Guest Columnist/Did U.S. Corps of Engineers learn nothing from the Kennewick Man case?

By Alan Schneider and Cleone Hawkinson

GOVERNMENT agencies are often slow learners. A case in point is the U.S. Army Corps of Engineers' process for protecting human skeletal remains found on Corps-managed federal land.

Recently a partial human jawbone and two teeth were recovered from the Columbia River not far from where the 9,400-year-old Kennewick Man skeleton was found in 1996. Based solely upon visual inspection of these remains, the Army Corps declared them to be Native American, which puts them on a fast track for transfer to local tribes.

Only after the decision was challenged by concerned citizens did the Corps announce to the media it would seek a second opinion from an independent anthropologist.

The Army Corps' handling of this matter is troublesome.

In the Kennewick Man case, the Corps similarly relied on incomplete information to reach a snap decision that the skeleton was Native American and thus subject to repatriation claims by local tribes. Such a rush-to-judgment approach was one of the reasons the Corps' decisions in that case were overturned by the courts. Those decisions cost taxpayers more than $5 million. The Kennewick Man skeleton is now in safekeeping for future research.

A jawbone has no visual characteristics that can be used to reliably distinguish Native Americans from other human populations. Yet, when asked how this particular fragment was determined to be Native American, the Army Corps responded with vague, unhelpful statements, when it replied at all. The public deserves a complete explanation of this matter to see whether the law is being properly followed.

DNA tests are the only possible way to determine if this jawbone has any actual connection to living Native Americans. In deference to tribal beliefs, the Army Corps initially has announced no invasive tests would be allowed. Such a ban on testing also would preclude radiocarbon (C14) dating. Consequently, we would never know how old these remains are. They may be fairly recent, but they could also be as old or older than the Kennewick Man skeleton. If they are old, they should be preserved for study by future scientists, who may have new technologies we can only dream of today.

The courts reprimanded the Army Corps in the Kennewick Man case for acting as a biased partner of the tribes rather than an independent, neutral fact-finder. The same approach appears to be happening with this latest discovery.
The Corps has reportedly stated that it is relying on the claimed expertise of tribal staff to help determine the identity and ultimate fate of these remains. This is like having the fox guard the henhouse. As a claimant for these remains, the tribes have an inherent incentive to overlook or discount any information adverse to their interests. A biased process is not likely to produce a fair outcome.

More is at issue here than the fate of these few remains. The Corps' handling of this discovery mirrors attitudes that permeate other federal and state agencies with land-management responsibilities. Agency officials often view discoveries of human remains as nuisances or potential impediments to maintaining good relations with local tribes.

To appease tribal interests, they may cover over new discoveries and pretend they never occurred. If a discovery is investigated, they allow local tribes to dictate the process and the final outcome. Unfortunately, the outcome can be a quick transfer of remains to the tribes. Such practices make a charade of archaeological preservation laws and erode our ability to learn about the past.

Despite all that has been learned, American prehistory is still like a play viewed through opaque curtains in a dim theater. Archaeological sites and artifacts can tell us about what prehistoric groups did, but they cannot tell us who the people were who did these things. Only human remains can provide concrete information about the people themselves. Vestiges of the past are destroyed every day through natural deterioration, economic development, vandalism and looting.

We should not compound these losses by mismanagement of new discoveries when they occur.

Alan Schneider was the lead attorney in the Kennewick Man lawsuit case, Bonnichsen et al v. United States. Cleone Hawkinson is president of Friends of America's Past and also assisted in the case.