



U.S. Department of Justice

Environment and Natural Resources Division

Natural Resources Section
P.O. Box 663
Washington, DC 20044-0663

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VIA FACSIMILE AND US MAIL

June 12, 2006

Alan L. Schneider
1437 S.W. Columbia Street, Suite 200
Portland, OR 97201-2535

Rc: *Bonnichsen v. United States*

Dear Mr. Schneider:

Following conversations within the Ninth Circuit mediation in *Bonnichsen v. United States*, members of the Wanapum Band, the Confederated Tribes of the Colville Reservation, the Nez Perce Tribe, the Confederated Tribes of the Umatilla Indian Reservation, and the Confederated Tribes & Bands of the Yakama Nation ("Tribes") asked the U.S. Army Corps of Engineers, Northwestern Division ("Corps") for access to the Kennewick collection for a ceremony during the next biannual conservation assessment. The next assessment is scheduled June 21-June 23, 2006.

The Corps would like forward the Tribes' request for such a ceremony to the District Court of Oregon for approval as soon as possible, provided your clients do not have any objection. The Corps will agree with the ceremony only if a number of terms and conditions, which are consistent with the conditions discussed during the Ninth Circuit mediation and will serve to aid in the preservation of the remains, are required. Any access granted would be subject to these terms and conditions, as detailed in the attached memoranda.

Based on some of the discussion from the Ninth Circuit mediation and other conversations, it is our understanding that your clients may not be opposed to such access. Would you be willing to enter into a joint, stipulated motion with the United States or, in the alternative, provide us a letter indicating that you have no objection to the proposal? As indicated above, the Corps does not support a ceremony unless your clients have no objection that the District Court grants approval of the request. We are under a fairly tight schedule, so please let us know your thoughts as soon as possible. Please don't hesitate to give me or Jennifer Richman a call if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Devon L. McCune".

Devon Lehman McCune

Enclosure

Cc: Ellen Durkee
Tim Simmons
Jennifer Richman
Chris Pulliam



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, NORTHWESTERN DIVISION
PO BOX 2870
PORTLAND OR 97208-2870

JUN - 5 2006

Office of Counsel

Mr. Tim Simmons
Assistant U.S. Attorney
1000 SW Third Ave., Suite 600
Portland, OR 97204

Ms. Devon Lehman McCune
U.S. Department of Justice
PO Box 663
Ben Franklin Station
Washington, DC 20044-0663

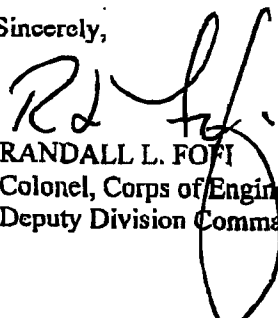
Dear Mr. Simmons and Ms. McCune:

On May 18, 2006, Rex Buck of the Wanapum Band requested access to the Kennewick collection to perform a religious ceremony at the Burke Museum on behalf of the Wanapum Band, the Confederated Tribes of the Colville Reservation, the Nez Perce Tribe, the Confederated Tribes of the Umatilla Indian Reservation, and the Confederated Tribes & Bands of the Yakama Nation ("Tribes"). It is my understanding that Mr. Buck indicated that the ceremony would not involve any handling of the remains and would not involve the burning of any items. Ideally, the ceremony would occur in the early morning hours and may involve up to twenty individuals, although Mr. Buck indicated there would be some flexibility with regard to how many individuals would be present in the room at any one time.

I believe that this request is not contrary to the Corps' responsibility to "protect and preserve the condition. . . of the collection" or to allow access under the curation regulations. See 36 C.F.R. part 79. Provided that counsel for the plaintiffs in *Bonnichsen v. United States* has no objections to granting access to the Tribes, and the District of Oregon approves such access, I recommend that access be granted to members of the aforementioned Tribes. Nothing in this support, however, indicates that approval for ceremonial access will necessarily be approved in the future. If such approval is received by the Court, the Tribes must abide by the terms and conditions outlined in the enclosed document. The ceremony will take place the morning of June 21, 2006. No more than twenty tribal members may participate in the ceremony and the Corps representatives may monitor the number in the room at any one time if deemed necessary for the protection of the remains.

Questions regarding access to the Kennewick collection for a tribal ceremony should be directed to Ms. Jennifer Richman at (503) 808-3763 or Ms. Direlle Calica at (503) 808-3715.

Sincerely,


RANDALL L. FOFI
Colonel, Corps of Engineers
Deputy Division Commander

Enclosure



DEPARTMENT OF THE ARMY
ST. LOUIS DISTRICT, CORPS OF ENGINEERS
1222 SPRUCE STREET
ST. LOUIS, MISSOURI 63103-2833

REPLY TO
ATTENTION OF:

CEMVS-EC-Z

02 JUN 2006

MEMORANDUM FOR Deputy Commander, Northwestern Division (CECC-NWD/Richman),
P. O. Box 2870, Portland, OR 97208-2870

SUBJECT: Response to Tribal Request for Ceremonial Access to Kennewick Remains, *Bonnichsen v. United States*

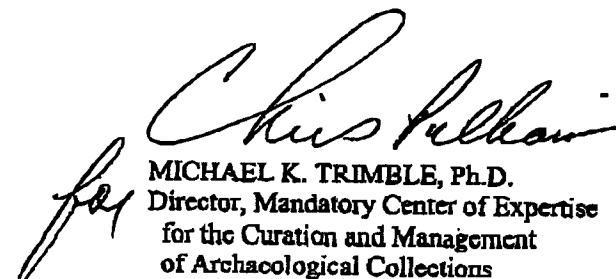
1. My staff, the government's contracted conservators, and the Burke Museum have considered the Tribes' request to access the Kennewick collection for ceremonial purposes during the next biannual conservation assessment. We believe the request is consistent with the curation regulations, provided the following conditions are strictly followed during the ceremony in order to ensure the protection and preservation of the collection.

- The curation boxes, housing the remains, will be closed throughout the ceremony.
- Neither the boxes nor the enclosed remains will be handled by any participant.
- Nothing will be placed in the boxes with the remains or on top of the boxes containing the remains.
- No materials may be used to brush or touch the curation boxes unless approved by a Corps representative.
- Nothing will be burned inside the Burke Museum.
- No photographs will be taken of the ceremony or of the remains.
- A conservator, a Burke Museum representative, and a Corps curator will be present throughout the ceremony.
- The number of individuals in the room during the ceremony may be limited at the discretion of the Corps representative.
- The ceremony may be halted at any time if any Corps representatives, including conservators or museum personnel believe the collection may be at risk.

2. We understand that the Tribes would like access for the ceremony in the morning. The earliest time available for the ceremony is 7:30 a.m. on Wednesday, June 21, 2006. If this time is not convenient or acceptable to the Tribes, coordination should be made through the Northwestern Division Tribal Liaison, Ms. Dorelle Calica at (503) 808-3715.

3. If you have any questions about these recommendations, please contact Mr. Chris Pulliam at (314) 331-8481.

FOR THE COMMANDER:


MICHAEL K. TRIMBLE, Ph.D.
Director, Mandatory Center of Expertise
for the Curation and Management
of Archaeological Collections