

## **Questions and Answers Related to Individual Scattering of Cremated Remains**

### **Is consultation with the U.S. Fish and Wildlife Service on the potential effects to threatened and endangered species required?**

No, unless the individual, non-commercial scattering of cremated remains exceeds the casual use criteria and has the potential to affect listed species. The definition of casual use is “*any short term non-commercial activity which does not cause appreciable damage or disturbance to the public lands, their resources or improvements, and which is not prohibited by closure of the lands to such activities.*” “Appreciable damage or disturbance... to... resources” would include potential effects to listed species. Because the Instruction Memorandum (IM) provides for evaluation of inquiries to scatter cremated remains on a case-by-case basis, local units have the flexibility to guide inquiries to avoid potential effects to listed species. Further, the IM provides managers with the direction to undergo appropriate consultation when potential effects to listed species are unavoidable.

### **What if we have specific ideas of areas where scattering is not appropriate, such as in streams, lakes, and developed recreation sites?**

Information may be provided to the public about places that are and are not considered appropriate for scattering cremated remains. This is similar to providing *Leave No Trace* information to people planning to hike or ride on public land. Guidelines for individual (non-commercial) scattering of cremated remains may include items such as:

- Scattering cremated ashes is a small, private activity, held away from high visitor-use areas. No publicity may be given to this activity.
- Cremains must have been processed by pulverization after cremation.
- Please scatter at least 100 yards from any trail, road, developed facility, or body of water.
- Spread the ashes over an area in a manner that makes them indistinguishable to the public.
- No markers or memorials may be left on site.
- Use of aircraft must be in accordance with Federal Aviation Administration regulations, and not over a developed area, facility or body of water.
- Cremation must be accomplished in accordance with applicable state laws and all Bureau of Land Management (BLM) regulations.

There are additional examples of guidelines related to individual scattering of cremated remains on many National Park Service websites including those for Yosemite, Sequoia and Kings Canyon, Grand Canyon, Yellowstone, and the Great Smoky Mountains National Parks.

### **How will cultural resources be protected from the scattering activities?**

Due to the dispersed and ephemeral nature of the activity, scattering cremated remains as a casual use activity does not represent an effect on archaeological resources (16 U.S.C. 470bb-1), historic properties (16 U.S.C. 470w-5) or sacred sites (E.O. 13007) (Cultural Resources; see

BLM Manual 8100, Glossary). As cremated remains are scattered, the small quantity of ash disperses and does not accumulate as an appreciable deposit on the public lands.

However, if the individual, non-commercial scattering of cremated remains exceeds the casual use criteria, an office may develop guidelines for users about appropriate scattering procedures and locations. The office should not explicitly identify areas that contain cultural resources as areas where individuals may not scatter cremated remains, as revealing the locations may threaten and/or cause appreciable damage to these sensitive resources. Rather, the office should identify locations that are appropriate for individual, non-commercial scattering of cremated remains.

**Is consultation with Indian tribes necessary to address concerns about scattering cremated remains?**

No. This policy on scattering cremated remains as a casual use activity does not represent a substantial direct affect on Indian tribes. Thus, tribal consultation is not necessary. However, if the individual, non-commercial scattering of cremated remains exceeds the casual use criteria and has the potential to effect cultural resources, then tribal consultation would be necessary.

**Can we develop an application and review process similar to that used by the National Park Service at Grand Canyon, in order to allow control over where cremains are scattered?**

If an office determines that the extent and impacts of this use exceed casual use criteria, then an application and review process can be developed. The application and authorization process for this use would be administered by the Lands and Realty Division.

**Does BLM have the ability to provide written permission for individual scattering of cremated remains, in order to conform to the requirement for landowner permission in some state laws?**

Yes. Written permission can be provided to individuals by a variety of means. Information about agency cremation policy may be developed as a handout and/or posted on BLM websites. For an example of a simple information sheet that functions as a national park's authorization to individuals, refer to the Sequoia National Park website at:

<http://www.nps.gov/seki/planyourvisit/upload/Ash-Scattering-Handout.pdf>

Written permission may also be provided by developing a generic authorization letter for people who inquire, without implementing a formal application process. For an example of a generic "dear interested party" authorization letter provided by a national park for individual use, refer to Yellowstone National Park's website at:

[http://www.nps.gov/yell/planyourvisit/upload/ashes\\_letter.pdf](http://www.nps.gov/yell/planyourvisit/upload/ashes_letter.pdf)

**What privacy act, Freedom of Information Act (FOIA) and records requirements would apply to this use?**

For casual use there will be no records or personal information retained by the agency. If an application process is developed by an office, applicable privacy act regulations, FOIA procedures, and records requirements will apply.

**Does this policy apply to commercial scattering of cremated remains from aircraft, boat or other modes of transportation?**

Yes. Commercial permits for aerial scattering will not be issued. Because aerial scattering results in a dispersal of a product onto public land, it is a commercial use that BLM has the authority to regulate. All Federal regulations otherwise applicable to methods of transportation on public lands would continue to apply to scattering of cremated remains.

**Does the BLM have responsibility to determine if someone has legal custody of cremated remains?**

No. State statutes determine who has the legal authority to make decisions about a deceased person, and state statutes determine who gets custody of the cremated remains of a deceased human. Cremated remains may be transported without a permit.

**Are there health and safety issues related to cremated remains?**

No. The incineration process involves an extended period of heat up to 2000 degrees Fahrenheit.

**Are there recognizable pieces of bone or metal implants in the cremated remains?**

No. After cremation, pieces of metal are removed and the bone fragments are pulverized in to a fine powder or ash prior to removal from the crematorium.

**What action should be taken if personal memorials are left on public land?**

Memorials or other commemorative items left on public land may be a violation of 43 CFR 2990.1-2 Unauthorized Use, or 43 CFR 8365.1-2 Unattended Personal Property. Persons responsible for placement of items should be given the opportunity to voluntarily remove them prior to any action by BLM to resolve through trespass or abandoned property procedures.