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# HANFORD NATURAL RESOURCE TRUSTEES MEETING

AUGUST 4 & 5, 1993
RED LION INN/HANFORD HOUSE
802 GEORGE WASHINGTON WAY
RICHLAND, WASHINGTON 99352

DRAFT AGENDA

**August 4, 1993**

| | | |
|---|---|---|
| 8:00 | Continental Breakfast | |
| 8:30 | Welcome | Bob Holt DOE-RL |
| 8:35 | Introductions | Preston Sleeger DOI-Region 10 |
| 8:45 | Natural Resource Trustee Functions | Steve Specht DOI-HQ |
| 9:15 | Overview of NRDA Process | Dave Rosenberger DOI-HQ |
| 10:15 | Break | |
| 10:30 | Natural Resource Injury Determination | Dave Rosenberger DOI-HQ |
| 12:00 | Hosted Lunch | |
| 1:00 | Natural Resource Injury Quantification | Dave Rosenberger DOI-HQ |
| 2:00 | Natural Resource Damage Determination | Dave Rosenberger DOI-HQ |
| 3:30 | Break | |
| 3:45 | Summary of Statutory Provisions for Natural Resources | Steve Specht DOI-HQ |
| 4:15 | Coordination of NRDA and the RI/FS Process | Panel Discussion Sleeger, Rosenberger, Specht, Bascietto, Holt, Goodenough |
| 4:45 | Questions/Discussion | |
| 5:00 | Adjourn | |

**August 5, 1993**

| | | |
|---|---|---|
| 8:00 | Continental Breakfast | |
| 8:30 | Review of Last Meeting Minutes | Theresa Bergman |
| 8:45 | Formation of Trustee Council (15 min) | Bob Holt |
| 9:00 | Other DOE Trustee Councils | Bascietto |
| 9:30 | Open Discussion of Trustee Council | All<br>Vision<br>Membership<br>Independent Facilitator |

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RED LION INN/HANFORD HOUSE
802 GEORGE WASHINGTON WAY
RICHLAND, WASHINGTON 99352

| | | |
|---|---|---|
| 10:45 | Break | |
| 11:00 | Open Discussion of Trustee Council (continued) | All |
| 12:00 | Hosted Lunch | |
| 1:00 | Cultural Link to NRDA Yakima Indian Nation | Russel Jim |
| 1:20 | Cultural Link to NRDA Nez Perce Indian Tribe | Donna Powaukee |
| 1:40 | Round Table Discussion of Issues | All |
| | | Funding<br>Natural Resource Management on the Hanford Site<br>Natural Resource Documentation<br>Exchange of information<br>Appropriate documents<br>Availability, etc. |
| 2:30 | Break | |
| 2:45 | Continue Discussion Of Issues | All |
| 4:30 | Summary and Conclusions | Theresa Bergman |
| 5:00 | Adjourn | |

**August 6, 1993**

8:00 Continue Open Discussion if Necessary

# DRAFT
# MEETING MINUTES

Subject: NATURAL RESOURCES TRUSTEES MEETING

TO: Distribution FROM: Bob Holt, DOE-RL

DATE: August 4 & 5, 1993 LOCATION: Red Lion/Hanford House

Attendees:
John Bascietto, U.S. Department of Energy Headquarters
Michael Bauer, Yakima Indian Nation
Kate Benkert, U.S. Fish and Wildlife Service
Theresa Bergman, Westinghouse Hanford Company
John Bevis, Confederated Tribes of the Umatilla Indian Reservation
John Brent, U.S. Army Corps of Engineers
Chris Burford, Confederated Tribes of the Umatilla Indian Reservation
Kevin Clarke, U.S. Department of Energy - Richland Operations Office
Bob Cook, Yakima Indian Nation
Steve Cross, Washington Department of Ecology
Jean Dunkirk, Westinghouse Hanford Company
Dirk Dunning, Oregon Department of Energy
Chuck Finan, Couer d'Alene Tribe
Alden Foote, U.S. Army Corps of Engineers
Steve Friant, Pacific Northwest Laboratories
Larry Gadbois, U. S. Environmental Protection Agency
Rick George, Confederated Tribes of the Umatilla Indian Reservation
John Hall, Washington Department of Wildlife
Bob Holt, U.S. Department of Energy - Richland Operations Office
Joel Jakabosky, Bureau of Land Management
Russell Jim, Yakima Indian Nation
Kevin Kjarmo, MACTAC
Nancy Lane, Westinghouse Hanford Company
Kathy Leonard, Westinghouse Hanford Company
Donna Powaukee, Nez Perce Tribe
David Rosenberger, U.S. Department of Interior
Dusty Seyler, Couer d'Alene Tribe
Preston Sleeger, U.S. Department of the Interior
Stephan Specht, U.S. Department of Interior
Alex Teimouri, U.S. Department of Energy- Richland Operations Office
Linda Tunnell-Price, Westinghouse Hanford Company
Roger Twitchell, U.S. Department of Energy - Idaho Operations Office
Kim Welsch, Westinghouse Hanford Company
J. R. Wilkinson, Confederated Tribes of the Umatilla Indian Reservation

AUGUST 4, 1993

**WELCOME AND INTRODUCTION**

The U.S. Department of Interior (DOI) presented a general review of DOI Damage Assessment Regulations. Mr. Stephan Specht discussed Natural Resource Trustee functions. The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) directs the President of the United States to select federal trustees. The Department of Interior has the lead for the federal government for developing regulations associated with natural resource trustee functions. Other federal agencies also serve as trustees for natural resources under their jurisdiction. For Hanford federal trustees include:

- DOI (Within DOI, several bureaus provide support on natural resource issues, including the U.S. Fish and Wildlife Service and the Bureau of Land Management.)
- DOE, which has trust responsibilities for natural resources on land under their management control;
- the National Oceanographic and Atmospheric Administration (NOAA), which has trust responsibilities for anadromous fish such as salmon; and
- the U.S. Army Corps of Engineers, which has trust responsibilities for migratory water fowl.

CERCLA also requires the governor of each state to designates someone to act as natural resource trustee. Indian tribes are also designated as natural resource trustees. The U.S. Environmental Protection Agency is not a designated trustee, but does have the responsibility to notify potential trustees of releases that may have the potential for causing natural resource injuries.

Potential trustees can work together as a group to more efficiently fulfill trust responsibilities. DOI encourages cooperative arrangements among trustees. The possible conflict that the Department of Energy has as both a trustee and the principal responsible party for the natural resource injuries will be in added complication in developing a cooperative working relationship among the trustees. The DOE strongly desires that other trustees work with DOE during environmental restoration activities to support more effective restoration of natural resources and minimize permanent resource injury.

Mr. David Rosenberger, DOI, provided an overview of the Natural Resource Damage Assessment (NRDA) process. Two terms that are key to the process are: injuries are measurable and adverse changes to the resource, especially as related to chemical or physical quality or viability of that resource; damages are monetary compensation for injury and are generally used to restore the lost resource. The process is defined in the Natural Resource Damage Assessment Rule in 43 Code of Federal Regulations (CFR) Part 11. Key steps are:

- detection of a CERCLA release that has the potential for causing natural resource injuries
- notification of potential natural resource trustees
- preassessment screen which identifies injured resources
- assessment plan which identifies what it will take to restore the injured resources. During the assessment plan phase a decision is made whether NRDA Type A (computer model) procedures or NRDA Type B (collecting specimens to determine damages) procedures are followed.
- damage assessment ????????
- post assessment plan??????

One strength of a cooperative trustee process can be that agreements among trustees can lead to less litigation and faster restoration of resources. Also, when trustees act as a group and don't divide up the resources relating to specific injuries, they have more impact for positive change. Trustees' representatives are urged to know the requirements of 40 CFR 11 and be able understand and speak about it.

Major concepts behind the NRDA regulations include:
- The goal of the process is to restore natural resource services, not to penalize the responsible parties.
- The purpose of natural resource damage awards are to compensate for lost resources and to mitigate residual injuries.
- Both cost effectiveness and reasonable costs should be considered during the damage assessment process. The cost of an assessment undertaken by a trustee should be proportional to damages the trustee can reasonably expect to recover.
- Trustees can be held financially accountable to the public if they do not uphold their trust responsibilities.

There are new injury standards in 40 CFR 11 which identify specific biological responses that by themselves prove that injury has occurred. Although these injury standards are not clean-up standards, if clean-up does not restore the resource to meet these standards, then damages can be assessed. The trustee can hold a rebuttable presumption by demonstrating that the resource displays one or more of these biological responses. The party responsible for the CERCLA release must prove they did not cause the injury to avoid assessment of damages. There may be other situations where injuries other than those defined by the standards have occurred. In this case, the burden of proof is on the trustee to demonstrate that an injury has occurred and that the party responsible for the CERCLA release is liable for damages. Specific biological responses are identified in 40 CFR 11(62)(f)(2).

Three criteria must be met to be considered an injury under NRDA regulations:
- there must be measurable adverse physiological changes,
- there must be a defined release pursuant to CERCLA, and
- there must be a defined pathway between the contamination and the resource.

AUGUST 5, 1993

Meeting notes from the April 15, 1993 potential trustees meeting were discussed. Attendees generally agreed that meeting notes as provided by DOE would not be considered formal meeting minutes, but rather an informal record of discussion.

Non-federal trustees proposed an alternate agenda which was integrated with the original DOE-prepared agenda. Several items that concerned individual attendees were raised, including:
- If the concept of a facilitator should be discussed and resolved before a trustee group could be formed.
- If a trustee group should be agreed to before a facilitator would be appropriate.
- If adequate funding would be available for potential trustees to continue to support any cooperative arrangement.
- The existence of a conflict of interest between DOE's dual roles as both a trustee and the responsible agency.
- Access to records and documentation held by DOE.
- Preparation of an independent record of the meetings.

Bob Holt of DOE-RL and John Bascietto of DOE-HQ indicated that funding issues had not yet been resolved. Some of the non-federal trustees have grants from DOE to support Hanford activities. Resolution of funding issues for both federal and non-federal trustees would have to occur for some of the potential trustees to continue to participate and for a trustee group to be successfully formed. Federal trustee funding would have to be for technical support to avoid conflicts with the Economy Act of 1932.

Discussions about an independent facilitator ensued. Potential facilitator attributes and responsibilities identified included:

- Being independent and impartial
- Arranging for future meetings
- Preparing meeting minutes
- Establishing meeting agendas in consultation with the trustees
- Leading meetings and facilitating discussions
- Mediating disputes and facilitating resolution of disagreements
- Establishing groundrules for trustee group operation
- Obtaining trustee cooperation throughout process

Issues that need to be resolved on a trustee group include:

- What is the purpose of the group?
- Who should participate?
- What is the projected cost of such a group?
- What portion of the cost do the other trustees want to share?
- Would a trustee group have officers?
- Could officers handle lead trustee responsibilities?
- Could attendees at this meeting form a trustee group?
- What would each participant's/group's role be in a group?
- How is DOE's dual role managed in the group?

Mr. Bascietto discussed trustee councils currently in operation at other DOE sites.

- At the Savannah River site there is a Trustee Council consisting of DOE, DOI, NOAA, EPA and the states of South Carolina and Georgia. They meet quarterly. There is no facilitator, no charter, and trustees are jointly in charge of the meetings. DOE provides administrative support such as meeting arrangements. There is no lead trustee. Major areas of discussion are technical issues.

- At the Oak Ridge Operations Office the trustees include DOE and the states of Ohio, Tennessee and Kentucky. They are currently concentrating on training while trying to figure out how they want to operate. DOE provides administrative support.

- At Rocky Flats there is a two-tiered system. There is a quarterly meeting of a senior-level policy group composed of DOE, DOI, EPA, and the State of Colorado. The second tier is made up of technical specialists who meet regularly at the EPA office in Denver. The technical group worked very well, after the initial difficulties. The trustees and EPA valued the technical input, including state RCRA oversight. Unfortunately, the process broke down because of funding issues and political considerations. Currently EPA is funding the U.S. Fish and Wildlife Service to provide technical oversight. This is not working as well as it had previously because people aren't' talking face-to-face.

- The Idaho Operations Office is just beginning the dialogue with their trustees. They have had one meeting. The state of Idaho, DOI, and tribes are participating as trustees.

DOE has provided the administrative support to the meetings so far because it has had the available staff and resources. Several trustee representatives expressed continued concerned about the conflict of interest that DOE would have as both the responsible agency and a trustee. Bascietto indicated that because DOE has been delegated trustee responsibilities by the President, DOE is obligated to act as a trustee in spite of the potential for conflict of interest. DOE's desire for a trustee group is to obtain technical input from trustees to assure that resources are protected or restored as necessary and that cleanup funds be spent most effectively. The trustee group could provide technical oversight to parts of the RI/FS process.

Steve Cross of Ecology suggested that rather than oversight on the RI/FS activities, the trustee group could more appropriately apply "peer pressure" on DOE as a co-trustee to assure that natural resources were protected or restored as necessary. Cross also suggested that a facilitator could take on many of the roles that DOE has taken on related to the trustee meetings. This could relieve DOE of some of the potential conflicts of interest and to alleviate concerns that some of the trustees have about DOE's control of the meetings and other activities. However, it was recognized that if DOE provided the funding for the facilitator, that concerns over control would not be totally relieved.

Bob Cook of the Yakima Indian Nation raised the potential for doing collaborative damage assessments. Holt responded that while Hanford is not at the damage assessment stage, it may be possible that the trustee group could collaborate on such activities if they were ever appropriate.

Discussion focused briefly on a tiered approach, including a trustee management group with one representative from each of the trustees that could be used to manage a facilitator or other activities. Teams could focus on specific types of issues, especially policy, technical or legal issues. Facilitators or other staff could assist the teams by helping focus on appropriate issues, providing a record of activities, and providing administrative support where needed.

DOE was asked if it was appropriate to incorporate NRDA activities into the Tri-Party Agreement. Preston Sleeger of the Department of Interior suggested that a trustee management council could offer suggestions to the three parties on cleanup schedules or plans as they related to natural resource issues. Larry Gadbois of EPA suggested that a trustee group could identify a vision of where the site and cleanup should go as a whole from a natural resource perspective instead of dealing with individual operable units.

DOE was also asked what its intent was on the trustee group. Holt and Bascietto stated that DOE's intention is to get technical input on RI/FS documents from a natural resource perspective. Several places where input would be useful are in RI/FS work plans where risk assessment plans are described and during the risk assessment process. Trustees can be especially valuable in helping DOE determine if the they are assessing the right pathways and receptors.

DOE asked CTUIR to identify their visions. Rick George stated that while tribal employees could not speak for the tribe, he indicated that they were aware of several key concerns:

- entire site should be viewed as a whole ecosystem, rather than acre-by-acre
- cleanup needs to address off-site impacts/effects
- adequacy of past and planned assessments, especially with respect to human health issues needs to be evaluated

- some treaty rights and issues that have not yet been discussed
- get on with technical reviews, but recognize that tribes and others are trying to assemble their staffs in the middle of complex process.

Kate Benkert of the U.S. Fish and Wildlife Service interjected that during the Commencement Bay Damage Assessment, trustees have attempted to put together a framework for restoration; to try to balance individual trustee issues with natural resource restoration.

Mr. Holt committed to investigate getting a facilitator. Funding for a facilitator and for other trustee activities remains an issue because it was not include when the 1994 budget was originally prepared. RI/FS activities are ongoing and unless funding is identified, then it may be deficient in natural resource issues. DOE-Headquarters is aware of funding issues. Mr. Cross suggested that DOE should then be willing to accept the potential risk of having unfunded (and therefore, potentially uninvolved and/or uninformed) trustees. Discussion of the budget process continued for sometime and concluded with the commitment that DOE would continue to explore funding possibilities for future NRDA activities.

Mr. Cross indicated he would like meeting minutes to be distributed to all potential trustees, including all downwinder/downriver tribes involved in the Hanford Environmental Dose Reconstruction project. He stated that trustees identify themselves and must assert that they have sustained damages or potential damages. Mr. Bascietto stated that EPA is responsible for notifying potential Trustees. Mr. Gadbois agreed that EPA would send letters to other potential trustees if they were identified. Mr. Sleeger agreed to provide a list of federally recognized tribes in the Northwest to EPA to be used to determine if there are other tribes that ought to be notified as potential trustees. Dirk Dunning of the Oregon Department of Energy asked if it was appropriate to include the states of Idaho and Montana, and possibly Canada.

Russell Jim of the Yakima Indian Nation stated that the Yakima Indian Nation has long been affected by what has happened at Hanford. He said that the Yakima Indian Nation has a deeper concern than federal or state regulations. Implicit in the Treaty of 1855 is a tie to the natural resources used throughout the centuries as foods and medicines. It is difficult to identify damages on some of the resources without jeopardizing them because if these foods and medicines were known, they would quickly become commercialized. Mr. Cross pointed out that cultural resources aren't recognized, but geological resources are. Mr. Sleeger indicated that as part of Natural Resources Preassessment screen, there is a list of values for plants and herbs, including the general service that Natural Resources provide.
Confidentiality and secrecy of sacred religious sites is an issue several states and agencies are working on with various tribes.

NEXT STEPS

The following suggestions for trustees were identified:

- Trustee representatives review existing RI/FS documents to determine if they are providing enough natural resource information. Provide input to DOE on adequacy and appropriateness of releases, pathways, and receptors being assessed.
- Trustees consider adopting a two-tiered approach with a management group and a technical review group.

- Be cognizant of Tri-Party Agreement milestones because they identify current time constraints on restoration activities. They can also provide an opportunity to start restoration quickly even if it is on a piecemeal basis.

ACTION ITEMS

- DOE will make arrangements for the next meeting for the week of November 15. Potential agenda items:
  - RI/FS training, including site conceptual model for ecological risks, status of RI/FS work, and how natural resource issues are factored into baseline risk assessment
  - Budget process briefing
  - Facilitator/trustee group discussions
  - Natural resources present at Hanford
  - Regulatory perspective of natural resource issues and TPA
  - Status of natural resource issues in current/future TPA modifications.

- DOE will draft agenda and circulate for review 3-4 weeks prior to meeting. Additional agenda items should be provided to Kathy Leonard of Westinghouse Hanford Company (509-376-7065).

- DOE will work with other trustees to identify potential attributes and scope of work for possible facilitators.

- Department of Interior to provide federally recognized tribe list to EPA. EPA will work with DOE to notify new potential trustees from that list.

# FAX COVER SHEET

Date: March 7, 1995

Page 1 of 3 Pages (Coversheet included)

| Fax Number To: | Fax Number From: 509-376-2816 |
|---|---|
| Name: | Name: Linda Tunnell-Price |
| Phone Number/Location: | Phone Number/Location: 509-372-3166 |
| Organization: | Organization: Westinghouse Hanford Company |

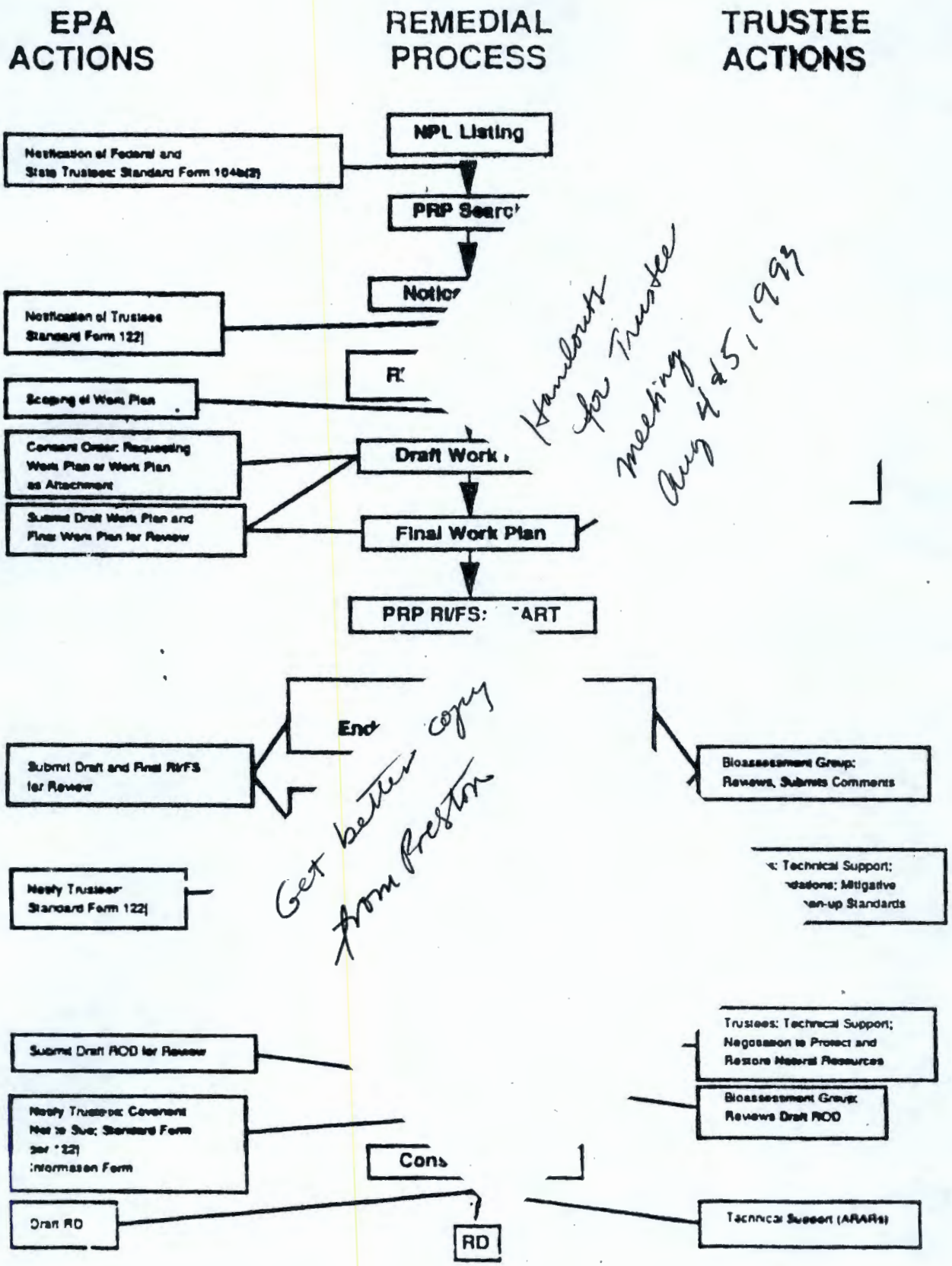
**Message**

Attached is the draft agenda for the Hanford Natural Resource Trustees Meeting. Please note that the meeting is scheduled for August 4 and 5, and, if necessary, discussions can continue on Friday, August 6, 1993. The Red Lion/Hanford House is on George Washington Way, the main street coming into town, and is situated on the right side of the street coming from the freeway.

Please confirm your attendance with Linda Tunnell-Price at the above number. If you have any questions, please feel free to contact me on 509-376-7065.

Sincerely,

Kathy Leonard


EPA ACTIONS
REMEDIAL PROCESS
TRUSTEE ACTIONS
NPL Listing
Notification of Federal and State Trustees: Standard Form 104b(2)
PRP Search
Notice
Notification of Trustees Standard Form 122
R
Scoping of Work Plan
Consent Order: Requesting Work Plan or Work Plan as Attachment
Draft Work
Submit Draft Work Plan and Final Work Plan for Review
Final Work Plan
PRP RI/FS: ART
Handouts for Trustee meeting Aug 4 & 5, 1993
End
Get better copy from Preston
Submit Draft and Final RI/FS for Review
Biossessment Group: Reviews, Submits Comments
Notify Trustees Standard Form 122
: Technical Support; dations; Mitigative an-up Standards
Submit Draft ROD for Review
Trustees: Technical Support; Negotiation to Protect and Restore Natural Resources
Biossessment Group: Reviews Draft ROD
Notify Trustees: Covenant Not to Sue; Standard Form (or 122) Information Form
Cons
Draft RD
RD
Technical Support (ARARs)

Natural Resources Trustee Meeting

August 4, 1993

| Name | Affilitation | Signature |
|---|---|---|
| John Basceitto | DOE-HQ | |
| Kate Benkert | USFWS | |
| Chris Burford | CTUIR | |
| Bob Cook | YIN | |
| Steve Cross | ECOLOGY | |
| Jean Dunkirk | WHC | |
| Dirk Dunning | STATE OF OREGON | |
| Chuck Finan | COUR D'ALENE TRIBE | |
| Steve Friant | PNL | |
| Larry Gadbois | EPA | |
| John Hall | DEPT OF WILDLIFE | |
| Bob Holt | DOE | |
| Joel Jakabosky | DOI,BLM | |
| Russell Jim | YIN | |
| Kevin Kjarmo | GSSC | |
| Nancy Lane | WHC | |
| Donna Powaukee | NEZ PERCE TRIBE | |
| J. R. Wilkinson | CTUIR | |
| Dusty Seyler | COUR D'ALANE TRIBE | |
| Preston Sleeger | DOI | |
| Steve Specht | DOI | |
| Alex Teimouri | DOE | |
| Linda Tunnell-Price | WHC | |
| Roger Twitchell | DOE-IDAHO | |
| Kim Welsch | WHC | |
| Rick Wotasek | WHC | |

Natural Resources Trustee Meeting
August 5, 1993

| Name | Affilitation | Signature |
|---|---|---|
| John Bascietto | DOE-HQ | |
| Michael Bauer | YIN | |
| Kate Benkert | USFWS | |
| Theresa Bergman | WHC | |
| John Bevis | CTUIR | |
| Jim Brent | COE | |
| Christopher Burford | CTUIR | |
| Kevin Clarke | DOE | |
| Bob Cook | YIN | |
| Steve Cross | ECOLOGY | |
| Jean Dunkirk | WHC | |
| Dirk Dunning | STATE OF OREGON | |
| Julie Erickson | DOE | |
| Chuck Finan | COUR D'ALENE TRIBE | |
| Alden Foote | COE | |
| Steve Friant | PNL | |
| Larry Gadbois | EPA | |
| Rick George | CTUIR | |
| John Hall | WASHINGTON DEPT OF WILDLIFE | |
| Bob Holt | DOE | |
| Joel Jakabosky | DOI, BLM | |
| Russell Jim | YIN | |
| Kevin Kjarmo | GSSC | |
| Donna Powaukee | NEZ PERCE TRIBE | |
| J. R. Wilkenson | CTUIR | |
| Dusty Seyler | COUR D'ALENE TRIBE | |
| Preston Sleeger | DOI | |
| Alex Tiemouri | DOE | |
| Linda Tunnell-Price | WHC | |
| Roger Twitchell | DOE-IDAHO | |
| Kim Welsch | WHC | |