

not subject to the exclusive use of any particular tribe, it was not identified as land exclusively held by the Umatilla, Cayuse, or Walla Walla Indian bands on the "Indian Land Areas Judicially Established 1978 Map" (1978 Map) (Ind. Cl. Comm. Final Report, H. Doc. 96-383, pocket part (1980), Map Area No. 95, 96, and 97). This map portrays the results of cases brought before the ICC in which an American Indian tribe proved its original tribal occupancy of a tract of land within the United States.

In the 1998 Federal Defendant's Fourth Quarterly Status Report and supporting documentation filed in the pending litigation involving the Kennewick remains (Bonnichsen et al. v. United States), we reported that the discovery site of the Kennewick remains did not fall within an area of Federal land that had been recognized by a final judgment of the ICC as the aboriginal land of any Indian tribe. We relied on the 1978 Map in making this Report.

We have since further reviewed the entire ICC record addressing the issue of aboriginal land status at the Kennewick human remains' discovery site (Attachment A), which was the subject of ICC findings of fact and opinions prior to a compromise settlement. We have also considered how similar ICC findings of fact and opinions have been considered in implementing Section 3 across the country (Attachment B). Based on this review, I believe our earlier report to the Court somewhat oversimplified the situation, as explained below.

NAGPRA's purpose, according to the House Committee Report on the Act, is "to protect Native American burial sites and the removal of human remains, funerary objects, sacred objects, and objects of cultural patrimony on Federal, Indian, and Native Hawaiian lands." H.R. Rep. 101-877 (1990) p. 8. NAGPRA's section 12 specifically recognizes the unique legal relationship between the United States and Indian tribes. Therefore, the statute ought to be construed as Indian legislation, and any ambiguities in it resolved liberally in favor of Indian interests. See, e.g., County of Yakima v. Yakama Indian Nation, 520 U.S. 251, 269 (1992); Yankton Sioux Tribe v. U.S. Army Corps of Engineers, 83 F. Supp. 2d 1047, 1056 (D.S.D. 2000).

NAGPRA's text refers to a "final judgment" of the ICC that "recognize[s]" the land where human remains or other cultural items are recovered "as the aboriginal land of some Indian tribe." In the case of the Kennewick remains, there is no such final judgment. On the other hand, there are ICC findings of fact to the effect that several claimant Indian tribes aboriginally used and occupied the area where the Kennewick remains were found. Although the settlement of the claim did not affirm these findings, it poses no barrier to their use in determining the aboriginal land of some Indian tribe(s) under NAGPRA, 25 U.S.C. § 3002(a)(2)(C).

The preamble to DOI's regulations implementing NAGPRA seems to acknowledge that final judgments of the ICC may not fully reflect a specific delineation of aboriginal land