Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

Steven D. Sites, EA Document Manager
Integrated Vegetation Management EA
US Department of Energy
P.O. Box 550 (A6-35)
Richland, WA 99352
IVMEA@rl.gov

September 19, 2011

Re: Integrated Vegetation Management on the Hanford Site, Richland, Washington, DOE/EA- 1728D

Dear Mr. Stites,

The Yakama Nation ER/WM Program (YN ER/WM) appreciates the opportunity to review and provide comments on the Integrated Vegetation Management (IVM) Environmental Assessment for the management of invasive species and noxious weeds on the Hanford Site, Richland, Washington (DOE/EA- 1728D). It is our understanding that the Re-vegetation Plan is still in draft form and will be finalized at a later date.

The Confederated Tribes and Bands of the Yakama Nation (YN) is a federally recognized sovereign Nation pursuant of the Treaty of June 9, 1855 made with the United States of America (12Stat. 951). The U.S. Department of Energy's Hanford site was developed within the ceded land boundary of YN, therefore the YN retains reserved rights to natural and cultural resources. There is no issue of greater importance to the YN than the protection of, and respect for treaty reserved rights, and the protection, preservation and perpetuation of these resources, which are sacred and sensitive to us and are inseparable from our way of life.

The YN ER/WM Program comments for the IVM Environmental Assessment are enclosed. Our comments identify several areas of significant concern.

DATA GAPS

It is impossible to offer meaningful comments on this EA with the following data gaps:

Cumulative Effects

This EA lacks the necessary cumulative effects analysis of past, current and proposed increased use of herbicides. Well informed decisions and comments cannot be made without this crucial information. This data is necessary to fully calculate environmental impacts of this proposed action. Please provide the cumulative effects analysis of herbicides.

Management Documents

The use of unrealized and/or draft documents such as the Adaptive Management, Alternative Management Plan and Re-Vegetation Plan cannot be fully considered with the regards to the IVM, as these documents do not exist yet.

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EDMC

Chemical
Have chemical methods been thoroughly reviewed and analyzed by DOE?

Short and long term effects to soil, native plants, biota, air and water needs to be considered.

Biological
Have biological methods been thoroughly researched by DOE?

Short and long term effects to soils, native plants, water, air and biota needs to be considered.

INTEGRATION
Coordination with other agencies as well as other entities included in multi-jurisdiction areas needs to be addressed.

Has DOE coordinated with private land-owners?

CRITERIA
Criteria used in decision making for choosing one method over another or combination of methods needs to be fully explained.

GUIDANCE DOCUMENTS
Consideration of YN position on CLUP.
Consideration of YN position on BRMaP.

How specifically is this EA coordinated with these documents?

WATER QUALITY
Concerns with regards to the synergistic effects between herbicides and current contaminants on groundwater and surface water.

SOIL
Updated and site specific soil profiles.

Effects of each method on soil.

AQUATIC HABITAT
What methods of protection to wetlands and aquatic habitat will there be?

Effects of each method on aquatic habitat and wetlands.

WILDLIFE
How will each method affect the various animal species in particular special status species?

AIR QULITY
Effects of dead bio-mass being chemically treated then burned.

NATIVE VEGETATION
Vegetation classification maps are too broad and not representative of smaller localized eco-zones.

CULTURAL RESOURCES
Methods of preservation and protection under National Historic Preservation Act

Post Office Box 151, Fort Road, Toppenish, WA 98948 (509) 865-5121

MONITORING

Success of eradication and re-vegetation.
Cumulative effects of herbicide use.
Cumulative impacts to biota.

Please refer to attachment for in depth comments and questions. The YN ER/WM Program looks forward to dialogue on these concerns and comments. If you have any questions, please contact me at (509) 452-2502.

Sincerely,

Russell Jim, Projects Manager
Yakama Nation
ER/WM Program

Enclosures:2

cc:
Vera Hernandez, RHWC
Warren Spencer, RHWC
Sam Jim Sr., RHWC
Raymond Smartlowit, RHWC
Ken Niles, Oregon Department of Energy
Phil Rigdon, YN DNR
Gabriel Bohnee, NPT
Stuart Harris, CTUIR
Wade Riggsbee, Yakama Nation ERWM
Administrative Record

DATA GAPS

It is impossible to offer meaningful comments on this EA with the following data gaps:

Cumulative Effects *(Sections 2.2 and 4.12)*

The proposed action states in open rangelands, DOE would *"more aggressively apply chemical methods" and "DOE estimates that up to 4,249 hectares (10,500 acres) of open rangelands per year would be treated by chemical and physical methods"*. This EA lacks the necessary cumulative effects analysis of past, current and proposed increased use of herbicides. Well informed decisions and comments cannot be made without this crucial information. This data is necessary to fully calculate environmental impacts of this proposed action. Please provide the cumulative effects analysis of herbicides.

The Yakama Nation Environmental Restoration Waste Management (YN ERWM) program is currently devoted time and funds to look at Cumulative Effects (CE) of ongoing programs at the Hanford Site by requesting herbicide application records from DOE and their contractors. The Yakama Nation ERWM program is involved in working on 20 years of records. We are still collecting this information. We are using the Council on Environmental Quality's (CEQ), January 1997 document "Considering Cumulative Effects Under the National Environmental Policy Act (NEPA)" to guide this effort. The CEQ's regulations for implementing NEPA defines Cumulative Effects as: "the impact on the environment which results from the incremental impact of the action when added to other past, present and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions (40 CFR §1508.7). This handbook places emphasis on the "scoping process", "Scoping allows the NEPA practitioner to "count what counts". DOE had in previous meetings denied scoping out a Cumulative Effects analysis. If the Yakama Nation is the only NEPA practitioner, then the analysis would reflect "what counts" to the YN and that would be human health and safety and natural foods and medicines through plant use on the Hanford Site.

Management Documents

The use of unrealized and/or draft documents such as the Adaptive Management, Alternative Management Plan and Re-Vegetation Plan should not be considered, as they do not yet exist.

How will this plan coordinate with a re-vegetation plan? The type of control used will directly affect re-vegetation management

How will these documents be integrated with BRMaP? The plans must be coordinated.

If an *"adaptive management"* approach is going to be a consideration of the proposed actions, more details which include evaluation of potential effects should be described. (Section 4.5.1)

Who has the responsibility for *"adaptive management"*? (Section 2.0)

Alternative management strategies must be implemented through a Wildfire Situation Analysis. Should prescribed burning exceed its boundaries it must be identified prior to performance of prescribed burning actions (contingency plans in place). (Section 4.7.4)

What type of ecological studies has been done to ensure methods used on a *landscape* level would enhance the health of the *landscape ecological system* as a whole? What level of tribal consultation/participation has been done with regards to the *landscape* approach? (Section 2.2)

Chemical

Have chemical methods been thoroughly reviewed and analyzed by DOE?

Short and long term effects to soil, native plants, biota, air and water needs to be considered. What data has been gathered to determine these effects? What studies have been used for reference?

Will there be an opportunity to review the list of herbicides used on the Hanford Site? Studies indicate Diuron persist in the environment and is toxic to humans (it has been characterized as a "known/likely carcinogen), and mammals and the aquatic environment. (Appendix A)

What research has been done and/or consulted to ensure success of application methods in a like eco-system?

Biological

Have biological methods been thoroughly researched by DOE?

YN has a concern w/ biological method's being introduced into the native ecosystem. Short and long term effects to soils, native plants, water, air and biota needs to be considered. What are long and short term effects of introducing biological methods? While these may produce immediate results, are we creating a long term problem to later deal with? Have studies been researched to show effectiveness/problems with this method in similar ecosystems?

Appendix C

The YN ER/WM Program suggests DOE review Appendix C. Hanford Site Vegetation Maps, and develop potential vegetation approaches for these areas, identify criteria details, and stipulate any Adaptive Management techniques that may be employed and include this information within this EA. These maps are not current and do not reflect fire activity from 2007 forward. (Section 4.13)

WE REQUEST AN EXTENSION OF THE 30 DAY REVIEW ON THIS DOCUMENT UNTIL THESE DATA GAPS CAN BE FILLED AND WE ARE ABLE TO REVIEW AND CONSIDER THE RESULTS.

INTEGRATION

Coordination with other agencies as well as other entities included in multi-jurisdiction areas needs to be addressed. How are these efforts being coordinated?

Has DOE coordinated with private land-owners?

"Lands managed by USFWS and WDFW are not within the scope of this EA. The EA addresses 84,596 hectares (209,040 acres) representing the "project area of the Hanford Site. (Section 3.1.1)

If an Adaptive Management approach is going to be a consideration of the proposed action, more details which include evaluation of potential effects should be described. (Section 4.2.1)

CRITERIA

Criteria used in decision making for choosing one method over another or combination of methods needs to be fully explained. The YN ER/WM requests Category I chemicals be used only as a last resort. (Section 4.7 and Appendix. A)

The two alternatives considered are not analyzed in detail and are not reasonable. The choice of alternatives had been reduced to the point where there is a bias for the No Action Alternative and Proposed Action. (Section 2.4) What studies and/or reasoning support DOE's decision that the Single Method Vegetative Management approach would not be effective?

There are no defined criteria within this document for choosing one method over another or a combination of methods. What are the criteria for a prescribed burn versus biological or herbicide control? What are the criteria when multiple methods will be used? Is it determined by land classification, project or area? Is it determined by type of evasive or weed?

How will it be determined which herbicide will be used? What if a chosen herbicide does not work?

What are the criteria for use of selective or non selective herbicides?

What is "*primarily cheat grass*"? Is there a criteria/percentage of cheat grass versus native vegetation that will determine the method of control? How will a ratio be determined? How will smaller pockets of healthy native ecosystems be protected? (Section 4.2.1)

What is the maximum size of "larger areas"? (Section 4.2.1)

What will be the criteria for aerial application with regards to drift, aquatic habitat, buffer zones and water resources? What herbicides will be used in aerial applications? How will this be determined?

What specific aquatic herbicides (host-specific biological agents) are being considered for application? How was this determined?

The YN ER/WM Program requests DOE clarify the criteria and methods to be used for the controls to be used in areas where Endangered Species, threatened, and special status species, microbiotic soil crusts, ground-nesting birds, small mammals are found. We have concerns over using mechanical, aerial and non-selective herbicides.

How will non-target impacts be evaluated prior to the decision to use aerial method? (Section 2)

Please define criteria.

GUIDANCE DOCUMENTS

Are guidance documents adequate for use in this document? Should they be revised? Are all finalized or still in draft form? (Section 2.3)

How will the YN documented position be considered with regards to the CLUP. (Section 2.3.1)
The first guidance document listed includes "DOE/EIS-0222, Final Hanford Comprehensive Land-Use Plan Environmental Impact Statement (CLUP) and associated record of decision. YN has previously made comments to the CLUP, see attached letter dated June 30, 1998.

How will the YN documented position be considered with regards to the BRMaP.

How specifically is this EA coordinated with this document?

WATER QUALITY

YN has concerns with regards to the synergistic effects between herbicides and current contaminants on groundwater and surface water. Will the mixture create larger problems?
"From the years of 1985 through 2010 nearly 24,000 data entries are documented in the Hanford Environmental Information System (HEIS) database relating to analyses for herbicides in groundwater. Groundwater samples have been analyzed by nearly a dozen analytical laboratories over the 25-year period. The EPA's "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," also known as SW-846 has been used to determine herbicide concentrations in Hanford Site groundwater samples. Of the nearly 24,000 data entries in the HEIS database for herbicides in Hanford Site groundwater, 99.5 percent of the data are non-detects. The remaining 0.5 percent of the data is estimated values at levels less than the Method Detection Limit, Required Detection Limit, or the Practical Quantitation Limit for the analyte. Based on these data, DOE does not expect impacts on groundwater from the application of herbicides in support of vegetation management activities conducted in the project area of the Hanford Site." (Section 4.4.3) Please consider synergistic effects to groundwater by herbicides plus other chemicals and/or radionuclides.

What consideration for surface water run-off is planned for those areas of open rangelands where DOE intends to more aggressively apply chemical methods?

How are high precipitation years with high river and groundwater levels taken into consideration?

SOIL

Updated and site specific soil profiles are needed. Soil survey is too broad and outdated to accurately show current soil types, and is not adequate for site specific analysis to determine how control methods will affect the soil. Any alteration in soil will affect the re-vegetation efforts and **needs** to be considered. Have the effects of each method on the various soil types been calculated, different methods will make changes in the soil composition and properties?

The YN ER/WM Program believes DOE should avoid application of herbicides in areas where cryptogrammic crusts, native plants, or aquatic plants exist. (Section 4.6)

AQUATIC HABITAT

What methods of protection to wetlands and aquatic habitat will there be?

Please define the effects of each method on aquatic habitat and wetlands.

What methods will be/or is used to prevent fragmentation of noxious aquatic plant species (milfoil)? Clarify aquatic habitat locations. Define the size and design of buffer zones around them.

As in other surface water and wetlands areas (the YN ERWM program considers Westlake, the vernal ponds near Gable Mountain and Gable Butte, the five (5) artificial ponds located in and adjacent to the 200 East Area [LERF & TEDF} as such. These pools can host freshwater crustaceans and other invertebrates and are of value to terrestrial species), consider only physical removal methods. YN ER/WM has concerns with regards to aerial spraying application within drift area of buffer zones.

WILDLIFE

How will each method affect the various animal species in particular special status species? There are Special Status animal species on the Hanford site (e.g. Burrowing Owl, Loggerhead Shrike, Sage Sparrow, Sagebrush Lizard, Townsend's Ground Squirrel, Black-Tailed Jack Rabbit, Columbia River Tiger Beetle, etc.) Herbicides are typically not acutely toxic to animals; however, subtle physiological and developmental effects can occur. Explain in more details how biological method application will be controlled to host specificity, community compositions and function, etc) on terrestrial wildlife/organisms/biota to changes in habitat due to impacts of proposed actions (i.e. use of an IVM approach)? (Section 4.5.1)

AIR QULITY

What are the effects of dead bio-mass being chemically treated then burned? Have the emissions been modeled, calculated and tested? Where is the study? What were the results?

NATIVE VEGETATION

The vegetation cover map is very broad and does not adequately represent smaller local eco-zones. Will there be site specific/project specific maps created showing vegetation cover prior to deciding the method(s) of vegetation management? (Section 3.0)

"Invasive plants and noxious weeds pose a serious threat to native biodiversity, wildlife habitat, and connectivity."

"Connectivity of terrestrial habitats is one of the features that promotes and sustains the biological diversity of species (Do Habitat Corridors Provide Connectivity, Beir and Noss 1998). Implementation of the Proposed Action would foster connectivity of terrestrial habitats by managing biological resources at a scale commensurate with the scale of the natural processes that sustain them rather than continuing the individual, project-specific, and localized efforts under the No Action Alternative. The proposed Action would consider communities, ecosystems, and landscapes to ensure protection for a large number of species and their interrelationships. For example, vegetation management under the Proposed Action would be conducted to maintain evolutionary and ecological processes; maintain fragmentation by promoting the natural pattern and connectivity of habitats; restore degraded resources to enhance ecosystem integrity; avoid the introduction of invasive plants and noxious weeds and expansion of these

species into native communities; protect rare and ecologically important species and unique or sensitive environments; maintain or mimic natural structural diversity; and monitor ecosystem integrity." (Section 4.5.1). Yakama Nation ERWM staff has previously stated our position on the BRMaP as it aligns with Daubenmire.

Please reconsider the following when referring to connectivity throughout the EA:

"Daubenmire demonstrates that the Columbia Basin is a diverse and complex mosaic of vegetation assemblages and in his publication he concludes "The situation is so complex that vegetation, climate and soil must all be considered in evaluating a badly disturbed landscape." "Apparently, there is no universally applicable conclusion, except that the situation must be worked out independently in each area. (Daubenmire, R. 1970. Steppe Vegetation of Washington. Washington Agricultural Experiment Station Tech. Bull. 62.)

What kind of timeline is there from eradication of invasive species and weeds to successful re-vegetation efforts? The control management and re-vegetation of an area should be considered a **single project** with **funding** and **monitoring** for each stage detailed in the project proposal. In other words the restoration of the area should be considered as a whole rather than a single effort of invasive and weed control.

What is the difference in the *biological uptake of contaminants in the invasive plants* versus the native plants? This document indicates there is reason for concern by the "*biological uptake*" of contamination by the invasive species and the subsequent transport of these contaminants. Is the uptake of contaminants from the soil, groundwater, or both? If the contaminants are present in the groundwater and soil then the new re-vegetated native plants in the area would also "*uptake*" these contaminants. What efforts will be made to ensure a healthy native plant community? (Section 2.4)

YN has concerns on the classification of the Westlake area. Is it considered rangeland or wetlands? How will the IVM be carried out in this area?

There are special status plant species on the Hanford site (e.g. White Bluffs Bladderpod, White Eatonella, Umtanum Desert Buckwheat, Awned Halfchaff Sedge, Desert Doddler, Geyer's Milkvetch). Herbicides applied to special status plant species, either directly or indirectly from spray drift, could damage or kill these species. The IVM approach for these areas should consider not using aerial spraying or prescribed burning. Any application of host specific herbicides/chemicals should be last resort, with non-mechanical methods the priority methods. (Section 4.5.3)

CULTURAL RESOURCES

Please describe the methods of preservation and protection under National Historic Preservation Act.

There are concerns with regards to prescribed burn within culturally sensitive areas, particularly along shore line and within 400 m of the river. How will cultural resources be protected by this method? What level of NHPA section 110 surveys can be expected for these projects? Who will manage the prescribed burns? Will there be an independent contracted crew? Will Hanford Fire Department only be used if the fire jumps prescribed lines? What level of cultural oversight/monitoring will be performed during these burns?

The EA states cultural *reviews "are conducted whenever projects are proposed in previously un-surveyed areas"*. A new undertaking must have a new cultural review regardless if the area has been previously surveyed or not. It is considered a new undertaking and effects must be evaluated (Section 3.6)

Please define "*as DOE deems appropriate*" on page 46? (Section 3.6)

Completed NHPA Section 106 reviews will need to be completed on **each** undertaking/project, with full consultation with tribes and other interested parties.

Any projects activities that would be considered an adverse effect to cultural resources and/or Traditional Cultural Properties will likely require a MOA to mitigate the adverse effects. Project managers should plan projects well in advance with early consultation to allow extra time for this process. (Section 3.6)

MONITORING

What actions will be established to ensure success of invasive eradication and establishment of desirable plant communities? What level of monitoring will be performed?

The YN requests the application records upon treatment. We also request time and location be recorded for the application record(s) for each treatment.

What are cumulative impacts to biota? Will this be monitored?

MISCELANOUS QUESTION

What measures will be taken or is taken to prevent off-project site transportation of invasive species?

Confederated Tribes and Bands
of the Yakama Indian Nation

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Established by the
Treaty of June 9, 1855

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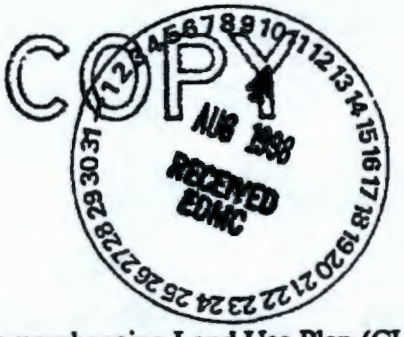
DOE-RL/DIS

June 30, 1998

John Wagoner, Manager
Department of Energy
Richland Operations Office
P.O. Box 550
Richland, WA 99352



Dear Mr. Wagoner,

Thank you for the opportunity to review the Comprehensive Land Use Plan (CLUP). We would like to compliment DOE on several points. We are pleased to see a written commitment to honor the Treaties with the Indian Nations. We interpret this as official DOE policy. We also compliment DOE on recognizing that agricultural uses are not appropriate for any of the Sites, including the Wahluke Slope. We also applaud DOE for Chapter 6, which sets up a land use approval process.

While we recognize the good points of the CLUP, overall it has so many fatal flaws that it should not be published as an EIS with a Record of Decision. The major points are discussed here, and additional points are included in the attachment.

The CLUP does NOT define final endstates. In fact, it could preclude ever achieving acceptable endstates if it were used as a way to allow mining, grazing, and industrial development. Even worse, it appears that the CLUP would result in a final ROD which is in direct conflict with existing interim RODs and enforceable milestones in the 100 Area. While the CERCLA/RCRA remedial process "can" use a legitimate land use plan, it does not have to use it if it did not involve all interested and affected parties. The Yakama Nation, which is an affected tribe and natural and cultural resource trustee, did not participate in the development of this land use plan, does not consider it to be a legitimate plan, and does not consider any ROD derived from the plan to be legitimate.

The intent of the CLUP is to "evaluate... environmental consequences associated with each alternative over the next 50-year time frame." This is, frankly, a ridiculously short time frame probably stemming from the Urban Growth Management Act, not from common sense, the nature of the contaminants, or environmental regulations. Therefore, the CLUP *cannot* be used as a basis for remedial actions and cleanup decisions. It is not clear why a myopically short land use plan tries to set itself up as the basis for establishing cleanup levels, especially when endstate goals are not even mentioned. In fact, DOE has

made public commitments that the CLUP would never be used to usurp the regulators' role under CERCLA and RCRA. Therefore, the CLUP is irrelevant to the cleanup process, despite the identification of this role as a benefit of the CLUP (page 1-1). Other aspects covered in the CLUP, such as cultural and natural resource protection, are already covered by respective management plans, and so the CLUP is not needed on that account, either.

There is no requirement that a land use plan must be prepared using a NEPA process. The NEPA process cannot be used to supersede a Treaty (which is upheld in the U.S. Constitution as the "Supreme law of the land". While a NEPA process could, indeed, have included a scope broader than a typical civic land use plan, it is not clear that any benefit is served by a process which results in an illegal Record of Decision. In fact, the preferred alternative from this CLUP violates its own stated intent to "honor treaties (page ES-44).

In fact, *all of the land uses involve the imposition of institutional controls.* It is unacceptable to disguise institutional controls as "conservation" and so on. None of the land uses for any of the alternatives achieve the unrestricted access levels that DOE has publicly committed to.

We note for the record that this land use plan in no way diminishes our Natural Resource Trusteeship authority for evaluating injury for any past, present, or future natural resource injury. We do not waive any rights to make damage and mitigation/restoration/ compensation claims for such injury. We do not recognize any Irreversible and Irretrievable (I&I) commitments made by this EIS or its ROD of natural resources (biotic and abiotic), or cultural resources (artifacts, sites, properties, or landscapes), or access to, use of, and quality of natural and cultural resources. Any injury resulting from any action or land use (including actions taken after any parcel might be transferred to another entity), including mining, grazing, recreation, industrial, or R&D use will be evaluated for injury and restoration requirements. Any residual contamination resulting from a failure to remediate to a level where treaty-reserved rights can be safely exercised will likewise be evaluated for injury. Disposal actions will be evaluated for the future potential to cause injury.

The fact that DOE has designated only a miniscule area as "preservation" quality land (BRMP Level 4) is irrelevant to the establishment of injury and mitigation/ restoration/compensation requirements or I&I commitments. Significant prime habitat is not within the designated "preservation" areas, which needs to be corrected. Furthermore, the mitigation ratio will not be limited by the current BRMP definitions, but will be addressed on a case-by-case basis according to the Yakama Land Use Policy goals to protect, restore, and enhance natural resources and landscapes at Hanford. The overall impression given by the CLUP is that DOE is not interested in proactive environmental management of Hanford's unique natural and cultural resources.

The land use values listed on pages 1-9 and 1-10 include some, but not all, of the values cited in the Yakama Nation Land Use Policy, which includes Hanford as part of the ceded area. For instance, DOE suitably recognizes that access to cultural resources and protecting the health of future generations are necessary (even if those values are then not carried forward in the CLUP), but does not recognize that the Treaty of 1855 and its derivative YIN Land Use Policy already describe acceptable land uses and endstates for Hanford, and should be cited as primary definition and reference documents in the CLUP.

We can see that an attempt was made to address treaty rights in the present document by including the CTUIR and Nez Perce land use alternatives. However, since neither alternative was selected, it does not seem that any useful purpose was served other than being able to say that tribal alternatives were included. What is the point of participating in such a process, or submitting alternatives if they are only ignored, and treaties are violated anyway?

As discussed in the YIN letter of June 1, 1998 from William Yallup to Thomas Ferns, Section 1.4.2.1 (A Tribal View of Tribal Rights) is particularly offensive in its title, and it is incorrect regarding the test for open and unclaimed land status. The Treaty was listed as a federal law in Chapter 7, then disputed. Why? It is clear that DOE holds a different opinion about treaty rights than the tribes (or the courts) do, but it is not clear why this dispute is aired at all.

Similarly, it is not clear why treaty rights are singled out for dispute, while federal obligations of natural resource trusteeship are not discussed. The brief mention of trust responsibility on page 7-1 shows a misunderstanding of trusteeship. The trust responsibility is not merely a requirement to consult with tribes about impacts of federal actions to trust resources, but to actively protect those resources. The trust responsibility is a legally enforceable relationship between the United States government and American Indian Tribes, and imposes fiduciary standards on the conduct of the federal government, including the duty to take affirmative action to preserve resources on property held in trust by the federal government for tribal use. As a recognized affected tribe, the Yakama Nation asserts that massive contamination within its ceded area where the federal government is responsible for preserving natural resources (*Northern Cheyenne v. Hodel, 12 Indian L. Rep. 3065)* has not been adequately evaluated for its cultural, environmental, health, social, economic and other impacts.

We further assert that allowing mining and grazing across most of the Hanford Site would cause an additional violation of those trust obligations and degradation of environmental quality. To select a non-preservation and non-stewardship alternative clearly is in violation of federal trust obligations. The areas in the preferred alternative designated as "preservation" represent the minimal amount of preservation required by BRMP, and takes a minimalist view of what preservation means. To define most of the Site as suitable for "conservation" (i.e., mining and grazing) but not preservation illuminates the real intent of the EIS and ignores the prime habitat and many unique species that occur at

Hanford (see biota maps in BRMP, and Biodiversity Inventory document by the Nature Conservancy).

The second paragraph in Section 1.4.2.1 is a non sequitur wherein tribes seem to accept responsibility for any exposure that any tribal member receives at any time in the future. It is not clear why a discussion of how tribal governments regulate their members' off-reservation treaty rights belongs here and who it is intended to reassure. We disagree with this paragraph and request that it and similar statements elsewhere be removed.

We agree that there is a need for a land use approval process. However, Chapter 6 ignores the HNRTC, which could have served the same purpose and would probably be more neutral and appropriate since this is the group with legal responsibility for protecting, restoring, and enhancing the quality of natural resources on Site. In fact, most of the natural resource Trustees were not cooperating agencies in the development of the CLUP, and there is no indication that the Hanford Natural Resource Trustee Council was involved.

Last but not least, the actual selection of the preferred alternative is discussed in Chapter 5, and a number of attributes were evaluated for each alternative. However, no clear criteria for selecting or rejecting an alternative were given, and the real basis for selecting one alternative over the others is not stated. After a number of attributes were evaluated (albeit incorrectly in many cases), the chapter ends abruptly, and there is absolutely no discussion of who selected the preferred alternative or how it was selected. It appears that after the comparative evaluation was made, DOE simply retired to a back room behind closed doors and arbitrarily picked an alternative, without ever stating the criteria for doing so. While DOE will probably assert its role as "the decision maker" with no particular obligation to reveal its decision criteria or allow the affected peoples, trustees, and tribal governments into the actual decision as co-decision makers, this severely undermines what little credibility DOE has left with its stakeholders, and will cause a great deal of unnecessary tension.

The observations above highlight why the NEPA process, as implemented by DOE, does not work. In this case, the EIS is used as an attempt to formalize the rejection of treaty rights, to use land uses as a way to make I&I claims for almost the entire site thus attempting to preempt the NRDA process, to formalize short-term land uses as a basis for long-term cleanup decisions, substitutes short-term land uses for true endstate goals, and generally does more harm than good. It also seeks to formalize a great deal of industrial development, gives projects free reign to mine the site subject only to an approval process of a decision body not clearly defined in Chapter 6, and could greatly and permanently diminish environmental quality from present levels. Once environmental quality is lost by choosing an injurious short-term land use, the present level of environmental and cultural quality at Hanford would probably never be regained

This also highlights the impossibility of planning short-term land uses without any understanding of the long-term effects of contamination and waste disposal and with no endstate goals defined. What is really needed is a true sitewide EIS that starts with a clear and complete understanding of long-term waste migration and cumulative on-site effects (the Composite Analysis came nowhere close to this goal). The sum of the TWRS EIS and other smaller EISs, minus any idea of past practice and waste disposal sites, does not "cover" all the programs and their materials. The solid waste EIS, if it is ever done, may contribute some information, but will not "fill in the gaps" adequately. We are left with only the fuzziest idea of the tremendous amount of present and future contamination that will affect the entire Pacific Northwest in perpetuity. We strongly recommend that DOE agree to develop this analysis in an open manner (unlike the Composite Analysis, which was completely closed) and probably outside the NEPA process. We are doing our own high-level analysis, which is showing some disturbing long-term cumulative effects. We hope to present this to DOE in the near future.

In the meantime, if you have any questions, please feel free to call Mr. Russell Jim, ER/WM Program Manager.

Sincerely,

William Yallup Sr.

Willian Yallup Sr., Chairman
Yakama Tribal Council

cc:

Russell Jim, YIN ER/WM Manager
Thomas Woods, YIN ER/WM Richland Office
Tom Ferns, DOE-RL
Paul Dunnigan, DOE-RL
Merilyn Reeves, HAB
Antone Minthorn, CTUIR BOT
J.R. Wilkinson, CTUIR SSRP
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Additional Detailed Comments

There seems to be an unstated assumption that the HLW, LLW, and MLLW waste left in the 200 Area will never migrate into groundwater and never leave the boundaries of the 200 Area. While this might be true for the next 50 years, the contamination already in the soil and groundwater will continue to migrate, and additional materials will be released during tanks retrieval (short-term) and from the disposal sites (ongoing and long-term). The effect of contamination on land use is not discussed, but is pivotal to the development of land use plans. The Land Use Plan should begin with a clear statement about long-term environmental quality goals, and then discuss how those goals can be achieved. However, since future consequences of waste disposal and unremediated past practice sites are UNKNOWN, it will be impossible to develop a path forward toward those goals. This means that there is a fundamental problem with the entire Stategic Planning and Land Use processes.

Page ES-5 cites the Draft Hanford Cultural Resources Management Plan as being a planning document with implied endorsement of the YIN. This is untrue - we have serious concerns with the plan and do not find it acceptable for protection of cultural resources and cultural uses of Hanford.

Page ES-5 cites the Draft Hanford Biological Resources Management Plan as a similar planning document. We likewise have concerns with this plan and note that we had no input into the development of BRMP or BRMIS.

Page ES-5 also cites the Hanford Strategic Plan as articulating DOE's long-term vision for Hanford. We have a long history of disagreeing with the HSP and trying to get DOE to improve it technically. We disagree with the endstates as stated in the HSP.

The FSUWG is not a decision document and should not be used as a basis for any land uses or any boundaries.

Page ES-11 says that Alternative One (which was not selected) is the alternative which represents a natural resource stewardship role. Since this was not selected, then DOE clearly does not intend to make stewardship part of its mission.

ES4.0 (Affected Environment) understates tribal uses of the site, which probably amount to 99.9999999% of the Site's history since the Missoula floods, if not longer. This amounts to over 10,000 years, which is considerably than the "many years" states on page ES-25. Even when evicted from the Site in 1943 without compensation, cultural uses never completely ceased, just maintained at a lower level in anticipation of return of lands and access as promised. Further, the lands were not merely "used by American Indian tribal members for fishing, hunting, gathering, and pasturing of livestock." This merely reiterates listed treaty-reserved rights, although the treaties clearly state that many other

rights not specifically reserved were also to be reserved. There is no recognition of the religious aspects of the entire Site. This entire section, as well as ES6.0 (Cultural Resources) belittles and understates tribal uses and the meaning of Hanford to tribal members. Section ES4.8 (Socioeconomic Environment) should also have mentioned the role that the Hanford Reach played and continues to play in the sustenance of tribal communities - foods, medicines, homesites, spiritual health, and overall community welfare.

ES4.5 (Biological Resources) does not cite the Nature Conservancy work which continues to identify new species, including many heretofore unknown to science. It also fails to mention that the entire Hanford Site was designated by Secretary O'Leary as a National Environmental Research Park.

ES4.10 greatly understates the amount of contamination currently present, and completely misses the point that contamination will increase in the future as disposed and unremediated wastes migrate through the soil and groundwater.

ES5.1 (Analysis Approach) has several flaws, including but not limited to the following:

1. "Areas" of cultural and religious importance to American Indians were not correctly designated.
2. Tribal uses seem to have been laced in a recreational or preservation category. Traditional uses are not recreational.

ES5.2 (Human Health Impacts) again greatly understates the health impacts of contamination, and repeats the same mistake that land uses determine the degree of allowable exposure and therefore health impact, rather than recognizing that, under various cleanup levels, human uses are *limited* by adverse health effects, and therefore uses are *lost* due to lack of cleanup.

ES5.3.1 (Geologic Resources) should state an absolute requirement to ELIMINATE ALL GROUNDWATER RECHARGE in the White Bluffs area, not minimize it! Considering the gravity and extent of ongoing cultural resource harm, there should be an ironclad guarantee that no irrigation will ever be allowed on the Wahluke Slope again.

ES5.3.2 (Water Resources). Contamination of groundwater could occur not only from future uses such as golf courses or agriculture (although these are supposedly not allowed under any land use), but also due to disposal and lack of remediation. These should be stated. The first bullet in this section should reiterate the position that NO further degradation of groundwater is acceptable. This is an anti-degradation policy, not just a "groundwater management" policy.

ES5.3.5 (Cultural Resources) again misses the point (or more likely deliberately avoids using the phrase) "traditional cultural property." It also misses the point that cultural use of natural resources is protected by Treaty, by NEPA, and by CERCLA. Another bullet

should be added that indicates DOE's intent to compensate tribes for adverse impacts to tribal cultural-natural resources and for lost access and use. Remember that tribes were the only parties not compensated when Hanford was created, and the opportunity for discussing recompense is long past due.

Since the so-called "value" of activities such as grazing is included in the discussion, the "value" of cultural use must also be included. YIN will be glad to tell DOE how valuable cultural and religious use of the Hanford landscape is to them.

ES5.4 (Environmental Justice). This section should be thrown out entirely. It completely misses the point of Executive Order 12898, and is factually inaccurate regarding the degree of human health effects in the future. The sentence on page ES-39 that says that "tribes assert that a treaty-given right to hunt, fish, or gather plants is diminished (if not voided) if the fish, wildlife, or plants have vanished or are contaminated to the extent that they threaten human health" is incorrect. The phrase "to the extent that they threaten human health" should be removed, because any degree of contamination impairs traditional cultural use.

ES6.2 (Hanford CLUP Policies) says that the CLUP "integrates competing land and resource goals and objectives." No it doesn't – it includes two tribal alternatives and then ignores them both, so there is no visible "integration." Who has compromised? The tribes, not DOE. The overall policy (ES6.2.1) needs to be revised to state an intent to meet natural and cultural trusteeship obligations, an intent to restore environmental quality as part of honoring treaties (it is good that the CLUP agrees to "honor treaties" – this is a breath of fresh air). The protection of cultural resources (ES6.2.3) needs to be strengthened. The policy for siting new development (ES6.2.4) says that it will occur where the DOE, counties and cities' maps are consistent – tribes are noticeably omitted from this list.

Page 1-1 (Second sentence) says that 6% of the site is contaminated - this is incorrect. 200 square miles of groundwater is contaminated, which is approximately half of the main body of the Site. The issue of vertical depth of contamination is a serious issue which is currently misunderstood. One cannot slice Hanford into horizontal layers and treat these layers separately with respect to land use or institutional controls.