



U.S. Department of the Interior
Office of Inspector General

AUDIT REPORT

NATIVE AMERICAN GRAVES PROTECTION
AND REPATRIATION ACTIVITIES,
BUREAU OF LAND MANAGEMENT

REPORT NO. 00-I-377
MAY 2000

EXECUTIVESUMMARY**Native American Graves Protection
and Repatriation Activities,
Bureau of Land Management
Report No. 00-I-377
May 2000****BACKGROUND**

The Bureau of Land Management (BLM) is responsible for managing and protecting about 260 million acres of public land, including the archaeological and historical resources derived from that land. The Native American Graves Protection and Repatriation Act (NAGPRA), which is implemented through the Code of Federal Regulations (43 CFR 10), requires each Federal agency that has possession of or control over collections of human remains and associated funerary objects to compile an inventory, including geographic origin and Native American cultural affiliation (if determinable), of such remains and objects. Additionally, the process of identification and cultural affiliation occurs through consultation with the Native American tribes to facilitate repatriation when requested by the respective tribes. Further, 43 CFR 10 requires Federal agencies to submit a Notice of Inventory Completion to the Department of the Interior Consulting Archaeologist and a copy of the Notice to the respective Native American tribe upon determining the cultural affiliation of any human remains or associated funerary objects. Thereafter, the Notice is published in the "Federal Register" to give formal notification that the human remains and associated funerary objects have been identified and may be returned to the affiliated Native Americans.

OBJECTIVE

The objective of the audit was to determine whether BLM complied with the requirements of NAGPRA and related Code of Federal Regulations and Department of the Interior policies.

RESULTS IN BRIEF

We found that overall, BLM had made significant progress in complying with the requirements of NAGPRA. Specifically, BLM located and determined tribal affiliation for about 90 percent of the Native American human remains included in its museum collections. However, the Utah State Office had made minimal progress in completing the required NAGPRA process in Utah, and BLM Colorado State officials allowed Native American remains to be reburied on BLM-managed public land in Colorado, even though a BLM instruction memorandum prohibits such reburials. These deficiencies occurred because the Utah State Office did not identify the NAGPRA requirements as a high priority activity and provide the resources needed to accomplish the effort by the NAGPRA-required date of

November 16, 1995. Also, BLM senior-level managers did not monitor and enforce BLM's policy regarding public land reburials. As a result, Native American remains have not been repatriated timely in Utah; tribes and Native Americans may not be able to control remains reburied on public land; and BLM Colorado officials may not be able to adequately protect these reburied remains from vandalism, degradation, and theft.

RECOMMENDATIONS

We recommended that BLM develop and implement a plan for the Utah State Office to ensure completion of NAGPRA requirements in an expeditious manner and ensure compliance with BLM policy regarding the prohibition of reburying Native American remains on BLM-managed lands.

AUDITEE COMMENTS AND OIG EVALUATION

BLM concurred with the report's two recommendations. Based on BLM's response and subsequent information, we considered one recommendation resolved and implemented and the other recommendation resolved but not implemented.



United States Department of the Interior

OFFICE OF INSPECTOR GENERAL
Washington, DC. 20240

AUDIT REPORT

MAY - 5 2000

Memorandum

To: Director, Bureau of Land Management

From: Roger La Rouche *Roger LaRouche*
Acting Assistant Inspector General for Audits

Subject: Audit Report on Native American Graves Protection and Repatriation Activities, Bureau of Land Management (No. 00-I-377)

INTRODUCTION

This report presents the results of our audit of the Bureau of Land Management's (BLM) Native American Graves Protection and Repatriation Act (NAGPRA) activities. The objective of the audit was to determine whether BLM complied with the requirements of NAGPRA (25 USC. §3001-3013), enacted in 1990, and related Code of Federal Regulations and Department of the Interior policies. This report is the second of two reports we have issued concerning BLM's Cultural Resource Management Program. The first report, "Cultural Resource Management, Bureau of Land Management" (No. 99-I-808), was issued in September 1999 (see Prior Audit Coverage).

BACKGROUND

BLM is responsible for managing and protecting about 260 million acres of public land, including the archaeological and historical resources derived from that land. According to BLM officials, BLM and its predecessor organization, the General Land Office, authorized the collection of millions of archaeological and paleontological objects' from the public land. These objects were deposited mainly into about 189 non-Federal repositories, including museums, universities, and historical societies located in 34 states and Canada. BLM maintains about 3.5 million museum objects located primarily in two BLM museum facilities: the Anasazi Heritage Center in Dolores, Colorado, and the Billings Curation Center in Billings, Montana.

"These objects include human remains and funerary objects. According to 43 CFR 10.2(d)(2), funerary objects are "items that, as part of the death rite or ceremony of a culture, are reasonably believed to have been placed intentionally at the time of death or later with or near the individual human remains."

NAGPRA, which is implemented through 43 CFR 10, requires each Federal agency that has possession of or control over collections of human remains and associated funerary objects to compile an inventory, including geographic origin and Native American cultural affiliation' (if determinable), of such remains and objects. Additionally, the process of identification and cultural affiliation occurs through consultation³ with the Native American tribes to facilitate repatriation⁴ when requested by the respective tribes. Further, 43 CFR 10 requires Federal agencies to submit a Notice of Inventory Completion to the Departmental Consulting Archaeologist and a copy of the Notice to the respective Native American tribe upon determining the cultural affiliation of any human remains or associated funerary objects. Thereafter, the Notice is published in the "Federal Register" to give formal notification that the human remains and associated funerary objects have been identified and may be returned to the affiliated Native Americans.

SCOPE OF AUDIT

To accomplish our objective, we visited or contacted personnel in BLM's headquarters, BLM state or field offices, BLM's Anasazi Heritage Center museum, and the Office of the Departmental Consulting Archaeologist to obtain information and data regarding BLM's efforts to comply with the requirements of NAGPRA (offices and sites visited are listed in Appendix 1). We also obtained information from Indian tribes through a questionnaire regarding their satisfaction with BLM's efforts to comply with NAGPRA. Additionally, we contacted other BLM offices and officials as needed to accomplish the audit objective.

Our audit, which was conducted during April through September 1999, was made in accordance with the "Government Auditing Standards," issued by the Comptroller General of the United States. Accordingly, we included such tests of records and other auditing procedures that were considered necessary to accomplish our audit objective. As part of our audit, we evaluated the system of internal controls to the extent that we considered necessary. We found internal control weaknesses in BLM's compliance with NAGPRA requirements in the State of Utah and with the Colorado State Office's public land reburial actions. These weaknesses are addressed in the Results of Audit section of this report. Our recommendations, if implemented, should improve the internal controls in these areas.

We also reviewed the Departmental Report on Accountability for fiscal year 1998, which includes information required by the Federal Managers' Financial Integrity Act of 1982, and

¹According to 43 CFR 10.2(e), cultural affiliation is "a relationship of shared group identity which can reasonably be traced historically or prehistorically between members of a present-day Indian tribe or Native Hawaiian organization and an identifiable earlier group."

²NAGPRA requires Federal officials to consult with Indian tribal officials, traditional religious leaders, or known lineal descendants regarding the identification, affiliation, and repatriation of Native American remains and related cultural objects. BLM Manual Handbook H-8 160-1 states that "consultation is the active, affirmative process of: (1) identifying and seeking input from appropriate Native American governing bodies, community groups, and individuals; and (2) considering their interests as a necessary and integral part of the BLM's decision-making process."

³Repatriation is the actual transfer of custody to new owners (lineal descendants or tribal officials).

BLM's 1998 Annual Report to determine whether any reported weaknesses were within the objective and scope of our audit. We found that neither report identified weaknesses in BLM's activities regarding NAGPRA.

PRIOR AUDIT COVERAGE

The General Accounting Office has not issued any audit reports during the past 5 years on BLM's NAGPRA activities. The Office of Inspector General has issued one report during the past 5 years regarding BLM's Cultural Resource Management Program, which includes NAGPRA activities. The report, "Cultural Resource Management, Bureau of Land Management" (No. 99-I-808), issued in September 1999, stated that BLM did not adequately (1) survey the public land to determine the location, nature, and extent of culturally significant sites and (2) control and account for its museum collections. The report contained four recommendations to improve BLM's cultural resources management, which BLM agreed to implement.

RESULTS OF AUDIT

We found that overall, BLM had made significant progress in complying with the requirements of NAGPRA. Specifically, BLM located and determined tribal affiliation for about 90 percent of the Native American human remains included in its museum collections. However, the Utah State Office had made minimal progress in completing the required NAGPRA process in Utah, and BLM Colorado State officials allowed Native American remains to be reburied on BLM-managed public land in Colorado, even though BLM Instruction Memorandum (IM) 98-1 3 1 prohibits such reburials. These deficiencies occurred because the Utah State Office did not identify the NAGPRA requirements as a high priority activity and provide the resources needed to accomplish the effort by the NAGPRA-required date of November 16, 1995, and because BLM senior-level managers did not monitor and enforce BLM's policy regarding public land reburials. As a result, Native American remains have not been repatriated timely in Utah; tribes and Native Americans may not be able to control remains reburied on public land; and BLM Colorado officials may not be able to adequately protect these reburied remains from vandalism, degradation, and theft.

NAGPRA Activities

We found that as of September 1, 1999, BLM had located and identified the human remains of 2,256 individuals' in its museum collections of cultural objects. The status of these human remains from BLM-managed public land is in Table 1.

'According to BLM's National Curator, "individual" represents human remains that have been determined to be from one individual and may be a complete skeleton but is more likely to be fragmentary remains.

**Table 1. Native American Human Remains in
BLM Possession or Control'
(As of September 1999)**

<u>State</u>	<u>Individuals"</u>	<u>Tribal Affiliation Not Determined</u>	<u>Unaffiliated With Any Tribe</u>	<u>Affiliated and Repatriated</u>	<u>Affiliated But Not Repatriated</u>
Alaska	1,121	12	0	409	700
Arizona	82	0	18	5	59
California	50	17	0	11	22
Colorado	426	0	0	3	423
Eastern States	0	0	0	0	0
Idaho	13	0	0	13	0
Montana	10	0	10	0	0
Nevada	124	0	120	3	1
New Mexico	179	0	100	0	79
Oregon/Washington	13	0	0	13	0
Utah"	200	200	0	0	0
Wyoming	<u>38</u>	<u>0</u>	<u>35</u>	<u>0</u>	<u>3</u>
Bureauwide	<u>2,256</u>	<u>229</u>	<u>283</u>	<u>457</u>	<u>1,287</u>

'Data in Table 1 were provided by BLM state office and field office officials.

"Individuals" include all human remains, subject to NAGPRA, in the possession or control of BLM

"Utah data were estimated by Utah State Office officials.

As shown in Table 1, of the 2,256 individuals identified, BLM had affiliated 1,744 individuals (77 percent) to specific Sative American tribes and had determined that 283 individuals (13 percent) were culturally unidentifiable.⁶ Of the 1,744 human remains affiliated to Native American tribes, BLM had repatriated 457 remains, as requested by the respective tribes. Of the 1,287 human remains that had been affiliated to tribes but had not been repatriated, 1,123 human remains were undergoing further BLM/tribal consultations to determine their status, 160 individuals were pending publication of "Federal Register" Notices of Inventory Completion, and 4 individuals were unclaimed by the respective tribes. Repatriation of human remains and associated funerary objects is required by the Act only when requested by the affiliated tribes; otherwise, the unclaimed remains and associated funerary objects are held in BLM-managed museum collections. BLM had not determined the cultural affiliation for the remaining 229 individuals, of which 200 individuals (87 percent) were from BLM-managed public land in Utah.

Other than identifying the material as human remains, BLM officials in Utah stated that minimal progress had been made in determining tribal affiliation, conducting tribal consultations, and repatriating (as needed) the estimated 200 Native American remains because of higher priority wilderness study work. Although almost 10 years have passed since enactment of NAGPRA, Program officials in Utah could not estimate when the NAGPRA requirements would be given the priority and resources needed for compliance.

⁶These "culturally unidentifiable" human remains could not be traced (affiliated) to any existing Federally recognized Native American tribe.

Reburials on Public Land

During our audit, BLM officials in Colorado said that Native American remains in the State had been reburied on BLM-managed public land with the officials' knowledge of the actions. BLM policy prohibiting the reburial of repatriated Native American remains on BLM-managed public land is contained in BLM IM 98-131, which states:

Due to the substantial and extensive legal, logistical, and practical problems that would ensue if human remains and other "cultural items" repatriated or transferred to lineal descendants or tribes were to be reburied on public land, the Bureau's [BLM] existing policy, in place since 1996, is reaffirmed and clarified: The BLM's managers shall not directly or indirectly authorize or permit the reburial of repatriated, removed, or transferred human remains and/or other NAGPRA materials, on public lands.

BLM officials in Colorado said that the policy prohibiting reburial of human remains on BLM-managed land was instituted because of legal issues regarding ownership and because BLM officials could not ensure that such remains would be protected after reburial. The policy "responds to the extensive legal problems that reburials would create for the BLM manager who administers the land and the Native Americans who own the materials."

According to BLM IM 98-131, these "problems" are due to the owners (lineal descendants or tribes) being unable to exercise full control over the reburied remains, the multiple use mandate that public land is subject to, and BLM's difficulty in protecting⁸ non-Federally owned remains after reburial on BLM-managed public land. However, Colorado State officials said that they believed BLM's prohibition of public land reburials was impeding the NAGPRA consultation process and that it reduced BLM's ability to repatriate NAGPRA remains to tribes because some tribes wanted the remains to be reburied near the original burial sites (on public land). Therefore, these officials allowed Native American remains to be reburied on BLM-managed public land.

Tribal Concerns

During our audit, we mailed a questionnaire to 569 Native American tribes to obtain information from the tribes regarding BLM's efforts to comply with NAGPRA. As of November 30, 1999, we had received responses from 33 tribes (6 percent of the questionnaires mailed). The responses from 22 of the 33 tribes said that the tribes were satisfied with or did not express an opinion on BLM's NAGPRA efforts, and 11 tribes (one-third of the respondents) stated that they were concerned with or dissatisfied with BLM's NAGPRA efforts. These 11 tribes cited the lack of adequate BLM/tribal consultations regarding NAGPRA issues, BLM's policy of not allowing the reburial of Native American

⁷The Policy Against Reburial of Repatriated Materials on Public Lands was originally contained in BLM IM 96-97, issued in May 1996, and was reaffirmed in BLM IM 98-131, issued in July 1998.

⁸Personal property belonging to an Indian tribe and returned to public land would not be protected by the Archaeological Resources Protection Act.

remains on BLM-managed public land, and the lack of sufficient funding for the tribes to conduct their NAGPRA consultations with BLM.

Recommendations

We recommend that the Director, BLM:

1. Develop and implement an overall action plan for the Utah State Office to ensure completion in an expeditious manner of all NAGPRA requirements regarding human remains (inventorying, determining tribal affiliation, consulting with the tribes, formally reporting, and repatriating, as appropriate).

2. Ensure that BLM senior-level managers monitor compliance with the BLM policy regarding the prohibition of reburying Native American remains on BLM-managed public land and take appropriate action for noncompliance with the policy.

BLM Response and Office of Inspector General Reply

In the March 31, 2000, response (Appendix 2) to the draft report from the Acting Director, BLM, BLM concurred with our two recommendations. Subsequent to the response, BLM also provided a target date of September 30, 2002, for implementation of Recommendation 1. Based on the response and the subsequent information, we consider Recommendation 1 resolved but not implemented and Recommendation 2 resolved and implemented (see Appendix 3). Accordingly, Recommendation 1 will be referred to the Assistant Secretary for Policy, Management and Budget for tracking of implementation.

Additional Comments on Audit Report

BLM stated that it “has generally reported lower numbers of individual skeletal remains (627) identified under NAGPRA [Native American Graves Protection and Repatriation Act] than does this audit report”; that it had used “the most precise and consistent numbers possible”; and that the numbers “represent only completed and officially documented NAGPRA actions.” BLM further stated that the reasons the number of 2,256 in our report is “significantly higher” than the number reported by BLM is that the 2,256 included “not only the formally identified individuals but, also, (a) unaffiliated individuals (material not subject to repatriation), (b) material in draft pending “Federal Register” Notices, (c) estimated numbers supplied by [BLM] field personnel, (d) material where no tribal affiliation could be made, and (e) material whose status may change after initial consultation with tribes.”

The number of human remains, 2,256, that BLM had located and identified as of September 1, 1999, was used in our report to show the overall status of NAGPRA activities within BLM. We included all known (by BLM) remains that were subject to NAGPRA-related actions, whether or not these actions were completed or were formally documented in published notices. This resulted in a more comprehensive picture of the overall progress BLM has made in complying with the requirements of NAGPRA. Moreover, this audit

approach has also disclosed the areas for improvement, such as timely completing the NAGPRA process in Utah.

Since the report's recommendations are considered resolved, no further response to the Office of Inspector General is required (see Appendix 3).

Section 5(a) of the Inspector General Act (5 U.S.C. app. 3) requires the Office of Inspector General to list this report in its semiannual report to the Congress. In addition, the Office of Inspector General provides audit reports to the Congress.

OFFICES AND SITES VISITED OR CONTACTED

Office and Site	Location
Department of the Interior Office of the Departmental Consulting Archaeologist	Washington, D.C.
Bureau of Land Management	
Headquarters	
Cultural Resource Management Office	Washington, D.C.
National Curator	Sacramento, California
Alaska State Office*	Anchorage, Alaska
Arizona State Office*	Phoenix, Arizona
California State Office	Sacramento, California
Colorado State Office	Lakewood, Colorado
Anasazi Heritage Center	Dolores, Colorado
Eastern States Office*	Springfield, Virginia
Idaho State Office	Boise, Idaho
Lower Snake River Field Office	Boise, Idaho
New Mexico State Office*	Santa Fe, New Mexico
Montana State Office*	Billings, Montana
Nevada State Office*	Reno Nevada
Oregon State Office* *	Portland, Oregon
Utah State Office*	Salt Lake City, Utah
Wyoming State Office*	Cheyenne, Wyoming
Non-Federal Repositories:	
Colorado State University*	Fort Collins, Colorado
University of Denver	Denver, Colorado

*Office contacted.

**The Oregon State Office area includes BLM-managed land in Washington.



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Washington, D. C. 20240
<http://www.blm.gov>

In Reply Refer To:
1245 (240/830)

March 29, 2000

MEMORANDUM

To: Assistant Inspector General for Audits

Through: *for* Sylvia V. Baca *Shafiqul-Aziz Simmons* MAR 31 2000
Assistant Secretary, Land and Minerals Management

From: *for* Tom Fry *Mina Rosa Hatfield*
Acting Director, Bureau of Land Management

Subject: Response to **Draft** Audit Report on Native American Graves Protection and Repatriation Activities, Bureau of Land Management, C-IN-BLM-003-98 (A)-D

Thank you for the opportunity to respond to the Office of the Inspector General's (OIG) February 2000 "Draft Audit Report on Native American Graves Protection and Repatriation Activities, Bureau of Land Management (BLM)." We appreciate the time and effort involved in producing this document and are pleased the report reveals the BLM is implementing the requirements of the Native American Graves Protection and Repatriation Act (NAGPRA) effectively. We plan to use the recommendations to improve the BLM's implementation of this important law. The BLM's specific concurrence with the two recommendations made by your office is attached to this response.

We would like to take this opportunity to clarify the numbers of individual skeletal remains subject to NAGPRA that the BLM is managing at this time. The BLM has generally reported lower numbers of individual skeletal remains (627) identified under NAGPRA than does this audit report (2,256). There are no reporting requirements under NAGPRA. However, on occasion, BLM has been informally requested to provide statistics on various aspects of NAGPRA. To answer these requests, the BLM has chosen to use the most precise and consistent numbers possible--numbers that represent only completed and officially documented NAGPRA actions. This OIG audit report includes any and all skeletal remains that may be subject to NAGPRA. The differences between the numbers are in the definitions of the objects counted.

The BLM last reported 627 skeletal remains as the number of individuals which had been formally identified for potential repatriation or transfer of custody. That is, we reported that material, which, after going through the complete NAGPRA process, was formally identified in a NAGPRA Federal Register Notice or a NAGPRA Transfer of Custody Newspaper Notice for potential repatriation or transfer to affiliated tribes under the NAGPRA.

The reason the numbers in your report (2,256) are significantly higher than those reported by the BLM is they included not only the formally identified individuals but: also, (a) unaffiliated individuals (material not subject to repatriation), (b) material in draft pending *Federal Register* Notices, (c) estimated numbers supplied by field personnel, (d) material where no tribal affiliation could be made, and (e) material whose status may change after initial consultation with tribes.

Any general questions regarding this audit may be referred to Ms. Pamela Cleary, Acting BLM Audit Liaison Officer, at (202) 452-5 196; any program specific questions may be referred to Dr. Stephanie Damadio, National Curator, (916) 978-4650.

Attachment

**BUREAU OF LAND MANAGEMENT RESPONSE TO THE OFFICE OF THE INSPECTOR
GENERAL DRAFT AUDIT REPORT, NATIVE AMERICAN GRAVES PROTECTION AND
REPATRIATION ACTIVITIES
(No. C-IN-BLM-003-98 D)**

Recommendations

OIG Recommendation 1: Develop and implement an overall action plan for the Utah State Office to ensure completion in an expeditious manner of all NAGPRA requirements regarding human remains (inventorying, determining tribal affiliation, consulting with the tribes, formally reporting, and repatriating, as appropriate).

Concur:

In response to this recommendation, the State Director, BLM Utah developed a draft action plan on March 14, 2000 to ensure the completion of NAGPRA requirements in an expeditious manner. We expect the action plan to be finalized by the end of May and will provide a copy to you at that time. The responsible official for implementing this recommendation is the State Director, BLM Utah.

OIG Recommendation 2: Ensure that BLM senior-level managers monitor compliance with the BLM policy regarding the prohibition of reburial of Native American remains on BLM-managed public lands and take appropriate action for noncompliance with the policy.

Concur:

The BLM Colorado State Office, found by this audit to have acted outside the policy, issued Instruction Memorandum CO-2000- 16 on February 18, 2000, which reiterated the BLM policy prohibiting the reburial of repatriated or transferred NAGPRA materials on public lands. Bureau officials will be reminded of this policy at appropriate meetings, and once the final audit report is issued, it will be distributed to all the BLM Field Offices as an Information Bulletin. The responsible official for implementing this recommendation is the Assistant Director, Renewable Resources and Planning.

STATUS OF AUDIT REPORT RECOMMENDATIONS

<u>Finding/Recommendation Reference</u>	<u>Status</u>	<u>Actions Required</u>
1	Resolved; not implemented.	No further response to the Office of Inspector General is required. The recommendation will be referred to the Assistant Secretary for Policy, Management and Budget for tracking of implementation.
	Implemented.	No further response to the Office of Inspector General is required.

**ILLEGAL OR WASTEFUL ACTIVITIES
SHOULD BE REPORTED TO
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