



SOCIETY FOR AMERICAN ARCHAEOLOGY

July 30, 1997

Mr. Charles Wilson, Superintendent
Chaco Culture National Historical Park
Star Route 4, Box 6500
Bloomfield, NM 87413

Re: Reburial of Human Remains and Cultural Items from Chaco Culture National Historical Park

Dear Mr. Wilson:

The Society for American Archaeology (SAA) would like to express its concern over what we understand is the planned reburial by the National Park Service (NPS) of cultural items from Chaco Culture National Historical Park in the absence of any determination of cultural affiliation. While we fully support appropriate repatriation under NAGPRA, we are very concerned that a federal agency would bypass the very statute designed to effect repatriation at a national level. Our goal with this letter is not to prevent or delay the repatriation or to argue for or against the particular affiliation of any tribe with the prehistoric people of Chaco. Instead, our objective is to argue that NAGPRA provides the appropriate process to protect and balance the many competing interests in the past and simply to urge NPS's conduct to comport with this process.

With more than 6000 members, SAA is the largest professional organization devoted to the study of the archaeology of the Americas. SAA has been involved with NAGPRA since its inception. We testified before both the House and Senate on the draft bill, have provided comments on the regulations and input to the NAGPRA Review Committee in their deliberations on culturally unaffiliated and unidentified remains. We supported NAGPRA as legislation and continue to work toward its effective implementation.

Because of the difficulties in establishing cultural affiliation, we appreciate why assuming that cultural affiliation exists between the prehistoric group that occupied Chaco and one or more of the tribal signatories of the proposed MOA might seem attractive. Premised upon this assumption and tribal consent, reburial by NPS might appear to be a simple solution. However, the approach raises two concerns. First, it runs counter to Congressional intent and the process laid out in the Regulations for determining cultural affiliation. Second, it ignores some aspects of public interest.

No one disputes that determining cultural affiliation is conceptually and legally confusing. Nevertheless, it must be a legal conclusion based on applying criteria that are given in NAGPRA's regulations (Sec. 10.14, 60 Fed. Reg., 1995, pp. 62167-68). Museums and federal agencies apply the standard that these regulations provide to resolve questions of cultural affiliation.

NAGPRA attempts to balance tribal interests with other public interests, such as those of education, museums, and science. It does not mandate reburial or repatriation of all human remains and cultural items. Instead, it conditions return (in most cases) on cultural affiliation. In the words of the House report on NAGPRA (p. 14), the definition of cultural affiliation "is intended to insure that the claimant has a reasonable connection with the materials." Despite the apparent reasonableness of the assumption that cultural affiliation exists somewhere among these tribes, one does not really know what the evidence will show unless it is collected and analyzed.

If remains and objects that are not affiliated with a modern group are reburied, the other public interests are not served because these materials are no longer available for study or public education. If affiliation is not reasonably established, a danger exists that a truly affiliated group could be outside the present circle of claimants. The record shows that NAGPRA is very concerned about this possibility and takes pains to ensure that all potentially affiliated groups are informed of the process of repatriation through such things as published notices and agency consultation. Tribes might also be concerned that including groups that are not, in fact, affiliated within the decision-making process may establish precedents that later dilute the affiliated tribes' authority. The danger of an inappropriate affiliation, here and as a general precedent for future decisions, is greatly exacerbated if the NAGPRA notification and decision making processes are circumvented.

Also, even if the truly affiliated tribe (or tribes) is a signatory to the agreement, it may well be that the proposed remedy (i.e., reburial by NPS) does not best serve the particular group's interests. Although that group is willing to accept the collectively agreed upon disposition, it might decide on a significantly different outcome if it had sole control, under NAGPRA, of the remains and object.

The proposed reburial certainly would simplify matters for NPS, which undoubtedly is reluctant to choose among interested tribes. The tribes may also feel that this is the easiest way to deal with a difficult situation. However, we feel that such a reburial would set a very dangerous precedent. Most agencies and museums would probably like to avoid choosing among tribal claimants. Museums and federal agencies are likely to liberally adopt the NPS strategy of avoiding determinations of cultural affiliation. If so, the administrative convenience could subordinate other public interests that motivated NAGPRA. If an agency makes unpublicized repatriation agreements with some tribes, then other interested tribes might be excluded from the process of consultation and determining cultural affiliation. It should not be ignored that agencies will have strong incentives to get such agreements signed and, in this sort of negotiated situation, would be able to attempt to influence or coerce tribal agreements on a quid pro quo basis.

Such a procedure lacks the evidentiary rigor intended by NAGPRA to inform and facilitate the appropriate disposition of human remains and funerary objects. The June 27, 1997 written Opinion in the Kennewick Man case, Bonnichsen et. al. v. U.S., Civil No. 96-1481-JE, reflects the importance of weighing all evidence necessary to establish cultural affiliation and applying

the relevant legal standards under NAGPRA (see Bonnichsen et. al., opinion dated June 27, 1997 at page 32).

Finally, like museums, federal agencies have fiduciary duties to the archaeological collections that they control. These duties are well established in law and regulation. For example, Curation of Federally-Owned and Administered Archeological Collections (36 CFR 79, 1990), provides regulations on the curation of archaeological collections, and Na Iwi v. Dalton, 894 F Supp 1397 (1995), upholds a federal agency's investigation into its collection pursuant to its completion of the NAGPRA inventory and its inquiry into cultural affiliation. In light of the fiduciary duties of loyalty and care, federal land managers cannot dispose of these collections at will, but rather, they must do so according to the law. It appears to us that NAGPRA, which incorporates these duties into its design, provides the legally appropriate procedure for the disposition of important collections.

Federal agencies, including NPS bear the responsibility to protect both tribal and other public interests. We believe that adhering to the procedures and standards that NAGPRA provides is the best way to accomplish this goal. Thus, we ask that NPS reconsider its approach to repatriation in this case. We believe that the proposed MOA should be abandoned and NPS proceed with repatriation of materials from Chaco Culture National Historical Park as NAGPRA stipulates.

We thank you for your consideration of this matter. Please contact me if we may be of any further assistance.

Sincerely,



Vincas Steponaitis, Ph.D.
President



William Lovis, Ph.D.
Chair, Committee on Repatriation

cc: Frank McManamon, Departmental Consulting Archeologist, National Park Service
Tessie Naranjo, NAGPRA Review Committee
Western Archaeological and Conservation Center, National Park Service
Southwest Regional Office, National Park Service
Mr. Petuuche Gilbert, Realty Officer, Pueblo of Acoma
Mr. Rex Salvador, Lt. Governor, Pueblo of Acoma

Mr. Joseph Quintana, Governor, Pueblo of Cochiti
Mr. Leigh Jenkins, Director, Hopi Cultural Preservation Office
Mr. Alvino Lucero, Governor, Pueblo of Isseta
Mr. Randolph Padilla, Governor, Pueblo of Jemez
Mr. Will Herrera, Tribal Secretary, Pueblo of Laguna
Mr. Roland Johnson, Governor, Pueblo of Laguna
Ms. Lela Kaskalla, Governor, Pueblo of Nambe
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Mr. Albert Hale, President, Navajo Nation
Mr. Gerald Nailor, Governor, Pueblo of Picuris
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Mr. Lawrence Troncosa, Governor, San Felipe Pueblo Council
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Mr. Alex Lujan, Governor, Pueblo of Sandia
Mr. Leonard Garcia, Governor, Pueblo of Santa Ana
Mr. Gilbert Tafoya, Governor, Pueblo of Santa Clara
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Mr. Mike Concha, Governor, Pueblo of Taos
Mr. Fredrick Vigil, Governor, Pueblo of Tesuque
Mr. Stanley Pino, Governor, Pueblo of Zia
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