

the assistance of the Review Committee in resolving its dispute with the Bishop Museum as to whether repatriation of the Kalaina Wawae to Hui Malama I Na Kupuna O Hawai'i Nei was complete when no competing claims were filed following publication of the April 9, 1999, **Federal Register** notice.

On December 17, 2004, the Review Committee's designated Federal officer acknowledged receipt of the November 29, 2004, request and identified questions as to whether the Kalaina Wawae are objects of cultural patrimony as an issue of fact with which the Review Committee might wish to assist in resolving. The request for a recommendation regarding the finality of repatriation, which is likely dependent on provisions of state law and other legal authorities, was identified as being beyond the Review Committee's purview.

On February 2, 2005, the Bishop Museum provided information to the Review Committee relevant to the dispute, including a declaration that the museum does not consider the Kalaina Wawae to be objects of cultural patrimony.

On February 21, 2005, the Review Committee's designated Federal officer notified Hui Malama I Na Kupuna O Hawai'i Nei and the Bishop Museum that the Review Committee had agreed to assist in the resolution of the dispute at its next meeting.

On March 1, 2005, the Review Committee's designated Federal officer invited a representative of Hui Malama O Mo'omomi to provide information to the Review Committee.

**Findings and Recommendations:** On March 13–15, 2005, the Review Committee considered the dispute as presented by representatives of Hui Malama I Na Kupuna O Hawai'i Nei, Bishop Museum, and Hui Malama o Mo'omomi and made the following findings:

1. There is disagreement regarding whether the Kalaina Wawae are objects of cultural patrimony.
2. The Review Committee has chosen not to come to a finding as to whether the Kalaina Wawae are objects of cultural patrimony at this time.
3. The Review Committee recognizes the cultural significance of the Kalaina Wawae to the people of the Island of Molokai.
4. The Review Committee believes that the current location of the Kalaina Wawae is appropriate.

The Review Committee recommends that the Bishop Museum and Hui Malama o Mo'omomi work together to revise expeditiously the current memorandum of agreement to require

the consent of Hui Malama o Mo'omomi prior to the removal of the Kalaina Wawae from the Island of Molokai.

The National Park Service publishes this notice as part of its administrative and staff support for the Review Committee. The findings and recommendations are those of the Review Committee and do not necessarily represent the views of the Secretary of the Interior. Neither the Secretary of the Interior nor the National Park Service has taken a position on these matters.

Dated: May 20, 2005.

**Rosita Worl,**

*Chair, Native American Graves Protection and Repatriation Review Committee.*

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## DEPARTMENT OF THE INTERIOR

### National Park Service

#### **Native American Graves Protection and Repatriation Review Committee Findings and Recommendations Regarding a Dispute Between Hui Malama I Na Kupuna O Hawai'i Nei and the Bishop Museum**

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** At a March 13–15, 2005, public meeting in Honolulu, HI, the Native American Graves Protection and Repatriation Review Committee (Review Committee) considered a dispute between Hui Malama I Na Kupuna O Hawai'i Nei and the Bishop Museum. The dispute focused on whether three items from the Island of Molokai in the possession of the Bishop Museum are subject to repatriation under provisions of the Native American Graves Protection and Repatriation Act. The Review Committee recommended that the Bishop Museum proceed toward repatriation of the three objects to the appropriate claimants.

**SUPPLEMENTARY INFORMATION:** On May 2, 2003, the Bishop Museum published a Notice of Intent to Repatriate in the **Federal Register**. The notice identified a small wooden image carved into human form and a cowrie shell as unassociated funerary objects culturally affiliated with the Molokai Burial Council, Hui Malama I Na Kupuna O Hawai'i Nei, and the Office of Hawaiian Affairs.

On August 29, 2003, Hui Malama I Na Kupuna O Hawai'i Nei filed a claim with the Bishop Museum to repatriate

the small wooden image and cowrie shell.

On October 21, 2003, Hui Malama I Na Kupuna O Hawai'i Nei asked the Bishop Museum to explain why a rock oyster shell pendant that had also been previously listed as an unassociated funerary object on the museum's Molokai inventory had not been included in the May 2, 2003 notice.

On November 8, 2004, Hui Malama I Na Kupuna O Hawai'i Nei requested the assistance of the Review Committee in resolving its dispute with the Bishop Museum. The request also included an allegation that the Bishop Museum failed to comply with the repatriation provisions of the Act.

On December 17, 2004, the Review Committee's designated Federal officer acknowledged receipt of the November 8, 2004, request and identified questions as to whether the rock oyster shell pendant was an unassociated funerary object or whether the museum had right of possession to the three items as issues of fact with which the Review Committee might wish to assist in resolving. The same day, the allegation of failure to comply was referred to the Director, National Park Service for investigation.

On February 2, 2005, the Bishop Museum notified the Review Committee that the museum intended to publish a Notice of Intent to Repatriate identifying the rock oyster pendant as an unassociated funerary object. The museum also notified the Review Committee that it did not intend to assert right of possession to either the cowrie shell or the rock oyster pendant. The museum did assert a right of possession to the carved wooden figure.

On February 18, 2005, the Review Committee's designated Federal officer notified Hui Malama I Na Kupuna O Hawai'i Nei and the Bishop Museum that the Review Committee had agreed to assist in the resolution of the dispute at its next meeting.

On March 1, 2005, the Review Committee's designated Federal officer sent letters to two claimants inviting them to provide information to the Review Committee: Royal Hawaiian Academy of Traditional Arts and Na Lei Ali'i Kawanakoa.

#### **FINDINGS AND RECOMMENDATIONS:**

On March 13–15, 2005, the Review Committee considered the dispute as presented by representatives of Hui Malama I Na Kupuna O Hawai'i Nei, Bishop Museum, Office of Hawaiian Affairs, Royal Hawaiian Academy of Traditional Arts, and Na Lei Ali'i Kawanakoa and made the following findings:

1. The identification of the carved wooden image, cowrie shell, and rock oyster pendant as unassociated funerary objects is not in dispute.

2. The Bishop Museum has asserted it has right of possession to the carved wooden figure.

3. A claim of right of possession to an unassociated funerary object requires a museum or Federal agency to provide evidence that the unassociated funerary object was acquired with the voluntary consent of an individual, Indian tribe, or Native Hawaiian organization with authority to alienate the cultural item [25 U.S.C. 3001 (13)].

4. Hui Malama I Na Kupuna O Hawai'i Nei presented evidence to support a finding that the Bishop Museum does not have right of possession to the carved wooden figure.

5. The Bishop Museum failed to overcome the inference that it does not have right of possession to the carved wooden figure.

6. There are multiple claims for the three cultural items.

7. A museum or Federal agency must repatriate cultural items within 90 days of receipt of a written request for repatriation that satisfies the requirements of 43 CFR 10.10 (a)(1), except where the exemptions of 43 CFR 10.10 (a)(3) and 10.10 (c) apply. However, there is nothing in the statute or regulations that state that the repatriation is automatic at the end of the 90 days.

The Review Committee recommends that:

1. The Bishop Museum proceed toward repatriation by continuing its process of consultation to determine the appropriate claimant(s) for the three unassociated funerary objects; and

2. When repatriation takes place, the transaction is documented in a fashion consistent with Hawaiian state law.

The National Park Service publishes this notice as part of its administrative and staff support for the Review Committee. The findings and recommendations are those of the Review Committee and do not necessarily represent the views of the Secretary of the Interior. Neither the Secretary of the Interior nor the National Park Service has taken a position on these matters.

Date: May 20, 2005

**Rosita Worl,**  
*Chair,*

Native American Graves Protection and Repatriation Review Committee.  
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## DEPARTMENT OF THE INTERIOR

### National Park Service

#### Notice of Inventory Completion: California Department of Parks and Recreation, Sacramento, CA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession and control of the California Department of Parks and Recreation, Sacramento, CA. The human remains and associated funerary objects were removed from Kern, Kings, and Tulare Counties, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by California Department of Parks and Recreation's professional staff in consultation with representatives of the Picayune Rancheria of the Chukchansi Indians of California; Santa Rosa Indian Community of the Santa Rosa Rancheria, California (also known as the Tachi Yokut Tribe); Table Mountain Rancheria of California; and Tule River Indian Tribe of the Tule River Reservation, California.

At an unknown date, highly fragmented human remains representing a minimum of three individuals were removed from an unknown locality (most likely close to CA-KIN-32, also known as the Witt site) on the southwest shore of former Tulare Lake, 12 miles southeast of Kettleman City, Kings County, CA. The remains were collected by Leonard "Red" Van Den Enden, a private citizen, of Corcoran, CA. After Mr. Van Den Enden's death, his heirs donated the human remains to the California Department of Parks and Recreation in 1982. No known individuals were identified. No associated funerary objects are present.

While the human remains have no exact provenance, two human cranial fragments date to 15,696 years B.P. (+/-370 years) and 11,379 B.P. (+/-71 years). This is consistent with dates

generated from CA-KIN-32/Witt site. The California Department of Parks and Recreation Committee on Repatriation determined that site CA-KIN-32 cannot be clearly identified as Southern Valley Yokuts due to its antiquity. However, it determined that the prehistoric occupation of the same site by direct ancestors of the historic Southern Valley Yokuts (Tachi, Wowol, and Chunut Yokuts Tribes) was sufficient to culturally affiliate this site with the groups that are the present-day descendants of the Southern Valley Yokuts. Present-day descendants of the Southern Valley Yokuts are the Picayune Rancheria of the Chukchansi Indians of California; Santa Rosa Indian Community of the Santa Rosa Rancheria, California (also known as the Tachi Yokut Tribe); Table Mountain Rancheria of California; and Tule River Indian Tribe of the Tule River Reservation, California.

In 1927 and 1928, human remains representing a minimum of 14 individuals were removed from CA-TUL-16 (also known as the Broder Mound, Broder Place, Broeder Ranch, Broeder Area B, Old Broder, GWH 132, and J-90), 5 miles east of Visalia and 2 miles south of the Kaweah River, in Tulare County, CA. The remains and associated funerary items were collected by Frank F. Latta on weekends in the course of site leveling of the Broder Mound during agricultural activity. Mr. Latta donated the items to the California Department of Parks and Recreation on July 24, 1988. No known individuals were identified. The 89 funerary objects are 32 beads, 16 food remains, 11 soil samples, 6 ornaments, 5 flakes, 3 projectile points, 2 plant remains, 2 incised bones, 1 quartz crystal, 1 piece of ochre, 1 lithic, 1 piece of slag, 1 scraper, 1 fire stone, 1 hammerstone, 1 charcoal sample, 1 clay sherd, 1 metal knife, 1 button, and 1 ceramic sherd.

The ages of the burials are not directly known, but may be of considerable antiquity (4000-2000 B.C.). According to Mr. Latta's field notes, some of the burials came from a depth of 11 feet, indicating considerable age. Most of the associated funerary objects are consistent with an Early Period of occupation. While some associated funerary objects date to the historic Late Period, this can be explained by the salvage nature of the excavation. The California Department of Parks and Recreation Committee on Repatriation determined that site CA-TUL-16 cannot be clearly identified as Southern Valley Yokuts, due to its antiquity. However, oral history and tradition among the contemporary Yokuts tribes confirm that this site was and still is sacred to the