Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

April 9, 2012

Dennis Faulk, Hanford Project Manager
U. S. Environmental Protection Agency
309 Bradley Blvd., Suite 115
Richland, WA, 99352

Re: ER/WM Cultural Resource concerns on the draft Remedial Investigation/Feasibility Study (RI/FS)

Dear Mr. Faulk,

Yakama Nation Environmental Restoration/Waste Management (YN ER/EM) would like to submit our concerns with regards to cultural resources in the 100-K area. As stated during the Environmental Protection Agency (EPA) National Remedy Review Board meeting, March 27-29, 2012, the RI/FS and associated plan does not identify how the Department of Energy will comply with the National Historic Preservation Act, Native American Grave Protection and Repatriation Act, Archaeological and Historic Preservation Act, Archaeological Resources Protection Act, Executive order 13175, American Antiquities Act, and Proclamation 7319.

After expressing these concerns at the Remedy Review Board meeting, Board members requested YN ER/WM staff to detail out the concerns and submit them formally. The attached concerns are being submitted per this request. Please accept them as an addendum to YN ER/WM's original 10 page comment submitted to yourself and Remedy Review Board members. A copy of these concerns has been submitted to Amy Legare, Chairwoman, EPA National Remedy Review Board for distribution to Remedy Review Board members, also per Board member request.

If you have any questions or concerns please contact myself or a member of YN ER/WM cultural resource staff, Rose Ferri or Dana Miller at 509-452-2502. We look forward to continued consultation to resolve these sensitive cultural issues.

Sincerely,

Russell Jim
Yakama Nation-ER/WM Projects Manager

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Vera Hernandez, RHWC
Sam Jim Sr., RHWC
Philip Rigdon, YN DNR
Rob Whitlam, DAHP
Kate Valdez, YN THPO
Warren Spencer, RHWC
Raymond Smartlowit, RHWC
Amy Legare, EPA, Review Board Chairwoman
Administrative Record
Dan Opalski, EPA, Region 10

100-K and 300 Area RIFS EPA Advisory Remedy Review Board Statement

RE: Follow up comments concerning cultural resources

The 100-K and 300 Areas RI/FS have not addressed cultural resources. Although the cultural resource section acknowledges the abundance of cultural sites and culturally significant areas throughout the Hanford site, the remedy does not address how cultural resources will be protected or how effects to cultural resources will be addressed, as mandated by the NHPA and implementing CFRs. The RI/FS states "Tribal Nations leaders review the locations and potential impacts to these resources before site activities begin." However DOE has not been compliant with the NHPA and implementing CFRs since 2003. Approximately 1,200 projects (roughly 90% of all projects) were implemented since 2003 without a full Section 106 review and without **any** Tribal consultation. To date YN does not know the location and the nature of most of these projects.

Currently there are ongoing discussions with regards to the discovery of contaminated artifact, funerary objects and /or human remains. This topic was originally brought to DOEs attention in the late 1980s. To date there is still no plan as to how these resources will be cared for. Under the NHPA it is DOE's responsibility to properly care for these cultural materials. Tribal discussions with DOE revealed there is a lack of data to determine the level, type and depth of contamination in culturally sensitive areas, known archaeological sites and burial areas. Although DOE has invited Tribal input on a plan of action, until more characterization and testing is completed it is impossible to move forward with a treatment plan, or remedy selection, as it is unknown if cultural material will need to be removed, or can be left in place based on the level of contamination.

The final RODs are expected to be written by September 30, 2012, yet DOE has yet to meet with Affected Tribes to develop a sampling plan for the culturally sensitive areas, known archaeological sites and burial grounds. Once a sampling plan is developed samples will need to be collected and analyzed. The site specific results will need to be reported to Tribal Policy Makers, at which time each site will need to be reviewed. In consultation with DOE, EPA, and WA Ecology the Tribal Policy makers will need to decide what can be left in place and what will have to be removed based on levels of contamination. A plan detailing removal methods and proper curation/reburial of cultural materials must be developed and included in the ROD. The removal of cultural material will add time and expense, which has not been addressed in the alternative remedy selection and cost analysis process. To leave cultural material in place may affect clean up levels as well.

Final RODs need to account for the additional time, expense, clean up levels, and/or mitigation measures to comply with National Historic Preservation Act, Native American Grave Protection and Repatriation Act, Archaeological and Historic Preservation Act, Archaeological Resources Protection Act and Executive order 13175. With regards to HRNM land DOE will also need to ensure compliance with American Antiquities Act and Proclamation 7319. Compliance with laws and regulations needs to be written into the ROD, not merely written into an implementation/work plan post ROD..

It is unclear if DOE has consulted with Department of Interior on remedy and clean up levels as directed in Proclamation 7319 for the HRNM and adjacent lands that could affect the Monument lands. Any outcome of this consultation may affect clean up levels on the River corridor, which in turn may affect remedy selection for the 100-K and 300 Area proposed plans.