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## NOTE NEW MAILING ADDRESS

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**RE: OSC File No. DI-13-3684**

Patrick Williams' Comments on Agency Supplemental Report

These comments concerning the U.S. Bureau of Reclamation (BOR) SUPPLEMENTAL response are submitted on behalf of Mr. Williams by Public Employees for Environmental Responsibility (PEER).

## Comment Overview

### I. Supplemental Report Again Confirms Substance of Disclosure Allegations

As with the BOR "Report of Investigation" and response, this Supplemental Report validates the substance of Mr. Williams' disclosure.

At the outset, it should be noted that Mr. Williams submitted his disclosure on July 10, 2013. Today, more than two and a half years later, BOR states that:

- It is still "*developing plans* for identifying NAGPRA documents, records and *potential NAGPRA cultural items*." (Emphasis added)
- "In 2015, the Mid-Pacific Region...initiated or re-initiated consultation with" affected tribes. This timeline confirms that only after Mr. Williams made his disclosure were tribes notified at all, as he alleged. Moreover—
  - BOR concedes that "the amount of time to complete tribal consultation...cannot be determined at this time"; and
  - It is not at all clear that a single repatriation – a key purpose of NAGPRA – has yet to occur, as BOR is still creating "draft inventories" and developing plans .
- More than a quarter million dollars has only now been earmarked in the current FY 2016 to "work on the NAGPRA backlog."

- Temporary employees have been hired to do the work Mr. Williams disclosed was not being done. These temporary employees are “expected to work until the end of calendar year 2017” (another 23 months) to complete the work required by law and regulation.
- “In November, 2012, accessioning and cataloging was placed on a temporary hold [as Ms. William’s disclosure documented] while the Mid-Pacific Regional Office developed management plans for moving...NAGPRA cultural items to the new curation facility. [These efforts] are ongoing.”
  - Note that the “temporary” halt in required recording and processing NAGPRA collections lasted from 2012 until 2015, at the earliest. Further, this moratorium on NAGPRA compliance is still ongoing; and
  - BOR improperly prioritized moving the boxed NAGPA human and funerary objects over fulfilling its legal requirements to record, analyze, and seek repatriation of these objects to their rightful owners. This move may be the administrative rationale, but did not provide a legal excuse for BOR to ignore its statutory NAGPRA obligations.
- By BOR’s own count “based on the number of boxes and an estimate of items per box... [the] number of uncatalogued items is 164,981.” Note that this is an estimate of items in unopened boxes. Regardless of the precise number, the substance of what Mr. Williams disclosed is this regard has been conceded by the agency.

In short, the fact that BOR now represents that the “Mid-Pacific Region is taking its responsibilities seriously and is working diligently to achieve compliance with NAGPRA” the substance of its supplemental response denotes that 1) NAGPRA compliance at this date still remains a goal and not a reality; and 2) this renewed effort is due to Mr. Williams’ 2013 disclosure and the OSC requiring the Secretary of Interior to conduct this investigation of his allegations in 2014.

## **II. Supplemental Report Obscures Other Violations Documented in Disclosure**

Among the items OSC asked BOR to clarify was steps it had taken toward compliance with NAGPRA. In response, the Supplemental Report touches on the following aspects of Mr. Williams’ disclosure but appears to tacitly confirm the following concerns he raised:

### **A. Failure to record newly discovered human remains and funerary objects**

Mr. Williams disclosed that the Mid-Pacific Regional Office has kept records only for initial site surveys and excavations and stopped recording or analyzing new data uncovered from subsequent site visitations. Excavation sites and collections that have not been properly accessioned include, among others, thousands of items and remains recovered from the New Melones Reservoir Project, including human remains and funerary objects.

In the Supplemental Report, BOR appears to confirm this disclosure by stating that “following discovery of human remains, they were immediately covered up with soil or left in place or, in some cases; they were excavated, analyzed and returned to the site for reinternment.”

BOR kept no records of these excavations, analyses, or reinternments, as they make no mention of such records. Instead, they hypothesize that “the number of NAGPRA cultural items *that potentially could be located is expected to be* de minimis because” human remains were left in place. (Emphasis added). In other words, BOR still has only the vaguest idea of what NAGPRA items are in their possession or on BOR sites.

### **B. Removal of accession files**

Mr. Williams disclosed that the Mid-Pacific Regional Office permanently removed accession files for burial sites from its collection repository to unknown locations. Among others, the Regional Office has displaced a large number of items from the New Melones Reservoir site. Further, he alleged that beginning as early as August 2012, BOR’s Mid-Pacific Regional Office erased records of human remains and funerary objects from the Interior Collection Management System (ICMS) database.

In its Supplemental Report, BOR admits that:

“The total number of items that was previously reported by the Mid-Pacific Region, 421,657 items, could not be replicated because the source of that number is unknown...”

While BOR today speculates that the earlier report may have been based upon an “informal estimate,” the fact remains that the agency no longer possesses any records prior to 2014 describing what items were collected, recorded, or inventoried (let alone their disposition) except to acknowledge that there are tens and tens of thousands of items in boxes many of which are still unopened.

Even in 2014, the inventory of collections was conducted not for NAGPRA compliance but to facilitate their relocation to the new Curation Facility.

### **C. Undocumented loans of funerary objects**

Mr. Williams disclosed that the Mid-Pacific Regional Office has loaned out funerary objects to other agencies, museums, and academic institutions for display without completing official loan-out documentation, thus making the loans untraceable in accession records. He also provided records indicating that undocumented loans had been to San Francisco State University, Fresno State University, the Santa Barbara Museum of Natural History, and the University of California, Berkeley and Santa Barbara campuses, among others.

In its Supplemental Report when it recounts progress made toward NAGPRA compliance, BOR does not mention tracing out these loaned collections. This omission suggests that progress toward fulfilling this duty is still not in the offing.

Moreover, prior to this supplemental process, Mr. Williams furnished OSC with requests from university museum curators for guidance about what they should do with NAGPRA collections obtained from BOR they wished to return.

### **Comments on Specifics of Supplemental Report**

Turning to the specific replies BOR made in response to the four OSC follow-up questions, Mr. Williams would add the following comments:

#### ***1. Progress Since 2009 IG Report***

As was pointed out, the Interior Office of Inspector General Report, issued in December 2009 and entitled *Museum Collections: Accountability and Preservation* (December 2009 C-IN-MOA-0010-2008) related to BOR's overall museum program and did not focus on NAGPRA. Nonetheless, the report found in 2009 that the BOR Mid-Pacific program was in shambles, concluding:

“As a result of cataloging backlogs, millions of objects remain boxed – unknown and unaccounted for.”

BOR provided eight bullet pointed statements about progress:

- The first three bullets concern the hiring of Mr. Williams as an indication of progress. The thrust of Mr. Williams' disclosure is that during his five-year tenure he was not allowed to do his job.
- The final bullet concedes that “Currently, the boxes of museum collections and associated records are being sorted and organized...” Thus, more than six years after the IG report, BOR is still handling unopened, unexamined objects and artifacts.

#### ***2. Progress on NAGPRA Compliance***

It should be noted at the outset that BOR does not claim to be compliant with NAGPRA. Instead, it claims to be making progress toward being compliant. Much of this progress is due to Mr. Williams' 2013 disclosure, however.

In addition, there are several notable aspects of the BOR Supplemental Report, including:

- A. An admission (see third bullet) that BOR was “re-packaging human remains” –while they had previously and elsewhere denied having human remains in agency possession.
- B. Progress cited in implanting from the BOR Investigation Report (at 20-21) which, by their terms, confirm several of Mr. Williams' key allegations, such as –
  - BOR had for years ignored requests for consultation by the Bishop Paiute Tribe;
  - BOR “needs to *initiate consultation* with the appropriate tribes...” (Emphasis added.) In other words, the third prong of Mr. Williams' disclosure is verified.

- That “additional staff” are needed “to verify any NAGPRA items located, assist...with appropriate tribes and effect timely repatriation of NAGPRA cultural items to the tribes.” This sounds remarkably similar to what Mr. Williams stated needed to be done.
- C. In the third bullet, BOR also admits that NAGPRA collections (including human remains), which have also still yet to be opened, analyzed, and recorded, were also re-boxed and moved lock, stock, and barrel to the new curation facility.

Further, BOR apparently made this move without a Collection Storage Plan, a document which agencies are supposed to generate to guide the relocation of NAGPRA objects to a new facility.

### **3. Progress on Management Problems and Backlog**

As an initial matter, BOR disputed the estimate that it possessed 1.3 million objects in its museum program, an estimate the agency incorrectly attributed to “the whistleblower” and that it called a “gross overestimate.” In fact, the 1.3 million estimate came from the Inspector General, citing BOR’s own museum curator:

“BOR: A data report used to prepare the summary report estimated a backlog of approximately 394,000 objects in the New Melones Artifact Storage Facility in Jamestown, CA. The curator, however, told us that the actual backlog could exceed 1.3 million objects.”

Further, the site summaries Mr. Williams submitted as an exhibit to his response to the BOR investigation contain his sampling of unopened boxes and a projection from that sampling to the entire universe of unopened, unexamined boxes. This projection is much closer to the IG estimate than to BOR’s most recent revision.

More significantly, however, this BOR response both validates Mr. Williams’ disclosure while also avoiding giving an answer to the question posed by OSC:

- A. BOR confirms that in late 2012 it put “accessioning and cataloging...on a temporary hold” while it prepared to move into a new curation facility. That “temporary hold” has gone on for years and remains in effect “to the present,” according to the BOR response. Mr. Williams filed his disclosure in July 2013 while this “temporary hold” remained in place.
- This admission of a “temporary hold” is another way of saying that the agency suspended compliance with NAGPRA for years – which is the gist of Mr. Williams’ disclosure;
  - BOR never explained why the move to the new facility either necessitated or justified halting further accessioning and cataloging. If anything, the move to a new facility should entail *an increase* in accessioning and cataloging so that BOR

would not merely be moving unexamined crates of innumerable objects to be warehoused in a more expensive, newer facility; and

- BOR offers no explanation as to why a move to a new facility excused it from meeting its legal obligations under NAGPRA.

B. BOR never indicated what progress it has made in either addressing the management problems or reducing the backlog. Presumably, the “temporary hold” from 2012 until now denotes that it made no progress.

#### ***4. Timeline for NAGPRA Compliance***

Two initial observations about the BOR response:

- A. The claim that the presence of human remains would be “de minimis” is contradicted by BOR’s answer to Question 2 in which it indicated that it was, among other tasks, “re-packaging human remains.”
- B. BOR references that its archeologists were operating under a policy from the 1970s and suggested that human remains “excavated, analyzed, and returned to the site” were ignored even after the enactment of NAGPRA. Presumably, it is also indicating that tribes were never notified of the existence of these remains; nor was there any attempt to repatriate those remains, as required by NAGPRA.

However, the thrust of the BOR response is that it expects to have all objects “accessioned and cataloged by the end of [calendar year] 2017” – more than 20 months hence. Thus implicitly, BOR admits that it has not been and is not now compliant with NAGPRA – precisely as Mr. Williams alleged.

#### **Conclusion**

As indicated in Mr. Williams’ previous comments on the agency response and on this supplemental response, BOR continues to struggle with achieving NAGPRA compliance. In light of these facts, we would urge OSC to do the following:

1. Transmit findings to the President and the congressional oversight committees that –
  - A. Mr. Williams’ disclosures were substantially validated by the investigation conducted under the auspices of the Secretary of Interior;
  - B. BOR has made some progress toward achieving NAGPRA compliance but much work remains to be done; and
  - C. Much of BOR’s recent efforts appear to have come about as a result of Mr. Williams’ disclosure, the OSC finding, and the subsequent investigation.

2. Request that the President and oversight committees facilitate another review of BOR compliance with NAGPRA in 2018, after the time period BOR estimates it will achieve compliance.
3. Recognize and commend Mr. Williams for his dogged devotion to public service in working for several years to ensure full compliance with the statutory mandates of this important cultural resource protection law.

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