



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
441 G STREET, NW
WASHINGTON, DC 20314-1000

CECW-P

MEMORANDUM FOR DIVISION COMMANDER, NORTHWESTERN DIVISION

SUBJECT: Implementation Guidance for Section 1152 of the Water Infrastructure Improvements Act of 2016 (WIIN 2016) – Kennewick Man

1. Section 1152 of the WIIN 2016 Act (Public Law 114-332) directs the Secretary, acting through the Chief of Engineers, to transfer the human remains known as Kennewick Man, to the Washington Department of Archaeology and Historic Preservation (the Department) on the condition that the Department dispose and repatriate the human remains to the claimant tribes. The transfer to the Department shall occur within 90 days from enactment of WIIN 2016. The provision provides that the transfer of human remains shall be subject to the following terms and conditions: the remains being repatriated in accordance with the Revised Code of Washington; the final burial place be specified to the Department and within the State of Washington; and that the claimant tribes agree that the Department will take legal custody of the remains upon the transfer by the Secretary. Section 1152 directs that the U.S. Army Corps of Engineers be responsible for any costs associated with the transfer. A copy of Section 1152 of WIIN 16 is enclosed (Encl. 1).

2. Definitions.

a. Claimant Tribes. The term "claimant tribes" is as defined in Section 1152, and means The Confederated Tribes of the Colville Reservation, The Confederated Tribes and Bands of the Yakama Nation, The Nez Perce Tribe, The Confederated Tribes of the Umatilla Indian Reservation, and The Wanapum Band of Priest Rapids.

b. Department. The term "Department" is as defined in Section 1152, and means the Washington State Department of Archaeology and Historic Preservation.

c. Human Remains. The term "human remains" is as defined in Section 1152, and means the human remains that are known as Kennewick Man or the Ancient One, which includes the projectile point lodged in the right ilium bone, as well as any residue from previous sampling and studies; and are part of archaeological collection number 45BN495.

d. Transfer. The term "transfer" refers to the transfer of the human remains from the Corps legal and physical custody, to the Department in accordance with Section 1152.

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3. Applicability. Commander, Northwestern Division, is directed to implement the transfer of the human remains. This guidance is applicable only to the human remains defined as Kennewick Man. The Corps will have no further responsibility for the human remains transferred pursuant to this section after the date of transfer to the Department.

4. Cessation of applicability of The Native American Graves Protection and Repatriation Act (NAGPRA).

a. The Corps, through Northwestern Division, currently controls the human remains pursuant to NAGPRA, the Archaeological Resources Protection Act, and the curation regulations (36 C.F.R. Part 79).

b. As of the date of the enactment of the WIIN 16 Act, Northwestern Division stopped work on the NAGPRA process for Kennewick Man. Northwestern Division will transfer the human remains to the Department using the transfer process outlined in this implementation guidance.

5. Transfer Process.

a. Condition Assessment and Photographic Record. Prior to transfer to the Department, the Corps Mandatory Center of Expertise for the Curation and Management of Archeological Collections (MCX-CMAC) will conduct a final Condition Assessment and photographic record of the human remains, together with the Burke Museum, in conformance with professional archaeological curation standards, to prepare the human remains for the exit inventory and transfer. The catalog numbers that are reversibly affixed to the human remains will be left in place, in accordance with the direction of the Department.

b. Joint Collection Inventory. At the time of transfer to the Department, the Corps will conduct an exit inventory of the human remains, to be witnessed by the Department. At the conclusion of the exit inventory, both the Corps Northwestern Division and the Department will sign a document listing the results of the inventory and a statement attesting to its accuracy, and that the human remains being transferred constitute the entirety of the human remains required to be transferred. The signed Joint Collection Inventory will be an Exhibit to the Legal Transfer of Custody document.

c. Legal Transfer of Custody. At the time of transfer, the Corps Northwestern Division and the State Historic Preservation Officer will jointly execute a document transferring legal custody of the human remains. A transfer document is enclosed (Encl. 2). The Department will certify that it will repatriate the human remains to the

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claimant tribes. Further, the Transfer Document will certify that the Department will meet the conditions for transfer listed in Section 1152, subsection (c) 1 – 4.

d. Costs. The Corps will provide all necessary funds associated with the transfer to the Department out of the McNary Lock and Dam Operations and Maintenance account as a joint cost with the Bonneville Power Administration, in accordance with Memorandum of Agreement No. 98PB-10211.

e. Transfer and Timing of Transfer. The Corps will transfer the human remains to the Department following the completion of the Condition Assessment, Legal Transfer of Custody and Joint Collection Inventory documents. The transfer will not occur unless all documents are signed by the Northwestern Division and the Department. The transfer will occur at a date to be set by the Corps, not later than 90 days after the enactment of WIIN 16. The physical transfer of the human remains can occur immediately following the execution of these documents.

6. Handling of Records. After transfer of the human remains known as Kennewick Man, all remaining records housed at the Burke Museum related to the Kennewick collection, and all records related to the NAGPRA process, will be temporarily transferred to the MCX-CMAC in St. Louis, Missouri. MCX-CMAC will organize the records for permanent curation. The records will be organized and indexed in accordance with applicable record-keeping policies.

7. Reburial on Federal Lands Administered by the Corps. Section 208 of the Water Resources Development Act (WRDA) 2000 (Public Law 106-541) authorizes the Secretary to recover and rebury "Native American remains" that were discovered on Civil Works project lands administered by the Corps. In the event the claimant tribes request, and the Corps approves, reburial of the human remains on Corps project lands, the reburial will be done in accordance with Northwestern Division implementation guidance for Section 208, issued October 2008.

8. Communication Plan. A vertically coordinated communications plan will be developed prior to the date of transfer. The lead for this communications plan will be the Northwestern Division.



THEODORE A. BROWN, P.E.
Chief, Planning and Policy Division
Directorate of Civil Works

2 Encls

SEC. 1152. KENNEWICK MAN.

(a) **DEFINITIONS.**—In this section, the following definitions apply:

(1) **CLAIMANT TRIBES.**—The term “claimant tribes” means the Confederated Tribes of the Colville Reservation, the Confederated Tribes and Bands of the Yakama Nation, the Nez Perce Tribe, the Confederated Tribes of the Umatilla Indian Reservation, and the Wanapum Band of Priest Rapids.

(2) **DEPARTMENT.**—The term “Department” means the Washington State Department of Archaeology and Historic Preservation.

(3) **HUMAN REMAINS.**—The term “human remains” means the human remains that—

(A) are known as Kennewick Man or the Ancient One, which includes the projectile point lodged in the right ilium bone, as well as any residue from previous sampling and studies; and

(B) are part of archaeological collection number 45BN495.

(b) **TRANSFER.**—Notwithstanding any other provision of Federal law, including the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et seq.), or law of the State of Washington, not later than 90 days after the date of enactment of this Act, the Secretary, acting through the Chief of Engineers, shall transfer the human remains to the Department, on the condition that the Department, acting through the State Historic Preservation Officer, disposes of the human remains and repatriates the human remains to the claimant tribes.

(c) **TERMS AND CONDITIONS.**—The transfer shall be subject to the following terms and conditions:

(1) The release of the human remains to the claimant tribes is contingent upon the claimant tribes following the Department’s requirements in the Revised Code of Washington.

(2) The claimant tribes verify to the Department their agreement on the final burial place of the human remains.

(3) The claimant tribes verify to the Department their agreement that the human remains will be buried in the State of Washington.

(4) The claimant tribes verify to the Department their agreement that the Department will take legal custody of the human remains upon the transfer by the Secretary.

(d) **COST.**—The Corps of Engineers shall be responsible for any costs associated with the transfer.

(e) **LIMITATIONS.**—

(1) **IN GENERAL.**—The transfer shall be limited solely to the human remains portion of the archaeological collection.

(2) **SECRETARY.**—The Secretary shall have no further responsibility for the human remains transferred

DRAFT

**Transfer of the Human Remains known as Kennewick Man or the Ancient One
Pursuant to Section 1152 of the Water Infrastructure Improvements for the Nation
Act of 2016 (“WIIN 2016”)
Collection 45BN495**

1. The human remains in this collection are being transferred to the Washington State Department of Archaeology and Historic Preservation (“the Department”) under the provisions of the Section 1152 of the Water Infrastructure Improvements for the Nation Act, Pub. L. No. 114-322 (“WIIN 2016”).
2. The Joint Collection Inventory (attached), dated _____, and consisting of ___ pages, was used to verify transfer and receipt of all materials identified as being the human remains that are known as Kennewick Man or the Ancient One, as defined in Section 1152 of WIIN 2016, curated at the Burke Museum of Natural History and Culture, in Seattle WA, or previously held at any other location.
3. The Department, on behalf of the State of Washington, agrees to dispose of the human remains that are known as Kennewick Man or the Ancient One, in accordance with WIIN 2016, and repatriate the human remains to the claimant tribes (“the claimant tribes” means the Confederated Tribes of the Colville Reservation, the Confederated Tribes and Bands of the Yakama Nation, the Nez Perce Tribes, the Confederated Tribes of the Umatilla Indian Reservation, and the Wanapum Band of Priest Rapids).
4. In accordance with WIIN 2016, the Secretary of the Army shall have no further responsibility for the human remains transferred.

TRANSFEROR:

I, David J. Ponganis, Regional Director of Programs, Northwestern Division, U.S. Army Corps of Engineers, on behalf of the Chief of Engineers and Department of the Army, hereby approve the transfer of the human remains known as Kennewick Man or the Ancient One from Collection 45BN495, as defined in WIIN 2016, and as identified in the enclosed and executed Joint Collection Inventory, from the Burke Museum to the Department, on the condition that the Department, acting through the State Historic Preservation Officer, disposes of the human remains and repatriates to the claimant tribes. I further certify that this transfer constitutes the complete human remains required to be transferred in WIIN 2016. I further designate Dr. Michael K Trimble, Director USACE Mandatory Center of Expertise for the Curation and Management of Archaeological Collections, as my representative to oversee and complete the physical transfer of these human remains.

Transfer of the Human Remains known as Kennewick Man pursuant to Section 1152 of
the Water Infrastructure Improvements Act of 2016 (“WIIN 2016”)
Collection 45BN495

Date

David J. Ponganis

Director of Programs, Northwestern
Division, USACE

The transfer of the human remains known as Kennewick Man or the Ancient One from Collection 45BN495, as defined in WIIN 2016, and as identified in the enclosed and executed Joint Collection Inventory from the Burke Museum, to the Department, was completed at ____ hours on the __, day of _____, 2017.

Date

Dr. Michael K. Trimble

Director, USACE Mandatory Center of
Expertise for the Curation and Management
of Archaeological Collectio

RECIPIENT:

By signing below I, Dr. Allyson Brooks, the Washington State Historic Preservation Officer, on behalf of the Washington State Department of Archaeology and Historic Preservation, certify that the Department will dispose of and repatriate the human remains known as Kennewick Man or the Ancient One from Collection 45BN495 to the claimant tribes, and all terms and conditions required by WIIN 2016 will be met, and I acknowledge receipt of all materials identified in the enclosed and executed Joint Collection Inventory, from the Department of the Army, and agree that these materials constitute the complete human remains required to be transferred in WIIN 2016.

Date

For the Department
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Transfer of the Human Remains known as Kennewick Man pursuant to Section 1152 of
the Water Infrastructure Improvements Act of 2016 (“WIIN 2016”)
Collection 45BN495

CURATION FACILITY:

All materials identified as part of the of the human remains known as Kennewick Man or the Ancient One from Collection 45BN495, as defined in WIIN 2016, and curated at Burke Museum on behalf of the U.S. Army Corps of Engineers, were included in the transfer identified above.

Date

For the Burke Museum
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Joint Collection Inventory enclosed