



SOCIETY FOR AMERICAN ARCHAEOLOGY

Questions and Answers Regarding HR 2893 Testimony

*Prepared by the Committee on Repatriation
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Because NAGPRA is a very complex and sometime vague piece of legislation it is not always straightforward to understand. This makes it particularly difficult to evaluate the effects of the proposed amendment, H.R. 2893. To assist with this, the SAA Committee on Repatriation has prepared the following questions and answers about H.R. 2893. We hope that they will serve to clarify the effects of the bill, and to stimulate discussion on the principles involved.

Q: While it may not be perfect, NAGPRA appears to be working. Why has SAA reopened this issue?

A: SAA did not initiate this legislation. It came from Representative Doc Hastings of Washington in whose district the Kennewick skeleton was found. As we understand it, his purpose in introducing this legislation was to remedy what he sees as a general problem with NAGPRA that was exemplified by the inability of scientists to study the ancient Kennewick remains that have great scientific importance. SAA has analyzed the amendment and supports it because it would enhance the opportunities for scientific studies and bring NAGPRA closer to SAA's policy without undoing the important and positive effects of NAGPRA.

Q: What is SAA's policy?

A: The [full text](#) is on the SAA web site, but it basically recognizes the legitimacy of both scientific and Native American interests in the material remains of the past, and calls for a case by case balance of scientific and traditional values, where scientific value is associated with the ability to contribute systematic knowledge and traditional value is indicated by strength of cultural or biological relationship.

Q: Does H.R. 2893 destroy NAGPRA, as has been charged?

A: No, but it does shift the terms of the compromise somewhat; that, of course, is its intent. SAA helped win the passage of NAGPRA, believes that it has accomplished important objectives, and continues to support it. SAA would fight the elimination of NAGPRA or any bill that fundamentally destroys the compromise of public and traditional interests that NAGPRA establishes. The Hastings bill does not in any way diminish the ability of any tribe to obtain repatriation of affiliated human remains or other cultural items.

Q: But isn't scientific recording and study, which are facilitated by the bill, contrary to the intent or spirit of NAGPRA?

A: Not at all. While NAGPRA was intended to remedy legitimate grievances of Native Americans, it was always viewed as a compromise that recognized both Native American interests and those of the public, as represented by the scientific, museum, and educational communities. The legislative history is crystal clear on that point. NAGPRA does not forbid or discourage study. It does say that the NAGPRA should not be construed as an authorization for new studies. That phrase was added, at least in part, to make clear that NAGPRA would not result in large costs to the federal government for additional studies. At the time it was widely believed that an Office of Management and Budget (OMB) assessment that the legislation would entail any substantial expense to the Federal government would have killed the bill, regardless of its merits.

Q: Why is any change in NAGPRA desirable?

A: There are several answers here. We'll get into some of the issues in subsequent questions, but one reason is to simply clarify some aspects of the law. The implementation of the law, particularly section 3 dealing with ongoing excavations on federal lands, has been inconsistently implemented by Federal agencies. By clarifying the intent of Congress, the bill can lead to a more consistent implementation and help keep procedural issues out of the courts.

Another reason is to make the scientific community more of a partner in the implementation of the NAGPRA. Now, most aspects of NAGPRA are implemented by museums and federal agencies in which scientific interests are often not well represented.

Q: The recording and study provisions that apply to ongoing excavations on Federal land the addition of subsection f to section 3 refer only to "cultural items." Does that mean human remains are not included?

