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DEPARTMENT of
NATURAL RESOURCES

Environmental
Planning/
Rights Protection
Program



CONFEDERATED TRIBES
of the

Umatilla Indian Reservation

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February 18, 1994

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MAR 11 1994

ERDF DMC

Dear Environmental Restoration Disposal Facility Representatives:

The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) are pleased to submit the following comments that identify key issues for consideration in the environmental analysis for the proposed Hanford Environmental Restoration Disposal Facility, Corrective Action Management Unit (ERDF, CAMU). These initial scoping comments, based primarily on the "Extended Public Notice, Washington State Notice of Intent for Corrective Action Management Unit-Hanford Environmental Restoration Disposal Facility, DOE/RL-93-101, Revision 0," are provided to outline both broad and specific issues that are important to the Tribes from an environmental remediation, restoration, and protection perspective, and which will need to be fully considered in the decision-making process for the ERDF.

The ERDF comprises a key and essential facility for facilitating remediation activities along the Columbia River and its development should be a high priority. Nevertheless, proper planning and preparation for development of the waste storage facility also should be completed so as to ensure that an environmentally sound and legally compliant facility is established that minimizes short-term adverse effects on resources while providing necessary waste storage capacity for Hanford Environmental remediation and restoration.

In addition, the proposed October 1994 completion date may be overly optimistic because of the large number of acres being committed, potentially significant connected actions such as new infrastructure development throughout the Hanford site, and the level of environmental review that is both required and necessary for such a major federal action.

A key concern regarding establishment of the ERDF in the 200 Areas is not directly related to this facility itself, but to the aggregate of on-going and foreseeable waste storage and management facility needs on the Central Plateau. Concern exists that a clear and comprehensive land use planning strategy that addresses future siting of foreseeable and numerous facilities in the 200 Areas, has not been fully developed. With the impending need to make available additional high-level waste storage tanks, siting of vitrification facilities and associated storage for both high- and low-level vitrified logs, storage for encapsulated fuel rods, the Multi-Function Storage/Processing Complex (MFSPC), and the ERDF, there needs to be a plan to coordinate land use for the 200 Areas to ensure that efficient (i.e., minimal land consumption) and safe use of the land base for these purposes is achieved. Moreover, such a plan would identify needs related to emergency response and evacuation and the necessary buffer zone should an emergency arise on the Central Plateau.

APPROPRIATENESS OF THE ERDF AS A PILOT PROJECT FOR NEPA/CERCLA INTEGRATION

At the January 10, 1994, meeting between representatives of the signatories to the Tri-Party Agreement (TPA) and CTUIR technical staff, we were informed that the planning process for the ERDF would be a "pilot project" for developing an integrated Comprehensive, Environmental, Response, Compensation, and Liability Act (CERCLA)¹ and National Environmental Policy Act (NEPA)² planning process. Specifically, this would be a CERCLA Remedial Investigation/Feasibility Study (RI/FS)³ process where "NEPA Values" would be integrated without actually performing a NEPA analysis.

We understand, from conversations with Tri-Party representatives for the ERDF, that the decision to use the CERCLA RI/FS process for establishing this facility in the 200 Area was made because the normal sequence of events for identifying waste storage facilities at individual Operable Units (OU's) is to include siting and management of such facilities in the Record of Decision (ROD) for those individual Operable Unit RI/FS's. This process is normally applied when the waste storage facility will be located within the OU. However, in this case, the ERDF will be located outside the many individual OU's where remediation activities will actually take place. The question arises as to whether CERCLA is the appropriate decision making process to be used under such circumstances.

¹42 U.S.C. §§ 9601-9675.

²42 U.S.C. §§ 4321 - 4370b.

³See 30 C.F.R. § 300.430.

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We believe that the ERDF project is fundamentally unsuitable as a pilot project for integrating these two processes because the CERCLA statute does not clearly apply to planning and siting a waste storage facility outside of individual operable units. The ERDF will be a Resource Conservation and Recovery Act (RCRA)⁴ facility. The applicable portions of RCRA encompass siting and managing hazardous wastes, treatment, storage, and specific management and operation requirements for disposal facilities.⁵ CERCLA is designed for evaluating environmental risks and performing removal, remediation, and restoration of sites that have been contaminated by hazardous substance releases.⁶ Hazardous substance releases have not occurred at the area proposed for siting the ERDF (Waste Management Area #1) and the site does not appear to be contaminated, at least near the surface. It is procedurally impossible to perform the RI/FS process for a site that has not been contaminated by hazardous substances.

Consequently, because CERCLA's RI/FS process does not apply to the ERDF, it is inappropriate as a pilot project for developing an integrated CERCLA/NEPA process that uses the RI/FS process as its basic framework for decision making. Even though the ERDF is a connected action to future OU remediation ROD's, siting the facility and conducting the necessary environmental review to develop alternatives, evaluate the effects of the alternatives, and develop mitigation measures would be more appropriately accomplished under the NEPA process.

APPLICATION OF NEPA

Regardless of the appropriateness of this project for NEPA/CERCLA integration, NEPA, of course, does apply to the ERDF project. Issues to be addressed by the NEPA process include definition of the proposed action, site selection, development of alternatives to the proposed action, evaluating and estimating environmental effects of the alternatives, and mitigating adverse environmental consequences resulting from implementation of the preferred alternative. DOE NEPA implementing regulations state that the "[s]iting, construction, operation and decommissioning of onsite storage facilities . . . for all waste other than high-level waste or spent nuclear fuel" is a class of action that normally requires a NEPA Environmental Assessment (EA).⁷ The ERDF is much more than an "onsite storage facility."

⁴42 U.S.C. §§ 6901 - 6992k.

⁵See 42 U.S.C. §§ 6921 - 6939b.

⁶See 42 U.S.C. §§ 9601 - 9626.

⁷10 C.F.R. § 1021, Appendix C to Subpart D, C16.

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It is a permanent disposal facility for hazardous and radioactive substances. As such, DOE should prepare an Environmental Impact Statement (EIS) for the ERDF project. NEPA requires that EISs be prepared whenever a federal agency is contemplating taking a "major federal action which significantly affects the quality of the human environment."⁸ CTUIR technical staff feel that the scope of the ERDF project, its cumulative impact when connected actions onsite are considered, and its irreversible and irretrievable commitment of a large segment of intact sagebrush/steppe habitat and associated natural resources all indicate that the ERDF project meets the NEPA requirements for an EIS.⁹

Note that the DOE NEPA regulations also classify the siting, construction and operation of disposal facilities for such substances as high level waste and transuranic waste as actions which "normally require EISs."¹⁰ The Expanded Public Notice does not specify if any of these wastes will go into the ERDF. If wastes of this nature will end up in ERDF, then the argument for an EIS is even more compelling.

On page 3 of 31 in the Expanded Public Notice it is stated that "the RI/FS and proposed plan also will address the issues and values normally found in a National Environmental Policy Act (NEPA) of 1969 review [sic]." NEPA is much more than a checklist and the regulations themselves do not provide an all-inclusive list of issues related to individual, site-specific proposed actions. Rather, NEPA is the federal government's basic national charter for protection of the environment that provides a framework for decision-making processes. This proposed plan should be completely reformatted so as to be consistent with the NEPA EIS process and to implement, in full, the requirements contained in the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act of 1969, as amended¹¹.

The CEQ regulations contain numerous provisions to ensure that federal agencies act according to the letter and spirit of the Act. It is DOE's own policy to follow the letter and spirit of NEPA, comply fully with the CEQ Regulations, and apply the NEPA review process

⁸42 U.S.C. § 4332(2)(C); 40 C.F.R. §§ 1502.3, 1508.18.

⁹See 40 C.F.R. § 1508.27.

¹⁰40 C.F.R. § 1021, Appendix D to Subpart D, D10 and D11.

¹¹Pub. L. 91-190, 42 U.S.C. 4321-4347, January 1, 1970, as amended by Pub. L. 94-52, July 3, 1975, and Pub. L. 94-83, August 9, 1975.

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early in the planning stages for DOE proposals.¹² This process, its provisions, and the "values" are the elements that need to drive the environmental review for the ERDF proposal.

The following Policy language from the CEQ Regulations is noted in our comments below. It is this basic intent that is required by law that needs to be implemented at Hanford with the overall goal and objective of implementing a planning process that fosters environmentally sound land use and management decisions.

Under § 1500.2, the Policy reads:

Federal agencies shall to the fullest extent possible:

- (a) Interpret and administer the policies, regulations, and public laws of the United States in accordance with the policies set forth in the Act and in these regulations.
- (b) Implement procedures to make the NEPA process more useful to decision makers and the public; to reduce paperwork and the accumulation of extraneous background data; and to emphasize real environmental issues and alternatives. Environmental impact statements shall be concise, clear, and to the point, and shall be supported by evidence that agencies have made the necessary environmental analyses.
- (c) Integrate the requirements of NEPA with other planning and environmental review procedures required by law or by agency practice so that all such procedures run concurrently rather than consecutively.
- (d) Encourage and facilitate public involvement in decisions which affect the quality of the human environment.
- (e) Use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment.
- (f) Use all practicable means, consistent with the requirements of the Act and other essential considerations of national policy, to restore and enhance the quality of the human environment and avoid or minimize any adverse effects of their actions upon the quality of the human environment.

¹²10 CFR 1021, Subpart A, General § 1021.101.

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The planning process for the ERDF proposal should follow the above regulations and integrate for consideration and evaluation the following more specific environmental planning elements, including:

- 1) Identification of the issues that are truly key to the project proposal and use them to drive development of the alternatives,
- 2) Development and consideration of a full range of reasonable and viable alternatives in detail,
- 3) Evaluation of the direct, indirect, and cumulative effects of the alternatives including the effects of irretrievably and irreversibly committing resources,
- 4) Evaluation and consideration of the connected actions associated with the proposal including development of new roads and railroads for transport of waste from remediation sites to the ERDF, and
- 5) Development of appropriate mitigation measures to reduce the magnitude of effects from implementing the action alternatives and to compensate for losses of resources or the services they provide.

If the Tri-Parties are serious about pursuing such a pilot project at Hanford, a more suitable project where CERCLA is clearly and directly applicable must be identified. Because a large number of remediation projects at Hanford are either on-going or soon will be initiated, identification of an appropriate project to use for developing an integrative process should not be difficult. CTUIR technical staff are very interested in assisting the Tri-Parties in selecting an appropriate pilot project. Moreover, Tribal staff are particularly interested in participating in development and implementation of the integrated process so as to ensure that culturally significant resources are protected, that future land use options are maintained, that appropriate "values" are included and fully considered in the analysis, and that effective opportunities for Tribal involvement in and ability to affect the process from beginning to end are preserved.

SCOPING ISSUES FOR CONSIDERATION IN THE ERDF EIS

Following are several key issues that are critical for developing a viable range of alternatives and in considering the environmental effects of the alternatives. Key issues should drive alternative development and provide the basis for evaluation of different siting and management scenarios and, ultimately, selection of the preferred alternative.

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1) **Future Site Uses Working Group Recommendations**

Siting of the ERDF should be consistent with the recommendations of the Hanford Future Site Uses Working Group. The working group identified a single cleanup scenario for the Central Plateau. This scenario assumed that future uses of the surface, subsurface, and groundwater in the areas immediately surrounding the 200 East and West areas would be exclusive¹³ and that the remediation goal for the buffer zone was unrestricted use¹⁴. The exclusive waste management area was planned to encompass the square boundaries of the 200 Area which was expanded to include the area lying east of the 200 East area where grout vaults were initially planned to be sited.

The working group also identified a temporary surface and subsurface buffer surrounding the exclusive zone that included the rest of the Central Plateau including the 200 North area. This zone extended to the base of Gable Butte. **The working group explicitly identified that CERCLA environmental restoration, but not RCRA waste management, activities would occur in the buffer in order to cleanup existing contamination in the buffer zone itself¹⁵.** The buffer zone has important value as wildlife habitat, contains intact shrub-steppe, and provides a relatively undeveloped area that should be maintained for its ecological integrity and value.

Referring to the site maps provided for review, it appears that areas available for potential siting of the ERDF have the potential to extend into the identified buffer zone. The proposed Waste Management Area #1 is significantly larger than the area envisioned by the working group for commitment to the ERDF. The EIS needs to fully recognize, account for, and justify any use of this buffer zone for waste storage and management even if the area is considered a contingency area for future waste storage.

¹³Term used by the Working Group to mean an area where access would be restricted because of risk to personnel who were trained and monitored for working with radioactive or hazardous materials.

¹⁴A term used by the Working Group to mean that contamination would not preclude any human uses of an area.

¹⁵The Future For Hanford: Uses and Cleanup, A Final Report of the Hanford Future Site Uses Working Group, December 1992, page 48.

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Is the commitment of the more than 4,000 acres to this facility necessary at this time? Are there other viable alternatives that could avoid allocating and adversely affecting the identified buffer zone? Can the site for the ERDF be re-configured to incorporate these concerns so as to minimize the area that is irreversibly and irretrievably committed for the waste storage facility? For example, and recognizing the need to maintain flexibility for future groundwater and/or soil remediation activities, could the ERDF, or portions of it, be located between the 200 West and East areas so as to minimize the allocation of currently uncontaminated and undisturbed areas? If not, under the preferred alternative, would the buffer zone be enlarged to meet the intent of the Future Site Uses Working Group?

As noted earlier in our comments, there is a need to develop a comprehensive land use plan to evaluate alternatives that consider probable locations of the numerous waste management and storage facilities planned to be located in the near future in the 200 Areas. Development of the land use plan should be guided by the Future Site Uses Working Group recommendations and should integrate emergency response and evacuation concerns related to the potential for an emergency in this area. The evaluation also should identify any changes or deviations from the vision of the working group in an attempt to provide long-term land use guidelines to facilitate waste management and development of new waste storage facilities in a manner that minimizes the amount of land committed, protects human health and the environment and meets the needs for the monumental task of environmental remediation and restoration of the Hanford site.

2) Protection of Groundwater

Several existing groundwater monitoring wells appear to be located within the proposed ERDF site. This creates significant concerns regarding potential groundwater contamination because of the potential for creating conduits that would permit or accelerate downward contaminant migration. How would these wells be dealt with to effectively prevent any contaminant migration to groundwater? Would these wells be preserved to serve as up- or downgradient monitoring wells for the ERDF facility and, if so, how would their compliance with RCRA standards be achieved?

Because of the known contaminated groundwater plumes located beneath at least portions of the proposed ERDF site, concern exists about the potential for interference with future groundwater remediation activities. How are future groundwater remediation needs and activities for these contaminant plumes being integrated into the planning process for development and construction of the ERDF?

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Are there any differences between the identified alternatives (construction of one large trench vs. several smaller trenches) related to protection of groundwater and vadose-zone soils, particularly with respect to being able to construct and maintain a liner and leak detection system with sufficient integrity to prevent or contain leaks? What additional mitigative measures could or will be implemented to eliminate the potential for soil or groundwater contamination?

The trench footprint should be developed with sufficient and appropriate design features so as to prevent potential soil or groundwater contamination, including placement of double liners and impermeable layers, development of a leak detection and leachate collection system, and sufficient up- and downgradient monitoring wells that would permit distinguishing ERDF-source contamination from that otherwise present or from other sources.

The Expanded Public Notice indicates that water will not be discharged to the aquifer. However, it appears to leave open the possibility that discharge to the ground may occur. Any discharges to the ground-- planned or possible-- during operation of the ERDF should be identified, quantified, and justified in this analysis. Every effort should be expended to eliminate such a need, to fully comply with TPA-mandated cessation of discharges to the ground by June 1995, and to fully integrate such discharges into the sitewide groundwater remediation strategy and protection plans being developed under TPA Milestone-13.

3) Protection of Shrub-Steppe Habitat and Wildlife Species

The Hanford site harbors some of the last remaining and largest undisturbed areas of native arid plant communities indigenous to the Tribes' historical territory and ceded lands in southeastern Washington state. Because of the importance of shrub-steppe in providing habitat for a wide diversity of wildlife including several obligate species, protection of as much of this resource as possible should be a common element to any proposed action associated with remediation or storage of hazardous wastes at Hanford. The DOE must take a proactive approach in maintaining the unique biological diversity and ecological integrity of the Hanford site and in protecting and maximizing habitat for all wildlife species, including those species protected under federal law and Washington state regulations.

Use of existing roads and railroads that connect the 100 and 300 Areas to the ERDF should be considered to the maximum extent possible before construction of any new roads/railroads is considered. An extensive network of existing transportation systems already exists at Hanford. Reconstruction of old railroads, within already disturbed,

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existing corridors, is highly preferable to new construction in currently undisturbed areas. If any new construction is needed, design and layout should consider, as a priority, avoidance of undeveloped and intact tracts of land containing shrub-steppe habitat.

Any proposed use of existing rock quarries or borrow sites and development of new rock sources for fill material or road and railbed construction should be identified in this analysis. Rock outcroppings are unique habitats and high-use areas for a variety of wildlife species, including threatened, endangered, and sensitive species. Development activities within these areally limited habitats may potentially disrupt use patterns or permanently alter habitat quality. Use of existing sources must be considered prior to development of new sources. However, proposed use of existing sources at the Gable Mountain/Gable Butte complex, and other prominences that are determined culturally significant, must not be considered further as these areas are significant historical properties and Tribally sacred sites.

Technical staff concur that construction of a single, large trench appears to be the most desirable alternative that best minimizes the amount of land committed for the storage facility. The large-trench footprint also would best reduce the cumulative impact on shrub-steppe and wildlife habitat. However, where is the excavated soil planned to be stockpiled? Is an area designed for this purpose and how many acres of land will be required?

4) Protection of Cultural Resources

On page 8 of the Expanded Public Notice, it is noted that cultural resource surveys were conducted on the primary 4.04 square mile portion of the proposed ERDF site. Are cultural resource surveys scheduled for the remaining 2.08 square miles planned for the site? How was the project area evaluated and stratified to determine what areas needed to be surveyed? What criteria was used to make these determinations? Have the areas affected by the proposal been evaluated to determine whether any areas qualify as traditional cultural properties? Has any geomorphological analysis been conducted to assess the potential for buried/deposited cultural resources?

Surveys for cultural resources in the area(s) under consideration, including any area planned for new road or railroad construction and development of new rock or borrow sources, must be completed and fully considered prior to development of alternatives. Use of Tribal cultural resources such as Gable Mountain and Gable Butte for these purposes should not be allowed.

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Personnel from the Hanford Cultural Resources Lab must consult with CTUIR cultural resources staff to review the cultural surveys both already completed or planned for the ERDF. Tribal cultural resource staff must be directly involved in determination of significance of cultural resources, development of protection measures, and if needed, identification of appropriate mitigation.

Tribal cultural resource staff have not received any cultural resource reports, appropriate site forms, and SHPO concurrence and, therefore, have no basis from which to evaluate the findings. We formally request this information for review.

5) Mitigation

Where committing or adversely affecting resources is unavoidable, full consultation with the Tribes to identify appropriate mitigation -- including restoration/enhancement of adjacent habitat and resources-- will be a required component for this project. Over 4,000 acres of relatively intact shrub-steppe habitat potentially could be irreversibly and irretrievably committed as a result of implementing the project as currently proposed. Therefore, the mitigation plan needs to consider the quality of resources lost, the loss of use of resources or habitat, and the sitewide cumulative effects related to further fragmentation of shrub-steppe from implementing the selected alternative. Protection and restoration of resources and mitigation for resources adversely affected as a result of sitewide remediation activities at Hanford needs to be approached in a comprehensive manner.

The collective effects of sitewide activities on cultural resources, which include all natural/biological resources, are, and will continue to be, highly damaging if the piecemeal tendency of current management practices continues at Hanford. Such resources now are ineffectively protected and piecemeal restoration efforts cannot accomplish desired results. The resources, the Natural Resource Trustees, and the DOE would greatly benefit from cooperative development of a Sitewide Trust Resource Management Plan¹⁶ that would provide the programmatic framework for: 1) effectively protecting and managing resources from an ecological approach, 2) identifying appropriate areas for resource mitigation/restoration, and 3) soundly managing resources for future needs while maintaining options. We repeat our recommendation here because the ERDF project is an excellent example of the critical need for development of such a management plan.

¹⁶CTUIR Comments on the Tentative Agreement on Tri-Party Agreement Negotiations, Section III, Problems of a General Nature, Section D, Development and Integration of a Sitewide Tribal/Trust Resource Management Plan, pg 10, December 1993.

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Potential areas for mitigating the effects of the proposed facility should be identified as an integral component of the proposed facility development plan. The CTUIR should be fully involved in identification of any proposals designed to mitigate the effects of resource damage and habitat loss resulting from development of the waste storage facility.

6) Public Involvement Plan, Consultation with the CTUIR

Milestone M-07-00-T01 contained in the Tri-Party Agreement (TPA) identifies a requirement for development of a Public Involvement Plan for the ERDF study process. This process was identified to oversee design, regulatory approval, and any subsequent expansion(s) of this proposed facility. Has the Plan been developed? The Tribes have not received this plan and formally request it for review.

The CTUIR's status as a sovereign government with distinct rights apart from the public, requires DOE and EPA, in particular, and in the interest of preserving good relations and communications, Ecology, to consult with the Tribes early in the planning process for a major action such as the ERDF. Consultation should be used as a means to ensure that Tribal values are duly and appropriately considered in the decision making process and to foster wise land use management decisions.

As we progress through this process, policy and additional technical level consultation will be required to ensure that Tribal values are recognized and that the project is designed with the overall objective of minimizing impacts on these values. Policy review by the CTUIR Board of Trustees will be necessary prior to finalization of the range of alternatives considered in the analysis.

CONCLUSION

We appreciate the opportunity to provide an overview of our concerns on the ERDF proposal and look forward to reviewing the draft alternatives. The above comments outline issues that we believe are key to evaluating and minimizing the impacts of the proposed ERDF. Please recognize, however, that this is not an all-inclusive list and the CTUIR reserve the right to identify additional issues throughout the planning process.

We recognize that this waste storage facility is a much needed and integral component of environmental remediation activities at Hanford and that it must be expeditiously developed. Nevertheless, committing the extensive resources necessary for construction of the storage facility is a painful and difficult decision that will necessarily result in further injuries to

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natural resources. We believe that environmental planning for the ERDF should include more than just integrating "NEPA values." Several of the components of a NEPA analysis are being implemented for the ERDF, but we need to develop a process that ultimately integrates the entire spectrum of decision-making tools into a single process (as opposed to a piecemeal approach) to foster better land management decisions. Development of alternatives using key issues to drive the analysis, evaluating the alternatives through these key issues, identifying the environmental consequences, through, in part, risk assessment, and developing mitigation to reduce these consequences could be combined into single administrative process that adequately achieves the desired end result in a timely manner. CTUIR technical staff intend to work closely with the Tri-Parties in resolving these issues and look forward to additional communications regarding CERCLA/NEPA integration.

We strongly encourage the DOE to develop a comprehensive land use plan for the 200 Areas to ensure that decisions concerning waste management and storage are being made with the benefit of knowing what the long-term strategy for the Central Plateau is as it relates to Hanford site remediation and restoration. The ultimate goal of providing sufficient and safe management and storage facilities in this area cannot be achieved without this approach.

We also recognize that ERDF development is an essential and critical component of getting on with the clean-up. Recognizing this dilemma upfront makes the decision no easier, but we strongly feel that the overriding need is to fully implement the strategy contained in the TPA to reduce contamination threats to the Columbia River and to human health. Mitigating the effects of adversely affecting resources in the 200 Areas and other areas by restoring and/or enhancing habitat/resources in other areas at Hanford will help to offset the realities of making such difficult decisions.

If you have any questions regarding the issues that we have identified or need further clarification, please contact myself or Allen Childs, CTUIR Hanford Restoration Project Environmental Biologist at (503) 276-3449.

Sincerely,



Rick George

Program Manager
CTUIR Department of Natural Resources
Environmental Planning/Rights Protection Program

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cc: Donald Sampson, Chairman, CTUIR Board of Trustees
William Burke, Treasurer, CTUIR Board of Trustees
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