

Lawsuit Over Spirit Cave Man

Kennewick Man now has company in testing the limits of the Native American Graves Protection and Repatriation Act (NAGRA). The Spirit Cave Man, who lived a thousand years before the Kennewick Man, is the subject of a lawsuit filed in Nevada Federal District Court.

In the Kennewick Man case, scientists sued the U.S. Army Corps of Engineers (ACOE) over its decision to give the ancient skeleton to a coalition of northwest tribes for burial. The ACOE's decision was based on a broad interpretation of NAGPRA. Two courts ruled in favor of the scientists, allowing study.

The Fallon-Shoshone Paiute Tribe has filed a lawsuit against the US Bureau of Land Management (Federal District of Nevada, Reno, CV-N-04-0466). The Tribe claims that Spirit Cave Man is their ancestor and should be given to them for burial. BLM disagrees. A panel of three BLM scientists found that “the remains predate contemporary Northern Paiute tribes and cannot reasonably be culturally affiliated with any of them.” [2000 BLM Determination at 66]. Like Kennewick Man, this skeleton does not physically resemble modern Native Americans. Nor are there any significant resemblances between Spirit Cave Man’s material culture (what little is known of it) and later Nevada populations.

The Tribe and BLM do appear, however, to agree on one assumption: that the Spirit Cave Man skeleton, because of its age, is Native American and subject to tribal claims under NAGPRA. In the Kennewick Man case, the Ninth Circuit Court of Appeals found that age is not sufficient. The court ruled that NAGPRA applies only to remains that have a proven relationship to present-day Native Americans. Friends of America’s Past filed an amicus brief with the Nevada district court arguing that the same rule should be applied to Spirit Cave Man. Amicus briefs were also filed by scientists, the Ethnic Minority Council of America and the Ohio Archaeological Council.

Cross-motions for summary judgment by both the Tribe and the BLM are currently pending before the court. A decision is expected sometime next year.