



NATHPO

NATIONAL ASSOCIATION OF TRIBAL HISTORIC PRESERVATION OFFICERS

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May 12, 2010

Sherry Hutt, Manager
National NAGPRA Program
National Park Service
Docket No. 1024-AD68
1201 I Street NW, 8th Floor
Washington, DC 20005

Re: Comments on RIN 1024-AD68

Dear Ms. Hutt:

The National Association of Tribal Historic Preservation Officers (NATHPO) is a not-for-profit membership association of federally-recognized tribal government officials who are committed to preserving tribal cultures and practices. Tribal Historic Preservation Officers (THPOs) perform a variety of duties for their respective tribal governments. Most are responsible for implementing the Native American Graves Protection and Repatriation Act (NAGPRA).

On October 16, 2007, the Department of the Interior published a proposed regulation for 43 CFR Part 10, RIN 1024-AD68, Native American Graves Protection and Repatriation Act Regulations – Disposition of Culturally Unidentifiable Human Remains. 72 Fed. Reg. 58582-58590. NATHPO submitted written comments to the proposed rule on January 14, 2008. On March 15, 2010, the Department of the Interior published a final regulation for RIN 1024-AD68, Native American Graves Protection and Repatriation Act Regulations – Disposition of Culturally Unidentifiable Human Remains. 75 Fed. Reg. 12378-12405. The Final rule had the unusual feature of an additional period for public comments.

NATHPO supports the published Final rule and this important step toward fulfilling the intent of Congress. We are pleased with the Department's progress to facilitate the disposition of culturally unidentifiable Native American human remains and wish that it had not taken almost 20 years for this reserved section of the act to be promulgated as a Final rule.

Based on statements we have read – in the press and in other submissions on this rule – we feel that we must state for the record that Native Americans are not “specimens,” who can be studied at will without our consent, whether we are 50 or 150 years old. Native Americans today have legal rights, including the right to bury or inter our relatives and ancestors, a right that every other American citizen takes for granted. The Final rule specifies how Indian tribes and Native Hawaiian organizations may use the act to repatriate our ancestors who are being held in storage by museums and Federal agencies that lack the right of possession.

Suggested Improvements to Final Rule:

1. Associated Funerary Objects - 43 CFR 10.11(c)(1)

NATHPO strongly objects to the Department of the Interior's decision to exempt associated funerary objects from the disposition requirement at 43 CFR 10.11(c)(1). The Department's decision is contrary to the Common Law which holds that funerary objects that are found in association with claimable human remains are not considered "treasure trove," but are the property of the claiming individual or organization. See Charrier v. Bell, 496 So.2d 601 (La. App. 1986). It is inconceivable that the very regulations that identifies the proper claimants for Native American human remains for which cultural affiliation was not determined should simultaneously strip the claiming Indian tribes and Native Hawaiian organizations of the right to the objects that were carefully and lovingly laid with them. Since statutes in derogation of the common law are to be narrowly construed, the Common Law principal must prevail. Further, the Department's decision to exempt associated funerary objects from the disposition requirement of 43 CFR 10.11(c)(1) is also poor public policy for it sanctions the wholesale looting of Native American burial sites located on non-Federal lands. For these reasons, we strongly recommend the following changes:

- At 43 CFR 10.11(c)(1), after the phrase "must offer to transfer control of the human remains," insert the phrase "and associated funerary objects"
- Delete 43 CFR 10.11 (c)(4) and renumber the subsequent subsections.

2. Timelines - 10.11 (d)(1)

While the regulations require that a museum and Federal Agency has 90 days to consult once a request for disposition has been made from a Tribe, it does not provide any requirement for when a Notice of Inventory Completion is to be published or a mandatory timeframe for the offer to transfer control. We suggest a timeframe not to exceed 180 days that will provide museums and Federal agencies 90 days to initiate consultation under 10.11 (b)(1)(i) and an additional 90 days to finish the consultation and prepare the Notice of Inventory Completion. Thus, we suggest adding the following language:

- 10.11 (d)(1): "*Notification.* Disposition of culturally unidentifiable human remains and associated funerary objects must take place within 180 days of receipt of a written request that satisfies the requirements of paragraph (c)(1) of this section. Disposition of culturally unidentifiable human remains and associated funerary objects under paragraph (c) of this section may not occur until at least 30 days after publication of a notice of inventory completion in the Federal Register as described in § 10.9."

3. Culturally Unidentifiable Native American Inventories Database

To the extent that the Department did not affect the changes NATHPO included in our comments of January 14, 2008, to improve the Culturally Unidentifiable Native American Inventories Database (CUNAIID), and in consideration of the importance of this database for this section of the act, we elaborate on our earlier comments and request re-consideration of these important improvements.

The Review Committee's inventory of culturally unidentifiable human remains and associated funerary objects, known as the Culturally Unidentifiable Native American Inventories Database, is on the NPS NAGPRA Program website and it is cumbersome and difficult to use and could be easily improved to include helpful information and links.

3. Culturally Unidentifiable Native American Inventories Database - continued

Specific recommendations on how to improve the Review Committee's inventory and database:

- a. As currently configured, the CUNAID does not list the NAGPRA contact person and their contact information for each museum and Federal agency, information that the National Park Service National NAGPRA Program may already have on record. Without having easy access to this important information, the burden is placed on Indian tribes and Native Hawaiian organizations to search for this information on their own via some other means, thus adding time and effort to their task.
- b. Currently, the CUNAID is simply a database that lacks a glossary or any "help" functions. It would be a public service for the Interior Department to create and include an online tutorial on how to use the database -- a common feature on most websites -- and also include a glossary that explains the terms used most frequently in the CUNAID, such as "MNI" and "AFO."
- c. The CUNAID entries do not currently clearly identify whether a Federal agency is housing its collection(s) at non-federal institution(s). This important information is simply not available from viewing the database. Thus, it is almost impossible to discern whether or not the repository is reporting on a museum or Federal agency collection. A more open and transparent system is needed so that Indian tribes and Native Hawaiian organizations know which entity to contact for more information about each entry.
- d. Include important, relevant and timely information in the database, such as:
 - Original date of entry into database;
 - Date(s) of any change to any entry and for what reason;
 - Name and contact information of person requesting database changes; and
 - Who to contact for more information for each entry (not just the NPS staff responsible for database maintenance).Without this information, Indian tribes and Native Hawaiian organizations are not truly part of the consultation process and the sharing of information.
- e. Define the search terms currently listed in the CUNAID, such as "Show unresolved only," and add a usable search function to the database so that Indian tribes and Native Hawaiian organizations may search by Name and sort by Date (entry/ies in CUNAID).
- f. Link the CUI Database to the Notices of Inventory Completion and Notices of Intent to Repatriate

Thank you very much for the opportunity to comment on this important process. On behalf of NATHPO, we look forward to being kept apprised of your work and timelines. Please do not hesitate to contact me if you have any questions or need additional information.

Sincerely yours,



Reno Franklin, Kashia Pomo Tribe and
NATHPO General Chairman