



Confederated Tribes and Bands  
of the Yakama Nation

1217380

Established by the  
Treaty of June 9, 1855

September 14, 2012

Tiffany Nguyen  
U.S. Department of Energy  
Richland Operations Office  
P.O. Box 550, A7-75  
Richland, WA 99352  
[CleanupFramework@rl.gov](mailto:CleanupFramework@rl.gov)

**Re: Yakama Nation Comments on Hanford Site Cleanup Completion Framework, DOE/RL-2009-10, Rev. 1, Draft**

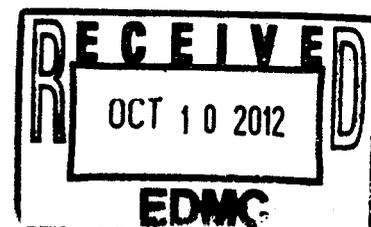
Dear Ms. Nguyen,

The Yakama Nation appreciates the opportunity to review the updated *Hanford Site Cleanup Completion Framework* (Framework), DOE/RL-2009-10, Rev. 1, Draft, which was produced by the U.S. Department of Energy (DOE) in May 2012 and released for public review and comment. We submitted comments on the initial draft released in August 2009. While we appreciate the revisions that have been made since the 2009 release, particularly where improved organization and clarification are provided, we continue to have important concerns with the overall approach to Hanford cleanup, as described in the Framework. The following general comments reflect our previous comments on the 2009 draft that were not addressed in the revised draft, and for which no adequate responses to comments were provided in the Comment Response Summary (Hanford.gov, 2012).

1. **Unrestricted Tribal Treaty uses are not recognized.** The final goal, now number 8, has been expanded such that institutional controls and long-term stewardship protect "Hanford's unique cultural, historical, and ecological resources" after cleanup is complete. However, it is more than protection of the resources that is important, it is also the Tribal *uses* of these resources, unrestricted and in full exercise of Treaty Rights, which are equally important. Cleanup to unrestricted use by Tribal Nations requires remediation that is protective of people with higher-than-average exposures.

We note that text was added regarding Congress' direction to DOE to establish land-use plans for Hanford. As written, this text implies that DOE has unilateral authority to determine anticipated future land use, as identified in the Comprehensive Land-Use Plan (CLUP). The Yakama Nation does not agree with the provisions of the CLUP because it does not recognize Tribal Treaty Rights. There is no evidence that in any of the federal statutes that authorize the establishment of the Hanford Site that Congress intended to abrogate the Yakama Nation Treaty Rights. Therefore, risk assessment and cleanup actions should be protective of, and based upon, anticipated

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Tribal subsistence uses. This should be clarified within the goals as well as the section discussing future land use expectations (2.3).

Also the document still does not acknowledge the government's fiduciary trust responsibility to the Yakama Nation and the need for government-to-government consultation. In the Comment Response Summary, DOE claims to recognize "its federal trust relationship and has committed to a government-to-government relationship" and "the need to fulfill Treaty and Trustee obligations" (Comment #8) – why is this not stated within the Framework document? We note that the term "consultation" used in the prior draft has been changed to "dialog," which, while important, falls short of fiduciary requirements.

2. **Concerns with stated goals.** In the Summary, Goal 4 (cleanup of Central Plateau waste and facilities) should be to protect groundwater *as well as* the Columbia River. It is important to acknowledge that groundwater (and contaminants therein) in the Central Plateau currently migrates to the river. In DOE's Comment Response Summary, comment #2 (goals), a change to the Framework document was identified in Section 1.4 ("because the Columbia River is central to tribal life..."). This language does not appear to be added to the revised Framework document. Also, please note that the referenced sentence is misworded (e.g., the site is not extraordinarily rich in resources *because* the river is central to tribal life, but rather, the other way around).

The new goal added since the 2009 draft (#5, safely mitigate and remove the threat of Hanford's tank waste), while an important goal, is presented differently than the others. The bullets associated with Goal 5 appear to be objectives, components of, or action steps for accomplishing the single goal; while bullets associated with other goals appear to be in themselves the end goal(s). The presentation should be consistent – are you making a statement that includes several related goals (e.g., cleaning up the River Corridor to protect groundwater, shrink the footprint, and support land use) or are you stating a goal and then presenting criteria for how to accomplish it (e.g., safely storing tank waste, constructing the WTP, and closing the tank farm to mitigate the threat of tank waste)? If the latter, a set of criteria (or objectives, action steps) should be provided for how to meet the first goal of protecting the Columbia River and to meet the second goal of restoring groundwater (e.g., meeting drinking water standards and aquatic water quality criteria).

3. **Over-reliance on institutional controls.** With regard to the final goal (#8) of implementing institutional controls, as we mentioned in our previous comments on the 2009 draft, the National Research Council (NRC) found the "likelihood that institutional management measures will fail at some point is relatively high" (NAS-

NRC, 2000). We appreciate the new section describing the challenges (6.2), but long-term stewardship still seems to focus on ensuring DOE's "future use," as defined by the CLUP. It should be clarified that the CLUP presents a 50-year timeframe, and the Long-Term Stewardship Program will involve limiting institutional controls to the extent possible and ultimately allow for unrestricted Tribal uses. Institutional controls have only been proven to remain effective for a fraction of the time that long-lived radionuclides, like those found at Hanford, remain hazardous (thousands of years).

4. **Issues with Risk Assessment.** As noted in our previous comments on the 2009 draft, we maintain that it is critical to assess cumulative risks to Tribal members (and other site users) to support making appropriate cleanup decisions. Although text has been added that "a variety of exposure scenarios will be evaluated in the risk assessment process to support risk management decisions" and that "exposure scenarios provided by the Tribal Nations" will be considered, it is not clear in what situations these scenarios will be applied or if the results will even be used for calculating cleanup levels and making cleanup decisions (which to date they have not). Other parts of the document plan for a "holistic" site-wide approach or perspective (e.g., institutional controls, NRDA), yet this approach has yet to be applied to a baseline risk assessment that holistically informs cleanup decisions. Cumulative risks should be assessed prior to close-out of any areas, such as the 100 and 300 Areas, to ensure adequate protection once cleanup of the entire site is complete.
  
5. **Issues with River Corridor cleanup plans.** The document has not been revised to address our prior comments that the River Corridor cleanup should include remediation of all remaining contaminant sources such that the river and potential future uses are protected. In the Comment Response Summary, DOE agrees that unremediated sources from the Central Plateau can migrate to the river via groundwater, which is why pump-and-treat systems are currently in place. The added text regarding key challenges is helpful; however, no text was added to explain how the *sources* of groundwater plumes (importantly, vadose zone contamination) are being remediated, particularly when DOE plans to leave in place source contaminants within the Central Plateau "footprint" and below 15 feet. Preventing migration from the Central Plateau is no substitute for source removal. Soil remediation of chromium "hot spots" along the River Corridor will not be adequate if the area becomes re-contaminated over time. Similar to our previous comments on the 2009 draft, we request that the statement be removed that "future plumes from the Central Plateau do not need to be considered in River Corridor decisions" (p. 36) – that is an admirable and optimistic goal, but an enormous and dangerous assumption to make when making cleanup decisions to protect the river. Additionally, the Framework notes that

chromium-contaminated groundwater upwelling in the river is being identified (p. 28), but does not explain how this contamination will be addressed.

6. **Issues with Central Plateau cleanup plans.** It was appropriate to merge the *Central Plateau Cleanup Completion Strategy* into this single Framework document, and to add the discussion regarding the challenges associated with the deep vadose zone, use of surface barriers, etc. However, we are concerned that meeting groundwater drinking water standards *into the future* is not presented as the ultimate goal of Central Plateau cleanup. "Technical impracticability" of cleanup within a "reasonable timeframe" remain major caveats; controlling migration and preventing exposure should only be interim actions while working to achieve the ultimate goals of remediating sources (vadose zone) and cleaning up groundwater to drinking water standards. In the Comment Response Summary, DOE cites EPA's expectation per 40CFR300.430 several times, which allows for such caveats; however, the same regulations also state that: "EPA expects to consider using innovative technology when such technology offers the potential for...implementability." The closing paragraph of Section 4.0 states that DOE will only close out the site when drinking water standards are met for key contaminants, all cleanup remedies are implemented, and institutional controls are in place. The details behind this generalized statement are critical. For example, we note that inadequate characterization may miss some "key" contaminants, proposed cleanup remedies may not remove all sources of contaminants, and selected institutional controls cannot be relied up into the indefinite future. Similar to the comment made regarding the River Corridor above, regardless of cleanup goals for the Central Plateau, it cannot be assumed that migration will be contained such that there will be no influx of groundwater contamination to the River Corridor (or influx of vadose zone contamination to groundwater) for purposes of making cleanup decisions.
  
7. **Natural Resource Damage Assessment.** The statement about the role of Trustees to "determine injuries to and loss of natural resources caused by releases of hazardous substances and to determine the extent of restoration appropriate" is not complete; there are more compensable options than strictly restoration. Ultimately, damages (or the value) associated with past, present, and future injury and service loss must be assessed to determine the degree of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources and their services that is needed. Although the focus of this document is on CERCLA response activities, this section appropriately recognizes the need for coordination of such efforts with NRDA and, as such, NRDA should be more clearly defined. There are three components to the Assessment Phase of NRDA, for which the Trustees are currently developing a plan; these are injury determination, injury quantification, and damage determination.

The Yakama Nation ERWM Program looks forward to discussing these concerns and comments. If you have any questions, please contact me at (509) 945-6741.

Sincerely,

A handwritten signature in black ink, appearing to read "Russell Jim".

Russell Jim, Manager  
Yakama Nation ERWM Program

cc:

Dennis Faulk, U.S. Environmental Protection Agency  
Jane Hedges, Washington Department of Ecology  
Ken Niles, Oregon Department of Energy  
Phil Rigdon, DNR Manager  
Administrative Record September 14, 2012