

YAKIMA INDIAN NATION
PROPOSAL FOR PARTICIPATION IN
DEPARTMENT OF ENERGY
ENVIRONMENTAL RESTORATION AND WASTE MANAGEMENT
FIVE-YEAR PLAN

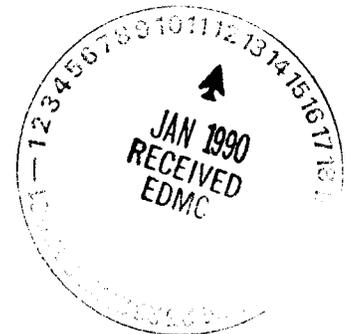
Submitted to:

Mr. Leo Duffy, Special Assistant
Defense Waste Management
United States Department of Energy

Submitted by:

Melvin R. Sampson, Chairman
Yakima Tribal Council
Yakima Indian Nation

October 11, 1989



YAKIMA INDIAN NATION
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INTRODUCTION:

The Hanford Nuclear Reservation is located on Yakima Nation ceded land. Operations at Hanford, beginning in 1943, have affected Yakima Treaty rights, and continue to affect Treaty rights. Article III of the Treaty of 1855 states:

"The exclusive right of taking fish in all the streams, where running through or bordering said reservation, is further secured to said confederated tribes and bands of Indians, as also the right of taking fish at all usual and accustomed places, in common with citizens of the Territory, and of erecting temporary buildings for curing them; together with the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land."

Yakima Nation rights to Columbia River basin fish is well established in law. Courts have also interpreted this right to include the right to a level of environmental protection which supports the fishery. A clear interpretation regarding Yakima Nation rights to hunt, gather roots and berries, and pasture horses and cattle at Hanford has not been made. However, recent events at Hanford support Yakima Nation claims to resources on Hanford "open and unclaimed land."

In particular, the Department of Energy has, within the last month, terminated Hanford's primary historical mission, the production of plutonium for nuclear weapons, and has embarked on a massive program to restore the Hanford environment. Termination of the nuclear production mission will remove the justification for limiting access to some areas, while environmental restoration will promote alternate uses of the land and resources.

Regardless of ceded land rights within the Hanford site boundaries, Hanford operations have affected, and will continue to affect, Yakima Nation Treaty rights on the Yakima Reservation and on ceded land outside of the Hanford boundaries. The Hanford site is only thirteen miles from the Yakima Reservation, so commercial nuclear reactor operations, research reactor operations, remedial actions, and waste storage, treatment, and disposal operations have the potential for affecting the environment on the Yakima Reservation. (See Attachment 1, maps showing the present Hanford Nuclear Reservation in relation to Yakima Nation ceded land and the Yakima Reservation.) In addition, the final decisions about how much and what kind of waste are disposed of on-site will have long-range implications for environmental quality in the region.

PURPOSE:

The Yakima Nation had a well-developed program for monitoring Hanford activities from 1985 to 1988. This program was derived from language in the Nuclear Waste Policy Act of 1982, which allowed "affected Indian tribes" substantial participation in DOE planning for a nuclear waste repository. The NWPA was amended in 1987 to exclude Hanford from consideration as a repository site, and the Yakima Nation program was terminated on December 18, 1988.

Since that time, only limited oversight capability has been available to the Tribe. The current goal of the Tribe is to gain funding from DOE to support a comprehensive program for monitoring Hanford environmental restoration and waste management activities and influencing the Hanford decision process to protect Treaty rights, a goal clearly supported in the DOE Five-Year Plan.

CURRENT SETTING:

In May of 1989, the DOE, EPA, and Washington State signed an agreement which deals with waste management and environmental restoration at Hanford. This agreement is called the Hanford Federal Facility Agreement and Consent Order (FFACO), or simply the Three-Party Agreement. The agreement describes each agency's role and responsibilities as concerns ongoing waste management operations and environmental restoration at Hanford, and sets schedules for cleanup for the next 30 years.

The Yakima Nation was not invited to participate in any phase of the Three-Party negotiation process. Department of Energy and EPA response to YIN requests for participation was negative; the Federal agencies declared that the YIN had no statutory basis for participation in the regulatory decision process. Undoubtedly, DOE and EPA were concerned that the Yakima Nation's rights at Hanford, not incorporated into a set of regulations, would complicate and delay the negotiations.

Since the Three-Party Agreement was signed, however, two events have occurred:

- 1) The Yakima Nation was designated, in May, 1989, an "affected Indian tribe" for purposes of actively participating in the DOE National Five-Year Plan development process.
- 2) The State of Washington has proposed to support Yakima Treaty rights through a mutual agreement which recognizes YIN legitimate interests at Hanford, formalized in Washington State Nuclear Waste Board Resolution 88-6.

FUNDING AUTHORITY:

In Fiscal Year 1989, Congress appropriated approximately \$950 million for DOE waste management and environmental restoration activities. Of that amount, DOE Richland Operations Office received about \$155 million. For Fiscal Year 1990, Congress has allocated \$1.66 billion for national waste management and environmental restoration work. (See Attachment 2, pp. 69-70 of Report 101-235 to accompany H.R. 2696.) Under the Five-Year Plan and the Three-Party Agreement, funding for the Hanford waste management and environmental restoration program for FY 90 to FY 95 will rise from \$1.2 billion to \$2.4 billion.

In negotiating the Three-Party Agreement, the State of Washington Department of Ecology gained consent from the DOE to fund three distinct parts of its Hanford program: 1) costs of permitting Treatment, Storage, and Disposal Units, 2) costs associated with CERCLA activities, and 3) costs for environmental monitoring and oversight. (See Attachment 3, pp. 54-55 of the Hanford Federal Facility Agreement and Consent Order.)

The mechanism for funding the environmental monitoring and oversight activities is a mutual cooperation funding agreement. (See Attachment 4, Mutual Cooperation Funding Agreement, Hanford Federal Facility Agreement and Consent Order.) The authority DOE cites for entering into this agreement is PL 95-91 and other authority. PL 95-91, the Department of Energy Organization Act of 1977, contains a provision which authorizes cooperative agreements or other similar transactions to carry out functions vested in the Secretary of Energy:

"The Secretary is authorized to enter into and perform such contracts, leases, cooperative agreements, or other similar transactions with public agencies and private organizations and persons, and to make such payments (in lump sum or installments, and by way of advance or reimbursement) as he may deem to be necessary or appropriate to carry out functions now or hereafter vested in the Secretary." Sec. 646, 42 USC 7256.

Funding for Washington State Department of Ecology is included in the FY 89 Activity Data Sheets for the DOE-RL. (See Attachment 5, Hanford Site Environmental Restoration and Waste Management Five-Year Plan Activity Data Sheets, pp. 4-201 to 4-202.)

The Three-Party Agreement also contains an article which describes a contested issue regarding EPA cost reimbursement by DOE:

"ARTICLE XVIII. RECOVERY OF EPA CERCLA RESPONSE COSTS

62. EPA and DOE agree to amend this section at a later date in accordance with any subsequent resolution of the currently contested issue of EPA cost reimbursement. (Hanford Federal Facility Agreement and Consent Order, pg. 43.)

YIN-DOE NEGOTIATIONS:

The Nuclear Waste Policy Act provided a clear statutory basis for YIN participation at Hanford derived from Treaty rights and the Federal-Tribal government-to-government relationship. Based upon this precedent, negotiations for funding YIN participation must be based upon Treaty rights and DOE commitment to recognize such rights.

The YIN and the Shoshone-Bannock were the only two tribes in the country selected by DOE for participation in the national Five-Year Plan development and review process. This plan is the DOE guidance manual for conducting waste operations for the next five years, and will be updated annually.

Yakima and Shoshone-Bannock participation in the DOE national Plan is meant to be representative of affected Indian tribes across the nation. In fact, the DOE will request participation by many Indian tribes at the operations office level. (See Attachment 6, Section 1.2.1.2 of U.S. DOE Environmental Restoration and Waste Management Five-Year Plan.)

In order for the Yakima Nation government to ensure protection of Treaty rights, it must have technical, professional, and administrative capabilities to participate in the DOE Five-Year Plan process. Funding by the Department of Energy to allow for full participation is therefore required to accomplish the following objectives:

1. Review all DOE documents related to the DOE Five-Year Plan and the Hanford Implementation Plan.
2. Attend meetings and observe on-site monitoring.
3. Provide the Tribe with information regarding DOE environmental restoration and waste management activities.
4. Coordinate with other Federal and State agencies as well as other tribes.

Meeting these objectives will support the DOE goal of achieving regulatory environmental compliance with tribal requirements as described in Section 1.2.3 of the Five-Year Plan, as well as meeting the commitment to recognize Tribal sovereignty and Treaty rights as described in Section 1.1.1 of the Five Year Plan. (See Attachment 7, Section 1.2.3 of U.S. DOE Environmental Restoration and Waste Management Five-Year Plan.)

The DOE has divided its objectives for the Five-Year Plan into the following areas:

- o Corrective Activities
- o Environmental Restoration
- o Waste Management
- o Research and Development

Also, in order to arrive at a system which equitably distributes the multi-billion dollar appropriations for cleanup across the nation, the DOE will develop a "National Prioritization System". The Yakima Nation will be involved in developing and reviewing this allocation system as well.

YAKIMA INDIAN NATION PROPOSAL OUTLINE:

The following is an outline which provides the basis for the Yakima Indian Nation funding request to the Department of Energy for Yakima Nation oversight of DOE Five-Year Plan activities for Fiscal Year 1990:

The Yakima Indian Nation has rights, under the Treaty of 1855, on the Hanford ceded land. Department of Energy environmental restoration and waste management activities, as described in the Environmental Restoration and Waste Management Five-Year Plan, will impact YIN rights at Hanford, on adjacent ceded land area, and on the Yakima Indian Nation Reservation. The Department of Energy has recognized the impact of its actions on Yakima rights under the Basalt Waste Isolation Project, and under other DOE programs and activities. (See Attachment 8, Yakima Indian Nation Involvement in Activities at the Hanford Nuclear Reservation (U.S. Department of Energy Funded).

The Yakima Indian Nation has been recognized by the Department of Energy as an "affected Indian tribe" as regards the DOE Five-Year Plan. Such recognition entails a commitment by DOE to work with the Tribe on a government-to-government basis, and to provide assistance to the Tribe for services performed in support of Five-Year Plan goals.

The Yakima Nation, in fulfillment of its role as a full participant in DOE's planning and implementation process for corrective activities, environmental restoration, waste management, and assistance in development of the national prioritization system, proposes to carry out the following tasks in support of Treaty rights which correspond to DOE Five-Year Plan activities:

- I. Review and comment on all DOE plans and documents comprising the four primary areas of DOE activities:
 - o Corrective Activities
 - o Environmental Restoration
 - o Waste Management
 - o Research and Development

Review will include implementation plans for the Hanford site, and will also include participation in the National Prioritization System, with recommendations to be provided regarding development of methodology and criteria which incorporate potential risks to Tribal resources.

- II. Attend and report on all relevant meetings of the DOE National Five-Year Planning and Implementation process, and attend and report on meetings of the DOE-RL (Hanford) Implementation Plan.
- III. Distribute information regarding DOE Five-Year Plan activities to the Tribal government and Tribal members and develop a library to catalog and cross-reference relevant documents.
- IV. Coordinate with other affected states and tribes, and with relevant Federal agencies, to ensure that Yakima Nation recommendations and actions are based upon a thorough consideration of relevant jurisdictions and interests.
- V. Observe environmental monitoring activities and data analysis, as necessary, to independently verify published data and to determine compliance with protection of Treaty rights.
- VI. Provide administrative support for program record management, financial control, and clerical assistance.

BUDGET REQUEST:

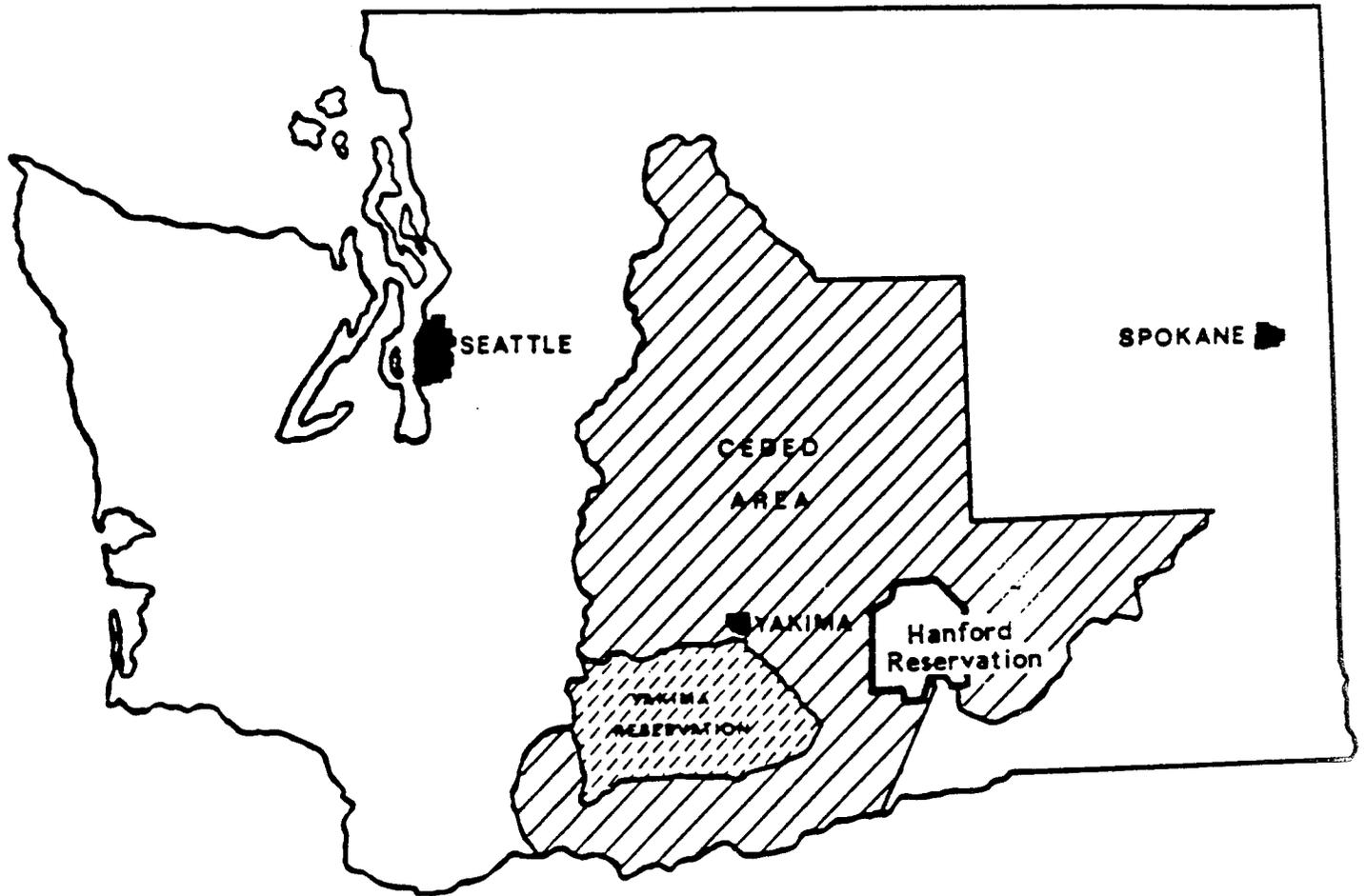
Following is a budget request to the Department of Energy for carrying out the activities described above, for Fiscal Year 1990:

TASK	DESCRIPTION	LEVEL
I	TECHNICAL REVIEW AND COMMENT	\$ 181,000
II	MEETINGS AND REPORTS	\$ 33,000
III	PUBLIC INFORMATION	\$ 20,000
IV	COORDINATION WITH OTHER AGENCIES	\$ 14,000
V	ENVIRONMENTAL MONITORING AND ANALYSIS	\$ 26,000
<u>VI</u>	<u>ADMINISTRATION</u>	<u>\$ 48,000</u>
	TOTAL	\$ 322,000

This budget is based upon total funding determined to be necessary to oversee the DOE Five-Year Plan activities at the DOE-HQ and DOE-RL level for FY 90. The distribution of resources among tasks reflects first-year program requirements. (For a comparison with the distribution of the Fiscal Year 1987 YIN Nuclear Waste Program, see Attachment 9). With a 50/50 program/contractor ratio, this budget would support three FTE.

The Yakima Indian Nation Nuclear Waste Program will carry out its functions under the Tribal Government structure. (See Attachment 10, Nuclear Waste Program Organization Chart).

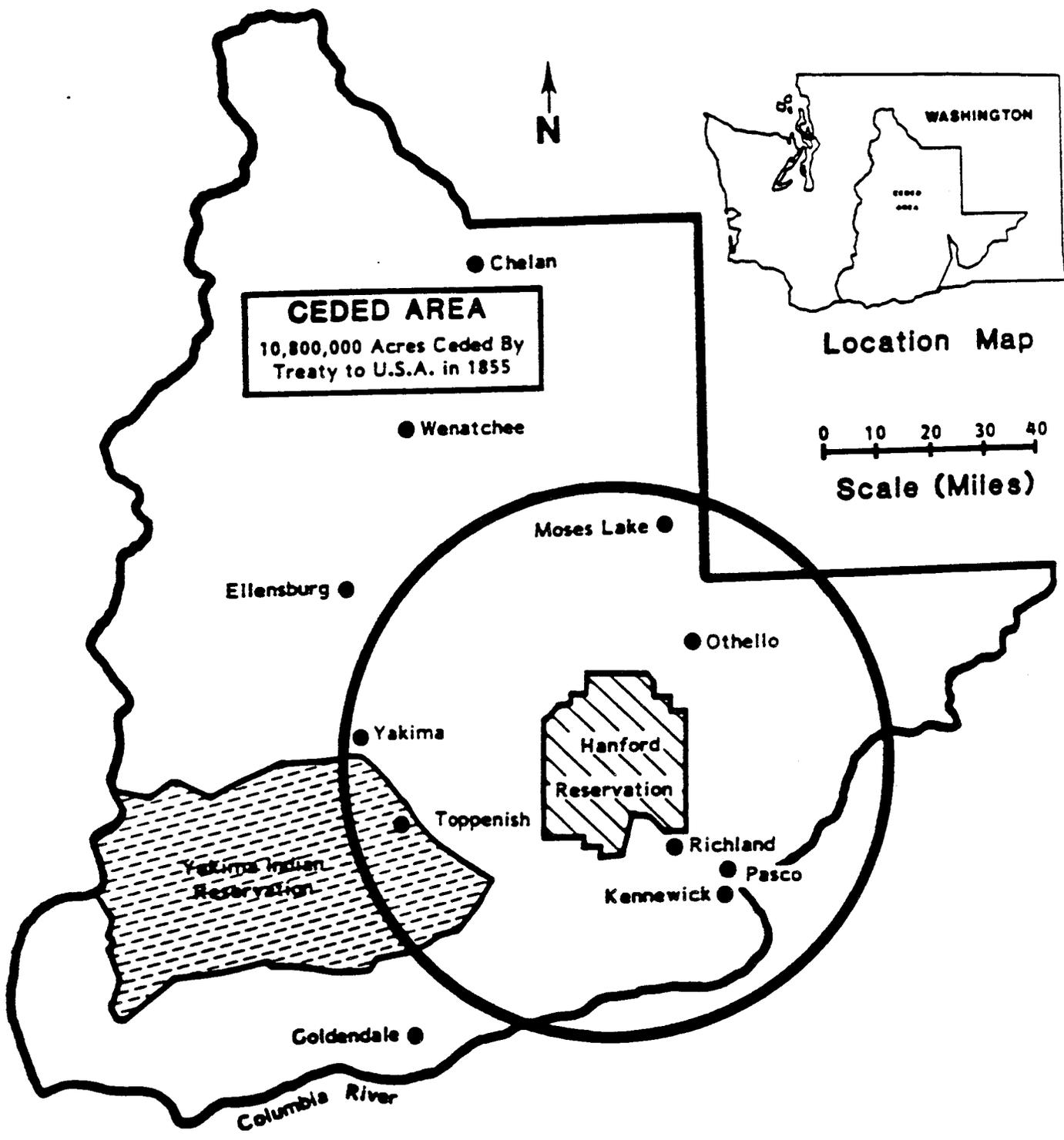
ATTACHMENT 1



STATE OF WASHINGTON

 +  Original Territory  Ceded Area  Yakima Reservation

That part of the original territory of the Yakimas which they ceded away to the Federal Government by Treaty in 1855, now constitutes 25.4% of the State of Washington.



ATTACHMENT 2

Department of Energy

	FY 1990	
	Budget Request	Conference
87-0-158 Environmental, health, and safety improvements, Phases I, II, III, & IV, Feed Materials Production Center, Fernald, OH ...	55,111,000	55,111,000
Subtotal, ESM projects.....	60,011,000	60,011,000
Safeguards & security projects:		
88-0-148 Additional separations safeguards, Savannah River, SC.....	10,300,000	10,300,000
88-0-153 Additional reactor safeguards, Savannah River, SC.....	6,400,000	6,400,000
88-0-156 Plantwide safeguards systems, Savannah River, SC.....	6,181,000	6,181,000
Subtotal, safeguards & security projects.....	22,881,000	22,881,000
Subtotal, Construction.....	283,474,000	283,474,000
Subtotal, Supporting services.....	545,342,000	545,342,000
D. Enriched material.....	168,900,000	168,900,000
E. Capital equipment.....	104,425,000	104,425,000
F. Program direction.....	35,255,000	35,255,000
TOTAL, MATERIALS PRODUCTION.....	2,213,574,000	2,188,574,000
(Operating expenses).....	(1,854,691,000)	(1,854,691,000)
(Capital equipment).....	(104,425,000)	(104,425,000)
(Construction).....	(454,458,000)	(399,458,000)
III. DEFENSE WASTE AND ENVIRONMENTAL RESTORATION		
A. Environmental restoration - operating expenses	481,283,000	572,000,000
B. Waste operations and projects		
Operating expenses.....	568,157,000	698,696,000
Construction		
Programmatic projects:		
88-0-170 GPP, various locations.....	29,036,000	29,036,000
88-0-171 INEL road renovation, ID.....	7,400,000	7,400,000
88-0-174 Replacement high level waste evaporator, Savannah River, SC.....	9,360,000	9,360,000
88-0-175 Hanford waste vitrification plant (HWVP), Richland, WA.....	29,100,000	29,100,000
87-0-173 242-A Evaporator crystallizer upgrade, Richland, WA.....	700,000	700,000
87-0-181 Diversion box and pump pit containment buildings, Savannah River, SC.....	2,790,000	2,790,000
Subtotal, programmatic projects.....	78,386,000	78,386,000
Environment, safety & health projects:		
88-0-171 Laboratory ventilation and electrical system upgrade, Richland, WA.....	1,100,000	1,100,000
88-0-172 Aging waste transfer line, Richland, WA.....	1,300,000	1,300,000
88-0-173 B-Plant canyon area replacement, Richland, WA.....	1,600,000	1,600,000
88-0-174 Decontamination laundry facility, Richland, WA.....	2,800,000	2,800,000
88-0-175 Landlord program safety compliance-I, Richland, WA.....	4,200,000	4,200,000
88-0-176 Transuranic (TRU) waste facility, Savannah River, SC.....	3,100,000	3,100,000
88-0-177 HEC Transuranic (TRU) waste treatment and storage facility, Idaho.....	8,800,000	8,800,000

Department of Energy

	FY 1990 Budget Request	Conference
88-0-178 TSA retrieval containment building, Idaho.....	6,000,000	6,000,000
88-0-172 Hanford environmental compliance, Richland, WA	27,600,000	27,600,000
88-0-173 Tank farm ventilation upgrade, Richland, WA	15,400,000	15,400,000
88-0-175 Hazardous waste/mixed waste disposal facility, Savannah River, SC	6,440,000	6,440,000
88-0-148 Non-radioactive hazardous waste management, Savannah River, SC	14,140,000	14,140,000
Subtotal, ESM projects.....	69,580,000	69,580,000
Subtotal, Construction.....	166,966,000	166,966,000
Subtotal, Waste operations and projects.....	738,133,000	866,567,000
C. Waste research and development.....	80,126,000	118,225,000
D. Hazardous waste and compliance technology.....	10,163,000	40,163,000
E. Transportation management.....	11,841,000	11,841,000
F. Capital equipment.....	80,126,000	80,126,000
G. Program direction.....	2,950,000	2,950,000
TOTAL, DEFENSE WASTE & ENVIRONMENTAL RESTORATION.....	1,301,731,000	1,658,967,000
(Operating expenses).....	(1,084,639,000)	(1,441,876,000)
(Capital equipment).....	(80,126,000)	(80,126,000)
(Construction).....	(166,966,000)	(166,966,000)
IV. NEW PRODUCTION REACTORS		
A. New production reactor support		
Operating expenses.....	203,500,000	203,500,000
Construction:		
88-0-164 New production reactor capacity, various locations (design only).....	100,000,000	100,000,000
TOTAL, NEW PRODUCTION REACTORS.....	303,500,000	303,500,000
(Operating expenses).....	(203,500,000)	(203,500,000)
(Construction).....	(100,000,000)	(100,000,000)
V. NAVAL REACTORS DEVELOPMENT		
A. Plant development		
Operating expenses.....	87,000,000	87,000,000
B. Reactor development		
Operating expenses.....	248,300,000	248,300,000
C. Reactor operation and evaluation		
Operating expenses.....	217,000,000	217,000,000
D. Capital equipment.....		
84,000,000	84,000,000	
E. Construction:		
88-W-101 General plant projects, various locations	8,500,000	8,500,000
88-W-102 Expanded core facility dry cell project, Naval Reactors Facility, ID	3,500,000	3,500,000
88-W-103 Advanced test reactor off-gas treatment system, INEL, ID	200,000	200,000
88-W-104 Facility renovations, Knolls Atomic Power Laboratory (KAPL), Westinghouse, NY	3,800,000	3,800,000
88-W-102 Heat transfer test facility, KAPL, Westinghouse, NY	8,500,000	8,500,000

ATTACHMENT 3

PART FIVE
COMMON PROVISIONS

ARTICLE XXVIII. RECOVERY OF STATE COSTS

88. DOE agrees to reimburse Ecology for all of its costs related to the implementation of this Agreement as provided below:

A. Permit Fees and Reasonable Service Charges: DOE agrees to pay to the appropriate account of the Treasury of the State of Washington, all permit fees and other reasonable service charges which would be payable by any person permitting TSD Units under applicable Washington law. In the event DOE disputes any such service charges by Ecology, DOE may contest the disputed service charges in accordance with the Dispute Resolution procedures of Article VIII.

B. Reimbursement of Department of Ecology CERCLA Costs:

1. DOE agrees to reimburse Ecology for its CERCLA costs directly related to implementation of this Agreement up to the amount authorized through a yearly grant by DOE to Ecology.

2. On an annual basis, Ecology shall submit to DOE a proposed workscope and estimates of costs to be incurred relating to CERCLA work to be performed under this Agreement by Ecology for the upcoming year. Subsequent to review by DOE, DOE shall issue grant funds to Ecology in an amount consistent with the cost estimated. All CERCLA costs incurred by Ecology shall be costs directly related to this Agreement and costs not inconsistent with CERCLA and the NCP.

3. In the event that DOE contends that any costs incurred were not directly related to the implementation of this Agreement or were incurred in a manner inconsistent with CERCLA or the NCP, DOE may challenge the costs allowable under the grant to Ecology. If unresolved, Ecology's demand, and DOE's challenge, may be resolved through the appeals procedures set forth in 10 C.F.R. Part 600 and 10 C.F.R. Part 1024.

4. DOE shall not be responsible for reimbursing Ecology for any costs actually incurred in excess of the amount authorized each budget period in the grant award.

C. Environmental Monitoring Costs: Any justifiable costs incurred by Ecology in the implementation of this Agreement which are not covered by payments made pursuant to paragraphs A and B above shall be paid pursuant to the Mutual Cooperation Funding Agreement executed by DOE and Ecology on May 15, 1989. A copy of the Mutual Cooperation Funding Agreement is appended to this Agreement as Attachment 3.

89. Ecology's performance of its obligations under this Agreement shall be excused if its justifiable costs are not paid as required by this Article.

ARTICLE XXIX. ADDITIONAL WORK OR MODIFICATION TO WORK

90. In the event that additional work, or modification to work, including remedial investigatory work and/or engineering evaluation, is necessary to accomplish the objectives of this Agreement, notification and description to such additional work or modification to work shall be provided to DOE. DOE will evaluate the request and notify the requesting

Party within thirty (30) days of receipt of such request of its intent and ability to perform such work, including the impact such additional work will have on budgets and schedules. If DOE does not agree that such additional work is required by this Agreement or if DOE asserts such additional work is otherwise inappropriate, the matter shall be resolved in accordance with the Dispute Resolution procedures of Part Two or Part Three of this Agreement, as appropriate. Field modifications, as set forth in the Action Plan, are not subject to this Article. Extensions of schedules may be provided pursuant to Article XL (Extensions).

91. Any additional work or modification to work determined to be necessary by DOE shall be proposed to the Lead Regulatory Agency by DOE and will be subject to review in accordance with the appropriate Dispute Resolution procedures of Part Two or Part Three of this Agreement, as appropriate, prior to initiation.

92. If any additional work or modification to work will adversely affect work schedules or will require significant revisions to an approved schedule, the EPA and Ecology Project Managers shall be immediately notified of the situation followed by a written explanation within seven (7) days of the initial notification. Requests for extensions of schedule(s) shall be evaluated in accordance with Article XL (Extensions).

ATTACHMENT 4

**MUTUAL COOPERATION FUNDING AGREEMENT
BETWEEN
THE STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
AND
THE U.S. DEPARTMENT OF ENERGY**

This MUTUAL COOPERATION FUNDING AGREEMENT (hereinafter called "Funding Agreement"), effective upon the date of signature, is by and between the United States Department of Energy, represented by the Richland Operations Office, and the State of Washington, represented by the Department of Ecology.

Whereas, the parties have entered into an AGREEMENT IN PRINCIPLE BETWEEN THE STATE OF WASHINGTON AND THE UNITED STATES DEPARTMENT OF ENERGY (hereinafter called "the Principle Agreement"), effective the 27th day of February 1989, and;

Whereas, the Department of Energy (DOE) desires to provide funding to the State Agencies responsible for environmental oversight, monitoring and emergency preparedness services to DOE as set forth in the Principle Agreement and this Agreement; and

Whereas, the State of Washington is willing to perform the effort contemplated by the Principle Agreement and this Agreement, and report thereon as contemplated by said agreements; and

Whereas, this Funding Agreement is executed by DOE under the authority of PL 95-91 and other applicable law, and by the State of Washington, through the Governor, under the authority of Article III of the Washington Constitution and Washington Revised Code Chapter 43.06 and other applicable law;

NOW THEREFORE, the parties hereto agree as follows:

ARTICLE I - SCOPE OF AGREEMENT

1. The State of Washington will implement an aggressive environmental oversight program as contemplated by this Agreement and the Principle Agreement, in support of DOE's activities at the Hanford Site, including technical analysis, work to be performed under the Hanford Federal Facilities Agreement and Consent Order (FFACO) sharing of samples and data, public education and information exchange, and monitoring of air, soil, vegetation, wildlife, fish, foodstuffs, ambient radiation, and water in the environs of the Hanford Site. Consistent with the Agreement in Principle which

the parties have signed, the State will establish and staff an extension office at Hanford to assist in the performance of these services.

ARTICLE II - PAYMENT

1. In consideration of the State of Washington's performance of its responsibilities herein, DOE will make available to Ecology advance payments estimated to be \$2.9 million. This amount shall be provided through a letter of credit, which DOE shall establish, as follows:

For the period through September 30, 1989	\$ 500,000
For the period of October 1989 through September 1991 an estimated	\$2,400,000

2. The State of Washington agrees to use and apply the funds provided pursuant to this Agreement for the sole purpose of helping to defray the costs of its employees who are performing work under the Principle Agreement and this Agreement (salary and related costs), and the reasonable directly associated costs of the State's activities under the Principle Agreement and this Agreement. The State of Washington agrees to establish procedures which will assure that the funding is utilized as provided herein.
3. Funding is currently available only in the amount of \$500,000. Payments commencing in October 1989 are subject to the availability of funds appropriated by the Congress which DOE may legally obligate and pay.
4. Funding for the State for its CERCLA costs and for the payment of RCRA permit fees and reasonable service charges pursuant to applicable State law are covered under the Hanford Federal Facilities Agreement and Consent Order, and therefore, such costs are separate from this agreement.
5. DOE shall, subject to the availability of appropriated funds, continue to provide funding to the State to perform the work and services under this Agreement during the period federal FY 1990 through FY 1993. On an annual basis, the State shall submit to DOE a proposed work scope and cost estimates for work and services to be performed by the State under this Agreement during the upcoming federal fiscal year. Subsequent to review by DOE, DOE shall provide such funds to the State through its letter of credit in accordance with this Agreement. In the event DOE disagrees with the State's proposed work scope and cost estimates, or does not have sufficient funds available, the signatories to the Agreement in Principle will attempt to resolve the funding level. Failure to agree to the funding amount shall result in termination of this agreement.
6. Ecology's performance of its obligations under Article I shall be

excused if its costs are not paid pursuant to the terms of this Funding Agreement.

ARTICLE III - REPORTS, RECORDS AND ACCOUNTS

1. The State of Washington agrees to keep records and books of account, in accordance with generally accepted accounting principles and practices, covering the DOE's payment of funds and the State's use of such funds.
2. The State will provide to DOE, within 90 days after the end of each federal fiscal year, a Financial Status Report (SF 269, short form) showing the expenditure of DOE funds under this agreement.
3. DOE shall at all reasonable times be afforded access to the books and records and to related correspondence, receipts, vouchers, memoranda, and other data reflecting the use of funds provided under this Funding Agreement. The State of Washington shall preserve such books and papers in accordance with the retention requirements referenced in Article IV Examination of Records by Comptroller General.

ARTICLE IV - EXAMINATION OF RECORDS

1. The Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of 3 years after final payment of funds under this Funding Agreement, have access to and the right to examine any directly pertinent books, documents, papers, and records of the State involving transactions related to this Funding Agreement.
2. Expenditures are subject to the requirements of the Single Audit Act of 1984 (P.L. 98-502) and Office of Management and Budget Circular A-128 (Audits of State and Local Governments)
3. Nothing herein shall be deemed to preclude an audit by the General Accounting Office of any transaction under this Agreement.

ARTICLE V - OFFICIALS NOT TO BENEFIT

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of the Funding Agreement or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this Agreement if made with a corporation for its general benefit.

ATTACHMENT 5

**ENVIRONMENTAL RESTORATION AND WASTE MANAGEMENT FIVE-YEAR PLAN
ACTIVITY DATA SHEET**

Operations Office: RL
Installation: Hanford
Facility/Waste Area Grouping: All

ID NUMBER: RL-0598-01/5-31CATEGORY: ERPRIORITY: 1

Program B&R Code: GF-72-91-01
Activity Title: **ERRA PROGRAM SUPPORT**

<u>FUNDING SUMMARY:</u>	Budget Authority (\$000's)						
	FY 1989 Approp.	FY 1990 Amended Presid. Budget	FY 1991	FY 199	FY 1993	FY 1994	FY 1995
Operating	4500	6700	7800	10950	12800	17000	20100
Capital							
Plant:							
GPP							
Line-item							
Total	4500	6700	7800	10950	12800	17000	20100
<u>RD&D (non-add)</u>							
Operating							
Capital							
Plant							
Total	0	0	0	0	0	0	0

KEY WORDS:

CERCLA, ERRA, Quality Assurance, Community Relations Plan, Data Management, Tri-Party Agreement

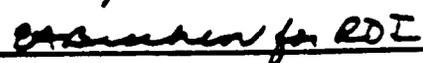
NARRATIVE:

o Description:

- Includes implementation of the Community Relations Plan developed in FY 1989 to support the Tri-Party Agreement.
- Provides Quality Assurance support to the Environmental Restoration Remedial Actions (ERRA) Program. Includes implementation of the Environmental Division QA Program Plan for the ERRA Program and assures integration of supporting QA activities (eg. audits, surveillances, procedure development/implementation) for all programmatic activities.

ID NUMBER: RL-0598-01/5-31NARRATIVE: (Cont'd)

- Provides data management for the ERRA Program. Includes operation of the Administrative Record and Information Repository required by CERCLA and the Tri-Party Agreement. This will provide the storage, indexing and retrieval of the thousands of individual data records which will be developed as part of the characterization, assessment and clean-up activities within the program.
 - Includes support to Washington State Department of Ecology for oversight of Tri-Party Agreement activities.
- o Basis of Cost Estimates:
- Preliminary estimates for requirements to support the expanding ERRA to achieve the clean-up milestones identified in the Tri-Party Agreement.
- o Milestones: None Identified
- o Alternatives: None
- o RD&D: None
- o Level of Confidence: Low

Prepared by: Approved by:  for RDI

ATTACHMENT 6

1.2.1.2 STATE, TRIBAL, AND PUBLIC PARTICIPATION IN THE PLANNING AND IMPLEMENTATION CYCLE



DOE is committed to the participation of affected States, Indian Tribes, and the public in the planning and implementation process at the Operations Office and Site levels.

Members of the State and Tribal Government Working Group emphasized the need for DOE's emerging open, participative culture to be reflected and institutionalized at all levels of the Department. The process depicted in Figure 1.2.1.2 responds to that need. This Plan embodies many comments and suggestions of the State and Tribal Government Working Group, which reviewed two preliminary drafts in June and July 1989. A Federal Register notice on this first Five-Year Plan will invite public comment to serve as input to next year's Five-Year Plan.

Between September 1989 and January 1990, Operations Offices will prepare detailed, site-specific implementation plans based on this Five-Year Plan and will also prepare Activity Data Sheets for use in formulating next year's Departmental Plan. Operations Offices will invite participation by one or more groups of representatives from State, Tribal, regulatory, and other affected parties.

When Operations Offices issue their implementation plans, they will invite public comment through vehicles similar to the Citizens' Forum at Richland, Washington, and to the groups convened at Oak Ridge, Tennessee, and at Fernald

and Portsmouth in Ohio. Operations Offices will incorporate public comments into their input to the second overall Five-Year Plan.

In the fall of 1989, the original State and Tribal Government Working Group will meet to discuss the planning and implementation process and to confirm the overall DOE responsiveness to their participation. The State and Tribal Government Working Group will also review the Department's Research, Development, Demonstration, Testing, and Evaluation Plan, scheduled to be published later this year, in the areas of public policy issues and the process for obtaining permits for emerging technologies ready for demonstration.

DOE will also develop a process whereby groups similar to the State and Tribal Government Working Group can participate in the formulation of a national prioritization methodology for the Plan's activities. The development process, which began in August 1989, is being scheduled on an optimistic timetable to yield a workable and acceptable prioritization system by April 1990. The methodology will be used in preparing future Five-Year Plans and budget requests.

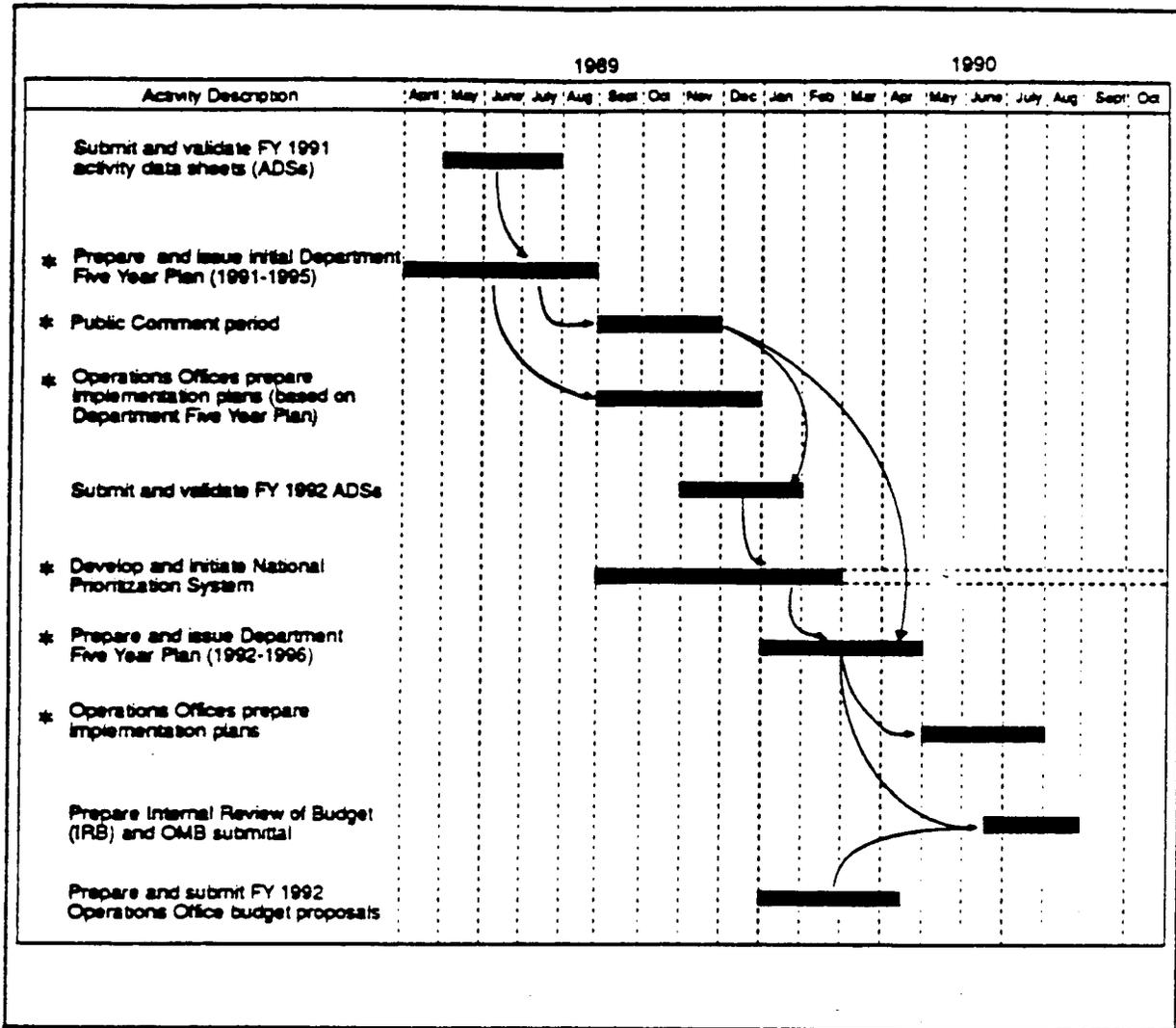


Figure 1.2.1.2. The second and subsequent planning/implementation cycles will follow the Federal budgeting calendar. Asterisks signal activities involving State, Tribal, and public participation.

ATTACHMENT 7

1.2.3 REGULATORY FRAMEWORK GOVERNING ENVIRONMENTAL COMPLIANCE



DOE Corrective Activities, Environmental Restoration, and Waste Management Operations Programs must comply with the Atomic Energy Act (AEA); other Federal and State statutes and regulations; and DOE Orders.

The AEA established the Atomic Energy Commission (AEC) in 1947. The AEA explicitly granted the AEC responsibility for protecting human health and the environment at nuclear facilities handling source, by-product, or special nuclear materials. (These terms are defined in the AEA.) The AEC and its successor agencies, including DOE, interpreted the language of the AEA to mean that they were self-regulating with respect to the environment. That self-regulation was accomplished through internal DOE Orders. Many non-AEA activities were added as the AEC was reorganized into the Energy Research and Development Administration (ERDA) and subsequently DOE.

As the number of environmental laws increased, most of DOE's facilities complied with them while other facilities continued to be regulated by DOE Orders. That arrangement was challenged by a suit [Legal Environmental Assistance Foundation (LEAF) v. Hodel, 586 F. Supp. 1163 (E.D. Tenn. 1984)] that charged DOE with violations of the Clean Water Act (CWA) and RCRA at the Y-12 Plant. The case was decided for the plaintiffs and DOE was faced with a massive task of bringing all facilities into compliance with a broad range of environmental laws, regulations, and requirements. Because of waivers of sovereign immunity, DOE was also

subjected to compliance with certain State and local laws and regulations. It is DOE's policy to comply with all applicable laws, regulations, and requirements as established by EPA, States, Indian Tribes, and local governments.

The following discussion describes the major Federal environmental statutes affecting DOE Corrective Activities, Environmental Restoration, and Waste Management Operations. While the LEAF v. Hodel decision addressed only the CWA and RCRA, it was generally recognized that the principle applied to other environmental statutes as well. Specific laws, such as RCRA, also waive sovereign immunity, allowing State or local statutes to be applied to Federal facilities. In cases where sovereign immunity has not been waived, it has become DOE practice to meet the provisions of State and local statutes unless doing so would violate other laws to which DOE is subject.

CERCLA addresses the non-Federally permitted, uncontrolled releases of hazardous substances to the environment. It mandates a response to the release of these substances, which includes hazardous wastes to the extent they are not addressed by other environmental statutes. CERCLA addresses the cleanup of former or otherwise inactive waste sites. The applicability of CERCLA to

ATTACHMENT 8

**YAKIMA INDIAN NATION INVOLVEMENT IN ACTIVITIES
AT THE HANFORD NUCLEAR RESERVATION
(U. S. DEPARTMENT OF ENERGY FUNDED)**

PROGRAM OR ACTIVITY

DATE

DRAFT ENVIRONMENTAL IMPACT STATEMENT DISPOSAL OF HANFORD DEFENSE HIGH-LEVEL, TRANSURANIC AND TANK WASTES: REVIEW AND COMMENT	INITIATED: 5/86 COMPLETED: 8/86
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The Department of Energy authorized the Yakima Indian Nation to undertake a comprehensive review of the Draft Environmental Impact Statement (DEIS) on Disposal of Hanford Defense High-Level, Transuranic and Tank Wastes in May 1986. On August 8, 1986, the Yakima Nation submitted its comments; reflecting a legal and technical analysis, the response was 104 pages, with 219 detailed comments. The Final Environmental Impact Statement, Disposal of Hanford Defense High-Level, Transuranic and Tank Wastes was issued by the DOE in December 1987.

DRAFT ENVIRONMENTAL IMPACT STATEMENT PROCESS FACILITY MODIFICATIONS PROJECT: REVIEW AND COMMENT	INITIATED: 4/86 COMPLETED: 7/86
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The Draft Environmental Impact Statement was prepared in compliance with the National Environmental Policy Act of 1969 and evaluates the potential environmental impacts of constructing and operating a segmentational dissolution facility as front-end modifications to the Plutonium and Uranium Extraction Plant at the Hanford site. YIN submitted comments on this DEIS to the DOE Richland Office at the DOE's request.

BASALT WASTE ISOLATION PROJECT: REVIEW AND COMMENT, MONITORING, CONSULTATION AND COOPERATION NEGOTIATIONS	INITIATED: 3/83 COMPLETED: 12/87
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In 1978, the Yakima Nation requested information from the Department of Energy regarding plans to characterize the Hanford basalt for suitability as a medium for geologic disposal of high-level nuclear waste. YIN participated in the following groups and committees as part of its review and monitoring activities:

**DOE Coordinating Groups:
Environmental
Waste Package
Quality Assurance**

Transportation
Licensing
Information Resources Management
Institutional and Socioeconomic

Washington Nuclear Waste Advisory Committees:
Hanford Historical Documents Review Committee
Environmental Monitoring
QA Task Force
Socioeconomics
Defense Waste

HANFORD ENVIRONMENTAL DOSE RECONSTRUCTION PROJECT: REVIEW, PARTICIPATION IN DATA COLLECTION AND DISSEMINATION OF INFORMATION
INITIATED: 2/88
COMPLETED: PENDING

The Yakima Nation participated in the review work of the Hanford Historical Documents Review Committee. This committee recommended a comprehensive study of radiation releases from Hanford in the 1940's and 1950's, coupled with an assessment of radiation pathways, to determine doses received by people living at or near Hanford during this time. The Department of Energy undertook this study, called the Hanford Environmental Dose Reconstruction Project, in February 1988. In May of 1988 a Technical Steering Panel was convened to oversee the project work performed by Battelle's Pacific Northwest Laboratories.

The Yakima Nation has participated in the study as an observer. As the project proceeds, the Tribe expects to furnish data necessary for Battelle's pathway analysis, and to disseminate information about the study to the Yakima people.

BASALT WASTE ISOLATION PROJECT
SITE RECLAMATION:
REVIEW AND COMMENT, MONITORING
INITIATED: 3/88
COMPLETED: PENDING

Reclamation activities at BWIP sites commenced in February 1988. The DOE Mission Plan stated that a site altered during the repository program "will be returned, as nearly as practicable, to its original condition." The Yakima Nation has reviewed and commented on reclamation plans for the Near Surface Test Facility, the Exploratory Shaft Site, the BWIP Boreholes, and has reviewed the Site Characterization Plan and the Preliminary Closure/Post Closure Plan for the 2101-M Pond.

ACCESS AND USE UNDER THE AMERICAN INDIAN RELIGIOUS FREEDOM ACT:
NEGOTIATION ON MEMORANDUM OF UNDERSTANDING
INITIATED: 9/88
COMPLETED: PENDING

In October 1987, the DOE requested recommendations from the Tribe regarding the potential reclamation of Gable Mountain, and

regarding access requirements related to religious use of Gable Mountain. The Yakima Nation submitted recommendations on October 30, 1987. On November 1, 1987, a Native American religious service was held on Gable Mountain, the first such service in some 45 years. Since then, the DOE and the Tribe have been involved in negotiations regarding procedures for access to the Hanford site, pursuant to the American Indian Religious Freedom Act of 1976. In September 1987, the DOE released a draft Memorandum of Understanding (MOU) for Native American Access to the Tribe. Review of the MOU and development of Tribal recommendations is currently in progress.

DRAFT HANFORD CULTURAL RESOURCE
MANAGEMENT PLAN:
REVIEW AND COMMENT, NEGOTIATION
ON MEMORANDUM OF UNDERSTANDING

INITIATED: 11/88
COMPLETED: PENDING

The Yakima Nation received a copy of the Basalt Waste Isolation Division Design for Programmatic Cultural Resource Research in December 1986. After a review and comment period, the DOE revised the cultural resource plan and expanded its scope. In November 1988 the Tribe received a copy of the Draft Hanford Cultural Resource Management Plan, with authorization to spend up to \$20,000 of its existing grant funds to review and comment on the document. The objective of the plan, as outlined in its introduction, is to:

"Establish policies and procedures for managing cultural resources on the Hanford Site that may serve as the basis for a programmatic agreement between DOE-RL, the State Historic Preservation Officer for Washington, the Advisory Council on Historic Preservation, and neighboring Indian tribes who wish to participate as signatories."

Review of this document is in progress, and comments will be submitted to the DOE. It is expected that the Hanford Cultural Resources Management Plan will serve as a framework for an MOU between the Tribe and the DOE.

ATTACHMENT 9

FEDERAL ASSISTANCE BUDGET INFORMATION FORM

FORM FIA 459C
10/88

FORM APPROVED
OMB No. 1900 0127

1. Program/Project Identification No. DE-FG06-83RL10545	2. Program/Project Title Nuclear Waste Grant Program
3. Name and Address YAKIMA INDIAN NATION P. O. Box 151 - Fort Road Toppenish, WA 98948	4. Program/Project Start Date 10-01-86
	5. Completion Date 09-30-87

SECTION A - BUDGET SUMMARY

Grant Program, Function or Activity (a)	Federal Control No. (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.	81.065	455,000		2,477,001		2,477,001
2.		3,712,147		3,912,047		3,912,047
3.						
4.						
5. TOTALS		4,167,147		6,389,048		6,389,048

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	- Grant Program, Function or Activity				Total (h)	
	m C&C	Review & Comment	Meetings	Public Information		
a. Personnel	7,937	17,060	20,966	45,888		
b. Fringe Benefits	1,512	3,250	3,994	8,742		
c. Travel	4,580	-0-	22,420	7,880		
d. Equipment	-0-	-0-	-0-	3,500		
e. Supplies	-0-	-0-	-0-	13,000		
f. Contractual	41,690	1,179,448	368,981	7,280		
g. Other Tribal Council	2,600	1,300	2,600	1,300		
h. Other	-0-	-0-	2,000	1,500		
i. Total Direct Charges	58,319	1,201,058	420,961	89,090		
j. Indirect Charges	3,175	6,824	8,386	18,355		
6. TOTALS		61,494	1,207,882	429,347	107,445	
7. Program Income						

FEDERAL ASSISTANCE BUDGET INFORMATION FORM

FORM (IA) 459C
7/8/88

FORM APPROVED
OMB No. 1970-0127

1. Program/Project Identification No.	2. Program/Project Title
3. Name and Address	4. Program/Project Start Date
	5. Completion Date

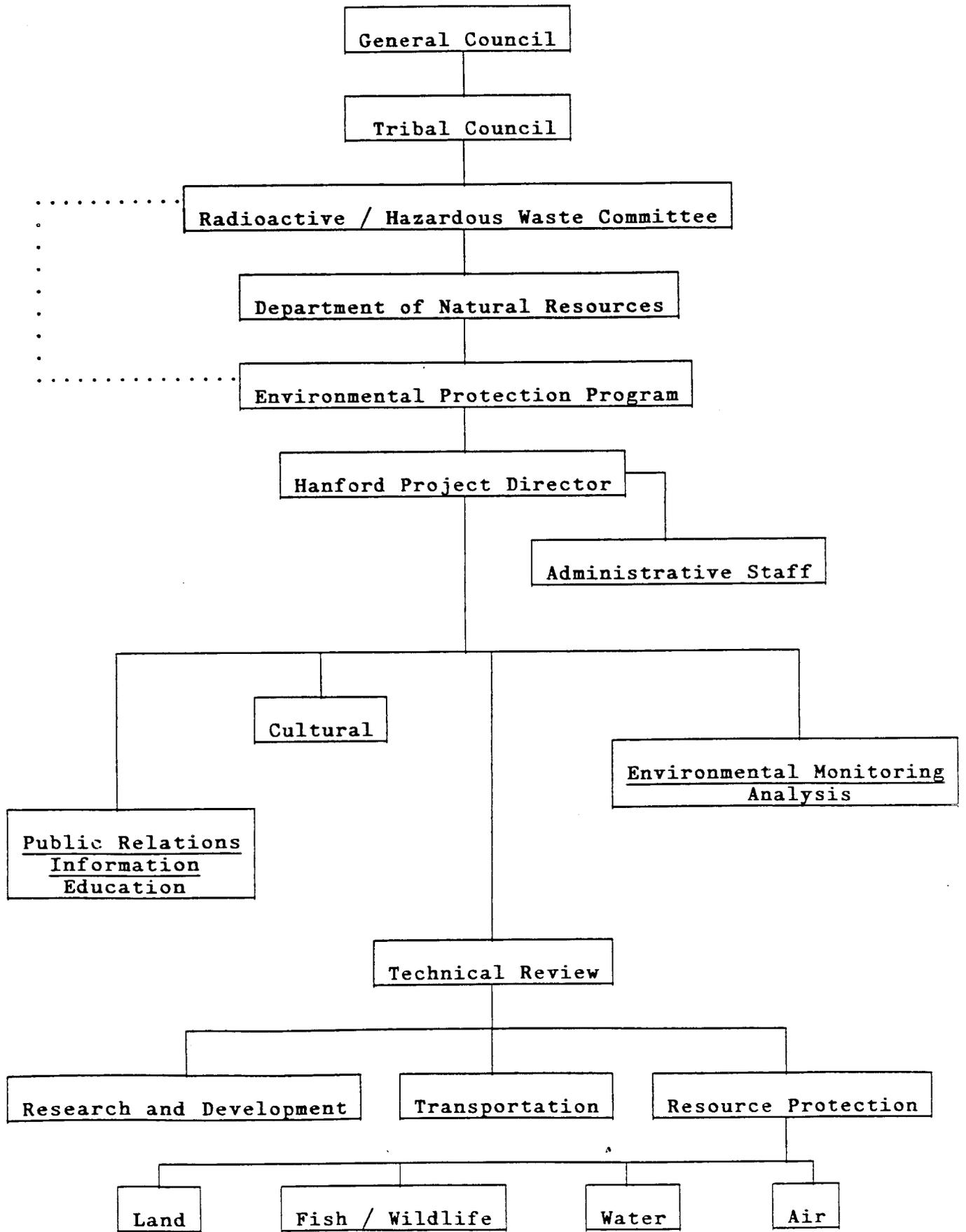
SECTION A - BUDGET SUMMARY

Grant Program, Function or Activity (a)	Federal Catalog No. (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		\$	\$	\$	\$	\$
2.						
3.						
4.						
5. TOTALS		\$	\$	\$	\$	\$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	- Grant Program, Function or Activity				Total (g)
	(5) OR Coord.	(6) Monitor & Analysis	(7) OR Admin.	(a)	
a. Personnel	\$ 19,375	\$ 17,060	\$ 53,759	\$	\$ 182,045
b. Fringe Benefits	3,691	3,250	10,241		34,680
c. Travel	-0-	-0-	21,620		56,500
d. Equipment	-0-	-0-	6,300		9,800
e. Supplies	-0-	-0-	3,000		16,000
f. Contractual	14,760	384,455	76,100		2,072,714
g. REVENUE Tribal Council	1,300	-0-	1,300		10,400
h. Other	500	-0-	18,045		22,045
i. Total Direct Charges	39,626	404,765	190,365		2,404,184
j. Interest Charges	7,750	6,824	21,503		72,817
k. TOTALS	\$ 47,376	\$ 411,589	\$ 211,868	\$	\$ 2,477,001
7. Program Income	\$	\$	\$	\$	\$

ATTACHMENT 10



YAKIMA INDIAN NATION
PROPOSAL FOR PARTICIPATION IN
DEPARTMENT OF ENERGY
ENVIRONMENTAL RESTORATION AND WASTE MANAGEMENT
FIVE-YEAR PLAN

Submitted to:

Mr. Leo Duffy, Special Assistant
Defense Waste Management
United States Department of Energy

Submitted by:

Melvin R. Sampson, Chairman
Yakima Tribal Council
Yakima Indian Nation

October 11, 1989