



United States Department of the Interior

BUREAU OF RECLAMATION

Washington, D.C. 20240

IN REPLY REFER TO:

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Dr. Julia A. King, Chair
Advisory Council on Historic Preservation
Archaeology Task Force
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue, NW, Suite 809
Washington, DC 20004

Dear Dr. King:

As instructed in the September 1, 2005, *Federal Register*, the Bureau of Reclamation is providing comments (enclosed) on the Proposed Action: Notice of intent to reconsider the Advisory Council on Historic Preservation's "Policy Statement Regarding Treatment of Human Remains and Grave Goods."

If you have any questions, please contact Reclamation's Federal Preservation Officer Mr. Thomas Lincoln at 303-445-3311.

Enclosure

Sincerely,

John W. Keys, III
Commissioner

Working Principles for Revising the Advisory Council on Historic Preservation's (ACHP) Policy Statement Regarding Treatment of Human Remains and Grave Goods [Federal Register Vol. 70, No. 169, Thursday, September 1, 2005] .

Comments by the Bureau of Reclamation

We thank you for the opportunity to comment on the subject Working Principles, and note that Reclamation has concerns with this policy statement, its relevance, and the process by which the ACHP solicited comments from Federal Preservation Officers.

Reclamation believes that an ACHP policy statement on the treatment of human remains is no longer necessary because of regulations that have been promulgated since 1988. We note that many references in the proposed Working Principles restate existing clauses from either the ACHP's regulation 36 CFR Part 800, or the Native American Graves Protection and Repatriation Act (NAGPRA) and its implementing regulation 43 CFR Part 10. We believe existing regulatory language is adequate to allow Federal agencies to address appropriately the treatment of human remains and associated items. Furthermore, we believe it is confusing for the ACHP to issue a policy that does not address all situations where Federal agencies must consider the treatment of human remains and funerary objects. In Reclamation's opinion, however, such a policy statement would be beyond the scope of the ACHP's authority.

Having stated our recommendation against the need for an ACHP policy on the treatment of human remains, Reclamation has specific comments on both the proposed Working Principles and the current policy. If the ACHP chooses to move forward with revision of its policy, Reclamation recommends that the ACHP modify all references that may be construed as regulatory language (see comment no. 11) so that it is very clear that compliance with section 106 of the National Historic Preservation Act and decisions that derive from Federal undertakings are the Federal agency's responsibility.

1. **Supplementary Information**, 3rd paragraph - The statement "The Task Force solicited the comments of Federal * * * Historic Preservation Officers * * * " misrepresents the actual actions of the ACHP. Reclamation's Federal Preservation Officer (FPO) was not contacted by the Task Force, nor did he receive a request from the Department of the Interior to participate with, or comment on, Task Force activities. Task Force information was provided to Reclamation's FPO, but after Task Force activities had been ongoing for some time, and after decisions had been made.

2. **Background information**, 3rd paragraph, *Nature of the current debate* – The statement "Most people would agree that human remains and the items buried

with them should not be disturbed.” has not been demonstrated. The sentence should be edited to read “Many people * * *.”

3. **Background Information, Objectives of an updated policy** – The statement “* * * the ACHP wishes to assert its leadership in historic preservation for the Federal government * * *” seems to us to be a stretch. The ACHP is an important player in Federal historic preservation, and it has a leadership role, but to claim preeminence, as implied in the draft statement, is not correct. We recommend the statement be edited to read “* * * the ACHP wishes to continue its role as a leader in historic preservation for the Federal government * * *.”

4. **Working Principles** – “Address treatment of all human remains and funerary objects in the context of compliance with section 106 of the National Historic Preservation Act (NHPA).” Reclamation believes this statement is addressed in ACHP regulations 36 CFR Part 800 and is, therefore, not necessary.

5. **Working Principles** – “Encourage Federal agencies to initiate the section 106 process early in their planning process.” Reclamation believes this statement is in ACHP regulations 36 CFR Part 800 and is, therefore, not necessary.

6. **Working Principles, Principle 2** – Reclamation believes the National Park Service (NPS) has the equal, if not preeminent, responsibility to “clarify the intersection between the requirements of section 106 and the Native American Graves Protection and Repatriation Act (NAGPRA).” Thus, we recommend that any statement in this area either copy or reflect NPS statements regarding the interface of NAGPRA and section 106.

7. **Working Principles, Principle 2** – It is not necessary to recognize the responsibilities of Federal agency officials under section 106 in this policy because it is stated in ACHP regulation 36 CFR Part 800.

8. **Working Principle, Principle 4** – The opening paragraph is redundant with ACHP regulation 36 CFR Part 800 and should be deleted.

9. **Working Principle, Principle 4** – The statements: (1) “Agency decisions regarding treatment of human remains and ultimate disposition must be based on a careful consideration of all views” and (2) “The legal Government-to-Government obligations of Federal agencies to Indian tribes * * * should have a bearing on Federal agency decisions regarding the treatment and disposition of Native American human remains and funerary objects” are established in NAGPRA and NHPA and, thus, it is not necessary to repeat them here. Furthermore, some may read these statements to imply that the ACHP would support individual Native American or tribal positions with regard to the treatment of Native American human remains and disregard competing views that would support scientific analysis of Native American human remains. Reclamation

believes that language in this section must include a statement that identifies the benefits and desirability of scientific analysis of Native American human remains.

10. **Working Principle, Principle 5** – Federal law (NAGPRA and NHPA), regulation (36 CFR Part 800 and 43 CFR Part 10), and agency guidance all exist to assist the Federal agency official in making decisions regarding treatment of human remains. We recommend this section be deleted.

11. **Working Principle, Principle 5** – The statement “The policy statement should clarify how the Federal agency official weighs the views presented by the different parties in arriving at a final decision, recognizing that Federal or State law may prescribe a certain outcome” approaches regulatory language and, as such, is beyond the authority of the ACHP which is a consultative agency.

12. **Policy Statement Regarding Treatment of Human Remains and Grave Goods** - Reclamation disagrees with the following statement in the extant policy, “In general, human remains and grave goods should be reburied * * *” and believes it should not be considered for inclusion in the revised policy. This statement is an opinion, and does not represent an official Federal position. The statement presupposes that the ACHP prefers reburial of human remains, and thus, potentially takes decision-making authority required to conclude the section 106 process away from the Federal agency official.