



CONFEDERATED TRIBES

of the

*Umatilla Indian Reservation*

P.O. Box 638

PENDLETON, OREGON 97801

Area Code 541 Phone 276-3165 FAX 276-3095

Received  
AUG 1998

Mr. Francis P. McManamon, DCA  
Manager, Archaeology & Ethnography Program  
1849 C. Street, N.W., Suite 210  
Washington, D.C. 20240-0001

August 4, 1998

RE: Draft Document - *Department of Interior Approach to Documentation, Analysis, Interpretation, and Disposition of Human Remains Found at Columbia Park, Kennewick, WA., 29 June 1998*

Dear Mr. McManamon:

Of recent past, members of our Board of Trustees and staff for the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) have been meeting with you and others regarding the treatment and disposition of the human skeletal remains discovered near Kennewick, Washington. The CTUIR has received and reviewed the draft document titled "*Department of Interior Approach to Documentation, Analysis, Interpretation, and Disposition of Human Remains Found at Columbia Park, Kennewick, WA., 29 June 1998*". By this letter, the CTUIR provides additional comment to your Office regarding this proposed testing regime.

As you may recall, our representatives provided to you specific concerns and questions regarding this proposed testing regime during the Consultation sessions previously held in Walla Walla, Washington. Specifically, you were asked how these proposed tests coincided with the press release issued by the American Anthropological Association (AAA) regarding a AAA letter sent to the federal Office of Management and Budget regarding scientific testing of race. The AAA letter was a response to Directive 15 which designates racial and ethnic categories used in the U.S. Census and in innumerable other public and private research projects. It reads in part:

"...The concept of race is a social and cultural construction, with no basis in human biology - race can simply not be tested or proven scientifically, according to the AAA. In fact, many Americans do not understand the differences between race, ethnicity and ancestry categories in surveys, and fail to distinguish between them".

DOI 03381

The AAA further:

"...the data also show that any two individuals within a particular population are as different genetically as any two people selected from any two populations in the world."

Your reported response to this issue was that "there is disagreement in the field on this question". Our response to you is that your categorization of this as merely a "difference of opinion" is an understatement requiring explanation. We have asked precisely how taking physical measurements of these human remains can "prove" if he is Native American in light of the position of the AAA on this question. Mr. McManamon, we are simply attempting to understand the scientific principles being proposed by the DOI in light of the fact that the Tribes are all working diligently to preserve the sanctity of these remains. We are opposing the efforts of a few "scientists" to conduct tests simply because we do not ascribe to the notion valuable information may be learned with destructive tests or tests based on out-dated theories rejected by the AAA and others.

We have studied your correspondence to the Corps of Engineers (December 23, 1997) regarding questions from the federal court in the Bonnichsen v. United States litigation. We agree with your read and assessment of NAGPRA and the regulations in answering the questions. By that correspondence, we understand you to mean, that any human skeletal remains, inadvertently discovered on federal lands, is a Native American if those remains are 500+ years in age (roughly) regardless if the remains are biologically related to any person now and regardless of whether those remains are of a person who was born in what is now the United States or migrated here from someplace else. How does your letter to the Corps regarding the terms Native American and "indigenous" coincide with the need to conduct these tests as proposed?

To date we have not been provided any direct explanation to our concerns regarding the scientific legitimacy of such examinations proposed in the draft document. Without an explanation, we are left without the means to reconcile the contrasting views on this issue between the AAA and your Office. We request, again, that you provide the documentation or other literature that either refutes the AAA's position on racial identification or explains or reconciles how the AAA's position and the DOI's testing regimen are not mutually exclusive. It is our view that this entire issue is and has been protracted (often times unnecessarily) to the detriment of our cultural and religious tenants, and it is our desire to avoid any future delays, including delays based upon an arbitrary or capricious decision. We need a resolution to this issue on the science behind some of these proposed tests prior to any further steps being taken.

Specific comments are as follows:

1. *Physical Examination and Inventory of Skeletal and Dental Elements:*

The use of testing procedures that are in contrast to the position of the AAA are questioned here. Also, the term "ethnic indicators" is not found in the NAGPRA, so, even if they exist, what is the purpose of looking for "ethnic indicators"? How does this reach the determination of Native American? We agree and fully support a complete inventory by a qualified physical anthropologist. We would expect to have notice, or even formal consultation on the question of whom constitutes "qualified".

2. *Detection and Analysis of Adhering Soil.*

We fully support efforts to conduct an examination of any soil still within or adhering to the human remains, provided that any such examination may be helpful in making the Native American determination. We recommend that this analysis be accomplished in conjunction with the work performed at the discovery site by the CTUIR, the Corps of Engineers (Dr. Lillian Wakeley) and Dr. Huckleberry. We understand that there is potential that this soil analysis might be able to assist in confirming which soil layer(s) the human remains were buried, and also the soils may potentially assist in confirming the age of the remains.

3. *Analysis of Lithic Object Embedded in the Pelvis.*

We understand that this examination would not require removing the lithic object from the pelvis. We also understand that this particular examination is thought to be able to provide information about the source, age and technology employed in the manufacturing of this lithic object. If this examination can be demonstrated to assist in repatriation efforts, we will offer our support. It was also thought that an examination of the wound (actually the healing process) in the pelvis might reveal information about this person's health. We are not interested in his health so this part of the study should not be included.

4. *Metric Recording of Dental and Skeletal Elements.*

As mentioned above, the CTUIR requests that consultation occur between your Office and all of the involved Tribes regarding the scientific legitimacy of physical measurement-type tests being proposed given the AAA letter as a backdrop. Again we are concerned that any proposed examination or recording of these human remains be conducted with the least amount of

handling and that only those examinations and tests that are required to reach the Native American determination. We do not support examinations or recording of measurements that are inconsistent with the position of the AAA, that is, trying to scientifically prove race of skeletal human remains by "scientific" testing. We cannot support this part of the testing regimen until further consultation with your Office.

5. *Non-Metric Dental and Skeletal Recording.*

As mentioned above, the CTUIR requests that some discussion occur between your Office and all of the involved Tribes regarding the scientific legitimacy of physical measurement-type tests being proposed. We understand however, that this part of the testing regimen will include tests that might reveal "patterns" which may suggest "Native American descent" and that morphological aspects of the skeletal remains and teeth can display characteristics linked to Native Americans. If such assessments can be made without running afoul of the AAA's position on racial identification, then we could support this part of the testing regimen.

6. *Assessment of Trauma.*

It is not certain how this assessment helps the DOI get to the determination of Native American. More explanation is needed here on this portion, and in the event we are convinced that this test helps in the repatriation process, we will support it.

7. *Dating of the Remains using Radiocarbon Techniques.*

The DOI asserts that it is essential that all human remains be placed in temporal and cultural context and that if chronology cannot be adequately inferred from other means, radiocarbon dating would be necessary. We have previously commented on this question (see letters to Corps of Engineers (September 16, 1997 and November 14, 1997) and we recommended that other means to age the remains should be utilized before Radiocarbon testing. Also, the site stabilization work and data gathering by the CTUIR, Dr. Lillian Wakely and Dr. Huckleberry should be reviewed for age assessment before radiocarbon testing. Radiocarbon testing is destructive and we do not support it on those grounds alone. In this case, there has been no demonstration or explanation given why any tests must be done if the remains are older than 500 years.

8. *DNA Extraction and Analysis.*

The theory here is that modern and past Native American populations exhibit distinct "patterns" of mitochondrial DNA and that by comparing the DNA of these human remains against

other known DNA samples taken from "Native Americans" the DOI can make a "Native American" determination. DNA extraction requires the destruction of the bone sample and on that basis we cannot support DNA testing. More discussion (read consultation) would be needed before the CTUIR could consider DNA testing.

9. *Stable Isotope Extraction and Analysis.*

The theory here is that by testing for the existence of certain chemicals found in the body, that the diet of the person can be learned, and thus, assist in determining of these remains are "Native American". Stable isotope extraction requires the destruction of the bone sample and on that basis we cannot support this test.

10. *Other Invasive Techniques.*

The DOI believes that there may be a need for other tests (chemical, radiological and other physical means) to be conducted in gathering information necessary to make a determination as to whether or not the Ancient One is a "Native American". Until these other techniques are made available for review, there is nothing to comment on here.

In addition to the above issues, the DOI draft implies that no Tribe or Tribes claimed the tri-cities area as part of their aboriginal territory based on the final decrees issued by the Court of Claims. The Tribes explained to you at Walla Walla that the judgements and decrees of Court of Claims were arbitrary and capricious and did not reflect use of this area. The Court of Claims concluded that "no one single Tribe" had exclusive use and occupancy of this geographic area and on that basis no one single Tribe could obtain a Court of Claims judgement which includes these lands. The fact is, that this area was heavily used by many tribes and bands and all did and still consider this area as their "aboriginal territory". We recommend that our comments include changes to this portion of the draft.

Also, in the draft document there was a reference to Lineal Descent, that is, that it not being possible for any relationship of lineal descent to be made. This might be the likely outcome of this particular case, however, given the fact that as of the writing of the draft document, not the Tribes, the plaintiff scientists or the federal government have had an opportunity to conduct an inventory much less an examination of these remains. It is possible that these remains are not at all as old as once thought and there may in fact be someone who comes forward with evidence supporting lineal descent. It appears that this text was premature and should be deleted.

In summary, we support only those parts of the testing regime that get the DOI (and the Corps of Engineers) to the determination of whether or not these human remains are Native American. We are mindful of the fact that the DOI has a need to conduct some form of examination to make this determination, we simply are not yet convinced that some of these tests are in fact required. Also, we are not yet convinced that the theories behind some of these tests are legitimate and in fact, may run counter to our efforts. We want very much to assist the DOI at this stage, however we strongly suggest that there be some very frank discussions between us about "science".

We must mention here, that from our perspective, that in light of all the federal law and policy extant on these issues (NAGPRA, it's legislative history, the NAGPRA regulations, Presidential Executive Orders regarding Native Americans, the American Indian Religious Freedom Act and the federal cannons of construction regarding federal Indian law and policy), it is truly an injustice of still having to overcome yet another artificial barrier to implementing policy and enforcing law where Indian rights or interests are at stake. Further, we must also mention that our religious and cultural tenants are being violated and we are concerned that the DOI may elevate "science" to a status as the only legitimate means of perceiving and interpreting these issues.

We cannot emphasize enough, the importance of having this person's body returned immediately for reburial. Please contact us for formal consultation regarding this proposed testing. If there are any questions or concerns, please contact me.

Sincerely,

  
Antone C. Minthorn  
Chairman, Board of Trustees

ACM:plm

cc: Board of Trustees  
Cultural Resources Commission  
The Colville Confederated Tribes  
The Yakama Indian Nation  
The Wanapum Band  
The Nez Perce Tribe  
Michael J. Farrow, Director, DNR  
Debbie Crosswell, Public Relations  
Jeff Van Pelt, DNR CRPP  
Dan Hester, Esq.