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Ms. Madeleine Brown, Chair
Hanford Advisory Board
Environmental Restoration Subcommittee

Mr. Tom Woods, Chair
Columbia River Comprehensive Impact Assessment Team
1933 Jadwin Avenue, Suite 110
Richland, Washington 99352

Dear Ms. Brown and Mr. Woods:

COLUMBIA RIVER COMPREHENSIVE IMPACT ASSESSMENT (CRCIA), APPENDIX D

At the June 11, 1998, Hanford Advisory Board Environmental Restoration Subcommittee meeting, there were questions raised on the U.S. Department of Energy, Richland Operations Office (RL) position on Appendix D in the CRCIA report.

For your information, RL earlier provided comments on Appendix D to the CRCIA team (Enclosure 1). These comments dealt only with the concept of performing an impact assessment and did not address our broader concern which is the need for RL to control work that directly supports Tri Party Agreement Milestones. The data and predictive models that would be products of a CRCIA team managed activity would be fundamental to the suite of data and tools that will be needed to reach regulatory decisions and complete Tri-Party Agreement milestones. With RL being responsible for Tri-Party Agreement milestones, RL needs to have direct project management authority and responsibility over these products.

Based on conversations with the CRCIA team, it appears that the fundamental driver behind Appendix D is the desire to have impact assessment data and tools that have a high degree of public/tribal confidence. The current regulatory structure provides a base level of oversight on both the process and the end products needed to prepare impact assessments for a Record of Decision which is issued not by RL, but by regulators. For activities related to the Groundwater/Vadose Zone integration project, we are attempting to achieve a higher degree of public, tribal, and Oregon State participation and insight into the efforts to produce credible data and a credible model.

It is important to the Groundwater/Vadose Zone integration project to continue soliciting feedback on the credibility of project processes and products. RL will ensure that opportunities for such feedback will occur.

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If you have any questions, please contact me on 376-7277.

Sincerely,

Richard A Holten, Director
Restoration Projects

Enclosure

cc w/encl:
M. Reeves, HAB
TRI

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"Table. N21"

DRAFT (11/21/97)
APPENDIX II-D CONCERNS

CRCIA Requirements Document	Concerns
The CRCIA Management Board would direct the activities of DOE employees (e.g., Executive Administrator and staff) and directing and funding of DOE contractors (e.g., the Performing Contractors).	The Federal Advisory Committee Act (FACA) specifically excludes granting decision making authority to committees with non-governmental members. Actual decision making authority over the expenditure of federal funds must either be an elected federal official, or report to an elected federal official, (e.g., through the Executive Branch to the President). **Therefore, this particular requirement cannot be met; significant changes would have to be made in it regarding the role of the Board vis-a-vis DOE employees to be in compliance with FACA. Additionally, DOE cannot permit DOE or contractor staff to be directted by any entity other than DOE (or in the case of contractors, than employing organizations.)**
The CRCIA Requirements Document does not discuss the relationship of the CRCIA Management Board and the Hanford Advisory Board.	Even though the membership of the CRCIA Management Board is similar or potentially duplicative of the Hanford Advisory Board (HAB), the HAB was not identified as an organization represented on the CRCIA Management Board, nor is the relationship between the HAB and the CRCIA Management Board discussed. A path forward on this requirement would require insertion of appropriate language , approved by the full HAB membership.
Section D.5 says that the "results and conclusions are expected to be used by Hanford Site decision-makers to ... help determine the manner in which remediation and waste disposition should be done."	The relationship of the CRCIA effort and Hanford Site decision making is ambiguous. It is unclear how these "results and conclusions" would be used since the CRCIA effort appears to reject much of the protocol used in clean-up decision making. Because the CRCIA may not use Hanford Site specific or other commonly accepted standard environmental decision making parameters and models, the CRCIA may generate results that are not in agreement with environmental and health risk found in other Site decision documents. **The term "...expected to be used..." requires discussion and agreement on more precise language.**

The Executive Administrator provided by the Sponsoring Organization is required to be "... a senior, well-qualified manager to serve as project manager within the sponsoring organization and as executive administrator within assessment activities. This person must have sufficient stature and respect within the sponsoring organization to enable authority to be delegated to him or her to act for and . . .to commit the sponsoring organization to the agreements reached in Board deliberation. In all matters, the executive administrator shall reflect and advocate the Board's consensus positions and sentiments.... " (D2.0-2). The Executive Administrator is required "in all matters" to "reflect and advocate the Board's consensus position and sentiment ..." (D2.0-2).	The assumption is that the Sponsoing Organization would by the Department of Energy (DOE) and the Executive Administrator, a senior DOE employee. As a DOE employee the Executive Administrator would be put in an untenable position if he or she would be required to "In all matters, the executive administrator shall reflect and advocate the Board's consensus positions and sentiments.... " . This would limit the ability of the Executive Administrator to openly and honestly discuss with the Site Manager and others on his professional opinion on the Board decisions and proposed actions. **The Hanford Site Manager cannot turn over to the Executive Administrator the authority "to commit the sponsoring organization to the agreements reached in Board deliberation."** (D2.0-2).
The composition of the CRCIA Management Board would include representatives downstream to Astoria. According to the Requirements Document, membership of the CRCIA Board shall be sought to represent the following: general citizenry affected by Hanford; persons who use the Columbia River for sustenance, commerce or recreation; affected Tribal governments; Tri-Party agencies; federal and state regulators at Hanford; federal, state, and local public health agencies; Hanford Natural Resources Trustee Council; fish and wildlife agencies; and representatives of local, state, and federal governments.	There is no discussion how the composition of the CRCIA Management Board would be determined. The composition of the CRCIA Management Board should consider following the procedure used to identify representation on the Hanford Advisory Board. One Technical Peer Reviewer noted that the list did not include local business representation, Hanford workers, the research community, and migrant workers. According to the Technical Peer Reviewer, "Several times in the document, reference is made to affected communities such as migrant workers - yet no specific position has been identified for this group. Has the team thought about adding this under represented group?"

The Executive Board within the CRCIA Board would be responsible for hands on management of the assessment. It would consist of Representatives of Tri-Party agencies, governments of states of Washington and Oregon, Hanford Advisory Board, representatives of Native American Groups.	The role and limitation of the Executive Committee and their ability to act independent of the CRCIA Board as a whole is not defined. **However, whatever the interaction, , DOE does not agree to a "management" role which extends beyond that of advisory.** The proposed Executive Committee over-represents certain factions of of the proposed CRCIA Management Team and parallels the dominant players on the current CRCIA Team. According to one technical peer reviewer, "one of the big problems with any advisory group is that over time they become unrepresentative." The actual structure and representation of the Executive Team should be developed by the CRCIA Management Team and should not be dictated by the current CRCIA Team.
The CRCIA Management Board has included itself in the process of selecting the Performing Contractor. "The Performing Contractor would be selected by the Sponsoring Organization, in collaboration with the CRCIA Board. Subcontractors shall also be selected in collaboration with the CRCIA Board." (D3.0-1).	It is also probable that the CRCIA Management Board would want to participate in or support the development of the request for proposals. A possible role for one or more representatives of the CRCIA Management Board would be as a non-voting technical advisor to the procurement team. Because of a potential conflict of interest, the liability to their participation on the team would be that the organizations on the Board would not be eligible for the prime or subcontracts. **The legality of this particpatory role will require additional procurement review.**
According to the Requirements Document, "The performing contractor is responsible to ensure that the Board acts in all matters with a grasp of relevant technical considerations." (D3.0-3)	This would more appropriately be a role outside that of the independent peer review or the technical advisory contractor. One technical peer reviewer stated that making the performance contractor responsible for educating the CRCIA Management Board "is a very large mandate" and that the CRCIA Management Board "may want to confirm this with the outside technical expertise that is described earlier." **DOE would not generally agree to fund this requirement nor take on the responsibility of ensuring that Board members are made cognizant of issues as this requirement reads.**

"The CRCIA Board shall develop a public outreach plan that shall include, but not be limited to the following: (a) regularly provide assessment reports to interested parties, informing them of the emerging insight into the present and future states of the Columbia River together with the causes of any projected impact (b) provides innovative opportunities for meaningful and effective public participation in assessment project reviews. (D.7). "The meetings and all other business of the CRCIA Board shall be open to the public. However, in view of the broad-based public representation comprising the Board, input from the public is expected to be typically made through appropriate representative.	It is not clear if the meetings of both the CRCIA Management Board and the CRCIA Executive Committee would be open to the public. Relevant public participation would require the regular timely publication of the meeting agendas. A concern is the lack of details for an effective public outreach program. This need is particularly relevant for an assessment with this much potential interest to the public. **This section needs to be expanded to include additional information such as:** **- A commitment to prepare as part of the organizational charter, a public outreach program.** **- The opportunity for public participation and input of individuals or organizations not represented by the CRCIA Mangement Team.** **- A committment to publicly available meeting agendas, minutes, monthly and/or quarterly and draft and final analysis reports should be provided.** **- A commitment to conduct regular public information meetings.**
The CRCIA Management Board would operate on a consensus basis .... It is assumed the CRCIA Board would meet monthly. The CRCIA Board would develop and maintain a resource loaded project work plan spanning the life of the project (D6.0-1) and would be responsible for allocating the funding provided as well as managing the finances of the assessment project (D6.0-2). CRCIA Board has the responsibilities of planning the conduct of the assessment, annual budget proposal. (D1.0-5). The Executive Board within the CRCIA Board would be responsible for hands on management of the assessment. The CRCIA Board or the Executive Board . . . is the only approval authority for changes in the assessment's work plans, budget allocations, and funding, . . ." (D10)	Relationship and between the CRCIA Management Board and the Executive Board is not described. The role and limitation of the Executive Committee and their ability to act independent of the CRCIA Board as a whole is not defined. The need for a charter developed by the CRCIA Management Board is recognized. Regarding, the language, "...and would be responsible for allocating the funding as well as managing the finances of the assessment Project . CRCIA Board has the responsibility of planning the conduct of the assessment annual budget proposal." **Any activity involving allolction of funding and /or budget planning which goes beyond advisory , such as these , would be non-compliant with FACA; DOE is unalterably opposed to this requirement.** Until that charter is developed, it is assumed that the CRCIA effort would be managed by the current CRCIA Team. Because the CRCIA Management Board would operate on a consensus basis it should be assumed that the charter would have to be approved on a consensus basis. This would allow a representative of any organization on the CRCIA Management Board to block the majority position and could delay development on the charter.

The existing CRCIA Team shall determine when the full CRCIA Board should be formed. The existing team will likely remain unchanged while preliminary assessment tasks are being performed. . . ." (D9.0-2)	Until the Charter is approved, which could be a time consuming process the current CRCIA Team would continue to manage the CRCIA effort through very critical formative period. Based in the earlier discussion, the development of the charter could be a time consming process.