



*Nez Perce*

ENVIRONMENTAL RESTORATION & WASTE MANAGEMENT

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January 8, 2000

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**EDMC**

**RE: Environmental Restoration and Disposal Facility (ERDF) Mitigation Concerns**

The purpose of this letter is to document our concerns regarding the lack of any compensatory mitigation by the ERDF Project with respect to cells one and two.

Since 1855, reserved treaty rights of the Nez Perce Tribe in the Mid-Columbia have been recognized and affirmed through a series of Federal and State actions. These actions protect Nez Perce rights to utilize their usual and accustomed resources and resource areas in the Hanford Reach of the Columbia River and elsewhere. Accordingly, the Nez Perce Tribe Department of Environmental Restoration and Waste Management Program (ERWM) responds to actions that impact the Hanford ecosystem.

As you are aware has been in operation since 1995. The construction of cells one and two in 1995 destroyed 170 acres of some of the highest quality shrub-steppe habitat found at Hanford. Many bird species of concern such as the loggerhead shrike, burrowing owl, long-billed curlew, sage sparrow and various raptors utilized this area for nesting, foraging and cover. At the time this occurred, the Hanford Natural Resource Trustee Council (NRTC) worked with DOE and its contractors to come up with a mitigation plan to compensate for the 170 acres that were destroyed. The NRTC, in 1995, reviewed and commented on a mitigation plan that was written for ERDF, but the council never approved the plan. This plan failed to address compensatory mitigation for the shrub-steppe habitat that was lost.

The council requested that the contractor follow the guidance contained in the Hanford Site Biological Resource Management Plan (BRMaP). The BRMaP provides guidance on projects that require some level of mitigation as a result of habitat loss. The BRMaP was issued as a working draft in 1996 and was revised and submitted again to DOE as a final



document in December of 2000. The response of ERDF management in 1995-1996 regarding the guidance contained in the BRMaP was that it was only a draft and that they were under no obligation to implement it. ERDF management informed the council that they would consider implementing the guidance in the document only after the BRMaP became final.

Specifically, in a letter to the Washington State Department of Fish and Wildlife (WDFW) and US Department of Interior/U.S. Fish and Wildlife Service (USFWS) in September of 1995, DOE (Owen Robertson) stated *"that the ERDF project is not able to define mitigative actions beyond those listed in the MAP prior to having a site-wide policy in place. RL will continue to strive toward the goal of defining a site-wide mitigation policy in coordination with the Hanford Natural Resource Trustee Council. Following the establishment of a final site-wide mitigation strategy, the ERDF project will revise the MAP to reflect the established policy."* A complete copy of this letter is attached.

It is ERWM's contention that the draft BRMaP has served as DOE's mitigation policy since 1995. For years, the NRTC has worked with DOE to incorporate mitigation language based on the BRMaP, into Records of Decision, and worked with Hanford site contractors on mitigation and revegetation plans on several sites, including the Horn Rapids Landfill, the North Slope, the cross-site transfer line, vitrification project and the Arid Lands Ecology Reserve (ALE). All of the above mentioned projects and others have been willing to work with the NRTC on developing mitigation plans that have met the spirit and intent of the BRMaP and DOE's Biological Resources Protection Policy.

DOE's Biological Resources Protection Policy, *"ensures that biological resource values and ecosystem management principles are considered by all programs in all actions conducted on behalf of this Office. The Office will endeavor to enhance an awareness of, and appreciation for, biological resource values and their preservation, restoration and enhancement. RL will work together with its contractors to integrate biological resource management goals and administrative procedures into program and project activities to ensure potential adverse impacts to biological resources are avoided or minimized."*

During the last five years the ERWM has had the chance to meet with DOE management and express their concerns regarding the lack of compensatory mitigation at ERDF for cells one and two. Former DOE manager John Wagoner, conducted two tribal workshops to addressing various issues. At these workshops, ERWM expressed their concerns about ERDF mitigation and on both occasions were told that DOE would investigate and report back to the ERWM. Mr. Wagoner also met with us in Lapwai two years ago and promised to provide the ERWM with a response to our ERDF concern. We are yet to hear from Mr. Wagoner or his staff.

ERWM met with former Secretary Al Alm in Richland in 1997 and expressed the same concern. We were assured in that meeting that DOE would respond to us. We also brought up the same concern when we met with Assistant Secretary Ernie Moniz in Richland. The ERWM did not receive a response from either of these meetings. Finally,



we raised this same concern with you when you visited the Nez Perce Reservation this past year, and we have not received a commitment to address our concern.

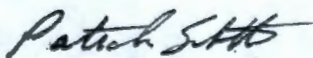
It also needs to be pointed out, that when DOE built cells 3 and 4 at ERDF, the project staff performed compensatory mitigation for the impacts that occurred as a result of the expansion. Funds were provided to purchase sagebrush seedlings that were used to revegetate nearly 200 acres on the Fitzner/Eberhardt Arid Lands Ecology Reserve. When this was done the BRMaP was still in draft form.

Since 1996, some DOE staff and its contractors have worked with the trustee council on mitigation projects with great success. The guidance that was contained in the draft BRMaP was utilized to come up with mitigation plans that were acceptable to all parties. We believe that ERDF project staff should be willing to do the same.

We feel very strongly that compensatory mitigation for cells one and two should still be accomplished following the guidance in BRMaP. This is especially important now in lieu of the fire this past summer that burned nearly 140,000 acres of shrub steppe habitat. Most of this area will be void of sagebrush for many years without human intervention and have adverse effects to shrub steppe dependent species. We have attached letters from the State of Washington, USFWS, Confederated Tribes of the Umatilla Indian Reservation (CTUIR), and the NRTC regarding ERDF. These letters should provide you with a good background and paper trail to address ERDF mitigation issues.

If you have any questions regarding this issue, please contact Dan Landeen f at 208-843-7375, email: [danl@nezperce.org](mailto:danl@nezperce.org).

Sincerely,



Patrick Sobotta  
ERWM Director

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