

statute [25 U.S.C. Sec. 3002(d)] and the implementing regulations written by the Department of the Interior (43 CFR Sec. 10.4 through Sec. 10.6). The procedure for determining who should have permanent custody of Native American remains is addressed by the provisions of 43 CFR Sec. 10.6. That regulation focuses on restoring possession to individuals or tribes that can demonstrate having the closest relationship. The regulation also establishes a hierarchy of relationships including lineal descendants, cultural affiliates and those who have occupied ancestral homelands. In this case there had been no claims by individuals and the regional tribes, led by the Confederated Tribes of the Umatilla Indian Reservation, formed a coalition and asserted a unified claim.

The coalition claim was supported by the District based on the provision at 43 CFR Sec. 10.6 (a)(2)(iii)(A), which gives custody of remains found on Federal land recognized by a final judgment of the Indian Claims Commission or the United States Court of Claims as the aboriginal land of the Indian tribe claiming the remains. On or about September 9, 1996, the Corps received information from the tribal coalition that the Columbia Park location of the discovery of the remains was subject to an Indian Claims Commission (ICC) final judgment in favor of the Umatilla.

On September 17, 1996, the Walla Walla District published the first of the two required notices of intent to transfer the remains to the regional tribal coalition in the Tri-City Herald. The notices described the nature of the remains, the intent to transfer them to the tribes, the basis for the decision, and the opportunity for others to file a claim based on a superior right to custody. On or about that date, the district also shared information with the Department of the Interior regarding the tribal assertion of an ICC final judgement. For the second required notice published on September 24, 1996, and in consultation with the Department of the Interior, information was included on the reported ICC final judgement. Before the required 30 day notice period could run, and within days of the filing of a civil complaint, the Corps learned there was no final judgment of the Indian Claims Commission or the United States Court of Claims covering the location of the discovery of the remains. The notices were subsequently withdrawn.

Since the time civil complaints were filed in U.S. District Court the procedures and actions taken by the Corps are fully documented through submissions to the Court and are available as public record. (See also Appendix B)