

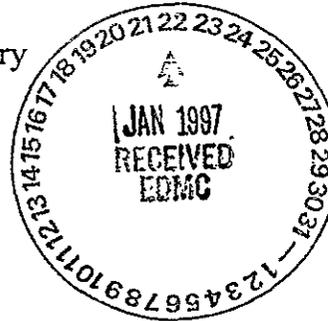


Confederated Tribes and Bands
of the Yakama Indian Nation

0046487
041405
Established by the
Treaty of June 9, 1855

December 18, 1996

The Honorable Hazel O'Leary, Secretary
U.S. Department of Energy
1000 Independence Avenue SW
Rm 7A-257
Washington, D.C. 20585



RECEIVED
DEC 27 1996
DOE-RL / DCC

Dear Secretary O'Leary:

Recently the Yakama Nation has seen a theme developing regarding our treaty reserved rights within the Hanford Reserve. Three recent documents which have either denied or raised questions and answers regarding the existence of these rights include the Draft Hanford Remedial Action Environmental Impact Statement, (HRA-EIS), the Columbia River Comprehensive Impact Assessment (CRCIA) draft Report, and a General Accounting Office (GAO) letter dated August 16, 1996, that was sent to Senators Murkowski, Chafee and Smith regarding Natural Resource Damages on DOE lands. 45015

The draft Hanford Remedial Action Environmental Impact Statement (HRA-EIS) contains language that is of great concern to the Yakama Nation. Specifically, the HRA-EIS states at p 5-223:

The tribal fishing rights reserved under the treaties have been recognized as effective within the Hanford Reach. The Privileges[sic] of gathering foods and medicines and of hunting and pasturing horses and cattle however, are, by the terms of the treaties, applicable to open [and] unclaimed lands. Open and unclaimed lands are lands held in public ownership which are not reserved for uses inconsistent with the exercise of the treaty rights. The Hanford Site's past mission of nuclear materials production and its current mission of waste management have both been deemed by the DOE to be purposes inconsistent with the exercise of the treaty reserved privileges.

While the HRA-EIS Scope does not address North of the River and the Fitzner/Eberhardt Arid Lands Ecology Reserve for remedial action purposes, these areas are included to the

extent they possess resources which may be used in remediation of the other Hanford units. In light of this, the Yakama Nation feels that DOE may attempt to apply the above statement regarding treaty reserved rights to the entire site.

The Yakama Nation interprets this as an unilateral agency action attempting to destroy reserved rights to hunt, pasture animals, and gather foods and medicines on the Hanford Site. Given that these are Congressionally recognized rights which the Yakama Nation intends to protect and exercise, we are offended that any Federal agency would use an EIS to deny the existence of these rights. We demand that all references attempting to delimit our treaty reserved rights be removed from the HRA-EIS.

Language regarding the treaty reserved rights on the Hanford Site which was initially drafted by Yakama Nation support staff for the CRCIA draft report preface was attacked by DOE legal staff. While the DOE legal staff admitted the existence of the usual and accustomed fishery on the Hanford Reach, they attempted to change the language referencing Yakama treaty reserved rights to terrestrial resources. We resent DOE legal staff balking at an accurate and fair delineation of our treaty reserved rights and attempting to rewrite such rights out of existence.

The third recent attack on Yakama treaty reserved rights is in a GAO report addressing the high cost of Natural Resource Damage Assessments under CERCLA. There was specific mention of treaty reserved rights and the suggestion that "if DOE's lands are considered occupied and used for industrial and national defense purposes, tribal rights might be limited." The letter includes the suggestion that our Congressionally ratified treaty reserved rights may be expendable at agency discretion, allowing DOE to escape Federally created liability.

Our reserved rights are property rights under United States law. We maintain these rights through the Treaty of 1855 that was ratified by the United States Congress in 1859. The preservation of our distinct way of life necessitates that we protect these resources and our right to enjoy them. It is the resources of the land which our ancestors used and upon which we still rely for medicine and subsistence.

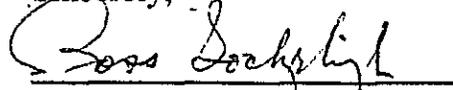
The Yakama Nation has never relinquished our rights to these resources. Throughout history there have been episodes in which we recognized other needs existed, such as national defense, and we have temporarily acceded to these. In no way have these rights been extinguished.

Attempts to include language in an environmental impact statement that would act to stifle our rights not only has no place in a NEPA document, but is in derogation of the working relationship which the Yakama and DOE have developed. This type of attack is

not only contrary to DOE policy, but Presidential policy and Federal fiduciary responsibility to the Yakama Nation as well.

Accordingly, we request that this language be removed from the HRA-EIS and any other similar attempts be curtailed.

Sincerely,



Ross Sockzehigh, Chairman
Tribal Council
Yakama Nation

cc: John Wagoner, DOE/RL
Kevin Clark, DOE/RL
✓ Thomas Ferns, DOE/RL
Paul Krupin, DOE/RL
Donna Powaukee, Nez Perce Tribe
J.R. Wilkinson, CTUIR
Hanford Natural Resource Trustee Council