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Executive Summary

With the passage of the Native American Graves Protection and Repatriation Act (NAGPRA or the Act; 25 U.S.C. § 3001, et seq.) on November 16, 1990, Congress mandated the formation of the NAGPRA Review Committee. The NAGPRA Review Committee is required to report to Congress annually regarding progress made, and any barriers encountered, in implementing the Act’s provisions during the previous year (25 U.S.C. § 3006). The Act benefits Native Americans and reflects “the unique relationship between the Federal Government and Indian Tribes and Native Hawaiian organizations” (25 U.S.C. § 3010). NAGPRA is intended to protect Native American graves and to ensure the appropriate repatriation of Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony to the proper lineal descendants, Indian tribes, or Native Hawaiian organizations. A broad intent of the law is to expand and improve the communication among Indian Tribes, Native Hawaiian organizations, museums, and Federal agencies concerning the proper treatment of the Native American human remains and other kinds of cultural items covered by the law. The Act was passed, in part, to eliminate the disparate treatment afforded to Native Americans in the protection of their ancestral burials and cultural items.

This report summarizes Review Committee activities and the progress and barriers on implementation of the Act. The Committee also has prepared a short list of recommendations to Congress regarding implementation of NAGPRA. The following numbered text summarizes the recommendations, which are described in greater detail in the body of this report.

1. Increase NAGPRA grant funding for Indian Tribes, Native Hawaiian organizations, and museums.

2. Increase funding and professional staffing for programs in Federal agencies that implement NAGPRA.

3. Exempt from disclosure under the Freedom of Information Act (FOIA) culturally sensitive information identified by Indian Tribes and Native Hawaiian organizations during consultation.

4. Direct Federal agencies that control cemeteries to allow the reburial of human remains and funerary objects repatriated pursuant to NAGPRA.

5. Hold hearings to discuss with Indian Tribes, museum and scientific communities, and Federal agencies on how to overcome barriers and increase progress made in implementing NAGPRA.

6. Support the goals of the STOP Act (Safeguard Tribal Objects of Patrimony Act; S. 1471 and H.R. 2930) and of the Secretary of Interior’s Federal Indian Boarding School Initiative.
Summary of Activities

NAGPRA affects Indian Tribes, Native Hawaiian organizations, lineal descendants, museums, and Federal agencies. The development of long-term positive collaborations and cooperation among these different communities as part of their compliance and involvement with the law is an important goal. Through its public meetings, oversight of implementation of the Act, recommendations to the Secretary of the Interior, and review and recommendations regarding the resolution of disputes, the Review Committee works to achieve the goals and objectives of the statute.

Review Committee Members

Nominated by Indian Tribes and Native Hawaiian organizations:
- John Beaver (term ends May 2022)
- Barnaby Lewis (term ends May 2022)
- Armand Minthorn (term ended August 2021)

Nominated by museum and scientific organizations:
- Heather Edgar (term ended November 2019)
- Patrick Lyons (term ended November 2019)
- Francis McManamon (term ends October 2022)
- C. Timothy McKeown (term ends June 2024)
- Shelby Tisdale (term ends June 2024)

Nominated by the Committee:
- Honor Keeler (term ends May 2022)

Review Committee members are appointed for a four-year term and may be reappointed for a second, two-year term.

Review Committee Meetings

In fiscal year 2020, the Review Committee held one public, telephonic meeting on October 30, 2019. During that meeting, the Committee completed and approved the final version of its annual report to Congress for 2018 and 2019 and considered one written comment.

Due to public health concerns and restrictions during the Covid pandemic (beginning in March 2020), the Review Committee was unable to meet again during fiscal year 2020 and for the first half of fiscal year 2021.

During fiscal year 2021, in the Spring, as Covid pandemic public health restrictions began to loosen, the Review Committee, supported by the National NAGPRA staff, tried to make up for some of the time lost in 2020 and 2021.
The Committee held six public, virtual meetings between June and August 2021. During the 2021 meetings, the Review Committee received reports from the National NAGPRA Program regarding implementation and compliance activities under the Act, provided recommendations to the Secretary of the Interior regarding the disposition of culturally unidentifiable human remains, heard presentations from NAGPRA constituents, and received public comments. The Review Committee also expressed serious concern about the delays in transmittal of the Committee's 2018-2019 annual report to Congress, which we hope by now has been rectified. The Review Committee conducted substantive discussions on the 2020-2021 annual report to Congress.

Attached to this Annual Report are statistics reported by the National NAGPRA Program for fiscal years 2020 and 2021 regarding the implementation of NAGPRA, grants awarded under the Act, and other important progress made. It is noteworthy that the National NAGPRA Program staff, despite Covid restrictions that prevented them from face-to-face interaction in their normal office environment, managed to maintain a high level of performance, particularly in the fiscal year 2020 and 2021 grant awards and Federal Register notice aspects of the program.

There have been notable examples of progress by Indian Tribes, Native Hawaiian organizations, museums, and Federal agencies in the implementation of NAGPRA. Regrettably, there are also longstanding barriers to swifter implementation of the law. In the body of this report, we present additional information on both the progress and the barriers.

Minutes and transcripts of past meetings can be accessed at: [https://www.nps.gov/subjects/nagpra/meetings.htm](https://www.nps.gov/subjects/nagpra/meetings.htm)

The 66th meeting of the NAGPRA Review Committee was held October 30, 2019, telephonically. During this meeting, the Review Committee:
- completed and approved the final version of its annual report to Congress for 2018-2019, and
- benefitted from public comments.

The 67th meeting of the NAGPRA Review Committee was held June 28, 2021, virtually. During this meeting, the Review Committee:
- heard a report on activities and accomplishments of the National NAGPRA Program by the Program Manager,
- reviewed the functions and membership of subcommittees,
- had a preliminary discussion of its Report to Congress for 2020 and 2021, and
- benefitted from public comments.

The 68th and 69th meetings of the NAGPRA Review Committee were held July 7 and July 13, 2021, virtually. During these meetings, the Review Committee:
- selected Armand Minthorn as Chair of the Review Committee,
• made five recommendations to the Secretary of the Interior regarding the disposition of culturally unidentifiable human remains, from the following museums and Federal agency:
  o Tennessee Valley Authority
  o Fort Lewis College
  o Michigan State University
  o Boston University
  o Baylor University's Mayborn Museum Complex
• had additional discussions of its Report to Congress for 2020 and 2021,
• discussed how the Committee would conduct its review of the draft revised NAGPRA regulations that the Department released for formal consultation with Indian Tribes and Native Hawaiian organizations on July 8, 2021, and
• benefitted from public comments.

The 70th and 71st meetings of the NAGPRA Review Committee were held July 21 and August 10, 2021, virtually. During these meetings, the Review Committee:
• heard one presentation by the Federal NAGPRA Network,
• heard three reports from subcommittees during the August 10th meeting,
• heard from the National NAGPRA Program Manager a summary of subparts A (during the 21 July meeting) and C (during the August 10 meeting) of the July 8, 2021 draft proposed revisions to the NAGPRA regulations and discussed these sections of the revised draft, and
• benefitted from public comments.

The 72nd meeting of the NAGPRA Review Committee was held on August 19, 2021, virtually. During this meeting, the Review Committee:
• heard one presentation by the Society for American Archaeology,
• reviewed and discussed the recommendations of the subcommittee on Review Committee Meeting Procedures,
• discussed the recommendations and other aspects of the Committee's Report to Congress for 2020 and 2021, and
• benefitted from public comments.
Progress Made

Congress has charged the Review Committee with reporting annually on progress made and barriers encountered in NAGPRA implementation. We are pleased to report on the following progress in the implementation of NAGPRA.

1. Cooperation and collaboration by organizations carrying out NAGPRA implementation. In 2020 and 2021, the Review Committee heard reports about cooperation and collaboration among organizations involved in consultation, documentation, inventories, repatriations, research, and other activities related to the implementation of NAGPRA.

At the June 28th, 67th meeting, the Review Committee heard from the NAGPRA Community of Practice (Community), an organization developed with the support of a three-year grant from the Institute of Museum and Library Services. The Community aims to support practitioners and advance implementation of NAGPRA. Activities include regularly scheduled video conferencing, information and resource sharing, and cooperation and collaboration with other organizations. For example, the community co-hosted the 6th Annual Repatriation Conference with the American Association on Indian Affairs. A steering committee has been formed to ensure the sustainability of the Community after the end of the grant period in 2022. In January 2020, the organization started hosting regular video calls. These video sessions are now held on a bi-monthly schedule, alternating between scheduled presentations and open discussion. All the calls are recorded and made available on the Community’s shared drive. There usually are 40 to 80 participants per session. Recent topics include presentations on the University of California and determining cultural affiliation.

At the June 28th, 67th meeting, the Review Committee heard about the formation of groups within the larger community. For example, a Southeastern NAGPRA Community of Practice now exists to provide a southeastern focused support system enabling individuals who are involved in NAGPRA to more easily find ways to talk and share resources specific to that region. Another group is the Indigenous Collections Care Working Group. They are working to create a guide that will offer scalable considerations and templates for implementation, advocacy, and creation of policies and procedures that prioritize Indigenous knowledge.

Most recently (during the August 10th, 71st Review Committee meeting), the Committee heard a presentation by representatives of the Federal NAGPRA Network (Network), a group formed in the last two years by Federal agency employees who have as part of their job responsibilities ensuring compliance with NAGPRA by their agencies. Objectives of the Network are to share information within and across agency lines on best practices. The organization also encourages sharing examples of approaches and factors that have been found to be key in successful implementation of NAGPRA. Network members also are collecting information about how different agencies or offices within the same agency are carrying out their NAGPRA responsibilities. They are collecting information about what percentages of staff time and the amount of program funding that is devoted to NAGPRA activities. The Network surveying of
needs identified leadership support, enhanced capacity (funding and staffing), training, and good examples and best practice information to draw from as key needs by staff.

Tribal coalitions continue to develop and provide for coordination and collaboration among Indian Tribes. The Columbia Plateau Inter-Tribal Repatriation Group (CPITRG) has presented to the Review Committee regularly in recent years. The members of the CPITRG have worked together to provide a strong, consistent voice for cultural preservation and repatriation in their region, including working to pass special legislation to transfer and rebury the Ancient One (Kennewick Man). The Four Southern Tribes Cultural Resource Working Group, another longstanding group, has presented to the Review Committee many times. The Michigan Anishinaabek Cultural Preservation and Repatriation Alliance has worked with museums to facilitate repatriation to its members. The newly formed Southeastern Tribal Alliance for Repatriation and Reburial will likely follow the model set by these two successful organizations.

An additional model of Tribal cooperation comes from Iowa, where 25 Indian Tribes signed an agreement with the Iowa State Archaeologist’s office to facilitate the repatriation of culturally affiliated human remains and NAGPRA objects and the transfer of culturally unidentifiable human remains. The original agreement between the State and Indian Tribes predates NAGPRA legislation; its most recent affirmation of the agreement was in 2018 when more Indian Tribes entered into the agreement.

2. Federal Indian Boarding School Initiative. On June 22, 2021, Secretary of the Interior Deb Haaland announced the initiation of the Federal Indian Boarding School Initiative (Initiative) to investigate the loss of life and lasting consequences of residential Indian boarding schools. The primary goal of the Initiative is to identify boarding school facilities and sites; the location of known and possible student burial sites located at or near school facilities; and the identities and Tribal affiliations of children interred at such locations. The final report of the Initiative is scheduled for submission to the Secretary by April 1, 2022.

The report is intended to provide a basis for future site work to protect cemeteries and burial sites. Before any such work occurs, the Assistant Secretary for Indian Affairs will consult with Tribal Nations, Alaska Native corporations, and Native Hawaiian organizations on determining the nature and scope of proposed sitework; on addressing cultural concerns and the potential dissemination of sensitive information generated from the existing records or from future sitework activities; and for the future protection of burial sites and the potential repatriation of human remains in compliance with NAGPRA.

3. Related Legislation: The STOP Act. The STOP Act (Safeguard Tribal Objects of Patrimony Act; S. 1471 and H.R. 2930) would increase the maximum penalty for trafficking of Native American cultural items, establish mechanisms to stop illegal export of Native American cultural items, facilitate the international repatriation of Native American cultural items, and establish a Federal network to support the voluntary return of Native American cultural items to Indian Tribes and Native Hawaiian organizations.
Of specific relevance to the NAGPRA Review Committee, the STOP Act would establish an interagency working group of representatives from the Departments of the Interior, Justice, State, and Homeland Security that would, in collaboration with this Committee, facilitate repatriations, protect tangible cultural heritage, and improve Federal agency implementation of NAGPRA, ARPA, and other laws. The STOP Act would also establish a 12-person Native American Working Group that would, with the assistance of this Committee, advise on the voluntary return of Native American cultural items and elimination of illegal commerce of cultural items.

**Barriers to Overcome**

Congress has charged the Review Committee with reporting annually on progress made and barriers encountered in NAGPRA implementation. Certain barriers have been reported year after year, and they continue to hinder progress in the implementation of NAGPRA.

1. **NAGPRA compliance is much more expensive than initially estimated.** A request for more funding to support NAGPRA implementation has been made in every report since 1995. The Review Committee is grateful that in 2020 and 2021, Congress added funds for the NAGPRA grants program.

   Funding is the primary barrier to success. The Congressional Budget Office estimated, in 1990, that total costs for NAGPRA compliance would run between $5 million and $30 million. As of September 30, 2021, the National NAGPRA Program had received requests from Indian Tribes and museums (Federal agencies are not eligible for NAGPRA grants) for nearly $108 million in grant support and had awarded more than $54 million. Over this same period, hundreds more millions of dollars have been spent on compliance by Federal agencies, Indian Tribes, Native Hawaiian organizations, and museums.

   The size of the annual NAGPRA grant funding pool, since its inception, has varied from a maximum of $2.4 M to a minimum of $1.4 M. The amount allocated has never been increased to account for inflation. Current grant funding does not reflect the scale of repatriation work that remains to be done.

   The Government Accountability Office’s (GAO) report entitled *Native American Graves Protection and Repatriation Act: After Almost 20 Years, Key Federal Agencies Still Have Not Fully Complied with the Act* (GAO-10-768) identified a lack of resources within Federal agencies dedicated to NAGPRA implementation as "one of the most significant challenges" to compliance with the Act.

   Although NAGPRA constituents (Indian Tribes, Native Hawaiian organizations, museums, Federal agencies, and the Review Committee) are all working together to address issues related to the complexity of NAGPRA compliance, only Congress can address the funding challenge.
2. **NAGPRA compliance is much more complicated than originally envisioned.** Congress envisioned in 1990 that repatriation activity pursuant to NAGPRA would be complete, or nearly so, within five years of the Act's passage. As evidenced by the GAO report (GAO-10-768) as well as statistics compiled and reported annually by the National NAGPRA Program, after nearly three decades, a daunting amount of work remains. Highlighted nearly ten years ago by GAO, is that vast numbers of human remains and cultural items under the legal control of Federal agencies are curated by non-Federal repositories. Federal agencies often do not have physical custody of their collections and, in some cases, may not even know that collections exist or where they are housed, mainly due to the inadequacies of early permitting procedures and gaps in record-keeping. In addition, establishing a Federal agency's legal control might take years, in part because some museums may not be forthcoming with catalog/acquisition records. Further, loans, exchanges, and excavation of the same site by multiple institutions have frequently resulted in collections from one site having been split among multiple institutions, each with its own protocols for determining cultural affiliation. Finally, while museums have always known that faunal collections might have included human remains, more careful inventories have recently shown the actual frequency of this occurrence.

Much of the work needed to find Federal collections in non-Federal repositories, examine the collection records, identify Native American human remains, carry out the administrative and legal work needed, and other tasks must be carried out by Federal agency staff or professional contractors.

3. **Legislative work is required in order to broaden opportunities for reburial of Native American human remains and cultural items on public lands.** Progress has been made on identifying places to rebury repatriated human remains and funerary objects, but difficulties remain. Reburial sites must be monitored and protected from looters.

Many Indian Tribes advocate for additional Federal lands to be set aside for reburial. Others feel that, due to changing land use and a lack of assured protection from development, human remains and cultural items should only be reburied on reservation lands. It is important to note that many Indian Tribes face additional burdens as their ancestors were interred in locations remote from their present-day Tribal lands. Legislation should reflect the diversity of Indian Tribal opinions on this issue.

4. **Sensitive information is currently unprotected.** Of critical importance, sensitive information divulged during NAGPRA consultations by lineal descendants, Indian Tribes, and Native Hawaiian organizations and in the possession of a Federal agency may be released under the Freedom of Information Act. For example, it is not in the spirit of the law to create open opportunities for looters by disclosing specific information on burial locations. Ceremonial information could be shared in a consultation session but should not be released to the general public. The inability to keep sensitive information confidential should be considered a significant barrier to repatriation.
Native American Graves Protection and Repatriation

Recommendations to Congress

Based on its experience with both barriers and examples of progress, the Review Committee recommends the following Congressional actions:

1. **Increase NAGPRA grant funding.** Over the 25 years that grant funding has been awarded, the NAGPRA Program has had a maximum of $2.4 M to award in a single year (2001). In 2005, this figure dipped to its lowest point, at $1.4 M. The Review Committee is glad to note that for fiscal years 2020 and 2021, the grant program was funded at a higher level, $1.9 M. However, the results of the grant proposal review process indicate that many proposals that merit funding cannot be funded due to insufficient funds. In an average year, only 43% of applicants are funded. Many more applicants submit proposals that would be funded if adequate funds were available.

   Additional grant funding would enable more consultation, documentation, and repatriation between Indian Tribes and Native Hawaiian organizations and museums leading to fuller and quicker compliance with the law.

2. **Increase funding and professional staffing for programs in Federal agencies that are responsible for agency compliance with NAGPRA.** These funds and increased staff should be directed to consult with Indian Tribes and Native Hawaiian organizations, conduct necessary research in repository records related to NAGPRA items in Federal collections, document NAGPRA items in these collections, and conduct repatriation activities to return these items to appropriately related Indian Tribes and Native Hawaiian organizations. Federal agencies should be directed to report annually on the use of funds to implement NAGPRA.

3. **Amend NAGPRA to include exemptions from Freedom of Information Act (FOIA) requests.** As provided for under exemption (b)(3) of the Freedom of Information Act, NAGPRA should be amended to protect culturally sensitive information identified by Indian Tribes and Native Hawaiian organizations during consultation and specific reburial locations.

4. **Direct Federal agencies that control cemeteries to allow the reburial of human remains and funerary objects repatriated pursuant to NAGPRA.** Federal agencies that control cemeteries should set aside some percentage of available cemetery plots for use in the reburial of human remains and funerary objects repatriated pursuant to NAGPRA. Amendment of the Recreation and Public Purposes Act may be needed to facilitate use of Bureau of Land Management lands for this purpose.

5. **Hold hearings to discuss barriers and progress made in implementing NAGPRA.** In our 2018-2019 annual report, the Review Committee urged Congress to hold hearings or other meetings at which members discuss with representatives from Indian Tribes, museum and scientific communities, as well as Federal agencies, how to overcome barriers encountered and increase
the progress made in implementing this law. We think this continues to be an important recommendation and reiterate it in this report as well.

6. Support the goals of the STOP Act (Safeguard Tribal Objects of Patrimony Act; S. 1471 and H.R. 2930) and the Secretary of the Interior's Federal Indian Boarding School Initiative. The Committee urges Congress to pass the STOP Act and support funding for the Federal Indian Boarding School Initiative. We look forward to providing our collaboration and assistance in these important endeavors.
National NAGPRA Program Statistics

### NAGPRA At-A-Glance
#### Fiscal Year 2020

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<th>Notice &amp; Grants</th>
<th>Count</th>
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<td>Repatriation grants</td>
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<td>Project grants</td>
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**NAGPRA collections increased** – the number of human remains reported in NAGPRA inventories increased by 2,653 individuals.

**NAGPRA activity is steady** – the number of human remains that have completed the regulatory process grew by 2%.

**NAGPRA funding increased** – available grant funds were increased from $1.65 million to $1.9 million.

**More NAGPRA work needed** – Over 116,000 Native American individuals are still in collections and 95% of those have not been culturally affiliated with any present-day Indian tribe or Native Hawaiian Organizations. Cultural affiliation studies and in-depth consultations could resolve the rights to many of these individuals.

### NAGPRA Accomplishments
#### FY 1990 – FY 2020

91.51% of culturally affiliated human remains have completed the NAGPRA process.

Over 1.78 million associated funerary objects have been transferred with human remains.

28% of museums subject to NAGPRA have resolved all Native American human remains under their control.

More than 332,000 unassociated funerary objects have been repatriated.

About 21,000 other cultural items have been repatriated.

66 Review Committee meetings have been held between FY 1990-FY 2020.

$59,111 has been collected in civil penalties for failures to comply.

$52.02 million has been awarded in NAGPRA grants.
### National NAGPRA Program Statistics

#### NAGPRA At-A-Glance

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<td>repatriation grants</td>
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<td>project grants</td>
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**NAGPRA collections increased** – the number of human remains reported in NAGPRA inventories increased by 2,320 individuals.

**NAGPRA activity is steady** – the number of human remains that have completed the regulatory process grew by nearly 2%.

**NAGPRA funding increased** – available grant funds continued at the increased amount of $1.9 million.

**More NAGPRA work needed** – Over 117,576 Native American individuals are still in collections and 94% of those have not been culturally affiliated with any present-day Indian tribe or NHO. Cultural affiliation studies and in-depth consultations could resolve the rights to many of these individuals.

### NAGPRA Accomplishments

**FY 1990 – FY 2021**

- 90.5% of culturally affiliated human remains have completed the NAGPRA process.
- Over 1.8 million associated funerary objects have been transferred with human remains.
- 21% of museums subject to NAGPRA have resolved all Native American human remains under their control.

- More than 349,000 unassociated funerary objects have been repatriated.
- About 21,600 other cultural items have been repatriated.
- 72 Review Committee meetings have been held between FY 1990-FY 2021.
- $59,111 has been collected in civil penalties for failures to comply.
- $53.92 million has been awarded in NAGPRA grants.
Native American Human Remains in Holdings and Collections

- Since 1990, **202,253** human remains reported under NAGPRA.
- For \(\approx 42\%\), NAGPRA process is complete (rights resolved by public notice).
- As of Sept 2021, **117,576** human remains are pending consultation and/or notice.

Native American Associated Funerary Objects in Holdings and Collections

- Since 1990, **about 2.6 million** associated funerary objects items reported under NAGPRA.
- For \(\approx 70\%\), NAGPRA process is complete (rights resolved by public notice).
- As of Sept 2021, **788,240** associated funerary objects are pending consultation and/or notice.
Sets of Native American individuals by institution/Federal agency. Showing 73% of the individuals in holdings or collections as of Sept 2021.

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<tr>
<th>Institution</th>
<th>Count</th>
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<td>Univ. of California, Berkeley</td>
<td>9,591</td>
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<td>Univ. of Alabama Museums</td>
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<td>Illinois State Museum</td>
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<td>Ohio History Connection</td>
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<td>Harvard University</td>
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<td>Indiana University</td>
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<td>Center for American Archeology, Kampsville Archeological</td>
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<td>Milwaukee Public Museum</td>
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<td>Tennessee Dept. of Environment and Conservation, Division</td>
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