

**Statement of Chairman Wendsler Nosie, Sr., San Carlos Apache Tribe
Presented by Steve Titla, General Counsel – San Carlos Apache Tribe
House Committee on Natural Resources
Hearing on “Native American Graves Protection and Repatriation Act (NAGPRA)”
October 7, 2009**

The Arizona Apache Tribes work on repatriation matters jointly through the Western Apache NAGPRA Working Group (Working Group). These tribes are the San Carlos Apache Tribe, the White Mountain Apache Tribe, the Tonto Apache Tribe, and the Apaches of the Yavapai-Apache Nation.

Since 1996 the Working Group has repatriated 302 sacred objects and objects of cultural patrimony from 20 institutions under NAGPRA, and another 38 objects from the Smithsonian. We currently await the return of another 154 objects in pending claims.

The objects that we claim are vitally important and alive, belonging to Holy Beings whose power infuses them. These objects must be properly returned and ritually cared for, or we suffer dire consequences.

In the great majority of our claims, museums have embraced the spirit of NAGPRA, and have worked with us in open, good faith to repatriate these items in the most appropriate and expedient manner. Most museums have acknowledged that they should never have held these objects in the first place.

Traditional, responsible Apaches would never, now and in the past, willingly give up these items to a non-Apache for non-ritual use. Most of these objects were acquired, sometimes stolen, from Apache lands by museums at a time of extraordinary hardship, misery, and injustice for Apache people. Some agents of museums took deliberate advantage of these conditions to get these items, at the expense of Apaches.

We believe that NAGPRA is civil rights legislation, enacted as an attempt to right these past wrongs. For Apaches, righting these wrongs includes healing the damage caused by the alienation of our powerful objects and the circumstances which compelled that alienation. While the repatriation of these objects alone goes a long way in righting these wrongs, it does not fully facilitate healing. NAGPRA provides for further healing by allowing museums, to state whether objects are sacred objects, objects of cultural patrimony, or combinations of these. An acknowledgement that an item is an object of cultural patrimony is an admission that museums, at a minimum, have objects that are not rightfully their property, or, at the maximum, that they were at least a party to wrongdoing. Such an admission helps appease the Holy Beings who

were wronged so many years ago, and provides a measure of peace of mind to Apache communities.

Currently the Field Museum of Natural History in Chicago and the American Museum of Natural History in New York are attempting to remove this key element of justice from NAGPRA. These museums have among the largest collections of sensitive Apache items, and had agents who took egregious advantage of Apaches in order to acquire highly sensitive objects near the turn of the last century. These museums are refusing to classify Apache items specifically as sacred objects and objects of cultural patrimony, as claimed, in the Notices of Intent to Repatriate in the Federal Register, or even to meaningfully discuss the issue with us. In addition, these museums refuse – as an alternative to classifying these objects – to admit to any wrongdoing in collecting the items or to apologize for their actions. They are legally justified in this position according to the current Park Service interpretation of NAGPRA.

The Park Service allows museums to refer to items in their Notices of Intent to Repatriate as merely “cultural items”, as opposed to “sacred objects” and/or “objects of cultural patrimony”. We believe that this is a highly narrow and prejudiced interpretation of the law. This interpretation demeans our powerful objects and the Holy People to whom they belong, which we cannot allow. This interpretation removes any obligations from museums to explain their positions, while placing a burdensome onus of proof on tribes (often requiring tribes to reveal highly sensitive information publicly); as well as allowing museums to avoid any admission of wrongdoing.

Compounding this problem is the fact that the NAGPRA Review Committee can only make advisory findings and recommendations. While the Working Group has won twice before the Review Committee in formal disputes with museums, the museums chose not to follow the Committee’s recommendations. This, coupled with current Park Service interpretations of NAGPRA, has denied Apaches the full measure of justice that NAGPRA is capable of providing.

Additionally the Park Service has told us that the Review Committee cannot make a finding regarding a completed repatriation, and so now we must choose between repatriating objects as quickly as possible (as required by traditional guidelines), or seeking a measure of justice from the Review Committee. We strongly disagree with this interpretation of the law, and deeply resent the pain and confusion that this compromising interpretation has caused.

These are not trivial matters to us, and we have recently made a request to the Secretary of the Interior to review these matters, and will be discussing these at the upcoming NCAI session. Our concerns could be resolved to a large degree by requiring museums to state whether claimed items are sacred objects and/or objects of cultural patrimony, when so claimed, and by giving more teeth to Review Committee recommendations.

Of further concern is the increasing looting of archaeological artifacts from our reservations. Both Tribal members and outsiders are looting archaeological sites, our people driven by the shocking economic and social conditions within our community.

It is nearly impossible to combat this problem under current financial constraints. Even though our Reservation consists of 1.8 million acres of Federal trust land, our cultural and natural resources management is funded at one-fourth to one-seventh the levels for comparable land, issues, and activities on the National Forests immediately adjacent to the Reservation. This seriously challenges our ability to sustain the economic development necessary to prevent the problem in the first place, or to combat it in the second.

I very much hope that you look into these matters, and will be pleased to provide you with more information.

Thank you for time and attention.