

DOC HASTINGS

4TH DISTRICT, WASHINGTON

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Congress of the United States
House of Representatives

January 14, 2008

The Honorable Dirk Kempthorne
Secretary
United States Department of the Interior
1849 C Street, NW, Room 7256
Washington, DC 20240

Dear Secretary Kempthorne:

I write to provide written comment expressing my strong opposition to the Department's proposed regulations concerning the disposition of culturally unidentifiable human remains under the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA).

My two primary concerns are that this proposed rule 1) would severely hinder the scientific study of ancient remains, and 2) is an obvious attempt to end-run Congressional intent and a federal court ruling in the long-fought Kennewick Man case (*Bonnichsen v. United States*).

On the first point, I would call attention to the comments submitted by the scientific community who are far more able to speak to the potentially devastating negative impacts these regulations would have on our understanding of human history. In particular, I would highlight the written comments of the Society for American Archaeologists and the American Association of Physical Anthropologists.

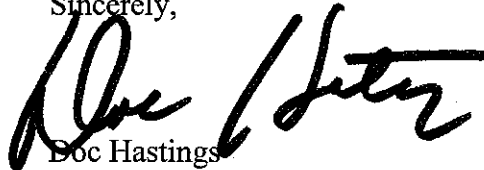
On the matter of Congressional intent, the record is absolutely clear that the Department lacks authority to issue these regulations. NAGPRA was written to address the custody of human remains from recent centuries that are related to present-day Indian tribes. It was not written to address very ancient remains of unknown origins and was never intended to thwart the study of ancient remains. With these proposed regulations, the Department seeks to assert authority and control that it was not granted by the Congress.

The proposed regulations are especially troubling considering they ignore the decision in *Bonnichsen v. United States*. It's been 17 years since NAGPRA became law, and now there is sudden action to write regulations that would have the effect of reinstating the Department's NAGPRA interpretation that was bluntly and decisively struck down by Judge Jelderks in 2002. It is very clear that these proposed regulations are aimed at overturning this federal court decision by bureaucratic process. The decision in *Bonnichsen v. United States* made it clear that Congress never intended NAGPRA to encompass ancient, unaffiliated remains with no present-

day tribal relationship. This ruling was affirmed by the Ninth Circuit court, but could now be undermined by what these proposed regulations would set in motion.

I strongly urge the Department to reconsider, if not halt, these proposed regulations. At the very least, the Department should delay further action until it publicly justifies the issuance of these regulations by explaining their compliance with the *Bonnichsen v. United States* decision.

Sincerely,

A handwritten signature in black ink, appearing to read "Doc Hastings", written in a cursive style.

Doc Hastings
Member of Congress

cc: Dr. Sherry Hutt
Manager, National NAGPRA Program
National Park Service
1849 C Street, NW
Washington, DC 20240