

NAGPRA and Beyond

Cooperation Leads to Precedents at the NAGPRA Review Committee Meeting

Precedent-setting cases were brought before the Native American Graves Protection and Repatriation Act (NAGPRA) Review Committee at their 16th meeting, December 10-12, 1998, in Santa Fe, New Mexico. The cases represented collections from three national parks in the Intermountain Region—Bandelier National Monument and Carlsbad Caverns National Park in New Mexico and Guadalupe Mountains National Park in Texas. This article describes the park cases and the recommendations that resulted from the presentations to the NAGPRA Review Committee (hereafter referred to as the Review Committee). These precedent-setting recommendations were the repatriation of projectile points and repatriation of culturally unidentifiable human remains. Under the law and its regulations, projectile points are not generally considered to fit the definition of sacred objects that can be repatriated. Disposition of culturally unidentifiable human remains is a section of the law and regulations that has not yet been written by the NAGPRA Review Committee and has been the subject of considerable controversy.

The Review Committee is a seven-member, private-citizen board established under the law. The role of the Review Committee is to facilitate the informal resolution of disputes relating to these NAGPRA regulations among interested parties that are not resolved by good-faith negotiations. Review Committee actions may include convening meetings between parties to disputes; making advisory findings as to contested facts; and making recommendations to the disputing parties or to the Secretary of the Interior as to the proper resolution of disputes consistent with these regulations and the Act. The meetings are typically held twice a year and deliberations of the cases are open to the public.

Case One

The first of the park cases presented related to the claim for repatriation of 53 projectile points, as sacred items, from Bandelier National

Monument. Bandelier began NAGPRA consultations with all culturally affiliated tribes in November 1993, when the park summary listing of sacred objects, objects of cultural patrimony, and unassociated funerary objects was sent to each of the 21 tribes potentially affiliated with park lands and resources. Subsequently, an item-by-item inventory of human remains and associated funerary objects was sent to the same tribes.

In 1996, in a proactive consultation effort, Bandelier held a general consultation meeting with representatives from each of the culturally affiliated tribes. This meeting was to serve as an introduction to the NAGPRA process for the tribes and to enable viewing of the collections that had been previously listed as sacred items. Three facilities house the Bandelier collection: the park, the Santa Fe repository, and the Western Archeological and Conservation Center (WACC) in Tucson, Arizona. For viewing by tribal representatives, Bandelier sacred items were brought from the park, and from park collections housed in Santa Fe. The park offered an opportunity to travel to Tucson to view the rest of the Bandelier sacred items housed at WACC. Six tribal consultants traveled to WACC to view the collections—two representatives each from the Cochiti Pueblo, San Ildefonso Pueblo, and Hopi/Tewa tribes. The representatives from the Pueblo of Cochiti identified 94 objects as potential sacred items; 53 of them were projectile points.

In 1997, Bandelier National Monument received a tribal resolution from the Pueblo of Cochiti seeking repatriation of the 94 objects, including the 53 projectile points. Forty-one of the sacred items being sought by Cochiti Pueblo clearly met the definition of sacred objects under NAGPRA, and were repatriated following the NAGPRA process. Bandelier staff continued consulting with Cochiti Pueblo and the National Park Service Archeology and Ethnography Program in Washington, DC, the office responsible for national NAGPRA implementation, about the

repatriation request for the 53 projectile points. The Archeology and Ethnography Program advised Bandelier that the projectile points could not be considered sacred items under the law and, therefore, could not be repatriated. The projectile points were excavated from different locations within park boundaries and were collected for potential additional research purposes. Archeologists believe that the primary purpose for the creation of projectile points was for utilitarian uses.

Governor Henry Suina felt strongly that the repatriation request submitted on behalf of the Pueblo of Cochiti did meet the NAGPRA definition of sacred items. The Review Committee agreed to hear Governor Suina's complaint and his dispute with the opinion presented by archeologists that projectile points are solely utilitarian. He made a presentation that clarified the importance of the projectile points for on-going traditional religious practices at the Pueblo. His presentation was made with great concern for safeguarding traditional religious knowledge. Many tribes fear that too much information must be revealed before sacred items can be repatriated. Governor Suina's impressive presentation brought support from the entire NAGPRA Review Committee for Cochiti Pueblo's repatriation request. A recommendation was subsequently made to the Secretary of the Interior that the Review Committee agreed with the assertion of the Pueblo of Cochiti that the 53 projectile points are indeed sacred objects, as defined by NAGPRA, and should therefore be repatriated.

Repatriation is the legal means by which the government can transfer ownership of property to a federally recognized tribe. Each repatriation is unique, based on the consultation that occurs between the agency and the tribe(s) involved. In this instance, through consultations with Cochiti Pueblo, Bandelier staff developed an agreement for the method of repatriation, which included delineating who would be present and where and what time the repatriation would occur.

The Notice of Intent to Repatriate was published in the *Federal Register* on April 23, 1999. After the required 30-day review period of the *Federal Register* notice, Bandelier Superintendent Roy Weaver and Native American Liaison/Museum Curator Gary Roybal repatriated the projectile points, which were now recognized as sacred objects.

The context for determining cultural affiliation began in 1987 when the park initiated

consultations with Pueblo communities in regards to the Bandelier Archeological Survey and Testing Project. This consultation effort assisted the park in establishing cultural connections and cultural affiliations to lands and resources administered by Bandelier National Monument.

Following four years of ongoing consultation on the archeological project, in November 1993 the summary of all sacred objects and objects of cultural patrimony and unassociated funerary objects under NPS control was completed and sent to all federally-recognized tribes, as required by NAGPRA. This bureau-wide summary included 160 objects recovered from Bandelier, which are curated in three facilities: at the park, in the Santa Fe repository, and in Tucson at the Western Archeological and Conservation Center. Consultation with tribes was not required prior to completion of the summary.

Two years later, in November 1995, the inventory listing of 48 human remains and 10 associated funerary objects was distributed by the park to 21 culturally-affiliated Indian tribes as required by the Act.

The following year, a general consultation meeting with all potentially affiliated tribes was held in Santa Fe. The second day of this meeting included the viewing of the previously determined Bandelier sacred objects from the park and the Santa Fe repository.

In May 1996, Cochiti, San Ildefonso, and Hopi/Tewa tribal consultants made a trip to the National Park Service Western Archeological and Conservation Center to view and identify sacred objects from the Bandelier collection. The three Cochiti tribal consultants identified 94 objects as potential sacred objects; of those, 53 were projectile points. Four months later, in September 1996, a letter was sent to the Pueblo of Cochiti from Superintendent Weaver regarding the identification of 94 objects for potential repatriation (the 53 projectile points are included). The Pueblo of Cochiti emphasized the desire to proceed to the next step in the NAGPRA repatriation process.

In April 1997, Cochiti Pueblo representatives met with Bandelier staff to discuss the list of objects identified by their tribal consultants in 1996 for potential repatriation. At this meeting, the Bandelier staff suggested the following option: Cochiti may want to discuss the selected items with Cochiti tribal members who participated in the previous consultation meetings, and be offered the possibility of viewing the objects prior to seeking

repatriation to determine if all listed items are still wanted for repatriation. The same month, the park received a letter and tribal resolution from the Pueblo of Cochiti. The documents stated their assertion of cultural affiliation to the 53 projectile points and four additional sacred objects identified as coming from the Bandelier National Monument, ancestral homelands to the Pueblo of Cochiti. It also stated their request to repatriate the projectile points and four additional sacred objects. Governor Lawrence Herrera and Lieutenant Governor Jose L. Cordero signed the Tribal Resolution, dated April 21, 1997. In addition, in 1998 a *Federal Register* notice was published and the four sacred objects meeting the definition of sacred objects in NAGPRA were repatriated to the Pueblo of Cochiti.

Gary Roybal was designated to draft a separate *Federal Register* notice for the 53 projectile points. During that time, in writing the draft notice, Mr. Roybal consulted with Francis P. McManamon, Washington, DC, Archeology and Ethnography Program; staff of the Intermountain Support Office-Santa Fe; and park staff. After many reviews, a final draft was submitted to the Archeology and Ethnography Program for their review. It was approved in the spring of 1999.

In December 1998, the consultation process led to the NAGPRA Review Committee meeting in Santa Fe, New Mexico. At that committee meeting, Cochiti's Governor Henry Suina made an impressive presentation on behalf of the Pueblo of Cochiti regarding the claim raised by the Pueblo of Cochiti relating to the repatriation of the 53 projectile points in the possession of Bandelier National Monument. After careful review of the information provided by Bandelier National Monument and the Pueblo of Cochiti, the NAGPRA Review Committee recommended that the park accept the Pueblo of Cochiti's assertion that the 53 projectile points in question are indeed sacred objects, as defined by NAGPRA, and proceed with the repatriation process.

On April 3, 1999, a *Federal Register* notice of intent to repatriate cultural items in the possession of Bandelier National Monument, National Park Service, was published. The same month, letters were received by Francis P. McManamon, Departmental Consulting Archeologist, from three United States Senators (John McCain, Jeff Bingaman, Pete V. Domenici). The letters were regarding the Pueblo of Cochiti's repatriation claim, brought under NAGPRA, for 53 projectile

points from the Bandelier collection. The letter also emphasized that officials of the National Park Service determined that the objects met the NAGPRA definition of "sacred objects."

In June 1999, the National Park Service published a notice in the *Federal Register* of April 23, 1999, concerning an intent to repatriate cultural items from Bandelier National Monument. The first document omitted a number of culturally-affiliated Indian tribes. This second notice includes corrections in the list of Indian tribes. The process concluded on July 23, 1999, when a historic event took place at Bandelier National Monument. Superintendent Weaver, along with Native American Liaison Gary Roybal, presented the 53 projectile points to Lieutenant Governor Cippy Crazyhorse and tribal consultant Tony Herrera of Cochiti Pueblo.

Case Two

The second case involved repatriating culturally unidentifiable human remains to multiple tribes with joint claims of cultural relationships to the human remains and the region. At the time, regulations had not been written on the disposition of culturally unidentifiable human remains.

In 1995, Carlsbad Caverns and Guadalupe Mountains National Parks initiated efforts to identify which American Indian tribes should be consulted regarding park collections that were subject to NAGPRA. An Ethnographic Overview and Assessment completed in 1996 for both parks focused on the ties to park lands of the Mescalero Apache Tribe and the Tigua of Ysleta del Sur Pueblo. This report documented the significant and long-term cultural and historical relationships of these two tribes with the southern Guadalupe Mountains region.

Beginning in 1995, curators at both parks began attending regional NAGPRA meetings. At those meetings, several other tribes indicated that they also had historical, cultural, or religious ties to lands now within the two parks. Between 1995 and 1997, the parks hosted a series of 11 consultation meetings with the individual tribes that had identified themselves as having ties to the Guadalupe Mountain region. These one-on-one meetings demonstrated that the parks had to consult with tribes other than those lying in closest proximity to the parks today. The Hopi and Zuni Pueblos had migration routes that brought their ancestors through southeastern New Mexico and west Texas; Western Apache tribes, historically from Arizona and western New Mexico had traveled

through the Guadalupe on their way to the buffalo plains of west Texas; the Kiowas and Comanches from the southern Plains had used the Pecos River and Guadalupe Pass on their trading and raiding routes from the Plains into Mexico; and Zia Pueblo in northern New Mexico has particularly strong cultural ties to Carlsbad Cavern itself.

During these individual consultations, each tribe expressed strong concerns over the status of their ancestors' remains in the parks' museum storage. Some of these individuals said that the associated artifacts had been stored in park collections since the 1930s, with no scientific examination since their original excavation. Without a scientific justification for maintaining the individuals in museum storage, the management teams of both parks agreed that the most appropriate course of action was to seek the repatriation of the individuals and their ultimate re-burial in a secure location.

A major obstacle to repatriation was the fact that all of the human remains and funerary objects from the parks are classified as culturally unidentifiable under NAGPRA. As written, NAGPRA requires a determination of cultural affiliation before materials can be repatriated. Human remains from two of the sites were identified as coming from the Archaic period, between 6000 B.C. and A.D. 500. Individuals from a third site had so little associated documentation that a determination of cultural affiliation could not be assigned. The parks and tribes discussed the possibility of additional studies to determine a cultural affiliation of the remains; however, any method to determine this affiliation would likely involve some sort of destructive analysis or other handling or examination that would be objectionable to the tribes.

Consultation meetings were held in 1997 and 1998 between the parks and representatives of the 12 affiliated tribes to discuss how a repatriation of the human remains could occur. The primary focus of these meetings was to do what all parties agreed was "the right thing," and to work together to make returning the individuals to their original resting places possible. The result of the two meetings was the development of a set of principles with which to guide the parks and tribes in pursuing the repatriation. The key principles were:

These are Native American human remains and funerary objects that should be returned to their original resting places.

The tribes are seeking the repatriation of the human remains and funerary objects through a joint claim as tribes with cultural relationships to these human remains and the Guadalupe Mountain region.

The tribes would not seek to establish a definitive cultural affiliation of any of the remains, but if a cultural affiliation could be determined, it would most likely be with one of these 12 tribes.

In May 2000, with Review Committee approval obtained, the two parks and the tribes met again to discuss the specific details of the repatriation and the ultimate return of these individuals to the earth. Continuing the cooperative spirit of previous meetings, the group reaffirmed their commitment to doing what they all feel is right. Two days were spent discussing logistics and some very difficult issues surrounding the repatriation, the re-burial, and the security of the re-burial locations. Other issues, including additional remains originally from the parks located in a museum in Pennsylvania, have surfaced, which may require a second presentation before the NAGPRA Review Committee this year. The goal of the tribes and parks is the completion of the repatriation and re-burial of these individuals by the spring of 2001.

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Gary Roybal, from San Ildefonso Pueblo, is the Native American Liaison/Museum Curator at Bandelier National Monument. He is responsible for on-going consultation with tribes on NAGPRA matters and other issues as they relate to park/Pueblo resources.

Jeff Denny is the Cultural Resource Program Leader at Carlsbad Caverns National Park. He is responsible for implementing NAGPRA and consulting with tribes.

Alexa Roberts is an anthropologist in the Ethnography Program for Intermountain Region, Santa Fe Support Office. She assists parks in the Region with establishing cultural affiliations and in consulting with tribes.