

13/78

1 based its decision on. There were other indicators also.

2 There is indicators of the fact, as it's
3 stated in Lieutenant Colonel Curtis's declaration, there
4 were other indicators. And the indicators are these were
5 found in a known burial location for Native American
6 remains. It was found with a projectile point that was
7 dated back to a period and that was used by Native
8 Americans. So, there were other indicators.

9 The Corps was not just blanketly saying we
10 found something that was this old, so it's Native American.
11 And I know there had been some confusion about that, and
12 that is why that Lieutenant Colonel Curtis, in his
13 declaration, set that forth.

14 It's believed that Dr. Chatters has also
15 submitted evidence to show about the projectile point and
16 the relationship of that in his affidavit. So, it is not
17 simply based on the fact that it's so old.

18 In terms of court's question as to whether
19 or not, if the court found a remain that was 25,000 years
20 old, and it was -- and it was clearly not related to any
21 Native American group, no, it would not. It would not
22 transfer custody in that case to a Native American group if
23 there was no clear evidence that it was related to a Native
24 American group, and that it could be determined to be
25 Native American. They wouldn't transfer custody in that

1 case. So, there wouldn't be a disposition under NAGPRA in
2 that situation.

3 But the point is, is that the, that the
4 administrative process here is required, and given -- the
5 clear principles of administrative law require that the
6 Corps make a final pronouncement. And I think the -- and
7 the plaintiffs cite to the case Chemical Waste. And, in
8 fact, that case says that the agency must issue a final
9 pronouncement on the matter that's of immediate consequence
10 to the plaintiffs.

11 Here we have no final pronouncement on the
12 matter. And it's supported by the statements of Lieutenant
13 Colonel Curtis, in his declaration, where he says, I
14 continue to look at all the evidence, and I will look at
15 all that evidence. All pertinent information -- I -- we
16 are open to receipt of pertinent information in assistance
17 in the process. The Corps will seriously consider and
18 independently evaluate all information in reaching the
19 final agency decision. And that's at paragraph nine.

20 He also states -- he also acknowledges that
21 the plaintiffs have raised issues, and he says before
22 making its final decision, the Corps will take into
23 consideration all comments presented including those of the
24 plaintiffs.

25 Now, the comments presented by the