

Minutes
Burial Preservation Board
May 3, 2019
10:00 AM – 2:00 PM
Working Lunch
State Capitol Building
Room 250
Helena, MT 59601

Members Present: William Big Day, Morris Belgard, Richard Parenteau, Rosemary Caye, Tom Escarcega, Sr., Greg Kirkwood, Stan Wilmoth, Skye Gilham

Members Excused: John Murray, Carl Davis

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

1. Introductions and Opening Prayer
 - a. Mr. Big Day gave the opening prayer.
2. Call to Order
 - a. Mr. Big Day called the meeting to order at 10:05 AM.
 - b. Mr. Big Day welcomed the newest board member: Tom Escarcega, Sr.
3. Previous Meeting Minutes
 - a. **ACTION ITEM:** Approve October 12, 2018 Board Meeting Minutes
 - i. Mr. Kirkwood moved to approve the minutes from the October 12, 2018 meeting. Mr. Belgard seconded. The motion passed unanimously.
4. Old Business
 - a. Montana Association of Coroners, May 2019 board meeting
 - i. Mr. Kirkwood started by acknowledging that because he was recently appointed to the board last year, he realized he had some misunderstanding about the board's responsibilities and powers. He had previously thought the Burial Preservation Board had a team who would accompany coroners during excavations, however, now understands that is not the case. The MT Coroner's Association meeting is taking place during the next week and they have reserved two hours for the Burial Preservation Board on Monday (5/6/2019). Mr. Kirkwood reviewed the information that he would like the Board to present.
 - ii. *Ms. Gilham arrived at 10:12 AM.*
 - iii. Mr. Wilmoth said that he had spoken to Mr. Kirkwood about the Coroner's Association meeting previously but explained his hesitation in making a presentation as the Board's archeologist. He feared that if he spoke to the Coroner's Association as an archeologist, it would confuse the issue. He said he felt the most important point to emphasize to the coroners is that the coroner decides whether the location is a crime scene and if it is not a crime scene, no excavation should happen. He felt that for him to explain how an excavation would proceed would be misleading. He suggested the first priority should be to get coroners used to the idea that if it is not a crime scene, then the remains need to remain undisturbed.
 - iv. *Mr. Fisher arrived at 10:14 AM.*
 - v. Ms. Caye suggested that Board members stress that these procedures are the law and any decision about remains should be made in consultation

with the Burial Preservation Board. Mr. Kirkwood noted that until now, the process for many coroners has been simple: bag up remains and send them to a crime lab. He felt that the board should work to address the mindset of many of Montana's coroners. He relayed that many coroners currently think any remains need to be removed within 24 hours. He felt this may be difficult with coroners who had been in this profession for a long time, and while the Board can educate all coroners, they have an opportunity to reach new coroners in particular. Mr. Kirkwood shared a recent case where a gravesite was found in Phillips County and he instructed the coroner to wait until the snow had melted to examine the site and make further determinations, but not to rush to any conclusion or disturb the site unnecessarily. Mr. Manion asked which board member was closest to Phillips County. Mr. Belgard noted that he was about forty miles from the site. Mr. Manion noted that under the law, a representative from the board should be there. Ms. Caye asked Ms. Gilham what she thought about the description of the grave. Ms. Gilham said that she was unsure and would not be able to tell without examining it. Ms. Caye suggested that Ms. Gilham be there as well. No plan was made for a Board member to visit this site.

- vi. Mr. Fisher questioned whether the Burial Preservation Board should consider having some type of agreement with the Coroner's Association to streamline the process. He wondered whether a MOU would be appropriate.
 - a. Ms. Berka introduced the presentation that she created for the Coroner's Association meeting and asked for feedback. Mr. Wilmoth suggested that perhaps Ms. Caye's report could be used as a case study for the presentation to the Coroner's Association. It was decided that it would not be included.
 - b. Mr. Wilmoth reported that Mr. Davis asked him to relay that Christine Green at the State Crime Lab wanted to give a presentation to the Archaeological Society about the State Crime Lab's work. The State Crime Lab wanted to bring remains to this presentation to demonstrate the kind of analysis they do. Mr. Davis was not comfortable doing that with the human remains in that setting, but thought the Burial Preservation Board may be interested in a presentation. Mr. Wilmoth noted that if the State Crime Lab did present to the Burial Preservation Board, the State Crime Lab could stand to learn even more from the Burial Preservation Board. Mr. Wilmoth noted that he has often observed that the State Crime Lab assumes that what it finds out about a set of remains (age, sex, ethnicity, etc.) will change whether the Burial Board had jurisdiction, when it does not. The Burial Board had jurisdiction over remains regardless of demographics. Mr. Fisher said it was important to access as many resources as possible and thought this was a good idea. Mr. Manion asked the Board when they would like to have the presentation. He noted that the next meeting of the Burial Preservation Board is October 2019. Mr. Wilmoth said he would start the conversation with the State Crime Lab and let the Board know via email.
 - c. The Board returned to a discussion of the Montana Coroner's Association meeting. Mr. Fisher expressed that he believes it is important that the

Burial Board have a substantive presentation. The Board discussed which members would attend. Mr. Fisher asked what the agenda for this presentation is. Mr. Kirkwood explained that the agenda is to explain to the coroners what the Burial Preservation Board does as well as how the Burial Preservation Board and the MT Coroner's Association can work together for the betterment of both organizations. Mr. Fisher asked Ms. Gilham if she was going to do a presentation on federal resource laws. Ms. Gilham responded that the focus is on state law. Mr. Manion noted that the presentation focuses on the state law, the Board's composition, and then details a case study. Mr. Big Day suggested explaining the names and territories of Montana's tribal nations. Mr. Fisher asked Mr. Kirkwood if coroners must understand the federal resource laws. Mr. Kirkwood said that when he went through the training 20-30 years ago, there was nothing about burial preservation and he guessed that there is nothing in the current training. He felt that the Board needs to inform this group about the work of the Burial Preservation Board and noted that he has been a coroner since 1978 and did not know about these laws. Mr. Fisher thanked Mr. Kirkwood for sharing and said he felt educating coroners was a crucial issue. Mr. Kirkwood agreed and said the Board should get training on resource laws into the POST (Public Safety Officer Standards and Training) curriculum for coroners. Mr. Kirkwood then voiced concern that the material would not be enough to fill two hours. The board suggested several different ideas for the Coroner's Association presentation, including role-playing, education on burial practices of the different tribes, and how to recognize ancient burials. Mr. Fisher volunteered to attend the presentation to the Coroner's Association. Mr. Big Day stressed the importance of conveying to law enforcement that a county coroner must be called to the scene as soon as possible. Mr. Kirkwood suggested it may be good to give the coroners an idea of what to expect in a burial site. Mr. Fisher offered to share a presentation on Northern Cheyenne burial practices. Mr. Fisher suggested that the Burial Preservation Board should strive to institutionalize training on burial preservation for coroners. Mr. Kirkwood said that he would broach the subject of including burial preservation training in POST. Mr. Parenteau asked Mr. Kirkwood who governs the curriculum and he responded that Perry Johnson is the head of POST. Mr. Parenteau asked whether POST works with Montana's Office of Public Instruction. Mr. Kirkwood answered that he does not believe they do. Mr. Belgard said he could create a presentation about Fort Belknap burial practices for the future. Mr. Big Day asked Mr. Kirkwood about deputy coroners. Mr. Kirkwood explained that the coroner is elected, but the coroner can appoint deputy coroners. Deputy coroners have the same jurisdiction as a coroner. The Montana Coroner's Association lists all coroners and deputy coroners on their website (www.mtcoroner.org). The conversation about the presentation to the MT Coroner's Association was concluded.

5. New Business

- a. Unprovenanced human remains from illegal John Byrd Collections, Lewis and Clark/Helena National Forest – *Stan Wilmoth*

- i. Mr. Wilmoth introduced Mark Bodily and Arian Randell of the Lewis & Clark National Forest.
 1. Mr. Bodily said he appreciated the opportunity to visit with the Board. He is a forest archeologist with the Lewis & Clark National Forest. He distributed a handout to the board members and presented a summary of the findings. Mr. Bodily explained that this case deals most probably with European remains. The remains are incomplete. They do not where the remains came from and they do not know who turned the remains over to the Lewis & Clark County Coroner. The Lewis & Clark National Forest is asking the Burial Preservation Board to take possession of these remains and conduct a respectful reinternment. Mr. Bodily explained that late fall 2018, he was notified by the University of Montana that the Lewis & Clark County Coroner's office turned some remains over to them. These remains were reported to have come from the John Byrd site. The University of Montana conducted a forensic analysis and concluded the individual was roughly 22-50 years old at time of death and the ancestry was most likely European. However, they could not determine the sex of the individual. Glass fragments, leather fragments, nail and wood fragments were also found at the site, which led them to believe it may have been associated with a coffin. Also, in a box of remains was part of a deer skeleton and a small piece of paper stating these remains came from the John Byrd site and providing coordinates. Given this additional information, the thought is that these human remains came from the John Byrd site. The John Byrd site is a Native American site located on the Helena Ranger District. It was first identified by a private citizen (John Byrd) and he collected materials from the site. This was brought to Forest Service's attention in the early 1980s and they completed a sample excavation in 1991. Mr. Bodily reviewed the excavation notes from 1991. These notes confirmed that the deer bones did come from John Byrd site. The archaeologist at the time was pretty sure it was an animal bone, but it was taken to the County Coroner's office to confirm. The County Coroner's pathologist confirmed that these bones were not human. Mr. Bodily said he believes that at this point, these deer remains were put into a box with other remains, including the human remains which the Board is talking about today. The human remains did not contain any provenance information. Mr. Bodily believes that some collections were mixed up some time around 1991 and had not been brought to light until this past year. Mr. Bodily conveyed that his office is asking the Board if it would take responsibility for the remains and conduct a respectful reinternment.

2. Mr. Wilmoth asked whether it would be accurate to say that these human remains were in the Lewis & Clark Coroner's Office and we have no reason to assume that they came from federal lands. Mr. Bodily responded that this is correct. Mr. Wilmoth suggested to the Board that this is like so many other unfortunate cases in that the Board would not be able to find out anything more about these remains. Mr. Fisher asked how the deer bones traveled from the forest to the Lewis & Clark County Coroner's office. Mr. Bodily responded that he could only point to the University of Montana's analysis. Mr. Bodily noted that there is no mention in the 1991 excavation report of human remains.
3. Mr. Bodily asked what the Burial Preservation Board would like to do. Mr. Bodily said he talked to Forest Service leadership and their preference would be to give them to Burial Preservation Board for reinternment.
4. **MOTION:** Mr. Kirkwood moved to accept the remains for reinternment. Mr. Fisher seconded the motion. Mr. Big Day asked if there was any discussion. Mr. Belgard noted that after contact Ft. Belknap largely gave up their aboriginal burial practices and started using some European burial practices. Mr. Belgard asked that the Board show proper respect and bury them like one of their own. Ms. Gilham suggested that the Board have a tribal representative there. Mr. Wilmoth suggested an amendment to the motion to accept the remains and inter the remains at People's Jump. It was decided that the State Historic Preservation Office would take possession of the remains until plans could be made. Mr. Kirkwood amended the motion accordingly. Mr. Parenteau seconded the amended motion. The motion passed unanimously. Mr. Manion noted that Mr. Bodily should turn the remains over to Mr. Wilmoth.

Break for Lunch

- b. 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.
 1. Ms. Caye explained that remains were found on private property near Kalispell, MT. The Anderson family contacted CKST's Tribal Historical Preservation Officer (THPO), who contacted Ms. Caye. The THPO took photos of the remains and sent the photos to the North Dakota Crime Lab. Ms. Caye does not know why this was done. Ms. Caye talked with the sheriff-coroner, who confirmed that the remains were Native American. Ms. Caye traveled to the site and met with Mr. Anderson. Ms. Caye put a team together from CSKT and they conducted the reburial ceremony. Ms. Caye reported that they had a positive experience, and everyone worked well together.

2. Mr. Escarcega asked if the remains were close to a riverbed. Ms. Caye said it was close to Woodland Park in Kalispell. Ms. Caye explained that many families would live near Woodland Park during the summers.
3. Members of the Board took time to review the report.
4. Mr. Kirkwood complimented Ms. Caye on the report. Ms. Caye thanked Mr. Kirkwood and said she followed the Montana state and NAGPRA regulations and suggested that the Board may want to develop a process like this.
5. Mr. Fisher asked whether the property owner wanted the remains removed. Ms. Caye responded that the family did want the remains removed.
6. Ms. Caye announced that this would be her last meeting as she was resigning from the Board.
 - a. Mr. Parenteau asked whether she is making a recommendation for her replacement. Ms. Caye reported that CSKT's Tribal Council had not made a determination.
 - b. Jason Smith spoke about the board appointment process and explained how replacement appointments work.
 - c. Ms. Caye explained that she is taking on a new position that is not on the CSKT Culture Committee. She noted that for the Kalispell reburial, CSKT paid the cost but she was able to facilitate this as a tribal employee. Therefore, if this were the case in the future, it would be helpful if the next Board member was also a tribal employee.
 - d. Mr. Manion noted that the Burial Preservation Board's budget is \$11,200 and this budget can be used for expenses such as this.
- ii. **MOTION:** Mr. Escarcega moved to accept Mr. Caye's report. Ms. Caye requested that this report remain confidential. Mr. Manion confirmed that the report can be accepted by the Board but still remain confidential. Mr. Parenteau seconded the motion. The motion passed unanimously.
- c. Robert Taylor, Nez Perce Tribe request – *Mike Manion*
 - i. Mr. Manion reported he received a call from Mr. Robert Taylor in March 2019. Mr. Taylor is the NAGPRA Specialist with the Nez Perce tribe in Idaho and he called Mr. Manion about human remains that were being held by the Alfred W. Bowers Laboratory of Anthropology at the University of Idaho. Associated funerary objects were kept by the Museum of the Rockies. These items were found on U.S. federal land and went through the NAGPRA process. The NAGPRA process yielded a report in the federal register dated September 10, 2018. According to this report, in 1929, human remains belonging to at least two individuals were removed from a cave in Park County, MT. On November 1, 1988, a private citizen donated the remains and funerary objects to the Museum of the Rockies. Later that month, Caroline Purcell, Museum of the Rockies Registrar, transferred the human remains to Dr. Roderick Sprague, Director of the Bowers Lab at the University of Idaho. The associated

funerary objects were retained by the Museum of the Rockies. The human remains consisted of right and left female innominate and a right male humerus. No known individuals were identified. The eight associated funerary objects are six flaked stone projectile points, one flaked stone drill or knife, and one digging stick of pine or spruce. At the time the remains and funerary objects were removed, the land did not belong to any Indian Tribe or Native Hawaiian organization. In January 2018, the Bowers Lab and the Museum of the Rockies invited the Crow Tribe of Montana, who is recognized as aboriginal to the area, to consult. The Crow Tribe did not participate in consultation and did not agree to accept the remains and funerary objects. In April 2018, the Bowers Lab and the Museum of the Rockies agreed to transfer control of the human remains and associated funerary objects to the Blackfoot Tribe, Confederated Salish and Kootenai Tribes, Fort Belknap Indian Community, Nez Perce Tribe, and Northern Cheyenne Tribe. Representatives of any Indian Tribe or Native Hawaiian organization not identified in the notice who wished to obtain control of the remains and objects could contact the Bowers Lab or the Museum of the Rockies. However, this October 2018 deadline passed without any other group filing a claim and so the remains were transferred to the Nez Perce after the tribe offered to repatriate them. Mr. Taylor of the Nez Perce Tribe contacted Mr. Manion in March 2019 and informed him that the Nez Perce Tribe has the remains in its possession. He told Mr. Manion that the Nez Perce Tribe would like to rebury the remains in Park County, MT. Mr. Manion responded that he would need to bring it up to the Board.

- ii. Ms. Caye asked if the associated funerary objects would be included with the remains. This question remained unanswered by the Board.
- iii. Ms. Caye also reported that Nez Perce representatives had contacted her as a NAGPRA representative to ask whether they could bury them in Yellowstone National Park. The Nez Perce were asking her for support in this endeavor. Ms. Caye reported she did some research on this question and sent the Nez Perce this information; however, she has not heard anything since. She does not know if the Nez Perce contacted Yellowstone National Park. Mr. Belgard asked if the location from which the remains were taken was a primary burial spot. Ms. Caye responded that yes, this was a primary burial location. Mr. Manion did not recollect Mr. Taylor mentioning anything about Yellowstone. Mr. Manion explained that Mr. Taylor is looking for direction from the Board. Mr. Belgard said that if these remains were taken from a primary burial location, he would prefer to see the remains returned to the original location. There was a question of whether the location was now on private land. Ms. Caye clarified that the question is whether the land is currently owned privately, by the state, or by the federal government. She then asked whether it would be possible to find a location closest to the original site. Mr. Big Day asked whether it would be possible to rely on oral history to determine a location. He said

he knows of Crow oral histories describing burial sites that may be worth consulting. Ms. Caye clarified that the Nez Perce Tribe currently has legal custody of these remains and that the Nez Perce want the Board's help to find a place where the remains can be reburied. If there was federal or state land close to the original location, this would be ideal. She suggested that all tribes help bury the remains because when she spoke with Mr. Taylor, he said they would prefer all tribes to participate. The first step, however, is to determine who currently owns the land where the remains and objects were removed.

- iv. Mr. Fisher asked if a state or tribe wants to rebury remains in another state, whether there is a process they must follow. Mr. Kirkwood noted that in this case these are historical remains and so he did not think any kind of permit would be necessary. Ms. Caye said that the University of Idaho and the Museum of the Rockies would have had to have a deaccession record. Now that Nez Perce has possession, they want the Board's help to find a reburial location in Montana. Mr. Manion asked the Board to contact Mr. Taylor. Mr. Fisher said that he felt that the Board needed to have a guarantee that it would be possible to rebury the remains in Park County.
 - v. The Board attempted to call Mr. Taylor. Mr. Taylor was unavailable, but Mr. Fisher left a message. Mr. Manion said DOA would connect everyone via email, and a special meeting via phone is also possible if a decision needs to be made.
 - vi. The Board agreed to take further action on this issue after speaking with Mr. Taylor. Mr. Fisher agreed to be the primary contact for this issue.
- d. Burial Preservation Board Terms
- i. Ms. Gilham asked Mr. Smith to check on the Board representative from the Blackfeet Tribe. Mr. Smith agreed to have Stacey Otterstrom to reach out to the Blackfeet. Mr. Fisher noted that the membership list includes "term expiration" dates and some of the dates have expired. Ms. Berka explained that when she spoke to Stacey Otterstrom, unless the Board receives a formal request, the expiration date should remain unchanged. Ms. Berka asked if there should be any corrections and took notes. Ms. Gilham asked Ms. Berka to check with Ms. Otterstrom on whether Board members are supposed to receive a formal letter whenever their term expires. Mr. Fisher asked whether "Term Expiration" is the appropriate term or whether any note is necessary at all. Mr. Manion noted that according to the Board's rules, representatives are appointed for two-year terms and then either the Governor's Office needs a letter re-appointing the representative or a new representative should be appointed. Mr. Parenteau suggested switching the language to say "Appointed" rather than "Term Expired." Mr. Manion stated that the best scenario would be for the nomination letters to be sent and returned. Mr. Smith noted that his office has sent out nomination letters, but often they have not received any response. Mr. Manion suggested that Board members encourage their

tribal governments to respond to the Governor's Office letters. Ms. Berka said she would work with Mr. Smith and Ms. Otterstrom to determine whether the list was current and make updates and send nomination letters where necessary.

6. Public Comment
 - a. None.
7. ***Action Item***: Set next meeting date.
 - a. Mr. Belgard made a motion to schedule the next meeting of the Burial Preservation Board on Friday, October 4, 2019 in Helena, MT. Mr. Fisher seconded the motion. The motion passed unanimously.
8. ***Action Item***: Mr. Belgard moved to adjourn the meeting.
 - a. Ms. Caye seconded the motion. The motion passed unanimously. The meeting adjourned at 12:20 p.m.