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METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

Executive Office

November 30, 2005

Archaeology Task Force  
Advisory Council on Historic Preservation  
1100 Pennsylvania Avenue, NW, Suite 809  
Washington, D.C. 20004

Dear Members of the Task Force:

Draft Working Principles for  
Revising the Policy Statement Regarding Treatment of Human Remains

The Metropolitan Water District of Southern California (Metropolitan) offers the following comments on the draft "Working Principles for Revising the Advisory Council on Historic Preservation's 'Policy Statement Regarding Treatment of Human Remains and Grave Goods' "(*Federal Register* 70(169:52066-52058))".

Metropolitan is committed to treating human remains with dignity and to consulting with appropriate Native Americans when such remains are discovered in the course of project development. We are concerned, however, about problems likely to attend the proposed substitution of Principle 3 (i.e., that "avoidance, followed by preservation in place, is the preferred alternative to the disturbance of human remains and funerary objects") for the first principle in the current (1988) "Policy Statement..." (i.e., that "Human remains and grave goods should not be disturbed unless required in advance of some kind of disturbance, such as construction"). The proposed change, if effected, would subordinate the broad public interest to a more limited preference. This, in turn, predictably would delay construction projects, necessitate redesign, and increase costs whenever human remains are found and must be preserved in the path of planned construction.

A further concern is the proposed change from "grave goods" to "funerary objects." This presumably is intended to align the terms used for compliance with the National Historic Preservation Act (NHPA) and the Native American Graves Protection and Repatriation Act (NAGPRA). However, neither statute requires this convergence. "Grave goods" is a straightforward term referring to those materials ostensibly placed with the deceased at the time of burial or cremation. "Funerary object" (a NAGPRA term) is far more ambiguous. It is often taken to mean any item belonging to a class of materials presumed to have been used in a

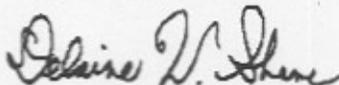
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funerary rite, regardless of the object's archaeological association with human remains. Consequently, the semantic shift is likely to increase project delays and costs because of consultation to determine whether particular items are deemed "funerary." Under the current "Policy Statement," grave goods are so defined simply and empirically on the basis of their association with human remains.

Finally, Metropolitan believes that the present "Policy Statement..." seeks to balance the interests of science with those of Native Americans. We are disappointed to see that most of the language supporting scientific investigation and the pursuit of knowledge is omitted from the proposed "Working Principles..." This raises the specter of litigation being brought against Federal agencies by scholars when opportunities for scientific study are denied. Projects might be delayed *pendent elite*, leaving entities such as Metropolitan unable to fulfill their public mission. The recent "Kennewick Man" case (Bonnichsen *et al.* v. U.S.; Civil No. 96-1481 JE, District of Oregon) is instructive in this regard.

It is Metropolitan's belief that the current principles are adequate and that they achieve a reasonable balance among the needs of science, society, and the individual communities who may be related to or affiliated with the subject human remains and artifacts. We urge the Council's Archaeological Task Force to reconsider the proposed changes in light of our comments. Thank you.

Very truly yours,



(for)

Laura J. Simonek  
Manager, Environmental Planning Team

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