



SOCIETY FOR AMERICAN ARCHAEOLOGY

February 19, 1997

The Honorable Ben Nighthorse Campbell, Chairman
Senate Committee on Indian Affairs
Washington, D.C. 20510

Dear Chairman Campbell:

The Society for American Archaeology (SAA) wishes to take this opportunity to comment on a bill that was recently introduced by Senator Inouye and that falls within the jurisdiction of your committee. This bill is S. 110—proposed amendments to the Native American Graves Protection and Repatriation Act (25 U.S.C 3001) (NAGPRA). With over 6300 lay and professional members, SAA is the largest organization devoted to the study of the archaeology of the Americas. SAA supports Native American and Native Hawaiian rights with respect to affiliated ancestral human remains and cultural items, and worked closely with Native American groups and members of Congress to obtain passage of the current version of NAGPRA.

SAA agrees that clarification of certain components of NAGPRA is desirable. SAA believes, however, that S. 110 as currently written is much more than a clarification, and that the four individual changes proposed by S. 110 need to be considered separately. We have detailed our arguments in an attachment to this letter; a brief summary appears below.

The first change—S. 110 Section 1(a)—requires written consent by lineal descendants or appropriate tribes before the excavation of human remains on federal land. As currently worded, this amendment has the potential to transform NAGPRA into a major tool that could be used by tribes, Native Hawaiian organizations, or other groups to stop many kinds of economic development or land management activities on Federal land. In order to understand why this is so, one must recognize that virtually all archaeological excavation of Native American graves on Federal land is done in the context of construction or land management activities that will destroy or damage the graves. These archaeological excavations are a direct consequence of the way in which the National Historic Preservation Act (16 U.S.C. 470) is applied when archaeological sites are impacted by Federal agency activities or by economic development projects done under federal permit. We believe that such a change would not be good public policy and that the backlash resulting from project stoppage would harm the broader interests of native peoples and of historic preservation. SAA recommends withdrawing this proposed change.

The second change—1(b)—requires that when there are inadvertent discoveries of human remains or cultural items on Federal land that appropriate tribes are notified in a timely way. It also makes clear that, once made, inadvertent discoveries are to be treated in the same manner as intentional excavations, with respect to ownership, removal, and consultation with tribes. SAA strongly supports the proposed changes (with minor rewording) as appropriate clarifications of NAGPRA's intent.

The third change—1(c)—extends the responsibilities of the NAGPRA Review Committee by asking it to compile an inventory of funerary objects associated with culturally unidentifiable human remains and by asking it to include these funerary objects in their recommendations concerning the disposition of culturally unidentifiable remains. SAA believes this is a significant extension of the NAGPRA through a paragraph in the law whose interpretation is already contested. SAA believes that the Review Committee

already has before it a tremendous amount of important work and recommends a substitute amendment that would eliminate the amended paragraph [Section 8(c)(5)] from NAGPRA.

The fourth change—also labeled 1(c), but presumably, 1(d)—directs the Secretary of the Interior to use NAGPRA penalties for further enforcement of NAGPRA, permits payment of rewards for information relating to NAGPRA enforcement, and allows payment of restitution to aggrieved parties rather than the collection of penalties. SAA strongly supports the proposed changes in order to enhance the enforcement of NAGPRA, but suggests a minor rewording of one paragraph.

Finally, SAA is concerned that Section 3 (Ownership) of NAGPRA does not, in two respects, weigh the interests of the affected parties in what we see as appropriate ways. (1) SAA believes that when the scientific value (ability to contribute information about the past) of a set of remains or objects is great, the public interests in the past should outweigh the concerns of a modern tribe that lacks clear cultural affiliation with the remains in question. (2) SAA supports the central principle that underlies much of NAGPRA: the closeness of cultural relationship should transcend contemporary property rights in determining the disposition of human remains and cultural items. However, Section 3 is inconsistent with that principle when it gives contemporary tribal land ownership priority over cultural affiliation. This results in NAGPRA assigning ownership over human remains that are *indisputably* the recent ancestors of one tribe to a different tribe, just because the latter tribe now controls the land on which the remains were found. SAA asks that when hearings are held, the committee take testimony on these additional concerns as a part of its consideration of amendments to NAGPRA.

SAA believes S. 110 has important implications that need to be further understood before it is considered by the Senate. We therefore recommend the changes outlined here and suggest that the Senate Committee on Indian Affairs convene a hearing to take testimony from Federal agencies, state historic preservation officers, private businesses operating on public lands, archaeological organizations, and Native American and Native Hawaiian groups. SAA would be pleased to consult with you on draft language that would avoid the problems it sees with the present version. SAA thanks you for your attention and looks forward to your response.

Sincerely,

William D. Lipe, Ph. D.
President