



United States Department of the Interior

NATIONAL PARK SERVICE

1849 C Street, N.W.

Washington, D.C. 20240

IN REPLY REFER TO:

W3821(2253)

MAR 8 - 2002

James A. Goold
Covington & Burling
1201 Pennsylvania Avenue NW
Washington, DC 20004-2401

Dear Mr. Goold:

I write in response to your February 7, 2002, letter regarding the Department of the Interior's authority to promulgate regulations regarding the disposition of culturally unidentifiable human remains pursuant to the requirements of the Native American Graves Protection and Repatriation Act (NAGPRA).

NAGPRA clearly gives the Secretary of the Interior authority to promulgate regulations regarding the disposition of culturally unidentifiable human remains. Section 13 of the Act grants the Secretary of the Interior authority to promulgate regulations to carry out the Act [25 USC 3011]. Section 8 (c)(5) of the Act clearly identified the disposition of culturally unidentifiable human remains as being within the Act's purview [25 USC 3006 (c)(5)]. There appears to be no ambiguity as to Congress' intent.

Section 8 (c)(5) of the Act also directs the review committee to recommend specific actions for developing a process for disposition of culturally unidentifiable human remains. This procedural requirement is in addition to other required rule making procedures [5 USC 553]. On June 8, 2000, the review committee's recommendations regarding the disposition of culturally unidentifiable Native American human remains were published in the Federal Register. The review committee requested that the Secretary of the Interior develop a draft proposed rule based on their recommendations.

As you pointed out in your letter, an earlier version of the bill that ultimately was enacted directed the review committee to provide its recommendation regarding the disposition of culturally unidentifiable human remains to the Secretary of the Interior and to the Congress [H.R. 5237 (7)(d), July 10, 1990]. However, this provision was subsequently stricken in the version that was signed into law. The sequence of changes in a statute prior to enactment provides strong evidence of the meaning of the enacted statute. It would thus appear that while Congress may have considered limiting authority to promulgate regulations regarding the disposition of culturally unidentifiable human remains, this restriction was ultimately rejected.

Lastly, I would like to point out that regulations regarding the disposition of culturally unidentifiable human remains already exist. Museums and Federal agencies are required to provide the Department of the Interior with a list of all culturally unidentifiable human remains and associated funerary objects in their possession or control [43 CFR 10.9 (e)(6)]. Museums and Federal agencies are currently required to retain possession of culturally unidentifiable human remains pending promulgation of 43 CFR 10.11 unless legally required to do otherwise, or recommended to do otherwise by the Secretary of the Interior. Our records do not indicate that your client, the Society for American Archaeology, has ever challenged the Secretary of the Interior's authority to promulgate these regulatory provisions.

I hope this clarifies our interpretation of the Secretary of the Interior's statutory authority to promulgate regulation regarding the disposition of culturally unidentifiable human remains.

Sincerely,

A handwritten signature in black ink, appearing to read "Katherine H. Stevenson", followed by a horizontal line.

Katherine H. Stevenson
Associate Director, Cultural Resource
Stewardship and Partnerships

cc: Members of the Native American Graves Protection and Repatriation Review Committee