

**INTERAGENCY AGREEMENT
BETWEEN THE DEPARTMENT OF THE ARMY AND THE DEPARTMENT OF THE INTERIOR
ON THE DELEGATION OF RESPONSIBILITIES UNDER SECTION 3 OF THE
NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT PERTAINING TO
HUMAN REMAINS DISCOVERED NEAR THE CITY OF KENNEWICK, WASHINGTON**

WHEREAS, on July 28, 1996, human remains were inadvertently discovered in Columbia Park, near the City of Kennewick, Benton County, Washington, on land controlled by the U.S. Army Corps of Engineers; and

WHEREAS, on or about September 1, 1996, the Corps Walla Walla District took control of these human remains and proceeded with the understanding that they are subject to the requirements of the Native American Graves Protection and Repatriation Act (NAGPRA) and its implementing regulations; and

WHEREAS, on September 17 and 24, 1996, the Corps Walla Walla District published notices in a newspaper of general circulation in the area of the discovery announcing its decision that the human remains were Native American and were culturally affiliated with five Columbia River basin tribes; and

WHEREAS, on October 16 and 22, 1996, disposition of the human remains became the subject of two lawsuits, Bonnichsen et al. v. United States et al. (D. Oregon, Civil No. 96-1481-JE) and Asatru et al. v. United States et al. (D. Oregon, Civil No. 96-1516-JE); and

WHEREAS, on March 23, 1997, the Corps Walla Walla District rescinded its prior notices regarding the disposition of the human remains.

WHEREAS, on June 27, 1997, the Court vacated the prior decisions regarding disposition of the human remains to the extent they had not already been rescinded and remanded the matter back to the Corps for further consideration; and

WHEREAS, section 3 (d)(3) of NAGPRA stipulates that the responsibilities for determining the disposition of inadvertently discovered Native American human remains may be delegated to the Secretary of the Interior;

NOW, THEREFORE, the Secretary of the Army delegates, and the Secretary of the Interior consents to such delegation of, the responsibility for determining if the human remains found near Kennewick, Washington, are Native American within the meaning of NAGPRA, and, if it is determined that such human remains are Native American, to provide for their disposition under the terms of the statute and its implementing regulations found at 43 CFR 10.3 through 10.7.

STIPULATIONS

- I. The Department of the Interior shall determine if the human remains found near Kennewick, Washington are Native American within the meaning of NAGPRA.
- II. If the human remains are found to be Native American within the meaning of NAGPRA, the Department of the Interior shall determine their disposition under the terms of the statute and its implementing regulations found at 43 CFR Part 10.3 through 10.7.

DOI 02676



III. The Department of the Interior shall be the lead agency in maintaining the official administrative record for the determinations made as required by Stipulations I and II, above.

IV. The Department of the Interior shall design a set of procedures and identify appropriate entities needed to make the two determinations listed in stipulations I and II. These procedures may include, but shall not be limited to: a complete examination and evaluation of the human remains; archeological, ethnographic, and geological and/or geomorphological evaluation of the site of discovery; studies to determine the appropriate disposition and custody of the human remains; and, physical testing of limited portions of the remains, if necessary and appropriate.

V. All activities conducted by the Department of the Interior as part of this agreement shall be done in cooperation with the Department of the Army, and, to the extent required by law or Federal policy, in consultation with appropriate Indian tribes and other interested parties.

VI. The Department of the Army shall procure such studies, tests or items of research determined appropriate by the Department of the Interior under NAGPRA with regard to the human remains discovered near Kennewick, Washington. Any obligation of funds, expenditure of appropriations, or inter-agency transfers will be accomplished in accordance with applicable laws, regulations, policies and procedures.

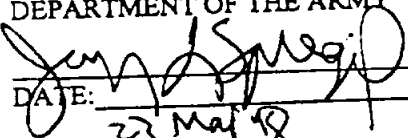
VII. The Department of the Interior and the Department of the Army shall create a joint review team for the purpose of evaluating the progress of activities designed and implemented pursuant to this agreement. This team shall meet on an as-needed basis, but not less frequently than once each month.

VIII. The joint review team shall designate a point or points of contact for any public information regarding the status and condition of the human remains and the site of discovery, as well as the status of any studies, tests, or items of research developed pursuant to this agreement.

IX. The Department of the Army shall continue to manage and protect the site of discovery of the human remains and adjacent lands owned by the Federal government. The Department of the Army also shall ensure the continued protection and appropriate curation of the human remains.

X. This agreement becomes effective when signed by both signatory parties and remains in effect until modified or terminated. This agreement may be modified or amended at any time, by mutual and written agreement of both parties. This agreement may be terminated by either party upon sixty (60) days prior written notice. This agreement may be modified or amended based on mediation.

XI. This agreement does not create a private right of action in any person or entity to enforce any provision of this agreement or to challenge any agency action taken pursuant to it.

DEPARTMENT OF THE ARMY

DATE: 23 Mar 98
JAYSON L. SPIEGEL
Acting Assistant Secretary of the Army
for Manpower and Reserve Affairs

DEPARTMENT OF THE INTERIOR
~~APPROVED SIGNATURE PENDING~~
DATE: _____
DONALD J. BARRY
Acting Assistant Secretary of the Interior
for Fish and Wildlife and Parks

DOI 02677

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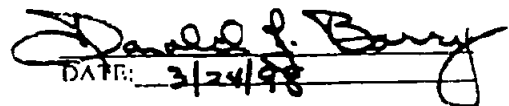
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DEPARTMENT OF THE ARMY

DATE: _____

JAYSON L. SPIEGEL
Acting Assistant Secretary of the Army
for Manpower and Reserve Affairs

DEPARTMENT OF THE INTERIOR


DATE: 3/24/98

DANIEL J. HARRY
Acting Assistant Secretary of the Interior
for Fish and Wildlife and Parks

DOI 02678