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11 IN THE UNITED STATES DISTRICT COURT  
 12 FOR THE DISTRICT OF OREGON

14 ROBSON BONNICHSEN, et al., )  
 15 Plaintiffs, )  
 16 V. ) Civil No. 96-1481 JE  
 17 UNITED STATES OF AMERICA, et al., )  
 18 Defendants. )

19 ASATRU FOLK ASSEMBLY, et al., )  
 20 Plaintiffs, ) Civil No. 96-1516-JE  
 21 V. )  
 22 UNITED STATES OF AMERICA, et al., )  
 23 Defendants )  
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25 **FEDERAL DEFENDANTS' RESPONSE**  
 26 **TO COURT'S MAY 13, 1998 ORDER**

27 NOW COMES the Federal defendants and submits this response to the Court's May 13,  
 28 1998 Order ("Order") regarding the above-styled matter. This Response is focused so as to  
 specifically address only the questions set forth in paragraphs one through seven of the Court's

1 Order.

2 (1) **Whether the Remains Have Been Properly Stored.**

3 During the period from November 4 through 7, 1997, Michael K. Trimble, Ph.D.,  
4 Chief Curation Officer, Army Corps of Engineers ("Corps"), with the assistance of Ms.  
5 Madeline Fang, Conservator, Berkeley Museum, rehoused the Kennewick remains in  
6 accordance with acceptable methods necessary to ensure the scientific integrity of the  
7 remains. *See* Federal Defendants' Second Quarterly Status Report at ¶ 2 (January 5,  
8 1998); *see also* Declaration of Dr. Trimble at ¶ 3, attached as Exhibit 1. As a result of  
9 this rehousing process, the Kennewick remains have consistently been kept locked in a  
10 large metal, Delta Storage Cabinet with a museum approved filter and venting system  
11 ("Cabinet"). Declaration of Dr. Trimble at ¶¶ 3-7, Exhibit 1; *see also* Federal  
12 Defendants' Supplement to Third Quarterly Status Report at ¶ 3 (May 8, 1998). Within  
13 this cabinet, the remains were further housed in a locked Action-Packer storage container.  
14 *Id.* Inside the Action-Packer, each of the individual bone fragments are further contained  
15 in archival polyethylene plastic bags which have been tagged with an identifying code  
16 and packed in padded plastic containers for added protection. *Id.* Padding also lines the  
17 inside of the Action-Packer to ensure against any movement by the individual plastic  
18 containers. *Id.* The remains continue to be housed in the same manner in which they  
19 were placed by Dr. Trimble in November, 1997- a manner which ensures their scientific  
20 integrity for future analysis. Declaration of Dr. Trimble at ¶ 17, Exhibit 1.

21 In order to allow for appropriate testing and analysis of the remains, Federal  
22 defendants' believe that it may be necessary to find an alternative location for housing the  
23 remains. *See* Declaration of Frank McManamon at ¶ 6, attached as Exhibit 2. In looking  
24 for an alternative site, the Burke Museum of Natural History and Culture at the  
25 University of Washington, Seattle, Washington, is being given serious consideration as a  
26 likely new location. *Id.* at ¶ 6; *see also* Declaration of Karl Hutterer, Director Burke  
27 Museum, attached as Exhibit 3.

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**(2) Whether Persons With An Interest In This Case Have Been Permitted to Visit and Handle The Remains**

Since the remains were transferred to the Corps on September 5, 1996, there have been seven instances in which persons unrelated to the Federal defendants were permitted to visit the remains and in only one instance were the remains handled in any fashion. *See* Declaration Lt. Col. Curtis at ¶ 2.a, Exhibit 4; *see also* Federal Defendants' Response to Bonnicksen Plaintiffs' Status Report at 3, citing October 23, 1997 Declaration of Curtis. Five of these visits were for ceremonial purposes only and all were conducted under the direct supervision of the Corps. *Id.* The sixth visit occurred in September 1996, when District Corps staff archeologist, Ray Tracey, and two cultural resource group staff archeologists, conducted a summary inventory of those remains which had been transferred to the Corps on September 10, 1996. *Id.* This visit was the only time that persons not associated with the Federal defendants handled the remains while they have been in the custody of the Corps. *Id.* Further ceremonial visits of the remains have been prohibited. *See* Federal Defendants' Status Report referring to October 1, 1997 Declaration of Lt. Col. Curtis at ¶ G.

**(3) Whether The Remains Have Been Contaminated With Modern DNA In Manner That Compromises Their Scientific Integrity**

As discussed in the attached declaration from Federal defendants' curation expert, Dr. Michael Trimble, there is no reason to believe that the remains have been contaminated with modern DNA in a manner which would compromise any scientific tests necessary to answer the questions set forth in the Court's June 27, 1996 Order. *See* Declaration of Dr. Trimble at ¶¶ 14-15, Exhibit 1.

**(4) Whether the Cedar Boughs Which Had Been Temporarily Placed In With The Remains Could Compromise The Scientific Integrity of The Remains**

Dr. Trimble further determined that there is no scientific basis to believe that the cedar boughs, temporarily placed in the box with the remains, compromised the integrity of the remains for the purposes of conducting scientific analysis. *See* Declaration of Dr. Trimble at ¶ 15, Exhibit 1.

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**(5) Whether Remains Thought To Be A Part of The Same Individual Were Kept In A Box With Unrelated Animal And Human Bones**

On December 16, 1997, Dr. Trimble conducted a follow-up inspection of the remains. During the course of this inspection, Dr. Trimble created an entirely separate storage box for the temporary containment of additional bone fragments subsequently collected from the site. See Declaration of Dr. Michael Trimble at ¶ 16, Exhibit 1. In March of 1998, Dr. Trimble conducted a follow-up inspection of the remains to ensure their continued integrity. *Id.* During that inspection, Dr. Trimble examined the temporary holding box and found: (1) a whole, intact femur found by a local fisherman on an island in the vicinity of Chiawana Park and determined by Dr Trimble not to be related to the Kennewick remains; and (2) a rib fragment found by Dr. James Chatters in December of 1997 at the site where the Kennewick remains were discovered. *Id.* Subsequent to Dr. Trimble's examination of the temporary holding box, various animal bones were placed in the box along with a vertebra fragment through possible to be of human origin and a second small rib fragment thought possibly to be of human origin. Federal Defendant's Supplement to Third Quarterly Status Report at ¶2.

**(6) Whether Some Of The Remains Are Unaccounted For Or Were Buried**

With respect to remains that are unaccounted for, the Corps discovered a discrepancy between the inventories it had conducted and that of Dr. Chatters that indicates that certain femur fragments originally in Dr. Chatters' possession are not part of the remains under lock at the Battelle facility. See Supplement to Second Quarterly Status Report. The Corps inventories consistently show this discrepancy, including the informal inventory made a few days after the remains were transferred to the Corps. The Corps is continuing its investigation into this matter and has submitted a request to the United States Attorney's Office of the Eastern District of Washington to conduct an investigation into the missing femur fragments. See Declaration of Lt. Col. Curtis at ¶ 8, Exhibit 4 .

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With respect to reburied remains, on April 27, 1998, the remains of at least four Native Americans, found on federal land within the Columbia Park, Washington ("Columbia Park remains"), were transferred to the Tribes for disposition in accordance with the provisions of the Native American Graves Repatriation Act. See Federal Defendants' Supplement to Third Quarterly Status Report at ¶¶ 1, citing Affidavit of John Leier. The transfer occurred at Battelle Laboratory where the Kennewick remains are currently being housed. During the course of this transfer, the temporary holding box described in paragraph (5) above was unintentionally turned over to the Tribes and ultimately disposed of by them along with the Columbia Park remains. *Id.* at ¶ 2-3; see also Declaration of Lt. Col. Curtis at ¶ 5, Exhibit 4. These bone fragments had been recovered from the Kennewick site after the remains had been rehoused by Dr. Trimble. Declaration of Dr. Trimble at ¶ 16.

**(7) Whether Third Parties Have Been Permitted Access To The Storage Facility and Have Been Allowed To Remove Boxes Of Human Remains**

As noted in paragraph 5 above, during the transfer of the Columbia Park remains, unassociated bone fragments which had been discovered from the Kennewick site were also unintentionally transferred to the Tribes and disposed of by them. See Declaration of Lt. Col. Curtis at ¶ 5, Exhibit 4. The Kennewick remains, however, were not disturbed in any manner during this transfer. Federal Defendants' Supplement To Third Quaterly Status Report at ¶ 4. The Corps believes that the Kennewick remains were never at risk during the disposition of the Columbia Park remains. *Id.* Nonetheless, the Corps has reviewed its custodial procedures and has committed to the implementation of certain changes in order to further ensure the scientific integrity and protection of the Kennewick remains. Declaration of Lt. Col. Curtis at ¶ 6.


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Dated this the 27<sup>th</sup> day of May, 1998.

Respectfully submitted,

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