

FS Agreement No. 14-MU-11020000-002

Memorandum of Understanding (MOU) Regarding the reburial of Native American human remains and funerary objects

**Among the
State of Colorado (STATE)¹;
U. S. Dept. of Agriculture, Forest Service (FS), Rocky Mountain Region;
U. S. Dept. of the Interior, Fish and Wildlife Service (USFWS), Mountain Prairie Region;
U.S. Dept. of the Interior, National Park Service (NPS), Intermountain Region;
U. S. Dept. of the Interior, Bureau of Land Management (BLM), Colorado State Office;
Ute Mountain Ute Indian Tribe and the Southern Ute Indian Tribe (Collectively TRIBES or
TRIBAL)**

¹ Includes the *Colorado Commission of Indian Affairs*, the *Colorado Department of Natural Resources*, and the *State Historical Society of Colorado*.

I. Purpose

The FS Rocky Mountain Region, USFWS Mountain Prairie Region, NPS Intermountain Region, BLM Colorado State Office (hereinafter FEDERAL AGENCY or AGENCIES), STATE, and TRIBES (all hereinafter collectively referred to as the PARTIES) enter into this agreement to improve the process of identifying STATE, TRIBAL and FEDERAL AGENCY lands within the STATE suitable and appropriate for the reburial of Native American human remains and funerary objects² originating from the STATE and repatriated to the TRIBES under the authority of the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA). The PARTIES recognize their different authorities relative to the reburial of Native American human remains and funerary objects, but within these confines, seek to maximize the level of compatibility among their policies through the establishment of the Colorado Repatriation and Reburial Workgroup (Workgroup) dedicated to these issues.

II. Background

In compliance with NAGPRA, public and private agencies, institutions, museums and universities within the STATE have repatriated human remains and funerary objects found on private, STATE, TRIBAL, or FEDERAL AGENCY lands to Indian Tribes. The STATE and the FEDERAL AGENCIES recognize the deep cultural and historic associations held by tribes for the lands and resources they manage; and NAGPRA and its attendant regulations do not address reburial of repatriated remains.

The NAGPRA Repatriation Review Committee recognizes that 1) the ability to rebury human remains and funerary objects as close to the original interment site as possible is often the stated goal of tribes; 2) federal land management agencies do not have a uniform reburial policy thus often making repatriation less than fully satisfactory; and 3) the Committee has recommended to the Secretary of the Interior that a uniform federal policy be developed in consultation with Indian tribes and Native Hawaiian organizations to help facilitate satisfactory repatriations and reburials (National NAGPRA Report to Congress, January 10, 2013).

The TRIBES have taken a lead role in the repatriation and reburial of Native American human remains and funerary objects and will continue to work cooperatively with other Indian Tribes, the STATE and FEDERAL AGENCIES to identify appropriate and protected reburial sites, and ensure the solemn and respectful re-interment of Native American remains on private, STATE, FEDERAL and TRIBAL lands within the STATE.

The PARTIES want to build positive and productive relationships with all Indian tribes and accomplish the reburial of Native American human remains and funerary objects on these lands. The PARTIES further want to establish, to the extent consistent with their authorities, a cooperative and consistent approach to reburial of Native American human remains and associated objects.

² This includes *Culturally Affiliated (CA)* or *Culturally Unidentifiable (CUI)* human remains and/or *Associated (AFO)* or *Unassociated (UFO)* funerary objects as defined by NAGPRA (Public Law 101-601; 25 U.S.C. 3001 et seq.).

III. Authorities and Policies Relevant to the Reburial of Native American Human Remains and Funerary Objects

Native American Graves Protection and Repatriation Act
American Indian Religious Freedom Act of 1978
Religious Freedom Restoration Act
National Historic Preservation Act of 1966
Food, Conservation, and Energy Act of 2008
National Environmental Protection Act
Endangered Species Act
National Historic Preservation Act of 1966
E.O. 12875 Enhancing the Intergovernmental Partnership
E.O. 13175 Consultation and Coordination with Indian Tribal Governments
E.O. 12866 Regulatory Planning and Review
President's Directive to Federal Agencies
Department of the Interior Policy on Consultation with Indian Tribes
NPS Management Policies 2006 and December 2012 NPS Memorandum from the Associate Director, Cultural Resources, Partnerships and Science to Regional Directors - *Tribal Requests to Rebury Native American Human Remains on Park Lands*
BLM Instruction Memorandum No. WO-2007-002, October 11, 2006
USFWS Compatibility Policy, November 17, 2000
FS Manual 1563.01e. Sections 8103 a-b, 2010
CRS 24-80-401 ff - Historical, Prehistorical, and Archaeological Resources Act of 1973
CRS 24-80-1301ff - Unmarked Human Graves
Process for Consultation, Transfer and Reburial of Culturally Unidentifiable Native American Human Remains and Associated Funerary Objects Originating From Inadvertent Discoveries on Colorado State and Private Lands, authorized in 2008

IV. Agreement of the PARTIES

The PARTIES agree to establish a WORKGROUP, which will be comprised of members of each Party to this MOU. The WORKGROUP will meet as often as needed, but at least annually, to perform the following task:

Favorably consider requests for the reburial of human remains and funerary objects from a tribe or tribes to whom control of these remains and/or objects has been transferred when these criteria are met: (a) In cases where the original site of discovery or excavation of the remains is lacking; (b) where reburial on or near the original site of discovery, if known, is no longer a reasonable option; or (c) where there is presently no identified private, STATE, TRIBAL, or FEDERAL AGENCY site for reburial, and (d) where there is a reasonable assumption that the geographic origin of the repatriated remains (when determinative information of origin is lacking) fall within the STATE. The WORKGROUP agrees to

consider alternatives to reburial sites while maintaining compliance with specific TRIBAL and FEDERAL AGENCY reburial policies.

Representatives of the PARTIES:

BLM Point of Contact:

Name: Dan Haas
Address: 2850 Youngfield Street
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Email: dhaas@blm.gov

U.S. Forest Service Points of Contact:

Program Manager: Susan Johnson
Address: 740 Simms Street
City, State, Zip: Golden, CO 80401
Telephone: 303/275-5760
FAX: 303/275-5754
Email: sjohnson@fs.fed.us

Administrative Contact: Dana Mees

Address: 740 Simms Street
City, State, Zip: Golden, CO 80401
Telephone: 303/275-5273
FAX: 303/275-5396
Email: dmees@fs.fed.us

V. Funding

1. Subject to the availability of funds, the PARTIES agree to fund their own expenses associated with the implementation of this MOU.
2. Nothing contained herein shall be construed as obligating PARTIES to any expenditure or obligation of funds in excess or in advance of appropriations, in accordance with the Anti-Deficiency Act, 31 U.S.C. § 1341.

VI. Records

Any records or documents generated as a result of this MOU shall become part of the official PARTIES' records maintained in accordance with PARTIES' record management policies. Any request for release of records associated with the implementation of this MOU to anyone outside the PARTIES must be determined by PARTIES based on applicable laws, including the Freedom of Information Act and the Privacy Act.

VII. Exclusions / Limitations of this MOU

1. This agreement addresses only those reburial requests from Indian tribes to whom remains and funerary objects have been repatriated under the authority of NAGPRA. Human remains or funerary objects uncovered through an Inadvertent Discovery or an Intentional Excavation, as defined by NAGPRA, are not covered under this agreement. In addition, other cultural items subject to NAGPRA are not covered by this agreement unless they are also defined as funerary objects as part of the reburial request and control has been transferred to the repatriating tribe(s). For these objects and all matters related to Inadvertent Discovery or Intentional Excavation, the STATE, TRIBES, and FEDERAL AGENCIES will adhere to procedures under state, tribal, or federal law and regulations.
2. This agreement does not affect, exclude, or otherwise impact existing provisions to comply with existing STATE, TRIBAL, or FEDERAL AGENCY environmental or cultural resource protection laws, regulations, or guidelines. Notwithstanding this agreement, the STATE, TRIBES, or FEDERAL AGENCY on whose lands the reburial will take place will comply with all appropriate statutes, regulations, and guidelines that apply to the specific authorized ground-disturbing actions.

VIII. Debarment and Suspension

STATE and TRIBES shall immediately inform the FEDERAL AGENCIES if they or any of their principals are presently excluded, debarred, or suspended from entering into covered transactions with the federal government according to the terms of 2 CFR Part 180. Additionally, should STATE or TRIBES or any of their principals receive a transmittal letter or other official Federal notice of debarment or suspension, then they shall notify the FEDERAL AGENCIES without undue delay. This applies whether the exclusion, debarment, or suspension is voluntary or involuntary.

IX. Commencement/Expiration/Termination

This MOU takes effect upon the signature of all PARTIES to the MOU and shall remain in effect for five (5) years from the date of execution. This MOU may be extended or amended upon written request of any Party and the subsequent written concurrence of all other PARTIES. Any participating Party can terminate their participation in this MOU with a 30 day written notice to the other PARTIES.

X. Participation of Other Parties

1. The PARTIES anticipate that other Federal Agencies may participate in this MOU at any time while the MOU is in effect. These agencies will be governed by the terms of this MOU as a signatory.
2. This agreement establishes no additional legal or discretionary authority, or any

additional funding obligations, outside of existing STATE, TRIBAL, or FEDERAL AGENCY law, guidelines, or policies.

XI. Third Parties

This MOU is not intended to and does not create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by any party against the United States, its agencies, its officers, or any person.

XII. Members of Congress

Pursuant to 41 U.S.C. 22, no U.S. member of, or U.S. delegate to, Congress shall be admitted to any share or part of this agreement, or benefits that may arise therefrom, either directly or indirectly.

XIII. Nonbinding Agreement

This MOU creates no right, benefit, or trust responsibility, substantive or procedural, enforceable by law or equity. The PARTIES shall manage their respective resources and activities in a separate, coordinated and mutually beneficial manner to meet the purpose(s) of this MOU. Nothing in this MOU authorizes any of the PARTIES to obligate or transfer anything of value.

Specific, prospective projects or activities that involve the transfer of funds, services, property, and/or anything of value to a Party requires the execution of separate agreements and are contingent upon numerous factors, including, as applicable, but not limited to: agency availability of appropriated funds and other resources; cooperator availability of funds and other resources; agency and cooperator administrative and legal requirements (including agency authorization by statute); etc. This MOU neither provides, nor meets these criteria. If the PARTIES elect to enter into an obligation agreement that involves the transfer of funds, services, property, and/or anything of value to a Party, then the applicable criteria must be met. Additionally, under a prospective agreement, each Party operates under its own laws, regulations, and/or policies, and any Federal obligation is subject to the availability of appropriated funds and other resources. The negotiation, execution, and administration of these prospective agreements must comply with all applicable law.

Nothing in this MOU is intended to alter, limit, or expand the FEDERAL AGENCIES' statutory and regulatory authorities.

XIV. Publications, production of audiovisuals, or electronic media

The Workgroup shall acknowledge U.S. Forest Service support in any publications, audiovisuals, and electronic media developed as a result of this MOU.

Printed, electronic or audiovisual material shall include the following statement, in full, in any printed, audiovisual material, or electronic media for public distribution developed or printed with any Federal funding.

In accordance with Federal law, these federal institutions are prohibited from discriminating on the basis of race, color, national origin, sex, age, or disability. (Not all prohibited bases apply to all programs.)

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice and TDD). USDA is an equal opportunity provider and employer.

If the material is too small to permit the full statement to be included, the material must, at minimum, include the following statement, in print size no smaller than the text:

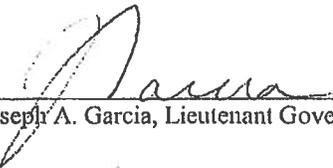
"These Federal institutions are equal opportunity providers."

XV. Signature of the PARTIES of the MOU on reburial of Native American human remains and funeral objects:

Signatories to this Agreement

State of Colorado

Colorado Commission of Indian Affairs



Joseph A. Garcia, Lieutenant Governor, Chair

12/13/13
Date

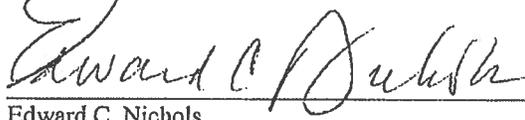
Department of Natural Resources



Mike King, Executive Director

12.13.13
Date

State Historical Society of Colorado (DBA History Colorado)

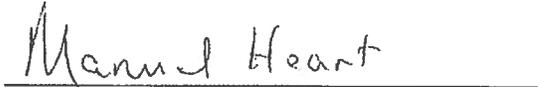


Edward C. Nichols
President and CEO, State Historic Preservation Officer

12/13/13
Date

Colorado Indian Tribes

Ute Mountain Ute Tribe of Colorado



Manuel Heart, Chairman

12/13/13
Date

Southern Ute Indian Tribe of Colorado

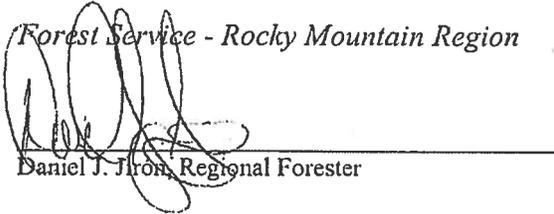


Jimmy R. Newton, Jr., Chairman

12/13/13
Date

U. S. Department of Agriculture

Forest Service - Rocky Mountain Region



Daniel J. Jiron, Regional Forester

12/13/13
Date

U. S. Department of the Interior

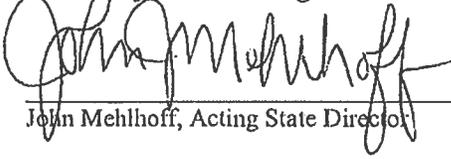
National Park Service - Intermountain Region



Colin Campbell, Acting Regional Director

12/13/13
Date

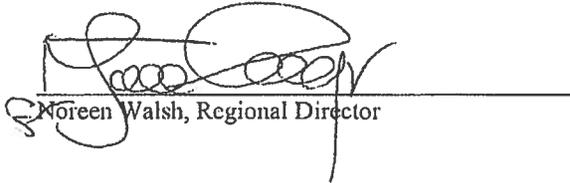
Bureau of Land Management – Colorado State Office



John Mehlhoff, Acting State Director

12-13-13
Date

U.S. Fish and Wildlife Service – Mountain-Prairie Region



Noreen Walsh, Regional Director

12.13.13
Date

APPENDIX 1: Definitions

For the purposes of this MOU, the following definitions apply:

1. ***Human Remains***: The physical remains of the body of a person of Native American ancestry. The term does not include remains or portions of remains that may reasonably be determined to have been freely given or naturally shed by the individual from whose body they were obtained, such as hair made into ropes or nets. For the purposes of determining cultural affiliation, human remains incorporated into a funerary object, sacred object, or object of cultural patrimony must be considered as part of that item. [43 CFR 10.2 (d)(1)]
2. ***Burial Site***: Any natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which, as part of the death rite or ceremony of a culture, individual human remains were deposited, and includes rock cairns or pyres which do not fall within the ordinary definition of a grave site. (43 CFR Part 10: 62159)
3. ***Cultural Affiliation (CA)***: A relationship of shared group identity that can reasonably be traced historically or prehistorically between members of a present-day Indian tribe and an identifiable earlier group. (43 CFR Part 10: 62160)
4. ***Cultural Items***: Human remains, associated funerary objects, unassociated funerary objects, sacred objects, cultural patrimony. [25 USC 3001 (3)]
5. ***Culturally Unidentifiable (CUI)***: Cultural items (including human remains) for which no culturally affiliated present-day Indian tribe or Native Hawaiian organization can be determined. [43 CFR 10.9 (d)(2)]
6. ***Funerary Objects***: Items that, as part of the death rite or ceremony of a culture, are reasonably believed to have been placed intentionally at the time of death or later with or near individual human remains. Funerary objects must be identified by a preponderance of the evidence as having been removed from a specific burial site of an individual affiliated with a particular Indian tribe or Native Hawaiian organization or as being related to specific individuals or families or to known human remains.

(a.) *Associated funerary objects*: Those funerary objects for which the human remains with which they were placed intentionally are also in the possession or control of a museum or Federal Agency. Associated funerary objects also means those funerary objects that were made exclusively for burial purposes or to contain human remains. [43 CFR 10.2 (d)(2)(i)]

(b.) *Unassociated funerary objects*: Those funerary objects for which the human remains with which they were placed intentionally are not in the possession or control of a museum or Federal Agency. Objects that were

displayed with individual human remains as part of a death rite or ceremony of a culture and subsequently returned or distributed according to traditional custom to living descendants or other individuals are not considered unassociated funerary objects. [43 CFR 10.2 (d)(2)(ii)]

For the purposes of this agreement the term *Funerary Object* includes both associated and unassociated funerary objects as defined above.

7. ***Inadvertent Discovery:*** The unanticipated encounter or detection of human remains, funerary object, sacred objects, or objects of cultural patrimony found under or on the surface of Federal or tribal lands. [Refer to Section 3(d) of NAGPRA and 43 CFR Part 10.2 (g)(4)]
8. ***Intentional excavation:*** The planned archeological removal of human remains, funerary objects, sacred objects, or objects of cultural patrimony found under or on the surface of Federal or tribal lands. [Refer to Section 3(c) of NAGPRA and 43 CFR Part 10.2 (g)(3)]
9. ***Indian Tribe or Tribes:*** Any tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. [25 USC 3001 (7)]
10. ***Requesting Tribe(s):*** Tribes to whom NAGPRA cultural items have been repatriated, or transferred control, and requested that these items be reburied on STATE or FEDERAL AGENCY lands.
11. ***Repatriate:*** The transfer of control of NAGPRA defined Native American cultural items to lineal descendants, tribes, and Native Hawaiian organizations. [25 USC 3005 (f), 25 USC 3009]

APPENDIX 2: Specific Provisions to a Particular Signatory

USE OF U.S. FOREST SERVICE INSIGNIA. In order for PARTIES to use the U.S. Forest Service insignia on any published media, such as a Web page, printed publication, or audiovisual production, permission must be granted from the U.S. Forest Service's Office of Communications. A written request must be submitted and approval granted in writing by the Office of Communications (Washington Office) prior to use of the insignia.

The authority and format of this agreement have been reviewed and approved for signature.

U.S. Forest Service Grants Management Specialist

Date