



Smithsonian

May 14, 2010

Dr. Sherry Hutt  
Manager  
National NAGPRA Program  
National Park Service  
1201 Eye Street, NW  
8th Floor  
Washington DC 20005

Dear Dr. Hutt,

Since passage of the NMAI Act (PL 101-185 [Nov. 28, 1989]) and the NAGPRA statute (25 USC. 3001 et seq. [Nov. 16, 1990]), the Smithsonian has been committed to the return of American Indian ancestral remains to descendant communities. The National Park Service has developed new regulations for culturally unidentifiable remains (CUI) to expedite their disposition. However, the resulting process creates a great risk that human remains will be transferred to communities other than the communities of origin, thereby undermining the NAGPRA's purpose of returning remains to the descendant communities.

According to the National NAGPRA Office (May 23-24, 2009, NAGPRA Meeting Minutes, p. 17), approximately 80% of remains listed as CUI in museum inventories "could be identified as to geographic location and time depth, or they had been found together with objects of material culture. The human remains belonging to these groups could reasonably be culturally affiliated." The analysis indicates that there is a high potential to identify culturally affiliated human remains from among the CUI by additional consultation and research by museums and tribes. In addition, the continuing development of new technologies and research methods will provide new evidence for cultural affiliation and the number of remains on the CUI list will steadily decline. The regulation, however, favors speed and efficiency in making these dispositions at the expense of accuracy in making sure the remains are returned to the proper descendant tribe.

The NAGPRA regulations for CUIs would make these remains subject to claim by any federally recognized tribe. In fact, a federally recognized tribe could conceivably claim all CUIs at every museum in the country under the regulations, not only those to which they may have a relationship. Further, under the proposed regulations, such claims would re-initiate consultation with all tribes from aboriginal lands where the remains originated. Tribes may be inundated with consultation requests. Because each tribe determines when it is ready to participate in the repatriation process based on its own priorities and resources, some may not have the ability to respond quickly and substantively to all such consultation requests. This could well result in the return of culturally identifiable remains to unrelated tribes that simply have greater means and

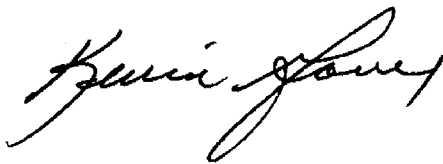
resources than rightful claimants. The process becomes uneven and even unruly, creating a real possibility of human remains being transferred to communities having no relationship to the remains in question.

At the very least, regulations for the disposition of CUIs should specify that a tribe may only claim remains from its own aboriginal lands or traditional territory. Without such a stipulation, numerous tribes could claim the same remains. These competing claims will complicate and lengthen consultations. Rather than expediting repatriation, the process described in the regulation could well delay the rightful disposition of remains to descendant tribes.

To date, NAGPRA's implementation has resulted in broad consultation activities and development of positive working relationships between many museums and many tribes. As suggested here, the proposed regulations for the disposition of CUIs threaten to nullify those gains by allowing museums to return remains to any claimant, including those who are not truly descendant communities, thus depriving some tribes of the right to claim and re-inter their ancestors. These relationships should not be disrupted. To the extent that particular institutions have not met their obligations under the statute, we encourage the Department to find other means for expediting compliance.

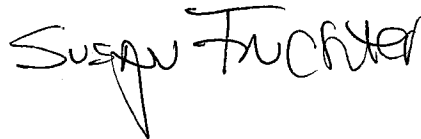
We are mindful of the need to accelerate the process of returning remains to their communities of origin, and we are aware of the frustration felt by many Native American people. The Smithsonian Institution subscribes to the purposes of the repatriation laws. Hopefully all can agree, though, that identifying the correct community of origin is a critical and virtuous goal of the legislation. The scientific and cultural issues are complex and deserving of a thoughtful dialogue among tribes and cultural and scientific institutions to establish processes that encourage accuracy as well as expedition. For our part, we commit to such a dialogue, and we believe strongly that methods and processes can be found that will both expedite repatriation of human remains and ensure repatriation to actual descendant communities.

Thank you for considering our comments. We are available for any further consultation you might find helpful.



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Kevin Gover  
Director  
National Museum of American Indian  
Smithsonian Institution



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for Cristián Samper  
Director  
National Museum of Natural History  
Smithsonian Institution