TREASURE TROVE

There are two areas here of major importance: (1) the Arizona Statute regarding archeological discoveries and (2) the law in Arizona regarding treasure trove. The first consideration is A.R.S. 41-771 et seq. These are the Arizona Statutes on archeological discoveries. In essence they provide that no person except when acting as a duly authorized agent of an institution or corporation referred to or a corporation organized for scientific and research purposes shall excavate "in or upon any historic or prehistoric ruin, burial ground, archeological or vertebrate paleontological site, or site including fossilized footprints, inscriptions made by human agency, or any other archeological, paleontological, or historical feature, situate on lands owned or controlled by the State of Arizona, or any agency thereof. No such activity can be undertaken without first obtaining a permit from the Director of the Arizona State Museum. No person, institution or corporation shall deface or otherwise alter any site or object embraced within the terms of the above provisions except in the course of activities pursued under such permit. Everyone has a duty when surveying, excavating or constructing on any lands owned or controlled by Arizona or any public agency or institution of the State or any county or municipal corporation within the State to report directly to the Director of Arizona State Museum the existence of any such site. Penalty for violation of the Statute is a fine not exceeding $500.00 or by imprisonment in the County jail not to exceed 6 months or both, and forfeiture to the Arizona State Museum of all articles and materials discovered, collected, excavated, or offered for sale or exchange,
together with all photographs and records relating to such objects.

I can find no cases indicating whether the Paralta stone maps or whatever may be within the cache come within the scope of this Statute.

Another prime question is who has the principal rights of ownership to the cache if it is located. Treasure-trove is defined in Am. Jur. at 633 as any gold or silver in coin, plate, or boullion, found concealed in the earth, or in a house or other private place, but not lying on the ground, the owner of the discovered treasure being unknown. Law of treasure-trove has changed throughout the years. It originally was held that the trove belonged to the finder if the owner could not be discovered. Then later the treasure-trove, especially coinage, was held to go to the State or to the king. However, in the United States the law regarding treasure-trove has been merged in the law of lost property at least as far as respects the right of the finder. Treasure-trove has been held to include paper representations of gold and silver so I think we shouldn’t have any problem in this area. However, it has been held to exclude gold bearing quartz and other precious metals. It is essential to its character that it shall have been placed some years before and concealed by the owner for safe-keeping, and in this respect it differs from lost property and property voluntarily parted with. The rule in the United States, in absence of legislation (there is no legislation in Arizona) is that, THE TITLE TO TREASURE TROVE BELONGS TO THE FINDER AGAINST ALL THE WORLD EXCEPT THE TRUE OWNER, AND IN THIS RESPECT IT IS ANALOGOUS TO LOST PROPERTY. The owner of the soil
in which the treasure-trove is found requires no title thereto by virtue of his ownership of the land, and it has been held that workmen finding money which has been buried or secreted on the premises of their employer are entitled to its possession and may maintain trover against the employer if he deprives them of the possession and refuses to restore it.

These rules of law have been upheld in the Pacific area, particularly in the State of Oregon where in the case of Danielson vs. Roberts, two young fellows age 8 and 10 were engaged to clean out an old henhouse which had been undisturbed for years. In the process they found old coinage in the amount of $7,000.00. The owners of the property took the coinage from the boys and in a subsequent action the boys were able to recover the property. (74 Pac. 913.) In a later case, Jackson vs. Steinberg, 205 Pac. 2nd 562, the Oregon Supreme Court in dicta reiterated this earlier case quoting Coke's definition of treasure-trove as follows:

"Treasure-trove is when any gold or silver, in coin, plate, or bullion, have been of ancient time hidden, wheresoever it be found, whereof no person can prove any property." 3 Inst. 132

The Court said the treasure must have been hidden or concealed so long as to indicate that its' owner, in all probability, is dead or unknown. (citing the Danielson vs. Robertson case) The Court quoted from the Danielson case and stated:

"This Court held that it was immaterial whether the money was technically lost property or treasure-trove; in either case, the plaintiffs' were entitled to its possession as against the defendants (finders as against owners) unless the latter can show a better title."
The fact that the trove was found on defendant's property, or that the plaintiffs were in defendant's service at the time cannot in any way affect the plaintiffs' right to possession.

In summary, I am firmly of the opinion that the finders of the cash would have full right thereto as against the whole world except the lawful owners. If the Paralta's descendants can show title then they would have a right to anything that might be found.