



January 20, 2016

Ms. Melanie O'Brien
Manager, National NAGPRA Program
National Parks Service
United States Department of the Interior
1201 Eye Street NW Room 846
Washington, DC 20005

Dear Melanie:

On November 18–19, 2015, the NAGPRA Review Committee (RC) met in Norman, Oklahoma. Four members of SAA's Committee on Repatriation attended the meeting. They met on November 19 to compare meeting notes in light of the concrete suggestions that SAA offered the National NAGPRA Program (NNP) in its August 31, 2015, letter. This communication summarizes their observations.

There was unanimous agreement that overall, the Designated Federal Official's (DFO) tone was far more balanced and respectful than that of her predecessor. Similarly, the tone of the RC members generally was more respectful. Despite this improvement, SAA remains concerned about several issues, those of greatest concern are (1) lack of DFO responses to correct inaccurate statements about details of the law during the meeting; (2) "moving goalposts" of NNP's expected work (and workload).

(1) Review Committee Meeting Process

SAA's August 2015, letter suggested the DFO begin each meeting by reviewing the RC's role, as this reminds all participants of the nature of the committee's work. With two new RC members, such a review would have been especially valuable. While the DFO explained the composition of the committee (3 museum/scientific representatives, 3 tribal representatives, and 1 consensus nominee), neither she nor Counsel stated its statutory role or responsibilities.

- The SAA also asked that the DFO or Counsel correct misapprehensions of the law and its regulations, noting when members' recommendations for RC action did not fall with its statutory authority and/or did not base its decisions on the statute and regulations. For example, two RC members asserted that NAGPRA consultations must be in-person meetings. While some ambiguity concerning in consultation per se exists in the statute, as consultation is not defined in the statute and regulations, but neither do these require a particular form of consultation. For the inventory, "Consultation *may* be initiated with a letter, but *should* be followed up by telephone or face-to-face dialogue" (emphasis added). SAA is concerned that, failing a nuanced and correct reading of the statute and regulations by NNP staff, such member opinions may be interpreted by new RC members as fact.
- While we appreciate that the DFO and Counsel might not have wanted to appear too heavy-handed during the first meeting of the newly constituted RC, SAA believes there are tactful ways of focusing on the statute and regulations to clear up misconceptions.
- SAA also suggested that, to ensure that the RC is well-informed and prepared in advance of each meeting, the DFO develop a firm policy for submitting documentary materials in a timely manner and that the deadlines be enforced. At the November RC meeting, substantial new information and testimony were introduced during the request for disposition of culturally unidentifiable human remains. Such novel information complicates the RC's to make a measured recommendation, and SAA repeats their recommendation for a firm deadline.

(2) “Moving Goalposts” and NNP Workload

Though the RC has no oversight role when it comes to violations of NAGPRA, the DFO routinely updates the RC on civil penalty investigations as part of the annual report on the activities of the NNP. This last November, the RC Chair stated that museums found to be out of compliance should “stay on [the Committee’s] radar” and be “strongly invited” to come before the RC to provide updates on their progress. It would have been especially helpful for the DFO or Counsel to remind RC members that the RC has no oversight role when it comes to violations of NAGPRA, and that the DFO’s updates are presented as a courtesy.

Likewise, the RC is not charged with oversight of international repatriation, nor does NAGPRA contain any provisions about these matters. While SAA supports efforts to develop an official process for international repatriation, the NAGPRA RC meetings are, by definition, not the forum for extended discussions or tasking on this matter.

By the same token, SAA holds that NNP’s production and updating of formerly drafted reports, both compiled at an earlier RC’s request,¹ stretches NNP staff time to produce reports on compliance not required by the statute or regulations. These reports also imply that museums/agencies are out of compliance, although they fully complied with the law at the time the inventories are submitted. This is an example of “moving goalposts” in a matter over which the NNP is not tasked with oversight by law. Such work diminishes NNP’s ability to focus on its core functions with its limited staffing.

We appreciate that some of these “corrections” to RC members’ misapprehensions may most tactfully and effectively conveyed to those whose seem to misconstrue the RC’s purview *outside* of the public meeting, at least initially. However, we believe that staying closer to the law and regulations is the path forward for assuring balance and transparency for all concerned.

Summary

In sum, SAA observers found the first meeting of the new RC reflected a considerable improvement in tone and orientation over those of the previous cycle. However, from our point of view as one of the stakeholders in assuring a balanced and transparent RC process, some points require further attention. These are especially in the area of leadership from the DFO and Counsel in orienting the RC to the actualities of the law and regulations, setting consistent standards for submittal of materials, and assuring that the RC does not exceed its legal remit in assigning itself or the NNP staff work.

Thank you for your attention. We trust that your and your staff will appreciate that our candid feedback is intended to help refine the process and understandings of the law and its regulations on the part of all.

Yours truly,



Diane Gifford-Gonzalez
President

cc: David Tarler

¹ “Museums and Federal Agencies Whose Culturally Affiliated Inventories Include the Human Remains of Individuals That Are Not Yet Represented in Notices of Inventory Completion”; “Museums’ and Federal Agencies’ Culturally Unidentifiable Inventories with No Indication of Mailing to Tribes”.