

Minutes
Burial Preservation Board
October 12, 2018
10:00 AM – 2:00 PM
Working Lunch
State Capitol Building
Room 317
Helena, MT 59601

Members Present: William Big Day, Morris Belgard, Richard Parenteau, Carl Davis, Greg Kirkwood, Stan Wilmoth, and Skye Gilham

Staff Present: Stan Wilmoth, Mike Manion, Jason Smith, and Lauren Berka

1. Call meeting to order: *William Big Day, Chair*
 - a. Mr. Big Day called the meeting to order at 10:18 a.m.

2. Introductions and opening prayer
 - a. Mr. Belgard gave the opening prayer.
 - *Action Item*:** Approve May 18, 2018 Meeting Minutes
 - b. Mr. Belgard moved to approve the minutes from the May 18, 2018 meeting. Mr. Parenteau seconded. The motion passed unanimously.
 - c. Mr. Kirkwood introduced himself. Those present introduced themselves. Mr. Fisher arrived after the meeting was called to order. Introductions were made after he joined the meeting.

3. Old Business
 - a. Rudy Victor update
 - a. The family of Rudy Victor was able to communicate with the landowner on whose land Mr. Victor's remains reside. However, the family has not yet been able to meet with the landowner at the site. Mr. Manion spoke to Mr. Victor's niece Ms. Tammy Littleman on October 9, 2018, and it appears they will visit the site in Spring 2019 instead. Mr. Manion asked Ms. Littleman if the family needed anything else from the Board, and she said she was happy with the Board's help. Mr. Manion brought a news article from June 25, 2017 to be distributed if any members were interested. Mr. Wilmoth thanked Mr. Manion for all the extra work he put into this case.

4. New Business
 - a. 2018 Kalispell Discovery
 - i. A report entitled "Montana State Burial Preservation Skeletal and Human Remains Act Kalispell Discovery June 2018" was submitted by Rosemary Caye ahead of the meeting and distributed to all board members.
 - ii. ***Action Item*:** Mr. Fisher moved to accept Mr. Caye's report. Mr. Kirkwood seconded the motion.
 - iii. Members of the Board took time to review the report. Mr. Wilmoth questioned why the North Dakota Crime Lab was involved. Mr. Manion suggested that the Board follow up with Ms. Caye with this question. Mr.

- Belgard asked whether it was possible to table the discussion until Ms. Caye could be present to make a presentation.
- iv. ***Action Item***: Mr. Fisher moved to table a discussion of the "Montana State Burial Preservation Skeletal and Human Remains Act Kalispell Discovery June 2018." Mr. Belgard seconded the motion. Mr. Fisher asked Mr. Manion to ensure that Ms. Caye would be attending the meeting the next time this report is brought to the Board. Mr. Big Day called for a vote. The motion passed unanimously.
 - v. Mr. Belgard asked Mr. Smith about the pre-European-contact burial practices of the Kootenai. Mr. Smith replied that he would like to leave that up to Ms. Caye to answer because he would not want to answer inaccurately.
- b. Burial Preservation Board Pamphlet
- i. Mr. Manion shared the current version of the Burial Preservation Board pamphlet. All Board members received a copy of the brochure to review. Mr. Manion said he contacted Bob Rosipal (Deputy Sheriff, Cascade County; President, Montana Coroner's Association) and sent him the brochure. Mr. Rosipal said he is willing to include the brochure in an upcoming educational training. Mr. Manion asked for any corrections. Mr. Belgard, Mr. Fisher, Mr. Wilmoth, and Mr. Kirkwood offered corrections. Ms. Gilham asked if it would be possible to receive copies of the brochure. Mr. Big Day asked board members if they would like to receive copies. All board members agreed they would like to have copies as well.
 - ii. Mr. Wilmoth asked if it would be possible to have a wider discussion of the pamphlet. Mr. Wilmoth described the origination and history of the pamphlet, particularly for Mr. Kirkwood's benefit as a new board member. Mr. Wilmoth noted that the coroner has absolute authority to determine if something is a crime scene. Mr. Wilmoth explained that from his perspective, remains have too often been sent to the Montana Crime Lab. He noted the Board has a long history of tension with the Montana Crime Lab and the University of Montana Anthropology Department, where remains are transferred after being investigated. He noted that, in many cases, information from the Crime Lab is irrelevant. Mr. Wilmoth offered this background information as explanation for why the Board has asked for involvement from the Coroner's Association and the Sheriff's Association. Mr. Wilmoth said part of the Board's work is to determine how to encourage coroners and sheriffs to refrain from collecting remains from areas that are not crime scenes.
 - iii. Mr. Kirkwood noted that in his recollection, this has never been a topic of discussion at a Montana Coroner's Association meeting. Mr. Kirkwood noted that the Montana Coroner's Association is holding a board meeting in December and offered to share the brochure at this meeting. Mr. Davis asked Mr. Kirkwood to report back to the Board about the meeting. Mr. Davis noted that brochures are useful but felt as though face-to-face communication is ideal. Mr. Davis asked if there were any other ways to make sure this information is communicated. Mr. Big Day agreed with Mr. Davis that this is extremely important. Mr. Fisher expressed appreciation of Board members' concerns and passion about this issue. He stated that the Board should have a serious discussion about the brochure

and thinks it would be a step forward to have a meeting with the Coroner's Association, but that this kind of education should be institutionalized. He urged and challenged the Board to follow up on this.

- iv. Mr. Big Day asked if there was any other discussion on the brochure. Mr. Wilmoth thanked Mr. Kirkwood for offering to bring the brochure to the Coroner's Association. Ms. Gilham emailed the Montana Sheriff's Office for contact information. Mr. Belgard thanked Mr. Kirkwood and asked if people could be fined for disruption of human remains. Mr. Manion responded that under the Human Skeletal Remains and Burial Site Protection Act there is the potential for civil and criminal penalties. Mr. Belgard suggested that the brochure could include a warning about the possibility of civil and criminal penalties. Mr. Davis agreed that there should be some language to this effect. Mr. Big Day agreed that this would be beneficial and suggested that Ms. Berka and Mr. Manion make the suggested changes and send out a proof to board members for approval. Mr. Manion agreed and said the brochure would be circulated to all members after updates have been made.
 - v. Mr. Fisher suggested the brochure should specifically state the laws that make disturbing human remains a crime. Mr. Big Day suggested that county coroners could be listed on the brochure. Mr. Davis said the president of Montana Coroner's Association or the State Medical Examiner, Dr. Rob Kurtzman, would have more authority. Mr. Davis suggested talking to him and getting his name on the brochure. Mr. Big Day noted that this could help expedite the process. Mr. Wilmoth cautioned that the coroners, not the state medical examiner, would be making on-site determinations. Mr. Kirkwood noted that many reservations do not have reservation members as deputy coroners. He suggested more tribal law enforcement members could complete deputy coroner training. Mr. Smith said he thought it was a good idea and noted that the Board members would be the ones to bring this back to their tribal nations. Mr. Smith asked that they gauge whether their tribal members would be interested and willing in this training. Mr. Manion asked whether it was the direction of the Board to include the medical examiner's information. Mr. Kirkwood agreed with Mr. Wilmoth that the contact information for the state medical examiner does not need to appear in the brochure. Mr. Wilmoth said he thinks it is important for the Coroner's Association to address this and take the initiative to work with the Board and local tribes. Mr. Big Day asked for any other comments on the brochure. Mr. Smith asked for a formal invitation from the Coroner's Association to the Burial Preservation Board.
 - vi. ***Action Item***: Mr. Davis moved to direct Mr. Manion and Ms. Berka to make updates to the brochure and distribute to board members for comment and approval. Ms. Gilham seconded the motion. The motion passed unanimously.
- c. Museum of the Rockies
 - i. Mr. Manion provided a report on human remains found in Park County, MT by a private citizen. The remains were transferred to the University of Idaho. Funerary objects were provided to Museum of the Rockies. The federal register text included in the folder explains the process. Lisa

Verwys at the Museum of the Rockies told Mr. Manion through an email on Thursday, October 4, 2018 that possession of remains were transferred to the Nez Perce and the funerary objects will be transferred to Mr. Big Day. Mr. Wilmoth relayed to her in an email that there was no need to involve the Nez Perce since Mr. Big Day had already given directions that it should go to the mortuary. Mr. Manion asked Mr. Big Day if he wanted to contact Ms. Verwys and explain where the remains should go. Mr. Big Day said he would contact her.

d. Selling of Human Skull

i. Mr. Wilmoth described an email that was forwarded to him by an archaeologist from Lewis & Clark National Forest. The email contained a screenshot of a Facebook post selling what purported to be a human skull. Mr. Manion asked if the Board would like for us to follow-up on this. Mr. Wilmoth noted there have been similar situations in the past. Mr. Manion said he was willing to follow up. Mr. Wilmoth asked Mr. Manion whether this type of activity would be illegal. Mr. Manion responded the 1991 statute (Human Skeletal Remains and Burial Site Protection Act) is clear that items such as a human skull cannot be sold. Mr. Davis suggested that someone contact this person without first involving the law. Mr. Fisher asked whether there was any difference in selling it in person versus selling it on Facebook. Mr. Manion responded that just because it appeared for sale on Facebook does not change the applicability of contract law. However, he noted that the Burial Preservation Board's jurisdiction only applies to remains found after 1991, and it is not clear in this case if the Board has jurisdiction. Mr. Fisher noted that in his view, this is unethical and immoral regardless of whether the skull is native. He felt as though the Board could not allow this to go on. Mr. Gilham offered to message the person selling the item. Mr. Big Day expressed how hurtful the selling of remains can be to native peoples and said he believed this was a violation of the individual. Mr. Big Day asked Mr. Manion to follow up on this. Mr. Manion recommended a motion.

ii. ***Action Item***: Mr. Davis moved to make an inquiry directly to this person. Mr. Parenteau seconded the motion. The motion passed unanimously.

1. Mr. Davis suggested that we get back to the Lewis & Clark National Forest archaeologist regarding the Board's motion to follow up on this.

e. Private Nathan Short

i. Mr. Manion offered an update on Private Nathan Short. Pvt. Short was a member of General Custer's army who was killed, possibly while riding horseback to deliver a message to General Custer. Mr. Robert Doran has written about Pvt. Short previously and has expressed interest in disinterring the area and re-burying Pvt. Short's remains at the Little Bighorn Battlefield. The Department of the Army in Washington D.C. was identified as the closest relative and after reviewing Mr. Doran's petition, determined that the area should not be disturbed. However, Mr. Doran has suggested that he is still planning to disturb the area. Mr. Wilmoth relayed that he has not heard anything more from Mr. Doran, but the last time he

communicated with him he reiterated that the remains should not be disturbed.

- f. Old Cases – Stan Wilmoth
 - i. Mr. Wilmoth reported that he recently completed an inventory of existing cases in his office. He has a set of burial objects from Rosebud County, which are still pending. Another case arrived recently at his office from the Montana State Crime Lab. These remains were discovered in a field near Winifred in Fergus County. The remains had been sent to the Montana State Crime Lab. The Board has not discussed this case. Mr. Fisher suggested that the nearest tribe take those remains into consideration. Mr. Fisher offered to follow up on the Rosebud County case. Mr. Belgard said he would accept the remains from Winifred in Fergus County. It was decided that Ms. Caye should be consulted regarding burial items from Madison County. There was consensus that burial items from Rosebud County should go to the Crow Tribe.
- 5. Public Comment
 - a. None at this time.
- 6. ***Action Item***: Set next meeting date.
 - a. The next meeting is scheduled for Friday, May 3, 2019 in Helena. The motion passed unanimously.
- 7. ***Action Item***: Mr. Davis moved to adjourn the meeting.
 - a. Morris seconded the motion. The motion passed unanimously. The meeting adjourned at 12:20 p.m.