



*Nez Perce*

**TRIBAL EXECUTIVE COMMITTEE**

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March 28, 2013

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Jane Hedges  
Washington State Department of Ecology  
3100 Port of Benton Blvd.  
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Re: **DRAFT *Proposed Plan for Remediation of the 100-FR-1, 100-FR-2, 100-FR-3, 100-IU-2, and 100-IU-6 Operable Units; DOE/RL-2012-41, Draft A***

Dear Mr. Dowell, Ms. Hedges, and Mr. Faulk:

The Nez Perce Tribe appreciates the opportunity to provide its preliminary comments to the draft Proposed Plan for Remediation of the *100-FR-1, 100-FR-2, 100-FR-3, 100-IU-2, and 100-IU-6 Operable Units; DOE/RL-2012-41, Draft A*. This is the fourth of six Proposed Plans for remediation of operable units along the River Corridor at Hanford in preparation for issuance of final clean-up Records of Decision under CERCLA.

The Nez Perce Tribe Environmental Restoration and Waste Management (ERWM) Program takes seriously its responsibility to see that these plans are well developed. The attached comments outline significant concerns that ERWM has regarding clean-up and long-term status of the 100-FR and IU-2/6 Decision Unit at the Hanford Site, an area within the lands subject to the Nez Perce Tribe's 1855 Treaty with the United States.

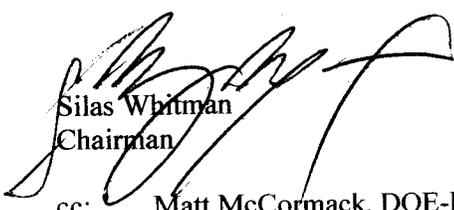
Our comments focus primarily on communications, land use assumptions, and groundwater. Though ERWM does not support this draft in its present form, within the current structure of the DRAFT Proposed Plan, the alternative which best meet our concerns is Alternatives S-2 and GW-2, as it currently appears they will accomplish the remediation in a timely fashion with the least disturbance.

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The Nez Perce Tribe will continue to take every opportunity to participate in the remedial decision-making efforts for the River Corridor with the intent to provide for and to protect Nez Perce treaty rights.

If you have any questions, please contact Gabriel Bohnee at (208) 621-3746 (email at [gabeb@nezperce.org](mailto:gabeb@nezperce.org)) or John Stanfill at (208) 621-3748 (email at [johns@nezperce.org](mailto:johns@nezperce.org)), of our Environmental Restoration and Waste Management Program.

Sincerely,



Silas Whitman  
Chairman

cc: Matt McCormack, DOE-RL  
Larry Gadbois, EPA  
Jack Bell, Chairman, HNRTC  
Stuart Harris, CTUIR  
Russell Jim, Yakama Nation  
Ken Niles, Oregon  
Jill Conrad, DOE-Indian Nations Program

February 2013  
Formal comments on draft DOE/RL-2012-41, Draft A  
**Proposed Plan for Remediation of the 100-FR-1, 100-FR-2, 100-FR-3, 100-IU-2, and 100-IU-6  
Operable Units**

Below are comments representing the initial response of the Nez Perce Tribe to the DRAFT Proposed Plan for the 100-FR and IU\_2/6 Decision Areas. Our Environmental Restoration and Waste Management Program has been practicing oversight of remedial objectives and actions in the area since the early 1990's. It is the intent of the Nez Perce Tribe Environmental Restoration and Waste Management (ERWM) Program to assist the Tri-Party Agencies in planning for and remediation of these critical locations along the banks of the Columbia River. As noted in the accompanying letter, ERWM takes earnestly the role of the Nez Perce Tribe in the responsibility that these plans be well developed.

### **Communication**

Regarding Tribal Nations participation in the remedial decision process, The Proposed Plan notes, page 10, lines 8-11 that: "The Hanford Site is located on land ceded to the United States under separate treaties with the Confederated Tribes and Bands of the Yakama Nation and the Confederated Tribes of the Umatilla Indian Reservation (CTUIR). The Nez Perce Tribe has treaty rights on the Columbia River. In addition, DOE consults with the Wanapum Band of Indians, who once resided on Hanford lands."

The Nez Perce Tribe objects to DOE's above characterization of the nature and scope of its 1855 Treaty. The Tribe requests that this language be deleted and replaced with the following: "The Hanford Site is also subject to rights secured in the Nez Perce Tribe's 1855 Treaty with the United States (Treaty of June 9, 1855 with the Nez Perces), 12 Stat. 957 (June 9, 1855)."

In the past five years, DOE appeared to be seeking values, principles and issues as input from the Tribal Nations through a risk communication effort with Consortium for Risk Evaluation with Stakeholder Participation (CRESP) from mid-2007 until mid-2009. Tribal input, responses and suggestions specifically included the following issues, which were clearly conveyed to the workshop participants on April 14, 2009:

- Tribal treaties need to be considered as ARARS in CERCLA actions (an issue ERWM was told by CRESP was receiving attention at the Headquarters level in Washington, D.C.).
- The Nez Perce Tribe is interested in having an active role in Institutional Controls and Long Term Stewardship development.
- The Nez Perce Tribe is concerned that DOE oversight of risk and remediation is limited to managing the contracts, and that technical oversight to the contractors is lacking.
- The Nez Perce Tribe does not recognize the Comprehensive Land Use Plan (CLUP) as the risk scenario defining mechanism or as long term resolution of land use.
- The Nez Perce Tribe wants the areas cleaned to a status compatible with Tribal Hanford vision statement.
- The Nez Perce Tribe wants a baseline risk assessment conducted without the benefit of institutional controls or other land use constraints; the Nez Perce Tribe does not understand the need for a restricted use scenario.

- The Nez Perce Tribe wants a tribal scenario protective of treaty rights-based land use, and to have that memorialized such that it cannot be altered with changes in land administration.

DOE said its goal with respect to the Tribes was to understand how Tribal members might use the site if non-residential use opportunities are expanded. But, the subsequent actions of the DOE suggest that even such an understanding would not affect the decision-making. Note the following from page 6-21, lines 17-23 in DOE/RL-2010-98, DRAFT A: “The results from the RCBRA (DOE/RL-2007-21) for remediated waste sites and the results from the groundwater risk assessment can be summed to obtain a cumulative estimate of risk for all exposure pathways included in the CTUIR and Yakama Nation exposure scenarios. These tribal scenarios have been evaluated and presented in Hanford Site risk assessments to assist interested parties in providing input on remedial alternatives (*Feasibility Study Report for the 22 200-ZP-1 Groundwater Operable Unit* [DOE/RL-2007-28]), and have not been used for development of PRGs as part of alternatives analyses in FS.”

The Nez Perce Tribe distinctly noted at these workshops and meetings that the Tribe will not endorse a restricted use scenario.

Additionally, the Nez Perce Tribe has produced a Hanford Guidance document in support of the Nez Perce Hanford End-State Vision [NPT Resolution NP-05-411], which has been made available to the Tri-Party agencies. Additional electronic and hard copies are available upon request to John Stanfill of the ERWM at the Nez Perce Tribe ([johns@nezperce.org](mailto:johns@nezperce.org)).

## **Applicable or Relevant Appropriate Requirements**

ERWM understands that remedial alternatives designed for an individual site in the Superfund process are evaluated according to the nine CERCLA Evaluation Criteria. In addition, the preferred alternative(s) must meet the first two of the criteria (“Threshold Criteria”): 1) Overall protection of human health and the environment; and compliance with Applicable or Relevant and appropriate Requirements (ARARs).

As should be apparent when reviewing the other comments below, the Applicable, Relevant, and Appropriate Requirements (ARARs) presented by DOE for the remediation of the 100-FR/IU2-6 Decision Areas lack coverage of a critical component to Tribal nations: Treaty Rights. Within the Proposed Plan – page 40, **Potential Location-specific ARARS** – Tribal cultural resource/archeological/human remains interests are considered (*Native American Graves Protection and Repatriation Act of 1990; Archeological and Historic Preservation Act of 1974; and National Historic Preservation Act of 1966*). The interests of the Nez Perce Tribe in the Hanford area go far beyond the preservation of cultural resources.

It would seem logical that tribally retained rights to practice traditional cultural lifestyle would be covered either under the first of the two Threshold Criteria [Overall Protection of Human Health and the Environment], or through the Treaty of 1855 if it were to be considered as an ARAR [the second of the Threshold Criteria]. However, tribal practices are recognized but not supported. And no ARAR status has been awarded the Treaty of 1855, though it is supported with numerous executive orders, Cooperative Agreements, Memorandums of Understanding, and various versions of Federal agency American Indian policies.

This Proposed Plan is among many DOE documents which suggests that the modern tribal voice is to be heard primarily at the level of the ninth Criteria [Community Acceptance], a “Modifying Criteria” one of the least powerful of the nine CERCLA criterion in Alternative Selection. **Until Treaty Rights are clearly addressed, and discussed through consultation with the Nez Perce tribal government, the Nez Perce Tribe considers the Proposed Plan severely lacking with respect to the role of the Nez Perce Tribe in the Hanford area.**

An additional concern is the failure of this plan to include as an ARAR *The Migratory Bird Treaty Act of 1918*, which is being considered in the 300 Area Proposed Plan. The migratory bird issue along the entire River Corridor is of concern for all natural resource proponents. (It is considered in the RI/FS for the 100-FR/IU2-6 Decision Areas.) Consideration of that treaty should not be limited to just the 300 Area.

## **Land Use Assumptions**

Discussion above of the potential for treaties as ARARs, and of language in the Proposed Plan describing tribal participation in the CERLCA process are indicative of differences of assumptions between the DOE and the Nez Perce Tribe relative to land use. Page 25, lines 1-6: “Tribal fishing rights are recognized on rivers within the ceded lands, including the Columbia River, which flows through the Hanford Site. In addition to fishing rights, the Tribal Nations retain the privilege to hunt, gather roots and berries, and pasture horses and cattle on open and unclaimed lands. It is the position of DOE that Hanford is not open and unclaimed land. While reserving all rights to assert their respective positions, the Tribal Nations are participants in DOE’s land use planning process, and DOE considers Tribal Nation concerns in that process.”

The Nez Perce Tribe objects to the DOE’s above characterization of the nature and scope of the Tribe’s 1855 Treaty. The Tribe recommends that DOE remove the following assertion: “It is the position of DOE that Hanford is not open and unclaimed land,” and replace it with the following: “DOE and the Nez Perce Tribe disagree concerning whether Hanford constitutes “open and unclaimed land” for purposes of the 1855 Treaty. DOE and the Tribe will continue to address this disagreement through consultation in accordance with applicable executive orders and DOE policy.”

The two reasonably anticipated future land uses noted by DOE in the Proposed Plan (page 26, lines 24 and 30) are *Resident Monument Worker Scenario*, and *Casual Recreational User Scenario* – both with institutional controls, such as those stating that drinking water shall be obtained from offsite. Tribal Treaty land use considerations are specifically extinguished by the use of less conservative risk scenarios, and by language as noted in the above paragraph. In addition, applicable institutional controls for such Tribal restrictions are not in evidence.

DOE’s proposals interfere with Tribal Treaty Rights on two fronts: through self-designating Hanford lands as “not open and unclaimed”, and by failing to remediate lands to a level consistent with the exercise of Tribal Treaty rights (and/or providing description of specific institutional controls). **The Nez Perce Tribe does not believe DOE has been responsive to Tribal values and input in the remedial action decision-making process.**

The toxic threats of Hanford are of such a nature that, left in place, will remain threats into the far distant future. **For DOE to assume that its stated designated land use will apply in the**

**distant future belies all the historical societal land use change which has occurred throughout human history, a history of which the Nez Perce Tribe has been an integral part and will continue to be into the future.**

### **Clean-up Levels –**

ERWM understands that the Proposed Plan is attempting to address the standards used in the Interim RODs, and that Ecology plans to assure that current MTCA standards are applied and met on sites that were formerly cleaned to interim standards. ERWM would encourage Ecology to maintain this as a strong priority. Though addressed, it is unclear in the Proposed Plan if Ecology's concerns are being met.

ERWM would remind the regulators and the DOE that the Hanford Guidance, developed by the Nez Perce ERWM in support of the Nez Perce Hanford End-State Vision [Resolution NP-05-411], contains groundwater standards more stringent than current EPA Drinking Water Standards where research and public policy elsewhere support more stringent values. This is in keeping with reducing risk to an acceptable level for tribal members to be able to practice treaty rights. See below.

(from NPT Hanford Guidance, Version 1, 2010)

<b>Constituents</b>	<b>Standard</b>	<b>Notes</b>
<b>Arsenic</b>	<b>0.01 mg/l</b>	<b>[EPA changed nat'l std to 0.01 mg/l in 1/06]</b>
<b>Beryllium</b>	<b>0.001 mg/l</b>	<b>[California Public Health Goal (CA PHG)]</b>
<b>Carbon Tetrachloride</b>	<b>0.0001 mg/l</b>	<b>[CA PHG]</b>
<b>Chromium</b>	<b>0.01 mg/l</b>	<b>[WA State ambient water quality std for aquatic organisms, which is 5 x lower than WA State DWS; this is important issue at Hanford Reach re: Salmon redds]</b>
<b>Fluoride</b>	<b>1.0 mg/l</b>	<b>[CA PHG; World Health Organization (WHO) has DWS set at 1.5 mg/l value]</b>
<b>Lead</b>	<b>0.002 mg/l</b>	<b>[CA PHG]</b>
<b>Mercury</b>	<b>0.0012 mg/l</b>	<b>[CA PHG]</b>
<b>Radium-226</b>	<b>0.05 pCi/l</b>	<b>[CA PHG]</b>
<b>Radium-228</b>	<b>0.019 pCi/l</b>	<b>[CA PHG]</b>
<b>Radon</b>	<b>300 pCi/l</b>	<b>[EPA, 1996]</b>
<b>Strontium-90</b>	<b>0.34 pCi/l</b>	<b>[CA PHG]</b>

Tritium	400 pCi/l	[CA PHG]
Trichloroethylene (TCE)	0.0008 mg/l	[CA PHG]
Vinyl Chloride	0.00005 mg/l	[CA PHG]
Uranium	2.6 µg/l	[EPA Tier II ecological screening value (1993) because NAWQC not available; WHO, 2006, set a DWS at 15 µg/l; 12/03 EPA determined a DWS of 30 µg/l ; ERWM supports the most conservative, which is that which EPA determines appropriate for aquatic organisms, Tier II ecological screening (in this case, at the Hanford Reach).

**Most significantly for 100-FR/IU2-6 Decision Areas, a new drinking water public health goal has been established for Cr6+ in July 2011, at 0.02 ppb (or 0.02 ug/L).** The table above will reflect this change when Hanford Guidance updates occur. (See *PUBLIC HEALTH GOALS FOR CHEMICALS IN DRINKING WATER: HEXAVALENT CHROMIUM (Cr VI)*; Office of Environmental Health Hazard Assessment; California EPA; July 2011.)

As noted above, copies of the NPT Hanford Guidance have been distributed to the Tri-Party agencies, and are available electronically or in hard copy upon request to John Stanfill of ERWM ([johns@nezperce.org](mailto:johns@nezperce.org)).

## Groundwater

Some differences appear in the documents regarding the designation of groundwater use. On page 8-31 in DOE/RL-2010-98, Draft A (the RI/FS document for 100-FR and IU-2/6) is this statement: “The groundwater within the 100-FR-3 OU does not meet the exclusion criteria; therefore, it is classified as potable and must be restored to beneficial use wherever practicable and within a time frame that is reasonably consistent with NCP (40 CFR 300) requirements. The state of Washington has further determined that the highest beneficial use for potable groundwater at most of the cleanup sites within the state, including the Hanford site, is as a potential source of domestic drinking water (MTCA, ‘Groundwater Cleanup Standards’ [WAC 173-340-720(1)(a)]).” [Underlining is ours.]

In addition, DOE/RL-2002-59 use (*Hanford Site Groundwater Strategy – Protection, Monitoring, and Remediation*) states that the highest beneficial use for Hanford groundwater is as a potential future drinking water source. [Underlining is ours.]

Page 40, lines 23-26, the Proposed Plan for 100-FR and IU-2/6 reads: “Alternative S-2 complies with soil cleanup chemical-specific ARARs and meets this threshold criterion. The groundwater remedies included in Alternatives GW-2, GW-3, and GW-4 will be designed to achieve DWSs in groundwater and AWQC and state water quality standards at the groundwater/surface water interface in a reasonable time period.” [Underlining is ours.]

Therefore, ERWM finds the following statement on page 24, lines 41-42 of the Proposed Plan as inadequate: “The Tri Party Agencies’ goal for Hanford groundwater is to restore it to beneficial use to

protect human health, the environment, and the Columbia River.” It is our position that the future integrity of the groundwater must be maintained with consistent reference to the goals of reaching the *highest beneficial use*, which the State of Washington has defined as *potential drinking water source*.

Finally, ERWM understands that the sources for groundwater contamination in IU-2/6 reside outside the boundaries of those Operational Units and are being addressed within the CERCLA actions for the areas which encompass the sources of the plumes. However, risk definitions in the Proposed Plan for 100-FR and IU-2/6 must define the risk inherited from the offsite-sourced plumes to give a clear view of the condition of the 100-FR, IU-2/6 areas. It is not sufficient to simply indicate that the issue will be handled elsewhere.

## **Cultural Resources**

Page 31, lines 17-20 in the Proposed Plan note the following: “If during design or implementation of the RTD remedy, culturally sensitive sites are identified for which mitigation activities to protect cultural resources would be inadequate, DOE and EPA will work with the Tribal Nations to identify an alternative remediation strategy. This alternative remediation strategy would be implemented through a ROD change.” The Nez Perce Tribe is currently engaged in the efforts of DOE and EPA at the 100-K Area regarding planning for remediation of culturally sensitive areas. ERWM is comfortable with those efforts; and assumes EPA will participate in a similar positive manner should such effort be necessary in the 100-FR/IU-2-6 Decision Areas.

ERWM would also remind the Tri Parties, in addition, that the Gable Mountain-Gable Butte archeological district, within IU-2/6 Decision Area, has undergone review in the 1990’s and has been declared eligible through the State of Washington Office of Archeology and Historic Preservation for listing in the National Register of Historic Places as a traditional and cultural property.