

Reclamation Manual

Directives and Standards

Procedures for Reburial under 43 CFR Part 423, Public Conduct on Bureau of Reclamation Facilities, Lands, and Waterbodies.

1. Introduction.

Beginning on December 21, 2023, reburials of Native American Graves Protection and Repatriation Act¹ (NAGPRA) human remains (often referred to as “Ancestors” by Indian Tribes) or cultural items (funerary objects, sacred objects, or objects of cultural patrimony) under Reclamation’s *Public Conduct on Bureau of Reclamation Facilities, Lands, and Waterbodies* (43 CFR 423.28) regulation was added to the scope of activities permitted on Bureau of Reclamation (Reclamation) lands. NAGPRA is a processual law that follows an ordered list of actions, culminating in the disposition or repatriation of Ancestors and/or cultural items. Frequently, Tribes desire that reburials occur at or near the original interment location; this may not be possible if the original interment location was inundated for the creation of a reservoir or is too near the high-water line. Before December 21, 2023, Reclamation would aim to facilitate reburial in a secular cemetery, which is still an option. Now under §423.28, Tribes may request a permit for reburial for Ancestors and/or cultural items on Reclamation lands. This is the only reburial option on Reclamation land.

As Reclamation implements reburial of Native American Ancestors and cultural items on Reclamation-managed Federal lands, it is important to recognize certain distinctive characteristics of Reclamation’s land tenure. Reclamation withdraws, or acquires, lands for Congressionally authorized project purposes. When Reclamation determines that certain withdrawn lands are excess, those lands are subject to return to the agency from which they were originally taken, unlike operations at other agencies. Reclamation has procedures similar to other agencies for permitting non-project activities but allows a narrower scope of activities. It is important for the regional or area office archaeologist to work closely with their Lands colleagues to identify land holdings that are appropriate for reburial locations, as some areas, such as easements, would not be an appropriate location for reburial.

2. Lawful NAGPRA Disposition or Repatriation.

Permission to rebury lies with the authorized official² within the area office or region where the reburial would occur. First, the NAGPRA disposition or repatriation process must be completed,³ with appropriate signatures on the NAGPRA Disposition statement⁴

¹ Title 43 Subtitle A Part 10.

² Reclamation Manual, Delegations of Authority, Sec. 4 (K)(2)(d) Native American Graves Protection and Repatriation Act.

³ <https://www.nps.gov/subjects/nagpra/policy.htm>

⁴ 43 CFR part 10.7(c)(5): Disposition of the human remains or cultural items.

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or Repatriation statement⁵ by the authorized official. Prior to a reburial, scheduling may occur in consultation with Tribes.

3. Use Authorizations.

The use authorization⁶ (i.e., permit) request required for a NAGPRA reburial must be completed and submitted by the Tribe (all use authorization fees may be waived), with approval by the authorized official for NAGPRA within the area office or region where the reburial will occur. Although §423.28 allows for reburial, other authorities must be considered in advance of the reburial. For example, the location of the reburial may need to be evaluated for cultural resources prior to reburial – thereby triggering the compliance procedures found in the National Historic Preservation Act under Section 106⁷ due to ground disturbance of preparing the burial location. The proposed reburial site may need to be evaluated for threatened or endangered species (Endangered Species Act), or this might be an action that requires clearance through the National Environmental Protection Act. Further, land ownership and existing permits/licenses on Reclamation projects shall be checked. It is recommended that the permitting process occurs early in the proposed reburial effort, with discretion left to the area manager and/or regional director as to the adequacy of existing cultural and environmental clearances for the action.

Reburial is a sensitive subject for Tribes, and the reburial location is also sensitive information that shall not be specifically identified to the public, media, or in the use authorization, so as to minimize risk of harm, theft, or destruction to such resources or to the area or place where such resources are located.⁸ With this understanding, cultural resource management (CRM) staff, consisting broadly of the area archaeologist(s), regional archaeologist, national curator and NAGPRA coordinator, and Federal preservation officer shall have access to knowledge of the reburial location; others may have redacted copies as needed, within Controlled Unclassified Information (CUI) records management.

4. Timing and Coordination.

Permitting and physically undertaking a reburial will require coordination with multiple groups within the area and/or regional office. At a minimum, CRM personnel should contact the following groups well in advance (i.e., more than three months) before the anticipated reburial date: area office manager and/or regional director, Dam Safety Office, Environmental, Lands, and Recreation. During this coordination, close communication with the respective Tribe(s) concerning the time and place for a reburial ceremony is paramount. The national curator, NAGPRA coordinator, and Federal preservation officer

⁵ 43 CFR part 10.9(g) and 43 CFR part 10.10(h): Repatriation

⁶ Use Authorization Application, Form 7-2540: <https://www.usbr.gov/lands/docs/7-2540.pdf>

⁷ 54 U.S.C. 306108

⁸ Reclamation Manual, D&S LND 02-01, Sec. 17(C).

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shall be kept apprised of the reburial effort. Public Affairs should not publicize reburial events, and photographs are never allowed. Further, the location of the reburial should be vague in any public discourse, such as, “the reburial occurred near Vernal, Utah,” rather than “the reburial occurred at Reclamation Reservoir, near the dam on the north side.”

5. **Costs.**

The authorized official may consult with Tribes involved in a reburial process regarding Reclamation funding for the costs of reburial actions.⁹ In alignment with Departmental Manual (DM) Part 301, Chapter 7, Reclamation shall recognize that the respective Tribe(s) involved in the reburial are Indigenous Knowledge holders and shall be compensated appropriately for their time and services.¹⁰

6. **Reburial Documentation.**

The use authorization associated with the reburial is a Federal record and sensitive information that shall be recorded in the Enterprise Content System (ECS) in a safe and secure CUI file location managed by the office that has approved and undertaken the reburial action.

7. **Reburial Location.**

The reburial location shall be chosen in consultation with the respective Tribe(s) and must balance competing interests. For example, Tribe(s) will likely want the reburial at or near the original place of interment. Reservoir operators and Reclamation planning staff would like the reburial outside of any possible raising of the reservoir. Biologists would prefer the reburial to be outside of sensitive habitat. Realty specialists would want to check if the location is in a license, easement, or future infrastructure corridor. Recreation staff would want the reburial outside of campgrounds and away from recreation spots. The reburial shall be in a place that will not be disturbed by future infrastructure. Consequently, care must be taken to consider the past, present, and future uses of the proposed reburial location.

Tribal consultation is imperative throughout the process to identify the best reburial location. Reclamation staff and Tribal representatives may need to physically visit the identified reburial location in advance as well as after reburial for occasional monitoring or Tribal spiritual maintenance activities. The reburial location shall be added to appropriate GIS layers that are consulted for potential projects to ensure that the reburial location is not impacted by future activities.

⁹ Reclamation Manual, Directives and Standards LND 02-01, Sec. 19(A).

¹⁰ DM Part 301, Chapter 7, section 6 (B)(5)

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A. Area Office.

Reburial locations shall be kept at the office level for NAGPRA efforts associated with those projects. Reburial locations shall be placed upon sensitive information GIS layers, such as CRM file search layers, so future projects will not impact the reburial location, and the location can be monitored for disturbances. State and Tribal historic preservation officers are another repository for sensitive cultural resource information, so the reburial location shall be shared as an eligible site to preserve the reburial location from future impacts.

B. Regional Office.

Reburial locations shall be maintained as part of NAGPRA data collection policies. The regional archaeologist shall retain a copy of the documentation (which could be the electronic copy in ECS) associated with the reburial, including any correspondence and signed use authorizations (i.e., permits) to ensure that the NAGPRA process has terminated properly.

Reclamation's national curator, NAGPRA coordinator, and Federal preservation officer may request copies of the documents for their records, but the primary responsibility for retaining official records is the office managing the reburial.

8. Long-Term Care.

The long-term care and protection of the reburial location is in Reclamation's interest. Repeated disturbance of a grave, whether from a project, erosion, or looting, is abhorrent to cultural values across the world. The location of the reburial is sensitive information, and long-term care shall be afforded to it. For small reburials, secrecy of the location and landscape recovery may suffice, but for large-scale reburials, secrecy, landscape recovery, and a secured location may be warranted to protect the location, in addition to the option of implementing a protective covenant designation or completing a site record and filing it appropriately.