



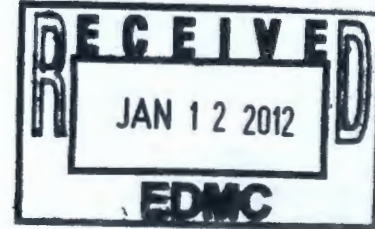
**Confederated Tribes and Bands
of the Yakama Nation**

0100915

Established by the
Treaty of June 9, 1855

January 5, 2012

Matt McCormick
Department of Energy
Richland Operations Office
P. O. Box 550
Richland, WA 99352



RE: 100-K-64 Waste Site MOA

Dear Mr. McCormick;

Yakama Nation (YN) does not concur with the 100-K-64 Waste Site MOA drafted to mitigate adverse effects to archaeological site 45BN423, as a result of remedial actions. Some of the mitigation actions (stipulations) outlined in the MOA do not mitigate the potential adverse effects adequately. In order to adequately mitigate adverse effects a comprehensive view of the site is necessary. At this point, there are data gaps which hinder a comprehensive perspective.

The MOA states (stipulation 1.f.), "Using available information, RL will update and revise the boundaries, information, text, maps, and associated photographs of the 45BN423 site form..." the archaeological site should be updated and boundaries verified prior to any ground disturbing activities. It has been 22 years since this site was recorded, during which time the landscape has changed through natural forces and human activity. The Cultural Review report states, "At present time much of the project area is posted as a radiological area with limited access". How limited is the access? Is it safe for archaeologist to go into this area to accurately update the site? The report does not give information about the Contaminates of Concern (COC), and what, if any are the threats to the ground water and /or Columbia River. Although the report states the project was modified to focus on the "structures understood to be sources of contamination", it does not state what the contaminates are. This waste site needs to be fully characterized in order to determine how cultural resources may be affected, and how the effects can then be mitigated.

In 1991, approximately 6,400 artifacts were collected from archaeological site 45BN423. As yet a formal analysis/report has not been issued, although YN has been told a report is in process (this report and findings should not be presented at a public venue without consent of the YN). Were the artifacts tested for a full range of contaminates? If so, what were the contaminates and does the level of contamination fall within the interim Records of Decision (ROD) for environmental safety? Were the artifacts cleaned, if so by what process? It is necessary and reasonable to have all of the data (with regards to contaminants) on the artifacts taken from site 45BN423, prior to starting new activities that could produce more artifacts. It must be determined if the artifacts can be left in place, cleaned, or need to be removed for environmental safety.

If the contamination testing of the artifacts already removed from site 45BN423 is complete, YN request these approximately 6,400 artifacts be returned to the YN. The area in which the artifacts were retrieved is YN Ceded Land and therefore the artifacts belong to the YN. Note in US vs Washington, 1974 (384 F. Supp.312) the court found "that the following statements are now well established in fact and law".

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"...all Treaties made under the Authority of the United States, shall be the supreme Law of the Land...anything in the Constitution or Laws of any State to the contrary notwithstanding." (Article VI of the US Constitution)

"...the Treaty must therefore be construed, not according to the technical meaning of its words to learned lawyers, but in the sense in which they would naturally be understood by the Indians."

"How the words of the Treaty were understood by this unlettered people, rather than their critical meaning, should form the rule of construction."

"The Treaty was not a grant of rights to the Indians but a grant of rights from them-a reservation of those not granted."

"The Treaty negotiations were with the tribe. They reserved rights, however, to every individual Indian as though named therein...And the right was intended to be continuing against the United States and its grantees as well as against the State and its grantees. That those rights are also reserved to the descendents of the Treaty Indians, without limitation in time..."

The Treaty of 1855 with the Yakama Nation does not grant the United States government the right of ownership of the possessions of YN ancestors. The YN formally request the return of ancestral items retrieved on YN Ceded Lands.

A major concern for the YN is the high possibility of discovering contaminated human remains, funerary objects and/or artifacts. At present there is not a plan in place to properly and respectively handle these items. A plan needs to be in place prior to the start of ground disturbing activities. YN will continue to consult with you on a treatment plan, however until the above stated data gaps are filled a comprehensive plan is not possible.

As a Sovereign Nation (granted by the Treaty of 1855), the YN requires signatory status on the MOA. The MOA is an agreement to mitigate the adverse effects to archaeological site 45BN423, which is located within the boundaries of YN Ceded Land, therefore, YN has the **responsibility** to ensure the adverse effects to the land, artifacts, and ancestors are mitigated properly and with respect.

If you have any questions please contact YN ER/WM cultural staff, Dana Miller or Rose Ferri at 509-452-2502.

Sincerely,



Vera Hernandez, Chairwoman
Yakama Nation Radioactive Hazardous Waste Committee

cc:

Russell Jim, ER/WM
Sam Jim Sr., RHWC
Philip Rigdon, YN DNR
Rob Whitlam, DAHP
Kate Valdez, YN THPO

Warren Spencer, RHWC
Raymond Smartlowit, RHWC
Marlene Shavehead, YN ER/WM
Administrative Record