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May 12, 1998

Ms. Robin Michael
U.S. Department of Justice
General Litigation Section
Envir. & Natural Resources
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Washington, D.C. 20044-0663
FAX No. (202) 305-0267/(202) 305-0429

VIA FAX AND MAIL

Mr. Timothy W. Simmons
Assistant U.S. Attorney
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Portland, OR 97204-2902
FAX No. 727-1117

Re: Bonnichsen et. al. v. U.S.
Civil No. CV 96-1481JE

Dear Counsel:

Thank you for faxing a copy of the May 8th Supplement to defendants' Third Quarterly Status Report. We appreciate your courtesies in this regard.

At the same time, however, I cannot emphasize too strongly how alarmed and concerned we are by this latest disclosure that additional parts of the Kennewick Man skeleton may have been lost or removed from the Battelle laboratory. As you will recall, plaintiffs raised concerns about the safety of the skeleton during the telephone status conference that was held with the court on April 20, 1998. This latest incident, occurring only one week after that status conference, is a vivid demonstration that the measures employed to date for curation of the skeleton warrant comprehensive review and revision.

As I understand the situation, the box of bone fragments that was improperly taken from the repository on April 27, 1998, contained at least four human bones (or fragments thereof). See description in Defendants' Supplement, Paragraph 2, and Leier Declaration, Paragraph 5. It is highly likely that at least some of those bones, or bone fragments, were

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from the Kennewick Man skeleton. For example, the rib fragment described in item 4 of the above cited Paragraphs was probably part of the skeleton given the circumstances of its discovery. In all probability, it represented a fragment that Dr. Chatters missed during his 1996 recovery activities. The same is likely to be true of items 2 and 3 if they were bones recovered by the Corps from the discovery site shortly before the site was covered by the Corps in April, 1998.

Furthermore, even if one were to make the untested (and now unverifiable) assumption that these bones were not from the Kennewick Man skeleton, their loss still constitutes a loss of potentially significant evidence. Among other things, if these missing bones were from another individual, it was important that they be studied to determine how many individuals may have been buried or naturally deposited at the site, and whether all of them were contemporaneous. Such studies are, of course, now impossible (unless the missing bones are somehow recovered).

This latest development makes it more imperative than ever that adequate measures be implemented to ensure that the skeleton will be properly preserved and protected from harm pending final resolution of the present lawsuit. During our recent telephone status conference, the court indicated that the parties should work with one another to develop such measures. We have already initiated that process (see Paula Barran's letter of April 21, 1998), and intend to submit more substantive proposals for your review within the next week or so.

In the interim, however, until such measures can be agreed upon and implemented, we have serious concerns about the ongoing safety of the skeleton. In that regard, we note and thank you for the assurances set out in Paragraph 4 of defendants' May 8th Supplement. Unfortunately, however, those assurances do not remove all of the causes for our concerns. Accordingly, we must demand that the government tighten its security measures at the repository to ensure that no further harm will occur to the skeleton prior to the time that our expert has had an opportunity to inspect the skeleton and the curation facilities at Battelle, and to issue a report on the results of that inspection. Such measures at a minimum should include the government's agreement to the following standards:

- (1) Will the government represent that no one (including representatives of Battelle) can open the Cabinet containing the skeleton without use of the keys held by Dr. Trimble and Ms. Kirts? By "Cabinet", I mean the locked metal cabinet holding the "Action-Packer" in which the skeleton is housed.
- (2) Will the government agree that Dr. Trimble and Ms. Kirts will not transfer their Cabinet and Action-Packer keys to any other person, and that no copies will be made thereof, without prior written notice to plaintiffs' counsel?

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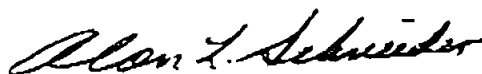
(3) The government in its May 8th Supplement to the Court has stated that neither the Cabinet nor the Action-Packer containing the skeleton will be unlocked without prior notice to plaintiffs' counsel. Will the government agree that such notice will be in writing, that it will be given at least 14 days in advance, and that no exceptions will be made to these commitments except in emergency situations (i.e., fire, flood, etc.) that pose an immediate threat to the safety of the skeleton?

(4) In addition to item (3) above, will the government allow a representative of plaintiffs to be present to observe all proceedings if the Cabinet is unlocked for any reason (except in emergency situations where such presence cannot be arranged in advance)?

Because of the importance of this matter, we would ask you to respond to this letter at once and in no event later than Monday, May 18, 1998.

We look forward to your reply.

Very truly yours,



Alan L. Schneider

ALS/dmc

cc: P. Barran
D. Rubanoff
M. Clinton
All Plaintiffs

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TOTAL P. 04