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13 IN THE UNITED STATES DISTRICT COURT  
14 FOR THE DISTRICT OF OREGON

15 ROBSON BONNICHSEN, et al., )  
16 Plaintiffs, )  
17 V. ) Civil No. 96-1481 JE  
18 UNITED STATES OF AMERICA, et al., )  
19 Defendants. )  
20

22 FEDERAL DEFENDANTS' FOURTH  
QUARTERLY STATUS REPORT

DOI 03173

23 The federal defendants submit their Fourth Quarterly Status Report in the above-styled  
24 matter. This Status Report is being submitted in compliance with the Court's Order of June 27,  
25 1997.

26 I. Update on Agency Determination Concerning Disposition of the Remains

27 Since the last status report, the federal defendants have continued to collect data and  
28 develop procedures for making a determination concerning the disposition of the remains. See  
Declaration of Frank McManamon at ¶4. Scientists from the U.S. Army Corps of Engineers

1 Waterways Experiment Station have completed geomorphologic investigations of the site of  
2 discovery have issued and a draft report summarizing the findings. *See* Attachment 1. In  
3 addition, the Department of the Interior ("DOI") has determined that the site of discovery does  
4 not fall within any area recognized as the aboriginal land of any Indian Tribe in a final judgment  
5 of the Indian Claims Commission or the United States Court of Federal Claims. *See* Declaration  
6 of Mary Anne Kenworthy. This determination will become important if the remains are  
7 determined to be Native American as defined by NAGPRA, since Section 3002(a)(2)(C) of  
8 NAGPRA gives ownership of Native American remains to the Tribe which had aboriginal title to  
9 the land upon which the remains were found. 25 U.S.C. §3002(a)(2)(C). The determination was  
10 made at this time solely to streamline the possible decision-making process and to clarify this  
11 issue since it had been raised in the initial federal register notice issued by the Corps shortly after  
12 the remains were discovered.

13 As indicated on the attached maps, DOI's analysis reveals that while the lands ceded by  
14 the Tribes in 1855 included the area identified as the site of discovery, the lands judicially  
15 established as aboriginal lands by the Indian Claims Commission in 1960 and 1963 do not. *See*  
16 Exhibits attached to Declaration of Mary Anne Kenworthy (e.g., Exhibit 1, depicts the present  
17 day reservations of the Yakama, Colville, Nez Perce and Umatilla tribes; Exhibit 2, the 1855  
18 Treaty Ceded Lands of the Yakama and the lands ceded by the Walla Cayuse and Umatilla  
19 Tribes in 1855; Exhibit 3, shows the judicially established land area of the Yakama, Walla Walla  
20 Cayuse and the Umatilla Tribes). Consequently, the remains appear not to have been discovered  
21 on any lands determined to be the aboriginal land of any tribe by a final judgment of the ICC as  
22 referred to under the Act. *See* Map of ICC lands attached as Exhibit 3, Declaration of Mary Anne  
23 Kenworthy.

24 In addition to the foregoing work, the federal defendants have been developing a  
25 procedure and time-line for determining whether the remains are subject to NAGPRA. *See*  
26 Declaration of Frank McManamon, Ph.D. at ¶3. Included in this time-line is a draft of the set of  
27 examination procedures which DOI believes are necessary in making the determination. *See*  
28 Draft DOI Approach to Documentation, Analysis, Interpretation, and Disposition of Human

1 Remains", as Attachment B, Exhibit 1, Declaration of Dr. McManamon. These draft procedures  
2 include examination and evaluation of the remains, developed in consultation with  
3 representatives of the claimant Indian tribes (in accordance with NAGPRA). In developing the  
4 procedures, the federal defendants will also seek input from the plaintiff-scientists. Declaration  
5 of Dr. McManamon at ¶ 4. Given that these procedures are designed to be flexible so that the  
6 Department of the Interior can seek and consider input from various interested and  
7 knowledgeable entities, these procedures are subject to modification as new data is gathered in  
8 accordance with this process.

9 Finally, Dr. McManamon provides an estimate of the time needed, and the approximate  
10 dates, for completing specific tasks related to transfer of the remains to a new curation facility  
11 and the responsibilities delegated to the Department of Interior under the Federal defendants'  
12 Interagency Agreement. *Id.*

## 13 **II. Evaluation of the Current Curation and Security Procedures In Compliance With** 14 **Court's May 29<sup>th</sup> and June 12<sup>th</sup> Orders**

15 On June 9, 1998, in compliance with the Court's Order, federal defendants provided  
16 plaintiffs-scientists with a copy of all reports, inventories, or other documents relating to the  
17 remains which were prepared by Dr. Trimble and Ms. Madeline Fang, or were obtained from  
18 Julie Longnecker, and all visitation, entry logs and other documents prepared by Battelle relating  
19 to persons granted access to the remains. *See* Order at ¶ 4. On June 16, 1998 federal defendants  
20 allowed plaintiffs' designee, Dr. James Chatters, access to the remains for the purpose of  
21 verifying that the remains are being curated in the manner described by Dr. Michael K. Trimble.  
22 May 29, Order at ¶1 and June 12, Order at ¶ 1; *see also* Declaration of Dr. Michael Trimble at ¶  
23 I.6. Specifically, Dr. Chatters was allowed access, by the federal defendants' curation expert Dr.  
24 Michael K. Trimble, to the curation room housing the remains in order to view the Delta cabinet,  
25 the Action Packer and two of the clear plastic containers housing the individual remains.

26 Shortly after Dr. Chatters was permitted access to the remains, he produced an extensive  
27 list of written questions which he asked Dr. Trimble and Brian Opitz, the Technical Director at  
28 Battelle, to answer before they could continue. Dr. Trimble's Declaration at ¶II. 5. After Dr.

1 Chatters had completed his questioning, Dr. Trimble provided Dr. Chatters with the following  
2 background information regarding the remains: 1) the condition of the collection when his team  
3 first examined it; 2) the approach he employed for curation and inventorying the collection; and  
4 3) the methods he used to repack and transfer the human skeletal remains to their current housing  
5 units. *Id.* Dr. Trimble then unlocked the Delta cabinet, explained its features, and carefully  
6 removed it from the Delta cabinet placing it on a nearby examination table. After responding to  
7 further questions by Dr. Chatters, Dr. Trimble opened the Action Packer and described that the  
8 purpose of the cloth padding lining the Action Packer was to provide further protection for the  
9 remains. Finally, he removed two clear plastic containers, containing some of the individual  
10 remains, from the Action Packer in a manner which allowed Dr. Chatters to look through the  
11 sides of the containers and to determine how the remains are being housed. As a view of these  
12 containers reveals, the individual bone fragments were further contained in archival polyethylene  
13 plastic bags which had been tagged with an identifying code and placed on top of padding inside  
14 the closed plastic containers. *Id.*; *see also*, Federal Defendants' Response to Court's May 13,  
15 1998 Order. In order to ensure the protection of the human remains, none of the containers  
16 holding human remains was opened at any time during the inspection. Order at ¶ 3.

17 At the completion of this examination, Dr. Trimble repacked the two containers inside the  
18 Action Packer, repacked the Action Packer, locked it and had Dr. Chatters check the lock. Dr.  
19 Trimble then returned the Action Packer to the Delta cabinet, closed and locked the cabinet and  
20 had Dr. Chatters to confirm that it too was locked. Dr. Chatters did not express any concerns with  
21 the manner in which the remains were being curated. *Id.* *citing* June 16, Memorandum For  
22 Record.

### 23 **III. Evaluation of Alternative Curation Facilities**

24 On June 9, 1998, in accordance with both the Court's order and the agreement of the  
25 parties, Dr. Trimble contacted plaintiffs' curation expert, Ms. Carolyn Leckie, to discuss mutually  
26 agreeable minimum curation criteria for selection of an alternative facility for housing the  
27 remains. Declaration of Dr. Trimble, *citing* June 9<sup>th</sup> and 10<sup>th</sup> Memorandum For Record. As a  
28 result of this conversation, a set of criteria was agreed upon by which to evaluate the Burke

1 Museum, in Seattle, recommended by the federal defendants and the Museum of Man. in San  
2 Diego, recommended by the plaintiff-scientists

3 Dr. Trimble also informed Ms. Leckie that he or his staff would conduct an inspection  
4 and evaluation of the Burke Museum on June 14<sup>th</sup> and 15<sup>th</sup>, and of the Museum of Man on June  
5 19<sup>th</sup> and 20<sup>th</sup>. *Id.* Although Dr. Trimble invited Ms. Leckie to attend these visits, she declined to  
6 do so. *Id.*

### 7 **1. Inspection and Evaluation of the Burke Museum**

8 Dr. Trimble conducted an inspection and evaluation of the Burke to ensure its ability to  
9 satisfy the curation criteria agreed upon by he and Ms. Leckie. In addition, Dr. Frank  
10 McManamon, Chief Archaeologist of the National Parks Service and Consulting Archeologist  
11 for DOI, conducted an inspection of the Burke to ensure that the facility possessed sufficient  
12 accommodations to conduct the type of examinations which he felt might be necessary in this  
13 matter. Although plaintiffs were invited to both participate in these inspections and to contact  
14 the Director of the Burke Museum, Dr. Karl Hutterer, to obtain specific information about the  
15 facility, they have declined to do so. Declaration of Dr. Trimble *citing* June 9 memorandum of  
16 record; June 26, 1998 letter to plaintiffs' counsel. On June 26, 1998 Dr. Trimble provided Ms.  
17 Leckie with a curtesy copy of his assessments on both the Burke and the Museum of Man for her  
18 review and comment. Declaration of Dr. Trimble, June 26, 1998 Memorandum For Record.

#### 19 **a. Inspection and Evaluation of the Burke Museum's** 20 **Curation Facilities By Dr. Trimble**

21 Following his two day inspection of the security and curation procedures at the Burke,  
22 Dr. Trimble prepared an assessment of the museum which utilized his standard curatorial  
23 inventory and addressed both the features that he and Ms. Leckie agreed were required of an  
24 appropriate curation facility. Declaration of Dr. Trimble at ¶ III. 1. Based upon this criteria, and  
25 given the unique circumstances surrounding the remains, Dr. Trimble concluded that the Burke is  
26 well suited to house these remains due to both its excellent specific resources and its proximity to  
27 the discovery site. *Id.* Notably, Dr. Trimble observed that the Burke could provide the following  
28 necessary curation resources: 1) a secure storage space for the Delta cabinet; 2) a secure

1 laboratory space for the study of the remains; 3) appropriate security in the collections storage  
2 area; and 4) a loading dock and service elevator for moving the cabinet into the facility. *Id.*  
3 Furthermore, the fact that the Director of the Burke, Dr. Karl Hutterer, agreed to personally serve  
4 as responsible for this collection provided additional assurance that the remains will be properly  
5 housed, curated, and protected. Declaration of Dr. Hutterer.

6 On the dates of June 24<sup>th</sup> and 29<sup>th</sup>, 1998 Dr. Trimble's spoke with Ms. Leckie about the  
7 results of his inspection of the Burke and relayed the fact that, for reasons set forth his  
8 assessment, it had only reinforced his impression that it was an appropriate place to house the  
9 remains. At the conclusion of these discussions, Ms. Leckie indicated that she felt that the Burke  
10 was a technically competent repository, and that given Dr. Trimble's report, she was leaning  
11 toward an endorsement of the Burke. Declaration of Dr. Trimble at III. B. 4.

12 **b. Inspection and Evaluation of the Burke Museum's Examination**  
13 **Facilities By Dr. Frank McManamon**

14 On June 19, 1998, Frank McManamon conducted an inspection of the examination  
15 facilities at the Burke Museum. Declaration of Dr. McManamon at ¶4. As a result of this  
16 inspection he concluded that the Burke Museum is a suitable site for relocation and housing of  
17 the remains as it will ensure their physical security and scientific integrity, while also providing  
18 appropriate on-site examination facilities. Specifically, Dr. McManamon was impressed by the  
19 Burke Museum's ability to provide the following resources necessary for examination: 1) an  
20 exclusive, secure, examination room was located only a few yards from the room where the  
21 remains would be housed; 2) the examination room is large enough to accommodate a 3-5  
22 member team of experts, as well as several observers; 3) the Burke made a commitment to  
23 brightening the lighting in the room to ensure adequate light for examination; and 4) in the event  
24 that examination and testing requires more technical equipment, such as x-rays or CAT scans,  
25 such equipment could possibly be borrowed from the medical facility on campus. *Id.* ¶ 4.b-c. As  
26 with Dr. Trimble, Dr. McManamon found that Dr. Hutterer's personal involvement in housing  
27 the remains was an important and positive factor in endorsing the Burke Museum as a location  
28 which can provide the necessary care and security for proper examination of the remains.

1 Declaration of Dr. McManamon, ¶ 4 a.

2 **2. Federal Defendants' Inspection of the San Diego Museum of Man**

3 In response to the plaintiffs-scientist objection to the Burke and proposal to house the  
4 remains at the Museum of Man, federal defendants inspected the facility. On June 18 and 19<sup>th</sup>  
5 members of Dr. Trimble's staff inspected the Museum of Man to determine whether it met the  
6 necessary and agreed upon criteria for proper curation of the remains. When Dr. Trimble's team  
7 arrived at the Museum of Man they found that the plaintiffs-scientists had not notified the  
8 Museum of Man that they had proposed that the remains be curated there and that, in any event,  
9 the Museum of Man did not have appropriate space for the remains. Following this visit Dr.  
10 Trimble and his staff prepared an assessment of their inspection which would, as with his  
11 assessment of the Burke, include an evaluation of the museum based upon criteria agreed upon  
12 by Ms. Leckie. Declaration of Dr. Trimble at ¶ III.1. Dr. Trimble determined that the Museum  
13 of Man was not an appropriate housing facility for the remains. Specifically, Dr. Trimble noted  
14 that the Museum did not have adequate space for the remains and did not have a fire suppression  
15 system. Declaration of Dr. Trimble *citing* June 29 Memorandum of Record.

16 On June 24, 1998, Dr. Trimble informed Ms. Leckie about his assessments of the Burke  
17 and the Museum of Man and on June 26, he sent her a copy his written evaluations. Based upon  
18 review of this information, both Dr. Trimble and Ms. Leckie agreed that the Museum of Man  
19 was not an appropriate facility for housing the remains. Declaration of Dr. Trimble at III. B.  
20 *citing* June 29, 1998 Memorandum of Record. Counsel for plaintiffs-scientists confirmed that  
21 they no longer recommended the Museum of Man in a letter faxed to counsel for the federal  
22 defendants' office on July 1, 1998.

23 **c. Consideration of The Getty Conservation Institute In Los Angeles, California**

24 On June 24, 1998, prior to receipt of Dr. Trimble's written assessment of the Burke  
25 Museum and the Museum of Man, Ms. Leckie requested that Dr. Trimble look into the  
26 possibility of housing the remains at the Getty Institute in Los Angeles, California. Declaration  
27 of Dr. Trimble at III. B. 4. Pursuant to Ms. Leckie's request, Dr. Trimble wrote the Getty and  
28

1 asked whether they would permit the collection to be housed at their facility. By letter dated  
2 June 25, 1998, the Getty stated that they would not accept the collection explaining that their  
3 "first concern would be the safety of the skeletal material- some 9,000 years old- during packing  
4 and 3-mode transport from Oregon [to Los Angeles]. Damage to the remains would surely upset  
5 a delicate political balance." Letter of 25 June, 1998 letter from Dr. Margaret G.H. Mac Lean,  
6 Group Director The Getty, Declaration of Dr. Trimble at B.4. On June 29<sup>th</sup> Dr. Trimble relayed  
7 the Getty's response to Ms. Leckie and they both agreed that although long distant transport was  
8 possible, it was not optimal for these remains if it could be avoided. Declaration of Dr. Trimble,  
9 June 29, 1998 Memorandum For Record.

#### 10 IV. INVESTIGATION OF ADDITIONAL MUSEUMS IS NOT NECESSARY

11 Although Dr. Trimble and his staff had spent most of the month of June inspecting the  
12 Burke Museum as well as all other facilities identified by plaintiffs' expert, on June 26, 1998.  
13 plaintiffs's counsel requested that Dr. Trimble produce a list of 10 to 15 museums which could  
14 provide suitable for housing the remains. In addition, plaintiffs' counsel requested that Dr.  
15 Trimble include the Smithsonian Museum in Washington, D.C. on that list. Federal defendants  
16 responded by requesting that plaintiffs first submit to Dr. Trimble a list of those facilities that  
17 they would not oppose and for which they had obtained a commitment to house the remains. In  
18 addition, federal defendants asked if the plaintiffs would agree to housing the remains at the  
19 Burke and that if they were apprehensive about doing so they were encouraged to call the  
20 Director of the Burke, Dr. Hutterer, in order to find out more about the facility. Plaintiffs still  
21 have visited the Burke regarding this matter and contacted Dr. Hutterer by telephone for the first  
22 time on June 30, 1998. *See* Declaration of Dr. Hutterer at ¶ 4.

23 Dr. Trimble estimates that it would take approximately 5 to 6 weeks just to generate an  
24 accurate list of potentially adequate facilities that he would feel comfortable presenting to the  
25 Court. Declaration of Dr. Trimble at ¶ III. D.1. Dr. Trimble further projects that, to visit each  
26 facility and create an assessment of the type produced in relation to the Burke and the Museum  
27 of Man, probabiy could not be achieved until January, 1999. *Id.* As plaintiffs are aware, Dr.  
28 Trimble is currently scheduled to be out of the country for the entire month of July.



1 Consequently, he would not be able to even begin such a task until the first of August. *Id.*

2       It is clear from the assessments produced in consultation with Ms. Leckie, by Drs.  
3 Trimble and McManamon, that the Burke Museum fully satisfies all of the technical curation and  
4 housing and examination criteria which are applicable in this case. Furthermore, the Burke is the  
5 only museum which also can satisfy the policy interests in housing remains the State of their  
6 discovery prior to disposition- an interest which the tribes are dedicated to having honored. May  
7 29, 1998 Testimony of Dr. Trimble. Finally, housing the remains at the Burke also decreases the  
8 risk that remains of this age would be damaged during long distance travel. This risk was not  
9 only recognized by both Dr. Trimble and Ms. Leckie but also by the Group Director for the Getty  
10 Center in Los Angeles, California. By satisfying the technical curation and examination needs of  
11 this collection, as well as the policy concerns related to their transfer, the Burke Museum is  
12 undeniably an appropriate facility for housing the remains. Consequently, the only thing that  
13 further investigation of additional museums would accomplish would be a waste of time, money  
14 and resources which could be better spent in analyzing the remains for a determination of their  
15 appropriate disposition.

16       **V.     Mediation**

17       The mediation occurred from June 17 through the 19<sup>th</sup>, 1998.

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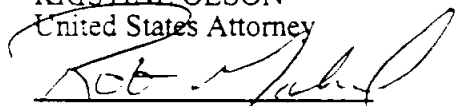
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Dated this the 1<sup>st</sup> day of July, 1998.

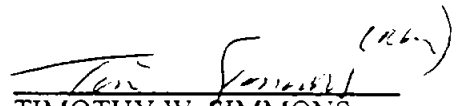
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15 ROBSON BONNICHSEN, et al., )

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Civil No. 96-1481-JE

**CERTIFICATE OF SERVICE**

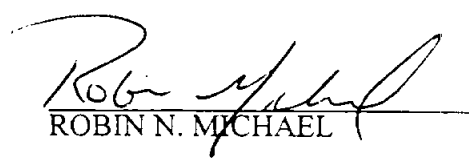
21 I certify that on July 1, 1998, I served copies of **Federal Defendants' Fourth Quarterly**  
22 **Status Report, Declaration of Francis P. McManamon, Declaration of Mary Anne Kenworthy,**  
23 **Declaration of Dr. Karl Hutterer, and Declaration of Michael K. Trimble, Ph.D.,** to the parties  
24 listed below by Federal Express:

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