



U.S. Department of Justice

Environment and Natural Resources Division

Natural Resources Section
P.O. Box 663
Ben Franklin Station
Washington, DC 20044-0663

Telephone (202) 305-0437
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March 29, 2005

Mr. Alan L. Schneider
1437 SW Columbia Street,
Suite 200
Portland, OR 97201-2535

Re: Bonnichsen v. United States

Dear Mr. Schneider,

I received your letter dated February 24, 2005, regarding plaintiffs' proposed taphonomic study of the Kennewick remains, as outlined in the *Description of Study Process: Kennewick Man Skeleton (June 2005 Study Session)* (hereinafter referred to as "Taphonomic Study Proposal"). I have also received your letter dated March 15, 2005, regarding scheduling for the taphonomic study session at the Burke Museum.

The United States Army Corps of Engineers has agreed to grant access to the plaintiffs' team of scientists to conduct the studies outlined in the Taphonomic Study Proposal, subject to the terms and conditions outlined in the attached documents. See Tab 1.

Furthermore, we appreciate your flexibility in scheduling the taphonomic study session. The agency and the Burke Museum have committed to the dates you proposed – July 5-15, 2005 – to conduct the taphonomic study session. Accordingly, we will notify the court that the parties have scheduled a study session, and thus, will need access to the remains from July 5-15, 2005.

Please feel free to contact me if you have any questions.

Sincerely,

SIGNED

Sydney Cook

cc: Tim Simmons
Jennifer Richman



DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, NORTHWESTERN DIVISION
PO BOX 2870
PORTLAND OR 97208-2870

REPLY TO
ATTENTION OF

Office of Counsel

Mr. Tim Simmons
Assistant U.S. Attorney
1000 SW Third Ave., Suite 600
Portland, Oregon 97204

Ms. Sydney Cook
U.S. Department of Justice (ENRD- General Litigation Section)
P.O. Box 663
Ben Franklin Station
Washington, DC 20044-0663

Dear Mr. Simmons and Ms. Cook:

This letter serves as a response to the plaintiffs' proposed taphonomic study of the Kennewick remains, as outlined in their *Description of Study Process: Kennewick Man Skeleton (June 2005 Study Session)*, dated February 24, 2005 (hereinafter referred to as "Taphonomic Study Proposal"). The studies are approved in the enclosed documents. Based on the information provided by the plaintiffs to the U.S. Army Corps of Engineers through correspondence, conference calls, in person meetings, and other discussion, and based on the technical advice of my staff, I believe that the studies outlined by the plaintiffs in the Taphonomic Study Proposal minimize the handling of the remains and are consistent with the Corps' responsibility to "protect and preserve the condition, research potential, . . . and uniqueness of the collection." 36 C.F.R. § 79.10. Therefore, I grant access to the plaintiffs' team of scientists to conduct the studies outlined in the Taphonomic Study Proposal, subject to the terms and conditions outlined in the enclosed document.

It is my understanding that these studies will occur in June 2005 and the details are being worked out among your offices, my staff, the government's conservators, the Burke Museum, and the plaintiffs. I look forward to hearing about the results of the studies and hope they will further our understanding of the Kennewick Man and prehistory while not unnecessarily duplicating the work previously performed by the government in 1999 and 2000.

Please forward this response to the plaintiffs. Questions about the Kennewick Man studies can be directed to Ms. Jennifer Richman of my staff at (503) 808-3763.

Sincerely,

SIGNED

WILLIAM T. GRISOLI
Brigadier General, U.S. Army
Division Engineer

Enclosure



DEPARTMENT OF THE ARMY
ST. LOUIS DISTRICT, CORPS OF ENGINEERS
1222 SPRUCE STREET
ST. LOUIS, MISSOURI 63103-2833

REPLY TO
ATTENTION OF:

CEMVS-ED-Z

8 March 2005

MEMORANDUM FOR Commander, Northwestern Division, ATTN: CECC-NWD (Richman),
P.O. Box 2870; Portland, OR 97208-2870

SUBJECT: Response to Plaintiffs' February 24, 2005, Taphonomic Study Proposal for the
Kennewick Remains, *Bonnichsen v. United States*

1. My staff, the government's contracted conservators (Dr. Nancy Odegaard and Dr. Vicki Cassman), and the Burke Museum have reviewed the Plaintiffs' Description of Study Process: Kennewick Man Skeleton (June 2005 Study Session), dated February 24, 2005, (hereinafter Taphonomic Study Proposal). The proposal is consistent with the Corps' obligations as identified under the curation regulations (36 C. F. R Part 79) and I recommend that you grant access to the plaintiffs' study team to perform the listed studies, subject to the identified conditions. The terms and conditions described in this memorandum are those I feel are necessary to ensure the protection and preservation of this collection. These conditions are also consistent with other requests for the study of archaeological collections (including human remains) that the St. Louis District recently reviewed.
2. This approval document is based on all communications with the plaintiffs from October 2002 to present. Plaintiffs submitted to the U.S. Army Corps of Engineers (Corps) an original study plan in October 2002. Since that time, the Corps has communicated with the plaintiffs by letter, phone, and in person. On February 24, 2005, the plaintiffs submitted the Taphonomic Study Proposal detailing the process for a first phase of studies on the remains, which is scheduled to occur in June 2005.
3. Members of the plaintiffs' study team will be subject to the same Conditions of Access/Code of Conduct issued by the Burke Museum as during the December 2004 pre-study inspection visit, which each member of inspection team signed. In addition, all agreements made through correspondence between the government and the plaintiffs prior to or during that visit will also apply. For instance, no photographs of any government or Burke personnel may be used without their written permission. Likewise, the number of individuals in a room at a given time may be monitored to protect the condition of the remains. Any deviations from the proposed plan will be described in writing and coordinated with the government. Copies of all raw data, such as notes taken during the studies, will be provided to the government for inclusion in the Kennewick associated records. Timing of all studies is subject to the schedule of the curators, the conservators, and the Burke Museum.
4. Assemblage Verification and Completion. Plaintiffs propose to first "verify the accuracy of the existing element assemblages and to attempt to identify as many of the unidentified

CEMVS-ED-Z

SUBJECT: Response to Plaintiffs' February 24, 2005, Taphonomic Study Proposal for the Kennewick Remains, *Bonnichsen v. United States*

- Any duplicate measurements should be minimized if measurements are taken during the study.
- Interpretations of previous government studies on the remains (e.g., Powell and Rose 1999; Walker, Larsen, and Powell 2000) should be explicitly addressed in the report of this study.

7. Taphonomic Data Collection/Phase Three. Plaintiffs propose to place the temporarily reassembled elements in anatomical position in a specially constructed sand enclosure "so that an emerging profile can be visualized for individual elements, then for paired bones, and eventually for the entire skeleton" as stated in the Taphonomic Study Proposal on pages 5-6. This proposal will reduce the handling of the remains. Information was also provided in the October 2002 Study Proposal at pages 4-5 and during the pre-study inspection visit at the Burke Museum in December 2004. This study is approved subject to the following conditions.

- Temporary refitting/reassembly using methods and materials approved by the government will be permitted. All reassembly will be done in the presence of the government's conservators.
- No cleaning or scraping of soil or concretions will be allowed.
- All elements and fragments will be returned to the original storage boxes at the completion of the study.
- Government representatives or Burke personnel will ensure the stability of the sand enclosure prior to any skeletal material being placed in the box. Conservators will oversee the process.
- Any duplicate measurements should be minimized if measurements are taken during the study.
- Interpretations of previous government studies on the remains (e.g., Powell and Rose 1999; Walker, Larsen, and Powell 2000) should be explicitly addressed in the report of this study.

8. Photography. Plaintiffs propose to photograph the remains at two fixed work stations as stated in the Taphonomic Study Proposal on page 6. Information was also provided in the October 2002 Study Proposal at pages 23-24, and supplemented in correspondence from A. Schneider to D. Shuey and T. Simmons, dated December 24, 2002. This study is approved subject to the following conditions.

- Copies of all photographs taken during plaintiffs' studies will become a part of the associated records of the collection.
- Any and all photographs taken must comply with the Burke Museum protocol for photography.

CEMVS-ED-Z

SUBJECT: Response to Plaintiffs' February 24, 2005, Taphonomic Study Proposal for the Kennewick Remains, *Bonnicksen v. United States*

fragments as possible" as stated in the Taphonomic Study Proposal on pages 1-2. Information also was provided in the October 2002 Study Proposal (pages 2-3). This study is approved subject to the following conditions.

- Any change in identifications of elements or fragments will be called to the immediate attention of government representatives (including conservators) and/or Burke Museum staff.
- The existing numbering system and bone element identifications, established during the 1999 government study, will be used as a baseline.

5. Taphonomic Data Collection/Phase One. Plaintiffs propose to examine each bone for "all observable taphonomic characteristics" as stated in the Taphonomic Study Proposal on pages 2-5. Information also was provided in the October 2002 Study Proposal at pages 4-5 and during the pre-study inspection visit at the Burke Museum in December 2004. This study is approved subject to the following conditions.

- Temporary refitting/reassembly using methods and materials approved by the government will be permitted. All reassembly will be done in the presence of the government's conservators.
- No cleaning or scraping of soil or concretions will be allowed.
- All elements and fragments will be returned to the original storage boxes at the completion of the study.
- Any duplicate measurements should be minimized if measurements are taken during the study.
- Interpretations of previous government studies on the remains (e.g., Powell and Rose 1999; Walker, Larsen, and Powell 2000) should be explicitly addressed in the report of this study.

6. Taphonomic Data Collection/Phase Two. Plaintiffs propose to temporarily reassemble the remains for further taphonomic evaluation and observations as stated in the Taphonomic Study Proposal on page 5. Information also was provided in the October 2002 Study Proposal at pages 4-5 and during the pre-study inspection visit at the Burke Museum in December 2004. This study is approved subject to the following conditions.

- Temporary refitting/reassembly using methods and materials approved by the government will be permitted. All reassembly will be done in the presence of the government's conservators.
- No cleaning or scraping of soil or concretions will be allowed.
- All elements and fragments will be returned to the original storage boxes at the completion of the study.

CEMVS-ED-Z

SUBJECT: Response to Plaintiffs' February 24, 2005, Taphonomic Study Proposal for the Kennewick Remains, *Bonnichsen v. United States*

9. X-Ray Imaging. Plaintiffs propose to x-ray the "cranium, mandible, and other key elements" of the skeleton as stated in the Taphonomic Study Proposal on pages 6-7. Information was also provided in the October 2002 Study Proposal at pages 23-27 and during the pre-study inspection visit at the Burke Museum in December 2004. This study is approved subject to the following conditions.

- "Other key elements" will need to be specifically identified and coordinated with government representatives.
- Plaintiffs will release for approval by the Corps, at least 14 days prior to the study, the name of the facility and the names and qualifications of the persons conducting the imaging.
- Plaintiffs will submit a detailed plan of action for the care, security, and handling of the remains during transport and examination at the off-site facility.
- Transportation and security of the remains will be coordinated with government representatives and will follow methods approved by the government.

10. Other Comments. Plaintiffs have provided a list of the members of the study team and logistical requirements for the study. All members of the study team identified by the plaintiffs in the Taphonomic Study Proposal are considered qualified. If the plaintiffs wish to add any other individuals to the study team, the government must be notified of the names of the additional individuals, not less than 14 days prior to the commencement of the study, for approval and to allow time to give the Court the required notice. The Corps understands that the study may take more than five working days to complete, and we will work with the plaintiffs to accommodate the schedule. Requirements for equipment and space at the Burke Museum will be met.

11. If you have any questions about the contents of this memorandum, please do not hesitate to contact Chris Pulliam at (314) 331-8481.

FOR THE COMMANDER:



SIGNED

MICHAEL K. TRIMBLE, Ph.D.
Director, Mandatory Center of Expertise
for the Curation and Management
of Archaeological Collections