

MINUTES

**NATIVE AMERICAN GRAVES PROTECTION AND
REPATRIATION REVIEW COMMITTEE**

SIXTIETH MEETING

September 13, 2016

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Background

The Native American Graves Protection and Repatriation Review Committee was established under the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3001 et seq., which was signed into law by President George Bush on November 16, 1990.

Pursuant to 25 U.S.C. 3006 (c) and (h), the Review Committee is responsible for –

1. Designating one of the members of the committee as chair;
2. Monitoring the inventory and identification process conducted under sections 5 and 6 to ensure a fair, objective consideration and assessment of all available relevant information and evidence;
3. Upon the request of any affected party, reviewing and making findings related to-
 - A. The identity or cultural affiliation of cultural items, or
 - B. The return of such items;
4. Facilitating the resolution of any disputes among Indian tribes, Native Hawaiian organizations, or lineal descendants and Federal agencies or museums relating to the return of such items, including convening the parties to the dispute if deemed desirable;
5. Compiling an inventory of culturally unidentifiable human remains that are in the possession or control of each Federal agency and museum and recommending specific actions for developing a process for disposition of such remains;
6. Consulting with Indian tribes and Native Hawaiian organizations and museums on matters within the scope of the work of the committee affecting such tribes or organizations;
7. Consulting with the Secretary of the Interior in the development of regulations to carry out this Act;
8. Performing such other related functions as the Secretary may assign to the committee;
9. Making recommendations, if appropriate, regarding future care of cultural items which are to be repatriated; and
10. Submitting an annual report to the Congress on the progress made, and any barriers encountered, in implementing this section during the previous year.

The Review Committee is organized and administered according to the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix (2006).

Six Review Committee members are appointed by the Secretary of the Interior from nominations by Indian tribes, Native Hawaiian organizations, traditional Native American religious leaders, national museum organizations, and scientific organizations. At least two of the members must be traditional Indian religious leaders. One Review Committee member is appointed by the Secretary from a list of persons developed and unanimously approved by the other members.

The Review Committee reports to the Secretary of the Interior. Under the Review Committee's charter, the Manager, National NAGPRA Program, National Park Service (NPS) serves as the Designated Federal Officer (DFO) to the Review Committee. The DFO oversees the activities of the Review Committee and coordinates administrative and staff support to the Review Committee on behalf of the Secretary of the Interior.

Additional information about the Review Committee – including the Review Committee's charter, membership, meeting protocol, and dispute procedures – is available at the National NAGPRA Website, <http://www.nps.gov/nagpra> (click on "Review Committee").

Notice of this Review Committee meeting was published in the *Federal Register* on February 2, 2016 (81 FR 5481-5484).

The 60th Meeting of the Review Committee

The 60th meeting of the Native American Graves Protection and Repatriation Review Committee was called to order by Ms. Melanie O'Brien, DFO, at 2:00 p.m., on Wednesday, September 13, 2016. Ms. O'Brien confirmed the attendance of the Review Committee members, and stated that the Federal Advisory Committee Act (FACA) requirements were met regarding the publication of the meeting notice and agenda prior to the meeting. Mr. Titla offered a traditional opening.

Review Committee members present –

Mr. Armand Minthorn – Chair

Ms. Heather Edgar

Ms. LindaLee (Cissy) Farm

Mr. Patrick Lyons

Mr. Dennis O'Rourke

Ms. Lauren Peters

Mr. Steve Titla

Designated Federal Officer present –

Ms. Melanie O'Brien, Manager, National NAGPRA Program, National Park Service

National Park Service/Department of the Interior staff in attendance –

Mr. David Tarler, Training, Regulations, and Civil Enforcement Coordinator, National NAGPRA Program, National Park Service

Ms. Mariah Soriano, Program Officer, National NAGPRA Program, National Park Service

Ms. Lesa Koscielski, Review Committee Coordinator, National NAGPRA Program, National Park Service

Ms. Sarah Glass, Notice and Grants Coordinator, National NAGPRA Program, National Park Service

Ms. Phoebe Coleman, Grant Support Contractor, National NAGPRA Program, National Park Service

Ms. Carla Mattix, Attorney-Advisor, Division of Parks and Wildlife, Office of the Solicitor, Department of the Interior

Persons in attendance during part or all of the meeting (names and affiliations as provided by attendees) –

Ms. Anne Amati, University of Denver Museum of Anthropology, Denver, CO

Ms. Tammy Becker, Gettysburg Foundation, Gettysburg, PA

Ms. Jan Bernstein, Bernstein & Associates, Denver, CO

Mr. Daniel Bringman, Gettysburg Foundation, Gettysburg, PA

Mr. David Downes, Office of International Affairs, Department of the Interior, Washington, DC

Ms. Erin Gredell, Yale Peabody Museum of Natural History, New Haven, CT

Mr. Jordan Jacobs, University of California – Berkeley, Berkeley, CA

Ms. Nell Murphy, American Museum of Natural History, New York, NY

Ms. Pinu'u Stout, Pueblo of San Felipe, New Mexico

Ms. Michelle Tellock, Hogan Lovells US LLP, Washington, DC

Mr. Adam Watson, American Museum of Natural History, New York, NY

Report: National NAGPRA Program Report

Ms. O'Brien provided a brief update on several matters considered by the Review Committee at its July 2016 meeting. The Review Committee heard a disposition request and made a recommendation to the Secretary of the Interior for culturally unidentifiable human remains from the Lake County Discovery Museum. On September 9, 2016, a letter was signed on behalf of the Secretary agreeing with the recommendation for disposition. In addition, the Review Committee heard and made recommendations on two requests for findings of fact and resolution of disputes. Notices for both recommendations were pending publication in the *Federal Register*. The minutes and transcripts of the meeting were due 90 days following the meeting and would be posted on the National NAGPRA website when complete. Finally, Ms. O'Brien stated that she would continue to work to fulfill other requests made by the Review Committee, and would provide an update at the December meeting.

Action Item: CUI Disposition Request – Gettysburg Foundation

Presentation

Mr. Daniel Bringman, Chief Operating Officer/Chief Financial Officer, Gettysburg Foundation, presented a request for the disposition of culturally unidentifiable human remains representing one Native American individual currently under the control of the Gettysburg Foundation to the Pueblo of San Felipe, New Mexico. In June 2014, a private auction was scheduled of a human cranium and Civil War era objects attributed to the Battle of Gettysburg that were recovered from Benner Farm at Gettysburg National Military Park. Following a public outcry, the auction was canceled, and the human remains and objects were donated to the Gettysburg Foundation. Forensic analysis indicated the human remains were of Native American ancestry, most closely associated with Indian tribes of the southwestern United States. The objects were determined to be unrelated to the human remains. Mr. Bringman gave a brief summary of the consultation process that ultimately resulted in a claim from the Pueblo of San Felipe, New Mexico, for the culturally unidentifiable human remains.

Ms. Pinu'u Stout, Natural Resources Director, Pueblo of San Felipe, New Mexico, stated that the Pueblo was prepared to move forward with the disposition process.

Review Committee Questions and Discussion

The Review Committee asked clarifying questions. In response, Ms. O'Brien stated that the human cranium was the only one of the human remains determined to be Native American, and no objects were determined to be associated with the cranium.

Review Committee Motion

Mr. O'Rourke made a motion that the Review Committee recommend to the Secretary that the proposed disposition of the human remains to the Pueblo of San Felipe, New Mexico proceed under the agreement. Mr. Lyons seconded the motion. The motion was passed by unanimous vote of the seven members.

Presentation: Department of the Interior International Repatriation Efforts

Mr. David Downes, Office of International Affairs, Department of the Interior (DOI), provided an update on the DOI's efforts to address concerns raised by Indian tribes regarding cultural heritage being held in foreign museums or sold at auction abroad. The DOI has committed to help support international repatriation and prevent wrongful acquisition, possession, or export of tribal cultural heritage. To inform these efforts, a letter and background information was sent to Indian tribes announcing a series of government-to-government consultations to identify concerns, activities, and possible actions. A copy of the documentation was provided to the Review Committee members prior to the meeting and made available on the National NAGPRA Program website. Mr. Downes stated the first consultation sessions were scheduled in September at the 2016 White House Tribal Nations Conference in Washington, DC, and at the 2016 Indigenous International Repatriation Conference in Albuquerque, NM. Mr. Downes stated that he would keep the Review Committee informed as future sessions were scheduled.

Mr. Minthorn stated that this issue was an important and challenging one, and asked for clarification of the current guidelines. Mr. Downes stated that while there are currently no uniform guidelines, the DOI works very closely with the Department of State (DOS) and the appropriate U.S. Embassy to support each request for assistance. The DOI works to raise public awareness, as well as awareness of foreign governments, on the special value of these objects and the reasons why they should not be privately sold. Mr. Downes summarized recent efforts in response to items proposed for auction in France, which resulted in suspension of the sale of a shield from the Pueblo of Acoma, New Mexico. Mr. Minthorn stated that there was a vital need for the development of guidelines so foreign governments were made aware of both tribal perspectives and the repatriation laws of the United States. In addition, Indian tribes in the United States have varying levels of experience with this issue, and should have the opportunity to share information. Mr. Titla agreed with the Chair's statements. Mr. Downes stated that the comments were helpful, and that he would continue to provide updates to the Review Committee.

Action Item: Discussion of the Review Committee 2016 Report to Congress

Ms. O'Brien stated that the members of the subcommittee drafting the 2016 report to Congress are Mr. O'Rourke, Mr. Lyons, and Ms. Peters. Mr. O'Rourke stated that the subcommittee would continue to work on the draft report to Congress, and as discussed at the July 2016 meeting, would:

- Highlight successes and barriers involving NAGPRA implementation presented to the Review Committee using as examples the successes of the Colorado Lands Repatriation and Reburial Workgroup and the BLM Wyoming State Office, and the challenges faced by the SRPMIC and the Four Southern Tribes of Arizona, as well as specific barriers encountered in working with specific museums and Federal agencies.
- Incorporate suggestions for improvements, such as the Alaska Federation of Natives' resolution and the recommendation by the Klamath Tribes that the NAGPRA regulations be revised to include certain deadlines.
- Expand on the implications of limited NAGPRA funding by providing specific examples of difficulties experienced due to the lack of financial resources, and including information on the total amount of grant funding requested compared to the actual amounts appropriated.
- Discuss issues involving Federal agency collections located in nonfederal repositories, in particular the DOI Museum Program collection survey and the Klamath Tribes' experience identifying collections through the culturally unidentifiable human remains database.
- Focus on a wider distribution of the report to include elected tribal officials, tribal historic preservation officers, intertribal organizations, and museum and scientific organizations.

The Review Committee agreed to also include the protocol of the University of Iowa, Office of the State Archaeologist as a successful model for addressing the disposition of culturally unidentifiable human remains and associated funerary objects removed from certain lands in Iowa. In addition, the subcommittee asked the DFO to provide focused statistics on NAGPRA implementation and the grants program. After Ms. O'Brien stated that the report to Congress includes a cover letter signed by the Director of the NPS on behalf of the Review Committee, the Review Committee agreed to include a similar cover letter signed by Chair Minthorn. Ms. O'Brien agreed to provide the requested statistical information and prepare the cover letter.

Subcommittee Discussions and Appointments

At the previous meeting, the Review Committee agreed on the following subcommittee appointments:

- Subcommittee on the report to Congress for 2016: members O'Rourke, Lyons, and Peters
- Subcommittee on the report to Congress for 2017: members Lyons, Edgar, and Peters (through September 2017, when her current term expires, unless she is reappointed)
- Subcommittee of the whole (which can communicate to discuss outstanding issues and report back to the full Review Committee at regular meetings)

Review Committee Motion

After discussion, Mr. Titla made a motion to form a subcommittee (members Farm, Edgar, Peters, and Titla) to review the transcript of the July 2016 meeting and subsequent related correspondence, and summarize the salient critiques of the Review Committee for future consideration by the Review Committee as a whole. Ms. Farm seconded the motion. The motion was passed by unanimous vote of the seven members. Ms. O'Brien stated that, under her role and responsibility as DFO, she agreed with and would support the subcommittee.

Action Item: Outstanding Meeting Items

At the previous meeting, the Review Committee noted several items that warrant future consideration. The Review Committee discussed the letter inviting Federal agencies to report to the Review Committee, and agreed to move forward. Ms. O'Brien stated she would prepare and send the letter on behalf of the Review Committee. In response to a question by Mr. Lyons, Ms. O'Brien stated that there continues to be correspondence between The Osage Nation and the State of Missouri on the November 2015 recommendation of the Review Committee. The Osage Nation plans to update the Review Committee at its December 2016 meeting.

Mr. Minthorn stated he was contacted by Mr. Tom Torma, Wiyot Tribe, California. Mr. Torma expressed disappointment with the Review Committee's decision at the July 2016 meeting, and asked if the decision could be reconsidered. Mr. Minthorn stated he informed Ms. O'Brien of the communication, and asked for clarification of the process. Ms. O'Brien stated she appreciated Mr. Minthorn's notification, and reminded the Review Committee and the public that all communication with the Review Committee should go through the DFO in order to ensure a uniform response. Ms. Mattix stated that the Review Committee's findings and dispute procedures provide for reconsideration only in light of substantial new information. If any party has such information to present to the Review Committee, the party should contact the DFO and follow the process outlined in the Review Committee's findings and dispute procedures. Mr. Titla stated that he received a similar communication from the Wiyot Tribe, California, and recommended to the individual that the Wiyot Tribe communicate with the DFO. Mr. Minthorn asked Mr. Titla to forward any email correspondence on this matter to Ms. O'Brien, and to prepare and send her a summary of the communication in an email. Mr. Minthorn asked Ms. O'Brien to respond to the Wiyot Tribe, California, detailing the next steps should the tribe decide to pursue this matter.

Ms. O'Brien stated that Mr. Frank Wozniak, USDA Forest Service, would be retiring after serving for many years as the NAGPRA Coordinator for the Forest Service. Mr. Minthorn asked Ms. O'Brien to convey the Review Committee's hope that the Forest Service would continue the high standard of reporting established by Mr. Wozniak. The Review Committee asked Ms. O'Brien to send a "happy retirement" letter to Mr. Wozniak expressing appreciation for his consistent presence and significant contributions to the Review Committee.

Traditional Closing

Mr. Armand Minthorn offered a traditional closing.

Meeting Adjournment

The meeting was adjourned at 4:03 p.m., by Ms. O'Brien.

Certified –



Ms. Melanie O'Brien
Manager, National NAGPRA Program
Designated Federal Officer, Native American Graves Protection
and Repatriation Review Committee

November 22, 2016

Date

Approved on behalf of the Review Committee –



Mr. Armand Minthorn
Chair, Native American Graves Protection
and Repatriation Review Committee

November 22, 2016

Date