

CONSERVATION CROSSFEED

Notes from AFCEE/ECS
September 2002

This issue of Conservation Crossfeed focuses on information from the

DoD Conservation Conference

and subsequent [AF Breakout Session](#) held 17-21 Jun 02 in Tucson AZ. Because attendees received a cd-rom of the presentations in *.pdf, I have the presentations, agenda, and add-on session (Pentagon After 9-11) and upon request I may be able to e-mail to requester (some are quite large). I wish I could post all of them in this issue but we are limited on time (both yours and ours) and space (some are rather long-winded).



One of the hottest issues covered at the 2002 DoD Conservation Conference was that of **Range Sustainability and Encroachment**. One of the presenters defined encroachment as: *“Any non-DoD action that has the potential to impede military readiness”*. You may disagree with the definition, but you need to recognize it as a big problem.

Other issues mentioned during the conference included T&E species management, integrated natural resource management, critical habitat for T&E species, migratory birds, marine mammals, wetlands, erosion, air quality, agricultural leasing and forestry.

As USAF natural resource managers, we have little control over non-DoD actions, but we are often responsible for developing management strategies that maintain our Installations in compliance with these non-DoD actions. Wise and innovative management also has the effect of sustaining our Installations and Ranges so as to accomplish our mission of providing national defense. Natural resource issues and how we deal with them are very important in the sustainability of our Installations.

Managing natural resources is no easy matter. We must constantly strive to maximize our ability to complete our primary mission while maximizing the conservation and multiuse of resources and maintaining compliance with federal and state legislation. In doing so, we contribute to the sustainability of our Installations. This only becomes harder as the encroachment problem intensifies. Some Installations are being surrounded by urban growth, effectively making them “islands of biodiversity” in a sea of asphalt and concrete. For more information and/or a copy of the CD containing the presentations given at the 2002 DoD Conservation Conference contact Stephanie Lamb, DoD Legacy Program - CTR 703- 604-1933, mailto: stephanie.lamb@osd.mil

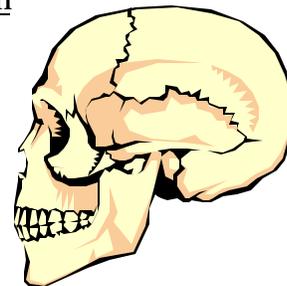
I have had many queries regarding future Conservation Conferences; there are tentative plans and the response from OSD (Alison Dalsimer and Stephanie Lamb) is “pretty likely to happen” at this time -- look to '04. When there are more details, we will use Conservation Crossfeed to pass it along.



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Implications of the Recent Kennewick Man Decision



1. Executive Issues

- The Federal District Court hearing the "Kennewick Man" case handed down a decision on 30 Aug 2002 (*Bonnichsen et al. v United States of America; Department of the Army, et al.* (Civil No. 96-1481-JE)).
 - The decision carries significant implications for Federal agency administration of the Administrative Procedures Act (APA), Native American Graves Protection and Repatriation Act (NAGPRA), the National Historic Preservation Act (NHPA), the Archaeological Resources Protection Act (ARPA), and Executive Order (EO) 13175 "Consultation and Coordination with Indian Tribal Governments".
 - Scientist plaintiffs, primarily archaeologists and physical anthropologists, almost entirely prevailed: They sued the Army Corps of Engineers (Corps) (1) to prevent transfer of custody to a coalition of Indian tribes, and (2) to be permitted to study the 9,000 year-old remains for various kinds of information, including the nature of early populations and how and when the Americas were colonized by humans.
 - The Court found that the remains were not "Native American" under the meaning of NAGPRA. Therefore, NAGPRA does not apply, and the scientists will be permitted to study the remains under the terms of ARPA.
 - The Court further found that the Secretary of the Interior's determination of cultural affiliation was arbitrary and capricious because it was not based upon a preponderance of the evidence.
 - The Court found that the Corps' decision to bury the archaeological site violated the NHPA requirement to consult with interested parties.
- The Court also found that Federal agencies' obligation to consult with Indian tribes does not relieve the agencies of the Administrative Procedures Act requirement to use a decision-making process that is fair to all parties.

Full text of the decision is found at:

<http://www.kennewick-man.com/>

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2. Background

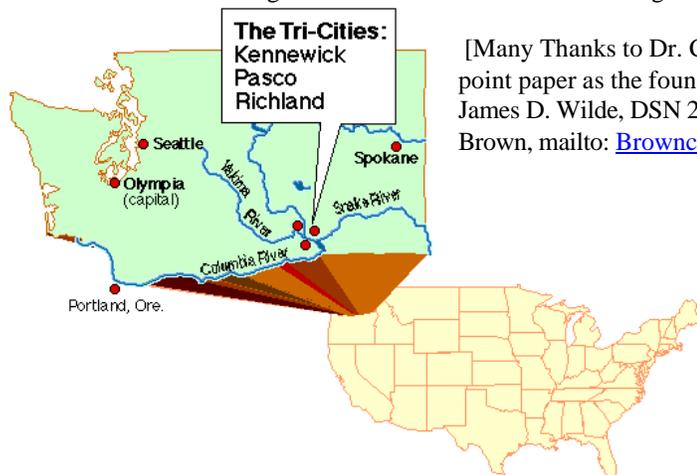
- In July 1996 about 90% of a complete human skeleton was found along the Columbia River near Kennewick, WA, on Federal property under the management of the Corps.
- Radiocarbon dating indicated that the skeletal remains were around 9000 years old. Human remains of this age are extremely rare in North America. The Corps hastily decided to transfer the materials to a coalition of five local tribes and prohibited any study of the materials. They also buried the original site to prevent further study of it (according to the Court -- the Corps alleges different motives).
- During long and complicated litigation, the remains were removed from the custody of the Corps and transferred to the Burke Museum at the University of Washington. The Corps engaged the Department of the Interior (DOI) to supervise compliance with NAGPRA. DOI was assigned responsibilities for determining cultural affiliation and proper disposition.
- In an earlier decision critical of the government (*Bonnichsen v. United States*, 969 F Supp 628 (D Or 1997)), the Court found that the Corps' decision making process was flawed, its decision was premature, it had clearly failed to consider all the relevant factors, it assumed facts that proved to be erroneous, and it failed to articulate a satisfactory explanation for its actions. The Court vacated the Corps' original decision to transfer custody and remanded the issues to the Corps with instructions to fully reopen the matter, gather additional evidence, and reach a conclusion based on all the evidence.
- In December 2000, the DOI concluded that the remains were "Native American" and subject to transfer to the Claimant tribes under NAGPRA. The DOI and Corps again denied scientists' request to study the remains. The scientists then filed an Amended Complaint challenging the decisions and asserting additional claims, including that, during the remand, the DOI and Corps violated the APA, NAGPRA, NHPA, ARPA and FOIA

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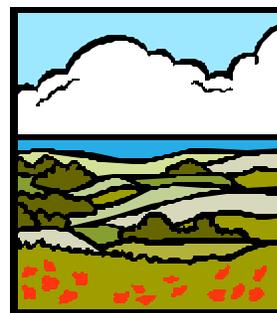
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3. Discussion

- The court determined that "the final decisions challenged here were not made by neutral and unbiased decision makers in a fair process as is required under the APA" (p. 23). The Corps and DOI were clearly biased toward the Tribal Claimants and against the scientist plaintiffs.
- The decision emphasizes in a most dramatic way that Federal agencies must make determinations of cultural affiliation under NAGPRA that are reasonable, factual, logical, well argued, documented, and based on a preponderance of the evidence. "The term, 'Native American' requires, at a minimum, a cultural relationship between remains or other cultural items **and a present day tribe, people, or culture** indigenous to the United States" (p. 30) (emphasis added). "NAGPRA does not mandate that every set of remains be awarded to some tribe, regardless of how attenuated the relationship may be" (p. 57). "Kennewick Man's culture is unknown and apparently unknowable" (p. 31), and therefore the DOI had insufficient evidence to conclude his remains are "Native American" and subject to NAGPRA.
- In particular, the decision makes clear that, under NAGPRA, the Federal agency must clearly define the "identifiable earlier group" from which the remains derive. Then, **a claimant** must "establish, by a preponderance of evidence, **a shared group identity** with the identifiable earlier group" (p. 57, see also discussion on p. 44) (emphasis added).
 - By implication, Federal agencies must complete good and thorough archaeological and related studies to identify the "earlier group" from which remains and cultural objects might derive in order to determine whether inadvertently discovered human or cultural remains are subject to NAGPRA. The standard is a well-documented "preponderance of evidence" that forms a "reasoned basis for the decision in light of the record" (p. 38).
 - Claimants, rather than Federal agencies, must provide evidence of a shared group identity that can be reasonably traced in order to claim cultural affiliation with remains or cultural objects.
 - "The requirement of continuity between present day Indian tribes and material from historic or prehistoric Indian tribes is intended to ensure that the claimant has a reasonable connection with the materials" (p. 44).
- The decision emphasizes that human remains and cultural objects not subject to NAGPRA, or for which no claimants can show a shared group identity, are covered by ARPA. Under ARPA, "[t]he responsible agency official is required to place archaeological resources removed from federal land in a repository that (1) has adequate long-term curatorial capabilities, 36 CFR Part 79.5; (2) uses 'professional museum and archival practices,' 36 CFR Part 79.9(a); and, (3) will make the collection available for 'scientific, educational and religious uses,' including scientific analysis and scholarly research by qualified professionals. 36 CFR Part 79.10(a), (b)" (p. 70).
- The finding that the Corps violated the NHPA by covering the discovery site may render the government vulnerable to further litigation.



[Many Thanks to Dr. Clifford Brown, Contractor NAVFACHQ, for sharing his Navy point paper as the foundation for this summary. For more information contact Dr. James D. Wilde, DSN 240-6546, mailto: james.wilde@brooks.af.mil, or Dr. Clifford Brown, mailto: Brownc@navfac.navy.mil]



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One of the most well received sessions at the 2002 DoD Conservation Conference was the [Threatened and Endangered Species Workshop](#) held on Sunday. The portion that most impressed me was the presentation on [Section 7 Consultations](#). The presenter covered this topic in a very thorough and logical way. He introduced the audience to the legal basis for consultation and explained the need for federal agencies to avoid jeopardy. He explained the prohibition of a commitment of resources to a planned action until consultation has been completed. The presenter then took the audience through the informal consultation process, which could in many cases lead to formal consultation. He also discussed emergency consultation, conferences and programmatic consultation. He discussed the development of a Biological Assessment and the response of the FWS with a Biological Opinion and the Incidental Take Statement. Finally he finished with a discussion of reinitiation of consultation, if necessary. I found the workshop to be excellent for the less experienced NR manager or those not faced with T&E species occupancy of their installation. For those managers with T&E species (or the possibility of T&E species) on their installation, I would recommend attendance at the week-long course given at the US FWS National Conservation Training Center at the following address: <http://www.nctc.fws.gov/>

If you have questions regarding Section 7 consultations, contact Dan Friese (DSN 240-3823; <mailto:dan.friese@brooks.af.mil>) or Mary Anderson (DSN 240-3808; <mailto:mary.anderson@brooks.af.mil>) and we would be glad to assist you.

UPCOMING EVENTS

2002

4-6 Oct: TX Society of Ecological Restoration meeting; Camp Thicket (near Weslaco, Tx); <http://www.phil.unt.edu/ser/#Location>

5-10 Oct: Society of American Foresters National Convention and DoD Forestry Workshop (10 Oct). Winston-Salem, NC. <http://www.safnet.org/calendar/natcon.htm>

21-24 Oct: 5th Wetlands Regulatory Workshop; Holiday Inn-Boardwalk, Atlantic City NJ; contact: Ralph Spagnolo or Frank Reilly. Phone:215-814-2796, 540-286-0072. <mailto:spagnolo.ralph@epa.gov>, <mailto:reillygroup@msn.com> or <http://www.wetlandsworkgroup.org/>

24-27 Oct: CA SER meeting, N. Tahoe Conference Center, Kings Beach CA. http://www.sercal.org/2002_conference.htm

10-14 Nov: American Society of Agronomy-Crop Science Society of America- Soil Science Society of America Annual Meeting; Indiana convention Center, Indianapolis, IN. Contact:Sara Procknow. Phone:608-273-8090, ext. 323. <mailto:headquarters@agronomy.org>. or <http://www.asa-cssa-sssa.org/anmeet/>

Planning for '03 training

Need information on what/who/where/when? Go to the ECC webpage "Management Training Courses" (<http://www.afcee.brooks.af.mil/ec/training/training.asp>)

For more information on any of these articles. Contract HQ AFCEE/ECS, DSN 240-3808
To E-mail us at AFCEE/ECS use this syntax: firstname.lastname@brooks.af.mil Check out our webpage:
<http://www.afcee.brooks.af.mil/ec/echome.asp>

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GEOBASE and the N/C Resources Manager.



First – there are no \$\$ for data development and limited training available. Now the rest of the story.

GeoBase (<https://www.il.hq.af.mil/geobase/>) is a concept utilizing GIS and CADD data to provide:

- A Commander's decision support tool (elevates access and visibility to mission data),
- A Situational awareness (crisis and routine situations, contingency planning), and
- A Common Installation Picture (CIP) (one base=one map, improves base support planning, integrated "mission decision space" for the commander, and raise decision confidence by answering the "what is it," "where is it," and "what's around it.")

So how does the N/C Resources Manager play into this? If you have routine management actions (monitoring stations), sensitive areas (i.e. wetlands, critical habitat, archeological sites, woodlots, or conservation easements), or INRMP/CRMP project implementation actions, you provide the digital data (maps, databases) to your CADD/GIS group and work with them to develop your management actions. Most MAJCOMs and installations will be incorporating remote sensing (aerial photos, satellite imagery) data into their systems and this data can be invaluable to the N/C Resources Manager. Current GeoBase contracts are delivering "IOC" initial operating capability...it includes the digital aerial, DTM/DEM, and many commonly used layers: roads, wetlands, bldgs, 100 yr flood and anything else we can readily capture electronically or digitize easily that is typically found in the Base General Plan.

AFCEE EC-GIO (GeoBase Program Managers) gathered up some fallout funds and purchased 500 ESRI premium subscription virtual campus seats (aka "limited training") for AF use. The purchase and access to these courses should be completed by 30 September. The premium seats include additional courses related to environmental conservation, forestry, hydrology, health services, and planning applications that are not included normal subscription training. The list of available courses can be found at <http://campus.esri.com/campus/catalog/subscripstions/index.cfm?CFID-3328156&CFTOKEN=87238162>

To receive a course access code, interested personnel should contact Deborah Locklair DSN 240-3516 or email to: Deborah.locklair@brooks.af.mil. The only requirement is that you go to the ESRI web-site and take a course/or introductory module (or show you have taken one within the last 6 months.) ESRI has several free introductory classes for people who are just learning about the technology. Send a copy of the certificate, with your name on it, from an ESRI virtual campus class (*.pdf is preferred, but we will accept FAX {DSN 240-3809}) To take another class, just send in the certificate from the last one...

(Mary's Soapbox) As a long-time GIS user and botanist, I don't feel that GIS is being used to its fullest potential – primarily as a planning and analysis tool. Currently, I see lots of pretty colored maps in reports and management plans but no direction (even from the contractors) on how to use GIS. I see this as a gap for most installations but one that wouldn't take too much effort or knowledge to fill. GeoBase may be the avenue to use in filling this gap. If any one has suggestions to use or are using GIS as an analysis tool – PASS it along.

At a recent ESA/SER conference, I purchased the book "Remote Sensing Imagery for Natural Resources Monitoring" (Wilkie and Finn, 1996, Columbia Press). When I finish reading it, I will pass along key items that may be of use to the installation personnel. If anyone else has a book review, peer-reviewed journal article or ideas for using GIS in natural or cultural resources management – PASS THEM ALONG.