

## **BACKGROUND INFORMATION**

### **The Discovery of Kennewick Man**

In 1996, an ancient skeleton was unearthed along the banks of the Columbia River. Later named in honor of the city where it was discovered, Kennewick Man is estimated to be more than 9,300 years old and is one of the oldest human skeletons ever found in North America.

After the discovery, the U.S. Army Corps of Engineers attempted to turn the skeleton over to regional Indian tribes for immediate burial despite the fact that all preliminary evidence suggested that it was not related to present day tribes. Upon learning of these plans, Congressman Hastings and many others wondered how the ownership of Kennewick Man could be determined by the government before basic questions about the age or racial classification of the skeleton had been settled. The discovery of Kennewick Man brought about a controversy that continues to this day about the proper disposition of ancient human remains discovered on federal lands.

### **NAGPRA**

At the center of this controversy lies the Native American Graves Protection and Repatriation Act (NAGPRA) – an important law that protects the interests of Native Americans with respect to the remains of their ancestors discovered on federal lands. While this law was written to address the ownership of human remains from recent centuries that are related to present day Indian tribes, it does not speak to the subject of very ancient remains of unknown origin, and was never intended to thwart the scientific study of remains as old as Kennewick Man.

### **Lawsuit/Court Decision**

Unfortunately, in the Kennewick Man case the Army Corps of Engineers and the Department of Interior took the extreme view that NAGPRA requires ancient remains to be turned over to the closest present day Indian tribe, even if that move would effectively prohibit scientific study. In response, scientists sued the Corps of Engineers for the right to study Kennewick Man. In 2004 the Ninth Circuit Court of Appeals ruled in favor of the scientists. NAGPRA defines a Native American as: “of or relating to, a tribe, people, or culture that is indigenous to the United States.” By using the present tense “*is*”, the Court ruled that Congress intended NAGPRA to apply only to remains related to presently existing tribes where a significant relationship can be shown. There was not enough evidence to suggest Kennewick Man was significantly related to a presently existing tribe – thus the decision cleared the way for the skeleton to be studied.

### **Current Issues**

Legislation introduced in Congress and approved by the Senate Indian Affairs Committee (Senate bill 2087) threatens to overturn the decision of the Ninth Circuit Court and allow ancient remains to be turned over to present day Indian tribes without scientific examination. Even if these attempts fail, the Ninth Circuit ruling protecting the right to study Kennewick Man is vulnerable to being overturned as a result of new legal cases involving other ancient remains.

### **Hastings' Bill**

In order to 1) ensure that legislative attempts to overturn the Ninth Circuit's decision are not successful, 2) protect against future misinterpretation and misapplications of NAGPRA by federal agencies and 3) prevent other ancient remains from being tied up in the courts for as long as Kennewick Man, Congressman Hastings has authored a bill to codify court rulings protecting the right to study ancient remains. Hastings' bill makes it crystal clear – once and for all – that NAGPRA only calls for remains with a substantial relationship to present day Native Americans to be automatically turned over tribal claimants.