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October 23, 1996

Colonel Bartholomew B. Bohn, II., EN  
Acting Commander  
U.S. Army Corps of Engineers  
North Pacific Division, ATTN: CENPD-DE  
220 NW 8th Street  
Portland, OR 97232

RE: Human Remains Excavated Under ARPA  
Permit No. DACW68-4-96-40

Dear Colonel Bohn:

The purpose of this letter is to supplement the claim filed by the Confederated Tribes of the Umatilla Indian Reservation ("CTUIR"), dated September 9, 1996, for the ancient human remains inadvertently discovered in Columbia Park along the banks of the Columbia River on July 28, 1996. In addition, the CTUIR also submits an alternative claim for return of the human remains under the Native American Graves Protection and Repatriation Act ("NAGPRA"), 25 U.S.C. § 3001 *et seq.*, by this letter.

I. SUPPLEMENT TO CTUIR NAGPRA CLAIM DATED SEPTEMBER 9, 1996

In the NAGPRA claim previously submitted by the CTUIR to the Corp of Engineers dated September 9, 1996, the CTUIR claims that it is entitled to the human remains pursuant to the provisions of NAGPRA at 25 U.S.C. § 3002(a)(2)(C)(1) because the human remains were discovered upon federal lands aboriginally occupied by the CTUIR. Under NAGPRA, a tribal claim of aboriginal occupation must be supported by a "final judgment of the Indian Claims Commission or the United States Court of Claims." The CTUIR has researched its claims before the Indian Claims Commission, referenced as Docket #264, and has determined that, while the CTUIR claimed the Columbia Park area where the remains were discovered, and the Tribe produced expert anthropological testimony regarding its use and

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occupation of the Columbia Park area.<sup>1</sup> The Indian Claims Commission determined that the CTUIR had failed to prove the exclusive use and occupation required for a determination of aboriginal ownership and hence entitlement to compensation. See Finding No. 20 of Indian Claims Commission at 8 Ind. Cl. Comm. 537, 538.<sup>2</sup>

Nonetheless, the United States has specifically concluded that the Columbia Park area was within the ceded territory of the CTUIR. Article 1 of the CTUIR Treaty of 1855, 12 Stat. 945, describes the geographic territory then occupied by the CTUIR and ceded to the United States Government in the Treaty.<sup>3</sup> The entire Tri-Cities area, including Columbia Park, are within the CTUIR lands ceded to the United States. A copy of the CTUIR Treaty of 1855 is attached hereto as Exhibit 1 and incorporated herein.

In addition, Dr. Deward Walker, Jr., an anthropologist with over three decades of experience in study of the tribes of the Columbia Plateau, testifies in his attached affidavit that the Tri-

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<sup>1</sup> See summary of testimony of Dr. Vern Ray at 8 Ind. Cl. Comm. 513-540 and related exhibits.

<sup>2</sup> Finding No. 20 makes reference to a map identified as Petitioner's Exhibit No. 521 for reference points on CTUIR aboriginal lands set forth in the findings. The Indian Claims Commission determined that the aboriginal lands of the Walla Walla Tribe (one of the three tribes comprising the CTUIR) went as far north as the confluence of the Snake and Columbia Rivers "thence southwesterly in a straight line, to the present town of Horse Heaven, Washington . . ." which line runs a few miles south of Columbia Park. 8 Ind. Cl. Comm. 513, 538.

<sup>3</sup> Article I of the CTUIR Treaty of 1855 begins with a recitation of the CTUIR lands ceded to the United States which includes the following area:

" . . . thence up the channel of the Columbia River to the lower end of a large island below the mouth of Umatilla River, thence northerly to a point of the Yakama River, called Tomah-luke, thence to Le Lac, thence to the White Banks on the Columbia below Priest's Rapids, thence down the Columbia River to the junction of the Columbia and Snake Rivers, . . ."

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Cities region, which includes Columbia Park "has been used traditionally by the CTUIR and their closely related relatives from neighboring Sahaptian Tribes for various purposes, prehistorically, historically and currently." Dr. Walker's affidavit is attached hereto as Exhibit 2 and incorporated herein. Thus, based upon the description of the CTUIR ceded territory in the CTUIR Treaty of 1855, and the attached Affidavit of Dr. Deward E. Walker, Jr., the CTUIR supplements its earlier claim dated September 9, 1996 by arguing that the Columbia Park area has been recognized by both the United States Government and by reputable anthropologists as an area historically occupied by the CTUIR. Accordingly, the CTUIR is entitled to the return of the ancient human remains discovered at Columbia Park pursuant to the provisions of NAGPRA at 25 U.S.C. § 3002(a)(2)(C)(1).

**II. ALTERNATIVE NAGPRA CLAIM TO ANCIENT HUMAN REMAINS**

In addition to the September 9, 1996 CTUIR NAGPRA claim to the ancient human remains, as supplemented herein, the CTUIR also makes a claim under NAGPRA for the ancient human remains pursuant to the provisions of 25 U.S.C. § 3002(a)(2)(B). Under this section of NAGPRA, the Indian tribe "which has the closest cultural affiliation with such remains or objects and which, upon notice, states a claim for such remains or objects" shall be entitled to ownership or control of the ancient human remains.

Dr. Walker has vast experience in anthropological research regarding the CTUIR and other tribes of the Columbia Plateau. In addition, Dr. Walker has reviewed the reports submitted by Drs. Chatters, Krantz, and MacMillan on the physical characteristics of the ancient human remains. In light of Dr. Walker's review of these reports and his anthropological expertise, Dr. Walker concludes in his Affidavit that:

- "a. It is probable that the recently discovered skeleton is ancestral to the Sahaptian tribal populations of the Southern Plateau region encompassing portions of the present states of Washington, Oregon and Idaho.
- b. It is probable that there is a shared group identity linking the skeleton to contemporary Sahaptian peoples, including members of the CTUIR.

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