



MUSCOGEE (CREEK) NATION

Cultural Preservation

Ted Isham – Manager

June 14, 2011

The Honorable Daniel K. Akaka
Chairman
United States Senate Committee on Indian Affairs
Washington, D.C. 20510-6450

Re: **Muscogee (Creek) Nation's Written Testimony, Oversight Hearing on**
Finding Our Way Home: Achieving the Policy Goals of NAGPRA

Dear Chairman Akaka,

Enclosed please find the written testimony submitted on behalf of the Muscogee (Creek) Nation for the Oversight Hearing on Finding Our Way Home: Achieving the Policy Goals of NAGPRA scheduled for June 16, 2011.

The Muscogee (Creek) People appreciate the opportunity to participate in this important issue which affects each and every Native American in the United States. We thank you for your time and consideration on how tribes and the federal government can work together to achieve the policy goals, as well as the spirit and the letter of NAGPRA.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ted Isham".

Ted Isham, THPO

Muscogee (Creek) Nation

PO Box 580 Okmulgee, OK 74447
Phone 918-732-7733 · Fax (918) 758-0649

Finding Our Way Home: Achieving Policy Goals of NAGPRA

Poncoko tate esheckees yofulecepes

I am Ted Isham of the Wind Clan and of the Hillabee Canadian Ceremonial Grounds, Muscogee (Creek) Nation citizen and live in Okmulgee, Oklahoma and I also work for the Muscogee (Creek) Nation. My title is Manager of the Cultural Preservation Office and Tribal Historic Preservation Officer (THPO). My previous job was Curator of the Creek Council House Museum in Oklahoma so I am very familiar with museum practices. I am also the language instructor of Muscogee at the Oklahoma State University.

I bring you greetings from our Nation's leaders.

The Muscogee (Creek) Nation believes that the Native American Graves Protection and Repatriation Act (NAGPRA), enacted in 1990, was and is designed as a Native American human rights law -- an effort to right an inherently basic wrong. NAGPRA was enacted in response to accounts that span many generations over the significant portion of two centuries. These accounts document a spectrum of actions from harvesting Human Remains from the battlefield to disinterment of existing graves and theft of Native American Human Remains, Funerary Objects interred with the deceased at burial, Sacred Objects of different types, and objects of Cultural Patrimony that belong to the collective Native community—families, clans, societies, longhouses, ceremonial grounds and other moieties. Within a few years time, two public laws were enacted that forever changed how Native Americans are viewed today:

- Public Law 101-601, the Native American Graves Protection and Repatriation Act (NAGPRA), enacted November 16, 1990).
- Public Law 101-185, the National Museum of the American Indian Act that includes repatriation provisions for the entire Smithsonian Institution, enacted November 28, 1989; amended 1996.

A basic universal human right is to express and carry out self-hood as deemed appropriate by the people themselves. The policy goal of NAGPRA is to treat our people as human beings with inalienable rights, rather than as archeological resources of the Federal government and private academics. In death, our ancestors were sent on a journey that has no boundaries of time and the disruption of that journey has no concept in our minds, beliefs, and culture, the same as if your relatives are buried today, the expectation is that their journey will not be interrupted

NAGPRA was intended to stop and provide a remedy for the disruption of Ancestral Remains. We find the implementation of the law has many areas of conflict with the policy goals, such as ideas of "control" and "ownership" of human remains; problems with funding to get the job accomplished; and new objectionable actions on top of the egregious actions that the law was intended to remedy.

The intent of the law is clear -- to respect and recognize Native rights, histories, traditions, cultural context and voice -- and there are a great many people who abide by the intent of the law. There are others who are scofflaws and who are trying to dehumanize us again in the way that they choose to ignore this important federal Indian law. Some repositories and scientists seem to view their collecting interests as trumping the moral and ethical interests that made NAGPRA such a far-reaching landmark federal policy. We still battle to help our Ancestors find their way home and we ask you for your

continued support help us implement the law as it was envisioned. The Muscogee (Creek) Nation is grateful for the opportunity to come here today to bring these points to your attention.

NAGPRA is intended to alleviate situations brought on by the European and Euro-American tradition of collecting the "other." The current reality of repatriation in America is that the Native nations carry almost the full burden of proof in making claims of repatriation with Federal agencies and with the Smithsonian Institution. This was not the intent of NAGPRA and I don't believe that this was the intent of Congress with the Smithsonian. This places an extraordinary hardship on many nations due to lack of funding, staffing, and expertise, among other reasons. The sheer number of ancestral remains that have been disturbed must be addressed. The Government Accountability Office (GAO) states that it may take several decades for the Smithsonian to complete their work (GAO-11-515). It also appears that repatriations using NAGPRA may take possibly hundreds of years to work through the process unless changes are made to the implementation of the act.

Federal Agency Example of How NAGPRA is not Meeting its Congressional Mandate

With the release of the GAO report on the federal agencies' compliance with the NAGPRA law, *NAGPRA - After Almost Twenty Years, Key Federal Agencies Still Have Not Fully Complied with the Act (GAO-10-768)*, one of the largest holders of Human Remains and Associated Funerary Objects, the Tennessee Valley Authority (TVA), is just now coming to realize that it, too, must consult in earnest with the tribes after ignoring this responsibility for the past 20 years. The vast majority of the collection that the TVA has accumulated comes from the southeastern United States, the original homelands of our Muscogee (Creek) Nation and related peoples. The TVA has classified almost all of the 8,368 Native American remains in its control as unaffiliated, without conducting proper tribal consultation to reach that decision. The Muscogee (Creek) Nation is one of the Indigenous peoples who lived in the region for at least 1,000 years, according to oral tradition and physical evidence. The likelihood that these Native American human remains and associated funerary objects can be culturally affiliated to our tribe is very high. The proclivity of the TVA to utilize archaeologists who seemingly make cultural affiliations or un-affiliations without tribal consultation as required by law makes the repatriation process very difficult for the tribes to complete.

The **Tennessee Valley Authority (TVA)** manages 293,000 acres and 11,000 miles of public shoreline in the Tennessee Valley. According to the agency Website, TVA Cultural Resources staff consult regularly with 18 federally recognized tribes. No Notices of Inventory Completion and no Notices of Intended Disposition have been submitted to the National NAGPRA office to date. A minimum of 8,368 Native American human remains and 20,870 affiliated funerary objects are curated at various museums, including the Alabama State Museum of Natural History, University of Alabama, and at the Frank H. McClung Museum, and the University of Tennessee-Knoxville. Other repositories have not been identified.

Relied on repositories to compile and submit inventory and summary documents. TVA relied on its own records and those of its repositories to identify the locations of its archeological collections. TVA generally relied on repositories in possession of its collections to compile the agency's summaries and

inventories. The repositories prepared these documents more than 10 years ago. For TVA's collections at the University of Alabama, TVA has not conducted specific consultations on cultural affiliations. As a result, TVA considers its inventories to be preliminary since the required consultations have not yet occurred.

Lacks compliance data and faces other challenges. According to TVA's NAGPRA coordinator, a database of TVA's NAGPRA collections is being developed. TVA cultural resources management staff stated that due to gaps in communications, a lack of consultations, and other challenges, TVA has not been able to establish final cultural affiliations for any of the NAGPRA items in its historical collections. In addition, for NAGPRA items that were excavated during the course of TVA projects several decades ago, some ambiguity may exist as to which entity – TVA or the museum that curates the items – has legal control over the items, according to TVA.

Museum Example of How NAGPRA is not Meeting its Congressional Mandate

All museums and Federal agencies were required to complete inventories of Native American human remains and associated funerary objects in their collections by November 16, 1995, and notify all culturally affiliated Indian tribes and Native Hawaiian organizations by May 16, 1996. A copy of each notification was to be sent to the National Park Service, which was to publish the notice in the Federal Register. The repatriation process cannot move forward without publication of the notice. In 1996, the Sam Noble Oklahoma Museum of Natural History in Norman submitted its notices and several were published. However, the remaining notices – accounting for the remains of 3,889 Native American individuals and 18,296 associated funerary objects – were withdrawn from the publication process on November 8, 2007, by a decision made by the National Park Service and the Sam Noble Museum. The affiliated Indian tribes were not consulted on this decision and these 3,889 Native Americans are not only no longer “affiliated,” they are no longer on any list and in fact have “disappeared.” These Native American ancestors remain on the museum's shelves, unable to proceed on their journey until the museum and the National Park Service publish the required notifications in the Federal Register or at the least, they classify them as culturally unidentifiable.

The basic premise that surrounds the repatriation process is the concept of meaningful consultation. We believe that even with President Obama's November 2009 direction for each agency to engage in meaningful tribal consultation, this concept is not being embraced, much less practiced in a uniform manner by federal agencies, museums and educational institutions in the realm of repatriating our Native American ancestors and cultural objects. This remains a stumbling block to the achievement of the goals of NAGPRA. We are not at the table at the important decision-making stages and we need to be included. The federal and federally-assisted entities do not have the historical, traditional knowledge that we have, no matter how much they think they know about us. We are the only ones who can represent our interests and those of our relatives. The TVA, other Federal agencies, and museums discount our oral history and our traditions, as well as our cultural, historical, linguistic, geographical and other ways that we are related to and affiliated with other Native nations, tribes, tribal towns, confederacies and peoples. Even when they are aware of this unique knowledge, we are still excluded from important parts of the processes affecting NAGPRA and as a result, our voices are not

heard. As a result, over 126,000 of our Ancestors are being described as culturally unidentifiable and are being held like prisoners of war, locked away in universities, agencies, historical societies and other repositories, and federal monies assist them in this warehousing of Human Remains. This is the opposite of the policy goal of NAGPRA.

The National NAGPRA Program office and others claim that there is no clear direction for who is in "control" of the Human Remains and Associated Funerary Objects that were disturbed and "collected" by actions of TVA and other agencies and repositories. The entity that is curating and completing the collection work makes its own case for claiming "control" of Human Remains and Associated Funerary Objects. This reverses the NAGPRA policy goal and is best seen in the recent federal rule that separates the Associated Funerary Objects from the Human Remains and "gives" the Associated Funerary Objects to the holding repositories, thus stealing from the deceased Native people once again. The Associated Funerary Objects belong to our Ancestors and Relatives. They are not the property of the federal government. The federal agencies do not have the right to "give" them to another entity. The repositories do not have the right to accept the Associated Funerary Objects or to keep them or to study them or to deal them away to others. Just because the repositories robbed graves or paid the grave robbers or received the grave robbers' contraband through third or fourth parties, the repositories have no clean title or claim to the treasures of our Ancestors and Relatives.

Administrative Remedy

The policy goal of NAGPRA is that the Associated Funerary Objects would be returned to their respective Native American communities. We ask the Committee to urge the Administration to amend the rule on culturally unidentified Human Remains issued on March 15, 2010, so that the Human Remains are repatriated with their Associated Funerary Objects subject to repatriation processes. (Attached is the National Congress of American Indians resolution of November 2010, Opposition to the New Rule on Funerary Objects Associated with Culturally Unidentified Human Remains, which we endorse.) To be perfectly clear, we oppose the rule to the extent that it does not mandate the return of our Associated Funerary Objects. We want any and all implementation of section 10.11 (c) (4) of the rule to cease, and for that portion of the rule to be revised. The Associated Funerary Objects are the primary means of identifying the unidentified Human Remains — and the policy goal of that section of NAGPRA is to identify what the repositories claim as unidentifiable Human Remains. We are deeply concerned that the Associate Funerary Objects will be further separated from the Human Remains, making their identification even more difficult, if not impossible. Revision of the rule on Associated Funerary Objects would be consistent with the NAGPRA policy. The Administration claims that Congress did not make its intentions clear and that it cannot act without further guidance from Congress. We believe that Congress made itself clear in setting the NAGPRA policy goals, that the Department of the Interior through the National NAGPRA Program office substituted its judgment for that of Congress and that the Administration can revise the rule now and does not need to wait for Congress.

The lack of a publicly available and agreed upon tribal consultation policy and protocol for repatriation purposes remains a stumbling block to the achievement of the goals of NAGPRA. Consultation is a bedrock of the repatriation process and there needs to be consultation guidelines for

the full range of Native cultural rights. Consultation with full participation of the tribes at all levels of the notification process is the only way to insure success of the repatriation.

Legislative Remedy

A technical clarification is needed in the legal definition of "Native American" by enacting the "or was" amendment that the Committee has recommended several times. Without the regulatory change and the technical amendment, we are impeded in our efforts to conduct repatriations and the institutions will continue to hold and "study" our Ancestors and Associated Funerary Objects. This and other such blocking mechanisms make it very difficult for any tribe to complete the NAGPRA process. Attached are two resolutions of the National Congress of American Indians, which address these issues.

Recommended Solutions for Federal Agency Compliance with NAGPRA

In October 2010 and in preparation for the 20th anniversary of the signing of the NAGPRA, the Oklahoma Coalition of Tribes (OCO^T), a newly formed organization of tribes representing one million Native Americans primarily from Oklahoma, developed and issued a resolution for Secretary of Interior Ken Salazar that lists the shortcoming of NAGPRA and recommends how to improve the process. The following resolution was also delivered to the National NAGPR Review Committee in November 2010.

RESOLUTION

OF A COALITION OF AUTHORIZED REPRESENTATIVES OF OKLAHOMA AND SOUTHERN INDIAN TRIBES

ON THE 20TH ANNIVERSARY OF THE NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT

WHEREAS: In recognition of the 20th anniversary of the signing of the Native American Graves Protection and Repatriation Act, authorized representatives from the federally recognized Choctaw Nation of Oklahoma, Chickasaw Nation, Caddo Nation, Osage Nation, Seminole Nation of Oklahoma, United Keetoowah Band of Cherokee Indians in Oklahoma, Quapaw Tribe of Oklahoma, Jena Band of Choctaw Indians, Kaw Nation, Absentee Shawnee, Sac and Fox Nation, and Muscogee (Creek) Nation, and the Citizen Band of Potawatomi Indians, representing over 1,000,000 tribal members, met in Durant, Oklahoma, on October 26-27, 2010, to discuss NAGPRA; and

WHEREAS: The authorized tribal representatives submit this resolution to the Secretary of the Interior; and

WHEREAS: As experienced by the above Indian tribes and documented in the recent Government Accountability Office (GAO) report, *NAGPRA - After Almost Twenty Years, Key Federal Agencies Still Have Not Fully Complied with the Act*, no enforcement mechanism exists to ensure NAGPRA compliance by federal agencies; and

WHEREAS: As experienced by the above Indian tribes and documented in the recent GAO report, federal agency representatives report that NAGPRA is a low priority within their agency; and

WHEREAS: As documented in the recent GAO report, the National NAGPRA Program has not effectively carried out its responsibilities; and

WHEREAS: As experienced by the above Indian tribes and documented in the recent GAO report, key federal agencies are still out of compliance with NAGPRA and have not published Notices of Inventory Completion in the Federal Register; and

WHEREAS: As documented in the recent GAO report, a lack of transparency and objectivity exists in the actions of the National NAGPRA Program and the Review Committee; and

WHEREAS: As experienced by the above Indian tribes and documented in the recent GAO report, civil penalty allegations against museums have increased dramatically over the past three years; and

WHEREAS: At the current rate of the NAGPRA process it will require some Indian tribes (e.g. Caddo Nation) more than a century to repatriate their known culturally affiliated human remains, associated funerary objects, sacred objects, and items of cultural patrimony; and

WHEREAS: According to the National Park Service's online databases, the number of currently reported Culturally Unidentifiable Human Remains and Associated Funerary Objects is approximately four times more than the number of currently reported Culturally Affiliated Human Remains and Associated Funerary Objects; and

WHEREAS: The above Indian tribes agree that the NAGPRA and repatriation processes are unacceptably slow and burdensome in their present form.

THEREFORE: The respective federally recognized Indian tribes listed above request the following steps to improve the NAGPRA process:

- A) An ombudsman be appointed to work with the Indian tribes and federal agencies to facilitate timely NAGPRA compliance and that four full-time NAGPRA investigators be employed within the Department of the Interior to ensure that museums, universities, and institutions that receive federal funds comply with NAGPRA; and
- B) Seek to improve NAGPRA compliance by increasing the civil penalty amounts; and
- C) Federal agencies, in consultation with Indian tribes, shall locate and secure reburial sites on federally protected land to be used by Indian tribes for the reburial of human remains and objects repatriated through the NAGPRA process; and
- D) NAGPRA Grants shall support projects that involve consultation with museums, universities, and institutions that receive federal funds and hold federal collections; and

- E) Indian tribes be provided with a copy of information that federal agencies submit to the National Park Service for inclusion in the Culturally Unidentifiable Native American Inventory Database, thus creating a process for directly sharing information with Indian tribes; and
- F) Develop a NAGPRA tribal consultation policy for sharing information among Indian tribes, federal agencies, museums, universities, and institutions that receive federal funds that would include, but is not limited to, NAGPRA Inventories, Summaries, archaeological reports, and other relevant data; and
- G) The Department of Interior shall promulgate the remaining reserved section(s) of the NAGPRA regulations; and
- H) Support NAGPRA at the level of at least \$1 million for NAGPRA administration, and \$4 million exclusively for the NAGPRA grants to Indian tribes and museums; and
- I) Federal agencies, museums, and institutions that receive federal funds shall participate in an annual consultation meeting with Indian tribes for the purpose of discussing policy-making, priority-setting, funding resources, and NAGPRA compliance, to be held in Oklahoma, the home of 39 federally recognized Indian tribes

One of the tribal members of OCoT, Ms. Lisa Larue from the United Keetowah Band of Cherokees, recently said these words at one of recent gatherings in Norman, Oklahoma, "It is a shame that some of our ancestors have been in boxes and on shelves for a longer time than they have walked on this earth..." The message we want to send about not returning our ancestors to their spiritual journeys is a moral one. We urge that the Congress review our resolution's recommendations and work with us to remove the challenges and barriers to the repatriation process.

Cultural Preservation at the Muscogee (Creek) Nation

In addition to my repatriation duties, I am also the newly designated Tribal Historic Preservation Officer (THPO) for our tribe. The Muscogee (Creek) Nation is the 113th Indian tribe to acquire Sec. 101(d)(2) status as a THPO. The THPO program is in a funding crisis because the amount of federal funds for the program is not keeping pace with the number of tribes entering into the program.

The Muscogee (Creek) Nation's Office of Cultural Preservation had the honor and privilege to assist our sister tribe, the Choctaw Nation of Oklahoma, with its own efforts of repatriation by working together to assist in the return 124 Ancestors. The Choctaw Nation, as the lead tribe, in consultation with other related tribes and the NPS Natchez Trace National Parkway, completed the repatriation process and reburial of the ancestors to allow for the continuation of their journeys to the other world. As the related tribes all acknowledge, there is no ceremony for the reburials but for protection of self, one was agreed upon. This ceremony was not intended for the reburial process but for protection of the workers who handle the remains, dig the graves and walk on the burial ground, much as we have funeral ceremonies in modern times. It was the intertribal collaboration that allowed the use of each of our combined traditions to 'invent' new ceremony, to show respect for our relatives. It did not matter

that the Human Remains and Associated Funerary Objects belonged to the Natchez people, we as related tribes, had all come to the agreement to allow one of the related tribes, in this case the Choctaw Nation, to make the claim and repatriate. It is important that a related nation return an Ancestor to his or her cultural context -- in our case, to the earth in a respectful way. As with all our ceremonies, repatriations are private matters and no one outside of our traditions need to know the details of what we do. This is the case for our religions, cultures and ways of life, just as it is for non-Natives' most personal and private family matters.

To allow Ancestors to find their way home allows us today to Find Our Way Home.

Mr. Chairman and Members of the Committee, allow us to find our way home.

This is a responsibility that we choose – to have our select few NAGPRA Warriors take care of our ancestors' remains in the attempt to rectify an injustice that has been perpetuated on the Native Peoples of the Americas. Please remove the barriers that stand in the way of fulfilling our responsibilities.

We urge you to act upon our requests and the attached resolutions, in order to keep repatriation on its intended policy course and to return the federal agencies' implementation of NAGPRA to the positive policy goals of our human rights law.

Mvto Cekicvkis ci!

Cenhesset toyis ci!

Mon mvhtekosan makavranis ci!

"I'm honored and humble to be here. I thank you. I have visited your beautiful land. I have learned a lot from your language program about your history and culture. We have much in common. " "Thank you and until we meet again."

Owau no me kahanohanoamekaha'aha'anei au ma'ane'i, mahalo. Uakipaa'e au i kou

'ainaaloha.Uaa'onuiwauko 'oukou 'olelo, mo'oleloamemo'omeheu.A uama'amaumaua.Mahalo a

nuiloaia 'oe.Na keAkua e ho'opomaika'iia 'oe e ku'uhoaloha.A huihouaku no.



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #PHX-08-069C

TITLE: NCAI Policy Statement on Sacred Places

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, the NCAI Human, Religious and Cultural Concerns Subcommittee met during the NCAI 65th Convention and discussed pressing issues and remedies regarding protection of Native sacred places; and

WHEREAS, the Subcommittee considered and wrote a paper, Policy Statement on Sacred Places, which it wishes NCAI to adopt and transmit to the Presidential Transition immediately following the outcome of the 2008 national election; and

WHEREAS, the exact text of the Policy Statement on Sacred Places reads:

As the oldest and largest national organization of American Indian and Alaska Native tribal governments, NCAI is deeply concerned with the respectful treatment and the protection of Native American sacred landscapes. Historically subjected to the devastating systemic destruction of our religious practices and places, we continue to suffer the heartbreaking loss and destruction of our precious few remaining sacred places.

The American Indian Religious Freedom Act (AIRFA) was enacted into law 30 years ago, in 1978, and states that "it shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites."

EXECUTIVE COMMITTEE

PRESIDENT
Joe A. Garcia
*Ohkay Owingeh
(Pueblo of San Juan)*

FIRST VICE-PRESIDENT
Jefferson Keel
Chickasaw Nation

RECORDING SECRETARY
W. Ron Allen
Jamestown S'Klallam Tribe

TREASURER
gaiashkibos
*Lac Court Oreilles Band of Lake
Superior Chippewa Indians*

REGIONAL VICE-PRESIDENTS

ALASKA
Mike Williams
Yupiaq

EASTERN OKLAHOMA
Joe Grayson, Jr.
Cherokee Nation

GREAT PLAINS
Ron His Horse Is Thunder
Standing Rock Sioux Tribe

MIDWEST
Robert Chicks
Stockbridge-Munsee

NORTHEAST
Randy Noka
Narragansett

NORTHWEST
Ernie Stensgar
Coeur d'Alene Tribe

PACIFIC
Juana Majel
Pauma-Yuima Band of Mission Indians

ROCKY MOUNTAIN
Willie Sharp, Jr.
Blackfeet Tribe

SOUTHEAST
Archie Lynch
Haliwa-Saponi

SOUTHERN PLAINS
Darrell Flyingman
Cheyenne-Arapaho Tribes

SOUTHWEST
Derek Valdo
Pueblo of Acoma

WESTERN
Alvin Moyle
Fallon Paiute-Shoshone

EXECUTIVE DIRECTOR
Jacqueline Johnson
Tlingit

NCAI HEADQUARTERS
1301 Connecticut Avenue, NW
Suite 200
Washington, DC 20036
202.466.7767
202.466.7797 fax
www.ncai.org

However, 20 years ago, in 1988, the Supreme Court ruled that neither AIRFA nor the U.S. Constitution provides a cause of action for Native Americans to defend their sacred places in court. The high court also stated that Congress would need to enact a statute for that purpose, but Congress has not enacted a statutory right of action for tribes to protect their sacred places and site-specific ceremonies.

In two recent decisions, courts have ruled that the Religious Freedom Restoration Act does not protect Native American religious interests at the San Francisco Peaks or Snoqualmie Falls. Other legal instruments -- such as AIRFA, the Executive Order on Sacred Sites (EO 13007), the National Historic Preservation Act (NHPA) and the National Environmental Policy Act (NEPA) -- often are ineffectively implemented and provide limited legal redress to aggrieved traditional religious practitioners and tribes.

Year after year, sacred landscapes that are integral to the exercise of Indian religions are being destroyed and are under threat by development, pollution, recreation, vandalism and other public and private actions. There is no comprehensive, effective policy to preserve and protect sacred places.

Protecting sacred places is necessary for the survival of traditional religions, cultures and lifeways and our identity and status as sovereign nations. We Native Peoples are required by the tenets of our traditional religions to protect the physical integrity of these places and we call on others to remove legal and other barriers that stand in the way of our spiritual duty of care and protection. We insist on our access to these landscapes, where appropriate and necessary to our lifeways. We seek public understanding and agreement that one use of a place may be not to use it and that some of these places are geophysically delicate and may not support non-cultural usage.

Here are action steps that are needed at this time to protect Native American sacred places:

- **Enact a statutory right of action for tribes to defend sacred places**

Today, there is no federal statute for the express purpose of protecting Native American sacred places. It is time for Congress to enact a right of action for tribes to defend sacred places. Unless tribes can sustain lawsuits, they will not have a seat at federal negotiation tables and agencies and developers will continue to disregard existing consultation requirements. Meaningful consultation and respectful negotiations can obviate the need for litigation. However, if negotiated accords cannot be reached, tribes must be able to protect their holy places in court.

- **Update and Executive Order 13007 and all consultative instruments**

Executive Order 13007 needs to be updated to assure that Native nations have sufficient, ongoing and meaningful opportunities to consult and participate in federal planning and decision-making processes that may affect Native American sacred landscapes and site-specific ceremonies. EO 13007 does not include a cause of action and any codification of it needs to include a specific right of action for legal protection of Native American sacred places. The federal government has failed to assure adequate nation-to-nation dealings with tribes regarding sacred places and needs to begin by updating and strengthening all its tribal consultative instruments.

- **Evaluate and implement specific sacred places policies**

Federal agencies, in consultation with tribal and religious leaders, should evaluate and implement, to the maximum extent possible, policies that would: 1) transfer sacred and culturally significant landscapes back to the tribes with a cultural affinity to them; 2) develop co-management and co-stewardship agreements with tribes to manage areas of religious and cultural importance; 3) prevent development (through withdrawal or other mechanisms) of areas of cultural sensitivity that are located on public lands; and 4) maintain the confidentiality of information pertaining to culturally sensitive places.

- **Establish policy for cultural surveys prior to transfers and permits**

Establish a federal policy to assure that, prior to any transfer or any issuance of permits, a cultural survey is undertaken in consultation with tribes as part of the initial stages of any federally-mandated identification process. This process must affirm the inherent rights of access to and protection of Native Peoples' historic, cultural, holy and sacred places; cultural patrimony; and our ancestors.

- **Strengthen the Native American Graves Protection and Repatriation Act**

The Native American Graves Protection and Repatriation Act (NAGPRA) needs to be strengthened in several ways. First, NAGPRA's definition of "Native American" needs to be technically clarified and returned to its original intent by adding the following italicized words to the existing definition: "Native American" means of, or relating to, a tribe, people, or culture that is *or was* indigenous to *any geographic area that is now located within the boundaries of* the United States. Second, NAGPRA needs increased penalties for violations of burials and burial grounds, human remains and cultural items. Third, NAGPRA needs to be specifically strengthened with tools for improved law enforcement and prosecutions.

- **Protect burial places and ancestors from current threats**

Burial places are also sacred places. At present, there are entities subverting existing laws designed to protect our burial places and our ancestors. These entities include, for example, prominent universities in the University of California system and other federal and federally-assisted educational institutions, museums and agencies. Vigorous enforcement of existing laws and maximum penalties are needed to address these ongoing violations of law, including the failure to recognize the rights of the historic tribes in California, which tribes have standing under the repatriation laws.

- **Appoint Native people to federal land-managing decision-making entities**

Many of the federal land-managing agencies' decisions affect sacred landscapes, tribal ceremonies and the cultural well being of Native people, but Native people do not sit on the key federal land-management committees, boards and panels which make those decisions. Native Americans need to be appointed to those bodies that make and drive policies and decisions in the federal land-managing agencies, especially those that may affect sacred places and site-specific ceremonies.

- **Use and strengthen existing administrative policies and regulations**

Many federal officials have failed to use existing administrative policies and regulations to protect sacred landscapes or to accommodate the ceremonial use of sacred places by tribes, moieties and traditional practitioners. Any policies and regulations that are deemed inadequate for these purposes need to be strengthened, in full consultation with tribes, religious leaders and traditional practitioners. Federal land managers need to provide the means for scientific and cultural experts, as well as other assistance to tribes in the consultative process.

- **Establish discrete processes for sacred places trust easements**

Establish discrete processes for tribes to obtain and hold trust easements to provide access to and protect the physical integrity of sacred places and viewscapes located on public and private lands. Public officials, in consultation with tribes, moieties and traditional practitioners, need to develop co-management or joint stewardship agreements, as well as practical economic incentives for private land owners to enter into sacred places easements. Tribes, moieties and traditional practitioners need to be provided with the means and assistance to obtain and hold easements. The public process must be discrete, efficient and timely, and the Bureau of Indian Affairs process must allow cultural easements in the fee land to trust land process, which it does not do now.

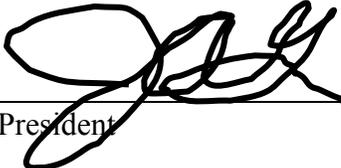
(Note: The NCAI tribal leadership has adopted resolutions which support the action steps above, including Resolution BIS-02-043, *Sacred Lands*, at the Mid-Year Conference, June 2002 in Bismarck, ND, in support of legislation that furthers the protection of sacred lands and sacred places; and Resolution SD-02-027, *Essential Elements of Public Policy to Protect Native Sacred Places*, at the Annual Convention in November 2002 in San Diego, CA.)

NOW THEREFORE BE IT RESOLVED, that the NCAI does hereby adopt the language above as the NCAI Policy Statement on Sacred Places and directs its transmittal to the Presidential Transition immediately following the results of the 2008 national election.

BE IT FURTHER RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2008 Annual Session of the National Congress of American Indians, held at the Phoenix Convention Center in Phoenix, Arizona on October 19-24, 2008, with a quorum present.



 President

ATTEST:


 Recording Secretary

RESOLUTION

OF A COALITION OF AUTHORIZED REPRESENTATIVES OF

OKLAHOMA AND SOUTHERN INDIAN TRIBES

ON THE 20TH ANNIVERSARY OF THE NATIVE AMERICAN GRAVES PROTECTION AND
REPATRIATION ACT

WHEREAS: In recognition of the 20th anniversary of the signing of the Native American Graves Protection and Repatriation Act, authorized representatives from the federally recognized Choctaw Nation of Oklahoma, Chickasaw Nation, Caddo Nation, Osage Nation, Seminole Nation of Oklahoma, United Keetoowah Band of Cherokee Indians in Oklahoma, Quapaw Tribe of Oklahoma, Jena Band of Choctaw Indians, Kaw Nation, Absentee Shawnee, Sac and Fox Nation, and Muscogee (Creek) Nation, and the Citizen Band of Potawatomi Indians, representing over 1,000,000 tribal members, met in Durant, Oklahoma, on October 26-27, 2010, to discuss NAGPRA; and

WHEREAS: The authorized tribal representatives submit this resolution to the Secretary of the Interior; and

WHEREAS: As experienced by the above Indian tribes and documented in the recent Government Accountability Office (GAO) report, *NAGPRA - After Almost Twenty Years, Key Federal Agencies Still Have Not Fully Complied with the Act*, no enforcement mechanism exists to ensure NAGPRA compliance by federal agencies; and

WHEREAS: As experienced by the above Indian tribes and documented in the recent GAO report, federal agency representatives report that NAGPRA is a low priority within their agency; and

WHEREAS: As documented in the recent GAO report, the National NAGPRA Program has not effectively carried out its responsibilities; and

WHEREAS: As experienced by the above Indian tribes and documented in the recent GAO report, key federal agencies are still out of compliance with NAGPRA and have not published Notices of Inventory Completion in the Federal Register; and

WHEREAS: As documented in the recent GAO report, a lack of transparency and objectivity exists in the actions of the National NAGPRA Program and the Review Committee; and

WHEREAS: As experienced by the above Indian tribes and documented in the recent GAO report, civil penalty allegations against museums have increased dramatically over the past three years; and

WHEREAS: At the current rate of the NAGPRA process it will require some Indian tribes (e.g. Caddo Nation) more than a century to repatriate their known culturally affiliated human remains, associated funerary objects, sacred objects, and items of cultural patrimony; and

WHEREAS: According to the National Park Service's online databases, the number of currently reported Culturally Unidentifiable Human Remains and Associated Funerary Objects is approximately four times more than the number of currently reported Culturally Affiliated Human Remains and Associated Funerary Objects; and

WHEREAS: The above Indian tribes agree that the NAGPRA and repatriation processes are unacceptably slow and burdensome in their present form.

THEREFORE: The respective federally recognized Indian tribes listed above request the following steps to improve the NAGPRA process:

- A) An ombudsman be appointed to work with the Indian tribes and federal agencies to facilitate timely NAGPRA compliance and that four full-time NAGPRA investigators be employed within the Department of the Interior to ensure that museums, universities, and institutions that receive federal funds comply with NAGPRA; and
- B) Seek to improve NAGPRA compliance by increasing the civil penalty amounts; and
- C) Federal agencies, in consultation with Indian tribes, shall locate and secure reburial sites on federally protected land to be used by Indian tribes for the reburial of human remains and objects repatriated through the NAGPRA process; and
- D) NAGPRA Grants shall support projects that involve consultation with museums, universities, and institutions that receive federal funds and hold federal collections; and
- E) Indian tribes be provided with a copy of information that federal agencies submit to the National Park Service for inclusion in the Culturally Unidentifiable Native American Inventory Database, thus creating a process for directly sharing information with Indian tribes; and
- F) Develop a NAGPRA tribal consultation policy for sharing information among Indian tribes, federal agencies, museums, universities, and institutions that receive federal funds that would include, but is not limited to, NAGPRA Inventories, Summaries, archaeological reports, and other relevant data; and

- G) The Department of Interior shall promulgate the remaining reserved section(s) of the NAGPRA regulations; and
- H) Support NAGPRA at the level of at least \$1 million for NAGPRA administration, and \$4 million exclusively for the NAGPRA grants to Indian tribes and museums; and
- I) Federal agencies, museums, and institutions that receive federal funds shall participate in an annual consultation meeting with Indian tribes for the purpose of discussing policy-making, priority-setting, funding resources, and NAGPRA compliance, to be held in Oklahoma, the home of 39 federally recognized Indian tribes.

RESOLUTION

OF A COALITION OF AUTHORIZED REPRESENTATIVES OF

OKLAHOMA AND SOUTHERN INDIAN TRIBES

**ON THE 20TH ANNIVERSARY OF THE NATIVE AMERICAN GRAVES PROTECTION AND
REPATRIATION ACT**

OCTOBER 27, 2010

INVITED SIGNATORY:

MUSCOGEE (CREEK) NATION

By: _____
Cultural Preservation Manager

Date: _____