



SOCIETY FOR AMERICAN ARCHAEOLOGY

April 6, 1999

Honorable Bruce Babbitt
Secretary of the Interior
U.S. Department of the Interior
1849 C Street NW
Washington, DC 20240

Re: Museum Requests for Extensions for NAGPRA Inventories

Dear Secretary Babbitt:

On behalf of the Society for American Archaeology (SAA), I am writing to urge the Department to grant extensions for the completion of inventories required under the Native American Graves Protection and Repatriation Act (NAGPRA) to those museums that have demonstrated a good-faith effort to comply with the law.

The Society for American Archaeology (SAA) is the leading organization of professional archaeologists in the United States. Starting in 1989, SAA led the scientific community in working with congressional staff on the language of NAGPRA and helped form a coalition of scientific organizations and Native American groups that strongly supported its enactment. Since that time, SAA has closely monitored its implementation and has consistently provided comment to the Department of the Interior and to the NAGPRA Review Committee. We urge our members always to work toward the effective and timely implementation of the letter and the spirit of the Act.

Through the inventory process, museums, in consultation with tribes, assess the cultural affiliation of human remains and associated funerary objects with modern tribes. When a culturally affiliated tribe is identified, repatriation can occur upon request of that tribe. While Congress felt that the completion of these inventories was an issue of considerable urgency, it also felt strongly that these inventories must be done carefully with full consultation of the tribes in order that the appropriate tribe be identified. For museums with extensive collections that have taken their responsibilities under the Act seriously, this has represented an enormous undertaking (requiring the expenditure of large amounts of staff time and money). In providing for extensions, Congress recognized that, even with a concerted effort, it might not be possible for all of the inventories to be done within the statutory deadline.

We recognize that some tribes have expressed frustration with the delay. However, to arbitrarily deny extensions to museums that have been working hard toward the completion of their inventories would be counterproductive to the intent of NAGPRA as well as to any goal of repatriation. When inventories are done carefully and with thorough consultation, museums find it is possible to assign cultural affiliation to remains that, with a less intensive effort, would be deemed "culturally unidentifiable." If no culturally affiliated tribe is identified during the inventory process, repatriation on request cannot occur. Instead, a very much larger burden is placed on a tribe to challenge the museum's finding and to show that a preponderance of the evidence supports its affiliation. Given the latitude provided by the law, it seems inevitable that blanket denial of extensions would lead to more remains being placed in the problematic "culturally unidentifiable" category. Further, by cutting short ongoing and productive consultations, such a denial would do a disservice to both the tribes and the museums.

In making your decision, we suggest that you consider three additional points.

- At its last meeting in Santa Fe, the NAGPRA Review Committee, twice discussed the issue of extensions. The committee seriously entertained a recommendation that extensions be denied only in cases where a museum's good faith could reasonably be questioned. After some discussion, the committee failed to endorse a recommendation by a coalition of tribes that all extensions be denied. The sense of the committee seemed to be that if a good-faith effort was demonstrated, extensions should be granted.
- Both testimony to the NAGPRA Review Committee and formal findings of the committee have made it abundantly clear that, by far, the largest inventory compliance problems lie with a number of federal agencies (including units within the Department of the Interior). Concerns with compliance are most productively directed at these agencies rather than at museums that are making a good-faith effort to comply with NAGPRA.
- Despite a statutory requirement that the Department issue regulations for NAGPRA within one year, regulations were issued more than five years after enactment--indeed, after the statutory deadline for inventories had passed. Thus, the museums' already-difficult task of completing the inventories was further complicated by their uncertainty concerning the inventory requirements that would appear in the Department's regulations.

SAA strongly supports the implementation of the letter and the spirit of NAGPRA and believes that at this point, it is appropriate for the Department to set a relatively high standard for what constitutes a good-faith effort. However, we believe that where museums have been working very hard to complete their inventories in a conscientious manner, to categorically deny requests for extensions would be contrary to the objectives of NAGPRA and damaging to productive cooperative arrangements between tribes and these museums.

Thank you for your consideration of our thoughts on this issue. Please contact me if we can provide any further information.

Sincerely,

/s/

Keith W. Kintigh
President

cc:

Mr. Donald Barry, Assistant Secretary, Fish and Wildlife and Parks
Mr. Robert Stanton, Director, National Park Service
Dr. Francis P. McManamon, Departmental Consulting Archaeologist