

SUPPLEMENTAL INFORMATION

**Investigation Report
OSC File No. DI-13-3684**

Background

On July 1, 2014, the U.S. Office of Special Counsel (OSC) sent a letter to the Honorable Sally Jewell, Secretary, Department of the Interior (Department), requiring the Secretary to conduct an investigation of a whistleblower disclosure of allegations outlined in OSC File No. DI-13-3684. The allegations assert that employees of the Department, Bureau of Reclamation (Reclamation) Mid-Pacific Regional Office are engaging in conduct that may constitute a violation of law, rule, or regulation, gross mismanagement, and an abuse of authority. Specifically, it is alleged that the Mid-Pacific Region is not in compliance with the requirements of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. § 3001, *et seq.*, and 43 CFR Part 10, NAGPRA's implementing regulations. NAGPRA is intended to resolve the repatriation and disposition of Native American human remains and cultural items.

An investigation team was formed, composed of Reclamation subject matter experts possessing knowledge of and familiarity with NAGPRA and museum property laws, regulations, policies, and procedures. The investigation team members are identified in Appendix A at 9-10. The allegations that were investigated are as follows:

- Failure to Properly Catalogue and Accession NAGPRA-Related Items
- Failure to Properly Document Loans of Funerary Objects
- Failure to Notify Native American Tribes of NAGPRA-Controlled Artifacts
- Improper Removal of NAGPRA Records for the Interior Collection Management System

The Department submitted an Investigation Report, with supporting materials in Appendixes A through L, to OSC on March 13, 2015. A description of how the investigation was conducted is presented in the Investigation Report at 2-3; see also, Appendix A at 9-15. The investigation was limited to the specific allegations identified by the OSC. See the Investigation Report at 2.

OSC's Follow-up Questions

On January 12, 2016, an Attorney for the OSC submitted follow-up questions to the Department, Office of the Solicitor, Pacific Southwest Region via email regarding OSC File No DI-13-3684. The OSC's email request stated:

In accordance with our procedures, the whistleblower reviewed and commented on the agency report. In his May 29, 2015, comments, the whistleblower noted that the Department of Interior, Office of Inspector General issued a report in December 2009 entitled Museum Collections: Accountability and Preservation (December 2009 C-IN-MOA-0010-2008) which found, among other things, that "DOI is failing to fulfill its stewardship responsibilities over museum collections." While the OIG report did not address BOR's failure to abide by the requirements of NAGPRA specifically, it found with respect to BOR's New Melones Artifact Storage Facility where MPRO stores a significant number of artifacts and collections, that only approximately 24,000 of the

estimated 418,000 objects stored at New Melones had been accessioned. The report further stated that, according to the curator, the actual backlog could exceed 1.3 million objects.

The whistleblower asserts that NAGPRA places an even higher level of responsibility on individual agency stewardship over collections, providing a process for museums and Federal agencies to return certain Native American cultural items, such as human remains, funerary objects, sacred objects, or objects of cultural patrimony, to lineal descendants, and culturally affiliated Indian tribes and Native Hawaiian organizations. The whistleblower asserts that despite the 2009 OIG report, including its 13 specific corrective action recommendations, the conditions found by the OIG to have existed in 2008-2009 have not appreciably changed. He reasons that in light of the continuing widespread failure on the part of BOR to properly accession, catalog, and/or inventory its collections that he observed during his tenure, it is not possible that BOR is meeting the requirements of NAGPRA.

Consequently, we are requesting the following:

- Please respond to the whistleblower concern that, despite the OIG report, nothing has changed with respect to BOR's stewardship of the artifacts and collections within its control.
- What, if any, steps have been taken at BOR MPRO since issuance of the OIG report to improve the situation and to ensure compliance with NAGPRA?
- What impact, if any, has occurred as a result of the implementation of any measures to address the artifact management problems identified by the whistleblower in this matter and/or in the 2009 IG report? Of the estimated 1.3 million backlogged objects at the New Melones facility, how many remain uncatalogued/unaccessioned?
- Assuming a backlog still exists, what is the projected timeline for curing the backlog and complying with NAGPRA?

Responses to OSC's Questions

The team that was formed to investigate the whistleblower's allegations carefully considered the follow-up questions and prepared the following responses.

Question 1: Please respond to the whistleblower concern that, despite the OIG report, nothing has changed with respect to BOR's stewardship of the artifacts and collections within its control.

Response: This question is a request for information about the Mid-Pacific Regional Office's museum property program and is not related to NAGPRA compliance. As was noted in the Investigation Report, "The procedures for accessioning and cataloging museum property,

including establishing ownership as museum property, are not applicable to NAGPRA cultural items. NAGPRA cultural items are not museum property. NAGPRA and its implementing regulations do not require NAGPRA cultural items to be accessioned or catalogued, nor do Department or Reclamation policies and procedures.” See Investigation Report at 5; see also Appendix A at 8 for the definition of museum collection / museum property.

That said, Reclamation’s Mid-Pacific Regional Office has made measurable progress in managing its museum collections, including:

- A Museum Specialist was hired in 2007, prior to the OIG reports.
- From 2007 to 2012 the Museum Specialist’s primary task was to accession and catalog the museum collections housed at the New Melones Artifact Storage Facility in Jamestown, California. See Investigation Report at 3, footnote 3.
- The Museum Specialist resigned in May, 2013, and another Museum Specialist was hired in December, 2013, to continue to work on the museum collections.
- Since 2009, a total of 108 accessions were completed and 43,893 objects have been cataloged.
- A corrective action plan was prepared to address the deficiencies that were noted in the OIG inspection report regarding the New Melones Artifact Storage Facility. All activities identified in that plan have been completed.
- A new curation facility was constructed in 2014 to house the New Melones museum collections, which meets the Department’s requirements for museum property storage space.
- All museum collections previously housed at the New Melones Artifact Storage Facility have been moved to the newly constructed curation facility, New Melones Curation Facility.
- Currently, the boxes of museum collections and associated records are being sorted and organized in preparation for accessioning and cataloging.

Question 2: What, if any, steps have been taken at BOR MPRO since issuance of the OIG report to improve the situation and to ensure compliance with NAGPRA?

Response: The 2009 OIG audit report *Department of the Interior Museum Collections: Accountability and Preservation* and the subsequent 2010 OIG inspection report *Museum Collections: Preservation and Protection Issues with Collections Maintained by the Bureau of Reclamation* deal exclusively with museum property management issues. See Appendix H. The reports are not applicable to NAGPRA compliance. As was noted in the Investigation Report, “The legal and policy requirements for NAGPRA cultural items, including Native American human remains, are separate and distinct from the legal and policy requirements for museum property. Both are very complex programs, and due care must be taken to understand the different requirements of these two, separate programs.” See the Investigation Report at 1; see also Appendix A at 15-35.

Even though the OIG reports do not address NAGPRA, Reclamation’s Mid-Pacific Regional Office has made substantial progress to ensure compliance with NAGPRA. The major accomplishments include:

- In 2012, the Mid-Pacific Region hired a Ph.D. level physical anthropologist to serve as the Regional NAGPRA Coordinator, a permanent, full-time position.
- The NAGPRA Coordinator developed processes for identifying and handling Native American human remains, consulting with Indian tribes, and developed a NAGPRA database to track cultural items, documents, and consultations.
- Activities associated with the NAGPRA cultural items housed at the New Melones Curation Facility include: moving the NAGPRA cultural items to the new facility, drafting inventories, re-packaging human remains, and developing plans for identifying NAGPRA documents, records, and potential NAGPRA cultural items.
- In 2015, the Mid-Pacific Region submitted draft NAGPRA inventories and initiated or re-initiated consultation with the Wilton Rancheria, California Valley Miwok Tribe, Bishop Paiute Tribe, Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California, Chicken Ranch Rancheria of Me-Wuk Indians of California, Santa Rosa Indian Community of the Santa Rosa Rancheria (Santa Rosa Tachi-Yukut Tribe), Tule River Tribe of the Tule River Reservation, California, and Table Mountain Rancheria of California by way of letters, meetings, and telephone calls.
- The Mid-Pacific Region developed a NAGPRA project management plan and budget for addressing the recommendations that were presented in the Investigation Report.
- Reclamation received a FY 2016 appropriation of \$500,000 for NAGPRA, the full amount in the President’s budget.

- A total of \$255,000 has been provided to the Mid-Pacific Region to complete work on the NAGPRA backlog.
- The Mid-Pacific Region hired two temporary employees in December, 2015, to assist with work on the New Melones NAGPRA cultural items.
- The temporary employees are expected to work until the end of calendar year 2017 and all work on the NAGPRA cultural items at the New Melones Curation Facility is expected to be substantially complete by the end of that time period.

See the Investigation Report at 20-21 for the team's recommendations, which are currently being implemented by the Mid-Pacific Region.

Question 3: What impact, if any, has occurred as a result of the implementation of any measures to address the artifact management problems identified by the whistleblower in this matter and/or in the 2009 IG report? Of the estimated 1.3 million backlogged objects at the New Melones facility, how many remain uncatalogued/unaccessioned?

Response: As noted in the response to Question number 2, the Mid-Pacific Regional Office hired the whistleblower as a Museum Specialist, with the primary duties to work on the museum property housed at the New Melones Artifact Storage Facility. See the Investigation Report at 3, footnote 3. Between 2007 and November, 2012, the whistleblower was assigned to accession and catalog museum collections. The Mid-Pacific Regional Office did not make any specific changes in its museum property management program as a result of the 2009 OIG report because accessioning and cataloging were already ongoing. In November, 2012, accessioning and cataloging was placed on a temporary hold while the Mid-Pacific Regional Office developed management plans for moving the museum collections and NAGPRA cultural items to the new curation facility. Following the whistleblower's resignation, another Museum Specialist was hired to continue the museum property management efforts, which are ongoing.

As a result of conducting a 100% inventory of the museum collections in the New Melones Curation Facility in 2014, the Mid-Pacific Regional Office revised the number of estimated items that have not been cataloged, based on the number of boxes and an estimate of items per box. The estimated number of uncatalogued items is 164,981. That revised estimate has been approved by the Department's Museum Property Program. 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, does not appear to be based on an actual count of the housed museum collections, and is likely an informal estimate that was made many years ago. The 1.3 million object estimate that was made by the whistleblower appears to be a gross overestimate of the size of the museum collections and is not supported by the actual housed museum collections.

From November, 2012, to the present, accessioning and cataloging has been hold as the new facility was completed and the museum collections were inventoried, moved, and organized. Management plans (i.e., Scope of Collection Statement and other required management plans) were drafted and finalized to prepare the museum collections and records for accessioning and cataloging. The full-time, permanent Museum Specialist who started in December, 2013, is dedicated to this effort and is working with the two temporary staff to address this backlog.

Question 4: Assuming a backlog still exists, what is the projected timeline for curing the backlog and complying with NAGPRA?

Response: As previously discussed, the accession and catalog backlog of museum property is a separate issue from the Mid-Pacific Regional Office's compliance with NAGPRA. See the Investigation Report at 5. The primary challenge to completing accessioning and cataloging is the complete lack of organization of the associated records that are needed to identify provenience, relationships, and grouping of museum collections for accessioning. Assuming the two temporary staff hired to assist Mid-Pacific Region in these efforts will be funded through calendar year 2017, the Reclamation museum collections housed at the New Melones Curation Facility are expected to be accessioned and cataloged by the end of 2017.

Sorting through all of the museum collections is expected to result in the identification of any potential remaining NAGPRA cultural items. Completing that process will assist the development of NAGPRA inventories, possibly summaries, and related ongoing NAGPRA compliance activities. Even if there are NAGPRA cultural items in the collections, the number of NAGPRA cultural items that potentially could be located is expected to be de minimis because the archeologists that were working on the New Melones Project during the 1970s were working under a policy that required them to leave human remains in place and not remove them. Under that policy, following the discovery of human remains, they were immediately covered up with soil and left in place or, in some cases; they were excavated, analyzed, and returned to the site for reinternment. See Investigation Report at 8, 12, 13-14; see also, Appendix A at 68-69.

It is the Mid-Pacific Region's goal to substantially complete all of the work on the NAGPRA cultural items in the New Melones Curation Facility by the end of calendar year 2017. The timeframe for completing the repatriation of NAGPRA cultural items is dependent upon the amount of time needed to complete tribal consultation, which cannot be determined at this time. The Mid-Pacific Region is taking its responsibilities seriously and is working diligently to achieve compliance with NAGPRA.