

NATURAL RESOURCE TRUSTEE MEETING

March 28, 1994

Shilo Inn-Rivershore
Richland, Washington

- 8:30 Morning Refreshments
- 9:00 Welcome and Introduction
- 9:15 Presentation by the Law Firm of Preston, Thorgrimson, Shidler, Gates, & Ellis "NorthWest Conference on Natural Resource Damages" (tentative)
- 10:15 Break
- 10:30 Presentation Continued
- 11:00 Strategic Plan -- Continue rough draft work from February 17, 1994 Meeting
- 12:00 Lunch
- 12:30 Strategic Plan -- Continued
- 2:00 Break
- 2:15 Strategic Plan -- Continued
- 3:45 Break
- 4:00 Strategic Plan -- Continued
- 4:30 Wrap Up
- 5:00 Adjourn

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Draft Record of Discussion
NATURAL RESOURCE TRUSTEE MEETING
Shilo Inn - Rivershore
March 29, 1994

Attendees:

Cynthia Abrams, Pacific Northwest Laboratory
James Bauer, U.S. Department of Energy - Richland Operations Office
Mike Bauer, Yakama Indian Nation
Rocky Beach, Washington Department of Fish & Wildlife
Joe Beck, Pacific Northwest Laboratory
Liz Block, U.S. Fish and Wildlife Department
David Conrad, Nez Perce Tribe
Steve Cross, Washington State Department of Ecology
Christopher Burford, Confederated Tribes of the Umatilla Indian Reservation
Jean Dunkirk, Westinghouse Hanford Company
Dirk Dunning, State of Oregon Department of Energy
Steve Friant, Pacific Northwest Laboratory
Larry Gadbois, U.S. Environmental Protection Agency
John Hall, Washington Department of Fish & Wildlife
R. Douglas Hildebrand, U.S. Department of Energy - Richland Operations Office
Bob Holt, U.S. Department of Energy - Richland Operations Office
Joel Jakabosky, Bureau of Land Management
Dave Kaumheimer, U.S. Fish and Wildlife Department
Kathy Leonard, Westinghouse Hanford Company
Tara Lucas, Pacific Northwest Laboratory
Fred Morris, Battelle PNL/BSRC
Don Padgett, Westinghouse Savannah River
Cynthia Sarthou, Heart of America Northwest
Geoff Tallent, Washington State Department of Ecology
Linda Tunnell, Westinghouse Hanford Company
Steven Weil, Bechtell Hanford Inc.
James R. Wilkinson, Confederated Tribes of the Umatilla Indian Reservation
Patrick Willison, U.S. Department of Energy - Richland Operations Office

Welcome And Introduction

Mr. James Bauer, U.S. Department of Energy Richland Operations Office, DOE-RL, welcomed participants and observers to the fifth meeting of the Natural Resource Trustees meeting. Mr. Bauer encouraged the group to continue to work on the preliminary planning process and focus on areas where the group can move forward. Mr. Bauer thanked everyone for their hard work and participation.

Mr. Joe Beck, Pacific Northwest Laboratory, PNL, continued to act as facilitator for this meeting. He reminded the group of an agreement made at the last meeting that this process is not complete until each trustee representative's constituency agrees with the product. He pointed out that there are points within the plan that will require agreement and compromise.

The draft record of discussion from the last meeting and the draft strategic plan were discussed. The trustees were encouraged to make any changes they

deemed necessary. A methodology for handling corrections was suggested; minor word changes will simply be made, substantive changes, will be bracketed (including the author's name) and submitted to the other trustees for a consensus agreement.

There remained questions regarding public involvement in the trustee meetings. The questions included, should the meetings be open to the public, and to what extent. Mr. Holt indicated that DOE-RL does not consider this a public meeting, but rather a trustee meeting which is open to the public. Although it was generally agreed that the meetings should not be closed, several trustees expressed the opinion that at some point, and on some issues, the meetings may need to be closed to the public, or at least certain portions of the meeting. Ms. Kathy Leonard, WHC, agreed to look into the public meeting policy regarding any legal issues which may need to be considered.

Mr. Steve Cross, Ecology, inquired about the presentation that was on the draft agenda for the meeting. Ms. Leonard explained there was a conflict with the date of the meeting for the people who would be presenting and asked if the trustees would be interested in scheduling them to come and put on a mini-conference. Mr. Mike Bauer, YIN, recommended the conference. He felt it would be very valuable for the trustees.

Mr. Cross requested an update on the status of the facilitator contract. Ms. Leonard explained that the contract went out for bid approximately two weeks ago to 28 organizations. The bid should be awarded by the middle of May, with the trustee facilitator subcommittee participating in the final evaluation process.

Introductions were made of all attendees in order for new attendees to familiarize themselves with the group. Mr. Beck explained the agenda for the meeting and how the previous meeting had progressed. He explained that the group has been and will be dividing into smaller working groups in order to provide the baseline role of the council. He reiterated that this is a consensus process, and if there is an issue that needs to be resolved, it may need to go into the parking lot for future resolution. He also stated that it was recognized that each trustee was a representative of their constituency, each needed to represent that constituency, and each would need to go back and discuss the process with their individual constituencies.

The group was divided into two working groups.

Group 1 was tasked to identify key stakeholders with which the trustee council will be working with, dealing with, and/or interfacing with at some point in time. They were also tasked with identifying trends (political, environmental, and technical).

Group 2 was tasked to work on listing assumptions based upon the vision and goals of the council. Upon completion both lists were posted so everyone could look at them, discuss them, and determine if they were valid for each representative.

Group 1: Identified the Following Stakeholders and Trends:

Stakeholders

Federal Stakeholders

U.S. Department of Energy
U.S. Fish & Wildlife
Bureau of Land Management
National Oceanic and Atmospheric Administration (NOAA)
Bureau of Indian Affairs

Non-Federal Stakeholders

Washington State
Ecology
Health
Wildlife & Fish
Historical Preservation

Oregon State
Department of Energy
Environmental Quality
(Columbia River)

Native American Stakeholders

Yakama Tribe
Umatilla Tribe
Nez Perce Tribe
Wanapum

Non-Trustee Agencies, Groups and Interested Stakeholders

The Environmental Protection Agency (EPA)
Columbia River Inter-Tribal Fish Commission
Hanford Environmental Dose Reconstruction Project (HEDR)
Agency for Toxic Substances and Disease Registry (ATSDR)
Center for Disease Control (CDC)
Office of Management and Budget (OMB)
General Accounting Office (GAO)
Department of Defense (Navy)
Corps of Engineers
Hanford Advisory Board
Benton County
Grant County
Franklin County
Adams County
Intelligence Groups
Local/City Groups
Western Governor's Association
STGWG

Public Interest Groups
Environmental Groups
 local, regional, national
Substance Resource Users

Additional Stakeholders

Regional Agriculture Organizations
Business
Labor
Down winders
Physicians for Social Responsibility
Union for Concerned Scientists
Nuclear Regulatory Commission
Academia
Congress (NW Delegation)
Former land owners

It was pointed out that there is an incredible number of interested parties and stakeholders.

Trends

- Funding - more focus on deficit reduction and accountability (more emphasis)
- Reauthorization of Federal Environmental statutes, ie. CWA, CERCLA (to be determined)
- Regulatory Integration (Being achieved but very slow, stakeholder integration (mitigate before we litigate))
- Faster, cheaper, better (more pressure to achieve)
- Technology Development (not focused)
- Media Involvement (Greater Interest/participation, scrutiny)
- Public Involvement (greater interest/participation)
- Restoration Capabilities (increasing but costly)
- Landscape Management (a move from species specific to ecosystem)
- Macro Cleanup (a move from small units to geographical areas)
- Public Perception of risks associated with radiation and toxic material/waste (heightened concern)
- Concern over lack of timely cleanup/restoration (increasing)
- Concern over secrecy (increasing)
- Public appreciation of shrub-steppe ecosystem (increasing)
- Nuclear Disarmament Strategy (developing)
- Acceptability of long-term disposability of waste
- Increasing awareness and concern over immediate health risks/catastrophes (increasing)
- Potential for off-site waste to come to Hanford (potentially increasing)

Group 2: Identified the Following Assumptions Regarding Visions, Goals, and Group Understanding

Assumptions

- Individual trustees retaining the right to litigate
- Working towards minimizing the need for litigation
- No double recovery (divide expenses for restoration of resources to baseline - can only restore a resource once...doesn't express lost services by constituents of each trustee)
- Ultimate goal is restoration of injured Natural Resources and services they provide
- Restoration: restoring, rehabilitate, replace, or acquire the equivalent natural resource
- Earlier is better, proactive approach (save money, lost resources, services is better than waiting)
- Need to determine a NR baseline (temporal)
- Decisions made about remediation have an impact on restoration
- DOE and the regulators will listen to the "input" of the trustee council (in their best interest)
- Trustee's role is to make sure that remediation decisions support restoration
- NR damages under CERCLA apply to RCRA hazardous releases as well, (RCRA hazardous releases are defined as CERCLA haw substances)
- Operable units are artificial divisions for NR issues; a site-wide perspective is needed
- Current legal system depends on operable units
- Need to find a way to change (bend) legal system
- Integration of eco-system management with the existing and future legal framework
- The council is NOT an advisory group; we are a statutorily authorized entity with specific responsibilities
- The trustee's goal is to restore lost services and other compensable values, in addition to bring the resource back to baseline
- If a trustee does not insure complete compensation for their constituencies' loss, they have failed their constituency
- If a trustee cannot meet the goal stated above within the trustee council then the trustee will have to take alternative action, but we will do as much as we can within this body
- Remedial decisions are based, in part, on trying to avoid additional injuries to NR
- (Assuming) Funding will be adequate for the trustees to perform their functions
- (Assuming) Funding for restorations activities on the ground during remediation
- (Funding: pay me now or pay me later...In DOE's best interest to listen, restore..)
- The TPA reflects both clean-up and restoration of natural resources (some believe that the TPA is incomplete)
- The council is NOT an advisory group, we are a statutory entity with specific responsibilities

- DOE will actively involve trustees in mitigating additional environmental damage during restoration
- DOE will fulfill its legal responsibilities

General Discussion

Mr. J.R. Wilkinson, CTUIR, pointed out that part of the problem has been with the recognition of cultural resources laws and losses related to them.

Mr. Steven Weil, Bechtell, interjected that compliance with laws shouldn't be a budget issue, and if adhering to the law becomes a cumbersome process which interferes with restoration then a variance should be sought. If regulators say we need to comply with a law, then we will comply. Mr. Burford, CTUIR, pointed out that there is a certain amount of flexibility within many laws.

Mr. Bob Holt said since the last trustee meeting in February DOE has held internal meetings in an effort to eliminate the duplication of effort within RL regarding natural resource issues. He indicated that a letter from the Yakama Indian Nation applauded the efforts of RL regarding the trustee council issue and the progress the group is making, and recommending RL consider creating a Natural Resources Management Group. Mr. Holt has been tasked with the writing of the proposal to bring this group together.

Mr. Wilkinson asked if RL has straightened out the PRP/trustee conflict. Mr. Holt replied that RL is still working on this issue. DOE-RL would like to see dual representation at trustee meetings, one trustee representative and one PRP representative. The issue is still preliminary at this time.

Mr. Burford was interested in how the trustees will interact with the Tri-Party Agreement (TPA). Mr. Larry Gadbois, EPA, explained that the TPA only addresses a small amount of natural resource issues and that the trustees will be dealing with other issues as well as the TPA.

Mr. Beck suggested the trustees work on terms and definitions that everyone agrees upon for a glossary to the Strategic Plan. Mr. Wilkinson suggested looking at the terms and definitions that the Hanford Future Site Uses Working Group used in their report. Mr. Geoff Tallent, Ecology, will take the lead on this and work with Ms. Leonard. Others are encouraged to call Mr. Tallent with terms and/or definitions (206)407-7112. People who volunteered to help with terms: Chris Burford, John Hall, and Liz Block.

Mr. Cross suggested that the format of the strategic plan be altered. Mr. Cross felt that the current format made it difficult to review and comment on the document. He suggested page numbers and line numbers be added to assist with the review. Mr. Beck suggested the trustees wait until the Strategic Plan is finished and then review it upon completion of the document. The group might want to review the document together in a meeting. Mr. Beck encouraged individuals to call him with concerns so they can be resolved.

The group broke off into two groups both working on listing drivers and constraints, followed by a prioritization exercise. The group as a whole reviewed the others comments.

Group 1: Identified and Prioritized the Following Drivers and Constraints

Drivers

- Spend money efficiently
- Trustees
- Regulators
- Public Trust-responsibility of agencies to manage in the public's best interest
- Public Anger
- Need to do preservation & mitigation while options are still available
- Region-wide decline of resources-shrub steppe, androgenous fish, free flowing rivers
- Protection of cultural resources
- Access for cultural activities (Native American)
- Political Pressure, Congress
- Regional decline of resources
- Mitigation requirements
- The potential threat of litigation/paying out damages
- Milestones
- Statute of limitations
- Recreational needs
- Hanford Reach Environmental Impact Statement (EIS)
- Pressure to release (transfer) land
- A completed site conceptual model
- Protect employee's and public health
- Develop cutting edge clean-up technology
- Protect the environment
- Remediation
- Restoration

Constraints

- Limited funds
- Limited technology
- Limited Methodology RI/FS
- Traditional agency culture
- Conflicting trustee interest/internal/methodologies
- One federal/state agency CANNOT sue another
- Regional decline of resources
- TPA (existing)
- Lack of understanding by DOE with the trustee's role
- Lack of understanding by DOE of its natural resource management role
- Lack of understanding by the public on trade-off costs (clean up vs NR protection)
- Lack of early input by NR trustees into the process
- No uniform future land-use vision
- Milestones
- Magnitude and complexity of the problem
- Site is broken down into operable units
- Statute of limitations

- Ability to successfully enhance or replace shrub-steppe habitat and others
- Land transfer mechanisms
- Lack of site conceptual model
- Protect employees and public health
- Protect the environment

Key Drivers

- Economics - spend money efficiently
- Power of regulators
- Political pressure
- Milestones
- Need to protect employees and public health

Key Constraints

- Limited funds
- Magnitude and complexity of the problem
- Traditional agency culture
- Lack of future land use vision
- Lack of a site conceptual models

Group 1: Identified the Following Major Obstacles

Major Obstacles

- Institutional preference for remediation over NR protection priorities (for example, restoration)
- Lack of specific DOE mission to be a resource manager
- Trust among trustees
- Allocation of funds
- No agreed upon site-wide future land-use group
- Lack of education of program managers to assess the natural resources impacts and communicate with NR trustees early in the process [front-end loading]
- Complexity of the decision-making system that we want to influence
- Losing the window of opportunity to avoid further decline of natural resources and enhancement opportunities.

Ways to Get Around Obstacles

- Organization structure and funding; roles and responsibilities
- Establish effective communication
- Identify and examine trustee impact systems

Group 2: Identified and Prioritized the Following Drivers and Constraints

Drivers

- Comprehensive Environmental Response Compensation and Liability Act (CERCLA)
- National Environmental Policy Act (NEPA) [entry crossed out]
- RCRA [entry crossed out]
- Model Toxics Control Act (MTCA)
- Defense Authorization Act (DAA) [entry crossed out]
- Clean Water Act (CWA)
- Clean Air Act (CAA) [entry crossed out]
- Treaty Rights
 - Treaty of 1845 & later,
 - Native American Graves and Repatriation Act (NAGRA)
 - American Indian Religious Freedom Act (AIRF)
- Tri-Party Agreement (TPA)
- Obligations to constituents - natural resources and -NR uses
- Loss of resources & injury to resources
- Technological Needs for Clean-up
- Site data and information releases and impacts on NR
- Protection of worker health and safety [entry crossed out]
- Protection of public health and safety [entry crossed out]
- Protection of the environment [entry crossed out]

Constraints

- TPA Tri Party Agreement (problem more than constraint) (constraint for two trustees - DOE, Ecology)
 - Timing, funding, specifics
 - Previous work and ongoing activities (EISs,...)
- Technology needs
- Funding (clean up)
 - Defense authorization act
 - Other funding sources
 - Funding for trustees & trustee council
 - Personal time commitments of trustee and their representatives
- Obligations to our constituents
- Internally conflicting roles
 - DOE - RP vs trustee vs Lead/other trustee
 - Ecology RP vs Trustee vs lead/other trustee
- Culture at Hanford
 - DOE-HQ vs DOE-RL
 - DOE/contractor relationship
 - Lack of institutional commitment
- Impacts of other entities & groups
 - Lack of public trust
 - Proliferation of other bodies and potential conflicts
 - Hanford Advisory Board
 - Hanford Environmental Dose Reconstruction
 - Hanford Health Effects Council

ERMC
STGWG
WGA
DOIT Committee

- Information needs (knowledge)

Key Drivers

- CERCLA
- CWA
- Obligations to constituents
- Treaty rights
- Loss of resources

Key Constraints

- TPA
- Technology needs
- Funding
- Obligations to our constituents
- Internally conflicting roles
- Culture at Hanford
- Lack of institutional commitment
- Impacts of other entities
- Information needs

Summary of the Key Drivers and Constraints

- Regulatory Compliance - Endangered Species Act, ARARs
- Funding
- Technology Needs
- Information needs
- Communications

Both Groups Identified Critical Success Factors

Measures Of Critical Successes

- Open, honest cooperation of DOE
- Resolve DOE's internal conflict as responsible party and trustee
- Resolve Ecology's internal conflict as regulator and trustee
- Restoration of Natural Resources (NR)
- Establish baseline of NR (PNRS)
- Successful short-term project
 - Review 1100 Area ROD
- Develop Council charter
- Develop funding base

How

- Need to start actual work
- Develop organizational charter and operating rules

Roles and responsibilities

- Locate funding and create budget
- Establish communication points of contact
- Establish position on conflict of interest
- Identify short-term and long-term agenda and develop action plan

This concluded the work on the strategic plan for the day. The plan will be completed at the next meeting.

1100 Area Project

It was suggested that a smaller group of trustees be formed to review a project as a trial run as to how the Trustee Council will integrate into projects on Site. Mr. Burford volunteered to be the task leader for the review of the 1100 Area project. The ROD has been issued for the work in the 1100 Area. The group will consist of the following individuals: Mr. Chris Burford, who will be the task leader, Mr. Mike Bauer, Mr. Geoff Tallent, Mr. Dave Conrad, Ms. Kathleen Leonard (WHC), and Mr. John Hall. They will identify the natural resources and concerns of the area/project. The results and recommendations of this group will be presented to the trustees at the next meeting. The trustees will be able to learn from this project and be able to avoid future obstacles. This will be a test case.

Closing Remarks

The trustees agreed on the following:

- The trustees need to start actual work
- Develop a charter and operating rules/procedures
- Locate funding and/or budget
- Establish communication routes - points of contact
- Establish position on conflicts of interest
- Identify long-term/short-term agenda/an action plan

Mr. Beck suggested for the next meeting individuals think about how they can maximize their position as the Trustee Council. On the agenda for the next trustee meeting the group will discuss strategies: the what and how of the council. There will be a presentation of the 1100 Area project results from Mr. Burford's working group. It was agreed the trustees were interested in participating a mini-conference for NRDA issues. The next meeting will be two days May 10 and 11, 1994. Mr. Beck told the trustees they were through listing topics and they have 3 hours of strategic planning remaining.

Action Items:

- K. Leonard: Regarding communication between DOE and t rustees: can we get documents on disk?
Find out what the obligation is under the law to hold open meetings
- G. Tallent & Group: Define Terms: risk, remediation, restoration, assessment, baseline, services, mitigation, injury, and damages, and other terms as deemed necessary.
206-407-7112
- C. Burford & Group: Review 1100 Area ROD 503-276-0105
- B. Holt Find out about getting Bart Freedman to present an NRDA workshop in May.