

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

ROBSON BONNICHSEN, C. LORING)
BRACE, GEORGE W. GILL, C. VANCE)
HAYNES, JR., RICHARD L. JANTZ,)
DOUGLAS W. OWSLEY, DENNIS J.)
STANFORD, and D. GENTRY STEELE,)

Plaintiffs,)

v.)

UNITED STATES OF AMERICA,)
DEPARTMENT OF THE ARMY,)
U.S. ARMY CORPS OF ENGINEERS,)
U.S. DEPARTMENT OF THE INTERIOR,)
NATIONAL PARK SERVICE, FRANCIS P.)
McMANAMON, ERNEST J. HARRELL,)
WILLIAM E. BULEN, JR., DONALD R.)
CURTIS, LEE TURNER, LOUIS CALDERA,)
BRUCE BABBITT, DONALD J. BARRY,)
CARL A. STROCK, and JOE N. BALLARD,)

Defendants.)

ORDER

Civil No. 96-1481-JE

JELDERKS, Magistrate Judge:

The plaintiff scientists move to dismiss the intervenor tribal claimants and to clarify the plaintiffs' service obligations. For the reasons set out below, the motion to dismiss is moot. I grant the motion to clarify.

DISCUSSION

On September 26, 2002, the Nez Perce Tribe, Confederated Tribes of the Umatilla Indian Reservation, Confederated Tribes and Bands of the Yakama Nation, and Confederated Tribes of the Colville Reservation (tribal claimants) moved to intervene in this action for the specific purpose "of appealing interpretations of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. § 3001 et seq. in this Court's Order and Opinion of August 30, 2002." Joint Tribal Claimants' Motion for Intervention for Purposes of Appeal at 2. The tribal claimants' memorandum in support of the motion reiterated the intention to appeal the interpretations of NAGPRA set out in this court's Opinion and Order of August 30, 2002. Joint Tribal Claimants' Memorandum in Support of Motion for Intervention at 2.

Based upon this understanding of the purposes of the proposed intervention, this court granted the tribal claimants' motion to intervene on October 21, 2002.

In a motion filed on July 23, 2004, plaintiffs seek an Order formally dismissing the intervenors, and clarifying that, following the decision affirming this court in Bonnichsen v. United States, 367 F.3d 864 (9th Cir. 2004), they are obligated to serve any further materials filed in this matter only on the United States.

On appeal, the Ninth Circuit noted that the tribal claimants participated in the appeal "as intevenors," id. at 868 n. 2, and found that the Secretary could not "conclude reasonably that

Kennewick Man shares special and significant genetic or cultural features with presently existing indigenous tribes, people, or cultures." Id. at 882. The court explicitly held that "Kennewick Man's remains are not Native American human remains within the meaning of NAGPRA and that NAGPRA does not apply to them." Id.

The tribal claimants were allowed to intervene for the purposes of the appeal. The Ninth Circuit's disposition of the appeal precludes the tribal claimants' further participation in this litigation, and renders the motion to dismiss the intervenor tribal claimants moot. Following the Ninth Circuit's conclusion that NAGPRA does not apply, there is no basis for concluding that the tribal claimants have a legally cognizable interest which entitles them to participate as parties in any further proceedings in this court.

The United States is the only remaining defendant. Therefore, the second part of plaintiffs' motion, seeking clarification that plaintiffs are now required to serve papers filed with the court only on that defendant, is well taken.

CONCLUSION

Plaintiff's motion to dismiss intervenors (# 589-1) is DENIED as moot, and plaintiffs' motion to clarify (# 589-2) is GRANTED.

DATED this 17th day of August, 2004.



John Felderks
U.S. Magistrate Judge