

**In the Matter of:**

*NAGPRA Tribal Consultation*

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*Reporter's Transcript of Proceedings*

*January 12, 2023*

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**G R I F F I N   G R O U P  
I N T E R N A T I O N A L**

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3200 East Camelback Road, Suite 177  
Phoenix, Arizona 85018

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UNITED STATES DEPARTMENT OF THE INTERIOR  
OFFICE OF THE SECRETARY

NAGPRA CONSULTATION

Phoenix, Arizona  
January 12, 2023  
10:00 a.m.

REPORTED BY:  
HALEY DAWN WESTRA, RPR, CRR  
Certified Reporter  
Certificate No. 50762

PREPARED FOR:  
U.S. DEPARTMENT OF THE INTERIOR

(Original)



1 NAGPRA CONSULTATION was taken on  
2 January 12, 2023, commencing at 10:10 a.m., at the at  
3 the offices of the Bureau of Land Management 9828 North  
4 31st Avenue, Phoenix, Arizona, before HALEY WESTRA, a  
5 Certified Reporter in the State of Arizona.

6 APPEARANCES:

7 SPEAKERS:

8 Bryan Newland, Tribal President Ojibue  
9 Shannon A. Estenoz, Assistant Secretary  
10 Melanie O'Brien, Manager of NAGPRA

11 STAFF:

12 Oliver Whaley, Director  
13 Stephanie Sfiridis, Senior Policy Counselor  
14 Rose Petoskey, Senior Policy Counselor  
15 Samuel Kohn, Department Assistant Secretary  
16 Kathryn Isom-Clause, Deputy Assistant Secretary  
17 Joaquin Ray Gallegos, Special Assistant  
18 Melanie O'Brien, Manager of NAGPRA  
19 Shannon A. Estenoz, Assistant Secretary  
20 Bryan Newland, Tribal President Ojibue  
21 Stephen Simpson, Esq., Solicitor's Office  
22 Brady Blasco, Esq., Solicitor's Office

23 TRIBAL LEADERS:

24 Harold Jacobs  
25 Desiree Duncan  
Melanie Deer  
Gerald "Shane" Anton  
Darius Enos  
Reylynne Williams  
Brenda Tomaras  
Vernelda Grant  
Larry Benallie, Jr.  
Sunday Eiset  
Fannie Suvlu  
Karyn Stricklan



1                   BRYAN NEWLAND: All right. Well, good  
2 morning, everybody.

3                   In Ojibwe, "Minogizhebaawagad."

4                   My name is Bryan Newland. I am a Bay Mills  
5 Indian Community tribal citizen. We're a small band of  
6 Ojibwe people up in northern Michigan, and I have the  
7 privilege of serving as the assistant secretary for  
8 Indian Affairs here at the Department of the Interior.

9                   And I'm really glad to be back doing  
10 in-person tribal consultations, and I'm glad to be here  
11 today.

12                   This is actually the first of four  
13 in-person consultations that we're hosting in the next  
14 day here in this room on different things that the  
15 Department of the Interior is doing. And we're here  
16 this morning to talk about our efforts to amend and  
17 revise the Department's regulations on NAGPRA.

18                   We've had a series of virtual  
19 consultations. We have published a proposed rulemaking  
20 this past fall.

21                   And this week, I think you may have seen,  
22 we've extended the comment deadline by 2 weeks to the  
23 end of January. I know that was a topic that's been  
24 brought up at several of our recent consultations.

25                   So you can get your written comments in to



1 us by January 31st.

2 Before I -- before we get into the  
3 substance, it's probably best to make sure everyone on  
4 our team gets a chance to introduce themselves to you.

5 So I will turn to my friend and colleague  
6 Assistant Secretary Estenoz here.

7 SHANNON ESTENOZ: Yes. Thank you. Thank  
8 you very much, Bryan.

9 Good morning, everyone. I'm Shannon  
10 Estenoz. I'm the assistant secretary of the Interior  
11 for Fish and Wildlife and Parks.

12 So in this role, I oversee the National  
13 Park Service, which, of course, administers the  
14 national NAGPRA program.

15 It is an honor to be with you. It's  
16 wonderful to be here in Phoenix. My first visit to  
17 Phoenix. So this is -- it's great to spend it with  
18 you.

19 This morning we're here to receive any  
20 input that you have and want to share with us on the  
21 NAGPRA proposed rule.

22 There are a couple of areas, if you do have  
23 feelings or thoughts, wisdom in these specific areas,  
24 we would love to hear it from you.

25 So, for example, we're keenly interested in



1 how folks are feeling about how we deal with the  
2 timelines in the proposed rule.

3 So the new regulations impose timelines on  
4 museums and federal agencies to carry out repatriation  
5 and disposition.

6 It is not our intent to impose timelines on  
7 lineal descendants or tribes or NHOs to request  
8 disposition or repatriation.

9 So how can we further -- you know, what  
10 we're really interested in here is further allowing  
11 Indian tribes and NHOs the flexibility and discretion  
12 in, you know, the step-by-step process while still  
13 holding museums and federal agencies accountable for  
14 completing the regulatory process.

15 So it's a balance between giving tribes and  
16 NHOs the flexibility they need while still holding  
17 everyone's feet to the fire to do this work and do it  
18 in a timely way.

19 The second big category is tribal lands.  
20 So in subpart B, Indian tribes have new  
21 responsibilities now for discoveries and excavations on  
22 their own tribal lands.

23 We have provided an option to delegate  
24 these responsibilities to the BIA or any other federal  
25 agencies, but -- but it has to be done in writing.



1                   So we just -- if you've got thoughts about  
2 capacity, for example, in your tribes for completing  
3 this work, we'd love -- we'd love to hear thoughts in  
4 that area as well.

5                   And then, finally, in the subject area of  
6 making requests. In subpart C, Indian tribes and NHOs  
7 must make written requests for consultation and  
8 repatriation.

9                   So these new regulations, they provide for  
10 a more streamlined and -- process, and they try to  
11 simplify that process.

12                   If you've got any thoughts about this  
13 process, capacity, do you think the proposed provisions  
14 are going to impact your tribe's capacity and resources  
15 for repatriation, we'd love to hear about that.

16                   Having said that, everything that you have  
17 to offer us this morning is of great value, and we --  
18 and we look forward to hearing it.

19                   So, again, thank you for your time today.

20                   BRYAN NEWLAND: All right. I want to also  
21 make sure that I'm recognizing all of our team members  
22 who have been involved in helping put this together.

23                   So over here, on this side of the room,  
24 we've got Indian -- team Indian Affairs, including our  
25 deputy assistant secretary, Kathryn Isom-Clause; our



1 policy advisor, Joaquin Gallegos; and we have our --  
2 our policy counselors, Sam Kohn, Rose Petoskey, and  
3 Stephaine Sfiridies, and Oliver Whaley, who was really  
4 instrumental in pulling these things together for us.

5 So as we -- if you have particular  
6 questions on things too, we encourage you to collar our  
7 folks and ask them questions.

8 And I know we have other folks here from  
9 the Solicitor's Office in the back, Stephen Simpson and  
10 Brady Blasco.

11 And at this time, I'll turn it over to Mel.

12 MELANIE O'BRIEN: Thank you, Bryan; and  
13 thank you, Shannon.

14 I want to echo their appreciation for the  
15 opportunity to be here in person.

16 We have done so much of the work on these  
17 regulations and in consultation with tribes remotely.

18 It's very good to be back in person to hear  
19 from all of you.

20 We do have some information to share about  
21 the proposed regulations in case you haven't had a  
22 chance to dig into them.

23 But we're really more interested in hearing  
24 from all of you, to get your thoughts and your ideas,  
25 especially on how we've done in these proposed rules.





1                   So do you want me to move into the  
2 presentation?

3                   BRYAN NEWLAND: Sure.

4                   MELANIE O'BRIEN: Okay.

5                   Just a minute to move over. I'll get this  
6 back to you. There's one over there.

7                   BRYAN NEWLAND: Okay. I also forgot to  
8 add, before you begin, Melanie, that we do have Haley,  
9 our court reporter, here in the front taking notes.

10                   We will take our own notes as well as we go  
11 along, but this is -- since this is an official  
12 government-to-government consultation on the part of  
13 the Department.

14                   We do create a transcript and record of  
15 this. And just to let you know that -- that it's  
16 important for us as we go out of the formal  
17 consultation and back to the drawing board, as it were,  
18 that we have these comments in writing because we do  
19 reference them when we're going back over the  
20 regulations and making changes based on the  
21 consultations.

22                   So I wanted to make sure you all understood  
23 that.

24                   MELANIE O'BRIEN: All right. Thank you.

25                   Okay. So if -- many of you know me, but



1 just to be clear, as Bryan and Shannon both said, I'm  
2 the manager of the national NAGPRA program, and it's my  
3 job to assist the assistant secretaries in preparing  
4 these regulations and sharing some of the details with  
5 you.

6 What I have today is an outline of some of  
7 the steps that we've taken so far, but also some of our  
8 goals and our hopes for what these proposed rules will  
9 do.

10 So the NAGPRA regulations were first  
11 published as final in 1995. They have been amended  
12 over time.

13 The largest amendment was in 2010. And  
14 since that, since 2010, the Department has received  
15 repeated requests to make a full revision to these  
16 regulations.

17 In the summer of 2021, the Department  
18 conducted consultation with Indian tribes and the  
19 native Hawaiian community on a draft text, and we  
20 received 71 individual comments -- individual letters  
21 that yielded over 700 specific comments on what we were  
22 proposing.

23 In addition to that, in the spring of 2022,  
24 the Office of Management and Budget conducted its  
25 review of the proposed regulations, and that included



1 some interagency review.

2 So that brings us to October of 2022 when  
3 we published a proposed rule in the Federal Register.

4 We have some goals in this proposed rule.  
5 Our main goal here is to simplify and improve the  
6 process for repatriation and disposition.

7 We have incorporated input from the  
8 consultations we conducted in 2021. We have  
9 incorporated that to the maximum extent possible.

10 So we took all of those 700-plus comments  
11 and tried to evaluate how much of them we could  
12 incorporate into this proposed rule.

13 As a result, we have emphasized  
14 consultation in every step of the process and required  
15 museums and federal agencies to defer to the customs,  
16 traditions, and Native American traditional knowledge  
17 of lineal decedents, Indian tribes, and Native  
18 Hawaiian organizations.

19 In the very first paragraph of the  
20 regulations, that sentence is the last sentence in the  
21 purpose of these regulations, that deference.

22 What we're hoping this will do is that it  
23 will shift the burden off of Indian tribes and NHOs,  
24 which is ultimately what Congress intended when they  
25 passed NAGPRA in 1990.



1           We have imposed deadlines on museums and  
2 federal agencies to complete the disposition and  
3 repatriation process.

4           And we hope we have removed the offensive  
5 and prohibitive sections of the regulations that are  
6 preventing repatriations from occurring.

7           The benefits that we see in these  
8 changes -- and, again, what we're here to do today is  
9 to find out if we've got this right, if we have  
10 achieved these goals and if we will realize some of  
11 these benefits.

12           In subpart B, which pertains to the  
13 protection of human remains and cultural items on  
14 federal or tribal lands, we hope that we have  
15 simplified the requirements, which will enable more  
16 protection of human remains and cultural items.

17           We have prioritized and required federal  
18 agencies take extra time for consultation on any  
19 discovery of -- on federal or tribal lands.

20           And ultimately, we hope we've reduced some  
21 of the ongoing burden and cost through the notice  
22 publication process for federal or tribal lands.

23           In subpart C, which pertains to the  
24 repatriation of human remains and cultural items, it is  
25 our hope that we have realized Congress's goal from



1 1990 to 1996 that requires the repatriation of human  
2 remains and cultural items.

3 Our hope is that we are resetting the  
4 process to require museums and federal agencies to  
5 complete their work specifically for human remains and  
6 associated funerary objects.

7 Based on the current rate of repatriation  
8 without these proposed changes, we estimate that it  
9 will take another 26 years to complete the repatriation  
10 of museum collections, so our hope is that we're going  
11 to change that timeline.

12 And lastly, we're hopeful that this is  
13 going to reduce ongoing costs, not only for museums and  
14 federal agencies in curating these collections that  
15 need to be repatriated, but also for Indian tribes and  
16 NHOs in conducting the consultation on these.

17 Our webpage at [nps.gov/nagpra](https://nps.gov/nagpra), under the  
18 regulations, we have provided a lot of different  
19 documents related to the proposed rule; so we're  
20 hopeful that these documents can assist you in  
21 reviewing the proposed rule and formulating comments.

22 So I'm going to leave it there for today  
23 instead of digging into any of the specifics of the  
24 proposed rule.

25 Given that -- the time we have and the



1 opportunity we have to be here with you in person, we'd  
2 like to shift into conversation at this point.

3 I'll leave this table of contents,  
4 basically, up so we can talk about certain specifics in  
5 the regulations if you have questions.

6 And part of our goal here today is to hear  
7 your questions as well as to hear your comments.

8 CASSANDRA ATENCIO: I do.

9 MELANIE O'BRIEN: Yes, Cassandra.

10 CASSANDRA ATENCIO: Hi.

11 MELANIE O'BRIEN: We have a microphone for  
12 you, just for the court reporter.

13 Oh, and just a note, please introduce  
14 yourself with your name and your title or your  
15 affiliation so that we can have that in the record.

16 CASSANDRA ATENCIO: My -- good morning. My  
17 name is Cassandra J. Atencio. I am the tribal historic  
18 preservation officer with the Southern Ute Indian Tribe  
19 and the Cultural Preservation Department with -- in  
20 Ignacio, Colorado.

21 And I'm glad to be here and to see faces  
22 instead of on a Zoom, first of all this morning. And  
23 I like the weather down here. It's snowy at home.

24 How -- how in line with the law do you  
25 think these regs have gotten closer to and within the



1 spirit of what the law is?

2 That's my question.

3 BRYAN NEWLAND: Do you want to field that?

4 MELANIE O'BRIEN: I can if you'd like me  
5 to.

6 BRYAN NEWLAND: Sure.

7 CASSANDRA ATENCIO: There's kind of been a  
8 disconnect.

9 MELANIE O'BRIEN: Absolutely. The  
10 disconnect, I would say, from our perspective, comes  
11 largely in the repatriation provision.

12 So for collections and holdings, we feel  
13 like the intent of the law in 1990 was to complete this  
14 process and make human remains and associated funerary  
15 objects, in particular, available to Indian tribes and  
16 NHOs for repatriation.

17 And the law puts a time frame on that of  
18 5 years and 6 months. It is a little bit more than  
19 5 years and 6 months after November 16, 1990, at this  
20 point.

21 So our hope is that we are resetting that  
22 process to better align with what the act itself says  
23 to require museums and federal agencies to make  
24 decisions, specifically about human remains and  
25 associated funerary objects, so they can go home. That



1 is -- our goal here to realign that process.

2 In subpart B, I would say that we are also  
3 trying to realign the regulatory process with what is  
4 in the act itself.

5 But in subpart B, I would say it's more  
6 about making it clear, simplifying the process.

7 From -- the existing regulations can be  
8 somewhat confusing and difficult to follow and  
9 difficult to figure out what comes next, so in both  
10 subparts what we've done is put in a step-by-step  
11 process so that it's clear to everyone whether museums,  
12 federal agencies, or Indian tribes or NHOs, what the  
13 next step is, what the process is to get to the return  
14 of these items to their appropriate homes.

15 CASSANDRA ATENCIO: Okay.

16 MELANIE O'BRIEN: But part of our question  
17 for you is: Did we get there? You know, that's kind of  
18 what we want to know with the comments is: Have we  
19 realigned the process? Have we reflected the original  
20 intent of Congress, in your opinions?

21 CASSANDRA ATENCIO: And the second part --  
22 am I loud enough?

23 MELANIE O'BRIEN: It's more for the court  
24 reporter.

25 CASSANDRA ATENCIO: The second part to





1 that, then, that wanting to go home, knowing that  
2 people -- that reservation lands is not where these  
3 people come from.

4 And is there a portion in the process now  
5 about lands to put these ancestors on closer to where  
6 they were found? Because they were put there in those  
7 places for reasons.

8 I know that sometimes where intentional  
9 excavations and different things, there's no land.

10 We do have a project, in fact, we're  
11 working on that came from tribal private and federal  
12 lands, but they're within the same landscape; so we're  
13 trying to look for a place.

14 But in Colorado, we have our lands for  
15 reburial work group where we try to identify lands that  
16 are closer, but it just seems that it's harder.

17 It's good that we want to take them home on  
18 one point; but, then, where are you taking them to?

19 And I think that that's a part of the  
20 process and a part of that -- that stalemate because it  
21 doesn't do any good. They're still going to sit there.

22 The other thing is that the money available  
23 to do that when you're a THPO that specifically set  
24 forth for THPO work and not NAGPRA work.

25 And so those budgets for NAGPRA are pretty



1 slim when it comes to competing tribes.

2 Thank you.

3 MELANIE O'BRIEN: Thank you for the  
4 question.

5 I think for both lands for reburial as well  
6 as funding for this work, those both fall outside of  
7 the scope of these regulatory changes; however, I would  
8 say that you are very fortunate in Colorado to have one  
9 of the best examples of how state, federal, and tribal  
10 nations can work together to come up with a solution.

11 And we often point people to Colorado as a  
12 best practice in identifying lands for reburial.

13 Unfortunately, it stops at the border of  
14 Colorado, and that's part of the issue.

15 We do hope that the regulatory process will  
16 facilitate more conversations about what comes next.

17 Because right now, you know, our  
18 perspective is that a lot of conversations around  
19 NAGPRA are on cultural affiliation or disposition and  
20 how things can be returned.

21 And we want to shift that conversation to  
22 be about -- about lands for reburial and about where  
23 these things can go once they come home so that the  
24 conversation is not about just getting to that point of  
25 being able to return. That -- that's part of our hope



1 here.

2 I will say that we have tried to  
3 facilitate, in subpart B, better options for federal  
4 land managers in terms of reburial.

5 You know, it's pretty common practice  
6 across the United States that Indian tribes prefer  
7 human remains or cultural items that are removed from  
8 federal land to be reburied nearby.

9 And we hope that we have explained how a  
10 process like that could still work under the proposed  
11 rule and make it more seamless in terms of a process on  
12 federal lands.

13 In terms of funding, I'll mention that  
14 we are fortunate that in the last -- the newest  
15 appropriation, we have additional funds for NAGPRA  
16 grants, the largest amount we've ever had, just over  
17 \$3 million. So it's been appropriated for NAGPRA  
18 grants.

19 So we're looking for this year being a good  
20 year. We encourage everybody to apply for a NAGPRA  
21 grant. Those are due by March 10th.

22 But, again, the hope is that we can shift  
23 the work off of the consultation process to lead to  
24 repatriation and -- and shift some of that funding into  
25 the repatriation work itself.



1           So, again, once we get through the process  
2 of -- of these regulations, our goal would be that  
3 there would be more opportunities for Indian tribes to  
4 use funding for repatriation.

5           BRYAN NEWLAND: And -- and thank you,  
6 Ms. Atencio.

7           I'll just add that on the federal lands  
8 piece, as it relates to reburial, you know, we -- we  
9 know that this whole country, from corner to corner,  
10 from sea to sea to sea, was all Indian lands. It is  
11 all of our homelands.

12           And so, you know, we can't -- we can't just  
13 confine ourselves in our sacred places to our existing  
14 reservation boundaries.

15           And we are working across the board on  
16 making sure that all of our land management agencies  
17 across the federal government are better incorporating  
18 that into their process.

19           And there are -- as you probably know  
20 better -- far better than I do, there are all kinds of  
21 regulations about burying human remains on federal  
22 lands outside of the NAGPRA process.

23           That's something that we are paying  
24 attention to in trying to give consideration to how we  
25 can be more effective and respectful on that side,



1 outside of the NAGPRA rulemaking process.

2 CASSANDRA ATENCIO: So -- so, then, you  
3 know, how you're supposed to consider NAGPRA in all  
4 your other -- when you do Consultation 106, 110,  
5 whatever, endangered, and you think about NAGPRA in  
6 cases, you know -- when you do development and ground  
7 disturbance?

8 And so do you think that every federal  
9 agency has its own policy, like you said, about  
10 reburial and about what they do?

11 Is there a way to incorporate NAGPRA into  
12 each of your -- into each of those agencies' thoughts  
13 rather?

14 Because it seems like it's one-tracked when  
15 it comes to consultation, whether we're talking 106  
16 and, you know, 110, or whatever under NHPA.

17 And the Forest is different because it's a  
18 farm bill.

19 But is there a way to make this a part of  
20 what those are when you're considering your management  
21 plans or whatever in those programs?

22 How to make -- how do we make this more up  
23 in the front so people are noticing it and paying  
24 attention to it when they're developing their 20-year  
25 plans, is what I'm saying?



1                   BRYAN NEWLAND: Sure.

2                   If -- I can't answer the legal questions  
3 about that, but what I can say is that if you have  
4 recommendations for us, you know, we would be happy to  
5 consider them.

6                   Also, just draw your attention to this is  
7 something we raised in the boarding school report that  
8 came out last year, this very issue that you're talking  
9 about; so it's on our radar of things that, you know,  
10 we're trying to address.

11                   Some of it maybe statutory, which would  
12 require an act of Congress. And where we can work with  
13 other land management agencies to make this work  
14 better, we want to do that.

15                   But if you have specific proposals that you  
16 want us to consider with your expertise and experience,  
17 I'd encourage you to get those to us in writing.

18                   And, again, we do -- we do read all these  
19 comments.

20                   CASSANDRA ATENCIO: Okay.

21                   BRYAN NEWLAND: People often say, "Do you  
22 guys really read these comments?"

23                   "Yes, we really, really do as part of this  
24 process."

25                   Yes, sir.



1                   LARRY BENALLIE, JR.: Good morning,  
2 everybody.

3                   MELANIE O'BRIEN: Good morning.

4                   LARRY BENALLIE, JR.: Is this on?

5                   Good morning, everybody. My name is Larry  
6 Benallie, and I am the archeological compliance  
7 specialist with the Gila River Indian community, the  
8 Tribal Historic Preservation Officers.

9                   And the initial presentation that I -- I --  
10 that interested me was that -- your proposal to have --  
11 to allow tribes to control over data recovery  
12 excavations.

13                   I'm assuming it's going to be on our lands  
14 that we -- because we -- because that's what -- that's  
15 what -- I think that's what you mean.

16                   And I totally agree with that. I totally  
17 agree with that -- with that idea.

18                   But I was wondering if any of you had even  
19 taken into consideration the ability of tribes to  
20 actually pursue control of data recovery on their  
21 lands.

22                   As far as I know, I can only count -- I can  
23 count in fingers how many tribes are even capable of  
24 doing that right now.

25                   And some of us are better at it than



1 others. And I give you that. And there's a lot of  
2 tribes who lack that kind of expertise and ability to  
3 provide guidance in this -- in this kind of data  
4 recovery.

5           And I always wonder what is the extent that  
6 the NAGPRA law revisions are proposing to the tribes to  
7 control data recovery on the land and what happens with  
8 disposition of the ancestors, the -- the consideration  
9 that all of the tribes to excavate is desecration,  
10 period.

11           And -- and from the cultural views, the  
12 different -- there's different cultural views, but  
13 you'll amazingly find that they're all very similar.  
14 We all have the same kind of idea about the thought of  
15 excavations.

16           And have you even considered that cultural  
17 aspect?

18           Have you even considered for the tribes who  
19 are not quite in the position to start commenting and  
20 taking control of the archeology that's conducted on  
21 their lands?

22           Have you even considered -- are you going  
23 to even provide them opportunity or expertise to help  
24 them along? Because that's what they definitely need.  
25 They need that assistance. And that's never been





1 provided. Nothing has ever been provided in that  
2 matter.

3 We get a lot of these -- we get a lot of  
4 these revisions to the law to get, "Oh, and they're  
5 going to give you this money."

6 You know, the feds give you money to go  
7 build power lines and to extend the Internet service,  
8 you know, and cell phone service, and infrastructure.

9 But they never discuss that they have to  
10 comply with Section 106 with access to the Preservation  
11 Act.

12 They never talk about how the people who  
13 get those services are going to have to pay for them  
14 later, you know.

15 There's no -- there's no guidance from the  
16 Feds offering that. It's just the money. And, you  
17 know, there's no expertise or revisions in the law  
18 here.

19 And I'd just like to know and -- if -- if  
20 the revisions in the law are going to allow for  
21 expertise to be given to the tribes to -- that need it  
22 when it comes to controlling data recovery on their  
23 lands.

24 MELANIE O'BRIEN: Thank you. I appreciate  
25 the input and the question because it focuses on an



1 issue that we have very much tried to address in the  
2 revisions to these regulations, and that is what  
3 responsibilities tribes have on their tribal lands when  
4 it comes to ancestors and items that might be  
5 discovered.

6 And it is -- it is in the act itself, in  
7 the law itself, that gives Indian tribes that  
8 responsibility to care for their ancestors and items on  
9 their lands, on their tribal lands.

10 And we have tried to highlight that in  
11 these revisions. It's in the existing regulations, but  
12 it's often not exercised in that kind of a meaningful,  
13 direct way.

14 So we've tried to revise that to make it  
15 clear that the tribe, in the first instance, is the one  
16 who can and should take care of those ancestors and  
17 items.

18 But you raised a good point, which is when  
19 tribes may not have the capacity to do so or the  
20 necessary training or skill to do so.

21 And in those instances, the tribe can,  
22 then, defer that responsibility or transfer that  
23 responsibility to a federal agency or to the BIA, in  
24 particular, on tribal lands. That's an option.

25 Our hope would be that this might improve



1 opportunities for tribes to have better access to  
2 technology and to training to facilitate those roles.

3 For NAGPRA, of course, it's going to be  
4 limited to those cases where there are ancestors or  
5 items that are discovered.

6 What you're talking about certainly goes a  
7 little bit broader into other areas of just  
8 preservation.

9 But in terms of archaeological data  
10 collection, one issue that we have actually removed  
11 from these regulations, on either federal or tribal  
12 land, is any expectation that there will be data  
13 recovery or data collection from a discovery of  
14 ancestors or items.

15 That is left up to the federal agency and  
16 the tribes to decide together, again, with deference to  
17 the tribe's opinions about whether there should be data  
18 collection from federal land and discoveries on federal  
19 land.

20 So we have tried to reduce the requirements  
21 there for any kind of archaeological data collection  
22 from NAGPRA-related activities.

23 I don't think it's quite a full solution to  
24 the problem that you stated. And I'm sorry that we  
25 can't go further. But we have tried to at least make



1 it clear what the options are when there is discovery  
2 of human remains or cultural items on tribal land, that  
3 it is the tribe who can determine what happens next.

4 GERALD "SHANE" ANTON: Good morning,  
5 everybody. I am Shane Anton. I'm the tribal historic  
6 preservation officer for the Salt River and  
7 Pima-Maricopa Indian community.

8 So us, along with Gila River, we have our  
9 most knowledgeable people on NAGPRA, not here, they're  
10 en route, so...

11 But they sent me some of the comments. And  
12 I think it's going to cover a lot of these broad ranges  
13 of stuff, but I'm just going to read them off if that's  
14 okay.

15 I'm not necessarily looking for an answer,  
16 just that you're aware of what we're seeking.

17 So the goals of the regs: One, to get  
18 funerary objects repatriated with all burials.

19 Two, to recognize the spiritual nature of  
20 sacred animals, now included in the definition of  
21 "human remains," that SRP-MIC, our community does  
22 support that.

23 Is there transparency in decision-making  
24 process?

25 And my -- my experience in that is that if



1 the agency or -- well, the agency or fed determine that  
2 something is not repatriateable or goes to another  
3 tribe or that they decide to keep it under whatever  
4 regulation, they never disclose who made that decision.

5 It may be that we're working with the  
6 people on the lower level; but if there's a board of  
7 regents or somebody else that they answer to, they, a  
8 lot of times, will say, "No, we won't do that," but we  
9 never get the chance to meet them. So there's no  
10 transparency in that sense.

11 Have museums directly answer why they won't  
12 repatriate in cases where they won't repatriate.

13 Recognize PPP loans as federal funding.

14 Strengthen civil penalties.

15 Require tribal input on care, handling, and  
16 housing.

17 Require a moratorium on scientific testing  
18 and research unless there is a written permission from  
19 tribes.

20 Disclose whether or not the ancestors or  
21 any protected items have been treated with toxic  
22 substances, have been on display, or if ancestors or  
23 belongings have been destroyed or discarded.

24 Per recent "plain language" guidelines --  
25 I'm sorry -- per recent "plain language" guidelines,



1 the regs should remove all references to legal  
2 interests and instead use "plain language" decipherable  
3 by the average person.

4 11, right of possession cannot ever be  
5 established for human remains, funerary objects, or  
6 objects of cultural patrimony. No one has the right to  
7 sell or trade them for any reason.

8 That concludes the list.

9 BRYAN NEWLAND: That's really helpful. I  
10 was trying to keep up. I think that -- I'm sure we'll  
11 have it all in the transcript.

12 But thank you for the clear articulation of  
13 your goals. And I put a star next to the federal  
14 funding piece as well. That's a piece I haven't heard  
15 before, and I want to make sure that we're giving a  
16 thorough discussion internally.

17 SHANNON ESTENOZ: The PPP.

18 BRYAN NEWLAND: Yeah.

19 SHANNON ESTENOZ: The PPP funding, yeah.

20 BRYAN NEWLAND: Yeah.

21 Thank you.

22 Additional comments or thoughts?

23 No? We're here to hear from you to make  
24 sure that we're getting this rulemaking right.

25 GERALD "SHANE" ANTON: I wanted to give



1 other people the opportunity to ask questions if there  
2 was any, so we do have one -- I do have one.

3 And, again, back to the people that aren't  
4 here. They're working closely together going through  
5 these regs line by line.

6 And so one of the issues that we had a  
7 concern on that I did -- was able to kind of see -- and  
8 I'll be honest, I haven't looked through the regs, you  
9 know, in that sense.

10 But one of the things that they asked me  
11 was this -- I'm not sure under which guideline it is.  
12 I want to say it's either 10-9 or 10-10.

13 But it's the stay of repatriation issue.  
14 And it kind of lists how things go in a certain order.  
15 I guess the order of the sequence of events.

16 But in that sequence of events, there  
17 isn't a -- it doesn't say when things go to NAGPRA  
18 review committee.

19 It seems like it goes from a dispute to  
20 court or to some kind of federal court or some kind of  
21 court proceeding.

22 So that whole section seems kind of muddy.  
23 So I just wanted to make that comment as well.

24 BRYAN NEWLAND: Thank you.

25 Thank you for that. We'll make sure that



1 we go back and look to see if we can bring some clarity  
2 to it.

3 One of the challenges with drafting  
4 regulatory language is leaving yourself enough  
5 flexibility to capture different situations but  
6 speaking with enough clarity to deal with particular  
7 situations.

8 And it's -- it really is a skill too, but  
9 if you -- you know, it's often we're helped in that  
10 process by getting guidance and suggested language from  
11 people to make sure we're capturing everything.

12 So, again, we have extended our written  
13 comment period to the end of the month.

14 I know folks, in our most recent  
15 consultation, were asking for a much longer extension.  
16 And one of the things I want to take the opportunity to  
17 explain is that in our roles, time is a finite  
18 resource. And this is one of the priorities of the  
19 administration.

20 And even from this point, getting to a  
21 proposed rule and then moving into a final rule, there  
22 has to be a review of all the public comments, a review  
23 of all the tribal comments, a disposition of every one,  
24 which getting everybody in the room together to do  
25 that, it's very hard to coordinate that, and then





1 drafting a preamble.

2 And then getting final rule language  
3 that -- that gets reviewed by all the relevant federal  
4 agencies takes many months.

5 And so even from where we sit today,  
6 it's -- it's -- getting to a final rule is going to  
7 take us many months.

8 And making sure that we're doing this on  
9 a -- on a time frame that allows President Biden's  
10 administration to complete this work and put it into  
11 implementation means we don't have as much time to  
12 extend the comment period as, I think, we all would  
13 like. And we're always mindful of the old adage of not  
14 letting the perfect solution become the enemy of a good  
15 solution.

16 And so, you know, we did extend the comment  
17 period to the end of the month, but it will be  
18 challenging for us to meet those goals if we were to  
19 extend the comment period much beyond that.

20 CASSANDRA ATENCIO: What if our comments  
21 are the comments that were from the previous draft  
22 before you brought up this new rulemaking? Is that  
23 fine?

24 BRYAN NEWLAND: Mm-hmm.

25 CASSANDRA ATENCIO: Okay. Because we do



1 have comments from the original and then the proposed,  
2 but not the one -- the newest draft ruling that came  
3 out.

4 And so part of ours were, like, a purpose  
5 that these regulations provide a systematic process  
6 under part A for the purpose, and -- and we know  
7 that -- so let me read the whole letter.

8 The Honorable Bryan Newland, Assistant  
9 Secretary Indian Affairs.

10 The Honorable Shannon Estenoz, assistant  
11 secretary for Fish and Wildlife and Parks and the U.S.  
12 Department of Interior.

13 Assistant Secretary Newland and Assistant  
14 Secretary -- "Es-ten-own-ez"?

15 SHANNON ESTENOZ: "Es-ten-knows."

16 CASSANDRA ATENCIO: "Es-ten-knows"?

17 SHANNON ESTENOZ: Mm-hmm.

18 CASSANDRA ATENCIO: Okay. The Southern Ute  
19 Indian Tribe thanks you for your leadership on behalf  
20 of the Department of Interior to conduct  
21 government-to-government tribal consultation -- I had  
22 problems with Wi-Fi, anyway -- on the draft proposal to  
23 revise regulations implementing the NAGPRA, on behalf  
24 of the Department to conduct government-to-government  
25 tribal consultation on the draft proposal to revise



1 regulations implementing the Native American Graves  
2 Protection and Repatriation Act.

3 We recommend and request that this round of  
4 comments not be the only opportunity to engage before  
5 the final rule and prior to the regular noticed and  
6 public comment process.

7 More than 10 years have passed since the  
8 Department last consulted on the NAGPRA process.  
9 In the interim, with the help of transparency and data  
10 reporting from the national NAGPRA program, we have  
11 learned much about how the process has, at times, been  
12 ineffective for Indian tribes.

13 We welcome this opportunity to assist in  
14 identifying the best way to repair and replace  
15 processes that lead to the healing and mending of the  
16 trauma that has happened through the collection of our  
17 ancestors and their cultural items.

18 We hope that this efforts leads to a NAGPRA  
19 process that also repairs and heals federal agencies  
20 and institutions from the burden of historic trauma  
21 their collections have caused.

22 While we appreciate the overview or changes  
23 provided by the National Park Service, the full draft  
24 proposal is extensive and significantly restructured  
25 from the current regulations.



1                   We respectfully request that you provide  
2 us -- and you already did -- with the draft preamble  
3 that accompanies this document and the redline markup  
4 of the changes, what you guys, this is -- this was  
5 before December when we had first put this draft  
6 together.

7                   Subpart A, in general, the purpose, these  
8 regs provide a systematic process for the disposition  
9 and repatriation of Native American human remains,  
10 funerary objects, sacred objects, and objects of  
11 cultural patrimony under the Native American Graves  
12 Protection and Repatriation Act of November 16, 1990.

13                   We are concerned about the omission of  
14 lineal descendants, Indian tribes, and NHOs which are  
15 whose -- which are those who rights to cultural items  
16 will be affected by the NAGPRA processes.

17                   And, CU 25 USCA subsection 3002(A)12(A) and  
18 (B) covering the priority of ownership and control of  
19 cultural items under NAGPRA.

20                   And I don't know if you've already  
21 addressed these things within that, but, therefore, we  
22 recommend amending the purpose to read as follows:

23                   Purpose: These regulations provide for the  
24 systematic process for the disposition and repatriation  
25 of Native American human remains, funerary objects,



1 sacred objects, and objects of cultural patrimony.

2 Just because the first way -- it just says  
3 "human remains," which doesn't give you a clear  
4 distinction between Native American and other peoples,  
5 besides us indigenous creatures.

6 So that was a -- one portion because, you  
7 know -- and especially for the layperson because then  
8 you get into -- we don't -- NAGPRA only covers tribes  
9 that we only care -- you know, our only concern is with  
10 Native Americans, so that portion.

11 And -- and offers to cultural patrimony to  
12 lineal decedents, Indian tribes, Native Hawaiian  
13 organization, and others under the Native American  
14 Graves Protection Act, dot, dot, dot.

15 Applicability, these regulations pertain to  
16 Native American human remains. We recommend keeping  
17 the phrase "pertain" to the identification and  
18 appropriate disposition of.

19 And then, I, discovered on or excavated  
20 from.

21 I'll just send these to you guys, okay,  
22 rather than going through this line by line? I'm going  
23 to bore everybody. Thank you.

24 But anyway, but we do have comments.  
25 I just need to know this is the correct email?



1 BRYAN NEWLAND: Mm-hmm.

2 CASSANDRA ATENCIO: Okay. Thank you.

3 BRYAN NEWLAND: And Oliver can help too  
4 troubleshoot the -- you know, where -- where the  
5 comments go to and confirming that you got them.

6 OLIVER SHALEY: Yeah. So if you've got any  
7 questions, the email address up there,  
8 consultation@bia.gov, or you can email me directly.  
9 It's just oliver.shaley@bia.gov.

10 And then if you need that, you can come and  
11 just find me when we're done here today, and I can take  
12 that for you.

13 BRYAN NEWLAND: That's the first time I've  
14 heard "indigenous creatures" in a formal  
15 government-to-government consultation.

16 All right. Any additional comments?

17 We're here at your disposal.

18 MELANIE O'BRIEN: Can I?

19 BRYAN NEWLAND: Sure. Go ahead, ma'am.

20 MELANIE O'BRIEN: It's always a good  
21 opportunity, especially with the assistant secretaries  
22 here, if you have examples or situations that you  
23 experienced in trying to accomplish a repatriation or a  
24 disposition, examples and real-life scenarios often  
25 help us better understand how we can make the



1 regulations better fit the actual experience.

2 So if you feel like you'd like to share  
3 something, that's another way to move forward and to  
4 give us more input, where you've had trouble with these  
5 regulations in the past.

6 I also know that could take days.

7 GERALD "SHANE" ANTON: Based on that  
8 question, since you asked, I had a concern, and I'm not  
9 sure how the regs would address it.

10 But as an example, we've tried to  
11 repatriate things from the BA. And I don't know if  
12 they're under the NAGPRA category. But they were  
13 reluctant or they wouldn't do it or, rather, they went  
14 the permanent loan route; in other words, "We'll  
15 permanently loan it to you, but we won't follow  
16 NAGPRA."

17 Are there issues that can address that so  
18 they can be repatriated under the way they should be  
19 repatriated?

20 And why do the agencies take that stance?  
21 What's the reason they don't want to repatriate per the  
22 law?

23 BRYAN NEWLAND: That's a great question,  
24 and I don't have -- I don't have an answer for you  
25 today, but Stephen might. He's got his hand raised in



1 the back there.

2 Oliver is getting his steps in today.

3 STEPHEN SIMPSON, ESQ.: Yeah, this is  
4 Stephen Simpson with the Solicitor's Office.

5 The issue is, sometimes, one of authority,  
6 especially for -- the NAGPRA gives all federal agencies  
7 statutory authority, okay, the power under a statute  
8 for disposition for repatriation, for taking things --  
9 items out of agency collections and giving them back to  
10 tribes where they should be. Okay?

11 But it's only those certain classes of  
12 items.

13 The other statutes often -- will sometimes  
14 do that kind of thing for other classes of items that  
15 the Federal Government has, but the BIA doesn't have  
16 that many of those.

17 And so we've tried -- and has actually  
18 fewer of those than some other federal agencies do.

19 So we've tried to work with -- the BIA has  
20 tried to work with tribes in some cases to be able  
21 to -- and, quite frankly, has been probably more  
22 flexible than we should -- than they should be if they  
23 get legally challenged on it, but nobody has challenged  
24 it.

25 So there's a few -- a few cases where we've





1 been able to do that. But it is -- it is very rare.  
2 And that's the main reason why, is -- is having the  
3 authority from Congress to be able to give -- to be  
4 able to give you back what, yes, should be yours.

5           There is -- it's not -- it's not a lack of  
6 recognition. And anybody that I've ever worked with,  
7 with the BIA, in 23 years of representing the BIA on  
8 all of this, it is not -- it is not any lack of desire  
9 to do that or lack of a recognition that that's what  
10 should happen.

11           It's a lack of authority from Congress to  
12 do it.

13           SHANNON ESTENOZ: Just as a clarifying  
14 question, Stephen, just so that I understand --

15           STEPHEN SIMPSON: Sure, Shannon.

16           SHANNON ESTENOZ: -- what you're  
17 explaining.

18           Are you -- are you saying that objects that  
19 are not covered by NAGPRA in this case? Because NAGPRA  
20 does apply to BIA; correct? It gives --

21           STEPHEN SIMPSON, ESQ.: Yes -- no, he's  
22 referring to -- I understand the question to be  
23 referring to objects that are not covered by NAGPRA.

24           SHANNON ESTENOZ: I see. Okay.

25           STEPHEN SIMPSON, ESQ.: Yes.



1 SHANNON ESTENOZ: Got it.

2 BRADY BLASCO, ESQ.: Brady Blasco, also  
3 with the Solicitor's Office.

4 I want to add that just that this authority  
5 issue has been on the radar of many agencies for a long  
6 time.

7 And while there hasn't -- I don't think  
8 there's been an opportunity yet to address it for, say,  
9 like, archaeological collections across the federal  
10 government.

11 There have been some steps taken. In  
12 particular, the Park Service finalized a rule this last  
13 year that created some limited circumstances for the  
14 deaccessioning of some archeological collections  
15 collected under ARPA and some other laws in the past.

16 It is -- it is limited, but it's a first  
17 step towards agencies exploring how far they can go to  
18 address these other items that are not subject to  
19 NAGPRA and how those might be -- "deaccession" is the  
20 term museums use. So basically, they're returned or  
21 transferred to folks who might have a greater interest  
22 in them than the -- than the museums and the agencies.

23 STEPHEN SIMPSON, ESQ.: And to add to what  
24 Brady was saying on the -- on the further efforts...

25 In 2010, when we issue -- when we issued



1 the regulation on cultural -- on return of culturally  
2 unidentifiable human remains in the NAGPRA process,  
3 there's a lot of discussion in the preamble of that  
4 regulation of disposition of authority.

5           And to the -- and that is one of the  
6 reasons why I think you mentioned earlier why  
7 associate -- why we say in that reg -- said in that  
8 regulation and say in the current NAGPRA regulations  
9 that associated funerary objects may be repatriated as  
10 part of that process, but it's up to the federal  
11 agency.

12           And it depend -- and we say in that written  
13 NAGPRA and the preamble to that regulation that it  
14 depends upon the agency's disposition authority.

15           I wanted to note that in this update, in  
16 these proposed regulations, we have changed our  
17 interpretation of that portion of the act and are now  
18 proposing to say that associated funerary objects must  
19 go back.

20           So we've at least come that far on it.

21           BRYAN NEWLAND: Shane, thank you for  
22 raising that issue. And that's something -- these are  
23 always -- when I come into tribal consultations,  
24 I always leave learning about issues that I didn't  
25 expect to learn about.



1                   And so this is another one I've marked for  
2 a follow-up conversation. So thank you for that.

3                   CASSANDRA ATENCIO: I have a question,  
4 then.

5                   So what about for, like, private museums  
6 and -- and a state museum that received help during  
7 COVID from the federal agencies? Now are they subject  
8 to NAGPRA?

9                   Because we have a museum that may have  
10 replicas and may have funerary objects that are within  
11 them, and they asked for -- during COVID, they asked  
12 for federal assistance.

13                   Now can we apply NAGPRA to them to -- to  
14 engage in consultation?

15                   STEPHEN SIMPSON, ESQ.: We are in  
16 conversation with the Small Business Administration on  
17 that point.

18                   And the fact that two of you have now  
19 mentioned it at consultation means that we're going to  
20 have to respond to that point -- that question in the  
21 final rule, and we will do that.

22                   We don't know yet, but we will --

23                   CASSANDRA ATENCIO: And then --

24                   STEPHEN SIMPSON, ESQ.: -- but we will --  
25 but we will check it out.



1 CASSANDRA ATENCIO: Because, you know,  
2 we've been trying to figure out how we can make --  
3 I don't want to say "make," but have this museum adhere  
4 and at least engage in -- in our perspective.

5 And so that's kind have been where we're  
6 at, especially with a replica on display.

7 STEPHEN SIMPSON, ESQ.: We're working on  
8 it.

9 CASSANDRA ATENCIO: Okay.

10 STEPHEN SIMPSON, ESQ.: Thank you.

11 CASSANDRA ATENCIO: I wanted you to say  
12 "yes."

13 STEPHEN SIMPSON, ESQ.: I know, but I have  
14 to -- I knew you did, but I have to talk -- I have to  
15 talk to other lawyers first.

16 SHANNON ESTENOZ: Yes -- yes -- yes, and --  
17 my microphone is not working. Hello?

18 MELANIE O'BRIEN: It just takes a moment.

19 SHANNON ESTENOZ: My -- hello?

20 I've learned that "yes" and "no" don't seem  
21 to be in the Government's vocabulary. Just like "yes,  
22 period; no, period."

23 "No" is more frequent than "yes."

24 GERALD "SHANE" ANTON: I guess as a  
25 follow-up to that example of issues, so we work closely



1 with the Pueblo Grande Museum. And they did a lot of  
2 excavation, I think, back in the '20s, '30s. But  
3 they -- at that time, the director -- and I can't  
4 remember his name. My people will help me back  
5 there -- but he -- he loaned -- and I don't know if it  
6 was more of just a gentleman's agreement -- to a -- to  
7 a museum in Oklahoma.

8 And the City recently found out about a  
9 City archaeologists who we work with all the time, the  
10 City of Phoenix, they made it known that -- I'm sorry.  
11 What's the name of it? -- Woolaroc Museum, and they're  
12 a private institution.

13 So the friendship between the previous  
14 director and the gentleman who started Woolaroc was --  
15 like I said, that's the gentleman.

16 But it was under excavation of Pueblo  
17 Grande Museum. And I think the BIA came back and  
18 determined that the gentleman didn't have the  
19 right of -- didn't have the right to make the loan  
20 based on -- again, this is back in the '30s and '40s.

21 So we required of Woolaroc, "Can you let us  
22 know if this BIA has got involved with this?"

23 They say "Yes." You know, we should have  
24 control of that. Woolaroc has been resistant in  
25 saying, "Well, we're a private museum. We don't



1 follow -- we don't have any federal funds or any  
2 federal nexus; therefore, we do not have to comply," or  
3 you know...

4 But we're pretty sure they got PPP loans.  
5 And that's the reason for us saying, "Yes, you did get  
6 some government money. And, yes, you should comply."

7 But, again, that's just our stance and not  
8 a legal stance. Just, I guess, a moral one from our  
9 point of view.

10 So that's just another example. And that's  
11 still ongoing. We haven't -- we're deciding now  
12 whether we are going to litigate or not, but that's  
13 where we are.

14 Oh, Od Elsa [phonetic], that's the  
15 gentleman from Pueblo Grande.

16 SUNDAY EISET: So --

17 BRYAN NEWLAND: Oh. I'm sorry. Can you  
18 share your name?

19 SUNDAY EISET: Oh, I'm sorry. I'm Sunday  
20 Eiset. I'm with the Salt River Pima-Maricopa Indian  
21 Community THPO. I'm a dig archeologist.

22 Similar to that, they're dealing with a  
23 case where Abel Hourary [phonetic] had lent a  
24 collection with -- of ancestors and associated objects  
25 and other things to the Mexico City, the Museo Nacional



1 in Mexico.

2 And they are now -- and that was kind of a  
3 loan that -- or not a loan -- that ASM did.

4 And so they're involved in trying -- and  
5 the BIA is also involved in trying to work with the  
6 Museo to return those collections. And that's been  
7 very difficult.

8 And I'm, you know, familiar with other --  
9 I'm very familiar with the Yaqui repatriation case, so  
10 I know how that can go outside of the NAGPRA process.

11 And I know that there's no real framework  
12 for doing this kind of thing within the framework of  
13 NAGPRA.

14 But I think I would just kind of raise  
15 that, again, as another example where I can see tribes  
16 are having problems with museums that are international  
17 in scope and respecting the wishes of the tribes.

18 SHANNON ESTENOZ: Can I ask a question of  
19 Stephen?

20 BRYAN NEWLAND: Yes.

21 SHANNON ESTENOZ: Just stick -- just  
22 sticking with this topic for just a moment to clarify  
23 my understanding, Stephen or Brady, what qualifies as  
24 federal funding.

25 So, in other words, for an institution to





1 be pulled under the NAGPRA regulations, is that defined  
2 in the statute or is it an interpretation? Is it a  
3 legal interpretation? Is it in the regs? And what is  
4 it generally?

5 Because there are all kinds of ways of  
6 getting federal funding one-off federal grants and the  
7 like.

8  
9 BRADY BLASCO, ESQ.: So there's a wide  
10 variety of versions of federal funding that -- that --  
11 that would count as federal funding under the  
12 regulations, under the act, to make institution that  
13 might not even normally look like a museum qualify as a  
14 museum under the regulations.

15 We discussed some of that, but I think it  
16 would be best to refer to the preamble where there is  
17 analysis of what some of that -- some of that includes,  
18 and it's fairly consistent with analysis that was done  
19 in prior durations of the regulations as well.

20 SHANNON ESTENOZ: Okay. Okay.

21 BRADY BLASCO, ESQ.: Questions such as  
22 about the PPP loans are difficult for us just because  
23 those are so new compared to some other forms. So we  
24 have to figure out what bucket those actually fit in --

25 SHANNON ESTENOZ: Yeah, okay.



1 BRADY BLASCO, ESQ.: -- but there's a number  
2 of buckets addressed in the preamble, most of them  
3 count as federal funding.

4 There are a few exceptions that come up  
5 towards the end of that -- of that section, which  
6 I could provide a page number or something if you give  
7 me a second.

8 STEPHEN SIMPSON, ESQ.: And one other point  
9 on that is -- and just, Shannon, it is not -- it is not  
10 in the statute.

11 The statute just says "Receives federal  
12 funding," and leaves the agency up to -- leaves that up  
13 to all of us to figure out.

14 But one of the great ways we have  
15 consistently interpreted it through the years has been  
16 that in the instance, for example, of state  
17 universities --

18 SHANNON ESTENOZ: Yeah.

19 STEPHEN SIMPSON, ESQ.: And their  
20 museums --

21 SHANNON ESTENOZ: Yeah.

22 STEPHEN SIMPSON, ESQ.: -- that if --  
23 that every -- every state receives federal funding;  
24 therefore, every entity of the state receives federal  
25 funding.



1                   And that flows down to state universities.  
2                   It flows down to museums that are run by states,  
3                   museums that are run by state universities. It flows  
4                   down to local -- localities that get -- that get  
5                   funding -- money from the state or directly federal  
6                   funded and vocal -- the offices in those localities,  
7                   like coroners' offices that you wouldn't think of are  
8                   museums but actually are for purposes of this statute.

9                   So it is still a fairly broad reach --

10                  SHANNON ESTENOZ: Yeah.

11                  STEPHEN SIMPSON, ESQ.: -- and -- and we  
12                  keep -- as Brady said, you know, there -- some of this  
13                  is well established in -- in the -- sort of the way  
14                  we've been working on the act and in the sort of  
15                  federal community.

16                  Because Congress uses this -- uses this  
17                  criterion a lot, and so there's a lot of people who are  
18                  working with this -- with this issue.

19                  The thing with PPP loans is they are new.  
20                  We haven't been able to contact -- figure out who to  
21                  contact and then talk to extensively enough with this  
22                  particular problem as to whether it -- how it works in  
23                  this issue.

24                  We've heard how it works with people who  
25                  get federal grants in general or with not-for-profits



1 who get, you know, in some other contexts, but not in  
2 this particular one. And that's what we're trying to  
3 work with the SBA on figuring out.

4 SHANNON ESTENOZ: Okay. Thank you.

5 BRYAN NEWLAND: And, Sunday, if I can  
6 just -- with regard to your example, you know, we've  
7 got a brand-new law in the books now in the STOP Act  
8 that President Biden just signed in the last 2 weeks --  
9 2 -- I lose track of times around the holidays, so  
10 forgive me -- but that deals with international  
11 trafficking and objects of patrimony.

12 And so we're trying to understand now  
13 the -- the intersection of that with NAGPRA as well and  
14 what our obligations and -- and responsibilities are at  
15 the Department of the Interior.

16 And Melanie informs me that we've actually  
17 got a briefing up in the very near future to discuss  
18 that.

19 So that's on -- that's on our minds as well  
20 as the international context and how that all plays in  
21 here.

22 But in a brand-new law, the initial  
23 implementation often -- you know, when a law is first  
24 put into effect, the first ways that you use it, like  
25 anything else in life, becomes habit for us.



1                   So we want to make sure that -- and  
2 precedent -- we want to make sure we're getting this  
3 part of it right and -- and meeting the spirit of the  
4 law.

5                   Maybe the coffee has worn off from  
6 everyone, but, you know, we can -- we can hold for  
7 final comments. We can break early if you want, but,  
8 you know, we'll leave it up to you guys.

9                   We had 3 hours scheduled, so we want to  
10 make sure we are available to do the formal  
11 consultation on the record. And, again, the written  
12 comments are incredibly helpful as well.

13                   And let me just add on behalf of the  
14 Department is -- that this is -- this is one of the  
15 first rules that we took up walking into the  
16 Department, the president's administration.

17                   Probably within our first 60 days on the  
18 job, we were pulling together a team of folks to go  
19 forward with this rulemaking because it's important to  
20 Secretary Haaland, and it's important to us. And it's  
21 our intention to get this rule done and get it to final  
22 so that this administration can use it and not only get  
23 the rule on the books, but then to make sure that we're  
24 setting the first -- you know, we're setting the stones  
25 for implementation in creating those good habits for



1 the Department for future administrations.

2 So we're going to continue to press forward  
3 on this, and I just really encourage you to -- you can  
4 help us along by getting comments in before the  
5 deadline so that we can use them as they're part of the  
6 record, which the administrative record, in all of  
7 this, getting written comments, getting comments in  
8 these transcripts, is very helpful for us when people  
9 raise questions or challenges down the line, and we  
10 can -- we can point to language in the regulations that  
11 are tied back to what we've heard in the consultations.

12 Yeah.

13 DESIREE DUNCAN: Good morning. And thank  
14 you for having us. I apologize for us being late. We  
15 went to the wrong BLM downtown but wanted to introduce  
16 ourselves.

17 I'm Desiree Duncan, the director of Native  
18 Lands & Resources with Tlingit & Haida.

19 And this is Harold Jacobs. He's the  
20 cultural resources specialist, and he has a wealth of  
21 knowledge.

22 We are going to submit some written  
23 comments, but we wanted to get President Peterson's  
24 approval first.

25 But, Harold, did you want to share anything



1 about your experiences, good or bad?

2 HAROLD JACOBS: Good morning. Thank you.

3 One of the problems we had was where the  
4 regulations say, "Upon receipt of a valid claim, the  
5 museum has 90 days," but then there's always this word  
6 where they'll stick on it and hang on it.

7 So the museums took it upon themselves to  
8 determine what was a valid claim and what wasn't.

9 And we just settled a claim in May that  
10 took 20 years after we submitted the claim.

11 Another museum we went to, actually, had  
12 armed guards in the room watching over the objects  
13 while we did a consultation. That shouldn't happen in  
14 any museum. That was the Springfield Science Museum.

15 When we first got these inventories in  
16 November of '93, the Denver Art Museum sent out a list  
17 of five objects that they determined met the  
18 requirements of NAGPRA.

19 My predecessor said, "You don't get to make  
20 that determination. That's ours." But we still ran  
21 into that problem.

22 And with the -- that same museum, the  
23 Denver Art Museum, I was talking with another museum  
24 about the problem there, and the director of that  
25 museum said, "The problem is when you have a museum



1 with art collections -- an art museum as opposed to a  
2 museum that has an anthropology section, where art  
3 museums only view the monetary value of objects and  
4 what it means to their collection and not the, shall  
5 I say, human connection that the tribe needs or has.

6 And then there's the museum right in  
7 downtown Juneau, which sits in the middle of Tlingit  
8 territory, which has, on record, said that they don't  
9 have to comply with NAGPRA. It's just an advisory law.

10 But I wanted to comment on the objects  
11 taken from graves.

12 We had two museums -- we had a shaman from  
13 her clan, actually, that was buried in 1853, and the  
14 objects got distributed to several museums.

15 Two museums said, "Yes, we'll return them  
16 as unassociated funerary objects."

17 The other the museum said, "No, his  
18 predecessor had the right to sell it, so we're not  
19 giving it back."

20 But should these objects be claimed with  
21 that or should they -- since they once had human  
22 remains with them -- be listed in an inventory  
23 completion?

24 MELANIE O'BRIEN: Hello. And both of you,  
25 welcome from your long journey from Alaska.





1 Harold, I don't know why every time I see  
2 you, you, seem to look younger, but it -- maybe it's  
3 the hat.

4 You know, I think that's one of the issues  
5 we've tried to really clarify in these revisions.

6 When it comes to whether an object is -- a  
7 funerary object is associated or unassociated, that the  
8 only determining factor under the law is where the  
9 human remains are presently.

10 So the answer to your question depends on  
11 where the remains of that individual are.

12 If they were left alone and not removed,  
13 then the objects are unassociated.

14 But if you do know that the human remains  
15 were also removed, even if they've been returned, that  
16 would qualify the object as associated.

17 So that's a part of the question -- the  
18 answer to your question.

19 But I think, Harold, in light of your  
20 experiences, which I have heard echoed across the  
21 country by many other individuals, one aspect of these  
22 revisions is adding to every definition of a sacred  
23 object, an object of cultural patrimony, or a funerary  
24 object, that the objects must be identified according  
25 to information provided by Indian tribes and NHOs.



1           So we've added that requirement to the  
2 definitions themselves so that a museum must take into  
3 account your identification of the object as a sacred  
4 object or an object of cultural patrimony.

5           And to get to both your situation as well  
6 as to what Shane mentioned earlier, where a museum  
7 refuses to repatriate an object, we require them to  
8 explain that to you when they respond; and,  
9 furthermore, in relation to your 20-year problem, we  
10 require them to make that response within 60 days.

11           So if they're not going to accept your  
12 valid claim, they must tell you why, and they must do  
13 it in a certain amount of time.

14           It's our hope that those steps, even just  
15 making the museum explain why they're not going to  
16 repatriate, will prevent the kinds of obstacles that  
17 you've faced.

18           We're hopeful if they don't have to -- if  
19 they have an option of repatriating or writing down why  
20 they're not going to repatriate that they may not want  
21 to write it down or they may then agree to repatriate.

22           Or when they do write it down, it gives you  
23 something to challenge in writing. And that's part of  
24 the goal here.

25           I know all too well that -- the time and



1 effort that it takes to get museums to do what they're  
2 supposed to do under the law.

3 So our hope is that these regulatory  
4 changes will have an impact.

5 BRYAN NEWLAND: Thank you, Melanie.

6 HAROLD JACOBS: Another question. Has  
7 the -- has any museum actually ever been fined for a  
8 noncompliance?

9 MELANIE O'BRIEN: Yes. 20 museums have  
10 been found to have failed to comply. Not all of them  
11 resulted in a payment, but many did.

12 And, again, part of the regulatory changes  
13 here are to establish a process so that when the  
14 process does not occur, it is easier for a tribe to  
15 make an allegation that they failed to comply.

16 So if a museum doesn't respond to you in  
17 60 days, or if they respond that they're not going to  
18 repatriate, and they don't explain why, those could all  
19 be failures to comply, and we could seek civil  
20 penalties if that's what you choose to do.

21 So we're hoping to increase the opportunity  
22 if not to make those allegations and to fine museums,  
23 at least to have that as an extra pressure that can be  
24 applied.

25 BRADY BLASCO, ESQ.: Again, Brady Blasco,



1 Solicitor's Office, for those who walked in to know who  
2 is talking.

3 I just want to add on to Melanie's point or  
4 maybe emphasize that the issues you're describing at  
5 present, all of these STOP points where a museum in  
6 particular -- since I'm about to talk about civil  
7 penalties, we're talking about museums, not federal  
8 agencies -- but all of these STOP points that come up  
9 with museums currently don't fit any of the listed  
10 failures to comply in the civil penalty section.

11 That's an issue right now under the  
12 existing regulations.

13 What's being proposed now and what Melanie  
14 was just talking about is how that listing of specific  
15 failures to comply would be removed in the civil  
16 penalty section.

17 A failure to comply would be defined much  
18 more broadly to pick up on many of these procedural  
19 steps, these procedural elements, where someone isn't  
20 responding in a certain time or someone isn't providing  
21 a notice at the right time.

22 It provides substantially more recourse to  
23 tribes to raise these issues to the Department and --  
24 and seek a civil penalty investigation.

25 CASSANDRA ATENCIO: Cassandra, can you give



1 us an example, like, as far as a penalty that you said  
2 "defined more broadly now"? But can you give me an  
3 example? Like, is it raised? Is the number -- the  
4 amount of penalty raised and -- and...

5 BRADY BLASCO, ESQ.: So, yeah, I -- the  
6 penalty amount isn't itself raised -- Melanie, correct  
7 me if I -- if I misspeak -- but the factors by which  
8 the Department can consider how high or how low it  
9 should be are broad.

10 The point I was trying to get at before is  
11 less about the amount, though, and more about what can  
12 actually constitute a failure to comply in the first  
13 place.

14 Whereas, right now, without a time frame  
15 requirement for a response from a museum, there is no  
16 failure to comply with the act. The act didn't define  
17 a compliance element there.

18 By adding time frames in, by adding  
19 requirements for responses and what those look like,  
20 there's more process in place now that can be  
21 considered part of the systematic process, part of what  
22 compliance looks like.

23 And then, in conjunction with the changes  
24 to the civil penalties section, failure to comply with  
25 those elements are now potentially subject to a civil



1 penalty, which they weren't before.

2 Because, again, there are about 11 listed  
3 failures to comply. They're very specific in the  
4 current regulations.

5 CASSANDRA ATENCIO: Okay. And now I have a  
6 question, and that leads me to a question.

7 So what about -- so a museum sends you  
8 out -- because we're getting bombarded now, right, from  
9 all the different universities and museums to do that.  
10 But there -- I have two interns and me.

11 And -- and so being able to consult  
12 effectively within those time frames and answer -- and  
13 provide a response is kind of -- is kind of a hindrance  
14 for us because we have so much other beyond besides the  
15 NAGPRA, and many tribal offices are the same.

16 It's how are we -- how can we  
17 effectively -- is it written in there effectively --  
18 communicate with each other to make sure that we stay  
19 within those time frames?

20 Because I don't want, like, say, us as a  
21 tribe wanting to culturally affiliate with the -- with  
22 the remains from a museum and somebody else step in,  
23 and we're just bombarded.

24 Is there a way to make sure that -- because  
25 I know that tribes are under no -- no time frame line,



1 but museums are.

2 So that -- that works. So then, therefore,  
3 we are too. And so I'm just trying to make sure that  
4 we're not doing -- just being a clearinghouse for  
5 remains to get off and go to somewhere without proper  
6 consultation, I guess is my point.

7 And how do we make sure because if -- what  
8 you were talking about, for penalties?

9 But just in those time frames, it made me  
10 think about how do we as a tribe stay engaged to make  
11 sure beyond just looking at the Federal Register every  
12 day?

13 Because I can tell you right now, we -- you  
14 know, it's, like, once a week, maybe, if I'm lucky.  
15 And not just not -- not just not NAGPRA stuff but  
16 everything.

17 And maybe -- and -- and besides looking at  
18 National NAGPRA Review and what the universities are  
19 doing, and plus whatever is on the website.

20 I just want to make sure that -- because we  
21 have two museums that want to talk to us within this  
22 next month in consultation and the costs.

23 So, I guess, getting to those places,  
24 utilizing NAGPRA because it takes time for grant money,  
25 is there a way for us to stay engaged within those



1 timelines? That's my basic question after all of that.

2 And then, as far as broadened penalties, is  
3 there a way that -- is there a person that we can talk  
4 to -- who do we send the penalties to are the  
5 conversation from a tribe, and then is there someone  
6 that can help us write that if we're not capable?

7 MELANIE O'BRIEN: Yeah, so your first  
8 question, Cassandra, is -- is one of the challenges of  
9 these regulations, is how do we balance requiring  
10 museums to take actions by certain timelines and yet  
11 providing opportunities for tribes to engage and  
12 consult if they wish to do so.

13 You know, we have tried to strike that  
14 balance when it comes to human remains and associated  
15 funerary objects.

16 We have required museums -- under the  
17 proposed rule, a museum would be required to update  
18 their inventory within 2 years.

19 And the first step in updating an inventory  
20 is to initiate consultation with tribes.

21 Tribes can, then, choose whether to respond  
22 and whether to engage in consultation or not and can  
23 set a timeline for that, but it must fit within that  
24 2-year requirement unless a museum is -- wants to apply  
25 for an extension to that 2-year time frame.





1           And that extension would require evidence  
2 that they have reached out to tribes and that the  
3 tribes are in agreement that the process should  
4 continue and take additional time.

5           And I'll say that, you know, in terms of  
6 responsibilities for approving an extension, that rests  
7 with the Assistant Secretary Estenoz.

8           She's the one who will decide whether  
9 museums can have extensions or not and whether they  
10 have worked effectively with tribes to allow for that  
11 timeline to be extended.

12           Likewise, with civil penalties, my office  
13 is where you would send the allegation. And it doesn't  
14 matter what exactly the allegation says. If there's  
15 not enough information, we'll come back to you and ask  
16 for more information to clarify.

17           CASSANDRA ATENCIO: Okay.

18           MELANIE O'BRIEN: But, again, the -- the  
19 responsibility for that action, that civil penalty,  
20 rests with the assistant secretary.

21           So, you know, I think that, you know, you  
22 see me a lot, and -- and I talk about this a lot, but  
23 the opportunity here with both of the assistant  
24 secretaries here is that these are really the -- the  
25 officials that make many of these decisions ultimately



1 about civil penalties and extensions and certainly  
2 about what goes into these regulations.

3 So I think it's just an opportunity to  
4 highlight that chain of responsibility that we have  
5 within the Department.

6 And, you know, we certainly welcome anyone  
7 to ask questions that are related to a civil penalty  
8 action.

9 I think that many of you know we've hired a  
10 full-time investigator. So his job is to talk to you  
11 about an allegation and what he can do to help  
12 understand what the issue is and try to bring it to a  
13 resolution.

14 I will say that we're hampered right now  
15 because of the regulations and what constitutes a  
16 failure to comply.

17 I don't know if you want to add?

18 CASSANDRA ATENCIO: I have one more  
19 question.

20 SHANNON ESTENOZ: Only that that's -- you  
21 know, that that's yet another -- it's another reason  
22 why finalizing these regulations is so important.

23 Because then when the -- you know, then  
24 I am the person that gets to implement those and gets  
25 to, as Bryan mentioned, start to build that muscle



1 memory for the person, then, who comes after me.

2 So if I'm able to make decisions under the  
3 new regulations, that starts to set precedent so that  
4 the next assistant secretary who comes, then, is  
5 more -- is, you know, not necessarily bound. It is  
6 that discretionary decision, but certainly the  
7 precedent is there.

8 CASSANDRA ATENCIO: Okay.

9 SHANNON ESTENOZ: So thank you for -- for  
10 surfacing this because this is, I think, a really  
11 important element that we haven't talked about that  
12 hasn't surfaced in previous consultations.

13 CASSANDRA ATENCIO: And then as far as  
14 having the delivery of written documentation under the  
15 regs, C, "Duty of Care," and it would -- "Duty of  
16 Care," it would be 1E -- no, it would be just E -- how  
17 do we make sure that these aren't FOIA-able for those  
18 documents that we send?

19 MELANIE O'BRIEN: It's a very good  
20 question. And the only confident answer I can give you  
21 on protection of sensitive information is not to submit  
22 it in writing.

23 CASSANDRA ATENCIO: But it is.

24 MELANIE O'BRIEN: Well, and that's where  
25 I think you need to look at closely at what is required



1 to be submitted in writing.

2           You are required to submit requests for  
3 repatriation. That is true. And that request for  
4 repatriation may need to contain certain information.

5           But does that -- does the request require  
6 information beyond an assertion that this is an object  
7 of cultural patrimony or a sacred object? Not  
8 necessarily.

9           And if that's information that the museum  
10 requests of you, then that's information that you  
11 protect by saying, "Let's consult on it, and we can  
12 explain to you further why it's a sacred object or why  
13 it's not an object of cultural patrimony," or you may  
14 say it just is.

15           And, "Museum, you have to make a decision  
16 based on our assertion."

17           I think that there -- there is a  
18 requirement for written documentation in these  
19 regulations, but we have tried repeatedly to make clear  
20 that specific information, which may be sensitive  
21 information, is not required to be put in writing  
22 because it ultimately could be subject to some kind of  
23 disclosure, whether under FOIA or other state laws.

24           CASSANDRA ATENCIO: So, then, what if you  
25 have two -- what if you have two competing -- two



1 tribes that are making the same claim, though, and then  
2 you're trying to think about preponderance of evidence,  
3 right, and this is the museum, then would it be easier  
4 to do group affiliation? Is that a part of this too?

5 MELANIE O'BRIEN: Absolutely. Yes.

6 CASSANDRA ATENCIO: All right.

7 MELANIE O'BRIEN: So we try to make very  
8 clear that a joint request is not a competing  
9 request --

10 CASSANDRA ATENCIO: Okay.

11 MELANIE O'BRIEN: -- And that the only time  
12 that a museum must evaluate multiple requests is that  
13 if they are, in fact, competing, if they are opposing  
14 each other.

15 And in those circumstances, then, there is  
16 information that's needed, and the museum must evaluate  
17 it, but it's not necessary that the specific details be  
18 provided in writing.

19 CASSANDRA ATENCIO: Can that be -- I think  
20 that would be a comment to be insert in there as part  
21 of confidentiality, some sort of clause within the  
22 regs.

23 Like how we have Section 304. There's not  
24 very meat in it, very much for 106, but we have that  
25 confidentiality clause. And I think there needs to be



1 some sort of language that kind of helps a part of  
2 that. That's off my head.

3 MELANIE O'BRIEN: Yeah, and this is where  
4 we bump up against, you know, the limits of NAGPRA.

5 Because NAGPRA, the law, does not provide  
6 for those kinds of exemptions like NHPA does.

7 So we are limited in relying on other  
8 statutes like NHPA or ARPA or FOIA, but to protect  
9 information.

10 NAGPRA itself does not contain those  
11 protections.

12 BRADY BLASCO, ESQ.: While we do run into a  
13 statutory authority issue there, we don't have a  
14 statutorily provided FOIA exemption.

15 Congress can do that. And they have, in  
16 fact, included some confidentiality components in the  
17 STOP Act.

18 Those don't apply to other laws, but it's  
19 something Congress could theoretically do or plan.

20 It's happened elsewhere, as we were talking  
21 about at ARPA and the NHPA, and then most recently,  
22 specifically in the STOP Act.

23 CASSANDRA ATENCIO: Okay.

24 BRYAN NEWLAND: All right. Well, I've  
25 learned a lot already this morning. And it's been a



1 good discussion.

2 I just want to pause here and make sure,  
3 you know, we -- doing the time check. We've got about  
4 1 hour left in our scheduled time.

5 We don't have to use all of it if you don't  
6 want, but we're available that long.

7 So I want to see if there are any  
8 additional comments. I know we've had a few folks join  
9 us in progress.

10 I want to see if there's any -- anything  
11 you wish to comment today.

12 Yes.

13 VERNELDA GRANT: Good morning. My name is  
14 Vernelda Grant. I'm the director for the Historic  
15 Preservation Archeology Department, the THPO, tribal  
16 arc, and NAGPRA rep as well.

17 So I -- gosh, where do we start, like, from  
18 the first day of creation to now? It seems like  
19 there's a lot of things that we've been bombarded with.

20 And -- and amidst the actions from  
21 Secretary Haaland, the -- you know, on a lot of the --  
22 I think -- I see it as a lot of small projects that can  
23 could be -- that are positive, like the changing the  
24 name for Squaw Peak. You know, I see a lot of small  
25 things that are being -- that are being addressed to



1 make good and to do good, you know, by the government  
2 with the tribes.

3           There's bigger issues that -- that I think  
4 that really need attention, you know, and I think that  
5 we're still dealing with these issues, and it affects  
6 almost, you know, everything we do on our traditional  
7 lands, our homelands, our way of life. It affects  
8 every bit of it, our mental capacity, our -- you know,  
9 just our minds, our body, our health, our spirit.

10           And there's been such a quick -- especially  
11 with this administration, possibly because of the last  
12 one, that there's been such a race, it seems like,  
13 to -- to address some of the small things, you know.

14           And what I mean by that is, there's good  
15 intentions behind what the government is doing, what  
16 you-all are tasked to do, and with the people that you  
17 are -- you know, you selected to work with who are  
18 Native American, American Indian, Native Hawaiian  
19 members, you know, that you're working with to help do  
20 work with tribal nations and Indian country and with  
21 the Native Hawaiian organizations.

22           But it seems like we're slammed. We're  
23 still constantly doing -- and I have to say this over  
24 and over and over because things really haven't really  
25 changed dramatically because every new administration





1 that comes in, it's a whole new thing, a whole new ball  
2 that keeps -- that starts to roll again.

3 And as far as consultation goes, there's a  
4 reiteration or a resupport of, you know, the  
5 president's initiative to work with native tribes to  
6 consult to conduct meaningful government-to-government  
7 consultation.

8 And when -- you know, each time there's one  
9 or two words adding saying, "What is really  
10 meaningful?"

11 And then there's a whole swarm of federal  
12 agencies that -- that come around and start throwing  
13 the projects in our face, you know, throwing it into  
14 the tribal nation's laps, into, you know, hiring  
15 consultant companies liaisons, you know, that are  
16 career building for themselves or that want some sort  
17 of attention. Some of them are native people too; some  
18 are nonnative.

19 And so we -- you know, you put all of those  
20 things into the mix. And then you have, you know, big,  
21 huge organizations and corporations coming in to  
22 extract minerals or energy resources from our tribal  
23 lands, holy, sacred places, cultural landscapes.

24 And then you have, you know, those entities  
25 coming in buying off different portions of people that



1 work for our government, and congressional  
2 representatives included.

3 And in this entire mix -- you know, in our  
4 case, for San Carlos, there's only two of us from my  
5 department, myself and an archeology aide.

6 And so we're supposed to, you know, jump on  
7 to every scenario and consult with everyone, you know,  
8 and, you know, do the things we need to do that we're  
9 tasked to do within our exterior boundaries of our  
10 reservation, in our reservation lands too, to prove  
11 that we as native professionals, experts in the areas  
12 that we're, you know, put on in these Indian  
13 reservations to manage to prove to the government that  
14 we can manage these tribal lands.

15 So you take all these things. You know,  
16 you take -- I'm tasked to oversee and to manage  
17 cultural resources, natural -- assist in natural  
18 resource projects to assist and to, you know, guide and  
19 to meet with all these individuals.

20 If you can just imagine putting yourself in  
21 those situations and then, you know, thinking, okay, we  
22 have 30 days for each one of these federal agencies,  
23 you know, DOI, how many are under -- how many, you  
24 know, is under the Department of Ag? How many is under  
25 the Department of DOI, DOT, you know, every single



1 agency, and every -- every president's cabinet member  
2 has their slew of people working for them.

3 So take all of that, and we're working with  
4 every single organization and the projects they're  
5 proposing and all these other elements, you know,  
6 institutions, you know, private institutions,  
7 educational institutions.

8 So we're just -- you know, we're trying to  
9 focus -- focus on things that are being thrown at us.

10 And through these years, it seems like some  
11 of these things have benefitted the tribes, have  
12 benefitted the government and the tribes.

13 And there's things that began that were  
14 forgotten because something else came up.

15 So what I'm trying to say is that there's  
16 been layers of, you know, consultation of reaching out  
17 to have listening sessions and, in particular, for  
18 this, you know.

19 So with me bringing up all these other  
20 things right now, it's just -- if you can just imagine  
21 being in this arena and then trying to also legally  
22 understand the laws behind this, you know, let alone  
23 the Indian laws, then the white man's laws, and then  
24 the federal Indian laws, which jumbles everything up,  
25 and nobody wants to touch it when it comes -- you know,



1 when you introduce, you know, that type of specific  
2 scenario.

3 And then you introduce what we're doing  
4 with Oak Flood [phonetic] and Mount Graham is really  
5 just rights.

6 Nobody wants to talk about religion in the  
7 court system too, is what we're -- we're dealing with.

8 And so in this whole mix of everything that  
9 we're dealing with as cultural resource managers, it's  
10 really hard to just kind of jump on board, you know,  
11 and to -- to say, "Hey, you know, this is cool. This  
12 is good. You know, okay, you guys, you know,  
13 everything you're proposing will be for the best of  
14 everyone," but it's -- we really have to be really  
15 careful, careful because it's -- we're dealing with  
16 really sensitive matters and issues, the remains of  
17 our -- our -- our loved ones, the remains of our  
18 ancestors, the remains of our children, you know,  
19 wrongfully taken away from us.

20 These discussions that we have are about  
21 holy places where something that has occurred that was  
22 beyond this world that has everything to do with my  
23 health and well-being for me as a person, for my niece  
24 or my mom, for all of us in this room, whether you're a  
25 native or not.



1           And it's just -- it feels like where we're  
2 on this high and going 100 miles an hour, you know, and  
3 we're thrown all of these things to think about and to  
4 consider and to make final rulings on immediately  
5 because that was something that somebody else, a career  
6 builder or some other person that doesn't know what  
7 they're doing, somebody that doesn't think about how --  
8 where our mind set is coming from is putting together.

9           You know, so I just wanted to just share  
10 that, even though it might not seem, like, nothing. It  
11 might -- it doesn't matter taking stuff like this into  
12 consideration because it's not going to be written in  
13 any of your final rules and regulations.

14           But it's something that -- this is where we  
15 come from and this is our way of life. It's our  
16 thought. It's our thinking. And, you know, it's -- a  
17 lot of the stuff that that's in these laws have  
18 everything to do that affects us, our mind, our  
19 mental/spiritual, you know, physical health and  
20 well-being.

21           The laws don't address that. You know,  
22 nobody's going to be able to -- you know, how do you --  
23 you know, that's not going to be able to be addressed  
24 in a courtroom because there's nothing -- there's no  
25 guidelines. There's nothing that can -- you know, that



1 I can say that'll make a difference, so...

2 But I just wanted to just share that with  
3 people here, that this is, you know, where tribes' mind  
4 sets comes from. This is what our thoughts are behind  
5 the questions that they ask, the statements that are  
6 read.

7 You know, it's more than just, well, you  
8 know, okay, these are the questions that the -- you  
9 know, are addressed to tribal leaders. There's five or  
10 six questions. I guess we just need to answer this and  
11 give it back to them within 30 days, you know.

12 So, you know, just for the purposes of your  
13 understanding is that it's a bigger deal. It's a  
14 bigger thing. And it really matters.

15 But it seems, like, in a lot of cases, you  
16 know, it's another thing that could possibly be thought  
17 of as rushed because I think some of these comments --  
18 and not this comment now for this particular NAGPRA,  
19 the final rules and regs portion that we're here for,  
20 but I think the initial one came during the pandemic,  
21 you know.

22 So I'm not sure who really put the words  
23 and regulations and wording together for that. And  
24 then it's expected that, you know, the tribes submit  
25 comments.



1 I think the original comments periods  
2 before that were maybe 10 to 12 years ago, maybe 2011,  
3 2010, 2012.

4 And so how far back -- you know, like, I  
5 guess, one of the questions that I'm asking is how far  
6 back are some of those comments that the tribes  
7 submitted back then, like 10 to 12 years ago and then  
8 2 years ago during the pandemic, and now? Will those  
9 be -- comments be considered and have they been entered  
10 into some of the wording of the final ruling? That's  
11 one question.

12 And then, you know, I had some concerns  
13 over the definitions, like Indian group, you know,  
14 versus federally Indian-recognized tribes putting  
15 claims in.

16 Definitions under possessions and control.

17 There's a lot of specifics. And, you know,  
18 of course, we'll be turning in comments on these  
19 specifics. But, you know, like, another thing  
20 that I -- a third thing is, you know, there's --  
21 there's tribal comments that we're -- that you're  
22 seeking, but also I think there's public comments too,  
23 and what is the difference between -- if you can  
24 clarify the deadlines between the two. You know,  
25 that -- that's something that I was kind of curious on.



1                   Funding, of course. You know, I think  
2 people brought that up before, but I think there's  
3 issues between -- you know, I think concerns would be,  
4 you know, funding and maybe a transition time  
5 between -- this was brought up in discussion earlier,  
6 like the changing the enforcement from the BIA to the  
7 tribes on, you know, lands that are adjacent to the  
8 reservation.

9                   You know, like, I think there could be  
10 difficulties without any, you know, transition time or,  
11 you know, funding available.

12                   I think we work so well with our BIA  
13 regional archaeologists that I can't see this to be,  
14 myself, an easy task to take on, you know, and to  
15 having to write right plan of actions and different  
16 things on top of it. I don't think it could be  
17 something that could be a good thing for other tribes  
18 as well.

19                   And also a side note from that, if that's  
20 being proposed, would it have an effect on existing PL,  
21 you know, 93-638 contracts that are specifically  
22 written for Section 106 activities? Would something  
23 like that change those type of contracts? And if so,  
24 would additional funding go into those contracts?

25                   Because I under- -- you know, I know that





1 in the TPA process for -- that tribes go through under  
2 the BIA natural resources, and where I'm located is not  
3 even close to, you know, priorities under my tribe at  
4 all.

5 So if we're taking additional things, you  
6 know, that BIA is -- you know, that we do successfully  
7 now with BIA and place it with tribes, I just have  
8 concerns that -- you know, that it might affect  
9 something that's already working well across the board.

10 I know that the -- let's see. And then I'm  
11 wondering if there's going to be future amendments to  
12 NAGPRA due to the STOP Act, and this is mentioned  
13 before, that was passed?

14 Because the STOP Act does -- I know  
15 everybody focuses just on one thing, which was the  
16 increase in penalties, but I know that there's other  
17 specifics under NAGPRA and the STOP Act that I would  
18 think there would be amendments to the NAGPRA  
19 regulations because of what's passed and written under  
20 the STOP Act.

21 So I'm just wondering is that something  
22 that we need to look forward to in the future?

23 There's more, but, you know, these are just  
24 some of the things that we're looking into.

25 Just starting off with just the statement



1 or the comments of just how inundated extremely  
2 beyond -- you know, extremely inundated that we are --  
3 we somehow do the best we can to be here and to be  
4 present and to be active.

5           Somehow we still -- we still do what we  
6 need to do. Miraculously somehow Creator puts us in  
7 this path and somehow Creator guides us to meet these  
8 demands or to make these statements or comments or to  
9 testify or to do the things we need to do because of  
10 the greater things that we're dealing with, you know,  
11 when it comes to really being in a room full of human  
12 remains, being in a room full of our ceremonial items,  
13 you know, being in a room full of things eagle feathers  
14 on it that we consider that are still alive like a  
15 human person.

16           So that when it comes down to that, it just  
17 seems like a lot of this stuff doesn't matter, but it  
18 does matter because of the world that we live in.

19           So I hope that these comments that tribes  
20 submit are really, you know, entered in some way,  
21 really thought of and considered.

22           And, you know, thank you for this time.

23           BRYAN NEWLAND: Thank you, Ms. Grant, for  
24 your comments but also for taking time to be here with  
25 us today.



1 I just want to -- I want to acknowledge and  
2 affirm what you said about being inundated by federal  
3 agencies. And we know and I know that that the tribal  
4 office and tribal departments, people wear many hats  
5 and have many responsibilities and that you're tasked  
6 with doing many other important things besides  
7 responding to federal officials seeking your comment.  
8 We understand that.

9 And one of the things we've tried to do is  
10 to bunch together our consultations like we've done  
11 here this week so that we're not doing it every week  
12 someplace else with different timelines so people can  
13 travel and be here for multiple consultations.

14 But I do want to just affirm that I know  
15 very well what it's like to get a different  
16 consulta- -- a "Dear Tribal Leader" letter in your --  
17 my inbox every day from some agency, and then you have  
18 to take time to say is this worth responding to, is  
19 this worth going to, who are we going to send from the  
20 tribe to represent us?

21 And then you've got to circulate the  
22 comments within the tribal government, and someone on  
23 the council has probably got a different view of what  
24 should be said, and it -- but we -- I hear you.

25 And so I appreciate the fact that you've



1 taken -- that all of you have taken the time to be with  
2 us today because you all have other very important  
3 responsibilities that you have to attend to.

4           And then in response to your last question,  
5 will these comments matter and make their way in,  
6 I just want to tell you that as somebody who has spent  
7 a good part of my career writing tribal consultation  
8 responses for tribes and attending these on behalf of  
9 tribes, I know what it's like to sit there and wonder,  
10 "Is any of these bureaucrats up there going to actually  
11 read these things?"

12           We do. Land those of us here representing  
13 the Federal Government and the Department of the  
14 Interior today know that if you're going to take the  
15 time and energy and effort to point us in a good  
16 direction on these things, that we owe it to you to  
17 take our time, energy, and effort to give thoughtful  
18 consideration to what is said.

19           And that's partly why this -- a lot of the  
20 policy-making process takes so long.

21           So I do want to say that there were a  
22 number of things that you raised particularly with --  
23 you referenced the STOP Act. We're trying to  
24 understand, again, the intersection between STOP Act  
25 and NAGPRA. And that's new.



1           You had referenced some of the definitions  
2 that you had concerns with, particularly as it relates  
3 to the tribe -- federally recognized tribes and other  
4 groups, and those are things that I want to make sure  
5 that we're discussing.

6           You had asked, just on a process question,  
7 about the difference between public consultation and  
8 public comment.

9           One of the things I want to make sure that  
10 I'm being clear and emphatic on is that tribal  
11 consultation is different than public comment, which is  
12 why we're having these two tracts.

13           So in the -- under federal law when  
14 agencies do regulations, we're required to hear from  
15 the public, but we are -- we are not lumping in tribal  
16 comments into that process.

17           This meeting today in our consultations are  
18 government-to-government because of our trust  
19 relationship and our trust responsibility, and we've  
20 had -- this is the second round that we've had on this  
21 rulemaking.

22           But we certainly consider them to be  
23 different processes even though they're speaking on the  
24 same rulemaking.

25           So, you know, we're -- and when we go back



1 to the drawing board and consider comments, there's a  
2 separate meeting/a process to consider the tribal  
3 comments versus the public comments.

4 So inside the building, it operates  
5 separate as well.

6 So I'll stop there, but I just wanted to  
7 acknowledge your frustration about hearing from lots of  
8 federal agencies while also making sure you do your job  
9 with the limited funding that you get and the limited  
10 capacity you have.

11 I appreciate that you took the time to be  
12 here with us to comment. And then out of respect and  
13 in response to that, we're going to take our time and  
14 be thoughtful about everything that is said during this  
15 process.

16 CASSANDRA ATENCIO: So I have a couple of  
17 comments on discoveries. We give this to somebody  
18 else, but I have -- on discoveries, number 2, and it  
19 talks about on tribal lands in Alaska and continental  
20 about how the Indian tribe can delegate its  
21 responsibility, I think that the old -- some of the old  
22 language needs to still stay there as far as tribal  
23 lands.

24 Like for us, for instance, we have our own  
25 burial protection policy as a tribe, but this seems to



1 almost negate it because there's not a reference to,  
2 like, if a tribe has its own policy. So maybe there  
3 should -- I recommend language that pertains to the old  
4 where it says it's up to the tribe, or however the old  
5 language read, to mimic -- to kind of also assert that  
6 if a tribe has its own policy, that's what we'll follow  
7 beyond that, because we do.

8           The other point that I wanted to make is  
9 that by doing geographical and cultural affiliation,  
10 geographical is already a line of affiliation, and does  
11 that place hierarchy on it, or is that just because  
12 you're calling it out and you're redefining it, and  
13 it's already a line of evidence as far as  
14 preponderance?

15           And so I don't know if that places it in a  
16 hierarchy for geographic as far as, you know, lineal or  
17 kinship or the other lines of evidence.

18           Thank you.

19           MELANIE O'BRIEN: So it's a good question  
20 on the geographical versus cultural affiliation.

21           And the way that the regulations are  
22 drafted for repatriation provisions under subpart C, a  
23 museum or federal agency would be required to identify  
24 both cultural and geographical affiliation to Indian  
25 tribes.



1           The priority would come only if there were  
2 competing claims.

3           So where multiple tribes requested  
4 repatriation, and they did not agree on a joint  
5 repatriation, that museum would have to prioritize.

6           And, in that case, cultural affiliation  
7 would be prioritized over geographical affiliation.

8           But certainly, lineal descendent remains  
9 the very first priority under either subpart B or  
10 subpart C.

11           CASSANDRA ATENCIO: Should we take "land  
12 claims" out of there?

13           MELANIE O'BRIEN: Unfortunately, the Indian  
14 court of claims or other court of claims decisions is a  
15 part of the act itself, so we are -- we have that.  
16 It's still there and will continue to be there.

17           CASSANDRA ATENCIO: Okay. I have one more  
18 thing, of course.

19           You guys know you wanted me to be here with  
20 all of these questions.

21           So the time frame for a plan of action,  
22 okay. This is a tricky one, I think, because a -- we  
23 have a federal agency who because of its -- it's a BOR,  
24 okay.

25           So it's a BOR. And because that has to do





1 with water and lakes and reservoirs, some of these  
2 reservoirs always have unanticipated and inadvertent  
3 discoveries from washing up and -- from the wakes.

4 And we have a regional office that's  
5 located in a different state but holds the original.

6 When the original reservoir was built,  
7 those -- those individuals, over 400 of them, that  
8 they've held them for over 400 years, but now we still  
9 have a yearly or seasonal every year more and more  
10 discoveries, unanticipated discoveries and inadvertents  
11 are coming up.

12 And so now we're having a bigger  
13 discussion, and you're asking for a plan of action  
14 under the proposed rules of 30 days.

15 It takes that long just for them to  
16 initialize consultation.

17 Is that 30 days to initialize consultation  
18 and then another 30 days to come up with the plan of  
19 action?

20 Because we're already -- our first  
21 consultation is when they decide that they're going to  
22 get ready at the beginning of this year, but our  
23 discoveries were 2 months ago. And the ones that they  
24 hold that we're just learning about is over 20 years,  
25 so how do we -- that plan of action seems too soon to



1 be able to come up with a plan of action prior to  
2 consultation, which would probably take 30 days to get  
3 all the tribes that are affiliated to come to the table  
4 to have a discussion about what we're going to do with  
5 that and to move forward.

6 So are those extensions -- are those soft  
7 timelines or hard timelines is, I guess, my question?  
8 And how to we address things in those instances?

9 MELANIE O'BRIEN: Certainly.

10 So, again, just to clarify the distinction.

11 The collections that you're talking about  
12 that maybe came from the original inundation would be  
13 subject to subpart C and repatriation because they  
14 predated the act in 1990.

15 And then new discoveries, things that are  
16 discovered today or since 1990 are handled under the  
17 plan of action process.

18 It is a hard time frame, the 30 days for a  
19 plan of action. And that relates to the statutory  
20 requirements for inactivity that may be occurring on  
21 federal land.

22 So if an activity discovered human  
23 remains -- and by "activity," I mean --

24 CASSANDRA ATENCIO: Intentional.

25 MELANIE O'BRIEN: -- logging, construction,



1 other kinds of activities on federal land, if those  
2 resulted in a discovery, then the federal agency has to  
3 allow that activity to resume.

4 And so we've built out the time frame to  
5 provide the plan of action and that same time frame  
6 that Congress required in the act for the activity to  
7 resume.

8 What you're talking about with an  
9 inadvertent discovery through erosion or some other  
10 kind of exposure would still cover under the same  
11 timeline, but it would seem to me there is some -- an  
12 advantage to the federal agency anticipating those  
13 kinds of exposures and building a plan of action  
14 without the time frame of a discovery.

15 So rather than waiting for the discovery to  
16 occur and starting the plan of action, the plan of  
17 action could anticipate a discovery might occur, and  
18 here's what the tribes agree to happen.

19 So if that makes sense that the way that  
20 the plan of action is structured, the timeline is firm  
21 after a discovery; however, there's no reason you  
22 couldn't start a plan of action before a discovery even  
23 occurred in anticipation that the discovery might  
24 happen, and then the plan of action would be ready to  
25 go if that discovery did occur.



1 Does that make sense?

2 CASSANDRA ATENCIO: No.

3 MELANIE O'BRIEN: I've totally confused  
4 you. Okay.

5 SHANNON ESTENOZ: Well, Melanie, can I?

6 MELANIE O'BRIEN: Yeah.

7 CASSANDRA ATENCIO: I get it, but not  
8 really, no.

9 SHANNON ESTENOZ: So I imagine that when  
10 these regulations become final that one of the things  
11 we could do as a matter of policy and practice is to  
12 begin to socialize them, provide trainings to federal  
13 agencies, and in how to -- and, you know, even museums,  
14 I suppose we could do that too.

15 And that's a really good example, Melanie,  
16 of how we, you know, could recommend to agencies who  
17 can predict, like the OR, who can predict discoveries,  
18 "Hey, get a head start now and develop a plan of action  
19 so that when the discovery is made and the clock starts  
20 ticking, you've got a plan already. You're not just  
21 taken unawares and then suddenly everyone has to  
22 scramble to meet that 30-day time frame."

23 And then a question, Melanie, just to  
24 clarify.

25 Is there a provision for extending those



1 deadlines, or are those deadlines solid?

2 MELANIE O'BRIEN: Right now, those are firm  
3 deadlines. And, again, it relates to the statutory  
4 requirement of allowing an activity to resume.

5 So we've had to structure a time frame;  
6 however, again, there's no reason why the planning  
7 couldn't happen before a discovery occurred. And that  
8 certainly would be a best practice. And it's certainly  
9 how the regulations are written and encouraging that  
10 effort to plan before something happens so that there's  
11 a plan in place and everyone knows, and especially the  
12 federal agency knows, what the tribe's preferences are  
13 for treatment in handling.

14 CASSANDRA ATENCIO: So when it says  
15 "appropriate official," are we talking about that  
16 federal agency official, or can that be in  
17 collaboration with the tribal, with the NAGPRA  
18 coordinator, say, or the THPO, as far as that official  
19 for that activity to resume?

20 MELANIE O'BRIEN: So the appropriate  
21 official is going to be the federal land manager.

22 CASSANDRA ATENCIO: Okay. Because I think  
23 there should be some language in there that talks about  
24 the distances.

25 So we've allowed things in consultation for



1 activities to resume before 30 days, but only because  
2 we come up with something that says, "You're going to  
3 be way over there when you start, and we're going to be  
4 way over there. And in between here, we're going to  
5 keep it no activity, but your activity can go there,  
6 and you can restart over there, and -- but in this  
7 middle until we take care of these ancestors and  
8 possible funerary AFOs that" -- you know, and is that  
9 the same thing as what's being said here, or can we do  
10 it that way, or are we -- can that be written into  
11 that?

12 MELANIE O'BRIEN: Yeah, that is the purpose  
13 of a plan of action, to accommodate those kinds of  
14 requests and decisions by the tribe.

15 The plan of action, again, remember,  
16 requires consultation and -- and specifically requires  
17 federal agencies seek consensus on what that plan will  
18 be.

19 And where the federal agency cannot --  
20 cannot come to a consensus of the tribes of distance or  
21 time frames or treatments, then that has to be recorded  
22 by the federal agency, again, explaining why they're  
23 unable to accommodate the tribes' requests.

24 BRYAN NEWLAND: Okay. Just...

25 MELANIE O'BRIEN: Sorry. I turned it off.



1                   BRYAN NEWLAND: Okay. Just for a time  
2 check here and housekeeping, we're at 12:20.

3                   We're scheduled until 1:00. We typically  
4 leave the last 5 or 10 minutes to make sure we read  
5 back what we think we heard in case there's any  
6 clarifying points or if we missed any big themes.

7                   So I just wanted to make sure you all knew  
8 how much time we had left here for this.

9                   REYLYNNE WILLIAMS: Okay. I have a  
10 comment.

11                   BRYAN NEWLAND: Sorry. Could you introduce  
12 yourself?

13                   REYLYNNE WILLIAMS: Yes. Yes.

14                   My name is Reylynn Williams. I am the  
15 cultural resource specialist for the Gila River Indian  
16 Community Tribal Historic Preservation Office and the  
17 designated NAGPRA representative.

18                   Thank you for this opportunity to provide  
19 verbal comments on the proposed rule for the Native  
20 American Graves Protection and Repatriation Act.

21                   We worked jointly with the Salt River  
22 Pima-Maricopa Indian Community Tribal Historic  
23 Preservation Office in providing comments on the draft  
24 regulations for NAGPRA in September of 2021 and on  
25 behalf of the four southern tribes of Arizona,



1 consisting of the Ak-Chin Indian community and the  
2 Tohono O'odham Nation, respectively.

3 So far in our joint review of the proposed  
4 rule for NAGPRA, we have seen that some of our comments  
5 were included in this current draft.

6 We strongly believe that we can create an  
7 efficient and effective government-to-government effort  
8 to assist with the development of a new proposed rule  
9 for NAGPRA.

10 So we would like to request that another  
11 round of tribal consultations occur before any final  
12 notice of proposed rulemaking moves forward because of  
13 the opportunity for public comment, which includes the  
14 public and museums and institutions and federal  
15 agencies.

16 Under the definition of "human remains,"  
17 the four southern tribes in previous comments recommend  
18 to include and recognize formally entered animal  
19 burials; for example, dogs, birds of prey, or animals  
20 of cultural significance, with or without associated  
21 funerary objects, being whole or partial, as part of an  
22 intentional archeological excavation or inadvertent  
23 discovery and/or encountered in a museum or federal  
24 agency collections and documented in the archaeological  
25 record.





1                   We were able to work with Arizona State  
2 Museum to include and recognize formally entered animal  
3 burials in the project specific burial discovery  
4 agreement that is in compliance with the Arizona  
5 Revised Statutes that we refer to as Arizona burial  
6 discovery laws because that language is similar to  
7 NAGPRA and was passed in the same year as NAGPRA.

8                   We believe that the animals have a  
9 spiritual connection to not only our tribal communities  
10 but to other tribes across the U.S. who also view  
11 animals in such a way.

12                   We have also made comments, previous  
13 comments, requiring a moratorium on scientific testing  
14 and research of any ancestral and human remains,  
15 funerary objects, sacred objects, and objects of  
16 cultural patrimony unless there is written permission  
17 from the tribes.

18                   We have also worked diligently with Arizona  
19 State Museum and some of the institutions here in  
20 requiring a written letter or statement from the tribe  
21 for any future research.

22                   We've also commented that -- and we'd like  
23 to reiterate that the right of possession cannot ever  
24 be established for human remains, funerary objects, or  
25 objects of cultural patrimony.



1           No one has a right to sell or trade our  
2           ancestors and cultural objects for any reason. And  
3           it's an unfortunate situation, you know, that our  
4           ancestors are in possession of people that have no  
5           connection to -- no relation to, no familiar -- no  
6           family bond to, you know, and so they don't -- they  
7           don't own these ancestors.

8           And we want to ensure that and remind them  
9           that the ancestors belong to us. They're our families.  
10          They're are relatives. And we want them home.

11          So I thank you for allowing me to make the  
12          comments. And do want to follow up with -- to  
13          Cassandra's comment regarding the NAGPRA plan of action  
14          and training.

15          We have come to realize that there is a lot  
16          of turnover within federal agencies and a lot of the  
17          staff that we work with to develop NAGPRA plan of  
18          action.

19          Some don't have the experience or  
20          understanding under NAGPRA and what the law requires  
21          and what previous staff members have done to ensure  
22          that a NAGPRA plan of action is in place.

23          I would -- I would recommend contacting  
24          some of the federal agencies here, staff people here,  
25          in Arizona as they are very familiar with how to



1 develop a NAGPRA plan of action and how they work with  
2 the tribes in developing that plan of action prior to a  
3 project specific or in the event of an inadvertent  
4 discovery.

5           And I believe that they -- we work with  
6 them so much here in Arizona that I feel confident that  
7 their level of understanding is -- is up there, and  
8 they would be a good asset in providing assistance in  
9 this area when the proposed rule is finalized.

10           Thank you.

11           MELANIE O'BRIEN: If I could just follow up  
12 on that last point, Reylynne, and -- are there specific  
13 federal agencies, bureaus, department level that you  
14 would recommend?

15           REYLYNNE WILLIAMS: The Bureau of  
16 Reclamation -- oh, the National Park Service, the  
17 Forest Service --

18           SUNDAY EISET: Tonto.

19           REYLYNNE WILLIAMS: -- yeah, Tonto National  
20 Forest, Coronado National Forest, and the local and  
21 national parks, the Casa Grande Ruins national  
22 monument, Montezuma, Tuzigoot National Moment.

23           SUNDAY EISET: Pueblo Grande.

24           REYLYNNE WILLIAMS: No, they're not  
25 federal.



1                   Those are the ones we work with very  
2 closely.

3                   BRYAN NEWLAND: Any additional comments  
4 today?

5                   Thank you very much, Ms. Williams.

6                   GERALD "SHANE" ANTON: Good afternoon,  
7 again. Just to follow up on the last comments about  
8 training.

9                   In my early, early days of NAGPRA, when  
10 they held the review committee meetings a day prior,  
11 they had trainings for anybody that wanted it.

12                   So if you arrived a day earlier, you could  
13 take the training. And it was free.

14                   Now, I don't know. I think NAGPRA  
15 contracts with -- I don't know who it is exactly to do  
16 trainings.

17                   But there's also that -- again, that  
18 financial burden on tribes to -- you know, travel isn't  
19 cheap these days. It's kind of sketchy even to begin  
20 with, so based on the flight schedules recently.

21                   So if there's a way to provide free  
22 training to both Feds and the tribes too so that we  
23 can -- that they can fully better engulf themselves in  
24 the law, in the regulations, I think that would be a  
25 lot of help.



1           BRYAN NEWLAND: All right. We'll start  
2 looking to wind down, make sure, folks, if you have  
3 final comments or final thoughts or you haven't weighed  
4 in yet, we certainly want to hear from you.

5           So I think maybe what Melanie and Assistant  
6 Secretary Estenoz and I can do is maybe just give a  
7 read-back of what we think we heard this morning,  
8 general themes captured.

9           You know, we started off with some comments  
10 about making sure that these regulations are aligned  
11 with the NAGPRA statute and the emphasis on the need to  
12 make sure that there's tribal capacity, including  
13 funding available for implementation.

14           We also discussed about the availability of  
15 federal lands and other state public lands or even  
16 private lands to rebury ancestors close to where they  
17 were found.

18           We -- there were comments about data  
19 recovery.

20           And, again, on tribal capacity with respect  
21 to implementation, there were comments about making --  
22 making sure that we were reburying associated funerary  
23 objects with human remains, recognizing the spiritual  
24 value of animals, transparency in decision-making.

25           There were several comments about expanding



1 the reach of NAGPRA through -- through another look at  
2 what constitutes federal funding, a reference to  
3 different COVID programs, including paycheck protection  
4 loans for private museums.

5 There were comments about a moratorium on  
6 scientific research.

7 And there was one comment about needing  
8 clarification on what a "stay of repatriation  
9 proceedings" means and just making sure -- oh, we had  
10 the reference to "indigenous creatures," which, again,  
11 I appreciate hearing in a formal  
12 government-to-government consultation.

13 Let me see. There were questions about the  
14 BIA's legal authority to return items that were outside  
15 the scope of NAGPRA. And there was a lot of  
16 back-and-forth conversation about that.

17 There was some -- there were comments about  
18 the international component. And then, you know, we  
19 had to explain that we were going to look at the STOP  
20 Act as it relates to NAGPRA and how -- how we're going  
21 to sort through that as a department.

22 The comments about the -- the ability of  
23 museums to determine for themselves the timeline for  
24 compliance, with some examples provided.

25 And then there were comments -- more



1 comments relating to the process that museums use for  
2 compliance and some comments also about FOIA.

3 There were a few comments about the process  
4 that we're using, in consultations in general, and some  
5 very specific comments, one about 638 contracting and  
6 Section 106 programs.

7 The recent discussion that we just had  
8 about discoveries on federal lands and that process.

9 Again, more comments about recognizing the  
10 spiritual value and components of animals that are  
11 buried with human remains and another request for a  
12 moratorium on scientific research.

13 And then we wrapped up with a discussion on  
14 training, the importance of training for federal  
15 officials and the amount of turnover that happens  
16 across federal agencies.

17 Melanie, did you want to walk through maybe  
18 some of your impressions and thoughts?

19 MELANIE O'BRIEN: I think that was a really  
20 effective summary of what we've heard today, and some  
21 of it is -- our comments that we haven't heard  
22 previously and others are echoing comments we have  
23 received.

24 I think both are valuable, certainly the  
25 echoing of other comments as to -- to our requirements



1 to respond fully and as -- as much as we can to those  
2 comments, but also the new comments, the new topics  
3 that we need to consider in revising these regulations  
4 for a final rule is important.

5 I think that for me the value is always in  
6 hearing your stories and hearing your experiences and  
7 better understanding how these regulations really play  
8 out in your lives and in real-world scenarios because  
9 that only improves our ability to make them effective,  
10 even in the stale regulatory language. We can envision  
11 them in real scenarios when you provide that kind of  
12 feedback. So I really appreciate that.

13 I certainly appreciate the opportunity to  
14 see many of you in person that I haven't seen for so  
15 long. That's also very nice.

16 I don't know if -- Shannon, if there was  
17 anything you wanted to add.

18 SHANNON ESTENOZ: No. Just a couple of --  
19 Bryan takes very complete notes, and so they tracked  
20 closely with mine. I noticed his handwriting is better  
21 than mine, so I'm always glad he goes first in these  
22 things, these recaps.

23 Just a couple of little details to fill in.

24 On the FOIA matter, we, you know, made  
25 clear that it's important that the -- that we put in --





1 we put in writing what the statute rules require and  
2 not more than that, and that there are other --  
3 although NAGPRA doesn't have its own FOIA exemptions,  
4 there are other laws that we rely on to provide for  
5 confidentiality. And those would, of course, be taken  
6 in concert with any action under NAGPRA.

7 I also wanted to repeat the suggestion that  
8 when it comes to building our training curricula and  
9 think about who our trainers might be that we come to  
10 Arizona and -- because, apparently, there is a lot of  
11 knowledge and experience here in Arizona in our own  
12 agencies, like the OR and National Park Services and  
13 our sister agencies over at USDA like the Forest  
14 Service.

15 So I have learned a lot. The PPP  
16 conversation was absolutely fascinating.

17 I just want to remind us that we understand  
18 that there's a conversation with the Small Business  
19 Administration. We've asked these questions. And so  
20 we're also waiting to hear what the answer to that is.  
21 So...

22 BRYAN NEWLAND: So with that, we can wrap  
23 up the formal government-to-government consultation on  
24 this and, again, remind you we have extended the  
25 deadline -- we have extended the deadline to



1 January 31st for written comments.

2 Cassandra, did you have one additional --  
3 anything else?

4 CASSANDRA ATENCIO: Yes. Of course. Of  
5 course I have two more questions.

6 I think, A, when you said "plans of actions  
7 that could be developed beforehand," I think that's  
8 kind of hard because plans of action should include  
9 those tribes to be included about what that plan of  
10 action should look like, you know.

11 And so I think that yes, a federal agency  
12 could do that, but in that consultation with the tribe  
13 to say, "This is what they should be."

14 I mean, they could maybe do the precursor  
15 with using the steps, but if you don't have tribes in  
16 there inserting an opinion or being there in  
17 collaboration about what that POA should be and should  
18 look like, then it's only one-sided.

19 The other thing is I think there still  
20 should be something in there like what she stated about  
21 scientific research not being that component because  
22 I didn't see it in the -- in the new draft regs, and  
23 I think that that insertion -- that assertion and the  
24 old regs about scientific research not going beyond  
25 because of DNA collection, some of us have that -- that



1 taboo and -- and within our own burial policies, that  
2 there will be nondestructive analysis and -- and beyond  
3 that, and I think that wording should stay within the  
4 new regs.

5 Thank you. I'll leave you with that.

6 SHANNON ESTENOZ: May I ask just a quick  
7 question?

8 BRYAN NEWLAND: You're the boss.

9 SHANNON ESTENOZ: So I -- I just offer up  
10 maybe just food for thought, when we're thinking about  
11 plans of actions, I wonder if, particularly in cases  
12 where you've got a specific activity that might be  
13 unfolding on federal land -- the construction of a  
14 reservoir, a new logging plan or something like that,  
15 where, you know, you have a known area that's going to  
16 be disturbed or impacted -- whether a federal agency --  
17 you know, whether there's a best management practice  
18 before you authorize that -- before the commencement of  
19 that activity, a plan of action be drawn up in  
20 consultation with tribes, right?

21 You haven't made a discovery yet, but by  
22 golly you know that once you start moving things  
23 around, you might. And so you begin that plan of  
24 action.

25 Cassandra, I think your point is absolutely



1 spot on. Those should not be developed without  
2 consultation with tribes.

3 But I do think there's going to be a  
4 category of activities on federal land where that  
5 preplanning can happen because enough is known in the  
6 event of a discovery that, then, steps can be taken in  
7 those 30 days in a more realistic way.

8 CASSANDRA ATENCIO: Which is what we kind  
9 of did when we did our Animas-La Plata thing. We  
10 developed a NAGPRA component within the MOA, under 106.  
11 And we developed a component of a POA would be  
12 developed within the plan, and then we talked about  
13 that.

14 But that started with the 106 process, and  
15 then that developed that NAGPRA plan into that  
16 agreement document, so...

17 BRYAN NEWLAND: As we wrap up too I want  
18 to -- just a couple of other housekeeping items.

19 So we have a second consultation here this  
20 afternoon at the departmental level -- what time are we  
21 starting that -- at 2:00 p.m., on how whether and how  
22 the Department should add in other programs beyond the  
23 BIA and to self-determination -- being available for  
24 self-determination contracts and self-governance  
25 compacting.



1           We have two consultations tomorrow as well  
2 on our proposed land into trust regulations as well as  
3 our proposed regulations on tribal state gaming  
4 compacts.

5           And if by the end of tomorrow you haven't  
6 had enough of us, don't worry, we will be back here in  
7 Phoenix next week because Secretary Haaland and I are,  
8 next Friday -- what's the date on that, Joaquin?

9           JOAQUIN GALLEGOS: The 20th.

10          BRYAN NEWLAND: The 20th.

11          We will be at Gila River Road to Healing  
12 Tour where the secretary and I will be hearing from  
13 people who attended federal Indian boarding schools as  
14 well as their family members about their experiences.  
15 So we invite you and your community members to join us  
16 there.

17          And then 2 days after that, Secretary  
18 Haaland and I will be up at the Navajo Nation for  
19 another boarding school listening session there.

20          So we're going to be very busy here doing  
21 very what I think are meaningful and important and  
22 healing work on behalf of the Department.

23          So I want to thank you-all very much for  
24 your time with us this morning. Again, I know how busy  
25 you are, how many hats you wear, all of the



1 responsibilities you have, especially at the start of a  
2 new year, the to-do list builds up real quickly over  
3 the holidays. We understand this. So much gratitude  
4 to all of you for taking your time and sharing with us  
5 today.

6                   And that will conclude our consultation and  
7 hope you-all have safe travels back home.

8                   (12:43 p.m.)

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1 STATE OF ARIZONA. )  
 ) ss.  
 2 COUNTY OF MARICOPA )

3 BE IT KNOWN that the foregoing proceedings  
 4 were taken before me; that the witness before  
 5 testifying was duly sworn by me to testify to the whole  
 6 truth; that the foregoing pages are a full, true, and  
 7 accurate record of the proceedings, all done to the  
 8 best of my skill and ability; that the proceedings were  
 9 taken down by me in shorthand and thereafter reduced to  
 10 print under my direction.

11 I CERTIFY that I am in no way related to  
 12 any of the parties hereto, nor am I in any way  
 13 interested in the outcome hereof.

- 14  Review and signature was requested.
- 15  Review and signature was waived.
- 16  Review and signature not required.

17 I CERTIFY that I have complied with the  
 18 ethical obligations set forth in ACJA 7-206(F)(3) and  
 19 ACJA 7-206 J(1)(g)(1) and (2).

20 Dated at Phoenix, Arizona, this 25th day of  
 21 January, 2023.

22 \_\_\_\_\_  
 23  
 24 HALEY DAWN WESTRA, RPR, CRR  
 25  
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26 \* \* \* \* \*

27 I CERTIFY that GRIFFIN & ASSOCIATES, LLC,  
 28 has complied with the ethical obligations set forth in  
 29 ACJA 7-206 (J)(1)(g)(1) through (6).

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<p>_____</p> <p style="text-align: center;"><b>\$</b></p> <p>_____</p> <p><b>\$3</b> 18:17</p> <p>_____</p> <p style="text-align: center;"><b>(</b></p> <p>_____</p> <p><b>(B)</b> 35:18</p> <p>_____</p> <p style="text-align: center;"><b>1</b></p> <p>_____</p> <p><b>1</b> 36:19 70:4</p> <p><b>10</b> 34:7 78:2,7 94:4</p> <p><b>10-10</b> 30:12</p> <p><b>10-9</b> 30:12</p> <p><b>100</b> 76:2</p> <p><b>106</b> 20:4,15 24:10 68:24 79:22 102:6 107:10,14</p> <p><b>10th</b> 18:21</p> <p><b>11</b> 29:4 61:2</p> <p><b>110</b> 20:4,16</p> <p><b>12</b> 78:2,7</p> <p><b>12:20</b> 94:2</p> <p><b>12:43</b> 109:8</p> <p><b>16</b> 14:19 35:12</p> <p><b>1853</b> 55:13</p> <p><b>1990</b> 10:25 12:1 14:13, 19 35:12 89:14,16</p> <p><b>1995</b></p>	<p>9:11</p> <p><b>1996</b> 12:1</p> <p><b>1:00</b> 94:3</p> <p><b>1E</b> 66:16</p> <p>_____</p> <p style="text-align: center;"><b>2</b></p> <p>_____</p> <p><b>2</b> 3:22 51:8,9 63:18 78:8 85:18 88:23 108:17</p> <p><b>2-year</b> 63:24,25</p> <p><b>20</b> 54:10 58:9 88:24</p> <p><b>20-year</b> 20:24 57:9</p> <p><b>2010</b> 9:13,14 41:25 78:3</p> <p><b>2011</b> 78:2</p> <p><b>2012</b> 78:3</p> <p><b>2021</b> 9:17 10:8 94:24</p> <p><b>2022</b> 9:23 10:2</p> <p><b>20s</b> 45:2</p> <p><b>20th</b> 108:9,10</p> <p><b>23</b> 40:7</p> <p><b>25</b> 35:17</p> <p><b>26</b> 12:9</p> <p><b>2:00</b> 107:21</p> <p>_____</p> <p style="text-align: center;"><b>3</b></p> <p>_____</p> <p><b>3</b> 52:9</p>	<p><b>30</b> 73:22 77:11 88:14, 17,18 89:2,18 93:1 107:7</p> <p><b>30-day</b> 91:22</p> <p><b>3002(A)12(A)</b> 35:17</p> <p><b>304</b> 68:23</p> <p><b>30s</b> 45:2,20</p> <p><b>31st</b> 4:1 105:1</p> <p>_____</p> <p style="text-align: center;"><b>4</b></p> <p>_____</p> <p><b>400</b> 88:7,8</p> <p><b>40s</b> 45:20</p> <p>_____</p> <p style="text-align: center;"><b>5</b></p> <p>_____</p> <p><b>5</b> 14:18,19 94:4</p> <p>_____</p> <p style="text-align: center;"><b>6</b></p> <p>_____</p> <p><b>6</b> 14:18,19</p> <p><b>60</b> 52:17 57:10 58:17</p> <p><b>638</b> 102:5</p> <p>_____</p> <p style="text-align: center;"><b>7</b></p> <p>_____</p> <p><b>700</b> 9:21</p> <p><b>700-plus</b> 10:10</p> <p><b>71</b> 9:20</p> <p>_____</p> <p style="text-align: center;"><b>9</b></p> <p>_____</p> <p><b>90</b></p>	<p>54:5</p> <p><b>93</b> 54:16</p> <p><b>93-638</b> 79:21</p> <p>_____</p> <p style="text-align: center;"><b>A</b></p> <p>_____</p> <p><b>Abel</b> 46:23</p> <p><b>ability</b> 22:19 23:2 101:22 103:9</p> <p><b>absolutely</b> 14:9 68:5 104:16 106:25</p> <p><b>accept</b> 57:11</p> <p><b>access</b> 24:10 26:1</p> <p><b>accommodate</b> 93:13,23</p> <p><b>accompanies</b> 35:3</p> <p><b>accomplish</b> 37:23</p> <p><b>account</b> 57:3</p> <p><b>accountable</b> 5:13</p> <p><b>achieved</b> 11:10</p> <p><b>acknowledge</b> 82:1 85:7</p> <p><b>act</b> 14:22 15:4 21:12 24:11 25:6 34:2 35:12 36:14 42:17 48:12 50:14 51:7 60:16 69:17,22 80:12,14,17,20 83:23,24 87:15 89:14 90:6 94:20 101:20</p> <p><b>action</b> 64:19 65:8 87:21 88:13,19,25 89:1,</p>	<p>17,19 90:5,13,16, 17,20,22,24 91:18 93:13,15 97:13,18, 22 98:1,2 104:6 105:8,10 106:19, 24</p> <p><b>actions</b> 63:10 70:20 79:15 105:6 106:11</p> <p><b>active</b> 81:4</p> <p><b>activities</b> 26:22 79:22 90:1 93:1 107:4</p> <p><b>activity</b> 89:22,23 90:3,6 92:4,19 93:5 106:12,19</p> <p><b>actual</b> 38:1</p> <p><b>adage</b> 32:13</p> <p><b>add</b> 8:8 19:7 41:4,23 52:13 59:3 65:17 103:17 107:22</p> <p><b>added</b> 57:1</p> <p><b>adding</b> 56:22 60:18 72:9</p> <p><b>addition</b> 9:23</p> <p><b>additional</b> 18:15 29:22 37:16 64:4 70:8 79:24 80:5 99:3 105:2</p> <p><b>address</b> 21:10 25:1 37:7 38:9,17 41:8,18 71:13 76:21 89:8</p> <p><b>addressed</b> 35:21 49:2 70:25 76:23 77:9</p> <p><b>adhere</b> 44:3</p> <p><b>adjacent</b> 79:7</p>
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