

“Tweaking the NAGPRA Rules”:
Native America Calling interview with Sherry Hutt on April 7, 2010.
Also with Bambi Kraus, NATHPO

Hutt says:

Rule takes “hold” off CUHR

CUHR determination made b/c museum/agency didn’t have enough info--b/c of bad collection practices, records not held as they “should have” been

82 requests for disposition to RC, involving about 4000 individuals

New rule says:

-take all the remains that you “know” were “exhumed from tribal lands” and “go ahead and put them in a published notice” identifying the tribal land owner, and returning remains to tribe with tribal land ties for “respectful reburial” if tribe desires.

-then go back to CUHR list (where museum/agency have “determined that they don’t have enough information”) & see if remains from aboriginal lands (“which cover most every inch of our country”), then “move those individuals into a published notice and indicate the tribes based on aboriginal [territory]”

Link based on tribal land claims and aboriginal territory rather than cultural affiliation. “We want to enable those tribes to receive those remains if they so desire. And the way you do that is you get those individuals into a published notice. That establishes the rights of the tribes to receive those individuals.” New regs “...adds more focus to the list.”

Interviewer asks why rules took so long

Hutt says

The 1995 regs contemplated that this new rule would happen (b/c there was a reserved section set aside)

RC involved in developing regs in 2000 and 2003.

Tribes of opinion that rule not move forward until lists were put up for public view--b/c how many could be culturally affiliated and taken off CUHR list?

When list put up, 5000 individuals moved off CUHR and into affiliation & notices

Another 4000 given disposition through Secretary

“Now moving forward w/ this rule... those museums and federal agencies that did not have the opportunity or take the opportunity to consult w/ tribes in coming to that inventory and making their cultural affiliation determinations, if they take those culturally affiliated and move them into consultation with tribes, they may develop the kind of information that could move as many as 80% of those into repatriation as culturally affiliated and not as unidentifiable.” “Consultation w/ tribes, developing the full picture of information, is key to the whole NAGPRA process.”

Kraus points out that all these CUHR were individuals with names who had important roles and are their ancestors.

Interviewer asks if geographic basis is best way to do this, b/c of tribal migrations over time

Hutt references “who are the CUI”? study. Said study was done by an archaeologist who used the data from the CUHR website and consulted with other archaeologists on the remains and did a statistical analysis on which remains were historic and prehistoric. “The conclusion was that about 80% of individuals on the CUI database could be affiliated using the NAGPRA standards.” “We really need to be careful as we look at that list that we apply the NAGPRA standard, which is a reasonable basis for determining a shared group identity. And if you take that information and you say ‘what is the reasonable basis for making a connection between an earlier group and a present-day tribe,’ that could put about 80% of those individuals into cultural affiliation. So part of this rule, this new rule, gives you a process to deal w/ those who are truly unidentifiable but it also prompts you to go back to the 1995 regs and if you haven’t done your consultation with tribes you simply must do so. Because...that so many of these individuals, as a result of consultation, could be culturally affiliated and repatriated on that basis.”

Bambi points out that museums and agencies were REQUIRED to do consultations in the 1995 regs, and that’s what led to determination of affiliation or CUHR. To suggest that we are still doing the basic rudimentary data-sharing this late in the process is part of the frustration that tribes have with the NAGPRA process.

Caller expresses concern about geographic basis for awarding disposition due to migrations.

Interview shares same concern, as well as willingness and capacity for tribes to do this.

Kraus says burden has been put on tribes to enact law, and capacity of tribes was limited due to economic possibilities for first several years, and time leading up to 1995 deadline. Encourages people to submit comments. One potential weakness in new rule is that it doesn’t require return of funerary objects, which is a change from previous DOI policy and is inconsistent with common law and the 1995 regs.

Hutt says funerary objects isn’t a change in policy, is part of the law. When law was drafted it was a hot topic and the law talks about culturally affiliated human remains and AFOs, but the CUHR rule only addresses HR. Regs can’t go beyond statute. That’s why it’s so important to affiliate the remains & repatriate them rather than have disposition as CUHR.

Caller from Hopi also expresses concern about geography and migration patterns. Repatriations require inter-tribal collaborations.

Interviewer wonders if DNA could help with identifications.

Interviewer wonders why museums want to retain these collections, asks if anyone can name one benefit that comes from scientific study of these bones.

James Riding In joined show, expresses concern that only 25% of remains have been repatriated, even 20 years later, as well as remains that are still at Smithsonian. Resistance to affiliation on part of museums, so that is why remains are listed as CUHR. Leaving this in the hands of museums could delay repatriation & disposition. Will continue to fight for funerary objects to be returned with remains. National NAGPRA using wrong approach when using cultural property rights, but it isn’t cultural property rights it’s human rights and Indian rights. Also questions why study human remains

and what benefit there is from it. Outcome is harmful to spirituality, Indian communities (social problems).

Interviewer says it's important to bury ancestors the way that they want rather than the way that other people and cultures say that they should be handled.

Caller who is Zuni says NAGPRA was created as a one-size-fits-all solution, and distrust/heartache is result of having to prove affiliation. Wonders why remains are retained and why they were acquired in the first place--some were stolen, not "found". Attributes collecting to idea of "vanishing race."

Hutt says that burden put on tribes by NAGPRA, the office tries to simplify the process and make it common sense, using the NAGPRA standard, which is reasonable standard. Points out that affiliation is made on cultural, not scientific, standards because scientific standards can be "repugnant" to tribes.

Rule is published w/ comment period that ends on May 14. Rule IS a final rule on May 14. Leadership in DOI unanimously wanted the rule finalized. If there are some things that are confusing or should be amended, then the comment period is the time to specify those concerns. Concerns will be used for future amendments.