

sent 7/30/97 1144  
16/82

ALAN L. SCHNEIDER  
ATTORNEY AT LAW

1437 S. W. Columbia St., Suite 200  
PORTLAND, OREGON 97201  
Telephone (503) 274-8444  
(Facsimile) (503) 274-8445

1445 Willamette, Suite 9  
P. O. BOX 10552  
EUGENE, OREGON 97440  
(541) 484-5483

July 29, 1997

Mr. Timothy Simmons  
Assistant U.S. Attorney  
888 SW 5th Avenue, Ste. 1000  
Portland, OR 97402  
VIA FAX: 503-727-1117

FAX AND REGULAR MAIL

Ms. Daria Zane  
U.S. Department of Justice  
General Litigation Section  
Envir. & Natural Resources  
P.O. Box 663  
Washington D.C. 20044-0663  
VIA FAX: 202-305-0506

Re: Bonnichsen et.al. v. United States  
USDC No. CV 96-1481 JE

Dear Mr. Simmons and Ms. Zane:

This is a follow-up to my earlier letters of November 6, 1996 and December 16, 1996, to Mr. Simmons requesting information concerning any plans by the Army Corps to conduct site stabilization or other modification activities at the location where the Kennewick Man skeleton was found. We have received no response to those letters.

According to the documents we have received from the Corps' administrative record, the Corps in early October 1996 engaged in a series of discussions with local tribes concerning a proposal to "stabilize" the site through a combination of "fill placement and revegetation". Since we do not have any of the administrative record after early January, 1997, we cannot determine the current status of the Corps' plans with respect to the site.

1144  
17/52

Mr. Tim Simmons  
Ms. Daria Zane  
July 29, 1997  
Page 2

We and our clients are very concerned about this matter. Any activities to stabilize or otherwise modify the site could adversely affect the ability of investigations to obtain information that could be important for determining whether the skeleton is Native American within the meaning of NAGPRA and/or whether it can be affiliated to any present-day tribe. Among other things, examination and testing of the site is needed to determine:

- (a) precisely where in the bank the skeleton was deposited;
- (b) when the skeleton was deposited at that particular location;
- (c) whether the skeleton's deposition was due to an intentional burial or a natural event;
- (d) whether there are any cultural artifacts associated with the skeleton;
- (e) whether there are any remaining portions of the skeleton still in situ;
- (f) whether there are any organic materials (such as charcoal, wood, etc.) of contemporaneous age that are still in situ and that can be used for radiocarbon dating to confirm the skeleton's age.

Examination and testing of the site could require trenching, auguring, collection of sediment samples, and/or other procedures specifically appropriate for this particular site and issues to be resolved.

In the interests of a full and open exchange of information as contemplated by the Court's decision of June 27, 1997, we are requesting that the Corps provide us with a description of: (a) its plans for any future modifications to the site; and (b) any activities involving modifications to the site that have been conducted since September 1, 1996. Details of any such plans or activities should be included (e.g. who, when, what, etc.). Such information will enable plaintiffs to offer input concerning the potential effects of such plans and activities on any scientific values associated with the site. We would also ask to be advised from time to time if any new plans involving modifications to the site are proposed or adopted in the future, or if any existing plans are modified.

In addition, please advise us whether the Corps would permit our clients to examine and test the site in September and/or October 1997 for the purpose of gathering information of the kind noted above. If the answer is "yes", we will submit an application for an ARPA permit describing the activities to be conducted, the

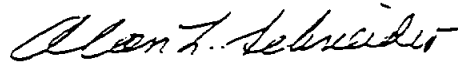
1144  
18/52

Mr. Tim Simmons  
Ms. Daria Zane  
July 29, 1997  
Page 3

reasons for such activities, the qualifications of the persons involved, and so on. If the site is not available for such scientific examination and testing, please advise us of the nature and reasons for any such restrictions.

We look forward to your reply.

Very truly yours,



Alan L. Schneider

ALS/kfk

cc All Plaintiffs  
P. Barran  
D. Rubanoff

C:\ais\nichlandman\letters\simmons\sim-zan5.ltr