



**U.S. Department of Justice**

*United States Attorney*

*District of Oregon*

*1000 SW Third Avenue, Ste. 600*

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February 3, 2006

Alan L. Schneider  
1437 S.W. Columbia Street, Suite 200  
Portland, OR 97201-2535

**RE: *Bonnichsen et al. v. United States***

Dear Mr. Schneider:

This letter is in response to the Plaintiffs' proposed studies of the Kennewick remains, as outlined in the *Description of Studies (Kennewick Man Skeleton): February 2006 Study Session* dated January 26, 2006 (hereinafter referred to as "February Study Proposal"), and supplemented by correspondence from Alan Schneider dated January 30, 2006 regarding two additional studies.

The response from the U.S. Army Corps of Engineers is enclosed. The Corps has agreed to grant access for the majority of the Plaintiffs' proposed studies, subject to the terms and conditions outlined in the attached documents.

The agency and the Burke Museum have committed to the dates you proposed, February 16-17, 2006 and February 21-24, 2006 to conduct the approved studies. Accordingly, we will notify the court that the parties have scheduled a study session, and thus, will need access to the remains during those dates.

Sincerely,

KARIN J. IMMERGUT  
United States Attorney

**"SIGNED"**

TIM SIMMONS  
Assistant United States Attorney

CC: Devon Lehman  
Jennifer Richman



REPLY TO  
ATTENTION OF

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

Office of Counsel

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

February 3, 2006

Ms. Devon Lehman McCune  
U.S. Department of Justice (ENRD- Natural Resources Section)  
P.O. Box 663  
Ben Franklin Station  
Washington, D.C. 20044-0663

Dear Mr. Simmons and Ms. McCune:

This letter serves as a response to the plaintiffs' proposed studies of the Kennewick remains, as outlined in their *Description of Studies (Kennewick Man Skeleton): February 2006 Study Session*, dated January 26, 2006 (hereinafter referred to as "February Study Proposal"), and supplemented by correspondence from Alan Schneider dated January 30, 2006, regarding two additional studies. The following studies are approved: *Taphonomic Analysis of the Skeleton, Douglas Owsley: Paleopathology and Lifestyles Examination, George Gill: Measurements and Observations, Della Cook: Paleopathology Examination, James Chatters: Skeletal Observations, C. Loring Brace: Measurements and Observations, Benjamin Auerbach: Body Size and Shape, Dental Peels of Occlusal Surfaces, Dennis Stanford: Examination of Projectile Point, and Christy Turner: Dental Measurements and Observations*. The study entitled *Bart Cannon: Elemental Analysis of Projectile Point* is approved in part and denied in part. The study proposed by Dr. Sam Stout entitled *Age Determination by Histological Analysis of a Rib Fragment* is denied in its entirety at this time.

Based on the information provided by the plaintiffs to the U.S. Army Corps of Engineers through written correspondence and conference calls, and based on the advice of my staff, Burke personnel, and the government's conservators, I believe that the approved studies outlined by the plaintiffs in the February Study Proposal 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 approved studies outlined in the February Study Proposal, subject to the terms and conditions outlined in the enclosed document.

It is my understanding that these studies will take place in Seattle on February 16–17 and February 21–24, 2006. Final details may be coordinated through your offices, my staff, the government's conservators, the Burke Museum, and the plaintiffs.

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"**

RANDALL L. FOFI  
Colonel, Corps of Engineers  
Deputy Division Commander

Enclosure



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

REPLY TO  
ATTENTION OF:

CEMVS-EC-Z

3 February 2006

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

SUBJECT: Response to Plaintiffs' January 26, 2006, Description of Studies for the Kennewick Remains, February 2006 Study Session

1. The government's contracted conservators (Dr. Nancy Odegaard and Dr. Vicki Cassman) and my staff have reviewed the Plaintiffs' Description of Studies for the Kennewick Man, February 2006 Study Session and letters dated January 30, 2006, proposing additional studies and feel the proposals are consistent with the Corps' obligations as identified under the curation regulations (36 C.F.R. Part 79). Except for the histological analysis by Dr. Sam Stout, which we do not support at this time, 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 that we feel are necessary to ensure the protection and preservation of this collection.

2. Members of the plaintiffs' study team will be subject to the same Conditions of Access/Code of Conduct issued by the Burke Museum for the July 2005 taphonomic study. All researchers will be requested to review and sign these documents prior to undertaking their study. 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, and the use of personal cameras will be limited (as outlined in Alan Schneider's letter and attachment dated January 31, 2006). Likewise, the total number of researchers (including note takers and photographers) in the study rooms will be limited to six. Additional persons/observers/liaisons will be accommodated outside the study rooms, but they may be unable to visually observe the activities inside the rooms. Any deviations from the proposed plan will be described in writing and coordinated with the government. Timing of all studies is subject to the schedule of the curators, the conservators, and the Burke Museum.

3. The following conditions apply to all of the proposed studies.

- 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 unless specifically discussed and approved by the government's representatives.

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- All elements and fragments will be returned to the original storage boxes at the completion of all of the following studies.
- Any and all photographs taken must comply with the Burke Museum protocol for photography.
- When possible, measurements and observations will be coordinated with other researchers to reduce handling of the remains.
- 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 reports of these studies.
- Nothing in this approval document precludes the Corps' representatives, including the conservators, and museum personnel from halting any activity by any participant at their discretion where the representative believes the collection may be at risk.

4. Doug Owsley, Richard Jantz, and Kate Spradley—Radiography of Long Bones and Teeth.

The participants propose to use these data to assess the anatomical structure of elements for biological affinities, pathological conditions, and sediment fill, and to improve upon previous X-rays. The proposed schedule for access to the Kennewick remains collection for the proposed imaging studies on the agreed-upon dates of 16–17 February 2006, Study Plan at 30, should be approved subject to the following conditions.

- The government will be provided with the name of the imaging facility, including points of contact, no later than 13 February 2006.
- The facility must be within the Seattle metropolitan area.
- Logistics regarding the packing, transport, and security of the remains will be closely coordinated with the government and will be approved by the Corps prior to transport.
- The remains will be returned to the Burke Museum no later than 5:00 p.m. each day.

5. Troy Case—Examination of Hands and Feet. Dr. Case proposes to study the hand and foot bones to aid in the determination of trauma, disease, degenerative factors, cause of death, overall health, mobility, congenital abnormalities, and repetitive activities. Access to the Kennewick remains collection on the agreed-upon dates of 23–24 February 2006, for the proposed study entitled *D. Troy Case: Examination of Hands and Feet*, Study Plan at 7–8, should be approved.

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6. Richard Jantz and Kate Spradley—3D Cranial Measurements. Dr. Jantz and Ms. Spradley propose to use this study to determine biological affinities and morphometric relationships as well as assess limb proportions, skeletal size, and robusticity. Access to the Kennewick remains collection on the agreed-upon dates of 16–17 and 21 February 2006, for the proposed study entitled *Richard Jantz: Cranial Coordinates, Measurements and Observations*, Study Plan at 11–12, should be approved subject to the following condition.

- The study will not begin before a discussion with the government's conservators regarding the methods being proposed and such methods are agreed upon and approved by the government.

7. Doug Owsley, Hugh Berryman, Tom Stafford—Taphonomic Analysis. The participants propose this study to aid in the determination of factors that affected the skeleton after death, and the extent and type of changes in the skeleton due to those factors as well as cause of death. Access to the Kennewick remains collection on the agreed-upon dates of 16–17 and 21–22 February 2006, for the continuance of the proposed study entitled *Taphonomic Analysis of the Skeleton*, Study Plan at 4–5, should be approved.

8. Doug Owsley—Paleopathology. Dr. Owsley proposes this study in order to assess biological affinities, disease, trauma, overall health, mobility limitations, cause of death, congenital defects and developmental abnormalities, age, diet, and food processing techniques. Access to the Kennewick remains collection on the agreed-upon dates of 21–22 February 2006, for the proposed study entitled *Douglas Owsley: Paleopathology and Lifestyles Examination*, Study Plan at 13–14, should be approved.

9. Chip Clark—Photography. Mr. Clark proposes to add to the photographic record and to document texture, condition, morphology, pathology, non-metric traits, and the correctness of previous skull reconstructions. Access to the Kennewick remains collection for the proposed study entitled *Scientific Photography*, Study Plan at 23–24, should be approved subject to the following condition.

- Government conservators, curators, and/or museum personnel may oversee photography.

10. George Gill—Measurements. Dr. Gill proposed to use this study to assess the biological affinities of the Kennewick remains. Access to the Kennewick remains collection on the agreed-upon dates of 21–22 February 2006, for the proposed study entitled *George Gill: Measurements and Observations*, Study Plan at 10–11, should be approved.

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11. Della Cook—Paleopathology. Dr. Cook proposes this study in order to gather data on trauma and its staging, degenerative and genetic arthritic syndromes, infections, functional consequences of reported injuries, and other pathological conditions to aid in determining biological relationships and life history. Access to the Kennewick remains collection on the agreed-upon date of 22 February 2006, for the proposed study entitled *Della Cook: Paleopathology Examination*, Study Plan at 10, should be approved.

12. Jim Chatters—Pathology, Functional Morphology, and Consultation. Dr. Chatters proposes to continue his study to verify previously collected data and complete an interrupted 1996 examination in order to aid in determining biological and historical relationships, stature, body and limb proportions, pathological conditions, stresses on the body, patterns of behavior, genetic relationships, and cultural behaviors. In addition, he wishes to consult with the other study participants regarding his findings. Access to the Kennewick remains collection on the agreed-upon dates of 22–23 February 2006, for the proposed study entitled *James Chatters: Skeletal Observations*, Study Plan at 9, should be approved.

13. C. Loring Brace—Cranial Metrics, Dental Metrics, Dental Wear and Occlusion, Dental Discrete Traits. The study by Dr. Brace is proposed in order to aid in determination of biological affinities. Access to the Kennewick remains collection on the agreed-upon date of 23 February 2006, for the proposed study entitled *C. Loring Brace: Measurements and Observations*, Study Plan at 7, should be approved.

14. Benjamin Auerbach—Body Shape and Size. This study is proposed in order to determine body size and shape characteristics of the Kennewick remains, and then to compare those characteristics with other prehistoric individuals. Access to the Kennewick remains collection on the agreed-upon date of 24 February 2006, for the proposed study entitled *Benjamin Auerbach: Body Size and Shape*, Study Plan Supplement dated 26 January 2006, should be approved.

15. Sam Stout—Age Determination by Histological Analysis of a Rib Fragment. This study is proposed in order to make a definitive determination of the biological age of the Kennewick remains. Access to the Kennewick remains collection for the proposed study entitled *Sam Stout: Age Determination by Histological Analysis of a Rib Fragment*, Study Plan Supplement dated 26 January 2006, should not be approved at this time. It is our position that the destructive nature of this study outweighs the age information that may be produced. Additionally, we feel that the age of the remains as determined through gross examination by all of the researchers involved in this study will be conclusive. If the researchers feel it is necessary to further refine the age determination after these studies are complete, then the government may review a proposal from Dr. Stout.

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16. Mark Teaford—Dental Peels of Occlusal Surfaces. Dr. Teaford proposes to use this study to record microscopic wear patterns on dentition in order to aid in the determination of dietary habits and other lifestyle issues. Access to the Kennewick remains collection on the agreed-upon date of 24 February 2006, for the proposed study entitled *Dental Peels of Occlusal Surfaces*, Study Plan at 29, should be approved subject to the following conditions.

- The study will not begin before a discussion with the government's conservators regarding the methods being proposed and such methods are agreed upon and approved by the government.
- Copies of all casts will be provided to the government for inclusion with the associated records of the Kennewick remains.

17. Bart Cannon—Analysis of Projectile Point. This study is proposed in order to determine the chemical constituents of the embedded projectile point. Access to the Kennewick remains collection on the agreed-upon dates of 16–17 February 2006, for the proposed study entitled *Bart Cannon: Elemental Analysis of Projectile Point*, Study Plan Supplement dated 26 January 2006, should be approved in part subject to the following conditions.

- Only Procedure B should be approved to be conducted on the remains, and only with an instrument brought into the study room.
- The potential harm of transporting the right innominate, which is one of the most fragile bones in the collection, precludes us from recommending that Procedure A be allowed.
- The study will not begin before discussions are held with the government's representatives regarding the methods that are being proposed and such methods are agreed upon and approved by the government.

18. Dennis Stanford—Examination of Projectile Point and Right Innominate Fragments. Dr. Stanford proposes to make an examination of the right ilium and the embedded projectile point in order to determine the type of point, raw material, and path of entry. It will help to relate the remains to cultures in the Pacific Northwest from the time period. Access to the Kennewick remains collection on the agreed-upon date of 17 February 2006, for the proposed study entitled *Dennis Stanford: Examination of Projectile Point and Right Innominate Fragments*, Study Plan Supplement dated 26 January 2006, should be approved.

19. Christy Turner II—Dental Measurements. Dr. Turner proposes this study in order to assess dental morphology, pathology, supportive structural conditions, biological affinities, and overall health and development. Access to the Kennewick remains collection on the agreed-upon date of 22 February 2006, for the proposed study entitled *Christy G. Turner: Dental Measurements and Observations*, Study Plan at 15–16, should be approved.

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20. Other Comments. A brief morning and/or afternoon meeting will be held each day prior to the initiation of the studies. During this meeting the researchers will be asked to discuss what they plan on doing that day (e.g., remains they will investigate, equipment they will use, assistance they may need from the conservators, photographs they may want to take) so the government, its conservators, and the Burke can be better prepared to assist them and minimize the amount of impact to the remains. In addition, at the end of each day, the remains will be returned to their permanent storage location in the Burke Museum. The government will need approximately two hours at the end of the day (beginning at approximately 3:30 p.m.) on Friday, 24 February, to perform a condition assessment and to inventory the remains.

21. If you have any questions about these recommendations, 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