

July 10, 2013

RE: Disclosure of Violations of Law and Regulation, Abuses of Authority, and Gross Mismanagement Related to the Native American Graves Protection and Repatriation Act

This memorandum details severe problems with the collection and processing of Native American human remains and burial artifacts at the Mid-Pacific Regional Office of the Department of Interior's Bureau of Reclamation (BOR), located in Sacramento, CA. The Mid-Pacific Regional Office's improper practices include

- Violations of federal law, regulation and internal policy;
- Abuses of authority;
- Gross mismanagement of a federal program;

These abusive and unlawful practices have and continue to result in the loss of hundreds of Native American human remains and funerary objects. Moreover, these actions frustrate the very purpose of the BOR program to implement the mandates of the Native American Graves Protection and Repatriation Act (NAGPRA).

This disclosure is made by Patrick Williams, who was a Museum Specialist in Archeology at the Mid-Pacific Regional Office from March 2007 to May 2013 and has worked in various capacities within the fields of archeology and museum management for the federal government or in academia for more than 25 years.

Mr. Williams previously raised all of the issues outlined below with his chain of command at the Regional Office, including Regional Archaeologist Laureen Perry and NAGPRA Coordinator Melanie Ryan, but to no effect. In reaction to his insistence upon NAGPRA compliance, Mr. Williams' supervisors initially directed him orally to stop keeping NAGPRA-required records – directions they later put into writing. Further, when Mr. Williams persisted in his attempts to follow federal law, his supervisors responded with intimidation and threats with the intent of coercing him into resigning from his position. Ultimately, Mr. Williams was stripped of his NAGPRA-related responsibilities and, earlier this year, left the Regional Office to work as an interpretive ranger at the New Melones Dam near Jamestown, California.

Background: The Native American Graves Protection and Repatriation Act

The federal Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. § 3001, *et seq.*, requires the federal government and any federally sponsored institutions to account for all newly discovered or currently held Native American human remains and artifacts for the purpose of preserving those discoveries and ultimately returning them to the Indian tribes and individual descendents to whom they rightfully belong. Pursuant to NAGPRA and its implementing regulations, federal actors must, among other things, do the following:

- (1) Keep detailed records of all collections of Native American human remains and artifacts regulated under the Act;
- (2) Notify Indian tribes and lineal descendents when any new discoveries are made of materials that are likely to be affiliated with those tribes and descendents;
- (3) Consult with such interested tribes and descendents during and/or immediately after completion of the recording process, depending on the nature of the artifacts discovered; and
- (4) Make available to interested Native American parties any artifact-related information that is relevant to the rights of those parties.

As detailed below, federal officials and employees at BOR's Mid-Pacific Regional Office have and continue to violate all of these requirements, resulting in the loss of hundreds of Native American human remains and funerary objects. These practices constitute gross mismanagement because they have a significant adverse impact or create a substantial risk of significant adverse impact upon BOR's ability to accomplish its mission under NAGPRA, which is to preserve and repatriate these collections. Further, the Regional Office's practices constitute an abuse of authority because the office is arbitrarily and capriciously exercising its power so as to adversely affect the rights of Native American tribes and individuals, who are or may be legally entitled to custody of these artifacts.

I. Violations of Law, Regulation, and Agency Policy

NAGPRA's provisions cover all discoveries and collections that include Native American human remains and objects that are funerary, sacred, or of other cultural affiliation or patrimony. The Act distinguishes between "associated" funerary objects and "unassociated" funerary objects. A funerary object is associated if the government is in possession of the human remains with which the object is reasonably believed to be affiliated or the object is believed to have been buried with human remains as part of a death rite or ceremony. 25 U.S.C. § 3001(3)(A); 43 C.F.R. § 10.2(d)(2)(i). A funerary object is unassociated if the government does not have possession of the human remains affiliated with the object. 25 U.S.C. § 3001(3)(B); 43 C.F.R. § 10.2(d)(2)(ii). If an object was originally displayed with individual human remains as part of a death rite or ceremony but then returned or distributed to descendents or other individuals according to traditional custom, it is not considered unassociated. 43 C.F.R. § 10.2(d)(2)(ii).

Federal officials and employees at BOR's Mid-Pacific Regional Office are violating the requirements of NAGPRA in the following ways:

A. Failure to record newly discovered human remains and funerary objects

Beginning in August 2012, officials and employees at the Mid-Pacific Regional Office deliberately ceased to properly catalog or accession the Native American human remains and funerary objects being processed by the office. This decision is evidenced by a memo entitled “Museum Property Procedures” and dated September 7, 2012 (See Attachment 1) which reads, in pertinent part:

“LOANS* For now, loan slips found in collections will be noted and not pursued at this time.

“HUMAN REMAINS* Collections with human remains will be set aside for now. Other collections can be accessioned and catalogued.”

Since this time, the Regional Office has kept records only for initial site surveys and excavations and is no longer recording or analyzing new data uncovered from subsequent site visitations. Excavation sites and collections that have not been properly accessioned include, among others, thousands of items and remains recovered from the New Melones Reservoir Project, many of which have been in the Regional Office’s possession for 30 years

The Mid-Pacific Regional Office’s deliberate failure to record newly discovered and long-stored artifacts and human remains violates NAGPRA Section 5, 25 U.S.C. § 3003, and NAGPRA Section 6, 25 U.S.C § 3004, as well as their correlating regulatory provisions. NAGPRA Section 5 governs the recording of human remains and associated funerary objects. Section 5 requires federal actors to conduct an item-by-item inventory of any such holdings and, to the extent possible, identify the geographical and cultural affiliation of those items. 25 U.S.C. § 3003(a); 43 C.F.R. § 10.9(a).

NAGPRA Section 6 governs the recording of unassociated funerary objects and requires federal actors to provide a written summary of any holdings that may include such artifacts, this summary being in lieu of an object-by-object inventory such as that required under Section 5. 25 U.S.C. § 3004(a) and (b)(1)(A); 43 C.F.R. § 10.8(a).

The attached Accession Records and memorandum further evidence the Mid-Pacific Regional Office’s failures. Up until August 2012, Mr. Williams made thorough accession entries (See Attachment 2), as required by NAGPRA, including item-by-item inventories of collections containing human remains. However, in August 2012, his supervisors instructed him to discontinue these entries. These verbal instructions were followed by the September memorandum, entitled “Museum Property Procedures” (See Attachment 1). The memorandum demonstrates the Regional Office’s deliberate failure to record collections including human remains as required by law.

Further, the attached Accession Records clearly illustrate the Office’s improper practices. For example, in Record 1, Mr. Williams’ July 12, 2012, entry for collections recovered

from Tuolumne County, CA gives a thorough, item-by-item description of the artifacts and human remains contained in the collection. The entry provides, in relevant part:

“Remarks . . . Human Remains recovered from unit: 284°/7m.; found among collection stage 1 faunal remains (bone) . . . in the 70-80 cm. level, encountered a single human vertebra. In the same level, a bone awl, square nails and glass were recovered. In the 80-90 cm. level, a possible human tooth, two pieces of human rib, and another vertebra were discovered. The human remains were not articulated, but scattered throughout the level.” (See Attachment 2 Accession Records kept by Mr. Williams).

By contrast, in Record 2, Mr. Williams’ August 28, 2012 entry (after he was instructed to stop making detailed accession entries) for another collection recovered from Tuolumne County provides only data regarding the numerical identification and origin of the collection, and gives no mention whatsoever of the kind of artifacts the collection contains. (See Attachment 3). These two entries, typical of the rest of the records, reflect the stark differences between accessions made in compliance with NAGPRA and the inadequate and improper practices implemented at the Mid-Pacific Regional Office, beginning in August 2012.

When Mr. Williams related his concerns about complying with NAGPRA to Melanie Ryan, the Regional Office’s NAGRPA Coordinator, she responded that making proper accession entries was too complicated and required too much time and effort. Subsequently, Mr. Williams continued his efforts to keep the Regional Office in compliance but was unsuccessful in generating anything more than the hostility and abusive tactics described above.

The continuing failure of BOR’s Mid-Pacific Regional Office to properly catalog and accession human remains and funerary objects or to record data from subsequent site visitations flies in the face of NAGPRA’s basic recording requirements. This information discloses:

- Violation of Law – NAGPRA Section 5, 25 U.S.C. § 3003(a)
- Violation of Law – NAGPRA Section 6, 25 U.S.C. § 3004(a)

B. Failure to notify and report to requesting tribes

In addition to discontinuing proper accession procedures, the Mid-Pacific Regional Office has deliberately ceased to inform tribes of long-stored and newly uncovered human remains and funerary objects or report these findings to tribes requesting this data. This practice has been in place since before Mr. Williams began working at the Regional Office. For example, the Office has not properly notified tribes of any collections recovered from subsequent site visitations to the New Melones Reservoir, visitations which date back to the late 1970s.

These omissions violate NAGPRA's notification and consultation requirements. Under NAGPRA's implementing regulations, 43 C.F.R. § 10.5(b)(1), the Regional Office, upon becoming aware of a discovery of Native American human remains or artifacts, must take appropriate steps to identify any lineal descendents or Indian tribes with whom these findings are likely to be affiliated and must notify any such parties for the purpose of initiating consultation regarding the discovered materials, as required by Sections 5 and 6. When conducting an inventory pursuant to Section 5, the Regional Office must consult with any lineal descendents or Indian tribe officials likely to be affiliated with the recovered materials, and these consultations must begin as early as possible. 25 U.S.C. § 3003(b)(1)(A); 43 C.F.R. § 10.9(b)(1) and (2). Along similar lines, for summaries pursuant to Section 6, the Regional Office must also consult with any likely-affiliated lineal descendents or Indian tribe officials regarding the findings, and these consultations must begin no later than the completion of the relevant summary. 43 C.F.R. § 10.8(b)(2).

The Regional Office's failure to inform tribes about relevant discoveries also violates NAGPRA Section 5(b)(2), which requires that, upon request by an Indian tribe that received or should have received notice of a Section 5 inventory, BOR must provide any additional available documentation to supplement the inventory. 25 U.S.C. § 3003(b)(2); 43 C.F.R. § 10.9(e)(5). Additionally, with respect to unassociated artifacts regulated under Section 6, BOR must provide tribes or lineal descendents affiliated or likely affiliated with such artifacts with access to relevant records, data, and studies for the purpose of determining geographical and cultural affiliation. 25 U.S.C. § 3004(b)(2); 43 C.F.R. § 10.8(d)(2) and (3).

The Mid-Pacific Regional Office's deliberate and continuing failure to notify interested tribes of discoveries, both new and old, or report to tribes requesting data is directly inconsistent with these provisions. The above information discloses a substantial likelihood of:

- Violation of Regulation – 43 C.F.R. § 10.5(b)(1)
- Violation of Law – NAGPRA Section 5, 25 U.S.C. § 3003(b)(1)(A)
- Violation of Regulation – 43 C.F.R. § 10.8(b)(2)
- Violation of Law – NAGPRA Section 5, 25 U.S.C. § 3003(b)(2)
- Violation of Law – NAGPRA Section 6, 25 U.S.C. § 3004(b)(2)

C. Removal of accession files

During Mr. Williams' employment, the Mid-Pacific Regional Office permanently removed accession files for burial sites from its collection repository to unknown locations. Among others, the Regional Office has displaced a large number of items from the New Melones Reservoir site.

Because these extractions by the Regional Office make the files unavailable to interested tribes, they violate NAGPRA's implementing regulations, 43 C.F.R. § 10.8(b)(3), which require the provision of relevant information during any consultations pursuant to Section 6. Under § 10.8(b)(3), the Regional Office must provide copies of a Section 6 summary

to interested Native American parties and must, upon request, also provide these parties access to relevant records for the purpose of determining the geographical and cultural affiliation of the artifacts. *See also* 25 U.S.C. § 3004(b)(2). Likewise, when conducting an inventory pursuant to NAGPRA Section 5, BOR is required to provide similar information to interested Native American parties. 43 C.F.R. § 10.9(b); 25 U.S.C. § 3003(b)(2).

The Mid-Pacific Regional Office's practice of permanently displacing accession files contravenes the following:

- Violation of Regulation – 43 C.F.R. § 10.8(b)(3)
- Violation of Regulation – 43 C.F.R. § 10.9(b)

D. Undocumented loans of funerary objects

Since before Mr. Williams' employment there, the Mid-Pacific Regional Office has loaned out funerary objects to other agencies, museums, and academic institutions for display without completing official loan-out documentation, thus making the loans untraceable in accession records (See Attachment 1, Memo Re Museum Property Procedures). For instance, over the years undocumented loans have been to San Francisco State University, Fresno State University, the Santa Barbara Museum of Natural History, and the University of California, Berkeley and Santa Barbara campuses, among others.

The Regional Office's failure to properly document loans of its collections violates Department of Interior internal policy, Museum Property Directive 3-1.9 (See Attachment 4). Under Directive 3-1.9, BOR must document each loan by assigning it a unique number, completing a loan agreement, and recording detailed data concerning the lender, borrowing institution, items lent, and date of return. Under the Supreme Court's holding in *Morton v. Ruiz*, "[w]here the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures." 415 U.S. 199, 235 (1974). The purpose of NAGPRA's implementing regulations is to "develop a systematic process for determining the rights of lineal descendants and Indian tribes . . . to certain [human remains and artifacts] with which they are affiliated." 43 C.F.R. § 10.1(a). The Regional Office's failure to document loans affects these legal rights of Native Americans by rendering indeterminable the location of many funerary artifacts. Thus, the Supreme Court's holding in *Ruiz* requires the Regional Office to follow Department of Interior procedures for documenting loans of funerary objects.

The attached memorandum from the Mid-Pacific Regional Office, entitled "Museum Property Procedures," evidences the Regional Office's deliberate failure to properly document loans of collections to other agencies and museums (See Attachment 1). The memorandum provides, "[f]or now, loans [sic] slips found in collections will be noted and not pursued at this time." This instruction to not "pursue" loan slips is direct evidence that the Regional Office has intentionally neglected to record and monitor loans.

As with the accession procedures discussed above, when Mr. Williams brought the inadequacy of the Regional Office's loan procedure to the attention of Ms. [last name], the Office's NAGPRA Coordinator, she responded that completing proper documentation for loans would require too much time and effort.

The above discloses:

- Violations of agency rule – Department of Interior Museum Property Directive 3-1.9

E. Deletion of government records and violation of 18 U.S.C. § 1001

On information and belief, beginning as early as August 2012, BOR's Mid-Pacific Regional Office has erased records of human remains and funerary objects from the Interior Collection Management System (ICMS) database in order to destroy evidence of the mismanagement and improper practices discussed above. These erasures began at the direction of Laureen Perry, the Regional Archeologist for the office. Likewise, during the same period, the Regional Office began altering catalog and accession spread sheets in order to hide a large number of regulated collections and loans of those collections. Mr. Williams had made over 5,000 entries of NAGPRA artifacts into the ICMS database before he was instructed to discontinue these entries. Shortly thereafter, he noticed that some entries had been removed. Although Mr. Williams was progressively blocked from editing or viewing the database, he has reason to believe that a substantial majority of his entries have been completely erased.

These practices are in blatant defiance of multiple provisions discussed above: the inventory requirement of NAGPRA Section 5; the summary requirement of NAGPRA Section 6; and the provision of information requirements associated with any consultations pursuant to Sections 5 and 6. 43 C.F.R. §§ 10.8(b)(3) and 10.9(b).

Based on Mr. Williams' information and belief, the Mid-Pacific Regional Office's practice of deleting database entries also violates 18 U.S.C. § 1001, which prohibits the falsification of government records.

The above information documents:

- Violation of Law – 18 U.S.C. § 1001
- Violation of Law – NAGPRA Section 5, 25 U.S.C. § 3003(a)
- Violation of Law – NAGPRA Section 6, 25 U.S.C. § 3004(a)
- Violation of Regulation – 43 C.F.R. § 10.8(b)(3)
- Violation of Regulation – 43 C.F.R. § 10.9(b)

II. Gross Mismanagement

In addition to constituting violations of law, regulation or policy, all of the practices described above rise to the level of gross mismanagement, further meriting immediate investigation. The purpose of NAGPRA is to create a systematic process for determining

the rights of Indian tribes and lineal descendents to certain Native American human remains and artifacts, with the ultimate aim of preserving those collections in order to return them to their rightful owners. The practices and deliberate omissions at BOR's Mid-Pacific Regional Office – failing to properly accession collections, removing files, making undocumented loans, and falsifying records – have resulted in the loss of hundreds of Native American human remains and artifacts. Further, because NAGPRA clearly envisions a participatory repatriation process, the Regional Office's failure to properly notify and report to interested tribes and individuals concerning collections strips those parties of their legal right to participation.

Thus, the Regional Office's improper practices are not *de minimus* but, to the contrary, have a significant adverse impact or create a substantial risk of significant adverse impact upon BOR's ability to accomplish its mission under NAGPRA. This constitutes:

- Gross Mismanagement

III. Abuse of Authority

The Mid-Pacific Regional Office's unlawful practices also constitute abuse of authority. As discussed above, these practices have resulted in the loss of hundreds of human remains and artifacts and the improper exclusion of Indian tribes and individuals from the repatriation process. Accordingly, practices at the Regional Office have directly minimized or rendered altogether void the rights of Indian tribes and lineal descendents that are or may be legally entitled to custody of collections regulated under NAGPRA.

Thus, the Regional Office's actions and deliberate omissions in direct contravention of NAGPRA's mandates constitute an arbitrary and capricious exercise of the office's power so as to adversely affect the rights of Indian tribes and individuals. This unequivocally amounts to:

- Abuse of Authority

Mr. Williams does not take this step lightly. He has exhausted his options within the Regional Office's chain of command, and suffered workplace hostility for his attempt to right these wrongs, forcing him to take a lower-paying position elsewhere. As noted above, when Mr. Williams first raised his concerns with the Regional Office's NAGPRA Coordinator, Melanie Ryan, she responded that keeping proper records and properly tracking loans was too complicated and would require too much time and effort. As Mr. Williams persisted in his attempts to comply with federal law, he was met with intimidation and threats of termination. As a result of his frustration, Mr. Williams left his position at the Regional Office but, to his knowledge, the Office continues its improper practices. He is concerned that further irreversible damage will occur unless and until these improper practices are exposed and redressed.