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Special Sciences
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Program

CONFEDERATED TRIBES

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November 24, 1997

Toni Davidson
U.S. Fish and Wildlife Service
11103 E. Montgomery Drive, Suite 2
Spokane, Washington 99206

Subject: Specific Comments on Hanford 1100 Area PAS, Draft 2, Introduction

Dear Ms. Davidson:

Here are some specific comments regarding the introductory portion of the Draft 2 1100 PAS. I have commented on the general structure of this section in my two prior comment letters and in subsequent conversations. The purpose of this letter is to provide a more specific, line-by-line review of the introductory portion of the second draft. I hope these comments will prove useful to you as you re-draft this portion. Where I describe legal matters, I have generally left out citations, for the sake of brevity. If necessary, I can provide them. To verify any statements I make about grammar, syntax or elements of style, make reference to any commonly used style manual, such as The Elements of Style, The MLA Handbook, or The Chicago Manual of Style.

Page 1, paragraph 2, sentence 1:

This sentence is written in the passive voice and is confusing. Who is the actor? What is it that he or she must do? What is a "full assessment" (a term that has not yet been defined in the document)? Give the sentence an active voice and consistent terminology, as in: "A trustee may only proceed past the preassessment phase to a full NRDA if the trustee can demonstrate that the following conditions have been satisfied:".

COMMENTS ON THE INTRODUCTORY TEXT OF DRAFT 2, 1100 PAS

Page 1

TREATY JUNE 9, 1855 ♦ CAYUSE, UMATILLA AND WALLA WALLA TRIBE

Page 1, paragraph 2, item 2:

The natural resource trustee interest of the federal government can be exercised by more than one federal agency. A state government, like a tribal government, is required to exercise all of its trust interests through a single entity, which represents the entire trust interest of the state. Thus, it is more accurate to speak of a state government's trustee rights, rather than a state agency's. Change first line to read: "Natural resources for which a Federal agency, State or Indian Tribe may assert . . .".

Page 2-3, Discussion of exceptions:

In this section, you failed to copy the regulations accurately, causing the resulting language to be legally inaccurate, illogical, and ungrammatical. These failings can be corrected by transcribing the regulatory text accurately.

When you copied these exceptions from the Interior NRD regulations, 43 C.F.R. § 11.25(b), you failed to copy the introductory phrase accurately. You copied the phrase, "Damages excluded from liability under CERCLA include." Unfortunately, in the DOE regulations, items one through five do not complete that sentence. Instead they complete the sentence that begins: "The authorized official shall determine whether the damages:". By changing the phrase that comes before each numbered item, you change the meaning of the entire section. Unfortunately, the new language is neither logical, grammatical, nor legally accurate. These errors can be corrected by accurately copying the regulatory language.

You made a few other changes to this text when you copied it from the regulations. First, you changed the first word in item one from "Resulting" to "Results." The new beginning to item one changed the meaning of that section and made it legally inaccurate. You can correct this error by returning to the original language.

Second, in the Draft One PAS, you made a similarly small change to item two. You changed "and the release" to "The release." Unfortunately, having copied the wrong introductory phrase, the new item two was legally inaccurate in a way that would be very damaging to the trustees. In my comments to Draft 1, I told you how to correct the content of item two. Unfortunately, I did not realize that the true source of the problem was the inaccurately copied introductory phrase. I now recognize that the problem with item two will be corrected if you simply use the original regulatory language throughout.

In addition, in item one, you should copy all of the regulatory language. Your current use of ellipses is confusing. Finally, in item five, you must copy the entire regulatory text. The omission of some of the conditions makes the current language legally inaccurate.

I do want to address some larger questions regarding this section. You have listed the exceptions that appear at 42 U.S.C. § 9607(f)(1). Why have you listed these, and not the exceptions that appear at 42 U.S.C. § 9607(b)? Why is one set different from another?

Why are we listing exceptions to the Clean Water Act NRD provision, since apparently the 1100 Area contains no releases that are governed by the CWA (no discharges of oil or hazardous substances to the navigable waters of the U.S., adjoining shorelines, etc.)?

Finally, why are we listing any exceptions at all? It seems to me that we should only describe an exception if, indeed, that exception has some relevance for the rest of the document. While some of these exceptions may actually be relevant at the 1100 Area, such as exception numbers 2 and 4, the current text of the document does not integrate these exceptions into any portion of its analysis. Unless or until the document does this, any recitation of exceptions seems superfluous.

Page 4, sentence 1:

This sentence would read more clearly if it were split into two sentences. Place a period after PAS, followed by two spaces. Replace "and" with "It." Also, instead of stating that this document "follows the requirements," state what those requirements are and where they can be found, including their citation. Anything less just looks like posturing.

Page 4, sentence 3:

Since this is an NRTC-produced document, it is implicit that its scope was agreed upon by the NRTC. Delete this sentence.

Page 4, sentence 4:

The public has no need to know this information. Public documents do not usually describe the contracting arrangements by which contractors provide services to public entities. If you do go into these matters, you will have to demonstrate great sensitivity in how you describe them. At the very least it should be clear that the PAS is being produced at the instigation and to the requirements of the NRTC, in short, that it is being written by the NRTC. DOE's involvement, as an individual trustee as well as the PRP, has been to respond to the requests of the NRTC as a whole. The Spokane office of USF&WS is simply a contractor assisting the NRTC in the production of a document. The current sentence structure places the emphasis on the wrong parties. Keep in mind, initially the CTUIR proposed that it should contract with a private consulting firm, on behalf of the NRTC, for assistance in drafting this document. The DOE/Spokane USF&WS arrangement was modeled on that proposal. In either case the relationships are the same. The document is the NRTC's. This write-up should cast absolutely no shadows on that conclusion.

Page 4, second paragraph:

I agree that this PAS should wrap up the loose ends presented by the two prior pseudo-PASs. Nevertheless, if you are going to discuss these documents, you should go into more detail and be very clear about their inadequacies. Something along the following lines might work:

Two prior documents have been produced which purported to be PASs for the 1100 Area. Those documents were _____ and _____. Neither of those documents contained the type of analysis that is required to be contained in a PAS. Specifically, neither document _____ [whatever they were missing: You might have to write a sentence or two about each] _____. Moreover, those documents were drafted by only one trustee, not the NRTC, which consists of seven trustees for Hanford. In acknowledgment of the inadequacy of the prior efforts, that trustee is now co-authoring this PAS. Thus, this PAS is the first PAS for the 1100 Area to contain the legally required content and to represent the interests of all affected natural resource trustees.

Page 4-6, Site History:

This section needs a great deal of polishing. History is inherently controversial. The determination of what past events are significant says a great deal about what (and who) is significant today. For our purposes, we need to tailor this section to serve the best interests of the trustees, while providing an concise, accurate summary of relevant matters.

Suggested re-write for History section (perhaps it should be renamed "Background on the Hanford Site"):

The Hanford Site currently occupies 560 square miles of sagebrush steppe lands northwest of the City of Richland, Washington. Because of development in the rest of Central Washington, Hanford contains one of the largest blocks of relatively undisturbed sagebrush steppe in Central Washington. The Hanford Site is divided by the Columbia River, fifty-one river miles of which pass through Hanford. These miles, known as the Hanford Reach, constitute the only remaining unimpounded portion of the Columbia River located above the tidal zone. Because of the unique status of Hanford Lands and the Hanford Reach, as remnants of once much larger ecosystems, Hanford retains an abundance of once-common, indigenous species that have disappeared from much of the rest of their original range. Salmon, elk, and deer, burrowing owls and ferruginous hawks, bald eagles and white pelicans, as well as a wide variety of native plant are present at Hanford in numbers rarely found outside of the Site's boundaries.

The Hanford Site was established in 1943 as part of the U.S. Army's Manhattan Project. Hanford facilities produced the plutonium used in the

atomic bomb that destroyed Nagasaki. After World War II, additional facilities were constructed at Hanford to support, at various times, nuclear weapons production and atomic energy research. These facilities were clustered in a variety of areas around the Site. The areas were given numerical names, such as the 100 Areas, the 200 Areas, the 300 Area, etc. Although these facilities were located in different portions of Hanford, most of Hanford remained undeveloped. Currently only 6% of the Hanford Site is occupied by facilities.

One result of Hanford Site development has been the release of a variety of radioactive and chemically hazardous materials into the air, soil, surface water and groundwater of Hanford. In 1989, four sub-areas of the Hanford Site were listed on the federal facilities National Priorities List, created under 42 U.S.C. § 9605(a)(8)(B). That same year EPA, the Washington Department of Ecology, and the DOE entered into a federal facilities agreement commonly known as the Tri-Party Agreement, or TPA. The TPA sets the schedules and the decision making framework by which cleanup of Hanford is governed. Corrective actions under the Resource Conservation and Recovery Act, as well as response actions under the Comprehensive Environmental Response, Compensation and Liability Act are coordinated under the TPA.

Page 6-9, Description of the 1100 Area:

The "Background on the Hanford Site" text that I have suggested, above, would flow easily into the following portion of the document, which describes the 1100 Area NPL site. I would start off the discussion of the 1100 Area in the following way:

The 1100 Area is one of the areas of the Hanford Site listed on the NPL. The 1100 Area is located in the southeast corner of the Hanford Site, directly adjacent to the City of Richland. It is essentially an industrial area, which has served as a central warehousing, vehicle maintenance, and employee transportation center for the Hanford Site. Contaminants released in this Area have typically been associated with vehicle maintenance or releases from storage facilities. From an ecological standpoint, the 1100 Area is highly disturbed due to the presence of these facilities. The principle reason the 1100 Area was listed on the NPL was that it is located near the City of Richland's drinking water wells.

At the time the 1100 Area was listed on the NPL, certain waste sites located outside of the 1100 Area, in the Arid Lands Ecology Unit of Hanford, were included within the definition of the 1100 NPL site. This arrangement allowed for the ALE sites to be addressed more quickly and efficiently than would have occurred otherwise.

The Hanford Site's Arid Land Ecology Unit consists of 120 square miles of the Hanford Site located south of highway 240. The chief features of this area are the Cold Springs Valley and Rattlesnake Ridge. These lands were originally acquired to provide

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a safety and security buffer around high risk facilities located north of highway 240. No weapons production facilities were ever located south of highway 240. During the 1950s, a Nike missile base was established at the base of Rattlesnake Ridge to defend Hanford from air assaults. Later, a laboratory was established at the summit of Rattlesnake Ridge. Both of these facilities produced wastes that were disposed of on site, and which were investigated as part of the remediation of the 1100 Area NPL site. In 1969 DOE created the ALE reserve, which set aside these lands for the study of the native ecosystems of Central Washington. As a result, ALE is one of the largest, most undisturbed, healthy native ecosystems remaining in Central Washington.

I would then plug in a paraphrase of some of your existing text:

The 1100 Area NPL site consists of four CERCLA Operable Units (OUs). Three of these (the 1100 EM-1, 1100 EM-2, 1100 EM-3 OUs) are located within the industrial area at the southeastern end of the Hanford Site. The fourth OU, 1100 IU-1, consists of all of the sites on ALE.

I would follow this text with the text you have on pages eight and nine of the Draft 2 PAS, with the following exceptions.

Page 8, line 14:

A period should be followed by two spaces. Add a space between "units. " and "A".

Page 8, last sentence:

The sentence that begins "As part of the investigations . . ." is not an English sentence. It appears that you attempted to write two independent clauses, but the second clause has no noun (subject). Also, when two independent clauses appear in the same sentence, they must be joined by either a comma followed by a conjunction (" , and " or " , but ") or by a semicolon. Your only other option is to divide the sentence into two sentences. Anything else is a run-on sentence.

Page 9, line 5:

Delete the space between "BISRA" and the closing parenthesis.

Page 9, second paragraph, first sentence:

This is a run-on sentence. Two independent clauses are joined by a conjunction ("and") but no comma. Insert a comma after "1100 EM-1" and before "and" (It would not be appropriate to delete the "and" and use a semicolon here.). Otherwise the sentence is ungrammatical.

Alternatively, you could end the sentence at "1100 EM-1" and then begin a new sentence by writing "Likewise, the RAQs . . .".

Page 9, second paragraph, last line:

Replace "MCTA" with "MTCA."

Now that you have had a chance to review these comments, perhaps you can appreciate the frustration I have felt concerning the drafting of this PAS. Clearly, from my standpoint, the Draft 2 document you provided to the NRTC was far from complete.

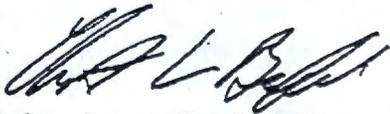
Some of the problems that I have noted here are minor, such as would creep into any draft. Extra or missing spaces are an example of this type of problem. I commented on these only for the sake of completeness. The larger problems I have identified are another matter. By this point in the drafting process, this document should not contain run-on sentences.

As for the general organization and content of this section of the PAS, I hope the examples I have provided give you a more concrete concept of what I have been wanting to see. By comparison with the existing text, they are written at a more introductory level, and their content is better organized. Superfluous information has been deleted.

During the recent phone conversation I had with you and Mr. Audet, I expressed the concern that I would end up having to write the entire introductory portion of the PAS. Clearly, in these comments, I have found it easier to simply re-write some sections rather than critique line-by-line their current comments. I did this because I felt it was more helpful (as well as easier) to demonstrate what I was looking for, rather than simply criticizing what I found.

I hope these comments will serve as useful guidelines for your next draft of the introduction.

Sincerely,



Christopher L. Burford, Esq.

Policy Analyst

Voting Member to the Hanford Natural Resource Trustee Council

cc: Members of the NRTC 1100 PAS Working Group