

1 Alan L. Schneider, OSB No. 68147
2 1437 SW Columbia Street, Suite 200
3 Portland, OR 97201
4 Telephone: (503) 274-8444
5 Facsimile: (503) 274-8445

6 George L. Kirklin, OSB No. 62046
7 Paula A. Barran, OSB No. 80397
8 **LANE POWELL SPEARS LUBERSKY LLP**
9 520 SW Yamhill Street, Suite 800
10 Portland, OR 97204
11 Telephone: (503) 226-6151
12 Facsimile: (503) 224-0388

13 Attorneys for Plaintiff

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

13 ROBSON BONNICHSEN, C. LORING BRACE,)
14 GEORGE W. GILL, C. VANCE HAYNES JR.,)
15 RICHARD L. JANTZ, DOUGLAS W. OWSLEY,) USDC CV No. 96-1481 JE
16 DENNIS J. STANFORD and D. GENTRY)
17 STEELE,)

18 Plaintiffs,)

19 v.)

20 UNITED STATES OF AMERICA,)
21 DEPARTMENT OF THE ARMY,)
22 U.S. ARMY CORPS OF ENGINEERS,)
23 ERNEST J. HARRELL, DONALD R. CURTIS)
24 and LEE TURNER,)

25 Defendants.)

26) AFFIDAVIT OF ALAN L. SCHNEIDER
) IN SUPPORT OF PLAINTIFFS' MOTION
) FOR ACCESS TO STUDY

27 STATE OF OREGON)
28)ss.
29 County of Multnomah)

30 I, Alan L. Schneider, being first duly sworn, do depose and state as follows:

ALAN L. SCHNEIDER
1437 SW Columbia, #200
Portland, Oregon 97201
(503) 274-8444

DOI 01596

1 I am one of the attorneys representing the plaintiff scientists in the above-captioned
2 matter.

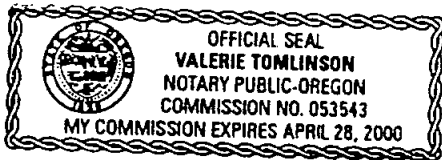
3 1. Attached hereto as Exhibit A is a true copy of a letter dated January 24, 1997 and
4 addressed to me from Lt. Col. Donald R. Curtis, Jr., of the Corps of Engineers.

5 2. Attached hereto as Exhibit B is a true copy of Defendants' Responses to
6 Interrogatories No. 1 and No. 2 of Plaintiffs' First Set of Interrogatories which I received from
7 defendants' counsel on December 19, 1996.

8 3. Attached hereto as Exhibits C and D are true copies of letters written by Drs.
9 Bonnichsen and Owsley to the Army Corps of Engineers to urge that scientific study of the
10 skeleton be permitted. Attached as Exhibit E is a true copy of a form letter that was sent to
11 myself and plaintiffs in response to our earlier communications with the Corps.
12

13
14 Alan L. Schneider
15 Alan L. Schneider

16 SUBSCRIBED and SWORN to before me this 6th day of March, 1997.



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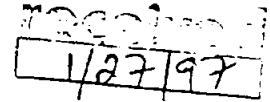
Valerie Tomlinson
Notary Public for Oregon
My Commission Expires: 4/28/2000

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Reply To
Attention Of:

DEPARTMENT OF THE ARMY
WALLA WALLA DISTRICT, CORPS OF ENGINEERS
201 NORTH THIRD AVENUE
WALLA WALLA, WASHINGTON 99362-1876



January 24, 1997

Executive Office

Mr. Alan L. Schneider
1437 Southwest Columbia Street
Portland, Oregon 97201

Dear Mr. Schneider:

I am writing in response to your letter concerning the inadvertent discovery of human remains in Benton County, Washington, on July 28, 1996. The purpose of this letter is to provide background information and to inform you of the status of our process for a final decision in this matter.

The ancient remains, referred to in the press as "Kennewick Man" or "Richland Man," were found on government-owned property under our jurisdiction. While they were being assessed by consultants to the local coroner's office, it was determined the remains were over 9,000 years old. Due to their antiquity and location, the remains came under Federal jurisdiction (e.g., Archaeological Resources Protection Act and Native American Graves Protection and Repatriation Act [NAGPRA]). Accordingly, we took custody of the remains and transferred them to a curation facility.

In accordance with NAGPRA, we consulted with a coalition of several Northwest Indian Tribes who claimed the remains. During this consultation, it appeared that the location of the discovery was on lands recognized by a final judgment of the Indian Claims Commission (ICC) as the aboriginal land of one of the Indian Tribes. We then published a notice of intent to transfer the remains to this coalition unless additional or conflicting claims were filed during the 30-day waiting period. Other claims were filed during this waiting period. We conducted additional research and found this land was not the subject of a final judgment of the ICC as originally believed.

During this same time period, we were sued by a group of scientists (*Bonnichsen, et. v. United States, et al.*) and by an indigenous, pre-Christian, European religion (*Asatru Folk Assembly, et. v. United States, et al.*) in the United States District Court of Oregon. These pending cases challenge transfer of the ancient remains to the Indian Tribes.

DOI 01598

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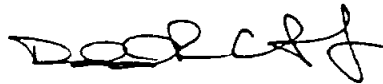
We are now reviewing and evaluating the claims filed by the Indian Tribes and others in accordance with NAGPRA. The information and issues presented in the pending lawsuits, as well as comments and information submitted by interested parties, are being considered in this administrative process.

The issue before us is "cultural affiliation." That is, whether a present-day tribe can provide evidence of a relationship of shared group identity which can reasonably be traced historically or prehistorically to these ancient remains. This evidence may include geographical, kinship, biological, archeological, linguistic, folklore, oral tradition, historical evidence, or other information or expert opinion.

Because of the controversy surrounding this discovery and the technical review of the information presented, the administrative process will not be completed in the near future. We plan to retain custody of the human remains in an appropriate curation facility until a final administrative determination identifies an appropriate claimant.

Thank you for your comments. I will consider them in making my decision. Should you have further questions, please feel free to contact me.

Sincerely,



Donald R. Curtis, Jr.
Lieutenant Colonel, Corps of Engineers
District Engineer

Defendants answer as follows:

INTERROGATORY NO. 1: State all examination, study, measurement or testing that was done on the Richland Man after coming into the possession of the United States or any agency thereof. Your response should include:

- a. The nature of the examination, study, measurement or testing;
- b. The identity of all persons involved in such examination, study, measurement or testing;
- c. The professional credentials of all persons involved in such examination, study, measurement or testing; and,
- d. The results or conclusions reached by such individuals.

ANSWER: None.

INTERROGATORY NO. 2: Describe with particularity all data from any study, observation, measurement or testing upon which you relief (sic) in coming to the preliminary or final conclusion that the Richland Man has a relationship of shared group identity which can be reasonably traced between it and five Columbia River Basin tribes and bands.

ANSWER: No preliminary or final conclusion has been made that the human remains referred to as the "Richland Man" have a relationship of shared group identity which can be reasonably traced between it and five Columbia River Basin tribes and bands. All "data from any study, observation, measurement or testing" currently available is limited to that provided to the U.S. Army Corps of Engineers by Benton County, its officers, employees, contractors, subcontractors, agents and assigns.

INTERROGATORY NO. 3: State the identity of the person or persons who made or

DEFENDANTS' RESPONSE TO PLAINTIFFS' INTERROGATORIES - Page 2

COLLEGE OF
LIBERAL ARTS
Center for the
Study of the
First Americans

September 26, 1996

Major General Ernest J. Herrell, Commander of the North Pacific Division
Army Corps of Engineers
P.O. Box 2870
Portland, OR 97208

DOI 01601

Dear Major General Herrell:

I am writing in my capacity as the Director of the Center for the Study of the First Americans (CSFA) regarding the inadvertent discovery of the remains of "Richland Man" at Kennewick, Washington. On behalf of our membership, I wish to express our concerns regarding how the Army Corps has handled this case. The CSFA is dedicated to the development and dissemination of new scientific knowledge regarding the initial peopling of the Americas and has an active membership of approximately 1200 individuals, including many of the top scientists in the field as well as members of the lay public. We feel that it is imperative that scientific study be conducted on the Richland Man remains before this national treasure is irretrievably lost.

It is our understanding that following discussions with the National Park Service that the Army Corps of Engineers has decided to proceed with the repatriation of the Richland Man remains and these remains will be returned to a modern Native American tribe for reburial. Furthermore, it has come to our attention that the Army Corps has posted notice in the Tri-City Herald, Kennewick, WA of its intent to repatriate the Richland Man remains. The Corps decision to repatriate is apparently based on the following assumptions: (1) the unidentified and unstudied remains of the Richland Man are of Native American origin; and (2) the Native American Graves Protection and Repatriation Act of 1990 applies to the Richland Man discovery.

In evaluating human skeletal remains, we can not begin with the axiomatic assumption that modern day Native Americans are the direct descendants of Paleo-American populations. The use of computers and large databases at Smithsonian Institution and Texas A&M University now allow researchers to make comparative study of thousands of human skeletons of all ages. These developments have resulted in a growing body of scientific literature that indicate: (1) the earliest Paleo-American human remains are significantly different than modern day Native Americans; and (2) unlike modern Native Americans who have numerous Mongoloid characteristics, some Paleo-American remains have Caucasian characteristics. Researchers who are now working with ancient human DNA are finding traces of other populations that lack modern descendants. To summarize, the paleo-biology of the first Americans is complex, multiple colonizing groups appear to be represented, and there is a strong Caucasian element in many of the oldest studied skeletons.

The 9300 year old remains of the Richland Man represent a rare discovery of national and international scientific significance. To fully understand the importance of this skeleton, it should be studied using the same procedures as employed by scholars who are compiling the national data bases of human remains that include other Paleo-American remains. No such studies have yet been conducted and a request to study these remains by Dr. Douglas Owsley of the Smithsonian Institution has been denied by the Army Corps. We are extremely concerned about this situation as it is our understanding that the skeleton is to be repatriated without further scientific study.

Frankly, we do not understand how or why the Army Corps could make a determination that the Richland Man remains are of Native American origin without an adequate

Advisory Board Executive Committee

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Marvin T. Beatty, Member-at-Large Mort D. Turner, Chair, Scientific Council
Robson Bunnichsen, Director



OREGON
STATE
UNIVERSITY

Weniger 555
Corvallis, Oregon
97331

Telephone
503-737-4595
Fax
503-737-3651
Email
csfa@clia.orst.edu

scientific study. The Corps' decision appears to be uninformed in view of the fact that preponderance of preliminary evidence gathered by Dr. James Chatters, Dr. Grover Krantz, Catherine J. MacMilan, and the local coroner all suggest that the Richland Man skeleton is not a Native American and has many Caucasian characteristics. In short, without study it is not clear that NAGPRA is applicable in this case.

We, therefore, are requesting that the Army Corps reconsider its decision and initiate scientific study of the Richland Man using the services of qualified scientists who will use appropriate scientific protocols to so that the Richland Man can be studied and compared with other Paleo-American remains.

Sincerely,

Robson Bonnicksen

Robson Bonnicksen, Director of the Center for the Study of the First Americans

cc. Rubenstein, Federal Preservation Officer, Army Corps of Engineers
William Lipe, President of the Society for American Archaeology
Frank McManamon, Archaeological Assistance Division of the National Park Service
D. Gentry Steele, Texas A&M University
Dennis J. Stanford, Smithsonian Institution
Douglas Owsley, Smithsonian Institution
Alan L. Schneider, Co-Chair of the CSFA and Attorney of Law.



OREGON
STATE
UNIVERSITY

DOI 01602





EXHIBIT D

NATIONAL MUSEUM of
NATURAL HISTORY
SMITHSONIAN INSTITUTION

September 24, 1996

MG Ernest J. Harrell
Commander, North Pacific Division
U.S. Army Corps of Engineers
P.O. Box 2870
Portland, Oregon 97208
FAX 503-326-7323

Dear Major General Harrell:

This letter is to protest the decision to repatriate the remains of the PaleoAmerican skeleton from the state of Washington without allowing the opportunity for a more thorough examination. The skeleton, known as the Richland Man, is in the custody of the Corps of Engineers, and based on a decision made by the District Engineer, LTC Curtis, is off limits to the scientific community.

Human skeletal remains that are 9,000 years old are extremely rare. The Richland skeleton represents a National Treasure, which if carefully studied can provide information important to our understanding of the peopling of the Americas and human evolution in general.

To date, the remains have been examined by Dr. James Chatters and more briefly, by Dr. Grover Krantz. Information and reports provided by both scholars strongly emphasize the need for further study. Their preliminary assessments note a number of skeletal features that differ from the historic tribes of the Western United States. Many of the cranial features and long bone proportions noted in this skeleton are characteristic of ancient European populations. Furthermore, Dr. Krantz's report clearly states that the remains are not ancestral to present-day American Indians. A cursory examination and statement provided by Catherine Mac Millan has also identified the remains as caucasian. To my knowledge, detailed reports on these remains are still not available to the Corps of Engineers, which leads one to question the basis for the decisions that have been made concerning this skeleton.

For more than two decades, the Smithsonian Institution has sponsored a program that is specifically concerned with the peopling of the Americas. Dr. Dennis Stanford, Chairman of the Department of Anthropology is the Director of this Program. Other scientists, such as myself, are also involved in this research. The discovery of this ancient skeleton is of vital interest to this

DEDICATED TO UNDERSTANDING THE NATURAL WORLD AND OUR PLACE IN IT

WASHINGTON DC 20560

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FORM 88 (REV. 8-85) P.03

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DOI 01603

Page 2

Smithsonian research program. The skeleton can provide information that is critical to answering several questions about the first migrants to North America. These questions concern genetic affiliation, population origins, and whether the first migrants were ancestral to present day Native Americans or, whether they were displaced by later groups. We also will learn about health and the antiquity of certain diseases.

I am dismayed by the lack of an established, orderly process for making the ruling that the remains are off limits to further scientific documentation. I am especially surprised that access has been denied to scientists representing another government agency, the Smithsonian Institution. Because of the PaleoAmerican Program, the SI has unique expertise in this field that is not duplicated by any other government agency. Our request to study the remains is not prohibited by the guidelines of NAGPRA that have been invoked in this instance. In fact, it is necessary in this case more than many others, as questions concerning cultural and population affiliation have not been resolved. I am also amazed that such an important decision was made at the local level by a single individual without awareness of its importance and the potential effect that it has on the entire Corps of Engineers and other federal agencies.

Only a few scientists have experience working with PaleoAmerican remains. They include Dr. Richard Jantz of the University of Tennessee, Dr. Gentry Steele of Texas A&M University, and myself. This group should be allowed to examine these remains in order to obtain metric and epigenetic data that are strictly comparable to the data that have been collected on a number of European, Asian and American populations. Recently these scientists were in Nevada to examine the 9,400 year old PaleoAmerican skeleton that is under the jurisdiction of the Nevada State Museum and the Bureau of Land Management. Examination of the Washington skeleton is essential in order to be able to directly compare these remains that are the same age.

To my knowledge, the Richland remains have not been measured using the protocol that has been established by the University of Tennessee and the Smithsonian Institution. Dr. Krantz' report notes that a full skull reconstruction is possible and needs to be completed in order to evaluate the cranial morphology. Some of the baseline measurements that are needed for population comparisons and determination of ancestry require instruments that are not widely available. A complete set of cranial measurements need to be taken. Skeletal and dental pathology also need to be carefully documented. This work is noninvasive and will cause no damage to the remains. This basic documentation can be completed within two days and without cost to the Corps of Engineers. Unless such data are collected, these remains cannot be compared to other PaleoAmerican remains and large samples of archeological, historic, and modern populations.

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EXHIBIT D - Page 2 of 3

DOI 01604

Page 3

Please explore these issues further with interested parties to insure that these remains are fully documented. The information to be obtained will help answer questions concerning the peopling of the Americas. Obtaining this information is in the best interest of all Americans.

Sincerely yours,

Douglas W Owsley

Douglas W. Owsley, Ph.D.
Division Head for Physical
Anthropology

cc LTC Donald Curtis, District Engineer (FAX 509-527-7804)

Mr. Paul Rubenstein, Federal Preservation Officer, Corps of
Engineers (FAX 202-761-~~2257~~
8839)

Dr. Michael Trimble, Mandatory Center for Expertise, Corps of
Engineers (FAX 314-331-8895)

Dr. Dennis Stanford, Chairman, Department of Anthropology,
Smithsonian Institution

DOI 01605

SEP-25-1996 09:33

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EXHIBIT D - Page 3 of 3



Reply To
Attention Of:

DEPARTMENT OF THE ARMY
WALLA WALLA DISTRICT, CORPS OF ENGINEERS
201 NORTH THIRD AVENUE
WALLA WALLA, WASHINGTON 99362-1876

EXHIBIT E

Received
1/27/97

January 24, 1997

Executive Office

Mr. Alan L. Schneider
1437 Southwest Columbia Street
Portland, Oregon 97201

Dear Mr. Schneider:

I am writing in response to your letter concerning the inadvertent discovery of human remains in Benton County, Washington, on July 28, 1996. The purpose of this letter is to provide background information and to inform you of the status of our process for a final decision in this matter.

The ancient remains, referred to in the press as "Kennewick Man" or "Richland Man," were found on government-owned property under our jurisdiction. While they were being assessed by consultants to the local coroner's office, it was determined the remains were over 9,000 years old. Due to their antiquity and location, the remains came under Federal jurisdiction (e.g., Archaeological Resources Protection Act and Native American Graves Protection and Repatriation Act [NAGPRA]). Accordingly, we took custody of the remains and transferred them to a curation facility.

In accordance with NAGPRA, we consulted with a coalition of several Northwest Indian Tribes who claimed the remains. During this consultation, it appeared that the location of the discovery was on lands recognized by a final judgment of the Indian Claims Commission (ICC) as the aboriginal land of one of the Indian Tribes. We then published a notice of intent to transfer the remains to this coalition unless additional or conflicting claims were filed during the 30-day waiting period. Other claims were filed during this waiting period. We conducted additional research and found this land was not the subject of a final judgment of the ICC as originally believed.

During this same time period, we were sued by a group of scientists (Bonnichsen, *etc. v. United States, et al.*) and by an indigenous, pre-Christian, European religion (Asatru Folk Assembly, *etc. v. United States, et. al.*) in the United States District Court of Oregon. These pending cases challenge transfer of the ancient remains to the Indian Tribes.

DOI 01606

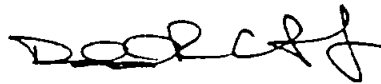
We are now reviewing and evaluating the claims filed by the Indian Tribes and others in accordance with NAGPRA. The information and issues presented in the pending lawsuits, as well as comments and information submitted by interested parties, are being considered in this administrative process.

The issue before us is "cultural affiliation." That is, whether a present-day tribe can provide evidence of a relationship of shared group identity which can reasonably be traced historically or prehistorically to these ancient remains. This evidence may include geographical, kinship, biological, archeological, linguistic, folklore, oral tradition, historical evidence, or other information or expert opinion.

Because of the controversy surrounding this discovery and the technical review of the information presented, the administrative process will not be completed in the near future. We plan to retain custody of the human remains in an appropriate curation facility until a final administrative determination identifies an appropriate claimant.

Thank you for your comments. I will consider them in making my decision. Should you have further questions, please feel free to contact me.

Sincerely,



Donald R. Curtis, Jr.
Lieutenant Colonel, Corps of Engineers
District Engineer

STATE OF OREGON)
) ss
County of Multnomah)

I, Tamara L. Thorud, being duly sworn, depose and say: (1) I am a competent person over the age of 18 years and am not a party nor an attorney in the proceeding entitled Bonnichsen, etc. v. United States of America, et al. in the United States District Court for the District of Oregon and bearing docket number CV 96 1481 JE in said court; (2) I am a person regularly employed by Lane Powell Spears Lubersky, with offices at 520 SW Yamhill Street, Suite 800, Portland, Oregon 97204-1383, who are attorneys for plaintiffs in said proceeding; (3) On March 11, 1997 I served the foregoing document upon defendants in said proceeding by mailing a copy thereof to the attorneys for defendants at their last known address:

Timothy W. Simmons
U.S. Attorney for the District of Oregon
888 SW 5th Avenue, Ste. 1000
Portland, OR 97204

Daria J. Zane
General Litigation Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 663
Washington D.C. 20044-0663

Signed and sworn before me this 11th day of March, 1997.

Tamara L. Thorud
Julie R. Dod
Notary Public for Oregon
My commission expires: 3/14/97

