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Sent: Monday, June 19, 2006 2:00 PM
To: nobody@ord.uscourts.gov
Subject: Activity in Case 3:96-cv-01481-JE Bonnichsen et al v. USA et al "Order on Motion to Expedite"

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**U.S. District Court
District of Oregon**

Notice of Electronic Filing

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Case Name: Bonnichsen et al v. USA et al

Case Number: 3:96-cv-1481

Filer:

WARNING: CASE CLOSED on 08/30/2002

Document Number: 679

Docket Text:

RECORD OF ORDER by Judge John Jelderks: Although it is probably not necessary for the parties to seek the approval of the court in matters such as this, the Joint Motion (#[678]) is **GRANTED**. The court will schedule a status conference in the near future to discuss when, if ever, the parties need to seek the approval of the court for actions upon which they agree. (eo)

The following document(s) are associated with this transaction:

3:96-cv-1481 Notice will be electronically mailed to:

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3:96-cv-1481 Notice will be delivered by other means to:

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Allison Rumsey
US Department of Justice
Environment & Natural Resources Division
Office of the Assistant Attorney General
950 Pennsylvania Ave Nw #2740
Washington, DC 20530

and will be at the Burke the morning of the 21st. My cell phone number is (503) 358-1875. We look forward to seeing you and representatives from the other tribes next week.

Sincerely,

"SIGNED"

JENNIFER R. RICHMAN
Assistant Division Counsel

Enclosure

CC: Tim Simmons
Devon McCune
Chris Pulliam
Ellen Durkee
Audie Huber
Armand Minthorn
Diana LaSarge
Camille Pleasants
Kate Valdez
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SUE ELLEN WOOLDRIDGE

Assistant Attorney General

DEVON LEHMAN McCUNE

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

ROBSON BONNICHSEN, et al.,

Civil No. 96-1481-JE

Plaintiffs,

EXPEDITED REQUEST

v.

**JOINT STIPULATED MOTION
TO GRANT ACCESS TO
CONDUCT TRIBAL CEREMONY**

UNITED STATES OF AMERICA, et al.,

Defendants.

LOCAL RULE 7.1 CERTIFICATION

The undersigned counsel for Federal Defendants (hereinafter “United States”) and Plaintiffs have discussed a request to allow access to the Kennewick collection at the Burke Museum to conduct a tribal ceremony. All parties in the above entitled matter have agreed to recommend approval to allow access and submit the request for Court approval.

MOTION

Following conversations within the Ninth Circuit mediation in Bonnichsen v. United States, members of the Wanapum Band, the Confederated Tribes of the Colville Reservation, the Nez Perce Tribe, the Confederated Tribes of the Umatilla Indian Reservation, and the Confederated Tribes & Bands of the Yakama Nation (“Tribes”) asked the U.S. Army Corps of Engineers, Northwestern Division (“Corps”) for access to the Kennewick collection for a ceremony during the next biannual conservation assessment.

Upon evaluation of the request, the Corps determined that with a number of terms and conditions, the request is not contrary to the Corps’ responsibility to protect and preserve the condition of the collection and would not violate the applicable curation regulations. See Devon Lehman McCune letter dated June 12, 2006, attached as Exhibit 1. Since the request was not contrary to the applicable rules and regulations, the Corps agreed to forward the tribal request (subject to terms and conditions) for such a ceremony to the Court for consideration provided that counsel for the Plaintiffs had no objections to granting the access requested by the Tribes. In addition, the Corps’

agreement to forward the tribal request was contingent upon this Court's approval to grant access. The Plaintiffs have indicated that they do not have an objection to the tribal request with the terms and conditions approved by the Corps. See Alan Schneider letter dated June 13, 2006, attached as Exhibit 2.

Based upon the above, the parties hereby move the Court to consider granting the tribal request for access to the remains to conduct a ceremony subject to the terms and conditions outlined in Exhibit 1. If granted, the ceremony would be conducted during the Bi-annual assessment which is scheduled to take place between June 21 and 23, 2006.

Dated this 14th day of June, 2006.

Respectfully submitted,

SUE ELLEN WOOLDRIDGE
Assistant Attorney General

/s/ Devon Lehman McCune
DEVON LEHMAN McCUNE
U.S. Department of Justice
(202) 514-4565
Attorney for Federal Defendants

/s/ Alan Schneider
Alan L. Schneider
The Law Office of Alan Schneider
(503) 274-8445
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that I have made service of the foregoing **Joint Stipulated Motion to Grant Access to Conduct Tribal Ceremony**, on the parties herein, by causing to be deposited in the United States mail on June 14, 2006, a true copy thereof, enclosed in envelopes with postage thereon prepaid, addressed to:

Stephen P. McCarthy
Lane Powell Spears Lubersky, PC
601 SW Second Avenue, Ste 2100
Portland, Oregon 97204-3158

Alan L. Schneider
1437 SW Columbia St., Suite 200
Portland, OR 97201

Paula Barran
Barran Liebman LLP
601 S.W. Second Avenue, Suite 2300
Portland, OR. 97204-3159

/s/ Jeannie Berg
Jeannie Berg
Paralegal Specialist



U.S. Department of Justice

Environment and Natural Resources Division

Natural Resources Section
P.O. Box 663
Washington, DC 20044-0663

Telephone (202) 305-0434
Facsimile (202) 305-0506

VIA FACSIMILE AND US MAIL

June 12, 2006

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

Rc: *Bonnichsen v. United States*

Dear Mr. Schneider:

Following conversations within the Ninth Circuit mediation in *Bonnichsen v. United States*, members of the Wanapum Band, the Confederated Tribes of the Colville Reservation, the Nez Perce Tribe, the Confederated Tribes of the Umatilla Indian Reservation, and the Confederated Tribes & Bands of the Yakama Nation ("Tribes") asked the U.S. Army Corps of Engineers, Northwestern Division ("Corps") for access to the Kennewick collection for a ceremony during the next biannual conservation assessment. The next assessment is scheduled June 21-June 23, 2006.

The Corps would like forward the Tribes' request for such a ceremony to the District Court of Oregon for approval as soon as possible, provided your clients do not have any objection. The Corps will agree with the ceremony only if a number of terms and conditions, which are consistent with the conditions discussed during the Ninth Circuit mediation and will serve to aid in the preservation of the remains, are required. Any access granted would be subject to these terms and conditions, as detailed in the attached memoranda.

Based on some of the discussion from the Ninth Circuit mediation and other conversations, it is our understanding that your clients may not be opposed to such access. Would you be willing to enter into a joint, stipulated motion with the United States or, in the alternative, provide us a letter indicating that you have no objection to the proposal? As indicated above, the Corps does not support a ceremony unless your clients have no objection that the District Court grants approval of the request. We are under a fairly tight schedule, so please let us know your thoughts as soon as possible. Please don't hesitate to give me or Jennifer Richman a call if you have any questions.

Sincerely,

"SIGNED"

Devon Lehman McCune

Enclosure

Cc: Ellen Durkee
Tim Simmons
Jennifer Richman
Chris Pulliam

REPLY TO
ATTENTION OFDEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, NORTHWESTERN DIVISION
PO BOX 2870
PORTLAND OR 97208-2870

JUN - 5 2006

Office of Counsel

Mr. Tim Simmons
Assistant U.S. Attorney
1000 SW Third Ave., Suite 600
Portland, OR 97204Ms. Devon Lehman McCune
U.S. Department of Justice
PO Box 663
Ben Franklin Station
Washington, DC 20044-0663

Dear Mr. Simmons and Ms. McCune:

On May 18, 2006, Rex Buck of the Wanapum Band requested access to the Kennewick collection to perform a religious ceremony at the Burke Museum on behalf of the Wanapum Band, the Confederated Tribes of the Colville Reservation, the Nez Perce Tribe, the Confederated Tribes of the Umatilla Indian Reservation, and the Confederated Tribes & Bands of the Yakama Nation ("Tribes"). It is my understanding that Mr. Buck indicated that the ceremony would not involve any handling of the remains and would not involve the burning of any items. Ideally, the ceremony would occur in the early morning hours and may involve up to twenty individuals, although Mr. Buck indicated there would be some flexibility with regard to how many individuals would be present in the room at any one time.

I believe that this request is not contrary to the Corps' responsibility to "protect and preserve the condition. . . of the collection" or to allow access under the curation regulations. See 36 C.F.R. part 79. Provided that counsel for the plaintiffs in *Bonnichsen v. United States* has no objections to granting access to the Tribes, and the District of Oregon approves such access, I recommend that access be granted to members of the aforementioned Tribes. Nothing in this support, however, indicates that approval for ceremonial access will necessarily be approved in the future. If such approval is received by the Court, the Tribes must abide by the terms and conditions outlined in the enclosed document. The ceremony will take place the morning of June 21, 2006. No more than twenty tribal members may participate in the ceremony and the Corps representatives may monitor the number in the room at any one time if deemed necessary for the protection of the remains.

Questions regarding access to the Kennewick collection for a tribal ceremony should be directed to Ms. Jennifer Richman at (503) 808-3763 or Ms. Direlle Calica at (503) 808-3715.

Sincerely,

"SIGNED"

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

Enclosure



REPLY TO
ATTENTION OF:

CEMVS-EC-Z

02 JUN 2006

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

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

SUBJECT: Response to Tribal Request for Ceremonial Access to Kennewick Remains, *Bonnichsen v. United States*

1. My staff, the government's contracted conservators, and the Burke Museum have considered the Tribes' request to access the Kennewick collection for ceremonial purposes during the next biannual conservation assessment. We believe the request is consistent with the curation regulations, provided the following conditions are strictly followed during the ceremony in order to ensure the protection and preservation of the collection.

- The curation boxes, housing the remains, will be closed throughout the ceremony.
- Neither the boxes nor the enclosed remains will be handled by any participant.
- Nothing will be placed in the boxes with the remains or on top of the boxes containing the remains.
- No materials may be used to brush or touch the curation boxes unless approved by a Corps representative.
- Nothing will be burned inside the Burke Museum.
- No photographs will be taken of the ceremony or of the remains.
- A conservator, a Burke Museum representative, and a Corps curator will be present throughout the ceremony.
- The number of individuals in the room during the ceremony may be limited at the discretion of the Corps representative.
- The ceremony may be halted at any time if any Corps representatives, including conservators or museum personnel believe the collection may be at risk.

2. We understand that the Tribes would like access for the ceremony in the morning. The earliest time available for the ceremony is 7:30 a.m. on Wednesday, June 21, 2006. If this time is not convenient or acceptable to the Tribes, coordination should be made through the Northwestern Division Tribal Liaison, Ms. Dorelle Calica at (503) 808-3715.

3. If you have any questions about these recommendations, please contact Mr. 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

ALAN L. SCHNEIDER
ATTORNEY AT LAW

1437 S.W. Columbia St., Suite 200
Portland, Oregon 97201

Telephone (503) 274-8444
Facsimile (503) 274-8445

June 13, 2006

Ms. Devon M. Lehman McCune
U.S. Department of Justice
Environmental and Natural Resource Division
Natural Resource Section
PO Box 663
Washington D.C. 20044-0663
Fax No. (202) 305-0506

VIA FAX AND MAIL

Re: **Bonnichsen et.al. v. U.S.**
Civil No. CV 96-1481JE

Dear Ms. Lehman:

This is to respond to your letter dated June 12, 2006.

Plaintiffs have no objection to the proposed Tribal religious ceremony in the presence of the Kennewick Man skeletal collection during the period of June 21-23, 2006 under the terms and conditions set out in the Memorandum attached to your letter. See Memorandum For Deputy Commander dated June 2, 2006 from Chris Pulliam, signed on behalf of Michael K. Trimbal, Ph.D.

You may file this letter with the District Court, or if you wish, plaintiffs would be willing to sign a stipulated motion to the same effect.

Very truly yours,

"SIGNED"

Alan L. Schneider

ALS/kfk

cc: T. Simmons
J. Richman (via fax 503-808-3766)
P. Barran
Clients
C. Hawkinson