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NATURAL RESOURCE TRUSTEE MEETING

DRAFT AGENDA

THURSDAY, AUGUST 11, 1994

- 1:00 Welcome and Introduction (Bob Holt)
- 1:15 Definitions (Geoff Tallent)
- 1:45 Public Meeting Issue (Bob Holt)
- 2:00 Closure on 1100 Area ROD Issue (Geoff Tallent)
- 2:30 Break
- 2:45 Ecology/RL Conflict of Interest Recommendations (Geoff Tallent/Bob Holt)
- 3:30 Identify Current Level of Commitment to Trustee Council (All)
- 4:00 Draft Trustee Charter (Stawperson) (Geoff Tallent)
- 4:45 Wrap Up (Bob Holt)
- 5:00 Adjourn

FRIDAY, AUGUST 12, 1994

- 9:00 Morning Refreshments
- 9:30 Welcome and Introduction (Bob Holt)
- 9:45 Draft Strategic Plan Wrap Up (Joe Beck)
- 10:45 Break
- 11:30 Lunch
- 12:30 ERDF Draft Letter - Review and Discussion (All)
- 2:30 Break
- 2:45 Biological Resources Management Briefing (Bill Reid)
Issue by issue review - Guiding Principles to Specific Management Matters
- 4:00 Habitat Evaluation Procedures -- How habitats will be assessed (Liz Block)
- 4:45 Meeting Wrap Up (Bob Holt)
- 5:00 Adjourn

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Hanford Natural Resource Trustee Meeting
August 11 and 12, 1994
Shilo Inn-Rivershore
Richland, Washington

Attendees:

Cynthia Abrams, Pacific Northwest Laboratory
Mike Bauer, Yakama Indian Nation
Joe Beck, Pacific Northwest Laboratory
Liz Block, U.S. Fish and Wildlife Department
Charlie Brandt, Pacific Northwest Laboratory
Chris Burford, Confederated Tribes of the Umatilla Indian Reservation (CTUIR)
John Carleton, Washington Department of Fish and Wildlife
Kevin Clarke, U.S. Department of Energy, Richland Operations Office
Ted Clausing, Washington Department of Fish and Wildlife
Kathleen Connor, U.S. Department of Energy, Richland Operations Office
Jean Dunkirk, Westinghouse Hanford Company
Dirk Dunning, State of Oregon Department of Energy
Alden Foote, U.S. Army Corps of Engineers
Pat Fredete, U.S. Department of Energy
Larry Gadbois, U.S. Environmental Protection Agency
John Hall, ASCI, Pacific Northwest Laboratory
Doug Hildebrand, U.S. Department of Energy - Richland Operations Office
Bob Holt, U.S. Department of Energy - Richland Operations Office
Pam Innis, U.S. Environmental Protection Agency
Jake Jakabosky, U.S. Bureau of Land Management
Kathy Leonard, Westinghouse Hanford Company
Tara Lucas, Pacific Northwest Laboratory
Paul Marchau,
Paul Nickens, Bechtel Hanford, Inc.
Bill Reid, Pacific Northwest Laboratory
Preston Sleeper, U.S. Department of the Interior
Geoff Tallent, Washington State Department of Ecology
RueAnn Thomas, CH₂M Hill
Linda Tunnell, Westinghouse Hanford Company
Dana Ward, U.S. Department of Energy - Richland Operations Office
J.R. Wilkenson, Confederated Tribes of the Umatilla Indian Reservation
Steve Wisness, Bechtel Hanford, Inc.

INTRODUCTION

Bob Holt welcomed attendees and visitors and opened the Trustee meeting at 1:00 p.m. Joe Beck then introduced the first agenda item. The meeting was turned over to Geoff Tallent for a discussion of definitions.

DEFINITIONS

The group discussed the definitions prepared by the Definitions Working Group. There were several suggestions made and discussions regarding additions, deletions, and modifications. Trustees were asked to mark up a copy of the definitions with their suggestions and forward them to Geoff Tallent.

PUBLIC MEETING ISSUE

Bob Holt led a discussion on the public meeting issue. This council is comprised of technical staff from multigovernmental agencies who need confirmation from their constituencies, and is not considered an advisory board. Based on the analysis done of the various state and federal regulations by DOE General Counsel, including the Sunshine Act of 1976, Federal Advisory Committee Act, CERCLA, Washington Open Public Meetings Act, and Oregon Public Meetings Law, the consensus is that these regulations do not specifically apply to the Hanford Natural Resource Trustee Meetings. It was recommended that the current meeting policy (meetings being open to the public) continue. It was also suggested that at some point in time the NR trustees schedule a public meeting to inform and educate the public about Natural Resource Trusteeship responsibilities.

1100 AREA ROD

Geoff Tallent led a discussion on a follow-up to the 1100 Area ROD presentation from the last meeting. There were many questions raised, including:

- Will Hanford be viewed as one ecosystem, or is each operable unit considered one site?
- Did the Preassessment Screen trigger the 3-year clock?
- Do we have to wait until remedial action is complete because the ROD is complete before the trustees can provide input on restoration?
- Was the ROD/remedial action decision carried out properly?
- What happens with subcontractors and leased land on the Hanford site?

Because there are so many unanswered questions, it was suggested that the 1100 Area ROD Working Group continue to explore options the NR trustees might have in responding to dissatisfaction with the 1100 Area ROD. At the very least, a process might be established where the trustees are automatically on distribution for documents which need review and comment. The process would include educating DOE-RL (RL), subcontractors, and the Tri-Parties regarding what the trustees statutory responsibilities are and how the trustees should fit into the process.

The 1100 Area ROD working group will meet via conference call on August 19, 1994, at 10:00 a.m. to discuss options. The Working Group consists of Mike Bauer, Chris Burford, Dave Conrad, John Hall, Kathy Leonard, and Geoff Tallent.

ECOLOGY/RL CONFLICT OF INTEREST RECOMMENDATIONS

Geoff Tallent discussed the issue of conflict of interest between Ecology and the NR trustees. He stated that, after discussing the issue with attorneys and other staff members at Ecology, the belief is that Ecology does not have a conflict of interest problem since they are not in the dual role of assessing damages and being liable for those damages. Since Ecology has multiple roles, they are striving to create a balance in their decision-making processes. Geoff indicated that the trustee role has been delegated down the management chain, and he is charged with participation in NR trustee activities. The specific hierarchy has not yet been clearly defined. Work is continuing on chain-of-command issues regarding signature authority, decision-making, and

other trustee activities. Ecology continues to actively work with other state agencies on natural resource issues. Geoff indicated that he was organizationally separated from the regulatory group at Ecology. He reports to Jeff Breckle. Although Geoff cannot stop a decision regarding restoration issues, he can elevate the concern and have input toward restoration decisions and the Tri-Party Agreement. Geoff will do a white paper for the next meeting outlining signature authority, Ecology's organization, and indicate Ecology's commitment level to the NR trustees.

Bob Holt discussed the DOE's multiple roles and the resulting conflict of interest issue. He indicated that the new RL structure has just been approved by DOE Headquarters (DOE-HQ). RL has created a position under the EAP organization for HEMP/NRDA program manager. Charles Pasternak has been assigned to that position. He brings with him knowledge and experience in natural and cultural resource issues. The Program people have recognized that there needs to be some independence for the department to speak on natural resources issues. The process for control and independence, however, is still undefined. DOE-HQ has a new committee which met and acknowledged the conflict of interest issue. Other governmental agencies dealing with defining PRP roles are the Department of Defense and the Department of the Interior. So far, RL and DOE-HQ are still wrestling with the multiple role issue. RL is working on a decision paper outlining what course of action it will take with respect to its roles and responsibilities. The other members of the NR trustees need to answer a few questions regarding the expectations they have of RL: (1) define what kind of autonomy will be acceptable to the NR trustees regarding DOE participation; (2) decide what criteria is expected regarding reasonable acceptable behavior; (3) define how the NR trustees can come to a consensus regarding its expectations.

Bob also mentioned a DOE memo regarding the Oak Ridge Site. This memo supported a "request for funding" of certain NRDA activities at Oak Ridge for the States of Tennessee and Kentucky. The memo indicated once an MOU outlining roles and responsibilities between DOE and the States is approved, funding for certain activities could be provided. This is an indication that trustee issues are finally getting recognition at the DOE-HQ level.

IDENTIFY CURRENT LEVEL OF COMMITMENT TO TRUSTEE COUNCIL

Preston Sleeper, from the regional office of the U.S. Department of the Interior, stated that depending on the travel budget, he has a commitment to participate in NR trustee council activities. However, his particular office will probably not participate a lot. The regional office will depend on the bureaus to provide important technical expertise. His office will become more actively involved when there are policy decisions to be made especially with regard to specific documents or major policy issues.

Liz Block, U.S. Fish and Wildlife Service, indicated that her personal commitment is very high. She has been directed to spend approximately 1/3 of her time on trustee issues. There are political issues regarding funding that she has to contend with and if funding in FY 1995 isn't obtained, her activity with the NR trustees will cease.

J.R. Wilkenson, Confederated Tribes of the Umatilla Indian Nation, stated that there is a high level of commitment from the tribes to see the NR trustee forum be successful. His perception is that the NR trustee council can assist trustees to fulfill their regulatory obligations effectively.

Chris Burford, Confederated Tribes of the Umatilla Indian Reservation, indicated that in his position as technical representative for CTUIR, he believes that participation with NR trustee activities is a very valuable exercise in the way that it brings people together to share ideas, convergent and divergent. When the NR trustee representatives can come together in unanimity, that is an impressive accomplishment; but even when there isn't total agreement, the NR trustees can be a valuable forum.

Dirk Dunning, Oregon Department of Energy, stated that Oregon's interest as a trustee is strong, but probably less than that of the other trustees. He said time commitments were a problem regarding the large number of issues relating to natural resources on the Hanford Site. Oregon's main interests relate to the Columbia River.

Bob Holt, U.S. Department of Energy, Richland Operations Office, indicated that DOE has a strong commitment to natural resource trustees based on the fact that they now have an individual focusing on natural and cultural resources. This increased staffing will enhance trustee activities in RL.

Jake Jakabosky, U.S. Bureau of Land Management, indicated that the BLM is committed because of the BLM lands involved on the Hanford Site. However, because of other pressing issues and projects combined with a shortage of funding for next year, Jake's level of involvement is undetermined at this time.

Mike Bauer, Yakama Indian Nation, said that YIN is planning on proceeding forward with the NR trustees, and hoped to see RL adequately define its position regarding DOE's dual role as PRP and trustee.

John Carleton, Washington Fish and Wildlife Service, stated that in the interim, his organization will be participating. He also indicated that Ted Clausen will be handling the technical roles of how his organization participates in Hanford Site natural resource activities.

Geoff Tallent, Washington State Department of Ecology, said that Ecology is committed to participating in NR trustee activities. He indicated that he will be dedicating a third to half of his time to trustee issues. Funding, however, may affect travel.

Larry Gadbois, U.S. Environmental Protection Agency, stated that the EPA is committed to being a resource to the NR trustees and doing whatever it can to facilitate the process.

DRAFT TRUSTEE CHARTER

Geoff Tallent led the discussion on the draft trustee charter. He indicated that this was just a draft and is intended to give the NR trustees a starting point. The charter is also intended to be general and flexible. Some questions raised during the discussion included:

- Do we need a charter? Should we be hammering out an MOU instead?
- If we do an MOU, can it be done in two phases, the first a general document with a clause indicating specific items to be addressed later?
- Is there another word that can be used rather than "clean up"?
- How will votes be counted when it comes to multiple trustees under a lead agency?
- Will NOAA be participating in this forum as a trustee?

Geoff requested that all participants read through the draft charter and provide him with their suggestions as soon as possible.

WRAP UP

Bob Holt closed the meeting with a couple of questions. The first question he asked was if there was any interest in another trustee hosting the next meeting. The consensus was generally favorable. Many trustees indicated having the meeting in other locations would allow their constituencies to attend, plus it would allow the trustees an opportunity to see other sites.

Bob also asked if the NR trustees would like to establish a chairperson for the council. It was pointed out that a chair is usually a person who represents an independent point of view. The suggestion was made that EPA might meet that criteria. By having a chairperson, some NR trustee documents could be signed by the chairperson, alleviating the cumbersome process of having every trustee or their designated constituency sign every document. The chair could also assist the facilitator in keeping documents, agendas, and meeting minutes flowing. The chairperson could coordinate NR trustee activities with the facilitator coordinating the meetings. The technicalities of appointing a chairperson and what their duties might be needs to be clearly defined.

Kathy Leonard gave an update on the facilitator contract. She said it should be awarded by September 15. There were some process problems which are being resolved. Questions were raised about whether a facilitator was needed. If the NR trustees decide they don't need a facilitator, the contract won't be awarded.

The meeting was adjourned at 5:00 p.m.

Hanford Natural Resource Trustee Meeting
August 12, 1994
Shilo Inn-Rivershore

Attendees:

Cynthia Abrams, Pacific Northwest Laboratory
Mike Bauer, Yakama Indian Nation
Joe Beck, Pacific Northwest Laboratory
Liz Block, U.S. Fish and Wildlife Department
Charlie Brandt, Pacific Northwest Laboratory
Chris Burford, Confederated Tribes of the Umatilla Indian Reservation
Larry Cadwell,
John Carleton, Washington Department of Fish and Wildlife
Allen Childs, Confederated Tribes of the Umatilla Indian Reservation
Kevin Clarke, U.S. Department of Energy, Richland Operations Office
Ted Clausing, Washington Department of Fish and Wildlife
Kathleen Connor, U.S. Department of Energy, Richland Operations Office
Jean Dunkirk, Westinghouse Hanford Company
Dirk Dunning, State of Oregon Department of Energy
Alden Foote, U.S. Army Corps of Engineers
Pat Fredete, U.S. Department of Energy
Larry Gadbois, U.S. Environmental Protection Agency
John Hall, ASCI, Pacific Northwest Laboratory
Doug Hildebrand, U.S. Department of Energy - Richland Operations Office
Bob Holt, U.S. Department of Energy - Richland Operations Office
Pam Innis, U.S. Environmental Protection Agency
Jake Jakabosky, U.S. Bureau of Land Management
Jeff James, Bechtel Hanford, Inc.
Kathy Leonard, Westinghouse Hanford Company
Tara Lucas, Pacific Northwest Laboratory
Launa Morasch, Pacific Northwest Laboratory
Dave Nylander, Washington Department of Ecology
Michael Sackschewsky, Pacific Northwest Laboratory
Amanda Stegen, CH₂M Hill
Bill Reid, Pacific Northwest Laboratory
Preston Slegger, U.S. Department of the Interior
Geoff Tallent, Washington State Department of Ecology
RueAnn Thomas, CH₂M Hill
Linda Tunnell, Westinghouse Hanford Company
Steve Weiss, CH₂M Hill
J.R. Wilkenson, Confederated Tribes of the Umatilla Indian Reservation

INTRODUCTION

Joe Beck welcomed participants back to the second day of the Hanford Natural Resource Trustee Meeting. He introduced an overhead presentation on the Strategic Plan.

STRATEGIC PLAN

Joe recommended the NR trustees prepare a tri-fold pamphlet on what the NR trustee council is, its purpose, vision, and public meeting policy. He also suggested the NR trustees prepare 2 or 3 sets of overhead presentations for NR trustees to use to communicate to constituencies and other groups information about the NR trustee group.

Joe proceeded with his overhead presentation. Below are some of the questions and comments regarding the presentations and related issues:

- One of the problems is that you indicate that we're here to "provide a forum for consensus based decisions." We are here for our constituency, not the NR trustees.
- Joe's response: we could modify it to read: "we prefer consensus, but when it's not possible to reach consensus, we would like to provide both sides of the issue."
- There was much discussion regarding word usage, including: mitigation versus restoration, rehabilitation, land use versus land restrictions. It was agreed that Geoff Tallent's Definitions Working Group should attempt to address these issues with input from the rest of the NR trustees.
- The NR trustees need to be aware that Benton County and the city of Richland are currently pushing for a site-wide plan, and that their goals may be counter to the goals of this group.
- The group discussed the possibility of doing informational presentations for the Hanford Advisory Board, DOE Senior Management, and to the Tri-Parties regarding the NR trustees. Tentative dates include a September presentation for Senior Management and an October presentation for the Hanford Advisory Board. Those who volunteered to be on the Outreach committee include: Bob Holt, lead, J.R. Wilkinson, Chris Burford, Dirk Dunning, Mike Bauer, Larry Gadbois, and Cynthia Abrams. The expectations include: (1) to get on agendas of HAB, Senior Management, and Tri-Parties meetings; (2) develop a rough draft presentation and fax the presentation to trustees; (3) identify the specific point of view of audiences so the presentation is appropriate for the audience; (4) identify presenters; (5) identify how the presentation will be made: verbal, overheads, multimedia. It was tentatively agreed that the presentation should be approximately 20 minutes long. Also that the presentation should cover 5 to 10 major points. It was also expressed that the group should be prepared to answer potential questions which will arise from the presentations.
- A management team was identified consisting of: the Charter Group with Geoff Tallent as lead and including Liz Block and Bob Holt. Their purpose would be to work on the charter, and identify critical issues.

- A technical team was identified consisting of: Allen Childs, lead, Larry Gadbois, Dirk Dunning, Geoff Tallent, and Liz Block for the purpose of identifying critical issues and agenda items.
- A team to follow up on the 1100 Area ROD was identified consisting of: Dave Conrad, Mike Bauer, Chris Burford, John Hall, and John Carleton.
- There was a discussion on the merits of spending any more time on the Strategic Plan. The feeling was that many substantive natural resource issues need to be dealt with and many attendees expressed the desire to get on with natural resource issues. It was decided that the Strategic Plan had merits for communication purposes, and that it has helped to coalesce diverse attitudes and values of the various trustees. It was also decided that it was time to divide into groups or teams and move ahead on concurrent paths. One team would be a technical advisory team and the other would be a management team.

ENVIRONMENTAL RESTORATION DISPOSAL FACILITY (ERDF) DRAFT LETTER

Liz Block led a review of the NR trustees draft ERDF letter. Liz pointed out that mature shrub stepp is present in the 200 Area. Such habitat is limited and would be very difficult to mitigate. The sensitive habitat has already been degraded by cumulative impacts from many projects in the area. Part of the problem seems to be in the site selection process. The site chosen for ERDF may or may not be appropriate, however, because the trustees never had an opportunity to review the proposed sites, the process should be revisited. Other points made during the discussion include the following:

- There is a need to have a comprehensive site plan for the plateau.
- Perhaps it isn't worth delaying clean up to pursue the review of the site selection.
- A dialogue with the agencies should be opened to find out how much of a delay and the impact of a delay should the site selection process be revisited.
- The site selection process has major flaws. Under regulatory guidance, the size was too large and should have been reduced before public review.
- Choosing one site was wrong.
- The group could oppose the selection of Site 3 resulting in some delay or simply not endorse Site 3.
- A request could be made that in exchange for not pressing for revisiting the site selection process a large portion of the shrub steppe be reserved and protected. Such an action could serve as a portion of reparation for damage in advance. This could create positive credits.
- It might be valuable to revisit the site selection process as a "lessons learned" activity.
- It would be very valuable to meet with the people who worked on site selection and let them know the trustees attitudes toward ecosystem and habitat evaluation.
- By revisiting the site selection process, there could be an opportunity to educate regulators and others for future activities.

- A concern was raised about delaying the processing of the waste and about the risks involved with keeping the waste in its current location near the river.
- We need to get more details regarding mitigation, and find out if we can codesign a mitigation plan.
- We don't know how to restore shrub steppe, or even if it can be mitigated.
- It is important to note that this was an engineering decision. This is an inadequate approach to NEPA. We need to find the best road through this situation and still address the key issues.
- We need to express to the Tri-Parties what we expect from them in order for them to be successful.
- If we're going to be effective in helping the Tri-Parties, we must be cognizant of their political realities.
- In the letter, it should indicate that the trustees propose that Tri-Parties meet with the trustees in (time frame) for a discussion of ERDF and a discussion of the process used in siting ERDF.
- It was recognized that this will be the NR trustees first real involvement, and that it is critical to approach this correctly.

It was agreed that a group be formed to work on another version of the letter. Liz Block, Geoff Tallent, and Mike Bauer will be on the subcommittee. They will work on rewriting the letter, incorporating comments, and fax the letter to the other trustees for approval.

BIOLOGICAL RESOURCE MANAGEMENT PLAN

Bill Reid provided a presentation on the Biological Resource Management Plan (BRMP). Bill indicated that the BRMP would review and create documents, and make recommendations regarding better ways to protect natural resources. One issue which needs to be addressed is finding an administrative management pathway to better manage the plan and process.

Bill said that Charlie Brandt is working on a mitigation plan which will contain mitigation strategies which would be provided on each project and will be referenced for use in the BRMP. It will apply to not just one project, but the whole site.

Other questions and comments made during the presentation:

- Will monitoring be addressed in the BRMP?
- Is the BRMP going to address economic issues versus human uses or services (tribal and public)?
- There is a plan for the river and one for the land. Will the two plans be integrated?
- Will this result in biological staffing or will this just result in recommendations?
- One of the problems of the Cultural Resources Management Plan was that it was never implemented, and we had the EMSL fiasco. The important issue is that the BRMP actually be implemented.

Bill stressed that this document would be a flexible strategy which will need to change as work progresses and circumstances change, and he said he would appreciate whatever input the Trustees might give him. His phone number is 509-372-1161, his fax is 509-376-3968, and his mailstop is K6-63.

ERDF HABITAT EVALUATION PROCEDURES

Liz Block gave a presentation on the ERDF Habitat Evaluation Process. ERDF is tentatively scheduled for habitat removal starting in October 1994. Since there is not enough time to fully assess the habitat, the U.S. Fish and Wildlife Service has recommended using ERDF surrogate sites for habitat assessment.

The purpose for ERDF habitat assessment was to measure habitat quality and do appropriate mitigation planning. The process was aimed at assessing ERDF habitat in particular and creating a methodology which could be used for other site evaluations.

Two objectives were presented: (1) look at listed or special species and develop methods for determining habitat suitability for those species and (2) assess habitat quality generally (not species specific). Part of this process would include a Habitat Evaluation Procedure (HEP), which takes individual or group species and measure habitat evaluations, looking at habitat variables that have been identified for that species. One of the things USFWS did was to use HEP to determine what species are only found in mature shrubs, only found in mature understory, and only found in contiguous habitat sites.

The HEP model is one method under consideration.

As the presentation continued, the following questions and issues were raised:

- There is no available data for some of the obligate species.
- There are species that are on the state threatened and endangered species list.
- There is so much variability with relation to seasonal fluctuations that when you try and count species, it is very difficult.
- There is a problem because destruction is scheduled to begin in October and the public comment period has not yet finished.
- The surrogate site species identification needs to begin immediately because once the land is disturbed, there may be degradation of intact habitat.
- How do we get the trustees involved in this process?

In conclusion, Liz asked the trustees if they would be interested in having a presentation on the Habitat Evaluation Process.

WRAP UP

Bob Holt asked who would like to host the next trustee meeting. Jake Jakobosky volunteered to host the next meeting in Spokane at the Bureau of Land Management office on September 7, 1994.

ACTION: The Outreach team will meet and create a draft presentation.

ACTION: The technical group will get together and set priorities regarding technical issues.

ACTION: The charter/administrative group will meet to set agenda and work on the draft charter.

White Paper -- Open Meeting Issue

Trustee Council Meeting

ISSUE: Is there an obligation by the Hanford Trustees to invite the public when the Hanford Trustees meet to discuss Hanford Natural Resource Issues? Should all meetings conducted by the trustees be open to the public.

DISCUSSION: The following is a brief summary of the requirements:

Government in the Sunshine Act of 1976

This federal law requires most meetings of multi-member federal agencies to be open to the public. However, it does not apply to agencies headed by a single official, such as DOE, the Department of Commerce (the parent agency of NOAA), or the Department of the Interior (the parent agency of USGS, the Fish and Wildlife Service, and the Bureau of Indian Affairs), or, of course, to state agencies. Accordingly, it would not seem to apply to meetings of the Hanford natural resource trustees.

Federal Advisory Committee Act

This federal law requires most meetings of committees of private citizens established to advise federal agencies to be open to the public. However, it does not apply to agency employees or contractors. FACA requirements include:

Advisory committees must be established by formal action of the agency head, with notice published in the Federal Agency and a committee charter filed with Congress

Advisory committee meeting must be open to the public

Timely notice of meetings must be published in the Federal Register

Meeting minutes must be kept and made accessible to the public, as well as other documents used or prepared by the committee

FACA defines an advisory committee to include any committee, council, panel, task force, or other similar group that is established or sued by one or more federal agencies to obtain advice or recommendations. Under FACA and the GSA rules governing FACA compliance by all agencies, the term excludes:

- Committees composed entirely of full-time federal employees (but according to at least one court this exclusion does not apply to committees consisting of both federal and state employees)
- Committees established to perform primarily operational as opposed to advisory functions
- Meetings initiated by federal officials for the purpose of obtaining the advice of individual attendees and not to obtain consensus advice or recommendations

There are no bright lines defining what is or is not a federal advisory committee subject to FACA. But the concept appears to be directed at the situation where there are one or more federal decision making agencies seeking policy advice from others. In the Trustee Council, all the participants represent agencies with decisions to make. They are attempting to coordinate their planning and to reach mutually consistent decisions to the extent possible, but neither DOE nor the other federal agencies are seeking "advice" from the other members of the council. Arguably, therefore, FACA would not apply to meetings of Hanford natural resource trustees.

CERCLA

CERCLA, the NCP and the Tri-Party Agreement contain provisions requiring public involvement in CERCLA decision making. However, these "community involvement" requirements apply to environmental restoration decision making, not natural resource damage decision making. Thus they too would not seem to apply to the process followed by Hanford natural resource trustees.

Washington Open Public Meetings Act (OPMA)

This state law requires most meetings of the governing bodies of Washington state agencies to be open to the public. However, "governing body" is defined to mean the multi-member board, commission, committee, council, or other policy or rulemaking body of a public agency or any committee that acts on behalf of a governing body, conducts hearing, or takes testimony, or public comment. This is a broad definition and can be interpreted to mean that it would not include meetings involving middle-level officials of agencies such as DNR or Ecology and thus would not seem to apply to meetings involving the Washington State natural resource trustees.

State and federal courts have identified several limitations to the applicability of OPMA:

- OPMA does not apply to meetings of a Washington agency governed by a single director
- OPMA does not apply to meetings of an external entity to which a Washington agency sends representatives
- OPMA does not apply to meetings involving a Washington agency's employees or technical representatives who lack authority to bind the agency

The participation of Washington agency representatives in Trustee Council meetings fall within all three of these limitations. Accordingly, OPMA should not apply to their attendance at Trustee Council meetings.

Oregon Public Meetings Law

This state law requires most meetings of the governing bodies of Oregon state agencies to be open to the public. "Governing body" is defined a little more broadly than in Washington and is defined to mean the members of any public body (a state agency) with the authority to make decisions for or recommendations to a public body on policy or administration. This could

conceivably extend to meetings involving middle-level officials of agencies such as DEQ who have the authority to make recommendations to the agency on policy and thus might apply to the involvement of such Oregon officials in natural resource trustee meetings.

CONCLUSION: Various federal and state laws require that certain agency meetings be open to the public. However, it would appear that none of these requirements strictly apply to meetings of the Trustee Council. As a matter of fairness and prudence it is recommended that Trustee Council meetings be open to the public except when they involve litigation sensitive matters.

Attendees
Hanford Natural Resource Trustee Meeting
August 11, 1994

NAME

SIGNATURE

Cynthia Abrams

Cynthia Abrams

Mike Bauer

Mike Bauer

Joe Beck

Joe Beck

✓ Liz Block

Charlie Brandt

Chris Burford

Chris Burford

✓ John Carlton

✓ Kevin Clarke

✓ Ted Clawsing

Dave Conrad

Jean Dunkirk

✓ Dirk Dunning

Julie Erickson

Pat Fredete

Pat Fredete

Roger Freeberg

Larry Gadbois

Larry Gadbois

John Hall

Doug Hildebrand

✓ Bob Holt

✓ Jake Jakabosky

Jeff James

✓ Kathy Leonard

Tara Lucas

Tara Lucas

Stephanie Page

Donna Powaukee

William Reid

Preston Sleeper

Geoff Tallent

RueAnn Thomas

Preston Sleeper
Geoff Tallent
RueAnn Thomas

✓ Linda Tunnell

Steve Weil

Russ Weir

Steve Wisness

Steve Wisness

Steve Weiss

Aug. 11 1994

Attendees

Hamford Natural
Resource Trustee
Meeting

Dana C. Ward

Kathleen Connor

Paul Nickens

Joe Williamson

Attendees
Hanford Natural Resource Trustee Meeting
August 12, 1994

NAME

SIGNATURE

Cynthia Abrams

Mike Bauer

Joe Beck

Liz Block

Charlie Brandt

Chris Burford

John Carlton

Kevin Clarke

Ted Clawsing

Dave Conrad

Jean Dunkirk

Dirk Dunning

Julie Erickson

Pat Fredete

Roger Freeberg

Larry Gadbois

John Hall

Doug Hildebrand

Bob Holt

Jake Jakabosky

Jeff James

Kathy Leonard

Tara Lucas

Stephanie Page

Donna Powaukee

William Reid

Preston Sleeper

Geoff Tallent

RueAnn Thomas

Linda Tunnell

Steve Weil

Russ Weir

Steve Wisness

Steve Weiss

Mike Bauer

Charlie Brandt
Chris Burford

John Carlton

Dirk Dunning

Larry Gadbois
John Hall
Doug Hildebrand
Bob Holt

Jake Jakabosky
Jeff James
Kathy Leonard
Tara Lucas

William Reid
Preston Sleeper
Geoff Tallent

James R. Wilkinson
Allen Childs - CTUR

PLEASE SIGN IN

<u>NAME</u>	<u>AFFILIATION</u>	<u>PHONE NO.</u>
Jean Dunkirk	WTC	872-2330
Steve Frant	PH L	509 376 9288
Kevin Kjarne (Cliff Ashley)	GSSC ()	(509) 376-1197
Jim Brent	US ARMY CQE	509 522 6500
J. R. Wilkinson	CTUIR	503/278-6105
Steve 2. Buford	CTUIR	503-228-0100
K. N. Clarke	DOE	509-376-6354
Steve Specht	DOI - Washington D.C.	(202) 208-3811
JOHN HALL	WASHINGTON DEPT. OF ENERGY WILDLIFE	509-736-3028
Bob Holt	DOE-RL	509-376-6341
ROGER TWITCHELL	DOE-ID	208-526-0776
Dusty Seyler	Council of Ministers	208 686-1800
Chuck Finnan	Council of Alaska Tribes	208 686-1088
KIM WELSCOTT	WTC	509 376-4372
Alex Teimouri	DOE	509-376-6200
John Bascetta	DOE/HQ	(202) 586-7917
Joel "Jabe" Jabeosky	DOI, BLM	(509) 353-2570
Larry Godbois	EPA	509 376-9884

Name	Phone / Fax #
KATE BENKERT	206/753-9440 FAX 206/753-9008
PRESTON SLEGER	(503) 231-6157 FAX 2361
Steve Fright	509 376 9799 9201
Bob Holt	(509) 376-0306 FAX (509) 376-0306
John Bascietto	(202) 586-7917; FAX (202) 586-3915
Alex Teimouri	(509) 376-6228 (509) 376-0306
Theresa Bergman	509-376-1669 509-376-9110 (fax)
Rick George	(503) 276-3449 / (503) 276-3317
John Bevis	(503) 276-3165
JR Wilkinson	503/276-0105 276-0540
Chris Burford	" " " "
Dirk Dunning	^{Oregon State} (503) 378-3178 ^{Dept. of Energy} Voice (503) 373-7806
Steve Cross	206 459 6675 206 459 6859
KEVIN CLARKE	509-376-6332 509-376-0306
Chuck Fman	208 686-1088 208 686 1182
"JAKE" JAKOBOSKY	(509) 353-2570 FAX (509) 353-2647
JOHN HALL WDW	736 - 3028 Ecology Knowl Office FA
Larry Gadbois	509 376-9884 376-2396
DONNA L. POWAUKEE	(208) 843-7375 (208) 843-7378
KIM WELSCH	(509) 376-4373 (509) 376-2816
MIKE BAUER	(509) 865-5121 x597 (509) 865-4713
Bob Cook Y/N	509 946-0101 509-943-8555
Russell JM Y/N	509 877 4151 509 877 4101
Jean Dunkirk	509 372 2330
Leland Seyler	(208) 686-1623 208-686-1182