

We’re currently working on a NAGPRA Help Center that will include such things as frequently asked question, sample documents, redacted as appropriate, and a place to ask an expert. I’m hoping that the Help Center will be completed early next year in time for the official launch of the CR Career Academy.

In the past, notable activities across the Park Service have been highlighted in these presentations to the Review Committee. The Intermountain Region’s multi-park project to proactively address culturally unidentifiable
inventories, the high-tech project that allowed
Natchez Trace to rebury remains in the same burial
pits from which they were removed, and the Alaska
Region's positive experience working with Alaska
Native villages, the National Science Foundation
and Alaska State agencies on an inadvertent
discovery at Kobuk Valley National Park.

But there are challenges to moving forward
with the NAGPRA process, and I'd like to highlight
a few today. First, as for all Federal agencies,
tight budgets will likely be a problem for the
foreseeable future. There's not much we can do
about it, but work with what we have. It is
unavoidable and it is across-the-board. It's
certainly not specific to NAGPRA. Second, NPS no
longer has separate funding for NAGPRA compliance.
As I noted earlier when GAO did its audit of
Federal agencies, it named NPS as one of the top
three. One of the reasons cited was that we had a
separate, agency-wide budget for NAGPRA activities
that enabled us to award roughly 500,000 dollars to
regions and parks every year through a competitive,
needs-based process. Unfortunately, that separate
fund no longer exists. Now, NAGPRA projects must
compete with cultural resource projects in
archaeology, anthropology, historic structures, museums, cultural landscapes and history, for limited and declining resources. Finally, loss of expertise is becoming an issue. In the National Park Service, each of the seven regions has a regional NAGPRA coordinator. In most regions, that role is assigned to the regional cultural anthropologist. Over the last few years, several regional NAGPRA coordinators have retired or moved on to other jobs or positions in the Park Service. Unfortunately, replacing that staff has been hampered by limited budgets. One region hasn’t had a regional anthropologist, and therefore NAGPRA coordinator, for almost two years.

In spite of these barriers, Park NAGPRA Program will continue to provide guidance and assistance to meet the requirements of the law and training to build the NAGPRA related skillsets of NPS staff as best we can. Thank you. I’d be happy to answer any questions you might have.

REVIEW COMMITTEE QUESTIONS AND DISCUSSION

ARMAND MINTHORN: Any comments, questions from the committee? Dennis.

DENNIS O'ROURKE: I’d just like to say thank you for the report. Do you happen to know the
outcome and reburial status of the materials from Kobuk Valley?

MARY CARROLL: Off the top of my head, I’m not sure. I could get that pretty quickly, but I know –

DENNIS O'ROURKE: I know the process, I just didn’t know how far along it was yet.

MARY CARROLL: They – I’m not sure where they are either. They’re not required to report to me, but I do check in with Eileen periodically. So I’m afraid I can’t – don’t have an immediate update for you.

ARMAND MINTHORN: Question, Mary, we’ve heard from several groups here today about the problem of finding lands for reburial. Can your office help with this?

MARY CARROLL: Well, the Park Service policy – there is a policy for reburial in the National Parks. It’s pretty basic. It is that if remains and objects were removed from park lands, they can be reburied on those park lands. There’s a little bit of flexibility in that, which I won’t quite get into here, but my office can’t really do anything about changing that policy. It has to come from higher up. But even if – we can rebury remains on
park lands, if they came from those lands, even if
the Park Service does not have the control under
NAGPRA. For instance, if — well, an example years
ago was from Pecos National Historical Park, a lot
of those remains were removed from before it became
a park and they were at, I think, the Peabody. So
because it wasn’t park land when they were removed,
the museum had the control and they went through
the process as it’s laid out under NAGPRA, but the
repatriation and the reburial did occur on — within
the boundaries of the current park. But we are
bound by the national policy, and there’s not a lot
we can do about that. We can’t really accept
remains from other places to be buried on park
lands the way it stands right now.

ARMAND MINTHORN: Any other comments? Cissy.

LINDALEE FARM: Mr. Chair. So Mary, when you
say it needs to come from higher up — and you have
to forgive me. I don’t know much about the Federal
government and the hierarchy. What do you mean by
that?

MARY CARROLL: Well, and I am not terribly
conversant on the intricacies of policy changes
either. So I’m afraid — I know that I don’t have
much ability to initiate that process.
LINDALEE FARM: Fair enough. I just thought maybe there was some entity or person or —

MARY CARROLL: Well, the Park Service has a policy office.

ARMAND MINTHORN: Carla.

CARLA MATTIX: (Inaudible comment) either under the current National Park Service management policy, a park unit can request a waiver of the policy, but that does have to go through several levels and get approved by the directorate. It goes to the regional director and then gets approved by the directorate. A more permanent change in policy comes every — there’s no set time to review the overall National Park Service management policies; it’s a published volume that the National Park Service has. There was — the most recent overall change in that was done in 2006, and before that 2001. But there’s no set timeframe. They do get revised after a number of years, and that would be the time to reconsider any current policies.

MARY CARROLL: And I will say that we — there has been one waiver to policies in the Park Service a few years back that was based on an agreement between — it was a park and forest lands abutted
each other. They had had an agreement for reburials that had expired, the agreement had expired, and then another situation came up with human remains and so they requested a waiver based on that historical agreement and it was allowed, but it’s not the norm. It’s not an easy process to get a waiver.

ARMAND MINTHORN: Any other questions or comments? Thank you.

MARY CARROLL: Thank you.

ARMAND MINTHORN: Before we take a break, Melanie, I have one question for Tennessee Valley. Are they still here?

MELANIE O’BRIEN: Yes, they are.

ARMAND MINTHORN: Tennessee Valley, you’ve heard many of the concerns and frustrations the tribes are having in locating reburials and places to rebury. Does Tennessee Valley – can they offer some help with this problem?

THOMAS MAHER: I wish I could say yes, but TVA is still in the midst of a process of finding large tracts of land for things that came from TVA’s land. Because we have a very serious looting problem on TVA land, we have to find spots where we can have some assurance of security. And although
one would say the nuclear plants would be a great idea, the NRC is not interested in having non-nuclear activities, let’s say, behind the fences. So once TVA has identified, I hope, multiple places for reinternment for all these many objects, NAGPRA items that are under its control, then we – then we might consider things in our region. But I don’t want to promise what I can’t deliver since I still can’t deliver a place for the things that are under our control. I do say that our management has tackled this at the highest level in trying to identify places that we can be sure of the security.

ARMAND MINTHORN: Okay. Thank you. If you can, Tennessee Valley, keep us updated.

PATRICIA EZZELL: I just want to clarify – this is Pat Ezzell with TVA. I do want to clarify that right now what we do is when we do reinternments after we’ve gone through the NAGPRA process, we do rebury and it’s typically as close as possible to the original site. So that is our process. What Tom is referring to, we are also looking for large parts of land to – large parcels of land to be reinternment cemeteries. So we kind of have two approaches that we’re looking at right now. I just
want to clarify that we do rebury if it came from TVA land currently.

ARMAND MINTHORN: Thank you.

Melanie, let’s take a break.

MELANIE O'BRIEN: Yes, sir. Five minutes? Ten minutes?

ARMAND MINTHORN: Ten minutes.

MELANIE O'BRIEN: Ten-minute break. Thank you.

BREAK

MELANIE O'BRIEN: Okay, if you can please take your seats, we’re going to get started. The next item on the agenda is a presentation from the Forest Service, Frank Wozniak.

PRESENTATION: FOREST SERVICE

PRESENTATION

FRANK WOZNIAK: Chairman Minthorn, members of the NAGPRA Review Committee, my name is Frank Wozniak. I am the National NAGPRA Coordinator for the USDA Forest Service and the NAGPRA Coordinator for the Southwestern Region of the Forest Service. I wish to thank the chair and the committee for this opportunity to update you on the implementation of NAGPRA in Fiscal Year 2015 by the USDA Forest Service. I’d like to start with a brief - some brief observations on 43 CFR 10.7,
which recently published in the Federal Register, which will, I believe, become effective on December 7 of 2015. This is regarding the disposition of unclaimed remains and other cultural items.

On behalf of the Forest Service, I was involved in the early rounds of discussions of the proposed rule among Federal agencies. As a result of these discussions, I realized early on that the Forest Service would be minimally impacted by the proposed rule. The reason for that is that the Forest Service had already established efficient approaches to the implementation of Section 3 of the statute, and we were already and for a number of years had been expeditiously repatriating human remains and other NAGPRA items, thereby fulfilling the purpose of the rule. This pattern has continued to the present.

Next, I would refer you to the two databases that are included in your binders. First of all, the spreadsheets entitled “Forest Service NAGPRA Compliance Status Fiscal Year 2015.” There are two sheets there. One entitled “NAGPRA Summary,” the other “NAGPRA Inventory.” The second document is the Forest Service’s response to the National NAGPRA Program’s annual data call to Federal
agencies regarding repatriation. The caption is – it’s the Forest Service response to Federal agency repatriation data call for Fiscal 2015.

The first spreadsheets, the ones directly from the Forest Service and documenting our annual implementation, provide cumulative data as of the end of Fiscal 2015. As of that date, September 30 of this year, the Forest Service has repatriated a total of 2,368 Native American – sets of Native American human remains. We have also repatriated 21,781 associated funerary objects, 7,269 unassociated funerary objects, 362 sacred objects, and 624 objects of cultural patrimony. The majority of the human remains have come from the Southwestern Region, and the majority of those remains have come from the Coconino National Forest. In Fiscal 2015, the Forest Service repatriated a total of 113 Native American human remains.

Turning now to the agency data call spreadsheets, I would like to bring to your attention a disparity between the cumulative numbers in this data call of 2,312 sets of remains and the Forest Service spreadsheets with a total of 2,368 sets of remains. As I believe I’ve indicated
in previous meetings, but because there are several
people here who have not been officially on the
Review Committee until this meeting, I'd like to
point out that the largest portion of this
difference of 56 individuals was due to
documentation deficiencies at Fresno State
University, now I think known as California State
University at Fresno. They had some major curation
issues whereby the provenience information of
virtually all the human remains were lost, at and
including the site level. They knew that they had
120 sets of human remains. Those 120 sets of human
remains came from National Forest System land. I
can't remember all of them. Corps of Engineers I
know was on that list. I think Bureau of
Reclamation, Cal Trans, for those of you from
California, a notorious institution.

The committee was brought into this in 1999
and asked for a decision permitting - requesting
the Secretary to permit California State University
at Fresno the permission to declare all 120 sets of
remains to be CUI, because you could not take any
set of individuals and say these remains came from
this site. We were involved because we knew that
42 of those 120 came from the lands administered by
the Sierra National Forest. As the record indicates in the records of the Review Committee and the Secretary of Interior, the committee recommended that these remains be considered culturally unidentifiable and that the Cal State Fresno would proceed to repatriation of those remains. They published a notice, I believe, in 2001, and they were subsequently repatriated under a letter from the Secretary of the Interior.

Finally, I would like to briefly look at the matter of reburials, which has become of interest at this meeting, reburials on National Forest System lands. Until Congress passed the 2008 Farm Bill with its reburial provisions, the Forest Service did reburials and we did reburials from the earliest days of NAGPRA on National Forest System lands under our discretionary authorities. However, in the early summer of 2008, there was set forth statutory provisions regarding the Forest Service’s reburial of human remains, Native American human remains and other cultural items on National Forest System lands. So what we’re talking about here is prevailing law governing us and specifying what we can do.

And I’m just briefly going to take a look here
and put into the record the relevant provisions of that law, and this is 122 statutes at large 2048 and following. First of all, looking at section 8101 entitled “Purposes,” and number (1) of 8101 is “The purposes of this subtitle are— to authorize the reburial of human remains and cultural items on National Forest System land, including human remains and cultural items repatriated under the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3001 et seq.” So that’s the first one.

Secondly, is section 8103, “Reburial of Human Remains and cultural items. (a) Reburial sites— In consultation with an affected Indian tribe or lineal descendant, the Secretary” namely, the Secretary of Agriculture, “may authorize the use of National Forest System land by the Indian tribe or lineal descendent for the reburial of human remains or cultural items in the possession of the Indian tribe or lineal descendent that have been disinterred from National Forest System land or an adjacent site.” And finally, turning to section 8102 of this law, “Definitions,” it says, “In this subtitle: (1) adjacent site— The term ‘adjacent site,‘” in quotes, “means a site that borders a
boundary line of National Forest System lands.”

The sum total of this is that this is clear
and specific language providing authority to the
Forest Service to permit reburials of Native
American human remains and cultural items on
National Forest System lands. This is a statutory
delineation of the extent of that authority. In
light of this, I think it is crucial to point out
that the reburial costs, another portion of it that
provides for the Forest Service to cover the cost
of that reburial, it’s crucial to realize that the
reburial costs will be paid with funds appropriated
by Congress. And that brings it all into a
different light, because we’re talking about laws
and regulation regarding the responsible and
appropriate and legal expenditure of Federal funds
doing reburials. And there has been the temptation
to try to exceed, in my mind, the legal authorities
regarding reburials of unprovenienced remains from
a state. In my opinion, we are prohibited
specifically because of the definition of adjacent
site. And I will say it again, the definition –
the term “adjacent site” means a site that borders
a boundary line of National Forest System land.

Having said that, I would now conclude and ask for
any questions.

**REVIEW COMMITTEE QUESTIONS AND DISCUSSION**

ARMAND MINTHORN: Thank you.

Committee, any questions or comments?

Thank you.

FRANK WOZNIAK: Thank you, Mr. Chairman, and thank you, members of the committee.

MELANIE O'BRIEN: The next item on the agenda is a presentation from the Columbia Plateau Inter-Tribal Repatriation Group.

**PRESENTATION: COLUMBIA PLATEAU INTER-TRIBAL REPATRIATION GROUP**

**PRESENTATION**

JACQUELINE COOK: Good afternoon, and thank you all for allowing us to have this presentation. Thank you. We would like to thank the Native American Graves Protection and Repatriation Act Review Committee for this opportunity to provide testimony on our experiences with NAGPRA compliance. The Columbia Plateau Inter-Tribal Repatriation Group consists of the tribes and bands from the Columbia Plateau in the Pacific Northwest states of Washington, Idaho and Oregon. The Confederated Tribes of the Colville Reservation, the Confederated Tribes of the Umatilla Indian
Reservation, the Confederated Tribes and Bands of the Yakima Nation, the Nez Perce Tribe, and the Wanapum Band of Priest Rapids, which I might mention is a nonfederally recognized Indian group, have come together to undertake the repatriation of human remains and funerary objects from the Columbia Plateau. The tribes and bands of the Columbia Plateau have an inherent responsibility under our religious beliefs and practices to care for our ancestors buried within their homelands. The practice of ensuring their return to the earth and continuing their journey is an integral part of Plateau culture and tradition. We continue to work together to achieve repatriation goals in the most expedient manner. The benefits we gain include building trust, forming strong working relationships, and pulling together resources during repatriation, reburial and ceremonial aspects of the repatriation. Between 2005 and the present, we have repatriated a minimum number of 1,515 individuals, 54,664 funerary objects, 1 sacred object from 54 institutions under NAGPRA.

We last presented to you in March of 2015 in Amherst, Massachusetts. We believe that it is important to present to the NAGPRA Review
Committee. Today, we’ll be providing an update on the Ancient One, also known as Kennewick Man. The claimant tribes - the Colville, Nez Perce, Umatilla, Wanapum, and Yakama - have always stood by their knowledge and traditions which told us the Ancient One was our ancestor. We have requested repatriation for almost 20 years, only to be blocked at every turn. The resulting court cases, which final judgment made at the United States Court of Appeals to the Ninth Circuit, placed the claimant tribes in the status of interested parties in the minds of the Federal agency and the public. In accordance with our spiritual and cultural practices, we have conducted annual ceremonies with and for the Ancient One when permission was granted. The purpose of these ceremonies is to let him know that he is not forgotten. There have been new studies conducted by the plaintiff scientists since the 2004 court ruling, culminating in a massive tome, over 600 pages in length. The findings in “Kennewick Man: The Scientific Investigation of an Ancient American Skeleton” came to no definite conclusion whether or not the Ancient One was Native American. The plaintiff scientists’ interpretation suggested that this
Paleoamerican was a lone wolf, a wanderer from the North, who ended up purposely buried on the Columbia Plateau.

We are happy to report, however, that the most recent study based on DNA results presented in June of 2015 have confirmed what we have always known; the Ancient One is Native American and more closely related to the claimant tribes than any other group. The article “The Ancestry and Affiliations of Kennewick Man,” published in Nature, contradicted the stale court finding. Numerous scientists associated with the Centre for GeoGenetics found not only the Ancient One is definitely Native American, but comparisons with members of the Colville Tribe show that he is more closely related to the claimant Columbia Plateau tribes than any other current or past populations studied to date, globally.

The goal of the claimant tribes is to jointly repatriate and rebury the Ancient One have never changed throughout our struggle. We are currently moving forward on multiple fronts to ensure that he is returned so that he can continue with his journey to the Creator.

The majority of our time during the last few
months has been devoted to fielding press and media requests, evaluating how the court case may affect moving forward, and working with Senator Patty Murray and her staff, as well as lobbyists and legal staffs on the Bring the Ancient One Home Act of 2015. The tribes have also been forwarding their concerns to the Department of the Interior regarding the publishing of NAGPRA’s regulations on unclaimed remains inadvertently discovered on Federal land. The claimant tribes are also in consultation with the U.S. Army Corps of Engineers and are working with their staffs.

In conclusion, the Columbia Plateau Inter-Tribal Repatriation Group once again thanks the NAGPRA Review Committee for this opportunity to provide testimony regarding the implementation of the Native American Graves Protection and Repatriation Act. Thank you.

**REVIEW COMMITTEE QUESTIONS AND DISCUSSION**

ARMAND MINTHORN: Any comments or questions from the committee? Dennis.

DENNIS O'ROURKE: I just wanted to say thank you, and I have to say I’m not surprised at the genetic results.

JACQUELINE COOK: We weren’t either.
ARMAND MINTHORN: Okay. Anything else from –

STEVE TITLA: Chairman?

ARMAND MINTHORN: Steve.

STEVE TITLA: I think that the Columbia Plateau Inter-Tribal Repatriation Group has presented a strong case that the Ancient One is part of their heritage, and I support the return of the Ancient One to the respective tribes. I don’t know whether our group can order that. Maybe our esteemed counselor – Steve is shaking his head. Mattix?

CARLA MATTIX: And just a reminder, this started out as a Section 3 inadvertent discovery case under NAGPRA, which is generally outside the purview of the committee’s recommendations, but it also has a very long litigation history and it is currently under the jurisdiction of the Corps of Engineers for them to consider this new information and perhaps make a new decision. I don’t have any information as to what they’re doing at this time.

ARMAND MINTHORN: Just to add to what Carla is saying, you know we have two avenues going here with the Kennewick Man, we know as (Native American language), Ancient One. And the Corps of Engineers, of course they’re going through their process in working with NAGPRA, and then we have
another avenue with Senator Murray. So we have Congress and a bill that’s going through Congress, and we have an avenue with the Corps. So we’re pushing on both of these avenues. One of them eventually is going to go faster than the other. So we will get down to the end where we will have a repatriation and a reburial. But just to note with the report, we do have two avenues and two efforts going to get the Kennewick Man back for reburial.

JACQUELINE COOK: And for the record, just because it’s on the agenda, Kate Valdez, who is the THPO for the Yakama Nation, she’s not with the Colville Tribes, couldn’t be here today, so just extend her thanks as well.

ARMAND MINTHORN: Okay. Thank you.

Okay. Moving on, Indiana University.

MELANIE O'BRIEN: Yes, sir. Indiana University is bringing you two separate presentations.

PRESENTATION: INDIANA UNIVERSITY

PRESENTATION

JAYNE-LEIGH THOMAS: Good afternoon, Chairman Minthorn, members of the Review Committee and distinguished guests. My name is Dr. Jayne-Leigh Thomas. I’m the NAGPRA Director for Indiana University. At last year’s National NAGPRA meeting
in Washington, DC, I presented background information on IU’s NAGPRA history and the updated progress. The purpose of this presentation is to provide members of the Review Committee, Program staff at National NAGPRA, tribal constituents and the general public with updated information regarding the committed endeavors of Indian University’s NAGPRA project. Since November of last year, we have continued our consultation efforts with face-to-face meetings with tribes in Washington State, Kansas, Oklahoma, Alaska, Arizona, Arkansas, California and New Mexico. Since the policy’s inception in 2013, I have met face-to-face with representatives from over 50 tribes and many more lines of communication has been established over the phone and through email.

In 2015, IU repatriated 13 collections comprising 44 individuals and 184 associated funerary objects. Four more repatriations are scheduled for spring of 2016. Three grants positively affected IU during the course of 2015. In a collaborative effort, Indiana and the Native Village of Barrow Inupiat Traditional Government obtained a repatriation grant which assisted both parties in the repatriation of a collection to
Barrow, Alaska. This repatriation project has received nationwide attention recently, and I will be presenting this work on behalf of both IU and the Native Village of Barrow shortly after this presentation.

IU was also awarded a consultation grant for this upcoming year, which will be used to bring tribal members from ten different tribes to Bloomington for a three-day event, holding discussions and consultations on the future of CUI collections from the state of Indiana. Tours of facilities will be provided and we hope to additionally open dialogue with regards to curation practices, participatory research and reburial within the state.

Additionally, in 2014, researchers from Indiana University were awarded a one-year National Science Foundation grant to research NAGPRA education throughout the United States and plan interventions to improve repatriation literacy. In August of this year, tribal cultural specialists, repatriation coordinators, anthropologists, museum studies educators and graduate students from around the country gathered in Bloomington, Indiana, for a two-day collegium workshop to participate in
discussions about particular gaps in knowledge and problematic understandings of NAGPRA that exist within the United States educational system and many sectors of the public. In 2015, IU researchers received confirmation that a second implementation phase will be funded for an additional three years. Additional funding supports working with tribal college educators, two additional collegium workshops where we will fly in members of tribes from all over the country, and collaborating on educational materials to improve knowledge of cultural awareness and NAGPRA practice.

The Indiana University NAGPRA project has the full support of the provost and the administration. IU also encourages tribes to come to Bloomington to utilize on campus resources such as tribal history documents and the Erminie Wheeler-Voegelin Archives and to tour facilities where collections that fall under NAGPRA are currently cared for. We are fully committed to working with tribes to create new partnerships and develop fruitful relationships so that ancestral remains and funerary objects will be returned to the appropriate tribal communities. I thank you for the opportunity to speak with you.
this afternoon, and I am happy to address any questions that you may have.

ARMAND MINTHORN: Any comments or questions from the committee? Thank you.

PRESENTATION: INDIANA UNIVERSITY/NATIVE VILLAGE OF BARROW

PRESENTATION

JAYNE-LEIGH THOMAS: All right, for this next presentation, it is my honor to present not only on behalf of Indiana University but on behalf of the Native Village of Barrow Inupiat Traditional Government, for which I have their permission, encouragement and support. Many of you may be aware of this project as our partnership recently was highlighted in media outlets such as Indian Country Today and Newsweek. Both the Native Village of Barrow and Indiana University are and flattered and honored that our partnership has created so much interest from around the country.

To begin with, Barrow, Alaska is located 350 miles north of the Arctic Circle at the top of Alaska. It is a community of over 4,000 people which rely predominantly on whaling for subsistence. Is it me? Go ahead and change it then. In 1916, Indiana native Mollie Greist and
her husband, Dr. Henry Greist, traveled to Barrow
to work as missionaries, where they stayed for 17
years, having become a welcome member of the
community. Upon returning to Indiana, Mollie
brought with her a large collection of parkas,
fishhooks, and other utilitarian objects, which in
the 1940s were gifted to the Indiana Historical
Society and later then to Indian University.

Today, people speak fondly of the Greist
family for their work in Barrow, David’s recent
trip - David was their son - and as you can see
here, this tombstone was donated after Mollie’s
death by the Native Village of Barrow.

In the spring of 2014, I reached out to
Flossie Mongoyak, Realty Director and NAGPRA
Coordinator for both the Native Village of Barrow
Inupiat Traditional Government and the Inupiat
Community of the Arctic Slope regarding the
collection of human remains and associated funerary
objects which Mollie Greist had brought back with
her to Indiana. For several months, Flossie and I
communicated via email and telephone and in the
fall of 2014, the Notice of Inventory Completion
for this collection was submitted.

At this time, we decided to work together to
apply for a repatriation grant. We agreed that if I wrote the grant the tribe would put their name on it, and that if successful, we would split the grant award so that both parties’ financial needs could be met. We were extremely pleased this year that this grant was awarded.

In spring of 2015, arrangements were made for myself and my colleague, Dr. April Sievert, of the Glenn Black Lab of Archaeology to escort the ancestors home to Barrow. One key component of our visit was the incoming whale migration. The Native Village of Barrow was the only group permitted to harvest whales twice a year, both in the spring and the fall as the whales migrate back and forth around the top of Alaska. The tribe had decided to hold the reburial after the whaling festival, which is held in June, so that during our visit we could share the celebration and attend the festivities as honored guests. This festival is known as the Nalukataq, a three-day celebration of feasting, dancing and the famous seal skin blanket toss.

In June of 2015, the ancestors returned home to Barrow. April Sievert and I spent ten days with members of the tribe, celebrating, feasting and dancing under the midnight sun. We were honored to
be asked to help select a burial plot in the community cemetery for the ancestors and arranged for gifts to be placed in the grave, one for each ancestor. I consider it a true honor to have been part of such a special repatriation, and I’m truly grateful for the support, guidance and friendships that I now share with members of the Native Village of Barrow.

It is our current plan to continue our collaboration by bringing Flossie Mongoyak to Indiana a year from now. The Mathers Museum of World Cultures curates a large collection of parkas and other objects from Barrow, and we do have plans for a collaborative photography exhibit and other projects with the tribe.

In conclusion, I would like to share a brief slide show of pictures taken during our trip to Barrow, and this is also with the permission and support of the tribe. These will be of the community, the Nalukataq and the reburial. I appreciate the opportunity to share with you our friendship that has developed between the Native Village of Barrow and Indiana University. (Native American language), and thank you.

(Slide show presentation.)
Thank you.

REVIEW COMMITTEE QUESTIONS AND DISCUSSION

ARMAND MINTHORN: Thank you. Any questions or comments from the committee? Steve.

STEVE TITLA: Chairman. Yes, thank you for a good report with your personal consultation with Alaska, Barrow, and also earlier you mentioned that you had personal consultation with over 50 tribes in that area. That’s to be commendable. I think that in the past two days, you’re the university that’s met the most with the – personal consultation with the most tribes. So maybe the committee can think of an award for the university that personally consults the most with tribes, because that’s what we like, I think. That’s what I like personally of the committee. I don’t know about the rest, but I think that that’s our theme. So it sounds like you’re doing a good job there and a good presentation, and like the Chairman said if you can keep us updated as you go forward. Thank you.

ARMAND MINTHORN: Just some comments. This is – this is truly good to actually hear and see that it’s taken place with the Natives in Alaska. A question, and it’s really not related to NAGPRA, is
it - I guess can you, if possible, give an example of how actually climate change is affecting the peoples there?

JAYNE-LEIGH THOMAS: I can actually. First of all, one of the things that that topic of discussion came up because there’s a lot of plants actually up there that the tribe doesn’t have a name for. There are flowers blooming in the summer they’ve never seen before, and so we were asking what are these plants, they’re really nice. We have absolutely no idea. They’re invasive. They’re coming and we don’t actually have a name for them, because it’s now becoming so warm that they’re not used to those being there.

The caribou herds are coming down from the high. They’re coming down to the water to cool off, also to rid their coats of bugs and things. But they’re seeing a difference in the migration patterns because it is so warm. The ice was there when we arrived. It moved out, and they said the ice is definitely decreasing. The seals and the walrus followed the ice. The polar bears follow the seals and the walrus, and they’re having to go further out to do their subsistence hunting for whales and seals and things like that. So very - I
don’t want to speak too much on that, because I
definitely am not an expert, but just in the short
period of time we were there, it did— it was
something that did come up.

ARMAND MINTHORN: Thank you. Anything else
from the committee?

Thank you.

Melanie, we’ll take a break.

MELANIE O’BRIEN: Certainly, we’ll come back at
3:05 to start public comment.

ARMAND MINTHORN: 3:05.

BREAK

MELANIE O’BRIEN: If you will please take your
seats. We have today several public comments.

ARMAND MINTHORN: If you could take your seats.

MELANIE O’BRIEN: If you could please take your
seats, the first public comment we have today is
from Linda and Bertney Langley of the Coushatta of
Louisiana. They also have with them Erin Gredell
of Yale University.

PUBLIC COMMENT

ERIN GREDELL/LINDA AND BERTNEY LANGLEY

ERIN GREDELL: Hi, thank you very much,
Mr. Chairman and members of the Review Committee,
for allowing us to speak today. I’m here just to
do a very brief introduction of how us three came
to meet. I initiated a consultation with regard to
a burial from Pine Island, Alabama, earlier this
year, consulted with numerous tribes. That’s
actually not why I’m here to speak, but that’s what
brought us together and brought them here today.
That burial, just to give you an update, the
notice is working its way through the system. I
actually just yesterday - Melanie, you’ll be happy
to know - I was emailed the approved draft, which
now I will take back to Yale and have the final
signature and then we will be submitting that for
publication in the Federal Register. But Bertney
and Linda here would like to take this opportunity
to just address the committee and the public here.
So I’m going to turn it over to them.

BERTNEY LANGLEY: Thank you, Mr. Chairman and
committee members, for allowing us to speak on
behalf of the Coushatta Tribe of Louisiana. My
name is Bertney Langley. I’m a member of the
Coushatta Tribe of Louisiana, and this is also my
wife, who’s an anthropologist, who’s worked with us
for a long while, trying to get some of our
documentations back into the tribe so we’ll have it
for our children and grandchildren.
What I’d like to do today is I’d like to speak in Koasati, in honor of our ancestors who we are working for the benefit of some of these reburials and whatever. We’ve been always – we’ve always been taught that our language is what gives us strength in the tribe. So on behalf of the Koasati ancestors, that’s what I would like to do today is give you a brief history of how we came to be where we’re at right now.

(Native American language.)

LINDA LANGLEY: I’ll do my best. First, what he would like for you to understand is on behalf of the Koasati people how much we appreciate this opportunity. What he said at the beginning and at the end is that they are still here, and when – I had bullet points of history, but I would like to start with the ending that he said, which is that the people had always told them – the old people had said that in the end times all those who were lost will return and will come home, and the people feel that this may be the beginning of that.

When Erin first called us, we had no idea at all. There’s absolutely no idea among the Koasati people in Louisiana that there were any Koasati at all considered culturally unidentified. I know
that may be difficult to imagine, but after all these years of NAGPRA, we did not know that there were still his ancestors in this predicament, and this has been a great sense of horror back home, and immediately the Chairman and the council immediately said to us that something must be done.

There – to back up a little bit to the history as he was saying it to you that the Koasati people were at one time one. They were a large group in the area that is the Muskogean area, Tennessee into Alabama. They were what the Spanish called the Coosa or Coohosa (phonetic) chiefdom. Later, often, it’s called the Creek areas. They were a member in the 1700s with the Creek Confederacy but prior to that a little bit further north. His ancestors left the area of the Confederacy, as he described it to you, the chief had a prophesy or had the dream, a vision, that the wars were coming, and this was actually written in an affidavit that he told these dreams to some of the White traders and explained why the people, the Koasati people were leaving the area, and about half of them did leave prior to the Creek wars.

And what they began was a series of journeys that left their ancestral homelands, and they ran
into various traders along the way or people that wrote this down, explorers. But in the area of Tennessee they left, in the area of Alabama they left, prior to wars, prior to forced removals.

There are three groups of Koasati today, the Alabama-Quassarte he mentioned in Oklahoma, the Alabama Coushatta, which many people are familiar with in Texas, and his group, the Coushatta Tribe of Louisiana. Most people are less familiar with them because they are the group that did leave ahead of all of this. And why this is important for NAGPRA is that it leaves them with the least amount of paper documentation. They are the one group that fortunately for them kept the most amount of language, the most amount of traditional culture as anthropologists reckon it, but the least amount of paper documentation, no treaties other than one where they signed with the Creek delegation. No forced removal, so they were not listed or numbered. Then they continued this pattern for the 200 years until their present land in Alton, Louisiana.

So for NAGPRA reasons on your current website, they have no land listed at all, despite the fact that they know where they come from and always have
known, and say we know who were are; this was not an issue for us. But as Erin, when she called, we became glaringly aware it was only the tip of the iceberg. What was in the Yale collection, we have since found out that this is a small part of the collections that are in many other—the collections of other agencies and also museums. It was a large cemetery, as best as we can understand it. There are numerous—we are learning all the lingo, associated funerary objects, minimum number of individuals, the NAGPRA rules and regulations. We are getting a crash course in all of it.

So we have learned a few things. One is that this can be a tremendously powerful process that a university can be on our side, which is a wonderful thing. She has guided us thus far and helped us understand that other tribes can be also wonderful partners, helping us understand what they’ve already gone through. We have reached out to numerous scholars and agencies. Yale paid for the initial analysis out of their budgeting, and has had—it has taught us a lot already what they have done.

We have reached out to each other group with Koasati members on their rolls, and plans are
already in place, although we have barely, I think, six months since we have learned and the numbers are staggering to us, from thinking there were none to thinking there may be hundreds. And we don’t know what we’re going to do, but we have learned that the teamwork is possible. We have learned that this already has spiritual impact back home. People have – one person in particular made the journey to Pine Island in Alabama and stood on the banks. It’s currently largely under water, but he took photographs of it and he came back, and my husband said that where he had previously mostly spoken to him in English he began speaking to him in their language, and he said I saw the world through the eyes of our ancestors because I knew I was standing where they stood and we have to do this.

It’s an amazing experience to us. We cannot fathom that these remains, these items that have been in a museum on the East Coast for over a hundred years have started this journey of discovery and rediscovery for the Koasati people. They have the saying that the struggle will make them stronger, and that is something that he also said that he feels strongly that the people will
work together and will come together to make this happen in a way that honors their ancestors and that they can finally be at rest in the way that is appropriate for the Koasati people.

**REVIEW COMMITTEE QUESTIONS AND DISCUSSION**

ARMAND MINTHORN: Thank you. Any questions or comments from the committee?

Just some comments. This is a unique situation here, and more than likely there are other tribes out there in this same situation that we don’t know about yet. In this modern-day society, and just like the words that came out, they’ll find their way back, and that is so true, so true. It’s of big interest how the Koasati is going to work with this, and again, if the committee can help, we’ll help. It would be good if we can keep updated from you folks on how this goes. Stay in touch with us and stay in touch with Melanie, as well. There are other tribes in the area, Florida and other places, federally recognized tribes, don’t hesitate to ask them for help as well, because this committee deals with NAGPRA, many tribes in the nation deal with NAGPRA and we have some experiences. And most of all, the office here, the National NAGPRA Program, you’re
the heart of the operation and if they can help as well, don’t hesitate to ask them.

But it is – as positive as a person can be and as strong as a people can be, it’s because of their ancestors. And the Koasati are no different. However, it’s unique what the Koasati are going to go through now, and it will strengthen the Koasati people and there will be lessons learned, but it’s only going to make the Koasati stronger as a people. So thank you for your comments and your report. And it – again, it’s going to be an interest, a big interest, to the committee how you folks work this and how you go through this experience with NAGPRA. Thank you.

MELANIE O'BRIEN: Mr. Chair, the next person who would like to make a public comment is Robin Dushane for the Eastern Shawnee Tribe.

ROBIN DUSHANE

ROBIN DUSHANE: Good afternoon, Chairman Minthorn and committee members. My name is Robin Dushane, and I serve the Eastern Shawnee Tribe of Oklahoma as the Tribal Historic Preservation Officer. During the last decade, our tribe has received two separate documentation and consultation grants through the National NAGPRA
Program, which have greatly increased our capacity to consult on NAGPRA issues. Most recently, our second repatriation has resulted in the reburial of 25 ancestors in West Virginia previously under the control of the Huntington District Army Corps of Engineers. Through further consultation, we have established a goal of pursuing repatriation of this district’s entire Fort Ancient collection dating from 1100 A.D. through the contact period, as the Huntington District has affiliated their Fort Ancient collections, totaling 80 ancestors, to the three federally recognized Shawnee tribes.

In closing and as an aside, I’m compelled to share with you that the TVA is one Federal agency that we also consult with that you heard from earlier this morning. Their consultation methods are very strong, and I applaud their efforts. They should serve as a model for other Federal agencies. Thank you.

ARMAND MINTHORN: Thank you. Any questions or comments from the committee?

Thank you.

MELANIE O'BRIEN: The next public comment we have is from Jaime Lavallee.

JAIME LAVALLEE
JAIME LAVALLEE: Good afternoon. Good afternoon. I’ve never been on this side of the table before. As Melanie said, my name is Jaime Lavallee. I’m a Muskeg Lake Cree Nation person from what is now called Saskatchewan up in Canada. It’s in Treaty 6 territory, but now I work in Treaty 4 territory for the File Hills Qu’Appelle Tribal Council. I’m the Director of Indigenous Governance, Law and Policy. However, I’m not here in that capacity, right? I’ll put on two different hats. One, I’m here as an SJD candidate with the University of Arizona doing a dissertation on NAGPRA. And the other one is also as a member of the working group on international repatriation.

So I’ll get the more official one out of the way with the international repatriation. I know that we were speaking about it earlier in the meeting. First of all, if anybody hasn’t received a pamphlet yet or has not picked one up, it’s available out there. There’s also some bags over on the side that has the agenda from the previous conference that was held this week, and also has a two-sheeter on basically just like what is international repatriation, things like that. So those are available through AAIA.
So we had our conference over at the Artesian Casino, which is also on Chickasaw. It was hosted by the International Repatriation project. The working group is a volunteer based group of people that are interested in international repatriation, either having done so themselves or they’re just interested in it. They are - they include Eddy Ayau, the San Carlos Apache Tribe, the Aquinnah Wampanoag, the Sault Ste. Marie Tribe on this side of the 49th or whatever parallel that would be because I think it’s gets a little - I don’t know. I’m not very good at - I’m not that good at geography that I know all the latitudes but it’s on this side, so the Sault Ste. Marie Tribe of the U.S., which if you know the Sault Ste. Marie Tribe has also in Canada, the Hopi Tribe and some ceremonial leaders from them, Chief Arvol Looking Horse, the Wabanaki Repatriation Committee rep, and the United Tribes of Michigan rep, and then there are other people that are also involved. I think there was somebody from Australia that was also involved in some of the teleconference events that we have. This was one of the first times we were actually able to meet in person. That was what we’re calling now the inaugural international
conference. So when there’s a next one, we will make sure that the invitation goes out to all of the Review Committee people and hopefully it will be able to be shared as well.

As part of it, we had a session on the next steps of what should or can be done to facilitate knowledge of international repatriation, the process and the actual repatriation. Some of the recommendations were coordinating another set of amnesty days, abroad but also within the U.S. Some people may have known there was some that were highly successful. There was one that was highly successful in the Southwest. We also discussed the establishment of intertribal enforcement units on cultural resources to help be proactive against looting. So that would be training and cross deputization with the Federal agency law enforcements to shut down looting and, as an aside, almost like the drug trade as well. If anybody has seen some of those things. I got a couple nods, but if not then it seems like maybe they’ll supply some more information. I don’t have the studies in front of me. And one of the recommendations would be that a study would be among the National NAGPRA DOJ FBI on states regarding illicit trade in Native
ancestors or cultural items and other illicit trade markets. That was one of our – the recommendations that we received in our conference and we’re bringing forward.

There was also the need to hear more success stories and for those that have not yet reached success, because as we have stated before, even during this public comment period, learning by doing, right, and sharing. We thought that was important because it would help with basically the resources that we have that are already available like databases, templates. There is a guide that is available on the international repatriation working group website, but they would like to keep trying to update it on an annual basis, so that way people have access to newer resources and newer processes and newer points of contact. They’re also working on one for basically museums and institutions as well. And then of course, any help is greatly appreciated to help reduce the stress of our resources, because as we know one of the issues that has come up is funding, which is a very important resource. We know that NAGPRA has issues itself, even though they have some grants and it’s a federally mandated piece of legislation. But
international repatriation doesn’t have any laws on it. There are only a few countries that have some sort of mechanism in place, but it’s by no means a broad or accepted method of dealing with your collections.

So there was also a point about it appears that the Program, the National NAGPRA Program is limiting applicability to 50 states for the grants, when the Supreme Court says applicability of domestic laws includes the territories and insular areas unless specifically exempted by the Congress. And the statement that has – that says it doesn’t apply directly contradicts the rest of it, including the acknowledgement of the U.N. Declaration on the Rights of Indigenous People, specifically the repatriation clause.

One of the other recommendations was to try and get Congress to do export legislation, because that is one of the reasons that was given for not having the stopping of auction sales is that it’s not illegal for it to be taken out of the country so there is no mechanism in which Paris or other countries can deny access or deny those cultural items from going into their country. So we have import rules but no export. So that is one - that
is a very big hole in trying to protect what we have now and what we don’t want to have removed.

And those are our things from the conference. Does anybody have any questions?

**REVIEW COMMITTEE QUESTIONS AND DISCUSSION**

ARMAND MINTHORN: Questions, comments from the committee? Yes.

HEATHER EDGAR: I have a question for you, but I’ll start it with a tiny bit of background. Our museum, the Maxwell Museum of Anthropology has a – I guess you’d call it a practice. It’s certainly not a policy, but a practice of accepting materials from individuals who have them, materials that probably should be returned to other countries, and facilitating those returns whenever possible. This happens in most cases so far, not all, but most cases so far have been involving pre-contact materials, cultural materials taken from Mexico after appropriate dates and with no legal processes. And so we have – we’re fortunate to have a consulate in our city, and so we have a fairly close working relationship with that consulate for returning materials like this. So these are not materials that are owned by our museum, but materials that we’re acting as the
conduit for the return of those kinds of things.

And I’m wondering if there’s ever been any kind of survey or information gathered from other such cultural institutions like ours, like the Maxwell Museum, on whether they are interested in returning material like that that’s appropriate, whether they help with general public inquiries like this. It would be very interesting to know what’s already being done that’s possibly under the radar. So do you know anything about this?

JAIME LAVALLEE: Thank you for sharing. No, we - as far as I know, we didn’t have anything like that come up in our conference, and it hasn’t come up in any of the teleconferences that I’ve attended. Those are exactly the success stories and sharing of knowledge and resources and practices that we’re encouraging people to do. I know on the Vlog we have comment sections, but we’re also trying to interview people to find out what they’re doing, how they’re doing it. Of course, within a culturally appropriate manner, a sensitive manner as well, because sometimes - it’s a pre-NAGPRA world out there for everybody out there, right, past the borders of the U.S., although it’s after NAGPRA, right? But it’s still
- for them there are still a lot of concerns about emptying out their collections and about being the expert in whatever collections that they do have regardless of whether or not the tribe says that is theirs or not.

But that would be a great idea. I would suggest if we can, I can give my contact information or you can contact the AAIA and the international repatriation project, and make suggestions. We’ve got a long wish list, and I think adding to a wish list is great. You never know where or when you might be able to find some of those resources to help share with everybody.

ARMAND MINTHORN: Okay. Any other comments or questions? Thank you.

JAIME LAVALLEE: Okay. I wanted to wear a different hat now. I don’t have another hat, but can I wear a different hat? I had a couple of questions or comments.

ARMAND MINTHORN: Okay.

JAIME LAVALLEE

JAIME LAVALLEE: Okay. This is just me being a NAGPRA - interested in and things like that, which was - when there was a discussion about the civil enforcement and the statement was that there are
about 108 institutions that have been – had the allegations since basically September – well, since 1996, they have investigated 40, they found 19, so that’s almost a 50 percent success rate of failure to comply, or the other way around, which is over 50 percent have not been found to fail to comply, whichever spin. But that still leaves 68, and I’m trying to find out through some of the report, the previous reports from either the Review Committee or the National NAGPRA Program about what is the priority or process for choosing which ones to investigate? What is the plan of action to resolve these remaining ones? I know we put a plan of action when there was a big backlog for notices. What is the plan of action for the law enforcement or the civil enforcement? What is the reporting by state, and no names or anything like that would have to be required but which ones are the biggest perpetrators or alleged to be? And can those that have reached the finalized stage report on what incentivizes them to complete? How long does it take them to get into compliance and what are the costs for not complying versus actual compliance? Because sometimes it’s – if it’s cheaper to not do it, sometimes people will continue to do so rather
than to do that. I know that our goal is to make everybody into compliance but it all depends on what is an incentive, right, positive or negative.

I was going to ask if we could find some sort of check of methodology to find the museum and institutions that should be complying with NAGPRA but aren’t or that might not even be on our list of actual museums or institutions that fall underneath NAGPRA, and then I was wondering if we could make available the actual results of the grant examples that we talked about earlier, databases and templates, a small summary of the projects and the results and maybe even follow-ups, because there’s always a ripple effect, right? Usually very positive, even what somebody was saying earlier about how they thought NAGPRA consultations will start this and then it will go on to also maybe inform their practices of curation and other agreements.

And then we were talking – I was listening to people talk and one of the things that I was wondering is if we could go about doing a mentor kind of, almost apprenticeship kind of network. There was a discussion about how there are tribes out there that are knowledgeable that we should
tap. Are they available to let people know who they are, how they would be able to contact them, maybe even what their workload would be, which is only one, one at a time? Or just in general, if there was a way to do a mentorship/apprenticeship, especially since I’ve been listening to what the National Park Service was saying, which is we’re losing a lot of knowledge, 25 years of NAGPRA. Some people now are going on to retirement and we have some people that are just graduating that may have learned but may not know how to actually go about practicing it, which feeds into what Indiana University has said about how there is knowledge and gaps within the educational institution of even people that are taking it. So those are my – those are my comments, my questions. Anybody have any questions for me?

**REVIEW COMMITTEE QUESTIONS OR DISCUSSION**

ARMAND MINTHORN: Any comments or questions for the committee?

Thank you.

JAIME LAVALLÈE: Thank you.

MELANIE O'BRIEN: We have an additional public comment from Jan Bernstein.

**JAN BERNSTEIN**
JAN BERNSTEIN: Hello, Chairman, members of the committee. Thank you so much for providing the time for public comment. It really is a great honor and privilege for me to be in this NAGPRA world. I’ve been working on repatriation issues since the early 1980s, and was there when NAGPRA was signed and have been a part of its implementation ever since. I’m an independent museum consultant. I have been in that capacity since 2003, and I have also the honor and privilege of teaching courses for the National Preservation Institute that Melanie spoke of. I teach the NAGPRA essentials class, and I also teach the grant writing class with Megon Noble. And we’ve been doing a lot of training this past fall, and we’ll continue to do that into the winter. And there is also one other teacher that teaches NAGPRA essentials, a former member of your Review Committee, Eric Hemenway from the Little Traverse Bay Band of Odawa Indians. And he’ll continue to teach a few courses into the spring.

And so we see a great need for training still, because there are always new people coming on board. And that money is only going to be available for a short time to provide those
scholarships and travel stipends. It will only last for, what, less than five years I believe, Melanie? Because it was money that was left over on the table after there were fewer high scoring grants than there was money available a couple years ago. And so it looks like maybe through the trainings we have increased the number of successful grant applications tremendously just through one year of training but these trainings will only be available for a few more years. And then if we continue to have these successful grant applications there will be no more money for training. So I urge you to also include in your report the issue of training, and I know Indiana is working on looking at the gaps as well.

And currently I have clients all over the country, Buena Vista Rancheria, which brought me in on a NAGPRA grant to do training for not only their tribe but for all of their neighbor tribes in northern or central northern California in the valley and up into the foothills, and I did that this last fall. And following that, they were able to do a successful consultation with UC Davis. And I write grants for the Central Council of the Tlingit and Haida Indian Tribes of Alaska. Without
those grants, they would not be able to do collection reviews, and write repatriation claims.

And I also work with the Wiyot Tribe. I’ve done three trainings for them. They on the south side of Humboldt Bay in northern California. I’ve done trainings for them and their neighbor tribes, THPOs, NAGPRA coordinators, tribal leadership, and the last one was for tribal Elders. And it’s just always so interesting to see how many people are new to NAGPRA and need that training and that capacity building.

And other institutions that I’m working with, Sam Noble Oklahoma Museum of Natural History. You heard their presentation yesterday about the work that is in front of them, 10 to 12 years of work to facilitate the return of over 3,000 individuals that have not yet been in notices, and they’ll be applying for a grant each year to fund that work. And it just goes on and on.

And something else that’s come up this fall is that I have four new museum clients, all of whom have never submitted a summary or an inventory. And in a couple of cases they didn’t know NAGPRA existed. One was a city, and their museum had been closed down for years and they were looking into
selling the collection. And they brought in a consultant who realized that there were Native American items in there covered by NAGPRA, and he contacted - put me in contact with the city. And they are - they’ve now submitted an inventory and a summary and are going to apply for a NAGPRA grant to fund consultation.

A second client in that same state, Michigan, has two museums. They had complied with NAGPRA barely but needed additional inventories and summaries to go out. And then I have another new client that has been in the press. I contacted them. This is the first time I’ve ever contacted a potential client and offered my services, and they took me up on it. And they have been found in noncompliance and are in the penalty phase now. And we are rushing to touch base with tribes so that they can submit an inventory and a summary and start to consult further with tribes, and they’ll be doing that through grants as well.

So I have a lot of clients that will be submitting grants. And there’s one last one in California, and they did - they never submitted an inventory. This is a state organization. And we just did that. Recently we submitted the inventory
and are embarking on consultation now to determine if there can be a cultural affiliation determination and repatriation. So that’s just this fall that I have had four new clients that never complied with NAGPRA. And I think you are right. There are a lot out there still probably, and Jaime mentioned that as well.

So I also want to talk about the National NAGPRA Program and how helpful they have been to the one client in particular that was found in noncompliance, what Melanie talked about, that separation that exists between the civil penalties investigation and her program. We felt very comfortable having conference calls with Melanie and asking her very direct questions because it was separate from the penalty - the penalty assessment and the investigation. So we do appreciate that separation that exists.

And also as far as burial sites go, Sheila Goff and Mr. Naranjo and Ms. Naranjo talked about the Colorado Lands group and how they were unable to accommodate the reburial of some of the individuals that were presented to them because they didn’t come from Colorado originally. I have been working with the Pueblo of Acoma for a long
time, for nearly six years to find a burial site for individuals from New Mexico and Texas. And we did present to the group and the group said it was out of their purview, and so we went to every Federal agency that has land in New Mexico.

I reported on this last time I was at the meeting a year ago. And since that meeting, the Ysleta del Sur Pueblo offered land for reburial, and they helped facilitate the burial this past summer of the individuals not only from New Mexico and Texas that were repatriated by the University of Colorado Museum of Natural History in Boulder, but also individuals that were from History Colorado, Denver Museum of Nature and Science, and those individuals came from Colorado, New Mexico, and Arizona. And they all were reburied in El Paso, Texas. So it is a little frustrating that the lands group can’t accommodate everybody but we did find a solution. And Ysleta del Sur Pueblo extended an invitation to do this; any time a tribe whose aboriginal territory includes that region of the country needs a burial site, they would be more than happy to help.

And I think that’s all for now. I’ve taken up a lot of your time. Do you have any questions for
REVIEW COMMITTEE QUESTIONS AND DISCUSSION

ARMAND MINTHORN: Questions, comments from the committee? Dennis.

DENNIS O'ROURKE: A very busy time.

JAN BERNSTEIN: Very.

DENNIS O'ROURKE: It all sounds incredibly busy and I’m sure the clients appreciate your assistance in coming into compliance.

JAN BERNSTEIN: Thank you very much, and thank you for all your work. I really appreciate how much time and energy you put into your work.

ARMAND MINTHORN: Thank you.

MELANIE O'BRIEN: That’s the last public comment that was requested. Are there any others who would like to come forward and make a comment to the committee?

ARMAND MINTHORN: Andrea? Anybody else? Please come up. This is your time. This is your time. Okay. Moving on.

MELANIE O'BRIEN: The next item on the agenda is again a discussion of the Review Committee’s 2015 report to Congress.

ARMAND MINTHORN: Okay, Dennis.

ACTION ITEM: DISCUSSION OF THE REVIEW COMMITTEE
2015 REPORT TO CONGRESS

DENNIS O'ROURKE: I’ll provide an additional update, since we discussed the report to Congress this morning, the Review Committee worked through lunch and discussed issues. We’ve taken written comments from two or three members of the Review Committee. We’ve edited some of the text to shorten it. We’re quite concerned that we don’t want the report to go too long. We want it to be impactful and read to catch attention, and we have changed the order of the priority of some of the requests for — or some of the barriers that have been identified and therefore the requests to Congress. I think all of the wording changes are agreeable.

What is left primarily is the summary of this meeting, which is mostly stream of consciousness notes from me that have been taken during the meeting, otherwise I think the committee is in general agreement with the tone and content of the report so far, as far as I’m aware.

ARMAND MINTHORN: So Dennis, too, this report, this year’s report is considerably shorter than last year’s.

DENNIS O'ROURKE: It’s shorter. I’m not sure
that it will be considerably shorter, but it is shorter. And I’m continuing to try to edit, just making textual changes to try to reduce size more. I prefer it shorter rather than longer, personally.

ARMAND MINTHORN: Okay. Any comments or questions from the committee?

So can we — can the committee approve a final draft today?

DENNIS O'ROURKE: It’s not in final form in the sense that the summary of what transpired at this meeting is not written in its final form. I don’t know if the committee trusts me and Patrick, who is the other member of the subcommittee, trusts us to accurately reflect what happened at this meeting, then perhaps so. Otherwise, it would need to be done at a — with a telephonic conference, which I know has been scheduled. I don’t know if the staff can perhaps address whether it’s even possible to approve it at this juncture.

ARMAND MINTHORN: Well, I’m sure the committee would trust you.

DENNIS O'ROURKE: Oh, I was afraid of that.

PATRICK LYONS: May I ask a question, please, Chairman?

ARMAND MINTHORN: Yes.
PATRICK LYONS: So perhaps, Dennis, we would want to review some critical portions of the report again, maybe talk about the - review the barriers and recommendations again.

DENNIS O'ROURKE: I can certainly read those again. Those haven’t changed other than the order from this morning. They’re the same. And basically the one change to order was to move up in the list of barriers to emphasize its importance, increased support and funding to the National NAGPRA Program, particularly for grants to Indian tribes, Native Hawaiian organizations, museums, etcetera, because of the dramatic increase in applications over the last couple years. That has moved up and has been emphasized more. That was the major change other than the editorial trimming and that sort of thing, and just finessing the wording.

ARMAND MINTHORN: Steve.

STEVE TITLA: Chairman, it would probably be better if we review the document once they finish it, email it to all of us, then we have a conference call on it. I think that would be much better than approving something that is not complete yet.
DENNIS O'ROURKE: If that’s the decision of the committee, Patrick and I will work very hard to get the last section done and to everyone very quickly. I think the rest of the document will not change so it wouldn’t take much review on the committee’s part to approve the final version once it’s done.

ARMAND MINTHORN: Okay.

PATRICK LYONS: Mr. Chair, I would have one thing that I would bring up, and we did – there is a section in there about amendments to – recommendations about amendments to the statute, and this seems like an appropriate time while we’re here together to talk about perhaps – well, have a discussion of perhaps lending support to the notion of the amendment of the definition of Native American to include “is or was,” and so I would propose that we talk about that today briefly.

ARMAND MINTHORN: Sure.

MELANIE O'BRIEN: Do you perhaps need some background on that issue of the definition of Native American?

PATRICK LYONS: I’m sure you can set that up better than I would.

MELANIE O'BRIEN: It’s a little late in the day. I’m not sure I can but I’ll go ahead and try.
PATRICK LYONS: I’m sorry.

MELANIE O'BRIEN: This is an issue that the committee has addressed in the past. It has been a part of previous reports to Congress. The issue comes down to what the statute says in terms of a definition of Native American. The statute says that Native American means “of or relating to a tribe, people or culture that is indigenous to the United States.” The use of the verb “is” in this case provides some temporal definition, some definition of time, about “indigenous to the United States.” So in the past, the Review Committee has recommended that the statute be amended to include “is or was indigenous to the United States.”

ARMAND MINTHORN: So on that note, Dennis and – this amendment to the statute, I guess the question here for the committee is this still – the consensus still the same in supporting or recommending is or was indigenous to the U.S.

DENNIS O'ROURKE: I haven’t thought about it long and hard. It just came up. Off the top of my head, I would say I’m perfectly happy to have it read that way, and I’d be happy to put it in the report. Again, apparently it’s been there before and was taken out, for what reasons I don’t know.
MELANIE O'BRIEN: I will suggest that right now you have a recommendation in the draft, that’s recommendation number 7, which asks Congress to hold hearings to determine whether amendments to the Act should be considered that would expedite the repatriation process and support the National NAGPRA Program in its revisions to the current regulations. I believe that in the past, the Review Committee has advocated, not necessarily for a position on this question, but that Congress take it up and consider it, which is different. And so you might want to look at that recommendation and how you might want to -

DENNIS O'ROURKE: I was going to say, would it be probably maybe more appropriate then, to say for example, considering this issue is versus was and is or was, and use that as an example of something that might be pursued in that point?

MELANIE O'BRIEN: Yes, you might want to talk about altering the language of that number 7 recommendation to include some more specific questions that the committee is asking Congress to consider.

HEATHER EDGAR: I was just going to say that I do remember when this first came up years ago and I
certainly - I had opinions at the time concerning "is or was," and if I remember correctly I didn’t have any problem with it. But to tell the truth, as a layperson at that point my opinions didn’t hold any weight whatsoever, and I would prefer to give more time and thought - more time and thoughtfulness to this consideration rather than the couple of minutes we have here before lending - before voting on it. Also I think it’s possible that when - if we ask Congress to reconsider some of the wording in the statute or in the regulations, there may be components of those words that are more important and have more importance in the way we implement or recommend that the law be implemented than "is or was." And so I would be kind of sorry to see if that was the - I don’t know, because I would have to spend a lot of time really looking at it, and that’s what I’m talking about it. I’d want to be thoughtful about it because I’m just not some person on the street anymore. And so I wouldn’t want to direct their attention just specifically to that change where there might be other changes that are more important, more valuable, and would cause more process to occur.
ARMAND MINTHORN: Cissy.

LINDALEE FARM: I would agree that this is an issue that requires some thought and some discussion, and that’s not to say that we can’t have a preliminary discussion now but to bring something basically out of the blue and then have expectations that we’ll have some sort of agreement on that I think is a little bit wishful. So in the past when we’ve had this discussion there has been a certain amount of back and forth, and therefore, the decision that – the suggestion that Congress hold hearings on it rather than foisting our opinions about things and having a little bit of divisiveness over it, to broaden the subject and to actually give it thoughtful consideration beyond just this group. So I would welcome a discussion on it, if people are prepared to have a discussion at this point, but I would also think that that’s probably not something that should be included in our report to Congress since we’re at the eleventh hour and we’re talking about that. It’s probably something that could be elaborated more in our subcommittee of the committee of the whole as to perhaps some of the issues that we want to talk about, and that needs to be further addressed at
this point, I think, as well.

**REVIEW COMMITTEE MOTION**

DENNIS O'ROURKE: And while we’re talking about this, and you mentioned the subcommittee of the committee as a whole, we discussed that earlier but took no action. I think we require a motion and a vote to constitute a subcommittee of the committee of the whole. Am I correct in that? Because we had anticipated that if we were to do that, we could hold more teleconferences between face-to-face meetings and be a bit more productive. So I think we actually have to act on that, since we had discussed it earlier. I’m happy to make a motion that we simply approve constituting a subcommittee of the committee of the whole that will hold more regular telephonic conferences to deal with issues as they arise between meetings. That’s basically what we discussed this morning.

MELANIE O'BRIEN: Just for the sake of clarity, the subcommittee would be to discuss issues, to provide information but it would not allow you to take any action on any of those issues. Any action would have to take place in a public meeting. Likewise, there would have to be some reporting back to the public about those subcommittee
meetings. I would suggest that we perhaps do at least minutes of those meetings so that there’s a clear record of those subcommittee meetings.

DENNIS O'ROURKE: Such meetings would be a forum where we could have a general discussion after each of us had thought about these kinds of issues, if we wanted to bring them up or not in a face-to-face meeting, to include in future reports or other actions for the committee.

PATRICK LYONS: I guess there’s a motion on the floor?

ARMAND MINTHORN: Restate the motion?

MELANIE O'BRIEN: The motion is to constitute a subcommittee of the whole to meet in between your public meetings to gather information about some of these topics.

ARMAND MINTHORN: And this would include the report to Congress?

MELANIE O'BRIEN: This would include some of the topics that you’re discussing.

ARMAND MINTHORN: Okay. All right. Is there a second?

PATRICK LYONS: I would second.

ARMAND MINTHORN: Any more discussion?

HEATHER EDGAR: Can I ask what the subcommittee
is called?

MELANIE O'BRIEN: Subcommittee of the whole.

HEATHER EDGAR: Because usually committees have a task.

MELANIE O'BRIEN: Carla just said it’s the super subcommittee.

HEATHER EDGAR: If we have no task, that’s fine.

MELANIE O'BRIEN: Well, I have a list of tasks actually, so I think the task is to discuss some of these items.

ARMAND MINTHORN: Cissy.

LINDALEE FARM: I think the point of that is to not restrict it but to have it sort of — the ability to discuss various topics, rather than a pointed agenda or a singular topic. It’s so that we can talk about the various issues that we have discussed previously and to flesh them out a little bit so that we can have a meaningful conversation when we make a decision.

HEATHER EDGAR: Except we can’t make a decision.

LINDALEE FARM: That’s correct.

ARMAND MINTHORN: Any more discussion?

PATRICK LYONS: I have a question, if that’s
okay, Chairman? So would this subcommittee of the whole be the venue where we discuss, for example, our potential meeting with representatives at Interior?

   ARMAND MINTHORN: Yes.
   PATRICK LYONS: Okay.
   ARMAND MINTHORN: Any more discussion?
   DENNIS O'ROURKE: Call the question.
   ARMAND MINTHORN: All those in favor of the motion raise your right hand?

   MELANIE O'BRIEN: For the record, those in favor, Dennis O'Rourke, Steve Titla, Patrick Lyons, LindaLee Cissy Farm, Heather Edgar.
   ARMAND MINTHORN: Opposed?
   Abstain?
   Motion carries. Okay.
   MELANIE O'BRIEN: The National NAGPRA Program would be happy to help coordinate scheduling and teleconference for those subcommittee meetings.

   This brings you back to your report to Congress and its current state as a draft. You have at this point developed a list of barriers and a list of recommendations that you want to present in this report.

   DENNIS O'ROURKE: I'll just reiterate what I
said this morning. I read both of those lists this morning; the list of barriers is amplified with explanatory text, and some discussion of possible remedies. The list of recommendations to Congress relies on those but doesn’t repeat them in an effort to keep the document somewhat shorter and more focused.

MELANIE O'BRIEN: I believe in addition to that, Mr. Titla expressed a desire to see a complete draft before voting for approval.

DENNIS O'ROURKE: Correct.

ARMAND MINTHORN: Okay. Any more discussion? Cissy.

LINDALEE FARM: It’s my understanding that our scheduled telephone conference is on December 14th. Am I remembering correctly?

MELANIE O'BRIEN: That’s correct. It is scheduled for December 14th at 2:00 p.m. Eastern time.

LINDALEE FARM: So I would just ask when we could expect a draft so that we could give it thoughtful consideration prior to that time.

DENNIS O'ROURKE: I will do my best to get it out within the next three to four days, and then my travel schedule and moving schedule is such you
won’t hear from me again. I’m going to be lucky to make the 14th conference call. I may be on the highway, although I’m hoping that’s not the case.

ARMAND MINTHORN: Okay. Anything else?

All right. Moving on.

**ACTION ITEM: UPCOMING MEETING DATES AND LOCATIONS**

MELANIE O'BRIEN: Okay. Moving on, the next item on the agenda is a discussion of your next meeting. The National NAGPRA Program has prepared a map of locations that the committee has previously met. We also have kept a list of invitations that the committee has received to hold its next meeting. I will say that you are not bound by an invitation. You’re welcome to request that the committee meet anywhere you feel is a good location.

Some of the locations that you have been invited to include Juneau, Alaska; Salt Lake City; Missoula, Montana; anywhere in the state of Arizona; Denver, Colorado; Western New Mexico University in Silver City, New Mexico. I have received on your behalf invitations to Reno, Nevada, from the Pyramid Lake Paiute Tribe, also an invitation to northern California from the Blue Lake Rancheria. You received today an invitation
to Bloomington, Indiana, and you’ve also received
an invitation to meet in Choctaw, Mississippi.
The National NAGPRA Program would like to
recommend that the committee meet in the summer of
the coming year, perhaps in June or July, depending
on your schedules, and work towards a general shift
slightly in the calendar for the Review Committee
meetings.

ARMAND MINTHORN: Well, to start things out,
all the invitations that the committee has received
and then too the citing that the committee has not
had too much focus on the Midwest. And certainly,
we can’t be everywhere. So would recommend the
committee consider Denver, Colorado, for our next
meeting in June.

STEVE TITLA: Chairman?

ARMAND MINTHORN: Steve.

STEVE TITLA: Have we ever been to Denver
before?

MELANIE O'BRIEN: Yes, two meetings have been
held in Denver. The last time the Review Committee
met in Denver was in 1996 – no, 2006.

STEVE TITLA: Chairman? I think that it’s my
opinion that we should try to go where the Review
Committee has not been before in the United States.
There’s a lot of empty space there, and I think Montana is one area we haven’t been or Indiana. I don’t know where Indiana is on that map, but it’s probably in an empty space. So those are areas that I think we should consider.

ARMAND MINTHORN: Missoula was mentioned, Missoula, Montana.

DENNIS O'ROURKE: We have not met near there for a very long time. I would certainly support the nomination of Missoula.

ARMAND MINTHORN: Missoula, Montana.

MELANIE O'BRIEN: I would ask the committee to give me three recommended locations, and I will work on identifying an appropriate venue for the meeting.

STEVE TITLA: Chairman.

ARMAND MINTHORN: Steve.

STEVE TITLA: I recommend Indiana as one spot, as one for her to consider.

DENNIS O'ROURKE: And it’s also been a long time since we met in the Southeast. I would recommend the third site be the invitation to Mississippi. I forgot the geographic location –

(Inaudible comment.)

DENNIS O'ROURKE: - Philadelphia, Mississippi.
ARMAND MINTHORN: So Dennis, you’re saying Mississippi?

DENNIS O'ROURKE: Yes, that would be my suggestion for the third site.

ARMAND MINTHORN: Okay, Melanie, we have Missoula, Montana, Mississippi, and Indiana.

MELANIE O'BRIEN: Okay. I will go forward and identify an appropriate location. Does the committee have any other requests in our effort to identify an appropriate facility, any other considerations, aside from location?

ARMAND MINTHORN: Cissy.

LINDALEE FARM: I understand that there have been a number of longstanding, outstanding invitations, and I think if we’re looking at a certain geographical area, we should, as a courtesy reach out to those who have extended the invitations in the past because many of them have been very, very gracious. And I think that we should take the opportunity to meet where we have been invited.

ARMAND MINTHORN: And we talked about this briefly, Melanie and Carla, wherever we meet, those three places, we need to strongly invite BLM to report and update us on Spirit Cave, and then also
it would be beneficial if we can strongly invite
and put the Federal agencies on the schedule to
meet with this committee regularly. And then too,
last thing, Melanie, is it was mentioned earlier
this afternoon the museums that are noncompliant,
they need to be factored into the schedule as well.

MELANIE O’BRIEN: I’ll be happy to extend
invitations and have discussions with those
different groups. Are there any other agenda items
or considerations you’d like me to –

DENNIS O’ROURKE: I just wanted to come back to
Cissy’s comment. I don’t know what outstanding
invitations there might be from past years. I know
of one that was discussed earlier, and it was
deemed perhaps fiscally inappropriate to go there
just because it would be very expensive. But I
don’t know if there are other invitations of long-
standing that should be considered.

STEVE TITLA: Chairman?

ARMAND MINTHORN: Steve.

STEVE TITLA: I know that we were invited by
Rosita Worl to Alaska last year in conjunction with
some Native event that they’re having up there in
Anchorage, I think. But the feeling I get from
NAGPRA is that we don’t have the funding for that
kind of thing. But next year, we’re meeting only
one time, which is in June or July. Usually we
meet two times, in the spring or fall. So she’s
invited us before when she was on the committee and
we were thinking seriously about it, but then the
prior DFO decided to go somewhere else. I can’t
remember where we went, but we didn’t go there last
year because of that.

MELANIE O’BRIEN: That is correct. You do have
an invitation to attend celebrations in Juneau,
Alaska. We do have a plan to only meet in person
one time next calendar year. However, the
Government functions on a fiscal year basis, and we
will meet – this meeting is the first meeting in
the fiscal year. We will meet again this fiscal
year, and then we will have two meetings in the
next fiscal year. So the calendar year and the
fiscal year difference doesn’t necessarily mean
there’s a fiscal savings there. But I appreciate
the continued desire to go to Juneau, and I will
certainly relay that information and keep that in
consideration as we budget the travel expenses for
the Review Committee.

ARMAND MINTHORN: Okay, anything else from the
committee?
CLOSING COMMENTS

ARMAND MINTHORN: Melanie, as we begin to wrap up here, I want to thank you, Melanie, Carla and Steve, Lesa, for your work here. Thank everybody here that’s still here. This only goes to show us that this is important to you. And it is a big help for us when you folks can stay for this long to hear and to actually know what’s going on but also it’s important too that we hear directly from you. That’s why the public comment periods are here in this part of this meeting. But if there’s other places and other times, whether it be a phone call or email, please let us hear your voice because it’s important that we know and become familiar or just to get to know you. But open communication is critical and it’s important.

So again, I want to thank all of you folks that are still here for staying this long. And thank you, Melanie, and your coworkers.

MELANIE O'BRIEN: Thank you very much. I’d just like to add to that that a number of times the committee has asked that different presenters keep you updated on the status of projects or issues that they’ve raised with you. Anyone is welcome to provide updates directly to me, and I will
distribute those to the committee. We do have a
regular communication process in place, and I’d be
happy to facilitate those updates through
communication with the Review Committee.

ARMAND MINTHORN: All right. We’ll wrap up and
we’ll close here. I guess a question for you folks
out there, is anybody here from Chickasaw? Is
there any other tribe here from Oklahoma?

MELANIE O'BRIEN: Yes, one representative from
Chickasaw is here.

ARMAND MINTHORN: Okay. Any other tribes here
from Oklahoma? Okay. I’m going to leave it up to
you folks that are here from Oklahoma and Chickasaw
that do the closing prayer.

**CLOSING PRAYER**

IAN THOMPSON: (Closing prayer.)

ARMAND MINTHORN: Thank you. Thank you,
everybody. We’re adjourned.

MELANIE O'BRIEN: Thank you, Mr. Chair.

**MEETING ADJOURNED**