



THE UPAC NEWS

Published by the Utah Professional Archeological Council

Published Quarterly
November 1991

Bruce Louthan, President
Diana Christensen, Editor

NEW RULES FOR STATE HISTORY AND STATE LANDS

A "rules committee" was formed at the last UPAC meeting to scrutinize new rules proposed by the Division of State History and State Lands and Forestry. The committee consists of UPAC Vice President for Governmental Affairs, Betsy Tipps, along with Joel Janetski, Duncan Metcalf, Jim Wilde, and Jerry Wylie. Since the UPAC meeting, the committee has met one to two times per week to review the rules and prepare UPAC's comments. Other UPAC members participating in varying degrees are Claudia Berry, Kevin Jones, David Madsen, Steve Simms, and Shelley Smith. USAS member David Clark has also assisted.

Copies of two sets of proposed rules were passed out at the most recent UPAC meetings. One set of rules proposed by the Division of State History (State History) to implement Utah Annotated Code 63-18-25 and 63-18-25.1. The other proposed by the Division of State Lands and Forestry (State Lands) outlines the manner in which State Lands will treat

cultural resources (a state Section 106 and 36CFR800 version). Members of the professional community who are familiar with both sets of rules identified several major problems with the proposed rules and recommended that UPAC closely scrutinize each set of rules and provide comments to the respective divisions. UPAC requested, and was granted, an extension of the public comment period by State Lands. Comments on the State Lands rules are due December 11, 1991. Comments to State History are due December 16, 1991. Our request for an extension is pending.

Where we stand - November 18, 1991

Thanks to quick action by Claudia Berry, the Board of State Lands and Forestry scheduled a public hearing on November 14, 1991, which provided UPAC an opportunity to voice our concerns about the proposed State Lands rules. The hearing went well and UPAC members were well received.

The board asked UPAC for help drafting rules that will allow them to protect cultural resources while still meeting their congressional mandate to generate revenue for the schools. Although State Lands is still talking about selling artifacts, we have made great progress considering where we were only one year ago. The UPAC committee is currently drafting a revised set of rules based on the federal framework. These rules will be presented to State Lands for consideration on November 22, 1991. We believe we will be able to work with State Lands on a continuing basis, at least until the December 11 deadline.

UPAC has prepared detailed comments on the State History rules and formally requested a public hearing to voice our concerns in front of the Board of State History. We hope that our request for a hearing will be considered on November 22, 1991.

The status of the committee's work is very dynamic and changing almost on a daily basis. As of today, we are uncertain what help we will need from individual UPAC members. If letters or phone calls are needed, you will receive a special mailing. If you receive such a mailing, PLEASE take the time to review it and take the requested action within the specified time frame. There is a lot at stake and it would be a shame to lose in the final hours due to lack of participation. UPAC members should understand that both sets of rules will change the manner in which archaeology is conducted in Utah for a long time. And they could affect

the cost of doing archaeology as well.

Due to the length and detailed nature of the rules and UPAC's proposed comments, and the very dynamic nature of the process, it will not be possible to summarize all of the problems the committee has identified in the two sets of rules, nor UPAC's proposed solutions in this article--more information will be provided at a later date. Anyone interested in additional information at the present time can contact one of the committee members.

Copies of both proposed sets of rules are attached to this newsletter for your information.

---Betsy Tipps

UPAC SPRING MEETING

Reserve March 27 and 28, 1992 for the joint Colorado Council of Professional Archaeologists and UPAC meeting in Grand Junction, Colorado. This promises to be an especially informative meeting and an opportunity to relate with our professional counterparts in Colorado.

GOVERNOR'S NATIVE AMERICAN BURIAL COMMITTEE

The governor's committee completed its role as defined in 1990 by Utah Senate Bill 214. A complete text of the draft legislation dating to June 20, 1991 after the termination of the committee at Window Rock, AZ on June 7, 1991 is printed in this newsletter. This version does not address private land. A second version

submitted to the governor addresses private land. Given that legislation affecting private land will likely be even less suitable to legislators than the first version, I only include the first one here.

The proposed Utah bill has intentionally strong parallels to the federal bill printed in the February 1991 issue of the UPAC News. In some places it is more favorable than the federal bill because it attempts to omit "unassociated funerary and sacred objects." In one way, the proposed Utah bill is worse than the federal bill because it proposes a strong Native American bias on the review committee. This committee will oversee the museum inventory, determination of ownership, claim, and repatriation process.

The proposed bill is by no means static. The governor may alter it before sending it to the legislature and the legislative process itself will result in changes difficult to foresee at this time. Since we all are concerned with this bill, I will not attempt to summarize all of my concerns here. Instead, let me report on UPAC efforts in recent months and indicate the future to the degree possible at this time.

I met with Ms. Enid Green, a staff assistant to Governor Bangerter, in early October. We discussed two central concerns with the bill that I thought had some chance of gaining a hearing. These were taken from among a variety of concerns that I tried unsuccessfully to raise at the

last meeting of the committee. Certainly there are other concerns among the UPAC membership and I have others as well. However, the two discussed with Ms. Green would bring the state law more into line with the federal law (a political reality we are simply going to have to adapt to) and gain a more balanced consideration of scientific interests. The proposals follow below.

Ms. Green was quite receptive, but the bill remains in limbo. A sponsor has to be found. Two legislative committees have already refused to consider the bill. The governor wants this bill considered during the 1992 legislature thus he may attempt to push it a bit. The State Division of Indian Affairs may also attempt to find a sponsor. Thus, until a committee is assigned, probably in December, UPAC members should digest the text, and be prepared to respond to a request to act should the need arise. When the process goes forward, and it looks like UPAC input might be useful, I will notify UPAC members as to where to direct your input.

As I have said for the past year and a half, you may contact me with your concerns. I do note the time is past for many concerns that surely continue to exist among archaeologists to be effectively addressed within the structure of the burial committee. If you have concerns that I cannot help with, you will have to direct them to the legislative arena.

---Steve Simms

ARCHAEOLOGY EDUCATION REPORT

Workshop for Archaeologists

A workshop for archaeologists who are interested in participating in Intrigue of the Past teacher inservice workshops has been scheduled. It will begin at 8:30 am at the Salt Lake District BLM Office (2370 South 2300 West, Salt Lake City, Utah) on Tuesday, December 3, 1991. If you are interested in attending, contact Jeanne Moe at (801) 539-4060 by November 25, 1991.

Secondary Curriculum

Work on a secondary curriculum has begun. We are interested in obtaining activities for teaching archaeology and research projects that might be applicable for secondary education. If you would like to share your ideas and/or research project materials, call Jeanne Moe at (801) 539-4060.

KANE COUNTY CHAINING

In March of 1991, the Soil Conservation Service (SCS) released a draft Environmental Assessment (EA) summarizing their strategy to reduce erosion and sedimentation, and improve water quality, wildlife habitat, and livestock forage in the Muddy Creek-Orderville Watershed in Kane County, Utah. The EA proposed implementation of the National Economic Development alternative which includes disking and reseedling 1390 acres, double chaining 6730 acres, burning 25 acres, chemical treatment on 620 acres, and reseedling 1070 acres.

UPAC sent a letter to the SCS voicing our concerns about the project and its effects on cultural resources. The letter identified several problem areas. For example, the EA stated that sites would be protected by avoidance. UPAC noted that islanding can have a detrimental effect on sites because the unchained islands serve as flags in alerting pothunters and vandals to their exact locations. UPAC also noted that trampling by livestock, which damages surface artifacts, becomes concentrated on sites as livestock seek shade shelter in the islands of unchained pinyon and juniper.

The EA asserted that a reconnaissance level survey would be conducted by SCS personnel prior to the chaining. UPAC requested an intensive inventory by fully trained professional archaeologists as defined by the Secretary of Interior Standards and Guidelines found in Appendix A of 36CFR61. UPAC also noted that the chemicals proposed for treating brush could hamper or eliminate future scientific analyses such as blood residue, radiocarbon, etc. In addition, the EA boldly stated that there are no areas of Native American religious concern in the project area but provided no supporting documentation. UPAC requested documentation that Native American concerns had been adequately addressed.

Based on the letter from UPAC and numerous others, the SCS is now preparing a full Environmental Impact Statement. A public hearing was held in

Kanab to identify important issues. To their credit, the SCS recognized that many interested members of the public, including UPAC, were unable to attend the scoping meeting in Kanab, and invited UPAC representatives to a one-on-one meeting to express their concerns. The meeting was held on November 15, 1991, and was attended by two UPAC officers, Kevin Jones, Vice President for Membership and Ethics, and Betsy Tipps, Vice President for Government Affairs. UPAC explained the cultural resource compliance process to the SCS representatives, and reiterated the concerns identified in the original letter, as well as several others.

The SCS was very cooperative and receptive to our concerns. Among other things, they have agreed to do an intensive pedestrian inventory using qualified archaeologists and contact all potentially interested Native American groups. They have promised to investigate the effects of the proposed chemicals, especially those that effect the rate of moisture absorption--such chemicals have the potential to speed up or slow down rind formation on obsidian artifacts. Instead of avoiding sites by leaving unchained islands, sites will now be avoided by leaving large unchained strips or peninsulas that extend across the project area in a mosaic pattern. Vegetation on sites that cannot be incorporated into an unchained strip or peninsula and must be left as islands will be hand cut so that sites are not flagged for pothunters

or damaged by livestock seeking shade.

It appears the SCS is making a genuine effort to protect cultural resources on this project. We will monitor their activities and provide UPAC input as needed. The next chaining project is proposed for the Montezuma Creek area in southeastern Utah. If anyone has concerns about either project, they should contact Betsy Tipps at (801) 467-5446.

---Betsy Tipps

UTAH SHPO EDITORIAL

Overwhelming response to last issue's editorial on the Utah SHPO indicates that I must have hit some nerves. I have never before been contacted by any UPAC member about any other item in the newsletter and to hear directly from more than half of the membership indicates professional archaeologists working in the state feel a strong need for redirection in the Utah SHPO.

The Utah SHPO, however, needs to hear these thoughts from you. In order to sway that office into the direction most professional archaeologists in the state think it needs to be directed, I ask each of the UPAC members who contacted me to put those thoughts on paper and direct them to the Utah SHPO. In this way, that office will be informed and might rethink some policies and directions to be more responsive to archaeological issues and problems.

---Diana Christensen

USU ANTHRO MAJOR

In April of 1991 the Utah State Board of Regents approved a proposal from Utah State University for an anthropology major offering the B.A. and B.S. degrees. USU joins the University of Utah and Brigham Young University as anthropology degree-granting institutions in Utah. The curriculum stresses a comprehensive background in anthropology as necessary to any specialized pursuit such as archaeology. There are five anthropologists in the department offering courses in the four fields of anthropology. Faculty in other departments add opportunities in linguistics, African ethnology, and the nationally recognized program in folklore. The strengths within anthropology lie in international development, human osteology, and archaeology with two faculty members offering opportunities in Great Basin archaeology. The new major officially began Fall quarter 1991 and about 30 majors have already signed up. For information about archaeology at USU contact Dr. Steve Simms, Anthropology, Utah State University, Logan UT 84322-0730.

FALL UPAC MEETING MINUTES

The fall 1991 meetings of the Utah Professional Archeological Council (UPAC), were held on October 25 and 26, 1991 at the Division of State History in Salt Lake City and were called to order at 1:15 pm by President Bruce Louthan. Thirty-three members were in attendance. Wilson Martin,

Associate Director of the Historical Society, welcomed UPAC members to the Division of State History. Wilson summarized State History's initiatives and accomplishments of the last few years and emphasized a dramatic shift toward commitment to archeology.

Old Business

John Senulis made a motion to approve the minutes of the Spring meeting as published in the UPAC newsletter. Steve Simms seconded the motion which passed unanimously.

Debbie Wilde presented the Treasurer's report for Lorna Billat. As of October 25, 1991 the UPAC treasury has a balance of \$4384.57. UPAC has 97 current members, 75 voting.

Kevin Jones, Vice-President for Membership and Ethics, reminded all members to pay their 1992 dues. Voting members dues are 25.00 and associate dues are 12.50. Renewals should be sent to Lorna Billat at 105 Allen-BYU, Provo, Utah 84602. New members can send applications and dues to Kevin Jones at the Division of State History, 300 Rio Grande, SLC, UT 84101.

The terms of four offices expire at the spring meeting and nominations for their replacements were conducted by Julie Howard. Nominations were taken for the offices of President, Vice-President for Membership and Ethics, Treasurer, and Editor. For the position of President Charmaine Thompson and Steve Simms were nominated. Stan McDonald, Don Southworth and Bill Fawcett were nominated for Vice-

President of Membership and Ethics. Evie Seelinger and Nancy Shearin were nominated for Treasurer. Nominees for Newsletter Editor are Signa Larralde and Susan Miller.

Bruce Louthan suggested there is too much burden on the President to organize the Business Meeting and an effective Symposium Program. Bruce suggested that the Vice-President's title be changed to Vice-President of Membership and Program with the added responsibility to insure a good current research symposium be organized for each meeting. He recommended the by-laws be rewritten to this effect and be voted on at the next business meeting. Bruce also recommended that an additional duty be added to the Vice-President of Membership and Ethics, consisting of organizing a nominating committee to present at the fall meeting at least two names of individuals willing to serve in each office while still allowing nominations from the floor.

Joel Janetski, Editor of the Utah Archaeology journal suggested that a review committee be established. This committee would help set policy and select articles for Utah Archeology, having good representation from both UPAC and USAS. Kevin Jones made a motion to amend the by-laws to create a standing editorial advisory board to review articles. John Senulis seconded the motion. It was unanimously approved by the membership.

Bruce led a discussion on the non-profit status of UPAC. No

sales tax-exempt number has been obtained yet. A short discussion was also spent on bulk mailings. It appears to be too costly to be effective since UPAC changes the newsletter mailing site so often. Julie Howard, Secretary, will xerox and mail the newsletters, to save cost and share the work load with the editor.

Action Items

Dave Madsen discussed draft State History and State Lands cultural regulations. Legislation was passed a year and a half ago and they are still working on the proposed regulations. Wilson Martin is currently rewriting the regulations. They are very complex because of all the view points which must be considered and if possible, incorporated including UPAC's and other State agencies'. Dave reviewed the major features of the regulations. One feature is that Division of State Lands proposes to issue survey permits on all State-owned lands. They will hire an archeologist whose primary responsibility will be to issue permits and contracts for survey. The Division of State History would be responsible to monitor the results and recommend mitigation. There is also a provision that archeological excavation permits (which both agencies currently propose to issue) will require a bond to insure that the project is completed. As much as 15% of the cost of the project might go to pay for the bond. This provision was implemented because of the Kern River project problems and will affect all future excavation on

State Land. State Lands will also charge for a right of entry permit to do anything on State Land or anything that would affect trust assets.

A volunteer committee was established with Betsy Tipps as Chairperson, and including Jerry Wylie, Jim Wilde, Duncan Metcalf, Bruce Louthan to formulate UPAC's formal response to the two sets of proposed regulations. Any interested persons should contact Betsy Tipps immediately.

Dr. Claudia Berry discussed the State Lands lawsuit status. There are currently two law suits and one administrative appeal on behalf of UPAC with SUWA and several school children. There are presently procedural questions such as where to file the law suits. In order to be effective, they have filed in the State Supreme Court and 3rd District Court and are currently waiting a response.

SUWA requested our input on what affect chemicals have on archaeological sites. Discussion followed.

Bruce discussed the new Utah legislative task force on State School Trust Lands Management. It is a committee formulated under pressure from school lobbying groups and against the Governor's wishes. This committee feels too many deals have been cut for State Lands and the schools have been short changed. They believe multiple use mandates may be a problem. This may complicate efforts to get cultural resources considered on all State Lands decisions.

Evie Seelinger discussed IMACS Revisions. Four states are going to make their own abbreviated forms. Some of the data will be dropped. They are soliciting people's comments. They will retain the common users' guide, but the forms will change. Debbie Wilde asked about cost impacts on people and institutions who have made an investment in software packages adapted to the current IMACS form. Evie said that the goal is for one final form that will need no more changes. Contact Evie Seelinger for more information at 533-4563.

Steve Simms gave an update on the Governor's Reburial Committee.

Betsy Tipps reported on a 7,000 to 10,000 acre chaining on the Parunaweap Plateau that the SCS was proposing on Private (46%), State (15%), and BLM (39%). In another proposal, the Washington County Conservancy District will construct 15 dams initially and a total of 92 dams. Cultural mitigation proposals appear inadequate. Contact Betsy Tipps for more information.

Betsy also encouraged all UPAC members to comment on the Utah Bureau of Land Management proposed guidelines for professionals. Lastly, Betsy discussed problems agency archeologists have in establishing consistent buffer zones for site avoidance. Support from the professional community for a standard minimum buffer is needed. Most projects avoid sites. But, secondary impacts occur over the long term and sites are being destroyed.

Bruce passed out a copy of the proposed agenda for the combined CCPA/UPAC Meeting in Grand Junction. The tentative date has been set for March 27 and 28, 1992 and this was approved by the members present. More information will be sent in upcoming newsletters. The meeting adjourned at 5:30 p.m..

More detailed versions of the meeting minutes may be obtained from the secretary.

---Julie Howard

NEW ARCHAEOLOGISTS

William B. Fawcett has been appointed Research Assistant Professor in Anthropology at Utah State University. His primary role will be to provide field and lab research opportunities for students in Great Basin archaeology by developing a program in cultural resource management. Dr. Fawcett received his M.A. degree from the University of Wyoming and his Ph.D. in 1987 from the University of Massachusetts at Amherst. He has worked in a variety of places in the United States with experience in historic as well as prehistoric archaeology. Many of his publications deal with the Plains, especially communal bison hunting. From 1987 to 1989 he developed a cultural resource management program for the University of Dar-es-Salaam in Tanzania.

Signa Larralde replaced Shelley Smith in the Salt Lake District BLM office in September. Signa

will act as cultural resources program leader for the district. She has extensive experience throughout the Intermountain area and the Southwest as well as experience in the Maya area. She received her Ph.D. from the University of New Mexico. One of her primary research interests is in lithic studies.

ARCHAEOLOGY JOBS

The Arizona Strip District BLM anticipates an opening for a resource area archaeologist around June or July of 1992. For information on this position, contact Diana Christensen at (801) 673-3545.

The Utah Division of State Lands and Forestry recently announced a new archaeologist position at the Grade 25 level (\$25,251 annual salary). To qualify for the position an individual must have a B.A. degree from an accredited college or university plus two years of graduate study in specialty area of the employing agency plus two year full-time paid related employment. This position closes on November 27, 1991. For information on the position, contact Karl Kappe at State Lands, 355 West North Temple, 3 Triad Center, Suite 400, Salt Lake City, Utah 84180-1204 (telephone 801-538-5508).

The Salt Lake District of the BLM will readvertise the Pony Express Resource Area archaeology position. It will be open outside the federal government at a GS 5-7-9 level.

UPAC MEMBERS

The following are current UPAC members. Members with asterisks behind their names have already paid for 1992, also. Remember to update your membership by sending the Treasurer, Lorna Billat, your 1992 dues of \$25.00 for voting members and \$12.50 for associate members.

J. Richard Ambler	Bruce Louthan
Steve Baker	Carol Loveland **
C. Melvin Aikens	Margaret Lyneis
J. S. Alexandrowicz	Rick Malcomson
Jeffrey Altschul	Deanne G. Matheny
Adrienne Anderson	Ray T. Matheny
K. Renee Barlow	Stan McDonald
Claudia F. Berry	Douglas McFadden
Lorna Billat	Duncan Metcalf
Scott Billat	Blaine Miller
Kevin Black	Pamela Miller
Peter Bungart	Susan Miller
Kathleen Callister	Jeanne M. Moe **
Susan Chandler	Deborah Newman
Paul T. Chouinard	Asa Nielson **
Diana Christensen	Brian O'Neil
Nancy Coulam **	Lloyd Pierson
Patricia Dean	Peter J. Pilles, Jr.
Jim Dykman	Michael Piontkowski
Robert Euler	Michael Polk
Helen Fairley	Todd Prince
Bill Fawcett	Office of Public Archaeology
Don Forsyth	Alan D. Reed
Don Fowler	Land Richens
Phil R. Geib	A. E. Rogge
Carole Graham	Dyan Rowe
Rand Greubel	Alan Schroedl
George Gumerman	Angela Schwab
Craig Harmon	Tom Scott
Michelle Hegmon	Evelyn Seelinger
Mark Henderson	John and Jeanne Senulis
Richard Holmer **	Nancy Shearin **
Jonathon Horn	Steven R. Simms
Julie Howard	Shelley Smith
Leigh Ann Hunt	Don Southworth
Marian Jacklin	Richard Talbot
Joel C. Janetski **	Charmaine Thompson
Jesse D. Jennings **	Georgia Thompson
Kevin Jones **	Richard Thompson
Joel Klein	Betsy Tipps
Marc Kodak	James D. Wilde
Signa Larralde **	Kenneth L. Wintch
Robert Leonard	Karen Wise
Alexander J. Lindsay	Gregory Woodall **
La Mar Lindsay	Jerry Wylie
William Lipe	David W. Zeanah **

June 20, 1991

Native American Grave Protection
and Repatriation Act of Utah

SEC. 1. DEFINITIONS.

For purposes of this Act, the term -

(1) "burial site" means any natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which as a part of the death rite or ceremony of a culture, individual human remains are deposited.

(2) "cultural affiliation" means that there is a relationship of shared group identity which can be reasonably traced historically or prehistorically between a present day Indian tribe and an identifiable earlier group.

(3) "remains" means all or part of a physical individual and objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later.

(4) "State agency" means any department, agency, or instrumentality of the State of Utah.

(5) "State lands" means any lands located outside exterior boundaries of any Indian Reservations and which are owned by the state or subdivisions, including school trust lands, and sovereign lands.

(6) "Indian tribe" means any tribe, band, nation, or other organized group or community of Indians, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(7) "Native American" means of, or relating to, a tribe, people, or culture that is indigenous to the United States.

(8) "Appointee" means the Governor's designee relating to these matters, or the Director of the Division of Indian Affairs if not designated.

(9) "Lineal descendants" (Alternative 1) [Majority Position as present on June 7, 1991] means genealogical descendant established by oral or written record [agreed to by Native Americans and both chairmen.] (Alternative 2) means genetic descendant [minority position].

(10) "Appropriate Indian tribe" means the tribe as identified in priority order in Section 2, OWNERSHIP.

SEC. 2. OWNERSHIP.

(a) NATIVE AMERICAN REMAINS.--The ownership or control of Native American remains which are excavated or discovered on State lands after the date of enactment of this Act shall be (with priority given in the order listed)--

(1) in the lineal descendants of the Native American; or

(2) in any case in which such lineal descendants cannot be ascertained.

(A) in the Indian tribe which has the closest cultural affiliation with such remains, and upon notice, states a claim for such remains; or

(B) if cultural affiliation of the remains cannot be reasonably ascertained and the land is recognized either by a final judgment of the Indian Claims Commission or through other

evidence as the exclusive or joint aboriginal land of some Indian tribe--

(i) in the Indian tribe that is recognized as aboriginally occupying the area in which the remains were discovered, if upon notice, such tribe states a claim for such remains, or

(ii) if it can be shown by a preponderance of the evidence that a different tribe has a stronger genetic or cultural relationship with the remains than the tribe specified in paragraph i in the Indian tribe that has the strongest demonstrated relationship, if upon notice, such tribe states a claim for such remains.

(b) UNCLAIMED NATIVE AMERICAN REMAINS--Native American remains not claimed under subsection (a) shall be disposed of in accordance with rules promulgated by the Appointee in consultation with Native American groups, representatives of museums, the scientific community, and the review committee established under Section 4.

(c) INTENTIONAL EXCAVATION AND REMOVAL OF NATIVE AMERICAN REMAINS.--The intentional removal or excavation of Native American remains from State lands shall be permitted only if--

(1) such remains are excavated or removed pursuant to a permit issued under UCA 63-18-25 & 25.1;

(2) such remains are excavated or removed after consultation, and written consent of the owner;

(3) the ownership and right of control of the disposition of such remains shall be as provided in subsections (a) and (b); and

(d) INADVERTENT DISCOVERY OF NATIVE AMERICAN REMAINS.--

(1) Any person who knows, or has reason to know, that such person has discovered Native American remains on State lands after the date of enactment of this Act shall notify, in writing, the appropriate agency or head of any other agency or instrumentality of the State, having primary management authority and the owner, if known or readily ascertainable. If the discovery occurred in connection with an activity, including (but not limited to) construction, mining, logging, and agriculture, the person shall cease the activity in the area of the discovery, make a reasonable effort to protect the remains discovered before resuming such activity and provide notice.

Following the notification under this subsection, and upon certification by the head of any agency or instrumentality of the State which has jurisdiction, or the owner that notification has been received, the activity may resume after compliance with UCA 76-9-704. The state agency shall notify the Appointee.

(e) SCIENTIFIC STUDY.-- Scientific study of remains will only be carried out with approval of the owner of remains as established in Section 2. Where relationship is unknown, prior study will be restricted to those sufficient to identify ownership. Such study shall be approved by the review committee referenced in Section 4 or by rule. Such remains shall be retained no longer than 90 days after the date of establishing ownership.

(f) COMPETING CLAIMS.--Where there are multiple requests for repatriation of any remains and, after complying with the requirements of this Act, the State agency cannot clearly determine which requesting party is the most appropriate claimant, the agency may retain such remains until the requesting parties agree upon its disposition or the dispute is otherwise

resolved pursuant to the provisions of this Act or by a court of competent jurisdiction.

(g) RELINQUISHMENT--Nothing in this section shall prevent either (1) the lineal descendants or tribe as determined in accordance with Section 2(a), or (2) any person or entity which has acquired ownership or control of unclaimed remains in accordance with Section 2(b) from expressly relinquishing control in writing to any party over any Native American remains.

SEC. 3. ILLEGAL TRAFFICKING.

(a) Whoever knowingly sells, purchases, uses for profit, or transports for sale or profit, the remains of a Native American without the right of possession to those remains as provided in the Native American Graves Protection and Repatriation Act of Utah shall be guilty of a Class A misdemeanor. In the case of a second or subsequent violation, the person is guilty of a third degree felony.

(b) Whoever knowingly sells, purchases, exchanges, receives or uses for profit, or transports for sale or profit any Native American remains obtained in violation of the Native American Grave Protection and Repatriation Act of Utah shall be guilty of a Class A misdemeanor. In the case of a second or subsequent violation, the person is guilty of a third degree felony. Any penalties imposed and collected will be deposited in a non-lapsing account under the administrative supervision of the Division of Indian Affairs for disposition by the Division with the approval of the review committee established under Section 4.

SEC. 4. REVIEW COMMITTEE - Shall be established under the authority of the Division of Indian Affairs or the Appointee.

126

127

128

129

130

131

132

133

134

135

136

137

138

139

140

141

142

143

144

145

146

147

148

149

150

151

(a) ESTABLISHMENT.--Within 120 days after the date of enactment of this Act, the Appointee shall establish a committee to monitor and review the implementation of the identification process and repatriation activities required under Section 1.

(b) MEMBERSHIP.--(1) The Committee established under subsection (a) shall be composed of 7 members,

(A) 4 of whom shall be appointed by the Appointee from nominations submitted by Indian tribes;

(B) 3 of whom shall be appointed by the Appointee from nominations submitted by museum and/or scientific organizations; and

(2) In the event vacancies shall occur, such vacancies shall be filled by the Appointee in the same manner as the original appointment within 90 days of the occurrence of such vacancy.

(3) Members of the committee established under subsection (a) shall serve without pay, but shall be reimbursed at a rate equal to _____ for each day (including travel time) for which the member is actually engaged in committee business. Each member shall receive travel expenses, including per diem in lieu of subsistence.

(c) RESPONSIBILITIES.--The committee established under subsection (a) shall be responsible for--

(1) designating one of the members of the committee as chairman;

(2) monitoring the identification process conducted under Section 1 to ensure a fair, objective consideration and assessment of all available relevant information and evidence;

(3) reviewing upon the request of any affected party any finding relating to--

(2) provide reasonable administrative and staff support necessary for the deliberations of the committee.
(g) ANNUAL REPORT.--The committee established under subsection (a) shall submit an annual report to the Legislature on the progress made, and any barriers encountered, in implementing this section during the previous year.

SEC. 5. GRANTS.

(a) INDIAN TRIBES.--The Appointee is authorized to make grants to Indian tribes for the purpose of assisting such tribes in the repatriation of Native American remains.

SEC. 6. SAVINGS PROVISIONS.

Nothing in this Act shall be construed to--

(1) limit the authority of any state agency to--

(A) return or repatriate Native American remains to Indian tribes, or individuals, and

(B) enter into any other agreement with the consent of the

lineal descendant or culturally affiliated tribe as

determined in accordance with Section 2(a) as to the

disposition or control over remains covered by this Act;

(2) delay actions on repatriation requests that are pending on the date of enactment of this Act;

(3) deny or otherwise affect access to any court;

(4) limit any procedural or substantive rights which may otherwise be secured to individuals or Indian tribes; or

(5) limit the application of any State or Federal law pertaining to theft or stolen property.

SEC. 7. SPECIAL RELATIONSHIP BETWEEN STATE GOVERNMENT AND INDIAN TRIBES.

This Act reflects the unique relationship between the State government and Indian tribes and should not be construed to establish a precedent with respect to any other individual, organization, or foreign government.

SEC. 8. RULES.

The Appointee shall promulgate rules to carry out this Act within 12 months of enactment.

SEC. 9. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated such sums as may be necessary to carry out this Act.

(A) the identity or cultural affiliation of remains, or

(B) the return of such remains;

(4) facilitating the resolution of any disputes among Indian tribes or lineal descendants and State agencies relating to the return of such remains including convening the parties to the dispute if deemed desirable;

(5) consulting with Indian tribes on matters within the scope of the work of the committee affecting such tribes or organizations;

(6) consulting with the Appointee in the development of rules to carry out this Act;

(7) performing such other related functions as the Appointee may assign to the committee; and

(8) making recommendations, if appropriate, regarding future care of remains which are to be repatriated.

(d) Any records and findings made by the review committee pursuant to the Act relating to the identity of or cultural affiliation of any remains and the return of such remains may be admissible in any action brought under this Act.

(e) ACCESS.--The Appointee shall ensure that the committee established under subsection (a) and the members of the committee have reasonable access to Native American remains under review and to associated scientific and historical documents.

(f) DUTIES OF THE APPOINTEE.--The Appointee shall--

(1) establish such rules for the committee as may be necessary,

and

