

[SEARCH BLOG](#)
[FLAG BLOG](#)
[Next Blog»](#)

NAGPRA & UCB FAQ

ANSWERS TO FREQUENTLY ASKED QUESTIONS CONCERNING UC BERKELEY'S ELIMINATION OF ITS AUTONOMOUS NAGPRA (NATIVE AMERICAN GRAVES AND REPATRIATION ACT) UNIT.

MONDAY, JULY 23, 2007

NAGPRA REORGANIZATION FAQ

NAGPRA REORGANIZATION FAQ

Here are some frequently asked questions about the UC Berkeley NAGPRA reorganization. For tribal resolutions, tools of protest, letters from the former NAGPRA Coordinator, etc, please visit <http://nagpra-ucb.blogspot.com> .

1. What is NAGPRA?

The Federal Native American Graves Protection and Repatriation Act (NAGPRA) requires museums to acknowledge legitimate tribal claims on ancestral remains and sacred objects and to repatriate those items when cultural affiliation to specific tribes is established. Under the law, museums were required to submit an inventory of their Native American collections to the National Parks Service by 1996, and classify items within those collections as “culturally affiliated” or “culturally unidentifiable.” Culturally affiliated items would then be repatriated to tribes, and museums will keep “culturally unidentifiable” remains and artifacts until National NAGPRA determines their final disposition. The law also

PROTEST



Join us Oct. 5!

NAGPRA & UCB

The page for Tribal resolutions, action plans, etc.

BLOG ARCHIVE

▼ 2007 (1)

▼ July (1)

NAGPRA
REORGANIZATION
FAQ

specifies a process whereby tribes can challenge museum classifications; those challenges will succeed or fail based upon the “preponderance of the evidence.” Evidence can be geographic, kinship, biological, archaeological, linguistic, folkloric, based on oral tradition, historical, anthropological, etc. For more information on NAGPRA, visit <http://bss.sfsu.edu/nagpra/defs.htm> .

2. When the Phoebe Hearst Museum submitted its inventory, what percentage was classified culturally unidentifiable and what percentage culturally affiliated?

Approximately 80 percent or more was classified as culturally unidentifiable and approximately 20 percent or less culturally affiliated.

3. If the Phoebe Hearst has completed its inventory and has complied with mandatory repatriation requirements, why is it important to continue extensive NAGPRA services?

Many tribes simply reject the Museum’s claim that approximately 80 percent of the Nation’s second largest collection of Native American ancestral remains and artifacts is culturally unidentifiable. Hence, tribes are challenging the classifications, and tribal representatives must come to the museum to examine the documents and do their own archival research. The representatives consult extensively with NAGPRA staff in order to compile evidence that supports changing a classification from culturally unidentifiable to culturally affiliated. If tribes succeed in this, the material will become available for repatriation. “New” tribes have also recently gained

Federal recognition, which makes them legitimate claimants under NAGPRA, and many other tribes have applied for recognition. This means that NAGPRA staff must examine the culturally unidentifiable inventories, most of which at this time have not had archival review, to determine which collections should be reviewed by the Berkeley Repatriation Committee. That committee is made up of four faculty members and one Native American. The NAGPRA staff assists tribes trying to establish and compile the evidence for cultural determination. However, it is the Berkeley Repatriation Committee that makes the final determination regarding the cultural affiliation of the inventories. In addition to serving Federally recognized tribes, the Museum will soon have to respond to the claims of 51 Native American groups that have applied for tribal recognition under the California version of NAGPRA, AB 978. This will require substantial archival research and consultation. In short, the “easy work” – repatriation of culturally affiliated items – is almost complete, but the hard work has just begun.

4. Why should the NAGPRA staff be autonomous? Why shouldn't it be “folded into” the Museum?

The reason the NAGPRA staff should be at least semi-autonomous is that museums have an inherent conflict of interest with respect to NAGPRA requirements. In general, museums have an institutional interest in keeping their collections intact. Also the repatriation committees of research museums such as the Phoebe Hearst are dominated by researchers who favor archeological and biological evidence. Researchers

almost always out-number tribal representatives on committees, and they tend to minimize evidence from oral history, geography, linguistics, kinship, etc. More importantly, research scientists have a strong interest in preserving the collections because they want to study the remains and artifacts, often in ways that conflict with Native American spiritual beliefs. Yet, according to Donald Barry of the US Department of Interior, “NAGPRA strikes a balance between the interests of Native Americans and scientists.” The balance can only be achieved if the people who administer the law and work closely with tribes are fair and impartial between the stakeholders. If employees consider it part of their job to favor one group over another, they will fear for their jobs if they act impartially. This pressure will only increase if the University succeeds in disbanding the NAGPRA unit and “integrating” NAGPRA operations with Museum activities. The Museum is run by research scientists who will gain complete control of NAGPRA activities. Fair and impartial services and tribal consultation that satisfies the needs of tribes and respects scientific interests will cease. Tribal representatives usually are not NAGPRA experts, and they will no longer receive the services they need to gather evidence and prepare their claims. The fact is that the autonomy of the NAGPRA unit is essential to the integrity of NAGPRA administration.

5. Has a research bias negatively affected the administration of UCB NAGPRA in the past?

The autonomous NAGPRA unit has done its best to stand up to inappropriate pressures, but the pressure has been constant and often aggressive for many years. This

is why the previous Museum Director, who retired in 2006, cited inappropriate pressure when he recommended in 2006 that the administrative control of the NAGPRA unit not only be removed from the Museum but also from the Office of the Vice Chancellor of Research.

6. The Museum's website points out that other museums with Native American collections integrate NAGPRA operations into museum activities. Why should Berkeley be different?

We believe that any museum with a significant Native American collection should place the administrative control of NAGPRA operations outside of the control of administrators and scientists with vested interests in keeping their collections intact. This is especially true of Berkeley's collection, which is by far the largest covered by NAGPRA and has the largest percentage of inventories classified as "culturally unidentifiable." The fact that other museums do not operate with autonomous units does not mean that their administrative practices are best. Those who take this view usually assume that NAGPRA goals are just a subset of Museum goals, and that NAGPRA operations should be subordinate to Museum operations. But this assumption is false. The goals of NAGPRA and the goals of the museum are not always the same, and should not be confused. The goal of NAGPRA operations is to administer State and Federal laws in good faith and as effectively as possible. NAGPRA goals can – and often do – conflict with the aims of museums, especially at the Phoebe Hearst Museum, which has a history of negative relations with tribes. If the University subordinates

NAGPRA operations to Museum goals, it significantly reduces the chances that the consultation process will be administered impartially and effectively, with any equal concern for all stakeholders.

7. Should tribes have been consulted before the University disbanded the NAGPRA unit?

Native Americans care deeply about the treatment and repatriation of their ancestral remains and sacred objects, and they certainly should be consulted before any institution – even the powerful University of California – makes a major decision that will affect tribal interests. Yet the University claims the decision was simply none of the tribes' business “because this is a decision involving the management of a University entity that affects organizational reporting structures.” We believe that this “argument” is unconvincing for several reasons:

a) The University is a public institution, sanctioned and subsidized by tax-paying citizens, and as such, it must adhere to public standards for non-discrimination. The public has every right to insist that these standards not be violated, even when the decision affects “organizational reporting structures.” In this case, all tribal representatives and even the Native Americans on the NAGPRA staff were completely and deliberately excluded from the decision-making process. The review was conducted in a sudden and secretive manner, and the Vice Chancellor's office even misled the NAGPRA staff about its purpose. The review committee consisted of two archeologists, one of whom has a history of poor relations with tribes over NAGPRA issues. Both men sit on the UCOP Repatriation Committee, which makes the final decision on repatriation claims, and hence, their participation in the review gave them a chance to affect what comes before that committee.

b) UC Berkeley's obligation to Native Americans is even stronger than its ordinary obligation to taxpaying citizens in virtue of State and Federal NAGPRA statutes. Accountability under the law requires transparency, and the tribes cannot determine if the University is acting in good faith if they have no access to the processes that govern NAGPRA administration.

c) Native Americans believe that the ancestral remains and artifacts *belong to the tribes*, and hence, they have every right to be included in a process that affects what is rightfully theirs.

Under Federal law, Native American tribes are sovereign nations and interact with the Federal government on a government to government basis. Since Federal law takes precedence over state law, many tribes cannot understand why a state-run University won't accord them the respect that sovereign nations deserve.

8. Why did the University exclude Native Americans from the decision-making process?

The secretive, sudden, and misleading nature of the review process, the composition of the review committee, and the fact that administrators refused to listen to advance protests about the exclusion of Native Americans – all of this indicates that University administrators had decided beforehand on how they wanted to restructure UCB NAGPRA and that they set up a review process that would guarantee the desired recommendations. Many Native Americans believe that if they had been represented, the recommendations would have been different. The discrimination in the review process is reflected in the results of the decision. The new “organizational reporting structures” will have severe detrimental effects on tribal interests because they will eliminate the possibility of impartial NAGPRA consultation and services.

9. The Museum claims it wants to “expand outreach programs and deepen tribal input into various museum activities.” What is wrong with that?

Nothing, if it really happens. However, the Museum's website insinuates that this can only be achieved if it disbands the autonomous NAGPRA unit, and that insinuation is false. The Museum can and should enhance other Native American services and activities, especially given its dismal efforts in the past. But there is simply no need to sacrifice the autonomous NAGPRA unit in order to provide additional outreach and educational services or to deepen the input of tribes into these activities. This is a false choice and should be rejected. The Museum insists it is adding staff to enhance its Native American programs, and this is very good. But NAGPRA is not just one more "museum activity," comparable to staging exhibitions, hosting workshops, sponsoring Native American days, and all of the rest. NAGPRA imposes special obligations on the University as a matter of law, and it affects the issue of ancestral remains about which Native Americans are extremely passionate. The University can only discharge its obligations under NAGPRA if it administers the law fairly and impartially, and this requires ensuring that the NAGPRA staff can function without inappropriate pressure to favor one stakeholder over another. That is what the Museum had with the autonomous NAGPRA unit, and that is what it loses when it "integrates" NAGPRA activities into a Museum governed by research scientists with vested professional interests in preserving the collection.

10. The Museum claims that seven staff members will perform "repatriation-related" activities. Is this true?

No. The Museum's claim is based on verbal trickery, which conflates Native American-related activities – exhibitions, workshops, internships, etc. – with "repatriation-related activities." Far fewer people and resources will be devoted to the genuine repatriation services of the kind performed by the NAGPRA unit. What the NAGPRA unit did was consult with tribes about possible repatriations, and this required a highly skilled, knowledgeable and culturally sensitive team. Tribal representatives came to the museum to see all of the documentation related to as many as fifteen

archeological sites, view items within the collections, and determine what is rightfully theirs. In order to give them fair access to the evidence, the NAGPRA unit prepared extensively for their visit and did archival research for the appropriate documentation. When tribal representatives arrived, the staff showed them the documentation, explained the often arcane reasons why certain items are classified as culturally unidentifiable, helped them evaluate evidence to the contrary, and advised them on the process of how to prepare their challenges and their claims. After the representatives left, the unit assisted them remotely, often for months. It is simply not true that seven staff members will be devoted to this kind of consultation. Under the envisioned reorganization, one – or at most, two – will engage in tribal consultation on genuine NAGPRA issues, and only on a “case by case” basis. The Museum’s term “repatriation activities” is a deceptive euphemism that actually refers to any Native American-related activity. It will be great if the Museum staff engages in more Native American activities, but most of these activities will have no real relation to NAGPRA. Also, the more important point is this: Even if all of the new staff under the reorganization were devoted to NAGPRA, they would still be completely controlled by research scientists with a vested interest in preserving the collection. Therefore, the staff would not have the freedom to offer fair, impartial and comprehensive consultation services to tribes.

11. The Museum insists that no employees were let go. Is this true?

This claim is based on a bureaucratic slight-of-hand that turns falsehood into technical truth. Suffice it to say that by reorganizing, changing job titles, and eliminating the NAGPRA unit the University managed to rid itself of a specific archeologist who was highly skilled in NAGPRA archival research, worked extremely well with the Native Americans in the NAGPRA unit, was very popular with tribes, and resisted inappropriate external pressures.

12. The Museum says the reorganization will give it “the flexibility to assign additional staff members to help with repatriation claims as

needed, or to partner with tribes in new ways.” Isn't flexibility a good thing?

Assuming that “help with repatriation claims” means genuine NAGPRA archival research and consultation, this assertion trivializes the skills, experience and knowledge required for such activities. It takes a long time, much training, and a deep understanding of Native culture to perform genuine NAGPRA research and consultation well. The Museum will only have the “flexibility” to assign additional staff “as needed” if that staff has the right sort of training and experience. This would require a considerable investment of time and money and would divert staff from developing other forms of expertise. There is no evidence that the Museum is willing to do this.

The reason the Museum can so confidently tout its flexibility is because Museum research scientists will largely determine the “as needed” in the “assign additional staff membersas needed.” Serious NAGPRA services are being cut, so very little flexibility will be required.

“Flexibility” cuts both ways. Once the Museum blurs the distinction between NAGPRA operations and other Museum activities, it becomes just as easy to divert resources away from NAGPRA or even more general Native American-related activities. If the past is any indication, this latter scenario seems far more likely. The Museum has displayed little interest in general Native American activities and has a history of co-opting positions that are supposedly related to genuine NAGPRA operations. For example, the NAGPRA budget paid the entire salary of a NAGPRA/North American collection manager, but the unit only had access to about 20 percent of her time. She spent the bulk of her time working on non-NAGPRA related assignments.

13. Why is the Museum increasing its non-NAGPRA related Native American activities now?

Although it is great that the Museum is enhancing its non-NAGPRA-related programs, by doing so,

administrators “kill two birds with one stone.” First, the additional activities provide a cover for eliminating fair and impartial NAGPRA services. This is why administrators deliberately confuse “repatriation related activities” with “Native American-related” activities. Second, the new activities can be used as an inducement to get tribes to contribute to its new capital campaign. According to the Museum website, “the Hearst Museum recognizes that forging stronger collaborative ties with tribal groups will be a critical component in developing plans for the upcoming campus capital campaign to expand Museum exhibition, storage, and teaching space.” In other words, the Museum wants tribal money. The NAGPRA staff strenuously advocated for more tribal involvement in Museum programs for many years. Their recommendations were repeatedly ignored, and the Museum only became interested in new programs with the advent of its capital campaign. Regardless of the administrators’ motives, adding Native American-related activities reflects positive change in policy. However, the Museum should not disband the NAGPRA unit to implement this change. NAGPRA imposes a legal obligation on the Museum that supersedes other Museum goals, and its administration should not be treated like an ordinary Museum program.

POSTED BY NANC AT 1:26 PM 2 COMMENTS

LABELS: FAQ #1

Subscribe to: Posts (Atom)