

## BACKGROUND AND PURPOSE STATEMENT

From a consideration of the mandate issued by the Native American Graves Protection and Repatriation Act, it is clear that, in the event that an unmarked burial is opened or otherwise endangered on Federal lands managed by the Omaha District, U.S. Army Corps of Engineers (Omaha District) has a responsibility to notify and consult with those tribes whose ancestors are interred in unmarked burials found on lands administered by the Omaha District, but which were once the aboriginal homelands of an indigenous nation or tribe. Further, from a consideration of a series of meetings held with the North Dakota Intertribal Reinterment Committee (NDIRC), it is clear that tribal governments in North Dakota, through their representatives on the NDIRC, have repeatedly expressed their strong desire to protect the contents of their ancestor's graves from any manner of disturbance. When disturbance cannot be avoided, however, the tribes have been very clear in calling for procedures in the disposition of these burials that protect the deceased. For these purposes, the following procedures shall be carried out by the Omaha District and the NDIRC when unmarked human burials are opened or otherwise disturbed on lands under its control.

## MEMORANDUM OF AGREEMENT

BETWEEN THE DEVIL'S LAKE SIOUX TRIBE, STANDING ROCK SIOUX TRIBE, THREE AFFILIATED TRIBES, AND TURTLE MOUNTAIN BAND OF CHIPPEWA, AS REPRESENTED BY THE NORTH DAKOTA INTERTRIBAL REINTERMENT COMMITTEE AND THE UNITED STATES ARMY CORPS OF ENGINEERS, OMAHA DISTRICT CONCERNING THE PROTECTION, PRESERVATION, AND DISPOSITION OF UNMARKED HUMAN BURIALS, BURIAL MOUNDS, AND CEMETERIES LOCATED ON OMAHA DISTRICT LANDS IN THE ABORIGINAL HOMELANDS OF THE MEMBER TRIBES OF THE NDIRC, AS PROVIDED FOR BY THE NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT.

WHEREAS, the U.S. Army Corps of Engineers, Omaha District (hereinafter referred to as the Omaha District), has project operations responsibilities over lands once occupied by the aforementioned tribes that contain human interments now located along Lakes Bowman/Haley, Oahe, Sakakawea, and Pipestem Reservoir; and

WHEREAS, the Omaha District has custodial responsibility over burials, and periodically finds itself gaining possession of human remains eroded or collected from the reservoirs of North Dakota; and

WHEREAS, the tribes represented by the signatories hereto now occupy tribal lands in North Dakota and were aboriginal occupants of lands which, in part, now make up the State of North Dakota and other parts of the Missouri River Basin, as depicted on the map included as Appendix I, do claim and assert the right of possession and control of Native American human remains and associated burial goods on lands managed by the Omaha District in North Dakota in accordance with Section 3a(2)(C) of the Native American Graves Protection and Repatriation Act (NAGPRA), and

WHEREAS, the tribal governments in North Dakota, through their representatives on the North Dakota Intertribal Reinterment Committee (NDIRC), have expressed their strong desire to protect the contents of their ancestors' graves from any manner of disturbance; and

WHEREAS, the Omaha District has consulted with all of the aforementioned parties and has agreed that certain actions ensuring the proper treatment of any Native American human remains and burial goods shall require uniform procedures in order to comply with the position of the NDIRC and the NAGPRA.

NOW THEREFORE, the Omaha District and the Devil's Lake Sioux Tribe, the Standing Rock Sioux Tribe, Three Affiliated Tribes, and Turtle Mountain Band of Chippewa agree to the following stipulations and the principle that Native American human remains and burial goods are handled in an appropriate manner. The signatories shall ensure that the following measures are carried out.

## STIPULATIONS

### I. DEFINITIONS

- A. Legal Owner - For purposes of this agreement, the general concept of "legal" and/or ownership of human skeletal remains and associated burial goods is not recognized until identified under NAGPRA. To the degree that the Omaha District may be deemed under law to have jurisdiction of skeletal remains and burial goods (cultural items), the Omaha District disclaims such jurisdiction and accepts only custodial responsibility for the purposes of protection of burial sites and, if necessary, reinterment.
- B. Burial Goods - shall mean all sacred objects, which shall generally include all items believed to have been associated with the human skeletal remains or as part of the death rite, ceremony, or burial grounds, including but not limited to projectile points, knives, scrapers, articles of clothing, ornaments, beads, and religious items such as pipes, stones, dishes and pottery, feathers, and any item so identified and found, as determined in the field through consultation between the designated NDIRC representative and the archeologist.
- C. Department - means the North Dakota State Department of Health and Consolidated Laboratories.
- D. Duly Designated Representative - shall mean any person who is a member of the NDIRC and can provide written documentation of appointment to this committee by his/her respective tribal governing body.
- E. In Situ - means in the human burial site per se or in the proximate area or vicinity of unmarked human burials.
- F. Inventory - shall mean the physical creation of
1. A listing of the contents of unmarked human burials
  2. Other existing records.
- G. Qualified Archeologist - means an individual who meets the minimum qualifications as defined in Secretary of the Interior's Standards and Guidelines (Federal Register, vol. 48, no. 190, page 44739).
- H. Society - means the State Historical Society of North Dakota.
- I. Media - shall mean any form of communication including, but not limited to, electronic or other forms of print, audio, and video mediums. The term media does not include Omaha District technical reports to the file that are used for in-house documentation.
- J. Burial Identification - is defined as the visual observation of a site by a qualified archeologist and a NDIRC representative to determine if a burial is present.

K. Nontribal - is defined as the remains of a non-Indian person buried in an unmarked grave with Native belongings and/or other items which would lend the impression that the deceased had been buried in a tribal manner due to adoption, marriage, or other means.

L. Intrusive Archeological Testing - any method or manner of testing that touches, destroys or intrudes on the suspected or confirmed burial chamber, per se.

M. Study - means the examination by a qualified archeologist, with the assistance from specialists, as necessary, and in the presence of the NDIRC, of human burial sites, human remains, and burial goods, which examination is conducted in situ, unless the physical safety of the NDIRC member(s), archeologist(s), and others may be in jeopardy, or as agreed to in the field. The study consists exclusively of the following activities under the following circumstances:

1. In all instances, the taking of soil and floral samples as may be appropriate.
2. In those instances wherein the burial can be restored by backfilling, stabilization, and other protective measures from further disturbance, study will not be conducted. Notification procedures described herein apply in this instance as well, however, and restoration of all sites is to be completed by the NDIRC. Upon request by the NDIRC, the Omaha District will provide assistance.
3. In those instances wherein the burial cannot feasibly be restored, but must be disinterred or collected completely and reinterred in another location, the visual observation and written description of the human burial site and the measurement and weighing of the human remains and burial goods after disinterment from the burial will be conducted in situ through an archeological excavation of the site. Such study shall only be conducted following consultation with the NDIRC, and in the presence of at least one of its members.
4. In those instances wherein in situ examination is not feasible because certain contents of a human burial have been physically separated from the original burial site, those human remains and any burial goods that have been so separated shall be delivered to the NDIRC. Such human remains and burial goods are not to be examined scientifically for any purpose except when the following situation applies:

Within five business days following notification of discovery, a records check, and a thorough search of the proximate area, at a minimum, will be made by the Omaha District to locate the human burial site in which such human remains and any burial goods were originally interred. In the event that the original burial site is located, examination of such burial site, in addition to those human remains and burial goods which have been separated from the original burial site, will be conducted within five business days of the discovery of the original burial, but only in the event the burial site must be excavated for protection. Such study shall only be conducted following consultation with the NDIRC, and in the presence of at least one of its members, in accordance with the scope of study as defined herein.

## II. INADVERTENT DISINTERMENT - NOTIFICATION

Upon having received notification of the actual or potential disturbance or the discovery of a human burial site, human remains, or burial goods, the Omaha District shall, within a period of twenty-four hours, report the receipt of such notification to the appropriate NDIRC contacts. Based upon the information received from the person providing such notification, the Omaha District shall additionally inform the Society and the Department as to the exact location and state (condition) of the human burial site, human remains, or burial goods of which notification was received, for the purpose of obtaining their assistance (through a records search) in the possible identification of the deceased. In the event that either the Omaha District or the NDIRC representative(s) have reason to suspect that the burial contains a victim of a recent prosecutable crime or accidental death, a local law enforcement officer will be notified.

## III. INADVERTENT DISINTERMENT - STUDY

Within a period of two business days (although every effort will be made to keep the timeframe under twenty-four hours) from the time the Omaha District has received notification of the actual or potential disturbance or the discovery of a human burial site, human remains, or burial goods, the Omaha District and the NDIRC representative(s) shall commence initial examination of any human remains not associated or suspected of a crime or accidental death as determined above which are the subject of the notification and undertake exclusively the following activities:

1. The human burial site or its exposed contents must be initially examined by the Omaha District to attempt to determine the lineal descendants (next-of-kin), or to determine race and age of the remains, if possible, using relevant available and solicited information (e.g., plats, maps, records, interviews with tribal members and landowners knowledgeable of the site in question, and associated burial goods). This initial examination must be conducted in consultation with the NDIRC, and in the presence of at least one of its members.
2. If a presumption as to lineal descendants (next-of-kin), or a determination of race and age can be made based upon location, historical data, and any associated burial goods, this information must be used to determine disposition of the human burial site, human remains, or burial goods by the Omaha District and the NDIRC. Disposition must be in accordance with NAGPRA and requirements as set forth herein.
3. If it is determined by initial examination that the human remains are non-Indian and non-Tribal, the remains will be further examined within the applicable scope of study as defined herein. Further study and final disposition of these remains will be at the discretion of the Omaha District, with assistance from the NDIRC, if requested.
4. If it is determined by initial examination that the human remains are Indian, the remains will be further examined within the applicable scope of study as defined herein, and disposition of these remains will be in accordance with paragraph 2 above.

5. If it cannot be determined by means of such initial examination that the human remains are either Indian or non-Indian, it will be presumed that the human remains are Indian, based upon the experience of the Omaha District and the NDIRC.

#### IV. INADVERTENT DISINTERMENT - RECOVERY, RESTORATION AND REINTERMENT

A. In consultation with the NDIRC, the remains will be turned over to the proper legal authorities if it is determined that a recent crime was committed or suspected. Law enforcement and health officials will recover any remains resulting from a recent prosecutable crime or accidental death (i.e. drowning).

B. Within a period of two business days (although every effort will be made to keep the timeframe under twenty-four hours), the NDIRC representative, in consultation with the Omaha District representative, if necessary, shall make a determination as to whether the burial can be adequately and safely restored and protected in situ or whether, in the alternative, the contents of the burial should be disinterred completely and reinterred in another location.

C. Identification of a suspected human burial site, in consultation with a NDIRC representative, is an acceptable activity. Intrusive archeological testing methods are prohibited.

D. Prior to the restoration or reinterment of the burial, the NDIRC in consultation with the Omaha District, along with other possibly affiliated tribe(s), if any, shall attempt to determine the tribal identity or affiliation of the human remains and any burial goods interred in the burial site.

E. If it is determined that the disturbed burial can be adequately and safely restored and protected in situ, the NDIRC shall, as soon as practicable, cause the burial to be backfilled, stabilized, and protected from further disturbance by the human activities or natural processes which caused the disturbance in the first instance.

F. If, on the other hand, it is determined that the in situ restoration of the burial is not feasible, the NDIRC shall, as soon as practicable and subsequent to the completion of any study conducted on the contents of the burial at the direction of the Omaha District and pursuant to the scope of study as defined herein, and if lineal descendants cannot be ascertained, cause the disinterred human remains and any and all burial goods to be reinterred on Indian lands within the boundaries of the appropriate Indian reservation, as determined by the NDIRC.

G. Each such restoration and reinterment shall provide an opportunity for appropriate tribal religious ceremony or ceremonies. The Omaha District agrees to fund the expenses of the NDIRC members participating in restoration or reinterment ceremonies.

## V. PLANNED DISINTERMENT

A. For all activities undertaken on lands managed by the Omaha District, the general policy shall be strict avoidance of all human burials, whether marked or unmarked, whenever possible.

B. For all instances where avoidance is not possible, the Omaha District shall undertake to reach separate memorandums of agreement with the NDIRC, on a case by case basis. Under no circumstances will any activity proceed until consultation between the Omaha District, the NDIRC, and any other interested parties is completed.

## VI. CONSULTATION

A. Under no circumstances will the Omaha District provide details of any burial disturbance to any public, private, or governmental media.

B. The NDIRC will provide a prioritized list of points of contact (Appendix 2). The Omaha District will contact, in priority order, a NDIRC member when human remains and burial goods are reported. The NDIRC point of contact will in turn notify other members of the committee as necessary. The Omaha District will identify counterpart personnel who will act as liaison(s) and coordinator(s). Both parties will notify each other in the event of change in personnel.

C. At the invitation of the NDIRC, the Omaha District will attend at least one quarterly NDIRC meeting annually to review any activities that involve this Agreement since the previous joint meeting.

D. On those rare occasions when either party is unable to meet its commitments as pertaining to timeframe schedules for any activity specified herein, the party that is unable to meet the schedule will notify the other party as soon as physically possible to reschedule the activities to the mutual satisfaction of both parties. Emergency actions will be coordinated telephonically.

## VII. CHANGES

A. Should a dispute or competing claim arise during the course of this Agreement, the Omaha District will consult with the party(ies) in the dispute to resolve the objection or claim.

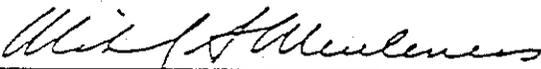
B. If any signatory to this Agreement believes that the terms of the Agreement cannot be carried out, or that an amendment must be made, that party shall notify the other signatories and request consultation to resolve the issue or amend the Agreement.

C. Other tribes may become parties to this Agreement.

D. Any signatory may terminate their participation in this Agreement upon 30 days written notice to the other signatories.

Obligations and expenditures agreed to by the Omaha District in this document are subject to the availability of funds.

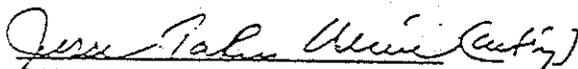
Execution of this Memorandum of Agreement is evidence that the signatories have consented to enter into an Agreement as provided for in NAGPRA Section 11 (1) (B).

  
MICHAEL S. MEULENERS  
Colonel, Corps of Engineers  
Commanding

December 13, 1993  
Date

  
WILBUR D. WILKISON, Chairman  
Three Affiliated Tribes  
Business Council

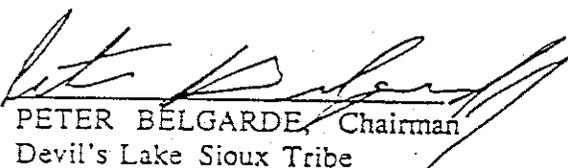
Oct 5, 1993  
Date

  
CHARLES W. MURPHY, Chairman  
Standing Rock Sioux Tribe

10-5-93  
Date

  
RICHARD L. LAFROMBOISE, Chairman  
Turtle Mountain Band of Chippewa

10-5-93  
Date

  
PETER BELGARDE, Chairman  
Devil's Lake Sioux Tribe

Oct 5, 1993  
Date

NORTH DAKOTA INTERTRIBAL REINTERMENT COMMITTEE  
(on following page)

POSITION OF THE NORTH DAKOTA INTERTRIBAL REINTERMENT COMMITTEE  
OFFICIAL REPRESENTATIVES  
OF THE TRIBAL GOVERNMENTS  
OF THE  
STANDING ROCK SIOUX TRIBE  
TURTLE MOUNTAIN BAND OF CHIPPEWA  
THREE AFFILIATED TRIBES  
DEVILS LAKE SIOUX TRIBE

1. We are categorically opposed to the excavation, curation, and study of all Indian remains and grave goods found in our homelands. We submit that these activities are ethnocentric and extremely racist, and violate our religious beliefs.
2. We want released to us all excavated ancestors and their personal belongings taken from our homelands for immediate reburial on Indian lands.
3. We reject any arguments that scientific analysis must be done on remains to establish tribal identity and assert that we do not have to prove we are related to Indian remains taken from our homelands. We further submit that there is no scientific test available today which conclusively identifies Indian remains as to tribal origin, and that any such findings made by science are strictly of a speculative nature.
4. There will be no subsequent disinterment of reburied ancestors or their belongings taken from our homelands for further study in the future.
5. The bodies and belongings of our relatives are not the property of any individual, institution, or government.

Note: It was mutually agreed that the position of the North Dakota Intertribal Reinterment Committee would be attached to the MOA. This does not reflect the policy of the Omaha District, Corps of Engineers.

Ronald S. Little Owl

RONALD S. LITTLE OWL  
Three Affiliated Tribes

10/11-93 at 2:22 P.M.  
CST

Date

Jane Martin Lone Fight

JANE MARTIN LONE FIGHT  
Turtle Mountain Band of Chippewa

10/05/93  
Date

Pemina Yellow Bird

PEMINA YELLOW BIRD  
Three Affiliated Tribes

10/5/93  
Date

Francis Cree

FRANCIS CREE  
Turtle Mountain Band of Chippewa

Oct. 5-1993  
Date

Tim Mentz Sr.

TIM MENTZ, SR.  
Standing Rock Sioux Tribe

Oct. 5, 1993  
Date

Elgin Crowsbreast

ELGIN CROWSBREAST  
Three Affiliated Tribes

Oct 5, 1993  
Date

Alta Bruce

ALTA BRUCE  
Turtle Mountain Band of Chippewa

10/26/93  
Date

George Ironshield

GEORGE IRONSHIELD  
Standing Rock Sioux Tribe

10-5-93  
Date

Paul Little

PAUL LITTLE  
Devils Lake Sioux Tribe

11-13-93  
Date

Thomas Bullhead

THOMAS BULLHEAD  
Standing Rock Sioux Tribe

10-5-93  
Date

Denise Peltier

DENISE PELTIER  
Turtle Mountain Band of Chippewa

11/19/93  
Date