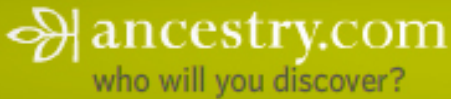


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Burial-Site Battle Pits Kumeyaay Against Scientists

By [Dina Gilio-Whitaker](#) August 22, 2011

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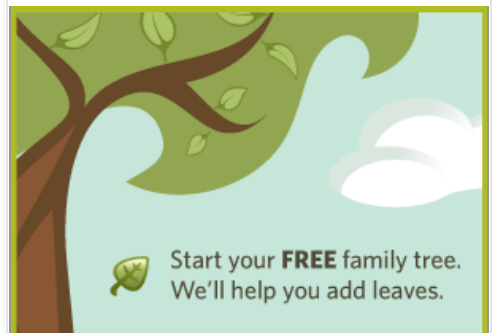
Daniel Soderberg

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Ever since the remains of three ancient humans were unearthed in 1976 on property owned by the [University of California at San Diego](#) (UCSD), the [Kumeyaay](#) people have been engaged in a complex battle to have the remains repatriated to them. This would be against the wishes of many University of California (UC) scientists, who want to keep them for further study, a stance that is now opposed by UCSD administrators. But after decades of wrangling, recent actions by UCSD and the scientists who oppose repatriation have brought the remains once again into the spotlight.

The site of UCSD, on the bluffs of La Jolla in north San Diego County overlooking the Pacific Ocean, is some of the world's prime real estate, but for the 12 bands of the Kumeyaay Nation, it has been part of their ancestral territory for at least 10,000 years, and likely longer. In 1976, three unusual burials (two adults and a child) were exposed by erosion at the university chancellor's house (also known as University House)—unusual for how well-preserved they were, and how old they are. Archeologists

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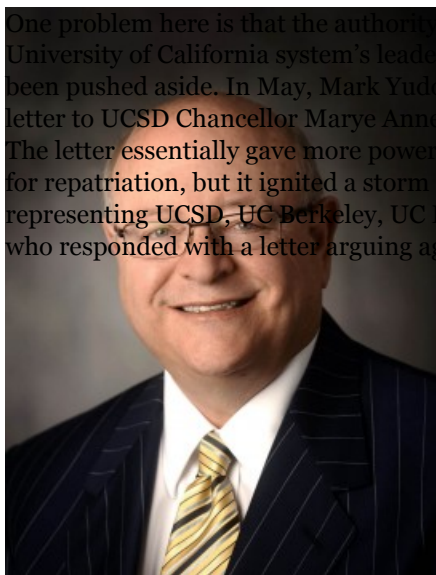
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estimate the remains at between 9,000 and 9,600 years old, making them possibly the oldest uncovered human remains in the continental United States. To archeologists like Eske Willerslev at the University of Copenhagen in Denmark, they are the “crown jewels of the peopling of the Americas.” For the Kumeyaay, the “find” was yet another in a long line of desecrations at the site. The house has since been declared unlivable due to a variety of code violations, and recent plans to renovate the house have been hampered, in part because a draft environmental impact report revealed more burials on the site, causing it to be declared a “sanctified cemetery” by the state in 2008.

In 1995 the 12 bands of the Kumeyaay organized the Kumeyaay Cultural Repatriation Committee (KCRC), to pursue the repatriation of the many remains unearthed during a housing boom in San Diego County. According to Dave Singleton of the California Native American Heritage Commission, a state agency whose mission is to support the enforcing of state law protecting Indian burials, prior to the formation of KCRC there were unsuccessful attempts to repatriate made by individual Kumeyaay tribes between 1976 and 1995. That process got a little easier with the passage of the Native American Graves Protection and Repatriation Act (NAGPRA) in 1990, which mandated that any public institution with Indian remains that receives federal money must notify tribes of their possession by 1994. “UCSD may have notified one or two of the tribes, but not all of them,” says Singleton. “KCRC was founded in large part as a unified effort to repatriate the University House remains.” Steve Banegas, chairman of KCRC, says, “The remains have been treated very poorly. They have continually disrespected our ancestors. All we want is for them to follow the law.”

One problem here is that the authority to repatriate has always been vested in the University of California system’s leadership, not UCSD. But that roadblock may have been pushed aside. In May, Mark Yudof, president of the 10-campus UC system, sent a letter to UCSD Chancellor Marye Anne Fox authorizing her to “dispose” of the remains. The letter essentially gave more power to UCSD administrators to negotiate with KCRC for repatriation, but it ignited a storm of protest from a group of five scientists representing UCSD, UC Berkeley, UC Davis and a private San Diego consulting firm, who responded with a letter arguing against repatriation that was published in Science magazine on May 20.



In May, Yudof (pictured) sent a letter to Fox authorizing her to “dispose” of the remains.

The scientists’ letter argues that advanced DNA testing could be used to determine whether or not the skeletons are genetically related to modern-day Indians, and could provide evidence for a coastal migration route from Alaska to California earlier than 10,000 years ago. The scientists bemoan the fact that UCSD has not allowed scientists access to the remains for more up to date DNA testing, stating that “[unfortunately,] the University of California administration has failed to

honor research requests for the study of these unique skeletons. Instead, the University of California favors the ideology... of a local American Indian group over the legitimacy of science.... [The] potential loss of the La Jolla skeletons would have a profoundly negative impact on our knowledge of the peopling of the Americas and the antiquity of coastal adaptations.”

KCRC is opposed to further testing because they argue it is destructive to bone tissue, and would be yet another instance of the disrespectful behavior they have tried to curtail. The scientists counter by arguing that UCSD shouldn’t give the remains back to the Kumeyaay because there is no proof the bones are of their ancestors [see pg. 4]. According to a story on Wired.com, UCSD scientists determined that the remains were not related to today’s Kumeyaay based on a 30-year-old isotopic analysis that showed a diet of marine and sea life, not land-based foods, which they believe would indicate a Kumeyaay ancestor. This is a claim Singleton refutes. “We think the scientists’ claims are without merit. That the Kumeyaay were fish-eating people is well known. It’s in their songs and traditions.”

The scientists’ argument on this point takes its precedent from the Kennewick Man case in 2004, when tribes lost a legal battle for repatriation because the Ninth Circuit

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Court of Appeals agreed with scientists that the remains were not culturally related to today's Columbia River tribes. However, NAGPRA and California state law stipulate that remains be repatriated to the "most likely descendants" (MLDs), and recent clarifications in NAGPRA rules make the repatriation of the University House remains easier, much to the chagrin of scientists. With the new rule, institutions subject to NAGPRA must now make even "culturally unidentifiable" remains available for repatriation to local tribes.

The long history of disrespectful treatment of the remains referred to by Banegas is documented in a 2008 essay titled, "How UCSD Spent Over \$500,000 on a Home Remodel That Never Happened" by Thomas Larson, a writing instructor at UCSD Extension school, that was published on UCSD's social sciences website. According to the essay, the 2007 draft environmental impact report for the University House renovation project reveals that since 1929 there have been a total of 29 inhumations removed from the site, in addition to numerous stone and bone artifacts. It also revealed conclusively that there are more "archeological and cultural deposits" and likely more human bones. Over the years, because of the lack of proper storage facilities at UCSD (the school didn't even have an archeology department until 1991), most of the remains were transferred to other museums and research facilities for study, and eventually fell into private hands without being accounted for. The 1976 remains have bounced between UCSD, the Museum of Man in San Diego, the Smithsonian Institution, and the San Diego Archeological Center, where they now reside.

Banegas says UCSD has voluntarily repatriated other remains to KCRC over the years, but refused to repatriate the University House remains, arguing they weren't

Kumeyaay. In 2006, upon hearing of the university's plans to proceed with the renovation KCRC filed an official request for the remains and issued a statement that they would only support a project that would avoid further desecration. Because of the known burials on the site, state law mandates consultation with local tribes, which the university failed to do. This triggered an investigation by the California state Native American Heritage Commission, which in 2008 designated the site a "sanctified cemetery" under state law, giving it enhanced protection.



Banegas remains wary until the remains are returned.

Some observers are willing to speculate about why UCSD would now move toward repatriation. For example, according to the Wired.com story, Margaret Schoeninger, an anthropologist at UCSD (and one of the signatories on that letter in Science), believes that if the university repatriates the University House remains, it will ensure a smooth renovation process (ostensibly by avoiding further conflict with KCRC, amounting to a political favor). How it would avoid further conflict, however, is not clear. While state law would mandate the presence of cultural monitors at the construction site, it would not need KCRC to sign off on the project. It would only give KCRC power to oversee proper handling of any further finds, and KCRC is on record as not being opposed to the renovation if any remains are handled respectfully.

For KCRC, the issue is simple: They are clearly the "most likely descendants" in keeping with NAGPRA regulations. The Kumeyaay had been identified as the MLDs many times for similar finds in the region. In 2009, a Science.com story reported that the University of California withdrew a request to NAGPRA's review committee to repatriate the University House remains to KCRC, because KCRC objected to the request's language that the remains were "culturally unidentifiable." KCRC's official statement claimed that they had provided "a mountain of evidence from linguistic, anthropological, archaeological and historical scholars to support their claim that these individuals [the University House skeletons] were indeed culturally affiliated with today's Kumeyaay/Diegueno people.... This process sets a dangerous precedent for future claims, both from KCRC and other tribes whose ancestors may be in the

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possession of the UC.”

News coverage of this controversy has mostly pilloried KCRC’s demands for repatriation. The story on Wired.com focused on the concerns of scientists, quoting, for example, one of the co-authors of the May 20 letter to Science, who referred to the remains as “specimens” and the KCRC as a “lobbyist” group. Such tactics perpetuate the idea that science is superior to traditional Native beliefs by trivializing tribal concerns, portraying them as unreasonable for being unwilling to contribute to the betterment of humanity through the advancement of scientific knowledge. They also drive a wedge between the scientific community and Native communities, while ignoring the suffering of California Indians as a result of colonization, and the massive loss of land and culture brought on by the U.S.’s notorious mishandling of California Indian affairs. What scientists call “archeological resources” and “specimens,” Native people call “our ancestors.”

Some UCSD administrators support repatriation. As long ago as 2008, the vice chancellor of resource and planning at UCSD, Gary Matthews, wrote a letter to the University of California’s Provost and Executive Vice President Rory Hume, urging repatriation. The letter cites multiple reasons, including the financial costs of storage, and the perceived cultural insensitivity of the university’s administration. UCSD has had public relations problems in recent years stemming from multiple incidents of racist activities on campus, including a noose found on campus in early 2010, and the Sun God Festival in May 2010, in which students “played Indian” by dressing up in face paint, feathers and headdresses. Matthews’s letter also noted the disproportionate underrepresentation of the Native American community at the university—less than one percent of the student body is Native American, and not a single Kumeyaay student is enrolled at UCSD.

The standoff between UCSD and KCRC is deeply entrenched, but with Fox’s imminent retirement, the granting of authorization by the UC system to the chancellor for disposition of the remains, and the strengthened NAGPRA rules, there appears to be real hope that KCRC’s repatriation request will be successful. On July 19, KCRC met with Fox and Matthews, who agreed to again begin the registration process with NAGPRA for repatriation in the next 30 days. While this sounds promising, to Banegas it was “just another meeting stuffed with stalling tactics.” Instead of just giving the remains to the tribes, registering with NAGPRA opens the process up to public commentary, more bureaucracy and more waiting. It may be a step closer to repatriation, but after the 35-year-long battle, Banegas says he can’t afford to let his guard down just yet.

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