DEPARTMENT OF THE ARMY
U.S. Army Corps of Engineers
WASHINGTON, D.C. 20314-1000

REPLY TO
ATTENTION OF:

1 MAY 2001

CECW-PG

MEMORANDUM FOR COMMANDERS, MAJOR SUBORDINATE COMMANDS AND DISTRICT COMMANDS

SUBJECT: Initial Implementation Guidance for Section 208 of the Water Resources Development Act of 2000 — Reburial and Conveyance Authority for Native American Remains

1. Purpose. This memorandum provides initial implementation guidance for Section 208 of the Water Resources Development Act of 2000 (WRDA 2000), Public Law 106-541.

2. Background. Section 208 of WRDA 2000 authorizes the Secretary of the Army to recover and rebury "Native American remains" that were discovered on Civil Works project land and have been rightfully claimed by a lineal descendant or Indian tribe. The Secretary is further authorized to set-aside Civil Works land to rebury these "Native American remains" and convey these set aside lands to an Indian tribe for use as a cemetery. The statutory language for this section is contained in enclosure 1.

3. Definitions. For the purposes of implementing Section 208 of WRDA 2000, the term:

a. "civil works projects of the Department of the Army" means U.S. Army Corps of Engineers administered and/or managed water resources projects;

b. "project land" means land held in fee title by the Corps at "civil works projects of the Department of the Army;"

c. "Native American remains" means Native American human remains and funerary objects as defined in the Native American Graves Protection and Repatriation Act (NAGPRA), Public Law 101-601, 25 U.S.C. 3001; and

d. "rightfully claimed" means Native American remains in the physical possession of, in the right of possession of, in the control of, or in the ownership of, an individual or Indian tribe as a result of the NAGPRA compliance process or by other processes.

4. Initial Implementing Guidance. Corps Commanders will:

a. immediately begin the process of identifying suitable lands at civil works projects for the reinterment of Native American remains originally or inadvertently discovered within project land and have been rightfully claimed by a lineal descendant or Indian tribe;

b. select appropriate areas for reburial in close consultation with affected Indian tribes; and

c. with consultation and consent of lineal descendants and/or Indian tribes, rebury Native American remains within areas set aside for reburial.

5. If requested by an Indian tribe, an area identified for use as a reburial area or a cemetery can be conveyed by the Secretary of the Army to the Indian tribe, if appropriate. The Bureau of Indian Affairs has been contacted and will work with CERE on the appropriate process and documentation for these transfers. The Corps will retain any rights-of-way, easements, or other interest required to carry out project purposes.

6. Recovery, preparation and reburial costs will be performed at Federal expense. Costs to recover, prepare, and rebury a NAGPRA inadvertent discovery can be borne by the Civil Works Project activity where the inadvertent discovery occurred. Costs to prepare and rebury all other Native American remains subject to the provisions of section 208 can be obtained from district allocations made available from the Civil Works Project activity. Similarly, any real property transfer costs can be obtained from district allocations made available from the Civil Works Project activity.

7. I recognize the complexity of this matter and understand additional guidance may be needed to comply with section 208. Consequently, CECW-P is coordinating with CECW-O, CERE, and CECC in developing more detailed implementation guidance to address the treatment, transfer and real property requirements of this provision. Questions concerning specific cases that defy resolution at the local level should be forwarded to this office. I will assemble specialist teams from CECW, CERE and CECC, at a minimum, to analyze these cases and prepare recommendations on problem resolution for the Office of the Assistant Secretary of the Army for Civil Works (OASA/CW). The OASA/CW will render decisions and final disposition for cases that defy resolution at the local level.

FOR THE COMMANDER:

Encl

HANS A. VAN WINKLE
for Major General, USA
Director of Civil Works

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(see Pages 3 & 4)

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