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DEPARTMENT of NATURAL RESOURCES

Administration

CONFEDERATED TRIBES
of the
Umatilla Indian Reservation

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December 13, 1994

Sandy Simmons
Walla Walla District, U.S. Army Corps of Engineers
Building 603
Walla Walla, WA 99362-9265

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DOE-RL / DCC

Dear Ms. Simmons:

The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) has received your request for comments on the Draft North Slope Revegetation Plan for the Hanford site. As well, CTUIR staff attended the discussion meeting held by U.S. Army Corps of Engineers (ACOE) staff on November 22, 1994, and provided informal comments to the draft plan at that time. We also received your summary of the meeting and have taken this opportunity to detail several primary restoration requirements that require clarification and immediate attention by ACOE staff.

CTUIR staff understand that you are in receipt of comments from both the Hanford Natural Resource Trustee Council¹ (NRTC) and U.S. Fish and Wildlife Service^{2,3} (USFWS, Service). The CTUIR is a signatory to the NRTC letter, and is largely in agreement with the major points raised by USFWS. While most of those issues will not be restated herein, principal elements of concern to the CTUIR include:

- failure to address restoration planning as a primary component of the remediation process, and the consequent need for a complete restoration work plan with associated cost estimates for the various alternative actions proposed; development of this plan must take place in consultation with Tribes and Hanford NRTC members, should have been completed well in advance of restoration, and still has yet to be accomplished,

RL Commitment Control

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Richland Operations Office

¹ NRTC Comments to John Wagoner; 11/21/94
² USDI, USFWS Comments to John Wagoner; 9/26/94
³ USDI, USFWS Comments to Sandy Simmons, ACOE; 11/21/94

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- lack of adequate advance planning for revegetation activities, and consequent failure in providing local native seed for proposed revegetation,
- failure to classify sites according to ecological condition, vegetation and soils,
- failure to provide for immediate and long-term site protection throughout the process, and
- the need for development of a quantitative, statistically-defensible, long-term monitoring protocol.

In terms of CTUIR staff review of the Draft Plan, we must first point out that a comment period consisting of five working days is inappropriate for a planning document of this significance. As a federal agency, the ACOE has a trust duty to the CTUIR under the federal trust responsibility to Indian tribes. A component of the trust responsibility is the duty to consult with the CTUIR whenever ACOE activities have the potential to affect CTUIR trust resources. This duty has been enforced by numerous court decisions and is recognized in President Clinton's Memorandum on Government-to-Government Relations with Native American Tribal Governments (See 59 Fed. Reg. 22951, Section (b)).

Moreover, ACOE's work on the North Slope is being directed by the U. S. Department of Energy (DOE). DOE has adopted a policy which directs its interactions with Indian tribes. This policy was transmitted to DOE personnel in DOE Order 1230.2 (4/8/92). The DOE Indian Policy recognizes: 1) tribal rights in off-reservation resources, 2) the DOE's trust relationship with tribes, and 3) commits to "consult with tribal governments to assure that tribal rights and concerns are considered prior to DOE taking actions, making decisions or implementing programs that may affect tribes."⁴ DOE and ACOE have consistently ignored CTUIR staff statements concerning North Slope remediation and restoration, and have delayed consultation with the CTUIR on revegetation until an artificial "crisis" has been created. As a result, CTUIR staff conclude that, to date, both agencies have failed to fulfill their duties to consult with the CTUIR on this issue.

From time immemorial, all lands along the Columbia River have been important to the Tribes. Because of concerns about these lands, the CTUIR submitted comments early in the review process for the North Slope Expedited Response Action (ERA). Please review our formal comments, submitted nearly one year ago, wherein Tribal staff stated, "We recommend that a broad-based shrub-steppe native plant community restoration plan be developed to ensure that... a consistent coordinated approach for vegetation restoration ... is implemented."⁵ The CTUIR is not alone in concerns about planning for this project. The same issue was raised by the USFWS State Supervisor as recently as September 26, 1994⁶, and that letter also referred to two previous requests by the Service for detailed revegetation plans and consultation with ACOE.

Despite these requests, we are now nearly one year into the North Slope ERA process, yet the only meeting with Tribes and other Hanford NRTC members was convened with inadequate

⁴ DOE American Indian Policy, sections 1, 2, and 3.

⁵ CTUIR Comments to Dib Goswami; 1/13/94

⁶ Op cit.; 9/26/94

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advance notice, and only after the Plan had been distributed. The lack of involvement for all parties early in the planning process, coupled with differing concerns about North Slope restoration among those involved, has served only to make consensus development more difficult.

In the immediate timeframe, failure to address the most fundamental restoration planning issues (e.g., bulleted topics above) is of particular concern. Primarily because of the lack of timely planning, what can only be called "interim" revegetation actions are now being proposed by some individuals. Given the trust responsibility, the ACOE cannot force decisions on these or any other actions prior to carrying out proper consultation with the Tribes and NRTC members.

CTUIR staff note that progress was made in bringing together some of the NRTC members for the November 22, 1994, preliminary discussion of the Draft Plan. However, ACOE staff summary meeting minutes⁷ indicate that "initial agreements" were made on several important issues, including site prioritization and seeding for the current season. As discussed below, Tribal staff note that, despite extensive discussion, consensus among the parties has yet to be reached on these topics.

Nonetheless, there are several issues that continue to require ACOE staff immediate attention. These include addressing site protection needs now, and providing information on feasible alternatives for erosion control and site stabilization to the Tribes and NRTC members as soon as possible. Immediate site protection measures may include formal road closures and associated signage, in order to immediately prevent the public from using the network of temporary roads established during remediation activities, and to protect the remaining habitat from further degradation. CTUIR staff concur with concerned state and federal resource agency staff who have repeatedly requested these protection measures be immediately addressed.

There are a number of additional stabilization measures that also must be evaluated; alternative options for effective erosion control may include application of straw, hydromulch, erosion blankets, netting, tackifier, and/or use of geotextile materials. While all parties attending the discussion noted concern about soil erosion and weed invasion, ACOE has yet to evaluate alternatives applicable to the various restoration sites. CTUIR staff strongly emphasize the need for immediate action on these matters.

Contrary to information included by ACOE staff in the summary meeting minutes, CTUIR staff cannot support current-season seeding activities as a method of choice, or as an alternative measure to site protection or stabilization, for the following reasons:

- Current-season seeding would require use of "generic" cultivar seed, rather than local native seed; use of generic seed presents the risk of genetic contamination to local native species and is inherently less successful than local seed in contributing to long-term native plant community restoration.
- Seeding this winter means germination will not take place until spring; this cannot protect the sites from soil erosion or prevent weed growth over the winter.

⁷ ACOE Summary: North Slope Revegetation Plan Meeting, 11/22/94.

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- Without integration of site protection measures, activities associated with seeding at this late date can only serve to increase site disturbance and soil erosion in the short-term.

The ACOE's ERA document, referenced above, stated that "Disturbed areas will be reseeded, preferably with native vegetation adapted to the Hanford environment." Yet now, instead of utilizing local native species' seed that is adapted to Hanford, ACOE has proposed using "generic" or cultivar seed stock. Such generic stock is the end result of numerous years of selective cultivation for seed-increasing. The genetic material represented by cultivar seed was, for the species under consideration, collected in places as far away as Utah and Montana, and cannot, by its genetic nature, be adapted to the Hanford environment. Generic material also represents the very real potential for contamination to local native species.

Because the intent in utilizing native species is to preserve genetic diversity, resource agencies often employ "plant movement guidelines" to limit the use of unacceptable genetic materials and contamination of local genetic resources. While ACOE has yet to adopt guidelines for use of local native species, it is clear that the Hanford site supports hundreds of thousands of acres of local native seed source. The CTUIR and others have repeatedly identified the need for early restoration planning so that appropriate local species and seed for native shrubs and grasses would be available for revegetation activities.

ACOE staff should note that this issue has also been specifically addressed by Washington state Fish and Wildlife (WDFW) early in the North Slope ERA review process, wherein they noted, "Seed sources will be local, to ensure that seeds and plants are adapted to Hanford's climate and soils."⁸ CTUIR staff agree with this stance, and with the stated position of the NRTC and USFWS that planning and revegetation efforts *should have occurred this fall*. It is truly unfortunate that ACOE failed to address these needs early in the process. However, while progress with site protection can and should go forward, Tribal staff cannot support proposals for current season planting, particularly given the failure to plan and provide for local native seed material. This point can only be strengthened by the fact that ACOE has yet to provide even preliminary planning documents for any proposed revegetation; a comparison of costs involved for alternatives and a work plan will be need to be reviewed by the Tribes and NRTC members prior to any proposed field activities.

In terms of immediate action, CTUIR staff formally request that ACOE provide the Tribes and NRTC members with a summary analysis of the alternatives available for site protection within the next ten (10) working days. This must include the benefits of the various protection alternatives in both reducing weed establishment and soil erosion, the disturbance associated with each alternative, and the associated costs for each of the sites under consideration.

Furthermore, because of differing restoration objectives among those with whom ACOE is required to consult, CTUIR staff formally request that the ACOE employ a facilitator, and bring together the Tribes and other NRTC members immediately. Through facilitation, a decision on site prioritization, protection and stabilization can be made and implemented as soon as possible. At that point, a working group can be established to guide your staff in developing an analysis of future restoration options for the North Slope. In this way, a

⁸ WDFW Comments to Dib Goswami:1/5/94, emphasis added.

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comprehensive, cost effective and ecologically acceptable plan, meeting everyone's concerns, can be developed and implemented in a timely manner.

Thank you for the opportunity to respond to the North Slope Revegetation Plan. CTUIR staff stress that restoration is a fundamental component of all future work at Hanford. The ACOE's efforts with restoration for the North Slope is a high priority project that can help guide future site-wide efforts. If you have any questions about this letter or wish to contact our staff for follow-up action based upon our comments, please contact me, Janet Ebaugh, or Chris Burford, on (503) 276-0105.

Sincerely,



J.R. Wilkinson

Hanford Program Manager

cc:

John Bascietto, Environmental Guidance, DOE HQ
John Wagoner, DOE RL
Kevin Clarke, Indian Nations Program Manager, DOE RL
Glenn Goldberg, DOE Unit Manager, North Slope

Michael J. Farrow, Director, CTUIR Dept of Natural Resources
CTUIR DNR Hanford Program staff
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Hanford Natural Resource Trustee Council members

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Linda Carter, ACOE
Jane Gardner-Clayson, Project Manager, North Slope, ACOE
Robert Kent, WDFW
Jay McConnaughey, WDFW

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