Nos. 02-35994 & 02-35996 (Companion Appeals)
(Related case DC 96-1481JE (D. Or.))

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ROBSON BONNICHSEN, C. LORING BRACE, GEORGE W. GILL, C. VANCE HAYNES, JR., RICHARD L. JANTZ, DOUGLAS W. OWSLEY, DENNIS J. STANFORD and D. GENTRY STEELE,
Plaintiffs-Appellees,

v.

UNITED STATES OF AMERICA, et al.,
Defendants-Appellants,

and

CONFEDERATED TRIBES OF THE COLVILLE RESERVATION, NEZ PERCE TRIBE, CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION, CONFEDERATED TRIBES AND BANDS OF THE YAKAMA NATION,
Defendants-Intervenors-Appellants.

On Appeal from the United States District Court
for the District of Oregon
Honorable John Jelderks

BRIEF OF AMICUS CURIAE
SHERRY HUTT

To Reverse

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BRIEF OF AMICUS CURIAE
SHERRY HUTT

STATEMENT OF INTEREST

The amicus is a private individual filing, pursuant to FRAP 29, on her own behalf and not on behalf of others. This amicus is a member of the State Bar of Arizona and was admitted to the Ninth Circuit Court of Appeals in 1982. This amicus is a consultant who provides training on cultural property law, including the Archaeological Resources Protection Act (ARPA), the Native American Graves Protection and Repatriation Act (NAGPRA) and decision making under the Administrative Procedures Act (APA), to attorneys, archaeologists, tribal officials and state and federal public lands managers and has done so for almost twenty years. She is a coauthor of ARCHEOLOGICAL RESOURCE PROTECTION, Preservation Press, 1992; HERITAGE RESOURCES LAW, John Wiley & Sons, 1999; and the forthcoming CULTURAL PROPERTY LAW: A PRACTITIONER'S GUIDE, American Bar Association. The amicus is a member of the Society for American Archaeology and has published in SAA publications. She has been honored for her work on ARPA by the Society for Professional Archaeologists and the Department of the Interior. She was a 2002 Fellow in Museum Studies at the Smithsonian Institution. The Smithsonian Institution is not a party or a repository herein. The views expressed in this brief are those of the amicus.

The amicus recognizes that the issues presented in this litigation arise from cultural property laws not often placed before this court. This amicus has an interest in the impact that the opinion of this Court will have upon those who must make decisions in the cultural property arena, who rely upon this amicus for training and guidance on the application of these laws. The perspective of the amicus is one of an academic treatment of the law. This amicus agrees with both Appellants that the decision of the trial court should be vacated, but for additional reasons. This amicus agrees in part with amici, who support Appellee. This amicus agrees with the Society for American Archaeology that the human remains at issue are those of a Native American, but disagrees that the standard of proof for a determination of cultural affiliation should be raised to one of a scientific certainty. The amicus also agrees with Pacific Legal Foundation that property rights are to be respected and this brief will track NAGPRA as it is consistent with the Fifth and Fourteenth Amendments to the United States Constitution. The amicus does not support the ruling of the trial court.

SUMMARY OF ARGUMENT

The amicus curiae raises four issues for consideration by this Court.

1. Appellees lack standing to obtain the relief awarded - that is possession of the human remains.

Access for study on lands under federal jurisdiction requires a permit. Plaintiffs did not request a permit prior to filing this action and they are not entitled to study as a matter of right. The trial court correctly denied the ARPA claims and then wrongfully granted relief pursuant to ARPA. In so doing the trial court did not join as an indispensable party the scientist known by the court to hold the ARPA permit for the area in question. Standing to assert possession and control of human remains is conferred under either common law or statutory law. The common law confers upon the descendants the ability to direct the disposition of their deceased ancestors and the Native American Graves Protection and Repatriation Act, in recognition of the common law, sets forth an administrative process to manage the disposition of Native American human remains. The plaintiffs, as individuals not related by blood and not as members of a group granted standing by statute, do not have standing to make a claim for human remains of a Native American. The Secretary of the Interior does not have ownership of the remains and as such is without the authority to comply with the orders of the trial court.

2. The district court incorrectly vacated its ruling dismissing ARPA claims and misconstrued the permit provisions of ARPA as judicial authority to issue a permit and to grant a permit on less than all of the criteria required by law.

The Archaeological Resources Protection Act controls access to scientific study on federal and Indian lands by those who are not federal employees in the course of their job duties, in order that fragile and irreplaceable data will be properly preserved in the interests of science. ARPA permits are issued by federal land mangers, and by Indian tribes having their own permitting codes for tribal lands. An ARPA permit requires that all of the provisions of 16 U.S.C. 470cc be met as specified in the permit. All materials recovered from pubic land pursuant to a permit remain government property and do not become the property of the permittee. The decision of the trial court to grant a judicial ARPA permit which only directs the scope of work to be done does not comply with ARPA. The trial court makes assumptions about the Smithsonian Institution, which is not a party or a repository herein. ARPA and the curation regulations to ARPA only apply to government property. Congress has determined that the human remains at issue herein are not government property.

3. The district court erred as a matter of law in determining that NAGPRA does not apply.

The Native American Graves Protection and Repatriation Act acknowledges that not all items which may be located on government land are government property. It is based upon a government to government relationship between federally recognized Indian tribes and the United States and asserts that the common law of property will apply to Indian tribes and Native Hawaiian organizations. NAGPRA sets forth a separate process for items in museum collections, which were removed from the land under previous assumptions about government property, than for those items discovered on federal and Indian land after the date of the Act, prior to an assertion of government authority of ownership. NAGPRA protected items in collections are subject to "repatriation" and those newly found on federal lands are subject to an immediate determination of "ownership." Repatriation is not an issue in this case. Once it is determined that the human remains are those of a Native American, the federal land manager must follow the NAGPRA process to determine who among lineal descendants and Indian tribal claimants with standing has the authority for disposition and from whom permission to study must be obtained.

4. The district court erred when it substituted its preferences for the decision of the Secretary of Interior which was reached in the course of compliance with NAGPRA.

NAGPRA sets forth a hierarchy of ownership that is not dependent upon a determination of the Indian tribal membership of the subject human remains, which was inserted by the trial court. A prima facie claim consisting of standing (lineal descendant or federally recognized Indian tribe), identified NAGPRA protected item (Native American human remains, of any age), and ownership relationship (lineal descendent, or cultural affiliation, or aboriginal territorial occupant, or other relationship), must be considered by the land manager. The trial court chose to consider as valid only scientific offerings, while the Secretary considered and weighed all of the evidence offered in coming to a reasonable decision based upon the evidence.

Conflicts between claimants must be resolved by applying a preponderance of the evidence standard, although only one Indian tribal claim, jointly made, is present herein. The scientific certainty standard asserted by Appellees and applied by the trial court defies NAGPRA and American law. Native American human remains that are not the subject of a substantiated prima facie claim are to remain in government custody in the NAGPRA category of "unclaimed," subject to future regulations which will direct their disposition. Even then, they are not assumed to be federal property. To ignore a reasonable claim would be arbitrary and capricious.

NAGPRA requires the Secretary of Interior to consult with Indian tribes before and after a discovery. In making the decision which prompted this litigation the Secretary of Interior considered all of the information provided by the Indian tribal claimants and the results of years of scientific study. The evidence was weighed by the Secretary in a transparent analysis which adhered in all respects to the NAGPRA mandated process. The trial court simply chose to disregard NAGPRA requirements and the evidence of the Indian tribal claimants and found the Secretary arbitrary and capricious for two reasons: 1. For not giving absolute weight to the scientific evidence, and 2. For not requiring that cultural affiliation be proven to a scientific certainty before acknowledging ownership in the Indian tribal claimants. Since the trial court ignored NAGPRA, it did not address the NAGPRA criteria, relied upon by the Secretary, which would support disposition of ownership in the Indian tribal claimants, even absent a determination of cultural affiliation, on the basis of common aboriginal territory occupancy.

ARGUMENT

APPELLEES LACK STANDING TO OBTAIN THE RELIEF AWARDED

Since 1906 the federal government has issued permits for scientific data recovery on the public lands. Antiquities Act of 1906 16 U.S.C. 432. Access for

study by private parties, which includes the Appellees, is governed by the Archaeological Resources Protection Act of 1979. 16 U.S.C. 470cc. The Appellees complain of a denial of access to study but never requested an ARPA permit. The trial court properly dismissed all ARPA claims. ORDER Aug. 30, 2002, DOI 496. James Chatters did receive an ARPA permit for the relevant site DOI 47. The trial court discussed the conduct of study on the federal land throughout the opinion. OPINION AND ORDER, 3-5, 8-12. Absent from the opinion of the trial court was a determination of the rights of the permit holder, and a reason that he was not joined as a necessary party. FRCP, Rule 12b. The trial court did not give a basis for taking jurisdiction over the site or establish the ripeness of Appellees' claims.

Standing to assert possession and control over human remains is different than standing to question whether a federal official has acted in an arbitrary and capricious manner. Standing to direct the disposition of human remains is conferred by common law or statutory law. Under the common law the descendants have the authority to direct the disposition of the remains of their ancestors. Where lineal descendants are not known, do not exist, or do not come forward, the social or religious groups in some way related to those remains may speak to disposition of them. Margaret Bowman, *The Reburial of Native*

American Skeletal Remains: Approaches to the Resolution of a Conflict, 13 HARV. ENVTL. L. REV. 147,150 (1989). Since application of the common law in the United States was afforded to non-Indians and not to Native American remains, protection of Native American human remains and funerary objects required legislative action. House Report 101-877 (1990) at 13. See generally Marcus Price, DISPUTING THE DEAD, U of Missouri Press (1991). NAGPRA "is the strongest current federal legislation recognizing the interests of contemporary aboriginal communities in prehistoric aboriginal remains." Price, at 32. Standing pursuant to NAGPRA, to assert control over the human remains of a Native American, is vested in lineal descendants, and if none known, then in an Indian tribe or Native Hawaiian organization. 25 U.S.C. 3002(a). Individuals or groups who are not Indians or lineal descendants do not have standing to claim the remains of a Native American. *Idrogo v. United States Army,* 18 F. Supp. 2d 25 (D.D.C. 1998).

There is no First Amendment right to access for study or to possession. *United States v. Austin,* 902 F2d 743 (9th Cir. 1990). *cert. denied,* 498 U.S. 874 (1990). The United States does not have the authority to turn over property to a requesting party without some basis in law. The authority of the United States with regard to Native American human remains is found in 25 U.S.C. 3001, et seq.

THE TRIAL COURT DID NOT HAVE JURISDICTION TO ISSUE AN ARPA PERMIT

Since the trial court dismissed the ARPA claims of the Appellees it is unknown by what means the court arrived at the determination that a judicial ARPA permit should issue. Such a determination violates the separation of powers and the requirements of the Administrative Procedures Act. 5 U.S.C. 706 (1994). Futility can not be established here since an ARPA permit was issued to a non-party. In undertaking to issue a permit, the court did not account for all of the requirements of 16 U.S.C. 470cc, which bind a federal land manager. Uniform regulations further specify the matters to be addressed in a permit. 43 CFR 7.8 & 7.9. While no one in this litigation has disputed the general competency of the Appellees as scientists, a permit requires certain assurances to be expressly stated, which include: 1. The time limit of the permit. 2. The applicant's qualifications in the study area and ability to complete the study in the time allowed. 3. Assurances that the scope of work will be undertaken to preserve knowledge in the public interest, and will result in a public written report. 4. The place of the study, the final repository for the items and the agreement of the institution to be responsible and to hold all associated records. This also imposes some assurances of sound financial arrangements. 5. The permit must include a certification by the permittee

that they will turn over all documents and material 90 days after submission of the final report to the land manager. 6. The identification of the land manager responsible to supervise the permit. 7. The scope of work allowed. 8. Reporting requirements and the terms of an annual review.

The Appellees are nine individuals not acting on behalf of a scientific institution or university as is typical in an ARPA permit. Assumption of the trial court to the contrary, OPINION AND ORDER, 5,6, the Smithsonian Institution is not a party nor a repository. Although the trial court personally felt that the Appellees should be given "access to study," none of the safeguards of financial responsibility and preservation of knowledge in the public interest are met. The responsible party to supervise the permit is also an unknown. Such is the problem created when the separation of powers is breached and laws are selectively enforced.

It is not necessary for the trial court or this court to resolve the defects in the permit. This is simply an illustration of the impropriety of the trial court ruling. ARPA does not apply to the matter at issue, unless the Appellees seek to abrogate 16 U.S.C. 470cc. ARPA and the curation regulations which emanate from ARPA, 36 CFR Part 79, only pertain to government property and the Congress has determined that the human remains at issue herein are not government property.

THE TRIAL COURT ERRED IN DETERMINING THAT NAGPRA DOES NOT APPLY

The Antiquities Act and ARPA make the assumption that items found on government land are government property. On November 16, 1990, Congress abrogated that assumption. In practice, human remains of non-Indians found on government land have not been subject to the presumption any more than personal items left behind by visitors to the public lands. House Report 101-877, at 13. Native American human remains have been subject to disparate treatment which resulted in the passage of NAGPRA. See Larry J. Zimmerman, *A decade after the Vermillion Accord: what has changed and what has not?*, in THE DEAD AND THEIR POSSESSIONS, Routledge, 2002, at 91. Zimmerman asserts that archaeologists were given the opportunity to resolve issues with Indian tribes and failed to do so, thus Congress acted.

There are four facets to NAGPRA. It is Indian law, property law, human rights law and administrative law. The placement of NAGPRA in Title 25, Indian Law, is intentional. "This Act reflects the unique relationship between the Federal Government and Indian tribes and Native Hawaiian organizations." 25 U.S.C. 3010, 3001(10). NAGPRA acts on a government to government relationship.

NAGPRA is property law as it seeks to recognize the common law principles

of ownership rights respected for non-Indians in human remains and funerary objects, sacred items and items of cultural patrimony. 25 U.S.C. 3001(3). Under NAGPRA human remains and funerary objects are treated as they would be treated if they were of non-Indians. Sacred items may be group owned or individually owned, depending on the property rules of the Indian tribe, but that ownership is respected as private property solely or group owned as it would be for a church, mosque or synagogue. Cultural patrimony is the inalienable vestiges of a culture, much like the Liberty Bell or the Statute of Liberty. See generally, Sherry Hutt & C. Timothy Mc Keown, *Control of Cultural Property as Human Rights Law,* 30 ARIZ. ST. L. J. 363 (1999).

NAGPRA creates nothing new or special for Indian tribes. Rather, it provides equal protection of the law in conformance with the 14th Amendment. Property rights are guaranteed to Indian tribes under the 5th Amendment. It protects those Indian tribes and non-Indians who have possession of otherwise NAGPRA protected property with the consent of a party having the authority of alienation over the items. 25 U.S.C. 3001(13). Congressional action which seeks to enforce property rights which already exist is human rights law. "Protection of Native American burial grounds is not just a matter of safeguarding archeological resources, ...it is a matter of civil rights for the Indians... ." Representative Bennett

(FL), H. HRG.101-952, July 17, 1990, at 47. "This discussion is about human rights." Statement of Senator Daniel K. Inouye (HI), S. HRG. 101-952, May 14, 1990, at 1. "(W)e are willing to deal with this as a human rights issue." NPS Associate Director Jerry Rogers, S. HRG., May 14, 1990, at 31.

Finally, NAGPRA sets forth a congressionally mandated management plan for administrative action, in the process of repatriating protected items in federal and museum collections, 25 U.S.C. 3005, and establishing ownership in the first instance for newly found protected items on federal and Indian land, 25 U.S.C. 3002. Federal repositories and museums that receive federal funds must comply with repatriation procedures, which are not at issue in this matter. It is notable, however, that the repatriation process allows scientists to appeal to the Secretary of Interior to retain items in order to complete data recovery where the items are "indispensable for completion of a specific study, the outcome of which would be of major benefit to the United States," 25 U.S.C. 3005(b), while the ownership section, 25 U.S.C. 3002, contains no parallel provision, as the United States will not have the authority of ownership to grant such a request.[1] To date there have been

[1]The trial court Opinion and Order makes a general reference to an attempt by the Appellees to approach Congress to address the actions of the Secretary in this instance. Specifically, that action was H.R. 2893, Nov. 7, 1997, an amendment to NAGPRA offered by Rep. Hastings, which would have added a mirror provision to 25 U.S.C. 3005(b) into 25 U.S.C. 3002. The amendment would have been inconsistent with the purpose of 25 U.S.C. 3002, and

no requests to retain items for study although there were estimated to be 200,000 Native American human remains in federal agency and museum repositories as of the date NAGPRA became law. Letter from Director Robert D. Reischauer, Congressional Budget Office, to Representative Morris Udall, chairman, House Committee on Interior and Insular Affairs, regarding H.R. 5237, October 15, 1990, in House Report 101-877, 101st Congress, 2nd Session at 21-22.

In the ownership and disposition process the first step is to determine whether the human remains are those of a Native American. In this instance there is no dispute that the human remains date back 9,300 years. Native Americans are "of, or relating to, a tribe, people, or culture, that is indigenous to the United States." 25 U.S.C. 3001(9). "Indigenous" is defined by archaeologists as those people in the United States prior to known European contact. DOI 135 Letter from Francis P. McManamon, Departmental Consulting Archaeologist, National Park Service, to Donald Curtis, Walla Walla District Commander, United States Army Corps of Engineers, Dec. 23, 1997. NAGPRA applies to this matter and the land manager is required to follow the process set forth in 25 U.S.C. 3002.

Once a claimant presents a credible prima facie case, the land manager must

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would have made the entire section simply redundant to 25 U.S.C. 3005. After the hearing of June 10, 1998, the amendment effort was abandoned.

consider the claim. A NAGPRA prima facie case consists of three things: 1.The claimant must have standing, conferred upon a lineal descendant or a federally recognized tribe. 2. The subject matter jurisdiction is the NAGPRA protected item, in this case the human remains of an individual of Native American ancestry. 3. There must be an ownership relationship, that is: as lineal descendent, culturally affiliated Indian tribe, Indian tribal aboriginal occupant of the area of the discovery or other relationship.

There is a priority for ownership or control of Native American human remains found on government land after November 16, 1990. First in order is the lineal descendant. 25 U.S.C. 3002(a)(1). If the discovery is on Indian tribal land the Indian land owner will take control and determine in what manner disposition will be further resolved. 25 U.S.C. 3002(a)(2)(A). If the discovery is on federal land the next in order of priority is the Indian tribal claimant showing the closest cultural affiliation. 25 U.S.C.3002(a)(2)(B). In the case of two or more competing claimants the land manager will weigh all of the evidence and determine the closest culturally affiliated Indian tribe by a preponderance of the evidence standard. If cultural affiliation can not be determined then the next in line is the Indian tribe as aboriginal occupant of the land where the discovery was made, unless it can be shown by a preponderance of the evidence that another Indian tribe has a stronger

cultural relationship than the aboriginal occupant. 25 U.S.C. 3002(a)(2)(C)(1 & 2). Again, if there is a dispute, the land manager will make a reasonable decision using the civil standard of a preponderance of the evidence. 25 U.S.C. 3002(a)(2)(C)(2).

Resolving a dispute between competing claimants is not an issue in this matter as the Indian tribal claimants made a joint request for the human remains. That Appellees and the amici that support them may desire to know which among the claimants is more closely affiliated to the human remains, is an academic matter and not a legal one. Absolute knowledge to a scientific certainty is the eternal quest of science, but the law and the decisions of a land manager in the course of daily business utilize a reasonable basis standard for decision making.

The land manager must consider the available evidence when a claim is made, as NAGPRA does not require the doing of additional science to make a determination, unlike the prior National Museum of the American Indian Act, 20 U.S.C. 80q (1990), which uses the phrase "best science available." The Congressional Budget Office estimated the cost of repatriation to be $50-$150 per individual. Reischauer letter. Congress never contemplated that NAGPRA would be contorted to the point that the cost of science on one individual would cost between $1 million and $3 million as estimated by counsel for Appellees. Alan L. Schneider at http://friendsofpast.org/kennewick-man/news/021128-3mil.html.

NAGPRA applies not only to recently buried human remains or ones for which an Indian tribal membership, that is a nineteenth century political affiliation, can be shown. The legislative history reflects that Congress intentionally distinguished between "Native American," the human remains and cultural property which are protected, and "Indian tribes, Alaska Village corporations and Native Hawaiians", who have standing to make a claim. H.R. 5237 (2)(11), July 10, 1990 and S. 1980 (3)(1), September 10, 1990. The NAGPRA regulations track this distinction. The latter are all present day groups for which the United States recognizes a government to government relationship and are "recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians." 25 U.S.C. 3001(7). "Native American" is a broad term, not bounded by time or a politically recognized group.

The hierarchy of claims in 25 U.S.C. 3002, for newly discovered human remains, is not repeated in 25 U.S.C. 3005, where human remains not identified in museum records, or identified in a claim by a lineal descendant or a culturally affiliated group with standing, fall into a category of "unidentified." For newly discovered human remains the prongs of the disposition ladder are multi-faceted until only those "unclaimed" remain. A land manager, faced with a credible claim for Native American human remains, from a tribe with standing, cannot find those

human remains to be "unclaimed." All unclaimed and unidentified human remains are subject to disposition which is dependent on yet to be determined regulations, to be promulgated by the Secretary of Interior in consultation with tribes, museum representatives and the scientific community. 25 U.S.C. 3002(b), 3006(c)(5). In this litigation, those wishing to frustrate the NAGPRA process have taken the position that human remains not identified to a scientific certainty shall remain in the limbo created by the absence of regulations.

THE TRIAL COURT ERRED WHEN IT SUBSTITUTED ITS PREFERENCES FOR THE DECISION OF THE SECRETARY

Courts are required to accord deference to an agency's construction of a statutory process that it administers. *Chevron U.S.A. v. Natural Resources Defense Council,* 467 U.S. 837, 842-45. Agency decisions are entitled to a presumption of validity. *Wilderness Public Rights Fund v. Kleppe,* 608 F2d 1250, 1254 (9th Cir. 1979). Courts should defer to an agency's technical expertise, and are not to substitute their judgment for that of the agency. *Citizens to Preserve Overton Park v. Volpe,* 401 U.S. 416 (1971).

The Secretary was obliged to follow NAGPRA. The decision of the Secretary of September 25, 2000, reads like a textbook analysis of the steps in

NAGPRA decision making. DOI 904. The face of the document reflects that the Secretary considered all of the information supplied by scientists and the tribes. The weighing of the evidence was done in a transparent analysis and a decision reasonably based upon the evidence was reached. In contrast, the decision of the trial court ignored the NAGPRA process and then considered the meaning of some terms which were not material to the court's decision. The trial court was simply incredulous that the Secretary would give weight to evidence presented by Indians in the face of evidence presented by scientists. In so doing the trial court acted beyond the jurisdiction of the courts in violation of the separation of powers, suspended a statute without some stated reason, and considered only evidence that it deemed desirable. The recitation of material evidence by the trial court only recognizes evidence submitted by Appellees. The court describes the Appellees and their non-party employers in glowing terms and then admonishes the Secretary for talking to Indian tribes.

It is impossible to comply with NAGPRA without talking to Indian tribes. It is impossible for the Secretary to not consider as interested parties those Indian tribes making a claim. The trial court usurped the decision of the Secretary because the Secretary followed the law. The decision in this case will have far reaching impact on land managers in NAGPRA decision-making and beyond.

CONCLUSION

In July 1996, human remains were discovered having been exposed from eroded soil in a river bed on land under the jurisdiction of the federal government. Nine scientists drew a line in the sand and chose to seek custody of the remains in a quest to establish a Constitutional right to do science and to abrogate NAGPRA. The trial court gave no recognition to the constitutional claims, dismissed ARPA claims, and then gave relief in the form of a judicial study order.

The decision of the trial court accomplished the following:

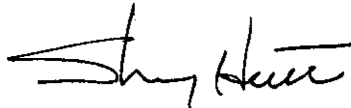
1. It set a new "scientific certainty" standard for the proof of a claim.
2. It established a judicial study permit with criteria as desired by the court.
3. It granted a permit not requested before or during the action.
4. It granted a permit for items not owned by the federal government.
5. It granted a permit without regard to others having an ARPA permit.
6. It granted a permit without allowing those with standing to assert a property right.
7. It substituted a judicial preference for the weighing of all evidence by the Secretary.
8. It required the Secretary of Interior to ignore Congress.
9. It demanded that the Secretary of Interior not consult with recognized

Indian tribes.

10. It abrogated the common law respect for human remains.

The ruling of the trial court requires a federal land manager to ignore the APA, ARPA, NAGPRA, Federal Rules of Evidence, Federal Rules of Civil Procedure, Article I and the Fifth and Fourteenth Amendments to the United States Constitution. The ruling must be vacated.

RESPECTFULLY SUBMITTED this 24 day of March, 2003



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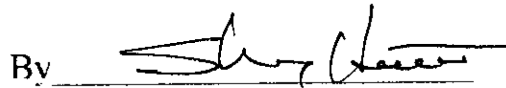
Pursuant to Fed. R. App. P. 32(a)(7)(C), I hereby certify that the foregoing brief is in compliance with Fed. R. App. P. 29(d), 32(a)(5), and 32(a)(7), as it is written in 14 point type and does not exceed the allowed length. This brief contains 5,943 words.

By 

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