



NEZ PERCE TRIBE

Guidance in Support of the
Nez Perce Tribe
Hanford End-state Vision Resolution 05-411
March 1, 2021
DRAFT - Version 3



Prepared by
Nez Perce Tribe
Environmental Restoration and Waste Management Program

TABLE OF CONTENTS

TABLE OF CONTENTS	II
ACRONYM LIST	IV
TAMÁALWIT (THE LAW).....	1
PREAMBLE	2
BACKGROUND	4
A. TREATY RIGHTS AND FEDERAL OBLIGATIONS.....	4
The Nez Perce Tribe Treaty of 1855.....	4
Treaty Reserved Resources.....	4
B. FEDERAL RECOGNITION OF TRIBAL SOVEREIGNTY	5
C. THE ROLES OF THE NEZ PERCE TRIBE AT HANFORD.....	6
U.S. Department of Energy American Indian Policy.....	6
Consultation with Native Americans.....	7
Nez Perce and DOE Relationship: The Cooperative Agreement.....	7
INTRODUCTION.....	9
A. PURPOSE.....	9
B. GEOGRAPHIC SCOPE AND TIME FRAME.....	9
GUIDANCE STATEMENTS.....	10
A. COMMUNICATIONS	10
Government-to-Government Consultation.....	10
The Nez Perce Tribe’s approved policy (Administrative Action no. 46, July 24, 2001) on Government-to-Government Consultation:	10
U.S. Department of Energy consultation policies Tribes is:.....	12
Access to Information – Database Access – Document Review	14
B. NATURAL RESOURCE MANAGEMENT	16
Guidance for Action.....	17
C. Groundwater	19
Cultural Significance of Water	19
Guidance for Action.....	19
D. Cultural Resources.....	23
Guidance for Action.....	24
E. Risk Assessment.....	26
Guidance for Action.....	26
F. Clean-up Operations of the Hanford Site	27
Guidance for Action.....	28
G. Waste Management.....	30
Guidance for Action.....	30
H. Transportation of Radioactive and Hazardous Waste	32
Guidance for Action.....	32
I. Natural Resource Damage Assessment (NRDA).....	33
J. Long-Term Stewardship (LTS).....	33
Guidance for Action.....	34
K. Capacity Development	36
CONCLUSION.....	37
APPENDIX A.....	38
GLOSSARY	38

APPENDIX B	41
RESOURCE LIST.....	41
APPENDIX C	42
LEGAL, POLICY, AND REGULATION REGARDING: WATER.....	42
APPENDIX D	45
LEGAL, POLICY, AND REGULATION	45
1. Executive Order 12866; Regulatory Planning and Review.....	45
2. Executive Order 12875; Enhancing the Intergovernmental Partnership	58
3. Executive Order 13175; Consultation and Coordination with Indian Tribal Governments	61
4. DOE American Indian and Alaska Native Tribal Government Policy	65
U.S. DEPARTMENT OF ENERGY AMERICAN INDIAN & ALASKA NATIVE.....	66
TRIBAL GOVERNMENT POLICY	66
5. DOE American Indian Tribal Government Interactions and Policy DOE O 144.1	71
6. Presidential memorandum for the Heads of Executive Departments and Agencies.....	87
APPENDIX E	89
RISK ASSESSMENT.....	89
Hanford Risk Assessments	90

ACRONYM LIST

1. (AIRFA), 1978- American Indian Religious Freedom Act
2. (ARAR's)- Applicable or Relevant and Appropriate Requirements
3. (ARPA), 1979- Archeological Resources Protection Act
4. (AWQSAO)- Ambient Water Quality Standards for Aquatic Organisms
5. (BRMAP)- Biological Resource Management Plan
6. (BRMiS)- Biological Resource Mitigation Strategy
7. (C&B)- Caps and Barriers
8. (CA PHG)- California Public Health Goal
9. (CCNI)- Classified Controlled Nuclear Information
10. (CERCLA)- Comprehensive Environmental Response Compensation and Liability Act
11. (CLUP)- Comprehensive Land-Use Plan
12. (CP)- Central Plateau
13. (CR)- Columbia River
14. (CRC)- Columbia River Corridor
15. (CRCIA)- Columbia River Comprehensive Impact Statement
16. (CRP)- Cultural Resource Program
17. (D&D)- Decontamination and Decommissioning
18. (DAT)- Designated Affected Tribe
19. (DOE-AIANP)- DOE-American Indian and Alaskan Native Policy
20. (DOE-AIP)- DOE-American Indian Policy
21. (DOE-AITGIP)- DOE-American Indian Tribal Government Interactions and Policy
22. (DOE)- Department of Energy
23. (DOE-ERP)- DOE- Environmental Restoration Program
24. (DOE-RL)- DOE- Richland
25. (DST's)- Double Shell Tanks
26. (DWS)- Development Work Statement
27. (EIS)- Environmental Impact Statement
28. (EMSL) site- Environmental Molecular Sciences Laboratory
29. (EN)- Energy Northwest
30. (EPA)- Environmental Protection Agency
31. (ERA)- Ecological Risk Assessment
32. (ERDF)- Environmental Restoration Disposal Facility
33. (ERWM)- Environmental Restoration and Waste Management
34. (ET)- Evapo-Transpiration
35. (FFTF)- Fast Flux Test Facility
36. (FOIA)- Freedom Of Information Act
37. (GERA)- Guidelines for Ecological Risk Assessment
38. (GTCC)- Greater Than Class C
39. (HAB)- Hanford Advisory Board
40. (HCRP)- Hanford Cultural Resource Program
41. (HCRMP)- Hanford Cultural Resource Management Plan
42. (HESV)-Hanford End-State Vision

43. (HRA)- Hanford Risk Assessment
44. (HSW)- Hazardous and Solid Waste
45. (IC)- Institutional Controls
46. (INEL)- Idaho National Environmental Laboratory
47. (INP) - Indian Nations Program (at Hanford)
48. (LTS)- Long-Term Stewardship
49. (LTSP)- Long-Term Stewardship Program
50. (MNA)- Monitored Natural Attenuation
51. (MTCA)- Model Toxic Control Act
52. (NACS)- Native American Cultural Site
53. (NAGPRA), 1990- Native American Graves Protection and Repatriation Act
54. (NASC)- National Academy of Science Committee
55. (NAWQC)- National Ambient Water Quality Criteria
56. (NEPA)- National Environmental Policy Act
57. (NHPA), 1966- National Historical Preservation Act
58. (NPT)- Nez-Perce Tribe
59. (NPTEC)- Nez-Perce Tribal Executive Committee
60. (NRDA)- Natural Resource Damage Assessment
61. (NSI)- National Security Information
62. (NWPA), 1982- Nuclear Waste Policy Act
63. (OEMIP)- Office of Environmental Management Implementation Plan
64. (OLC)- Office of Legal Council
65. (ORP)-Office of River Protection
66. (OUO)- Official Use Only
67. (PA)- Privacy Act
68. (PC)- Physical Controls
69. (PNNL)- Pacific Northwest National Laboratories
70. (PRP)- Principle Responsible Party
71. (RCA)- Radiological Control Area
72. (RCRA)- Resource Conservation and Recovery Act
73. (RI/FS)- Remedial Investigation/ Feasibility Study
74. (RL)- Richland WA
75. (RL-RPS)- Richland, River Protection and Science
76. (RTD)- Retrieve, Treatment and Disposal
77. (SPAB)- Site Planning Advisory Board
78. (SRP)- Superfund Response Process
79. (SST's)- Single Shell Tanks
80. (SWDWS)- State of Washington Drinking Water Standards
81. (SWPA), 1942- Second War Powers Act
82. (TPA)- Tri-Party Agreement
83. (TRU)- Transuranic (waste)
84. (U&A)- Usual and Accustomed (areas)
85. (UCNI)- Unclassified Controlled Nuclear Information
86. (US-DOE)- United States Department of Energy
87. (US DOT)- US Department Of Transportation
88. (US-Ecology)- Unites States Ecology

- 89. (US-NNPD)- United States Navy Nuclear Propulsion Division
- 90. (US)- United States
- 91. (VS)- Vision Statement
- 92. (WIPP)- Waste Isolation Pilot Plan
- 93. (WHO)- World Health Organization
- 94. (WSEO)- Washington State Executive Order
- 95. (WTP)- Waste Treatment Plant

Tamáalwit (The Law)

Núunim titéeq'isnim peetmíipn'isix kíi tamáalwina waqíipkin'ix...

Kínm tamáalwitki péetetmipn'itetu 'óykalana wéetespe... Q'o' 'óykaslix kíne wéetespe
'anoqonmáam cúukwe hiwekú' kúnk'u waḡ kúnk'u.

Núunim hanyaw'atóonm páanya kíi wéetesne. Páanaq'i'nya kíi wéetesne 'óykaloo'ayn,
la'ámwa'ayn, káa ke yoḡmay'áyn qo'c hipapáayno'.

'Ikúuy, núun kíye wisíx wéetespe... 'Óykaloo hitéw'yecix kíne wéetespe.

Núunim 'anoqonmáam cúukwe híiwes wéetespe... káa péetwiyektetu la'ámwa tititóoqana
minma'í tá'c waq'isnáawitki

Wéet'u kéemex 'apattóolayo' núunim 'anoqonmáam cukwenéewit... Q'o' kíye 'éeteenm
'apatmíipniyo' tamáalwina yoḡmay'áyn qo'c hipapáayno'.

Our elders remember this law from a long time ago. This law reminds all life on (from) earth... indeed everywhere on this earth (our) ancestor's knowledge resides for all time...

Our creator made this land. He got ready this land, for all people, and for those yet to come. It's true, we are from/of the earth and everyone resides here on this earth. Our ancestor's knowledge is in the land. It speaks to all people how to live good life... We must not forget our ancestors knowledge, we must remember this our big law for the benefit of those yet to come...

PREAMBLE

We, as Nez Perce, have resided on and been the stewards for the land since time immemorial. Our duty is to protect the Earth, our mother, and restore her when we can. This is at the heart of everything we believe in.

The Nez Perce Tribe (Tribe) has a vital interest in the current and future condition of the Hanford Site, the Hanford Reach, and Hanford-affected lands and resources. The 670 square mile area in Central Washington State was chosen by the Federal Government in 1942 as the site for plutonium production for the Manhattan Project, which evolved to develop nuclear weapons fuel for WWII and the Cold War. Past radioactive and chemical releases to the air, soil and water from Hanford during the plutonium production from the mid-1940s through the early 1980s were enormous (See Corbin et al. 2005. R.A. Corbin, B.C. Simpson, M.A. Anderson, W. Danielson III, J.G. Field, T.E. Jones, M.D. Freshley, and C.T. Kincaid, 2005, *Hanford Soil Inventory Model, Rev. 1*, RPP-26744, Rev. 0, CH2M HILL Hanford Group, Inc., Richland, Washington.) Hanford and much of the surrounding area has been affected by and retains residual pollution from nuclear weapons fuel development and processing. Today, although plutonium production has ceased and the nuclear mission has subsided, the cleanup mission will take decades, if not centuries, of applied remediation to complete. Residual contamination that cannot or will not be cleaned up by the U.S. Government will remain hazardous for millennia.

In September 2005 the Nez Perce Tribe Executive Committee (NPTEC) passed Resolution NP-05-411, the Hanford End-State Vision (Vision). This Resolution introduces the values that the Nez Perce Tribe places on the Hanford lands and resources, and defines the principles inherent in those values with respect to returning those lands and resources to a healthy status.

The Hanford End-State Vision is the basis for the Hanford Guidance document (Hanford Guidance). It articulates the short term, mid-term, and long term recommendations for State and Federal agencies with respect to cleanup activities, land use of the Hanford Site, and Hanford-affected lands and resources. The document is specific to Hanford; nothing in this guidance should be construed to modify or conflict with existing Tribe policy regarding the 1855 Treaty or the rights reserved therein.

**Nez Perce Hanford End-State Vision
Resolution NP-05-411
September 27, 2005
(Revised by NPTEC Administration Action January 27, 2009)**

POLICY STATEMENT AND CONDITIONS

The Nez Perce Tribe believes that the Endstate Vision of the Hanford Site should allow for Nez Perce Tribal members to utilize the area in compliance with the Usual and Accustomed treaty rights reserved and guaranteed in the 1855 treaty between the United State Government and the Nez Perce Tribe.

The Nez Perce Tribe believes that the ultimate goals of the Hanford cleanup should be to restore the land to uncontaminated pre-Hanford conditions for unrestricted use. This includes air, soil, groundwater, and surface water. Tribal members, ecological resources, and cultural resources within Usual and Accustomed areas should not be exposed to any potential adverse risk above that which has always existed for the tribe prior to the establishment of the federal government projects and facilities at Hanford in 1942.

To accomplish this long term cleanup goal the Nez Perce Tribe recognizes the following:

1. The Nez Perce Tribe will continue to work with DOE via its cooperative agreement on cleanup issues to ensure that treaty rights and cultural and natural resources are being protected and that interim cleanup decisions are protective of human health and the environment.
2. These goals will require the responsibility of future generations until the goals are finally reached.
3. Technology to cleanup or dispose of some contaminants may not be currently available, but as it becomes available the Nez Perce Tribe will work with the Federal government to further reduce the levels of any residual contamination.
4. Based on the history of man, the Nez Perce Tribe does not believe that institutional controls are necessarily a viable option to be used until land and water can be cleaned up.

For clarification, the following terms are defined:

Hanford and/or Hanford Site shall be defined as the 670 square mile geographic area originally acquired in Central Washington State by the Federal government under the Second War Powers Act in 1942 for the purpose of siting plutonium production facilities of the Manhattan Project.

Pre-Hanford shall be defined as prior to the establishment of the Manhattan project area today known as Hanford.

Uncontaminated shall be defined as free from hazardous and radiological elements and compounds associated with Hanford operations.

Unrestricted shall be defined as Nez Perce tribal access to, and use of, all resources within or affected by Hanford.

BACKGROUND

A. Treaty Rights and Federal Obligations

The Nez Perce Tribe is a sovereign government whose territory comprises over 13 million acres of what are today northeast Oregon, southeast Washington, and north-central Idaho. In 1855 the Tribe entered into a treaty with the United States, securing, among other guarantees, a permanent homeland, as well as fishing, hunting, gathering, and pasturing rights. (Treaty with the Tribe, June 11, 1855; 12 Stat. 957).

Since 1855, many federal and state actions have recognized and reaffirmed the Tribe's treaty-reserved rights. The Tribe's treaty-reserved interests in the Hanford Reach area inform its legal relationship with the United States. Aboriginal rights provided in the 1855 Treaty extend to areas of land in Idaho and surrounding states, including the Columbia, Snake, and Salmon River regions, which may be impacted by DOE activities. Because these rights are of enormous importance to the Tribe's subsistence and cultural fabric, the ecosystems that support fish and wildlife (including both flora and fauna) must remain undamaged and productive. DOE recognizes the existence of reserved treaty rights.

The Nez Perce Tribe Treaty of 1855

Under the Treaty of 1855, the Tribe ceded certain areas of its aboriginal lands to the United States and reserved for its exclusive use and occupation certain lands, rights, and privileges; and the United States assumed fiduciary responsibilities to the Tribe.

Rights reserved under the Treaty of 1855 include those found in Article 3 of the Treaty, "*The exclusive right of taking fish in all the streams where running through or bordering said reservation is further secured to said Indians; as also the right of taking fish at all usual and accustomed places in common with citizens of the Territory; and of erecting temporary buildings for curing, together with the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.*"

The aforementioned reserved rights are a fundamental concern to the Tribe. The fish, roots, wild game, religious sites, and ancestral burial and living sites remain integral to the Nez Perce culture. The Tribe expects, accordingly, to be the primary consulting government in all federal actions related to Hanford that stand to affect or implicate the Tribe's treaty-reserved or cultural interests.

Treaty Reserved Resources

Treaty-reserved resources situated on and off the Reservation (hereinafter referred to as "Tribal Resources") include but are not limited to:

Tribal water resources located within the Columbia, Snake, and Clearwater River Basins including those water resources associated with the Tribe's usual and accustomed fishing areas and Tribal springs and fountains described in Article 8 of the Nez Perce Tribe Treaty of 1863;

Fishery resources situated within the Reservation and associated with the Tribe's usual and accustomed fishing areas in the Columbia, Snake, and Clearwater River Basins;

Areas used for the gathering of roots and berries, hunting, and other cultural activities within open and unclaimed lands including lands along the Columbia, Clearwater, and Snake River Basins;

Forest resources situated on the Reservation and within the ceded areas of the Tribe;

Land held in trust or otherwise located on and off the Nez Perce Reservation in the States of Idaho, Oregon; and Washington;

Culturally sensitive areas, including, but not limited to, areas of archaeological, religious, and historic significance, located both on and off the Reservation.

B. Federal Recognition of Tribal Sovereignty

A unique political relationship exists between the United States and Indian Tribes, as defined by treaties, the United States Constitution, statutes, federal policies, executive orders, and court decisions which recognize Tribes as separate sovereign governments.

As a fiduciary, the United States and all its agencies owe a trust duty to the Nez Perce Tribe and other federally-recognized tribes. The trust responsibility imposes an independent obligation upon the federal government to remain loyal to the Indians and to advance their interests. The purpose behind the trust doctrine is and always has been to ensure the survival and welfare of Indian tribes and people.

In cases involving the interpretation of Indian Treaties or Statutes, the Supreme Court has taken the position that the United States has intended to honor the Treaties with the Indian Tribes. This line of reasoning has led to the **canons of construction** related to Indian Law. Thus, ambiguities in Treaties or Statutes are to be interpreted in favor of the Indians. The Treaties or Statutes are to be interpreted as the Indians would have understood them at the time they were negotiated. Any abrogation of Indian rights is not implied but must be unequivocally stated.

The United States' trust obligation includes a substantive duty to consult with a tribe, as only a tribe can provide that interpretation (canons of construction), in decision-making to avoid adverse impacts on treaty resources and a duty to protect tribal treaty-reserved rights "and the

resources on which those rights depend. See **Government-to-Government Consultation** under Guidance Statements; A. Communications below.

Consistent with the United States' trust obligation to Tribes, Congress has enacted numerous laws to protect Tribal resources and cultural interests, including, but not limited to the National Historic Preservation Act (NHPA) of 1966; the Archaeological Resources Protection Act of 1979; the Native American Graves Protection and Repatriation Act (NAGPRA) of 1990; the American Indian Religious Freedom Act (AIRFA) of 1978; and the Nuclear Waste Policy Act (NWPA) of 1982.

C. The Roles of the Nez Perce Tribe at Hanford

The Tribe has a duty to protect its reserved treaty rights, environment, culture, and welfare as well as to educate its members (the tribal public) and neighboring public of its activities. The Tribe assumes many different roles. It is a governmental entity with certain powers and authorities derived from its inherent sovereignty, from its status as the owner of land, and from legislative delegations from the Federal government. The Tribe exercises its powers and authority to serve its members and to monitor activities occurring within the areas of Nez Perce treaty interests. The Tribe is also a cultural entity and is accordingly charged with honoring its commitment to perpetuate that culture which is uniquely Nez Perce. The Tribe is also a beneficiary within the context of federal trust relationship with its obligation to Tribes. The Tribe is a trustee responsible for the protection and betterment of its members and the protection of rights and privileges. The Tribe is also party to treaties between itself and the United States government.

In 1982, the United States Congress passes the Nuclear Waste Policy Act (NWPA). The Tribe in response wrote a letter to the Secretary of Interior -William Clark dated August 7, 1984 to formally request to be designated as an "affected Indian Tribe" under the NWPA. The Act defines "Indian Tribe" under section 2(15) as; "the tribe must possess congressionally ratified treaty rights outside the boundaries of the Indian Reservation; and that the Secretary must find that these treaty rights may be substantially and adversely affected by the location of a nuclear waste repository at the Basalt Waste Isolation Project site (BWIP)". On September 17, 1984, the Assistant Secretary of Indian Affairs wrote a letter to the Secretary of Energy explaining that the Tribe needs to be designated as an "Affected Indian Tribe" under the NWPA. December 1984, Secretary of Energy approved Tribes' request.

U.S. Department of Energy American Indian Policy

On November 29, 1991, DOE announced a seven-point American Indian Policy, which formalizes the government-to-government relationship between DOE and federally recognized Indian Tribes. A key policy element pledges prior consultation with Tribes where their interests or reserved treaty rights might be affected by DOE activities.

The DOE American Indian Policy (Appendix D) provides a basis for the Cooperative Agreement between the Tribe and DOE relative to Hanford. The Cooperative Agreement will also serve as an DOE-Office of Environmental Management Implementation Plan for the DOE American Indian Policy regarding interactions with the Tribe.

Consultation with Native Americans

Consultation is dialog to affect change. Consultation is a form of communication that occurs at various levels from technical to policy. It is also communication that maintains quality control and transparency. It is the intent of the Tribe to talk early and often.

DOE's consultation responsibilities to the Tribe are enumerated generally in the document entitled, Consultation with Native Americans (DOE/EH-41-0019/1204, December 2004). This policy defines consultation in relevant part:

“Consultation includes, but is not limited to: prior to taking any action with potential impacts upon American Indian and Alaska Native nations, providing for mutually agreed protocols for timely communication, coordination, cooperation, and collaboration to determine the impact on traditional and cultural lifeways, natural resources, treaty and other federally reserved rights involving appropriate tribal officials and representatives through the decision making process.”

Further basis for U.S. Department of Energy consultation with the Tribe is found within the following statutes: The Nuclear Waste Policy Act (NWPA) of 1982 – Public Law 97-425; Memorandum for the Heads of Executive Departments and Agencies: Government-to-Government Relations with Native American Tribal Governments - April 29, 1994; DOE American Indian and Alaskan Native Policy; DOE Order 144.1 – Department of Energy American Indian Tribal Government Interactions and Policy; Presidential Memorandum on Tribal Consultation of November 5, 2009; Presidential Documents, Federal Register, Vol. 74, No. 115

Nez Perce and DOE Relationship: The Cooperative Agreement

DOE planning activities may affect the cultural, treaty, and trustee roles of the Tribe. The understanding iterated in the continuation of the DOE/ Nez Perce Tribe Cooperative Agreement reflects the diverse interests and responsibilities of the Tribe.

The relationship between the Tribe and DOE is defined by the fiduciary responsibilities of the Federal Government to the Tribe, by treaty, federal statute, executive orders, administrative rules, caselaw, DOE's American Indian Policy, and by the Cooperative Agreement. The structured relationship embodied by the Cooperative Agreement can best be described as a partnership grounded in the site-specific cleanup of Hanford, and extends to all trust-related activities of the Department.

The Tribe asserts its position as a co-manager with the Federal Government, and as such draws upon a pool of culturally and technically trained personnel available to DOE, including certified labor for environmental restoration, decontamination and decommissioning work.

The NPTEC may request policy level consultation with the DOE to discuss a proposal or issue further. The continuation of the Cooperative Agreement establishes an approach that integrates these and other roles into a comprehensive Nez Perce-DOE program.

Introduction

A. Purpose

The Tribe has the responsibility to protect the health, welfare, and safety of its members, and the environment and cultural resources of the Tribe. NPTEC authorize Environmental Restoration and Waste Management Program (ERWM) to implement the approved Vision. The Hanford Guidance is the tool used by ERWM to implement this responsibility. The Vision states the “ultimate goal of the Hanford cleanup should be to restore the land to uncontaminated pre-Hanford conditions for unrestricted use.” In the remediation process of the Hanford Site, Federal agencies are required to fulfill the various Treaties with the affected tribes. To assist Federal agencies in fulfilling trust responsibilities to the Tribe by implementing the values inherent in the Vision into the cleanup decision process, the language of the Tribe Hanford End-State Vision statement is correlated to objective goals and standards and/or criteria through this guidance document.

This Hanford Guidance is an addendum to the Nez Perce Hanford End-State Vision. It is intended to assist in guiding Federal agencies with their trust responsibilities to the Tribe to restore the integrity of the ecosystem through the cleanup of contaminated soil, groundwater and surface waters resulting from the operations of the Hanford Site. Because the Tribe recognizes that advances in the understanding of the science and technology of vadose zone and groundwater contamination will occur, this is a living document.

B. Geographic Scope and Time Frame

Hanford-affected lands are defined as the Hanford site; the Hanford Reach; the Hanford Reach National Monument; and lands, air, and water, outside Hanford that could be affected by Hanford, and anywhere that Hanford contamination has come (or will come) to be located.

Non-DOE land or operations within the Hanford area of influence, such as Pacific Northwest National Laboratories (PNNL), US Navy Nuclear Propulsion Division, Energy Northwest, and US Ecology, are included in this scope, as well as transportation routes where nuclear materials are moved from one site to another for treatment or disposal.

This guidance is applicable to actions on the Hanford-affected lands from the time Hanford was established by the Second War Powers Act in 1942, and for as long as Hanford-related contaminants remain intrinsically hazardous, and/or Hanford-related contaminate impacts remain.

GUIDANCE STATEMENTS

A. Communications

The Treaty of 1855 and trust obligations of the United States government extend to all federal agencies. All federal actions and the implementation of federal statutory schemes affecting Indian people, Indian land or Indian resources must be judged by the most exacting fiduciary standard. Thus, the federal government and its implementing agencies are obligated to use their expertise and authority – in meaningful consultation with the tribes – to safeguard natural resources that are of crucial importance to tribal self-government and to prosperity.

Government-to-Government Consultation

Consultation is dialog to affect change. Consultation is a form of communication that occurs at various levels from technical to policy. It is also communication that maintains quality control and transparency. It is the intent of the Tribe to talk early and often.

The Nez Perce Tribe’s approved policy (Administrative Action no. 46, July 24, 2001) on Government-to-Government Consultation:

“As a fiduciary, the United States and all its agencies owe a trust duty to the Nez Perce Tribe and other federally-recognized tribes. See United States v. Cherokee Nation of Oklahoma, 480 U.S. 700, 707 (1987); United States v. Mitchell, 463 U.S. 206, 225 (1983); Seminole Nation v. United States, 316 U.S. 286, 296-97 (1942). This trust relationship has been described as “one of the primary cornerstones of Indian law,” Felix Cohen, Handbook of Federal Indian Law 221 (1982), and has been compared to one existing under the common law of trusts, with the United States as trustee, the tribes as beneficiaries, and the property and natural resources managed by the United States as the trust corpus. See, e.g. Mitchell, 463 U.S. at 225.

The United States’ trust obligation includes a substantive duty to consult with a tribe in decision-making to avoid adverse impacts on treaty resources and a duty to protect tribal treaty-reserved rights “and the resources on which those rights depend.” Klamath Tribes v. U.S., 24 Ind. Law Rep. 3017, 3020 (D.Or. 1996). The duty ensures that the United States conduct meaningful consultation “in advance with the decision maker or with intermediaries with clear authority to present tribal views to the ... decision maker.” Lower Brule Sioux Tribe v. Deer, 911 F. Supp 395, 401 (D. S.D. 1995).

Further, Executive Order 13175 provides that each “agency shall have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” According to the President’ April 29, 1994 memorandum regarding Government-to-Government Relations with Native American Tribal Governments, federal agencies “shall assess the impacts of Federal Government plans, projects, programs, and activities on tribal trust resources and assure that Tribal

government rights and concerns are considered during the development of such plans, projects, programs, and activities.” As a result, Federal agencies must proactively protect tribal interest, including those associated with tribal culture, religion, subsistence, and commerce. Meaningful consultation with the Nez Perce Tribe is a vital component of this process.

Consultation is the formal process of negotiation, cooperation, and mutual decision-making between two sovereigns: the Nez Perce Tribe (NPT) and the United States (including all federal agencies). Consultation is the process that ultimately leads to the development of a decision, not just as process or a means to an end. The most important component of consultation is the ultimate decision.

Consultation does not mean notifying the Tribe that an action will occur, requesting written comments on that prospective action, and then proceeding with the action. In this scenario, the decision is not affected. “Dear Interested Party” letters are not consultation. It is equally important to understand that as a sovereign government, a Tribe may elect not to conduct government-to-government consultation or may decide to limit the scope of their consultation as needed.

Objectives of Consultation

- 1. Assure that the Nez Perce Tribal Executive Committee (NPTEC) understands the legal issues necessary to make an informed policy decision;*
- 2. Assure federal compliance with treaty and trust obligations, as well as other applicable federal laws and policies impacting tribal culture, religion, subsistence, and commerce;*
- 3. Improve policy-level decision-making of both NPTEC and federal government;*
- 4. Bilateral decision-making among two sovereigns (co-management of resources);*
- 5. Ensure the protection of NPT resources, culture, religion, and economy;*
- 6. Ensure compliance with tribal laws and policies;*
- 7. Develop and achieve mutual decisions through a complete understanding of technical and legal issues; and*
- 8. Improve the integrity of federal-tribal decisions.*

Process of Consultation:

Consultation works through both technical and policy-level meetings to differentiate between technical and policy issues allowing for proper technical level staff consultation and then policy-level consultation for those issues that remain unresolved or for those issues that are clearly only resolvable at the policy level. Consultation is the process of coming to common understanding of the technical and legal issues that affect, or are affected by, a decision and then using this understanding to formulate a decision.

Meaningful consultation requires that federal agencies and Tribes understand their respective roles and have a basic understanding of the legal underpinnings of the government-to-government relationship, including the responsibility of the federal

government under the Trust doctrine. In addition, federal agencies will benefit from some understanding of tribal culture, perspectives, world view, and treaty rights. Tribal governments must understand the policy decision-making authority of the federal agency. Tribal governments must understand the non-tribal politics of the federal agency decision that consultation will affect.

In these examples, it is critical to note that a tribal government cannot understand the politics of the federal agency decision without personal communications. Similarly, the federal agency cannot understand the Tribe's issues and concerns unless agency staff meet with the Tribe to discuss those issues and concerns. Without communication, consultation is meaningless and a mutual decision is difficult or impossible.

The consultation process works like this:

- 1. Federal agency contacts NPTEC or its appointed point-of-contact to notify of an impending project proposal or to conduct an activity that may or may not impact tribal resources.*
- 2. NPTEC responds back that this issue is important and that it would like to initiate consultation. NPTEC requests federal agency technical experts meet with tribal technical staff (or NPTEC requests a policy level meeting).*
- 3. Consultation has been initiated. Technical staffs meet. Technical and legal issues are discussed; the result is that tribal staff understand the proposal and federal agency staff understand at technical level why this proposed activity is of concern to the Tribe. This allows respective technical staff to brief respective policy entities and to provide informed opinions and recommendations.*
- 4. Tribal staff briefs NPTEC. Consultation is initiated between policy-level decision-makers from both the Tribe and the federal agency.*
- 5. Additional meetings are held, if necessary, leading up to the decision.*
- 6. Federal agency and Tribe formulated a decision. Assurances are made that the decision is consistent with federal laws and tribal laws and policies. This means the decision is consistent with applicable natural and cultural resource laws and policies. For the NPT specifically, it means the decision protects the resources to which the NPT has specific treaty-reserved rights and enables continued practice of tribal religious, cultural, and subsistence activities.*

These steps may be adapted to suit the needs of the decision-making process leading to the formulation of a decision.”

U.S. Department of Energy consultation policies Tribes is:

- a. **The Nuclear Waste Policy Act (NWPA) of 1982 – Public Law 97-425** -- The language of the act describes it as, “An Act to provide for the development of repositories for the disposal of high-level radioactive waste and spent nuclear fuel, to establish a program of research, development, and demonstration regarding the disposal of high-level radioactive waste and spent nuclear fuel, and for other purposes.”

In addition, PL 97-425 states, "...upon any decision by the Secretary or the President to develop [*the above*] ...the State or Indian tribe involved shall be entitled, with respect to the proposed repository involved, to rights of participation and consultation..."

- b. **Designated Affected Tribe** - After the United States Congress passed the NWPA in 1982, the Tribe passed a Tribal Resolution to formally request designation as an "affected Indian Tribe" under the NWPA. "Affected Indian Tribe" means any Indian Tribe (1) within whose boundaries a repository for high-level radioactive waste or spent fuel is proposed to be located: or (2) whose Federally defined possessory and usage rights to other lands outside of the reservation's boundaries arising out of Congressionally ratified Treaties or other Federal law may be substantially and adversely affected by the location of such a facility: Provided that the Secretary of Interior finds, upon the petition of the appropriate governmental officials of the Tribe, that such effects are both substantial and adverse to the Tribes." In December 1984, the Secretary of Energy recognized the affected status of the Tribe with respect to Hanford.

- c. **Memorandum** for the Heads of Executive Departments and Agencies: Government-to-Government Relations with Native American Tribal Governments - April 29, 1994

"The United States government has a unique legal relationship with Native American tribal governments as set forth in the Constitution of the United States, treaties, statutes, and court decisions..."

In order to ensure that the rights of sovereign tribal governments are fully respected, executive branch activities shall be guided by the following...

- b. Each executive department and agency shall consult...with tribal governments prior to taking actions that affect federally recognized tribal governments. All such consultations are to be open and candid ...

- f. Each executive department and agency shall apply the requirements of Executive Orders Nos. 12875 ("Enhancing the Intergovernmental Partnership") and 12866 ("Regulatory Planning and Review") to design solutions and tailor federal programs, in appropriate circumstances, to address specific or unique needs of tribal communities..."

[See Appendix D of this document for Executive Orders 12866 and 12875.]

- d. **DOE American Indian and Alaskan Native Policy**, last modified in January 2006 by Secretary Bodman – [See Appendix D for full text.] Purpose: "This Policy sets forth the principles to be followed by the Department of Energy (DOE) to ensure an effective implementation of a government to government relationship with American Indian and Alaska Native tribal governments. This Policy is based on the United States Constitution, treaties, Supreme Court decisions, Executive

Orders, statutes, existing federal policies, tribal laws, and the dynamic political relationship between Indian nations and the Federal government.’ The most important doctrine derived from this relationship is the trust responsibility of the United States to protect tribal sovereignty and self-determination, tribal lands, assets, resources, and treaty and other federally recognized and reserved rights. This Policy provides direction to all Departmental officials, staff, and contractors regarding fulfillment of trust obligations and other responsibilities arising from Departmental actions which may potentially impact American Indian and Alaska Native traditional, cultural and religious values and practices; natural resources; treaty and other federally recognized and reserved rights.”

- e. **DOE Order 144.1 – Department of Energy American Indian Tribal Government Interactions and Policy** [See Appendix D for full text.]
Purpose: “This Order communicates Departmental, programmatic, and field responsibilities for enacting with American Indian Governments and transmits the Department of Energy’s (DOE) American Indian and Alaska Native Tribal Government Policy...including its guiding principles, and transmits the Framework for Implementation of the Policy.”

- f. **Memorandum** on Tribal Consultation of November 5, 2009;; Presidential Documents, Federal Register, 74 FR 57879 [See Appendix D for full text.]
Purpose: This is President Obama’s affirmation of his Administration’s commitment “to regular and meaningful consultation and collaboration with tribal officials in policy decisions that have tribal implications including, as an initial step, through complete and consistent implementation of Executive Order 13175.

- g. **Memorandum** on Tribal Consultation and Strengthening Nation-to-Nation Relationships of January 26, 2021;; Presidential Documents, Federal Register, 86 FR 7491 [See Appendix D for full text.]
Purpose: This is President Biden’s affirmation of his Administration’s commitment “to strengthen the Nation-to-Nation relationship between the United States and Tribal Nations”, through complete and consistent implementation of Executive Order 13175 and Presidential Memorandum on Consultation November 5, 2009.

Access to Information – Database Access – Document Review

- a. **Need to Know:** The Tribe expects access to any Hanford information that involves projects which may impact natural and cultural resources at Hanford. If information falls under a FOIA exemption or is determined by DOE to be Official Use Only (OUO), the Tribe expects to resolve access through the consultation process.

- i. In regard to security clearance, none of the various provisions of the continuation of the Cooperative Agreement shall be construed as providing for the release of reports or other classified information designated as "classified" or "Unclassified Controlled Nuclear Information" to the Tribe, or as waiving any other security requirements. Classified information includes National Security Information (10 CFR Part 1045) and Restricted Data (10 CFR Part 1016). Unclassified Controlled Nuclear Information is described in 10 CFR Ch. X, Part 1017.
 - ii. In the event that reports or information requested under the provisions of the continuation of the Cooperative Agreement, while not "classified" or "Unclassified Controlled Nuclear Information," are determined by DOE-RL to be subject to the provisions of the Privacy Act, or the exemptions provided under the Freedom of Information Act, DOE-RL may, to the extent authorized by law, provide such reports or information to the Tribe upon receipt of the Tribe 's written assurance that the Tribe will maintain the confidentiality of such data.
- a. The National Environmental Policy Act intends to "...provide full and fair discussion of significant environmental impacts, and shall inform decision-makers and the public of reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment." It is the contention of the Tribe that access to information is vital to the determination of reasonable decisions about nuclear waste. Difficult questions and problems remain regarding clarity of risk to humans and the environment. One of the greatest problems is how to deal with waste that will remain radioactive and hazardous for very long periods of time.
 - i. The Hanford Site has many internal databases and documents that are not available to Tribe. Access to this information ensures that Treaty rights are being protected. If the DOE is unable to provide the Tribe access to the Hanford Intranet, then current electronic copies of Hanford databases and documents should be provided to the Tribe.

1. Communication Plans

- A.) Open and transparent decision-making processes are required to establish and maintain the working relationship between DOE and the Tribe. The mission statement of the Indian Nations Program at Hanford includes the following two directives:
 - 1. *To provide a proactive program that guides the implementation of the U.S. Department of Energy American Indian Policy in an honorable and consistent manner;*

2. *To provide effective ombudsman services and anticipate and initiate opportunities for meaningful tribal participation in Hanford decision-making processes.*

- B.) The Tribe supports the transparent processes of the Tri-Party Agreement, as those processes provide support to treaty rights in Usual and Accustomed Areas within the Hanford Site. Circumstances may encourage the development of a communications plan specific to an issue, such as contaminated human remains discovered during cleanup, or risk assessment in the river corridor.
- C.) All stewardship plans for Hanford must provide for an effective recordkeeping system to support cleanup, remediation, stewardship and risk responsibilities into the conceivable future.

2. Workshops and Meetings

- A) Though it is the intent of the Tribe to participate in public/stakeholder workshops and meetings relative to Hanford, including the Hanford Advisory Board, this does not replace official consultation with the Tribal government.
- B) The Tribe intends to continue regular staff-to-staff meeting with the two federal offices, RL and ORP, and both regulators, EPA and WA Department of Ecology. Consultation with the Tribe is not fulfilled until the Tribe recognizes that consultation has been adequately implemented. Frequency of staff meeting shall change according to need.

B. Natural Resource Management

The Nez Perce tribal vision of how tribes came to be part of the earth and part of creation and what the future holds is not easily expressed in non-tribal language. But the vision contains sovereignty, respect for the water, air, plants and animals and the interconnection of the spirits of these and tribal peoples, past, present and future.

Hanford lands are located in the Tribe's aboriginal lands. The natural resources of Hanford must be protected in such a way to meet the trust responsibility the United States has to the Tribe. Ecological resources and tribal use of those resources must be made whole. The character of Hanford and Hanford-affected lands and resources must be protected, including but not limited to the un-impounded character of the Hanford Reach, the salmon spawning areas, cultural sites, and other unique and irreplaceable attributes of Hanford and Hanford-affected lands and resources.

Therefore, the Tribe Hanford End-State Vision (page 8) states it is critical that the Hanford Site air, soil, groundwater and surface water are restored to uncontaminated, unrestricted pre-Hanford use in order to protect the water. To clarify, “uncontaminated” shall be defined as free hazardous of chemicals and radioisotopes associated with Hanford operations. “Unrestricted” shall be defined as Nez Perce tribal access to and use of all resources within or affected by Hanford. “Pre-Hanford” shall be defined as prior to the establishment of the Manhattan project area today known as the Hanford Site.

The US Government must protect the interests of the Tribe by ensuring that lands, water, soil, air, biological and cultural resources are clean and safe to use after cleanup; e.g., human health and the environment are not adversely affected from chemical, radiological, and physical impacts that are related to operations or management of the Hanford site.

The Tribe is a designated Hanford Trustee as defined under CERCLA, and as such is an active participant, working with DOE and its contractors on activities which impact cultural and natural resources. The Tribe supports all efforts to maintain the integrity of the sage/steppe habitat that exists at Hanford, and the health of the Columbia River.

Guidance for Action

In consideration of the values and regulatory issues noted above, the following points provide guidance to Federal and State agencies for health of Hanford lands, water, soil, air, and biological resources. Tribe intends that this guidance be an intricate part of the decision-making process of the cleanup effort at the Hanford Site.

1. The Federal government must maintain an institutional understanding and memory of its Treaty obligations and trust responsibilities to the Tribe.
2. Restoration to pre-Hanford operations-affected status is the baseline guidance.
3. Absent a sufficient understanding of the distribution of contamination in the vadose zone, migration rates and preferred pathways are poorly known, and risks to natural resources cannot be accurately predicted. Because the remediation and cleanup issues at the Hanford Site are profound, the Federal government must commit to supporting continued characterization and remediation until the problems can be resolved to the extent that human health and the environment are once again protected at the level commensurate with pre-Hanford contaminant conditions.
4. It cannot be assumed that cleanup action which is protective of human health is also protective of the environment. In the absence of any ecological data it cannot be assumed that remedial actions are being protective of the environment.
5. Institutional controls are to be considered interim actions only, contingent upon agreement with the Tribe to implement acceptable long-term remediation and cleanup actions.

- 6.** Interim actions must be carefully chosen so as not to be irreversible or otherwise produce unintended results that are contrary to the tribal policy. Interim actions must be responsibly monitored.
- 7.** Hanford land management must include an effectively operating noxious weed control program. If noxious weeds are not adequately controlled, many of the native species will be displaced and the Tribe will be unable to exercise treaty rights related to hunting and gathering.
- 8.** The Tribe strongly opposes any activities along the North Slope of Waluke which are likely to contribute to the increased landslide potential in the White Bluffs area.
- 9.** The Tribe supports the “Wild and Scenic” designation of the Hanford Reach (Resolution NP 96-007).
- 10.** The Tribe opposes use of Spiritual Mountains (Rattlesnake Mountain; Gable Mountain and Butte) or any further use except historical religious use, and recommends protection, preservation, restoration and maintenance of the cultural environment in sacred areas at the Hanford Site. (Resolution NP 03-139; 07-139;07-399)
- 11.** The Tribe recognizes Gable Mountain and Gable Butte areas important and significant to the culture of area Affected Tribes (Resolution NP 07-139).
- 12.** The Tribe recognizes Rattlesnake Mountain as important and significant to the culture of area Affected Tribes (Resolution NP 07-399).
- 13.** All decisions are to be guided with concern for maintaining natural resources for future generations.
- 14.** Updating the CLUP on a regular basis enhances the working relationship between the Tribe and DOE.
- 15.** Future Land Transfers pose a problem if tribal interests, treaty resources and treaty rights are not addressed.
- 16.** The Tribe recognizes that the CLUP identifies the Tribe as a member of the Site Planning Advisory Board.
- 17.** As a Hanford Trustee, the Tribe seeks to restore natural resources at Hanford through participation in the NRDA process.

C. Groundwater

Cultural Significance of Water

The Tribe, as people of the Columbia River system, holds the balancing of natural and cultural resources throughout the entire landscape in the highest regard. ***Kuus*** is the term the Nimiipu (Nez Perce people) use to identify water. *Kuus* is life. *Kuus* is everything. **Water is intrinsically sacred** to the Nez Perce people. The tribal vision of how tribes came to be part of the earth and part of creation and what the future holds is not easily expressed in non-tribal language. But the vision contains sovereignty, respect for the water, air, plants and animals and the interconnection of the spirits of these and tribal peoples, past, present and future.

The possession of an adequate land base and resources are vital to the existence of the Tribe on the Columbia River. Without such fundamental necessities tribal life is virtually impossible to maintain. The Tribe works to ensure tribal protection and preservation of their land, water, and subsistence rights. The results of these efforts hold importance beyond material wealth; they are the key to tribal existence.

Through oral traditions, it is understood that water is as old as the Mother Earth. It is a vital, life sustaining element that runs through Mother Earth's veins; it is the blood life to all beings, therefore it must be remembered that Hunyawat (the Creator) gave us one Earth that provides food, one Air that we breathe for life, one Water to nourish and cleanse our bodies, the animals, the plants and the land in which all live.

Water is essential in our day-to-day lives and our ceremonial feasts. The Niimiipuu drink water before and after eating to purify of our bodies before we accept the gifts from the Creator. Water is also consumed after the feast to purify all the food we have consumed.

The Tribe recognizes that water, land, salmon and other fish and wildlife species are integral to the proper functioning of the northwest ecosystem. The fish feed and provide vital nutrients to humans, birds of prey (eagles, ospreys), bears, aquatic insects, and the riparian vegetation. The nutrients that they bring back to the natal streams are a crucial source of energy for the watersheds and drainages to which they return in order to complete their life cycle. Uncontaminated water is key to ensuring that this all happens. The Tribe understands that pathways between water and all other creatures are capable of carrying multiple contaminants which pose innumerable risks to biologically functioning systems. The Tribe acts to erase or reduce the risks from contaminated water in order that the natural systems can return to a functional, naturally balanced state.

Guidance for Action

The Tribe believes groundwater and the Columbia River are at risk from current and potential radionuclide and toxic chemical releases from the Hanford Site. The potential for inadvertent releases of hazardous materials may be increased by improper remediation or inappropriate land use.

The Tribe Hanford End-State Vision states it is critical that the Hanford Site air, soil, groundwater and surface water are restored to uncontaminated, unrestricted pre-Hanford use in order to protect the water.

The DOE is recognized as the Potentially Responsible Party through the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) for the natural resources damaged by the accidental and purposeful releases of hazardous contaminants at the Hanford Site. **Restoration of water quality to natural background levels is the optimum Tribal standard**, for the environment in which Nez Perce people have lived for millennia (see Nez Perce Hanford End-State Vision statement).

Groundwater from the site feeds the Columbia River system and has high **instrumental use to daily activities of tribal members**. Its highest beneficial use and reasonable expected use, as defined by Nez Perce tribal values, is needed for drinking water, the healthy maintenance of aquatic organisms, sweat lodge activity, and food chain accumulation - whichever use requires the highest water quality. Tribal beliefs make it clear impacts to water and to terrestrial and/or aquatic ecological receptors are of equal concern to that of impacts to humans.

The Nez Perce belief system determines what levels of risk are acceptable. People judge risk based on how familiar they are with risk concepts, how likely it is to occur, how widespread the effects are and who is affected. The tribal experience and values support the perception that Nez Perce tribal members are at greater risk of exposure at the Hanford Site than the general public.

1. To the Tribe, *Cleanup* means restoration of the land to uncontaminated pre-Hanford conditions, with potential for unrestricted use by members of the Tribe. If DOE and the NPT determine that remediation and restoration of groundwater in specific areas do not appear to be technically or economically practical at the current time, all remedial actions will be deemed interim by the Tribe and will be conducted in accordance with CERCLA.
2. Natural attenuation potentials must be evaluated within the context of effects on Nez Perce Tribal treaty rights, the land and its natural resources, and potential for NRDA assessment. The cost of long-term monitoring associated with the natural attenuation must be incorporated into the remedy selection.
3. Groundwater resources that cannot be remediated must be isolated, and compensation for resource loss must be determined and restored.
4. Uncontained contamination in the vadose zone or groundwater is unacceptable.
5. Upon any development upon the Hanford Site, infiltration controls shall be required to protect groundwater where necessary.

6. Absent a designated point of compliance in the Central Plateau, the 200 Area boundary should be considered the point of compliance for planning purposes.
7. The Tribe is concerned with unplanned releases of non-contaminated fluids to the surface and vadose zone. In order to retain the knowledge, in working site databases, of a potential liquid drive of contaminant in the vadose zone, the NPT recommends the following as a permanent condition of the Site-Wide RCRA permit: *recording, in permanent archive, events of any unplanned releases of non-contaminated fluids to the surface and vadose zone in excess of 14,5000 gallons in a 24-hour period, OR 50,000 gallons total in a calendar year from one source.*
8. Without a sufficient understanding of the distribution of contamination in the vadose zone, migration rates and preferred pathways are poorly known, and risks to natural resources can not be accurately predicted. Because the remediation and clean-up issues at the Hanford Site are profound, the Federal government must commit to supporting continued characterization and remediation efforts until the problems can be resolved to the extent that human health and the environment are once again protected at the level commensurate with pre-Hanford contaminant conditions.
9. The Tribe currently applies State of Washington Drinking Water Standards and Ambient Water Quality Standards for Aquatic Organisms for most Hanford contaminants, with the exceptions stated below which are more stringent than the State of Washington standards.

The following quantitative standards could be adopted as Applicable or Relevant and Appropriate Requirements (ARARs) consistent with requirements as set forth in the Treaty of 1855, and Federal trust responsibilities as provided for in statutes, regulations, executive orders and agreements.

Table 1. The standards which the Tribe uses as a measure of the clean-up level required to bring the water of the Hanford Site back to a pre-Hanford level of environmental health, and thus in agreement with the Tribe Hanford End-State Vision.

Constituents	Standard	Notes
Arsenic	0.01 mg/l	[EPA changed nat'l std to 0.01 mg/l in 1/06]
Beryllium	0.001 mg/l	[California Public Health Goal (CA PHG)]
Carbon Tetrachloride	0.0001 mg/l	[CA PHG]
Chromium	0.01 mg/l	[WA State ambient water quality std for aquatic organisms, which is 5 x lower than WA State DWS; this is important issue at Hanford Reach re: Salmon redds]

Fluoride	1.0 mg/l	[CA PHG; World Health Organization (WHO)has DWS set at 1.5 mg/l value]
Lead	0.002 mg/l	[CA PHG]
Mercury	0.0012 mg/l	[CA PHG]
Radium-226	0.05 pCi/l	[CA PHG]
Radium-228	0.019 pCi/l	[CA PHG]
Radon	300 pCi/l	[EPA, 1996]
Strontium-90	0.34 pCi/l	[CA PHG]
Tritium	400 pCi/l	[CA PHG]
Trichloroethylene (TCE)	0.0008 mg/l	[CA PHG]
Vinyl Chloride	0.00005 mg/l	[CA PHG]
Uranium	2.6 µg/l	[EPA Tier II ecological screening value (1993) because NAWQC not available; WHO, 2006, set a DWS at 15 µg/l; 12/03 EPA determined a DWS of 30 µg/l ; ERWM supports the most conservative, which is that which EPA determines appropriate for aquatic organisms, Tier II ecological screening (in this case, at the Hanford Reach).

D. Cultural Resources

Núunim titéeq'isnim peetmíipn'isix kíi tamáalwina waqíipkin'ix ...

Our law and the Earth and our way of life are one...

Niimiipuu (Nez Perce) Cultural Resource definition: Any evidence of human occupation, or activity that is of significant importance in the Niimiipuu history, architecture, archaeology, or culture, located within the aboriginal homelands of the Nez Perce Tribe.

The Tribe, intends this section to provide guidance to manage and protect all cultural resources and other resources retained by the Treaty, on all lands within the Tribe's Treaty area. It is the intent of the Tribe to manage these resources in a manner which preserves the vitality of the resources for future generations.

The Tribe as a sovereign nation is capable of making decisions regarding management of historic and cultural preservation, protection and perpetuation within their aboriginal lands. The goals of this cultural resource section are to establish guidance for preservation, protection and perpetuation of cultural and historic resources; to identify and document significant historical and cultural resources and traditional cultural properties; to work with local, state and federal agencies to enhance management of resources and properties; and to educate the public concerning the value of these resources. This must be accomplished in a manner that reflects the values held by the Tribe and is consistent with Federal Law.

The Tribe considers the Hanford Site as important to its culture, religious practice, and economic well-being. As it is briefly discussed below, the Hanford site contains numerous unique cultural features that have contributed to the overall welfare of the Tribe.

First, the Columbia River traverses a large portion of the Hanford site and has been a major source of anadromous fish, principally salmon and steelhead, which have constituted a significant part of the diet of the Northwest Tribes. The Hanford reach is the only major free-flowing segment of the Columbia River within the borders of the USA. It is the location of numerous traditional fishing sites as well as archaeological and historic properties of national as well as Tribal importance. Two major tributaries of the Columbia River, the Snake River and the Yakima River are also important tribal fisheries and reach their confluence with the mainstream of the Columbia River near the Hanford site.

Second, countless cultural resources are known to exist in many areas of the Hanford Site. The Nez Perce believe that Hanford contains numerous undiscovered archaeological resources due to its unique geographic and other features and its centrality with respect to prehistoric and historic utilization by the Nez Perce, Umatilla, Yakima, and Wanapum. To date, only a small portion of the land at Hanford has been surveyed to determine the existence of archaeological and historic resources.

Third, several significant sacred and religious sites are located on the Hanford Site. The Nez Perce and other Indian Tribes have long considered prominent landmarks at Hanford as important sites for religious ceremonies.

The Tribe affirms its authority and commitment to preserve, protect, and perpetuate its culture and heritage. This trust includes the management of ancient and contemporary cultural use sites and resources which are fundamental in the recognition of traditional life ways, values, and histories of the Tribe. These cultural sites and resources include those associated with oral histories and stories, traditional foods and other natural resources, other sacred sites as designated by the Tribe, habitations, wildlife, and historical events and personalities.

Treaty- reserved rights to the aforementioned areas are a fundamental concern to the Tribe. The fish, roots, wild game, religious sites, and ancestral burial and living sites remain integral to the Nez Perce culture. It is recognized that these are invaluable, irreplaceable and endangered Tribal resources. It is a basic intent of the Tribe that these resources be protected and preserved within the traditional territory. It is the intent of the Tribe to protect, preserve and manage cultural resources by the use of this guidance, as well as Federal and State statutory prohibitions and regulations, laws, Presidential memoranda and Executive Orders.

Federal responsibilities related to Tribal rights and participation in Hanford operations includes the following;

1. Federal agencies (DOE) should exercise their trust responsibilities with respect to the provisions of the Treaty of 1855. This includes, cognizance by DOE of Treaty rights reserved by the Tribe as well as specific measures to protect cultural and natural resources, public health and safety, and environmental quality as they are all connected.
2. Activities at Hanford that may involve potential impacts to cultural resources are subject to federal statutes such as the American Indian Religious Freedom Act (AIRFA), Archaeological Resource Protection Act (ARPA), National Historic Preservation Act (NHPA) and National Environmental Policy Act (NEPA) which require various forms of federal-tribal consultations and cooperation.
3. DOE should provide for access to religious and sacred sites at Hanford, as mandated by the Treaty of 1855, and American Indian Religious Freedom Act (AIRFA).

Guidance for Action

It is the intent of the Tribe to protect, preserve and perpetuate cultural resources, by conducting amicable planning, dialoguing and consultation with federal, state, and local governments and the inter-departmental programs of the Tribe.

Consultation, as affirmed in the Tribe Consultation report (see **A. Communications** above) shall take place prior to commencement of projects to be conducted. Agreements, if required, regarding such projects will assure that negotiations occur between DOE and the Tribe to mitigate, reduce, avoid and/or eliminate adverse impacts to traditional cultural resources and resource areas significant to the Tribe.

The Tribe asserts that if areas of the Hanford Site are opened for public recreation, there is an increased potential for degradation of resources and resources areas significant to the Tribe.

Protection of Indian Religious Freedom

It is the policy of the Tribe to oppose the use of sacred sites except when in historical religious use, and therefore recommends that agencies involved protect, preserve, restore, and maintain the Cultural environment in sacred areas. (Tribe Res. #03-139;# 07-399)

Protection of Indian Graves

Protection of graves, grave sites, cemeteries and the individuals that rest therein are of the utmost importance to the Tribe.

1. It is a preferred recommendation that a plan of action be developed prior to any ground disturbing activities in areas that has potential to contain Native American graves, burial artifacts, sacred objects and objects of cultural patrimony.
 - i. If a plan of action is not fullfilled, and an inadvertent discovery occurs. It is a preferred recommendation to not remove or disturb anything from the discovery; and notify and involve Longhouse Leaders that are nearest and readily available to the proximity of the discovery to move forward in the development of a plan of action.
2. Confidentialty is considered imperative in development of protective measure with regard to planning development.
3. NAGPRA provides for the protection of Native American graves and for the repatriation of human remains, burial artifacts, unassociated burial artifacts, sacred objects and objects of cultural patrimony.
 - i. If NAGPRA is triggered it will be assessed case-by-case. The NPTEC, with the assistance of the Cultural Resource Program, will envoke administrative procedures to implement the provisions of Tribal consultations with federal agencies and others, regarding the proper handling and disposition of human remains, burial artifacts sacred objects and objects of cultural patrimony.

Contaminated Remains and artifacts are significant to the Tribe.

- (1) The probability of graves, grave sites, cemeteries and the individuals that rest therein, including artifacts, sacred objects and objects of cultural patrimony to be impacted as a result of hazardous and/or radiological contamination from the Hanford Nuclear Site is significant.
 - a. The Department of Energy (DOE) had successfully implemented a guidance document regarding contaminated remains that may be significant to the tribes at the 100-K Area Mile long trench cleanup. This document was completed with the assistance of tribal input.
 - b. Recommendations and acknowledgements are as follows:
 - i. Further disturbance and or removal is not a preferred action
 1. If contamination occurs, it is the recommendation to leave in place undisturbed.
 2. If removal is only course of action then see **(1.)** under **Protection of Indian Graves** above.

E. Risk Assessment

The Tribe realizes that soil, air, groundwater and the Columbia River, and ecological resources are at risk from current and potential radionuclide and toxic chemical releases from the Hanford Site. By implication Tribal members who use these resources or other resources affected by the water are also at risk. The potential for inadvertent releases of hazardous materials remains a problem at the Hanford Site.

There should be no remaining adverse effects on cultural and natural resources that would preclude tribal members from using the site in the future. The Tribe Hanford End-State Vision states it is critical that the Hanford Site air, soil, groundwater and surface water are restored to uncontaminated, unrestricted pre-Hanford use in order to protect the natural resources and the people. The health and safety of tribal members as they exercise their traditional, cultural, and commercial practices at Hanford is paramount. (Reference: 1855 Treaty with the Tribe Article 3)

Guidance for Action

1. The DOE shall apply a Hanford specific tribal subsistence exposure scenario in all risk assessments and in setting all cleanup goals. This scenario must be consistent with the Treaty of 1855, and federal law.

2. Cumulative impacts of contaminants of concern must be determined and applied to human and environmental risk assessments.
3. Risks from Hanford contaminants need to be considered in context with risks from non-Hanford contaminants, which reside in the Hanford environment, for a realistic risk evaluation to be developed.
4. As risk assessments are key planning and decision-making documents for the Hanford Site, the parameters input into risk/performance assessments must adhere to strict scientific principles and be subjected to rigorous external peer review.
5. Because the remediation and cleanup issues at the Hanford Site are profound, the Federal government must commit to supporting continued characterization and remediation until the problems can be resolved to the extent that human health and the environment are once again protected at the level commensurate with pre-Hanford contaminant conditions. Without a sufficient understanding of the distribution of contamination in the vadose zone and groundwater, migration rates and preferred pathways are poorly known, and risks to natural resources can not be accurately predicted.
6. Evaluating risk is an ongoing process and better estimates of risk will be made in the future based on refinement of models, additional characterization data, and scientific knowledge. The Tribe supports efforts to conduct risk assessments that have less uncertainty and where data gaps are being filled.
7. The Tribe supports the recommendation in the following statement by the National Academy of Sciences Committee to Review Risk Management in DOE's Environmental Restoration program when it said, *“Stakeholders, in addition to DOE managers, need to be assisted in understanding the nature, workings, and limitations of risk assessment if they are to participate effectively in the risk assessment process. All information on remediation and risk assessment should be presented in an understandable form and in a form that can be used by the participants.”*

F. Clean-up Operations of the Hanford Site

The Tribe expects to see cleanup at Hanford Site proceed with integrity in a scientifically sound, risk-based manner, and as economically as feasible. The more quickly risk can be substantially reduced, and resources reasonably restored, the treaty rights of the Tribe are better protected.

Guidance for Action

- 1.** The Tribe assumes that all Hanford-affected lands and resources are contaminated until they are confirmed otherwise to the satisfaction of the Tribe.
- 2.** The Tribe considers it the responsibility of DOE to ask for full funding from Congress to ensure compliance with the Tri-Party Agreement.
- 3.** Technology for cleanup or disposal of some contaminants may not be currently available, but as it become available the Tribe will work with the Federal government to further reduce the levels of any residual contamination (Resolution NP 05-411).
- 4.** The Tribe does not approve of permanent disposal and storage of radioactive and hazardous waste at Hanford. Complete containment of chemical and radioactive hazards and full restoration of natural resources is expected. The Tribe Hanford End-State Vision is to restore the Hanford Site air, soil, groundwater and surface water are to uncontaminated, unrestricted pre-Hanford-affected status (Resolution NP 05-411).
- 5.** All cleanup projects must include a mitigation phase.
- 6.** Cleanup actions must minimize the contaminated surface of soil source units and must minimize the need for clean fill and cap and barrier materials for the life cycle of the proposed remedy.
- 7.** Interim actions must provide the greatest degree of human and ecological health protection. If physical or institutional controls are selected as part of a remedy, the recovery curves must be calculated so that the impact on the exercise of Treaty rights can be evaluated.
- 8.** Final actions must provide the greatest degree of permanent human and ecological health protection with minimal use of physical controls (e.g., caps and barriers) or restrictions of access and use (institutional controls). If physical or institutional controls are selected as part of a remedy, the recovery curves must be calculated so that the impact on the exercise of treaty rights can be evaluated.
- 9.** Nuclear processing waste sites (for example, cribs, trenches, and soil sites) should be excavated, treated when required, and consolidated in the Environmental Restoration Disposal Facility (ERDF), which is a lined and permitted landfill.
- 10.** The canyon buildings and other major structures should be completely removed. This removal is one of the cheapest in short-term project costs, is by far the cheapest in terms of lifecycle costs (monitoring, barrier replacement), allows adjacent waste to be excavated, is most permanent, uses the least amount of clean fill, and is most protective of Tribal members.

- 11.** Re-use of existing uncontaminated facilities is tolerable within current developed footprints as long as no expansion of the footprint occurs, no additional natural resources are taken, and no hazardous/radioactive waste is generated.
- 12.** Developing further landfills or other onsite waste storage facilities should be a last resort. Other development should be limited to that which is deemed beneficial by the Tribe, as long as it does not result in loss of natural resources.
- 13.** The health of the environment and the associated progress towards cleanup should not be held hostage to the integration issues between CERCLA and RCRA units, the varied responsibilities assigned DOE-RL and DOE-ORP, and various contractor baselines (from NPTEC correspondence to DOE, 6/14/2006).
- 14.** It is the policy of the Tribe to endorse demolition of the FFTF site and oppose any re-establishment. The Tribe urges that the funds be used to clean up and protect the Tribal treaty resources which have been contaminated or are being threatened by Hanford activities. (Resolution NP 00-470)
- 15.** It is the policy of the Tribe to oppose establishment of the B-reactor museum and urge that the funds be used to clean up and protect the Tribal treaty reserved resources which have been contaminated or are being threatened by Hanford activities. (Resolution NP 08-152)
- 16.** New facilities such as the Waste Treatment Plant must be decommissioned and demolished when their life-cycle has ended, and the area returned to pre-Hanford natural resources conditions. Existing structures, such as the Fast Flux Test facility (FFTF) or the cocooned Reactors must remain on a path toward full demolition and mitigation.
- 17.** Irreversible remedial actions must not be used as interim solutions such that further remediation in the future would be made more difficult or impossible.
- 18.** Cleaning up the site is not strictly limited to removal or reduction of radiation and hazardous waste contaminants, but includes restoration of biota where possible

G. Waste Management

DOE should fulfill its environmental management/cleanup and mitigation mission in full compliance with applicable or relevant and appropriate Tribal, Federal and State laws and regulations. Action by administrative agencies seeking to change or re-interpret existing law shall not abrogate the treaty rights of the Tribe. Cleanup is to proceed with integrity in a scientifically sound, risk-based manner, and as economically as feasible. The more rapidly risk can be substantially reduced and resources reasonably restored, the better the treaty rights of the Tribe are protected. Cleanup decisions and processes need to be open and transparent.

Guidance for Action

1. Long-term Stewardship (LTS) concepts, values and infrastructure need to be integrated at the beginning into cleanup decisions related to any waste that is to be left at Hanford. The Tribe has concerns regarding the infrastructure for LTS as it exists at the Hanford Site in 2019. The HSW-EIS relies heavily on LTS, but it does not yet exist at the Hanford Site.
2. Tribal values are intent on protecting, preserving and perpetuating resources for the sake of our cultural survival. It is imperative that materials we use in a subsistence lifestyle be uncontaminated. Once resources become contaminated or lost then part of our connection to the land and part of culture is lost. (NPT to DOE 11/4/2009)
3. Retrieve, Treatment and Disposal (RTD) is the preferred clean-up strategy by the Tribe.
4. If wastes are going to be left in place, sufficient vadose zone characterization and a long term vadose zone monitoring program will be necessary and required to identify location in the sediment profile and to prove that wastes are effectively contained and are not migrating through the vadose zone. Risks can not be accurately predicted when understanding of the distribution of contamination in the vadose zone is insufficient, and migration rates and preferred pathways are unknown.
5. A drilling program should be directed at identifying the tank waste pathways to groundwater.
6. Cumulative impacts of waste left at Hanford need to be adequately characterized and considered.
7. Technetium-99 in high-level waste must be contained in a disposal form for shipment off-site.
8. Use of caps and barriers may be acceptable as interim protective devices, but will not be considered as a permanent resolution of waste disposal. Capping waste sites does not protect human health or the environment indefinitely, and results in the de facto

creation of nuclear landfills without a valid permitting process. Potential risk reduction by proposed interim caps and barriers needs to be demonstrated.

9. The Tribe opposes capping wastes in place, and prefers the retrieve, treat and dispose (RTD) option.
10. Vadose zone should not be considered as a barrier for the isolation of wastes.
11. The Tribe considers that all Hanford waste of the same radio-chemical constituents and concentrations as TRU shall be disposed as TRU waste (regardless of when it was produced), with its final destination at WIPP. The Tribe supports characterization efforts of suspect TRU tank wastes to determine whether wastes are TRU. Disposal of high-level waste and TRU waste at Hanford is unacceptable. (From NPTEC correspondence to DOE, 6/2/2004.)
12. The high level waste that is “incidental to reprocessing” should not be administratively renamed. The administrative reclassification of high level radioactive waste “incidental to reprocessing” is unacceptable, since it would result in on-site disposal in a near surface landfill, which is prohibited by law.
13. The Tribe opposes disposal of any GTCC or GTCC-like waste at Hanford.
14. The Tribe will support closure of waste sites, including tank farms, only when data is adequate for a credible risk assessment, and the resulting risk is determined by the Tribe to be adequate for the health and safety of tribal members when they are exercising their aboriginal rights via the 1855 Treaty. (see NPT-End State Vision)
15. In order to maintain objectivity, it is the recommendation of the Tribe that DOE review each of the single shelled tanks individually and determine each tank’s integrity, date(s) of leak(s), composition of the waste stream(s), and minimum and maximum leak volumes with a “best estimate”. In addition, each unplanned release should also be evaluated in the same manner. DOE should release the internal review comments and resolutions, and all estimates should be reviewed by an independent external expert panel.
16. Providing that the million gallon safety space is maintained, the Tribe supports using other available space in the DSTs for use in SST waste retrieval process.
17. The Tribe recommends that site wide RCRA permit require recording of unplanned releases (in excess of 14,500 gallons in a 24-hour period, OR 50,000 gallons total in a calendar year from one source) of non-contaminated fluids to the surface and vadose zone in a permanent archival record. This will retain the knowledge in working site databases of a potential liquid driver of contaminant in the vadose zone.
18. WTP operating permits should require that waste inventory and historical records be kept and archived for as long as high level waste remains at Hanford.

19. The Tribe will consider Monitored Natural Attenuation (MNA) as an appropriate remediation method only where its use will be protective of human health and the environment. It must be capable of achieving site-specific remediation objectives within a timeframe that is reasonable compared to other alternatives. MNA should never be considered a default or presumptive remedy at any contaminated site, and it should never be viewed as a direct outcome of a “determination of technical impracticability”.
20. The BC Cribs’ Radiological Control Area encompasses more surface area than any other Hanford waste site and should be considered as a “disturbed area” for any planning purposes.
21. The Tribe is to be clearly informed of presence of hazardous and/or radioactive materials on the various transport routes while said materials are in route through both neighboring tribal lands and those of the Tribe. (See Transportation guidance.)

H. Transportation of Radioactive and Hazardous Waste

The Nez Perce have treaty-reserved interest within a large land base that consists of Montana, Idaho, Oregon, Wyoming and Washington. The Tribe is concerned with transportation of hazardous and/or nuclear waste through any of the aforementioned areas where the Tribe may access treaty resources. Furthermore, there are federal guidelines (see #2 below) requiring notification to the Tribe when waste is being transported through areas where the Tribe has interests and the Tribe reservation.

Guidance for Action

1. It is the policy of the Tribe to oppose any action by the U.S. Department of Transportation to exclude Tribal governments from participating in any nuclear waste transport decision-making policies involving transportation through or adjacent to the respective Tribal reservations. (Resolution NP 85-32)
2. Tribes will expect written notification seven (7) days prior to the first shipment which will include the following information: (DOE G 460.2-1; Implementation guide for the use with DOE O 460.2 Departmental Materials Transportation and Packaging Management)
 - a. Name, address, and telephone number of shipper, carrier and receiver;
 - b. Description of the shipment;
 - c. A listing of routes to be used through Tribal jurisdictions;
 - d. Estimated date and time of departures from point of origin;
 - e. Estimated date and time of entry into Tribal lands;
 - f. Estimated date and time of departure from tribal jurisdiction.

I. Natural Resource Damage Assessment (NRDA)

ʔiinim ciláakt wées kiiʔu wéetespeme. c'alawí núunim wéetes hiwc'áayoʔqa k'óomaynin', kex ʔiink'e sapáak'oomaynin'. kamáwa núunim wéetes kayxkáyx káa wáaq'is hiwc'éeyuʔ, ʔéetex ʔiink'u wic'éeyuʔ wáaq'is. ʔanóoqtipx pekyúʔ káa timíipn'itki waq'isnáawitki. ʔanóoqtipx pekyúʔ naqcnikí híimteʔkt káa náaqcki tim'íne. kíye ʔawʔnáhpaytoqsix waq'isnáawitki wéetesne. kíye wisíix háwtnin'...

My body is of this earth. If our earth becomes sick, I will also be sick. Whenever that our earth becomes clean surely I too will become healthy. We will move forward by remembering our way of life. We will move forward with one teaching and one heart. We are restoring balance to the land, we are clean/sacred...

The Tribe is a Trustee at the Hanford Site. The Hanford Natural Resource Trustees have initiated a Natural Resource Damage Assessment (NRDA) for the site, and are currently developing an Injury Assessment Plan. The Nez Perce Tribe Hanford Policy and Guidance for Action shall serve as guidance for Nez Perce Tribe NRDA involvement at Hanford.

J. Long-Term Stewardship (LTS)

ʔIkúuy'nu kii wéetes teelelikítpe hiwyáawxqana káa kuʔskí k'óomaynin', mét'u, kii wéetespe ʔimiit qoʔc híiwes ʔilakáʔwin'... C'alawí núunim wéetespeme himyúume hipawcaʔyáawnoʔqa, ʔéeteenm ʔapasapáast'oxnoʔqa wiyéewc'etne híimteʔkeʔsne. Kíye ʔetmíipn'iten'ix tamáalwina wiyéeeheyn qíicxneʔs wéetes ʔayn. Núun ʔawʔyóoʔoʔsix wéetesne ke káa hiwc'éeyuʔ yam'óotnin'. ʔInptóqsix núunim waq'isnáawit ...

Its true, this land at Hanford is damaged and sick, but this land still has light within it. If our relatives no longer exist in the land then we may lose the opportunity to learn it. We are recalling the law each day to take care of it. We are waiting for the earth to become healed. We are taking back our way of life.

The Nez Perce Tribe believes that the relationship it has with the land, sky and water can be traced as far back as the glacier floods, 12,000 years ago, and as such believes that, because this bond has been preserved, the Nez Perce Tribe anticipates to uphold that relationship with land, air and water for many generations to come.

The Nez Perce Tribe believes that the ultimate goal of the Long-Term Stewardship at Hanford should be to provide future tribal generations the ability and capacity to continue

and enhance the relationship and to participate in a traditional way of life, which includes human and the ecological health and well-being, without the being exposed to or adversely affected from chemical, radiological, and physical impacts that are related to operations or management of the Hanford Nuclear Site.

To accomplish this long-term goal the Nez Perce Tribe recognizes the following:

1. The Nez Perce Tribe will develop a LTS plan, which will identify work to be completed by the Tribe in the following areas: co-management of the site, resources and resource areas; long-term data management, environmental monitoring, education and outreach, and administration (implementation).
2. It is of high probability that the Department of Energy/U.S. Government will leave contamination in place at the Hanford site.
3. The Nez Perce Tribe assumes that all Hanford-affected lands and resources are contaminated until they are confirmed otherwise to the satisfaction of the Nez Perce Tribe.
4. Natural attenuation potentials must be evaluated within the context of effects on Nez Perce Tribal treaty rights, the land and its natural resources, and potential for NRDA assessment.
5. The cost of long-term management and monitoring must be assessed.
6. It is imperative that materials tribal members use in a subsistence lifestyle be uncontaminated. Once resources become contaminated or lost then part of our connection to the land and part of culture is lost.
7. The Nez Perce Tribe will continue to work with DOE via its cooperative agreement on cleanup issues to ensure that treaty rights and cultural and natural resources are being protected and that interim cleanup decisions are protective of human health and the environment.
8. These goals will require the responsibility of future generations until the goals are finally reached.

Guidance for Action

1. The Tribe does not believe that institutional controls are a viable solution to the management of hazardous wastes at Hanford for the long term. (See End State Vision.)

- 2.** A Hanford Site LTS plan is an essential tool to support responsible, safe action and activity at the Hanford Site. That responsibility needs to be codified in federal law which also provides an adequate funding source to maintain over time.
- 3.** The Tribe seeks to be a Co-manager of the lands and resources at the Hanford Site. The federal government must be cognizant of its trust responsibility and treaty rights at usual and accustomed places.
- 4.** Co-management activities cover the entire range of resources and areas the Tribe have retained treaty rights. Development of a comprehensive Nez Perce Hanford LTS plan will identify where the tribe can assist DOE in their current LTS responsibilities and expand monitoring into resources and areas important to the Tribe.
- 5.** The Tribe has extensive expertise and experience in the managing these resources outside of the Hanford site. Development of a comprehensive Hanford LTS plan will address major areas including but not limited to: Terrestrial ecosystem management; Aquatic ecosystem management; Cultural resource management; Environmental monitoring; Education and outreach; and administration.
- 6.** The Tribe has a responsibility to protect the human health, welfare, and safety of its members, and the environment and cultural resources of the Tribe. Active Tribal presence on site is needed to fulfill monitoring participation. It is important to the tribe that frequent and regularly scheduled monitoring of all areas within the Hanford site are executed in a statistically defensible manner.
- 7.** A LTS plan for Hanford must provide for the effective and timely implementation and follow-through of CERLCA 5-Year reviews as required by law.
- 8.** A LTS plan for Hanford must provide for an effective recordkeeping system to support stewardship and risk responsibilities into the conceivable future.
- 9.** The Tribal Knowledge embodied in tribal oral traditions is to be integrated into the Hanford LTS plan.
- 10.** Where contamination is left in place at depth, DOE should have deed restrictions in place which prohibit the application of water to the ground surface over the waste site and which defines a buffer zone around the waste site (because of potential for lateral flow in the subsurface). Deed restrictions must also include prohibition of surface activities which enhance infiltration of natural precipitation.
- 11.** The use of caps and barriers as a long-term resolution is not acceptable since they are temporary structures over extremely long-lived contaminants. Capping waste sites has not been proven to be protective of human health or the environment indefinitely, and results in the de facto creation of hazardous and/or nuclear landfills without a valid permitting process.

12. Culturally sensitive areas on the Hanford reservation may be specifically identified through consultation with the Tribe as closed to development in the future. An example is the area north of the Bechtel Building and south of the 300 Area along the Columbia River (also known as the proposed EMSL Site).

K. Capacity Development

The responsibility we inherit from our ancestors is to understand the wisdom of the Natural Law, Tamáalwit and to continue to foster that knowledge into younger generations for them to perpetuate that same wisdom for those relations yet to come.

It is true that the life we have is the result of our ancestors before us. For they gave the ultimate sacrifice to provide for us today with; the knowledge, the relationship we have with the land and our surroundings. This relationship exemplifies how we co-existence and maintain balance in our world. In essence this relationship defines us and shows that we cannot be a part from it.

This knowledge will forever stay with the land as our stories, songs and teachings are embedded within this landscape. We, the Niimíipuu identify this land as our one true home that defines our identity through our long relationship that predates the Missoula Floods. We are taught we are created here, given our own land to roam, our own unique language, our own foods and medicines and own way to believe... It is as much a part of us as we are of it. To walk away and start new at another locations is an option we are not willing to entertain.

As our ancestors, the land, animals, plants and water, have promised to care for all living things yet to come and to nourish and make us strong. We must acknowledge that with the introduction of man-made contaminants impede our relationship we have with the earth. We need understand this change and determine how it will impact our way of life. If our Earth becomes sick, and the promise is still true, then we will all suffer... until it becomes again clean.

We Niimíipuu, acknowledge the need to develop the capacity for long-term participation on a legacy site and understand that currently certain discussion cannot be meaningfully discussed because of lack adequate assurances long term.

As part of our relationship, we have the duty to communicate concerns and questions about decision that could impact those we are steward for. Our expectations of the perpetuation of our way of life, that is based on the relationship we have with our surroundings, needs to survive rise and fall of governmental agendas, and persist in maintaining a meaningful presence to influence needed change in the best interests of the Niimíipuu.

It is the intent of the Tribe to perpetuate the relationship between the land and people as well as the Traditional Knowledge that makes it possible. It is the intent of the Tribe to build & maintain long-term ethnographic & scientific capacity and institutional memory to ensure that the best science available is utilized to protect the Nez Perce Tribal interests. It is further a guiding principle of the Tribe to maintain the capacity to be proactively engaged in the management of natural and cultural resources at or affected by the Hanford site.

The Tribe commits to proactive involvement in the Hanford Site to maintain and restore the baseline principles of traditional knowledge, cultural uses of the land, the resources and the people. This involvement includes actions such as providing original ethnographic & technological research and development work; identifying innovative technology that will assist in cleanup, support cost-effective solutions, and protecting and perpetuating treaty rights; and exploring potential for collaboration in management of remediation, treatment, disposal, and LTS. In addition, the Tribe will verify modeling and sampling results wherever possible, in partnership with other federal agencies, states, universities, and other Affected Tribes. External independent peer review of selected topics will be sought whenever possible.

Economic development opportunities for the Tribe will be investigated at Hanford. As an Affected Tribe, the Tribe should have significant access to employment opportunities contracted at Hanford, including but not limited to natural and cultural resources management.

- 1. Short-term.** The Tribe will strive to ensure that operating, cleanup, and restoration plans will result in achieving the goals of fully restored resources and safe, unlimited access and unrestricted use. The Tribe will continue to develop collaborations with the U.S. Government, the States of Washington and Oregon and other Affected Tribes.
- 2. Mid-term.** The Tribe will strive to ensure that cleanup actions are properly implemented, and the Tribe will continue to build the capacity to monitor contamination and educate future generations about the challenge of the cleanup. Criteria for measuring the DOE's progress toward cleanup will be based on the guidance statements contained in this document. This will enable the Tribe to evaluate the quality and timeliness of the DOE's work.
- 3. Long-term.** The Tribe will seek to ultimately own and co-manage Hanford lands with other Affected Tribes. Until such opportunity exists, the Tribe will accept co management with the Federal Government.

Conclusion

This document represents the direction of the Tribe in oversight, cleanup and co-management of the Hanford Nuclear site. This guidance provides an immediate and long-term vision for the Tribe's role in cleanup and management activities. It empowers the Tribe to be actively involved in the safe cleanup of the Hanford site and affected lands. The document provides guidance and direction for staff to initiate and implement actions. It is critical to protect

natural & cultural resources such as the Columbia River for members of the Tribe. The legacy of environmental hazards resulting from the production of nuclear weapons is a challenge for countless generations to come.

This guidance is subject to annual evaluation, reviews and updates by the Tribe’s ERWM program. It may be revised as appropriate to ensure the protection of resources, treaty rights and human & environmental health. It is intended to provide clear direction to the Tribe and TPA agencies staff working to protect the interests of the Tribe.

Appendix A

Glossary

1. “Aboriginal Areas” is a term used today to describe the extensive historic and prehistoric lands occupied and used by a tribe.
2. “Aboriginal Rights” are based on aboriginal title, original title, or Indian title. Title is the possessory right to occupy and to use an area of land that Indians have traditionally or historically used.
3. “Adverse Effect” means a reasonable likelihood or more than moderate adverse consequences for cultural resources in any given site or area, the determination of which is based on (1) the context of a proposed action or development; (2) the intensity of a proposed action, including the magnitude and duration of an impact and the likelihood of its occurrence; (3) the relationship between a proposed action and other similar actions which are individually insignificant but which may have a cumulatively significant impacts; and proven mitigation measures which the proponent of an action will implement as part of the proposal to reduce otherwise significant affects to an insignificant level.
4. “Cultural Resource” refers to any aspect of natural and human resources that the Nez Perce deem important for the perpetuation of their culture.
5. “Nimiipuu” is the tribal name associated with Nez Perce people
6. “Cumulative Effects” means the combined effects of two or more activities. The effects may be related to the number of individual activities, or to the number of repeated

activities on the same piece of ground. Cumulative effects can result from individually minor but collectively significant action taking place over a period of time.

7. “Ground Disturbing activity” means any activity that disturbs the surface of the ground, such as construction, digging, logging, farm practices on uncultivated soil, dredging, drilling, filling and mining.
8. “Hanford” and/or “Hanford Site” shall be defined as the 670 square mile geographic area originally acquired in Central Washington State by the Federal government under the Second War Powers Act in 1942 for the purpose of siting plutonium production facilities of the Manhattan Project (from Nez Perce Hanford End-State Vision).
9. “Mitigation” refers to the use of any or all of the following actions: (1) Avoiding the impact altogether; (2) Minimizing impacts by limiting the degree or magnitude of the action and its implementation; (3) Rectifying the impacts by repairing, rehabilitation, or restoring the affected cultural resources and or the environment; or (4) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
10. “Pre-Hanford” shall be defined as prior to the establishment of the Manhattan project area today known as Hanford
11. “Post- Depositional disturbance” means any disturbance by natural or man-made processes that alters or degrades the integrity of a known or potential site.
12. “Repatriation” means the physical return of any cultural item or artifact, including human remains, to its place of origin.
13. “Sovereign” This term refers to a body of persons or a nation having independent and self-governing powers, status, or authority.
14. “Sovereignty” This term refers to the inherent right of a tribe to govern all actions within its own jurisdiction based upon traditional systems and laws that arise from the people themselves. Sovereignty includes the right of tribes to live freely and to develop socially, economically, culturally, spiritually, and politically.
15. “Tamalwiit” is the tribal word which refers to the natural law.
16. “Uncontaminated” shall be defined as free from hazardous and radiological elements and compounds associated with Hanford operations.
17. “Undertaking” means any project, activity, program or development or change in land use that can result in changes in the characteristics or use of a cultural resource, if any such cultural resource(s) is located in the area of potential effects. For Federal undertakings, the project, activity or program must be under the direct or indirect jurisdiction of a federal agency or licensed or assisted by a federal by a federal agency.

Undertakings include new and continuing projects, activities, or programs and any other of their elements (36 CFR 800.2(o)).

Appendix B

Resource List

1. NPT- Hanford Endstate Vision/w Resolution
2. NPT Cultural Resource Management Policy 9/96
3. NPT Cultural Resource Program Statement of Work
4. Nez Perce Tribe Strategic Plan 2000-2001
5. NPT Fisheries Management Plan 2007
6. NPT Draft Water code
7. NPT Resource Management and Environmental Policy Plan 1982
8. NPT Environmental Restoration and Waste Management Program Strategic Plan 2001
9. NPT Resolutions
10. NPT Closing the Circle video
11. Treaties Nez Perce Perspective (ERWM publication)
12. CTUIR Hanford Policy
13. Hanford Cultural Resource Management Plan 2001
14. Alvarez, Robert August 18, 2003 *The Legacy of Hanford* The Nation – Vol. 277, Number 5, pgs. 31-35
15. Walker Jr., Deward E 1988 Final Report on Contrast Activities A, B, C from NPT resolution 88-193. Nez Perce Tribe, Lapwai, Idaho
16. Anastasio, Angelo 1972 The Southern Plateau: An Ecological Analysis of Intergroup Relations. Northwest Anthropological Research Notes 6(2):109-229. Moscow, Idaho.
17. June 1855, Record of Proceedings Walla Walla Treaty Council
18. Lewis and Clark Journals...
19. Nez Perce Tribe August 1984 *Letter Requesting designation of Affect Indian Tribe*
20. Nez Perce Tribe August 24, 1984 *NP Resolution 84-208 to petition for designation of Affected Indian Tribe*
21. Nez Perce Tribe December 10, 2002 *NP Resolution 03-139 regarding Sacred lands at Hanford*
22. Sappington, Robert Lee *Alice Cunningham Fletcher's Ethnologic Gleanings "Among the Nez Perces"* University of Idaho.
23. NPT Consultation and Communication training July 8-9, 1987, Spokane, Wa

Appendix C

Legal, Policy, and Regulation regarding: Water

The following documents, codes, and regulations provide the current framework under which the NPT has developed this groundwater guidance for the Hanford Site.

1. **The Treaty of 1855** – ARTICLE 3, second paragraph describes the preservation of : “The exclusive right of taking fish in all the streams where running through or bordering said reservation is further secured to said Indians; as also the right of taking fish at all usual and accustomed places in common with citizens of the Territory...” Fish need clean water and habitat to maintain health and population.

2. **Current and developing Nez Perce Tribal Code establishes water resource protection.**

Tribal Code: 4-3-50 Waters – A waters infraction is committed if a person pollutes or befouls any water by knowingly causing or allowing any substance harmful or potentially harmful to human health to enter into a source of water used for domestic purposes.

An infraction is committed if a person operates a point source or non-point source as defined in the Federal Clean Water Act 33 U.S.C. §§ 1251 – 1387, in a manner which interferes with any right of the Nez Perce Tribe or another person.

3. The **Nez Perce Resource Management and Environmental Policy Plan (RMEPP)** was developed in 1982, and expressed through a set of Policy, Goal, and Objectives statements, designed to provide a coordinated and comprehensive guidance to Tribal enterprises and activities, as well actions from entities external to the Tribe. The plan was intended to ensure that tribal action, such as this addendum, would serve as guideline to the applicable federal agencies in carrying out their trust responsibilities under federal law.

The Tribal RMEPP is guided by the following environmental statutes into policy statements; (1) Clean Air Act (CAA), (2) Water Pollution Control Act (Public Law 92-500), (3) Clean Water Act (Public Law 95-217), and (4) National Environmental Policy Act (NEPA). Another set of policy issues of the RMEPP that deal implicitly with major environmental statutes, although not directly identified in the 1982 environmental plan, cover the following: Mineral Resources Extraction applicable to the Resource Conservation and Recovery Act (RCRA); Riverine Minerals Extraction applicable to the RCRA; Soil Erosion applicable to Clean Water Act (CWA); Hazardous Materials applicable to RCRA; Water Resources applicable to CWA; Environmental Health applicable to RCRA solid waste provision, CAA, CWA, and Safe Drinking Water Act (SDWA); and Coordination of Planning and Management generally applicable to NEPA.

4. Both **Federal and State environmental regulation** has substance which will guide protection of groundwater and surface water for tribal interests at Hanford. The State regulations build on those of the Federal government, and may be more restrictive, but not

less. It is imperative that the DOE be required to adhere to State regulation, as must all other entities. At Hanford, the State of Washington (Department of Ecology) has authority over DOE via the Resource Conservation and Recovery Act (RCRA).

5. The **Clean Water Act** (1972) protects surface water; there is no federal equivalent for groundwater. The statute employs a variety of regulatory and non-regulatory tools to sharply reduce direct pollutant discharges into waterways. These tools are employed to achieve the broader goal of restoring and maintaining the chemical, physical, and biological integrity of the nation's waters so that they can support "the protection and propagation of fish, shellfish, and wildlife and recreation in and on the water."

6. **WAC 173-200 – *Water Quality standards for ground waters of the State of Washington***

WAC chapter 173-200 has as its goal to "...maintain the highest quality of the state's ground waters and protect existing and future beneficial uses...through the reduction or elimination of the discharge of contaminants to the state's ground waters."

To implement this goal, the chapter "...establishes ground water quality standards which, together with the state's technology-based treatment requirements, provide for the protection of the environment and human health and protection of existing and future beneficial uses of ground waters."

Cleanup levels in Washington State for both carcinogenic and non-carcinogenic substances must be below a concentration that could adversely impact terrestrial or aquatic ecological receptors unless it can be demonstrated that such impacts are not a concern at the site.

7. **WAC 173-340-720 – *Ground water cleanup standards*** [for the State of Washington]

8. **WAC-173-200-90 – *Special Protection Areas (SPA)*** - Tribal interests in quality of ground waters can fall under SPA regulation.

(a) The purpose of a SPA is to identify and designate ground waters that require special consideration or increased protection because of one or more unique characteristics.

(b) The unique characteristics of SPAs shall be considered by the department (Ecology) when regulating waters issues.

(c) Characteristics to guide designation shall include....ground waters that support a beneficial use or an ecological system requiring more stringent criteria than drinking water standards [ambient water quality criteria for aquatic organisms]; ground waters including but not limited to recharge areas and wellhead protection areas that are vulnerable to pollution because of hydrogeologic characteristics.

(d) SPAs may be proposed for designation at any time ...at the request of ...an Indian tribe.

The initiator of the request for proposed designation shall hold at least one public meeting and take written comment for the purpose of receiving comments from the public, affected local, state and federal agencies, tribes and other persons.

The department (Ecology) shall designate said ground waters as a SPA if it determines the SPA contains one or more of the characteristics described in (3) above, and if such a designation is in the public interest.

9. Model Toxics Control Act (1988) - The following key principles of the Washington State Model Toxics Control Act (1988) codified the clean-up program so it had a legal and financial basis in the State:

- Polluter pays
- Permanent remedies
- Public participation
- Bias towards action
- Innovation

MTCA determines that cleanup levels must be based on the reasonable maximum exposure (RME) expected to occur under both current and future site conditions. The defaults for these are:

- Groundwater – RME is a person drinking the water;
- Surface water – RME must consider fish consumption and aquatic impacts.

Federal (and later, State) Trust Responsibilities through the Treaty of 1855 relate directly to the RME for surface waters in the State of Washington.

10. In order to ensure ecosystem integrity, the **EPA 1991 Ground Water Protection Strategy** emphasizes protection of groundwater that is hydrologically closely connected to surface waters. This is clearly the case with the Columbia River, as illustrated by the contaminant plumes already reaching the river from the 100 Areas, 200 East Area, and the 300 Area.

Appendix D

Legal, Policy, and Regulation

1. Executive Order 12866; Regulatory Planning and Review

THE WHITE HOUSE Office of the Press Secretary

September 30, 1993

EXECUTIVE ORDER #12866 REGULATORY PLANNING AND REVIEW

The American people deserve a regulatory system that works for them, not against them: a regulatory system that protects and improves their health, safety, environment, and well-being and improves the performance of the economy without imposing unacceptable or unreasonable costs on society; regulatory policies that recognize that the private sector and private markets are the best engine for economic growth; regulatory approaches that respect the role of State, local, and tribal governments; and regulations that are effective, consistent, sensible, and understandable. We do not have such a regulatory system today.

With this Executive order, the Federal Government begins a program to reform and make more efficient the regulatory process. The objectives of this Executive order are to enhance planning and coordination with respect to both new and existing regulations; to reaffirm the primacy of Federal agencies in the regulatory decision-making process; to restore the integrity and legitimacy of regulatory review and oversight; and to make the process more accessible and open to the public. In pursuing these objectives, the regulatory process shall be conducted so as to meet applicable statutory requirements and with due regard to the discretion that has been entrusted to the Federal agencies.

Accordingly, by the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Statement of Regulatory Philosophy and Principles.

- a. The Regulatory Philosophy. Federal agencies should promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people. In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits shall be understood to include both

quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider. Further, in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.

- b. The Principles of Regulation. To ensure that the agencies' regulatory programs are consistent with the philosophy set forth above, agencies should adhere to the following principles, to the extent permitted by law and where applicable:
1. Each agency shall identify the problem that it intends to address (including, where applicable, the failures of private markets or public institutions that warrant new agency action) as well as assess the significance of that problem.
 2. Each agency shall examine whether existing regulations (or other law) have created, or contributed to, the problem that a new regulation is intended to correct and whether those regulations (or other law) should be modified to achieve the intended goal of regulation more effectively.
 3. Each agency shall identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.
 4. In setting regulatory priorities, each agency shall consider, to the extent reasonable, the degree and nature of the risks posed by various substances or activities within its jurisdiction.
 5. When an agency determines that a regulation is the best available method of achieving the regulatory objective, it shall design its regulations in the most cost-effective manner to achieve the regulatory objective. In doing so, each agency shall consider incentives for innovation, consistency, predictability, the costs of enforcement and compliance (to the government, regulated entities, and the public), flexibility, distributive impacts, and equity.
 6. Each agency shall assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs.
 7. Each agency shall base its decisions on the best reasonably obtainable scientific, technical, economic, and other information concerning the need for, and consequences of, the intended regulation.
 8.) Each agency shall identify and assess alternative forms of regulation and shall, to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt.
 9. Wherever feasible, agencies shall seek views of appropriate State, local, and tribal officials before imposing regulatory requirements that might significantly or uniquely affect those governmental entities. Each agency shall assess the effects of Federal regulations on State, local, and tribal governments, including specifically the availability of resources to carry out

those mandates, and seek to minimize those burdens that uniquely or significantly affect such governmental entities, consistent with achieving regulatory objectives. In addition, as appropriate, agencies shall seek to harmonize Federal regulatory actions with related State, local, and tribal regulatory and other governmental functions.

10. Each agency shall avoid regulations that are inconsistent, incompatible, or duplicative with its other regulations or those of other Federal agencies.
11. Each agency shall tailor its regulations to impose the least burden on society, including individuals, businesses of differing sizes, and other entities (including small communities and governmental entities), consistent with obtaining the regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations.
12. Each agency shall draft its regulations to be simple and easy to understand, with the goal of minimizing the potential for uncertainty and litigation arising from such uncertainty.

Sec. 2. Organization.

An efficient regulatory planning and review process is vital to ensure that the Federal Government's regulatory system best serves the American people.

- a. The Agencies. Because Federal agencies are the repositories of significant substantive expertise and experience, they are responsible for developing regulations and assuring that the regulations are consistent with applicable law, the President's priorities, and the principles set forth in this Executive order.
- b. The Office of Management and Budget. Coordinated review of agency rulemaking is necessary to ensure that regulations are consistent with applicable law, the President's priorities, and the principles set forth in this Executive order, and that decisions made by one agency do not conflict with the policies or actions taken or planned by another agency. The Office of Management and Budget (OMB) shall carry out that review function. Within OMB, the Office of Information and Regulatory Affairs (OIRA) is the repository of expertise concerning regulatory issues, including methodologies and procedures that affect more than one agency, this Executive order, and the President's regulatory policies. To the extent permitted by law, OMB shall provide guidance to agencies and assist the President, the Vice President, and other regulatory policy advisors to the President in regulatory planning and shall be the entity that reviews individual regulations, as provided by this Executive order.
- c. The Vice President. The Vice President is the principal advisor to the President on, and shall coordinate the development and presentation of recommendations concerning, regulatory policy, planning, and review, as set forth in this Executive order. In fulfilling their responsibilities under this Executive order, the President and the Vice President shall be assisted by the regulatory policy advisors within the Executive Office of the President and by such agency officials and personnel as the President and the Vice President may, from time to time, consult.

Sec. 3. Definitions.

For purposes of this Executive order:

- a. "Advisors" refers to such regulatory policy advisors to the President as the President and Vice President may from time to time consult, including, among others: (1) the Director of OMB; (2) the Chair (or another member) of the Council of Economic Advisers; (3) the Assistant to the President for Economic Policy; (4) the Assistant to the President for Domestic Policy; (5) the Assistant to the President for National Security Affairs; (6) the Assistant to the President for Science and Technology; (7) the Assistant to the President for Intergovernmental Affairs; (8) the Assistant to the President and Staff Secretary; (9) the Assistant to the President and Chief of Staff to the Vice President; (10) the Assistant to the President and Counsel to the President; (11) the Deputy Assistant to the President and Director of the White House Office on Environmental Policy; and (12) the Administrator of OIRA, who also shall coordinate communications relating to this Executive order among the agencies, OMB, the other Advisors, and the Office of the Vice President.
- b. "Agency," unless otherwise indicated, means any authority of the United States that is an "agency" under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(10).
- c. "Director" means the Director of OMB. (
- d. "Regulation" or "rule" means an agency statement of general applicability and future effect, which the agency intends to have the force and effect of law, that is designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of an agency. It does not, however, include:
 - 1. Regulations or rules issued in accordance with the formal rulemaking provisions of 5 U.S.C. 556, 557;
 - 2. Regulations or rules that pertain to a military or foreign affairs function of the United States, other than procurement regulations and regulations involving the import or export of non-defense articles and services;
 - 3. Regulations or rules that are limited to agency organization, management, or personnel matters; or
 - 4. Any other category of regulations exempted by the Administrator of OIRA.
- e. "Regulatory action" means any substantive action by an agency (normally published in the Federal Register) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking.
- f. "Significant regulatory action" means any regulatory action that is likely to result in a rule that may:
 - 1. Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
 - 2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
 - 3. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
 - 4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Sec. 4. Planning Mechanism.

In order to have an effective regulatory program, to provide for coordination of regulations, to maximize consultation and the resolution of potential conflicts at an early stage, to involve the public and its State, local, and tribal officials in regulatory planning, and to ensure that new or revised regulations promote the President's priorities and the principles set forth in this Executive order, these procedures shall be followed, to the extent permitted by law:

- a. **Agencies' Policy Meeting.** Early in each year's planning cycle, the Vice President shall convene a meeting of the Advisors and the heads of agencies to seek a common understanding of priorities and to coordinate regulatory efforts to be accomplished in the upcoming year.
- b. **Unified Regulatory Agenda.** For purposes of this subsection, the term "agency" or "agencies" shall also include those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(10). Each agency shall prepare an agenda of all regulations under development or review, at a time and in a manner specified by the Administrator of OIRA. The description of each regulatory action shall contain, at a minimum, a regulation identifier number, a brief summary of the action, the legal authority for the action, any legal deadline for the action, and the name and telephone number of a knowledgeable agency official. Agencies may incorporate the information required under 5 U.S.C. 602 and 41 U.S.C. 402 into these agendas.
- c. **The Regulatory Plan.** For purposes of this subsection, the term "agency" or "agencies" shall also include those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(10).
 1. As part of the Unified Regulatory Agenda, beginning in 1994, each agency shall prepare a Regulatory Plan (Plan) of the most important significant regulatory actions that the agency reasonably expects to issue in proposed or final form in that fiscal year or thereafter. The Plan shall be approved personally by the agency head and shall contain at a minimum:
 - A. A statement of the agency's regulatory objectives and priorities and how they relate to the President's priorities;
 - B. A summary of each planned significant regulatory action including, to the extent possible, alternatives to be considered and preliminary estimates of the anticipated costs and benefits;
 - C. A summary of the legal basis for each such action, including whether any aspect of the action is required by statute or court order;
 - D. A statement of the need for each such action and, if applicable, how the action will reduce risks to public health, safety, or the environment, as well as how the magnitude of the risk addressed by the action relates to other risks within the jurisdiction of the agency;
 - E. The agency's schedule for action, including a statement of any applicable statutory or judicial deadlines; and
 - F. The name, address, and telephone number of a person the public may contact for additional information about the planned regulatory action.
 2. Each agency shall forward its Plan to OIRA by June 1st of each year.

3. Within 10 calendar days after OIRA has received an agency's Plan, OIRA shall circulate it to other affected agencies, the Advisors, and the Vice President.
 4. An agency head who believes that a planned regulatory action of another agency may conflict with its own policy or action taken or planned shall promptly notify, in writing, the Administrator of OIRA, who shall forward that communication to the issuing agency, the Advisors, and the Vice President.
 5. If the Administrator of OIRA believes that a planned regulatory action of an agency may be inconsistent with the President's priorities or the principles set forth in this Executive order or may be in conflict with any policy or action taken or planned by another agency, the Administrator of OIRA shall promptly notify, in writing, the affected agencies, the Advisors, and the Vice President.
 6. The Vice President, with the Advisors' assistance, may consult with the heads of agencies with respect to their Plans and, in appropriate instances, request further consideration or inter-agency coordination.
 7. The Plans developed by the issuing agency shall be published annually in the October publication of the Unified Regulatory Agenda. This publication shall be made available to the Congress; State, local, and tribal governments; and the public. Any views on any aspect of any agency Plan, including whether any planned regulatory action might conflict with any other planned or existing regulation, impose any unintended consequences on the public, or confer any unclaimed benefits on the public, should be directed to the issuing agency, with a copy to OIRA.
- d. Regulatory Working Group. Within 30 days of the date of this Executive order, the Administrator of OIRA shall convene a Regulatory Working Group ("Working Group"), which shall consist of representatives of the heads of each agency that the Administrator determines to have significant domestic regulatory responsibility, the Advisors, and the Vice President. The Administrator of OIRA shall chair the Working Group and shall periodically advise the Vice President on the activities of the Working Group. The Working Group shall serve as a forum to assist agencies in identifying and analyzing important regulatory issues (including, among others (1) the development of innovative regulatory techniques, (2) the methods, efficacy, and utility of comparative risk assessment in regulatory decision-making, and (3) the development of short forms and other streamlined regulatory approaches for small businesses and other entities). The Working Group shall meet at least quarterly and may meet as a whole or in subgroups of agencies with an interest in particular issues or subject areas. To inform its discussions, the Working Group may commission analytical studies and reports by OIRA, the Administrative Conference of the United States, or any other agency.
- e. Conferences. The Administrator of OIRA shall meet quarterly with representatives of State, local, and tribal governments to identify both existing and proposed regulations that may uniquely or significantly affect those governmental entities. The Administrator of OIRA shall also convene, from time to time, conferences with

representatives of businesses, nongovernmental organizations, and the public to discuss regulatory issues of common concern.

Sec. 5. Existing Regulations.

In order to reduce the regulatory burden on the American people, their families, their communities, their State, local, and tribal governments, and their industries; to determine whether regulations promulgated by the executive branch of the Federal Government have become unjustified or unnecessary as a result of changed circumstances; to confirm that regulations are both compatible with each other and not duplicative or inappropriately burdensome in the aggregate; to ensure that all regulations are consistent with the President's priorities and the principles set forth in this Executive order, within applicable law; and to otherwise improve the effectiveness of existing regulations:

- a. Within 90 days of the date of this Executive order, each agency shall submit to OIRA a program, consistent with its resources and regulatory priorities, under which the agency will periodically review its existing significant regulations to determine whether any such regulations should be modified or eliminated so as to make the agency's regulatory program more effective in achieving the regulatory objectives, less burdensome, or in greater alignment with the President's priorities and the principles set forth in this Executive order. Any significant regulations selected for review shall be included in the agency's annual Plan. The agency shall also identify any legislative mandates that require the agency to promulgate or continue to impose regulations that the agency believes are unnecessary or outdated by reason of changed circumstances.
- b. The Administrator of OIRA shall work with the Regulatory Working Group and other interested entities to pursue the objectives of this section. State, local, and tribal governments are specifically encouraged to assist in the identification of regulations that impose significant or unique burdens on those governmental entities and that appear to have outlived their justification or be otherwise inconsistent with the public interest.
- c. The Vice President, in consultation with the Advisors, may identify for review by the appropriate agency or agencies other existing regulations of an agency or groups of regulations of more than one agency that affect a particular group, industry, or sector of the economy, or may identify legislative mandates that may be appropriate for reconsideration by the Congress.

Sec. 6. Centralized Review of Regulations.

The guidelines set forth below shall apply to all regulatory actions, for both new and existing regulations, by agencies other than those agencies specifically exempted by the Administrator of OIRA:

- a. Agency Responsibilities.
 1. Each agency shall (consistent with its own rules, regulations, or procedures) provide the public with meaningful participation in the regulatory process. In particular, before issuing a notice of proposed rulemaking, each agency should, where appropriate, seek the involvement of those who are intended to

benefit from and those expected to be burdened by any regulation (including, specifically, State, local, and tribal officials). In addition, each agency should afford the public a meaningful opportunity to comment on any proposed regulation, which in most cases should include a comment period of not less than 60 days. Each agency also is directed to explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.

2. Within 60 days of the date of this Executive order, each agency head shall designate a Regulatory Policy Officer who shall report to the agency head. The Regulatory Policy Officer shall be involved at each stage of the regulatory process to foster the development of effective, innovative, and least burdensome regulations and to further the principles set forth in this Executive order.
3. In addition to adhering to its own rules and procedures and to the requirements of the Administrative Procedure Act, the Regulatory Flexibility Act, the Paperwork Reduction Act, and other applicable law, each agency shall develop its regulatory actions in a timely fashion and adhere to the following procedures with respect to a regulatory action:
 - A. Each agency shall provide OIRA, at such times and in the manner specified by the Administrator of OIRA, with a list of its planned regulatory actions, indicating those which the agency believes are significant regulatory actions within the meaning of this Executive order. Absent a material change in the development of the planned regulatory action, those not designated as significant will not be subject to review under this section unless, within 10 working days of receipt of the list, the Administrator of OIRA notifies the agency that OIRA has determined that a planned regulation is a significant regulatory action within the meaning of this Executive order. The Administrator of OIRA may waive review of any planned regulatory action designated by the agency as significant, in which case the agency need not further comply with subsection (a)(3)(B) or subsection (a)(3)(C) of this section.
 - B. For each matter identified as, or determined by the Administrator of OIRA to be, a significant regulatory action, the issuing agency shall provide to OIRA:
 - i. The text of the draft regulatory action, together with a reasonably detailed description of the need for the regulatory action and an explanation of how the regulatory action will meet that need; and
 - ii. An assessment of the potential costs and benefits of the regulatory action, including an explanation of the manner in which the regulatory action is consistent with a statutory mandate and, to the extent permitted by law, promotes the President's priorities and avoids undue interference with State, local, and tribal governments in the exercise of their governmental functions.

- C. For those matters identified as, or determined by the Administrator of OIRA to be, a significant regulatory action within the scope of section 3(f)(1), the agency shall also provide to OIRA the following additional information developed as part of the agency's decision-making process (unless prohibited by law):
- i. An assessment, including the underlying analysis, of benefits anticipated from the regulatory action (such as, but not limited to, the promotion of the efficient functioning of the economy and private markets, the enhancement of health and safety, the protection of the natural environment, and the elimination or reduction of discrimination or bias) together with, to the extent feasible, a quantification of those benefits;
 - ii. An assessment, including the underlying analysis, of costs anticipated from the regulatory action (such as, but not limited to, the direct cost both to the government in administering the regulation and to businesses and others in complying with the regulation, and any adverse effects on the efficient functioning of the economy, private markets (including productivity, employment, and competitiveness), health, safety, and the natural environment), together with, to the extent feasible, a quantification of those costs; and
 - iii. An assessment, including the underlying analysis, of costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulation, identified by the agencies or the public (including improving the current regulation and reasonably viable nonregulatory actions), and an explanation why the planned regulatory action is preferable to the identified potential alternatives.
- D. In emergency situations or when an agency is obligated by law to act more quickly than normal review procedures allow, the agency shall notify OIRA as soon as possible and, to the extent practicable, comply with subsections (a)(3)(B) and (C) of this section. For those regulatory actions that are governed by a statutory or court-imposed deadline, the agency shall, to the extent practicable, schedule rulemaking proceedings so as to permit sufficient time for OIRA to conduct its review, as set forth below in subsection (b)(2) through (4) of this section.
- E. After the regulatory action has been published in the Federal Register or otherwise issued to the public, the agency shall:
- i. Make available to the public the information set forth in subsections (a)(3)(B) and (C);
 - ii. Identify for the public, in a complete, clear, and simple manner, the substantive changes between the draft submitted to OIRA for review and the action subsequently announced; and
 - iii. Identify for the public those changes in the regulatory action that were made at the suggestion or recommendation of OIRA.

- F. All information provided to the public by the agency shall be in plain, understandable language.
4. OIRA Responsibilities. The Administrator of OIRA shall provide meaningful guidance and oversight so that each agency's regulatory actions are consistent with applicable law, the President's priorities, and the principles set forth in this Executive order and do not conflict with the policies or actions of another agency. OIRA shall, to the extent permitted by law, adhere to the following guidelines:
- A. OIRA may review only actions identified by the agency or by OIRA as significant regulatory actions under subsection (a)(3)(A) of this section.
 - B. OIRA shall waive review or notify the agency in writing of the results of its review within the following time periods:
 - i. For any notices of inquiry, advance notices of proposed rulemaking, or other preliminary regulatory actions prior to a Notice of Proposed Rulemaking, within 10 working days after the date of submission of the draft action to OIRA;
 - ii. For all other regulatory actions, within 90 calendar days after the date of submission of the information set forth in subsections (a)(3)(B) and (C) of this section, unless OIRA has previously reviewed this information and, since that review, there has been no material change in the facts and circumstances upon which the regulatory action is based, in which case, OIRA shall complete its review within 45 days; and
 - iii. The review process may be extended
 - 1. once by no more than 30 calendar days upon the written approval of the Director and
 - 2. at the request of the agency head.
 - 3. For each regulatory action that the Administrator of OIRA returns to an agency for further consideration of some or all of its provisions, the Administrator of OIRA shall provide the issuing agency a written explanation for such return, setting forth the pertinent provision of this Executive order on which OIRA is relying. If the agency head disagrees with some or all of the bases for the return, the agency head shall so inform the Administrator of OIRA in writing.
 - 4. Except as otherwise provided by law or required by a Court, in order to ensure greater openness, accessibility, and accountability in the regulatory review process, OIRA shall be governed by the following disclosure requirements:
 - A. Only the Administrator of OIRA (or a particular designee) shall receive oral communications initiated by persons not employed by the

executive branch of the Federal Government regarding the substance of a regulatory action under OIRA review;

- B. All substantive communications between OIRA personnel and persons not employed by the executive branch of the Federal Government regarding a regulatory action under review shall be governed by the following guidelines:
- i. A representative from the issuing agency shall be invited to any meeting between OIRA personnel and such person(s);
 - ii. OIRA shall forward to the issuing agency, within 10 working days of receipt of the communication(s), all written communications, regardless of format, between OIRA personnel and any person who is not employed by the executive branch of the Federal Government, and the dates and names of individuals involved in all substantive oral communications (including meetings to which an agency representative was invited, but did not attend, and telephone conversations between OIRA personnel and any such persons); and
 - iii. OIRA shall publicly disclose relevant information about such communication(s), as set forth below in subsection (b)(4)(C) of this section.
- C. OIRA shall maintain a publicly available log that shall contain, at a minimum, the following information pertinent to regulatory actions under review:
- i. The status of all regulatory actions, including if (and if so, when and by whom) Vice Presidential and Presidential consideration was requested;
 - ii. A notation of all written communications forwarded to an issuing agency under subsection (b)(4)(B)(ii) of this section; and
 - iii. The dates and names of individuals involved in all substantive oral communications, including meetings and

telephone conversations, between OIRA personnel and any person not employed by the executive branch of the Federal Government, and the subject matter discussed during such communications.

- D. After the regulatory action has been published in the Federal Register or otherwise issued to the public, or after the agency has announced its decision not to publish or issue the regulatory action, OIRA shall make available to the public all documents exchanged between OIRA and the agency during the review by OIRA under this section.
5. All information provided to the public by OIRA shall be in plain, understandable language.

Sec. 7. Resolution of Conflicts.

To the extent permitted by law, disagreements or conflicts between or among agency heads or between OMB and any agency that cannot be resolved by the Administrator of OIRA shall be resolved by the President, or by the Vice President acting at the request of the President, with the relevant agency head (and, as appropriate, other interested government officials). Vice Presidential and Presidential consideration of such disagreements may be initiated only by the Director, by the head of the issuing agency, or by the head of an agency that has a significant interest in the regulatory action at issue. Such review will not be undertaken at the request of other persons, entities, or their agents.

Resolution of such conflicts shall be informed by recommendations developed by the Vice President, after consultation with the Advisors (and other executive branch officials or personnel whose responsibilities to the President include the subject matter at issue). The development of these recommendations shall be concluded within 60 days after review has been requested.

During the Vice Presidential and Presidential review period, communications with any person not employed by the Federal Government relating to the substance of the regulatory action under review and directed to the Advisors or their staffs or to the staff of the Vice President shall be in writing and shall be forwarded by the recipient to the affected agency(ies) for inclusion in the public docket(s). When the communication is not in writing, such Advisors or staff members shall inform the outside party that the matter is under review and that any comments should be submitted in writing.

At the end of this review process, the President, or the Vice President acting at the request of the President, shall notify the affected agency and the Administrator of OIRA of the President's decision with respect to the matter.

Sec. 8. Publication.

Except to the extent required by law, an agency shall not publish in the Federal Register or otherwise issue to the public any regulatory action that is subject to review under section 6 of this Executive order until (1) the Administrator of OIRA notifies the agency that OIRA has waived its review of the action or has completed its review without any requests for further consideration, or (2) the applicable time period in section 6(b)(2) expires without OIRA having notified the agency that it is returning the regulatory action for further consideration under section 6(b)(3), whichever occurs first. If the terms of the preceding sentence have not been satisfied and an agency wants to publish or otherwise issue a regulatory action, the head of that agency may request Presidential consideration through the Vice President, as provided under section 7 of this order. Upon receipt of this request, the Vice President shall notify OIRA and the Advisors. The guidelines and time period set forth in section 7 shall apply to the publication of regulatory actions for which Presidential consideration has been sought.

Sec. 9. Agency Authority.

Nothing in this order shall be construed as displacing the agencies' authority or responsibilities, as authorized by law.

Sec. 10. Judicial Review.

Nothing in this Executive order shall affect any otherwise available judicial review of agency action. This Executive order is intended only to improve the internal management of the Federal Government and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

Sec. 11. Revocations.

Executive Orders Nos. 12291 and 12498; all amendments to those Executive orders; all guidelines issued under those orders; and any exemptions from those orders heretofore granted for any category of rule are revoked.

WILLIAM J. CLINTON

THE WHITE HOUSE,
September 30, 1993.

2. Executive Order 12875; Enhancing the Intergovernmental Partnership

THE WHITE HOUSE; OFFICE OF THE PRESS SECRETARY
for immediate release October 26, 1993

EXECUTIVE ORDER ENHANCING THE INTERGOVERNMENTAL PARTNERSHIP

The Federal Government is charged with protecting the health and safety, as well as promoting other national interests, of the American people. However, the cumulative effect of unfunded mandates has increasingly strained the budgets of State, local, and tribal governments. In addition, the cost, complexity, and delay in applying for and receiving waivers from Federal requirements in appropriate cases have hindered State, local, and tribal governments from tailoring Federal programs to meet the specific or unique needs of their communities. These governments should have more flexibility to design solutions to the problems faced by citizens in this country without excessive micro management and unnecessary regulation from the Federal Government.

THEREFORE, by the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to reduce the imposition of unfunded mandates upon State, local, and tribal governments; to streamline the application process for and increase the availability of waivers to State, local, and tribal governments; and to establish regular and meaningful consultation and collaboration with State, local, and tribal governments on Federal matters that significantly or uniquely affect their communities, it is hereby ordered as follows:

Section 1.

Reduction of Unfunded Mandates.

- a. To the extent feasible and permitted by law, no executive department or agency ("agency") shall promulgate any regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless:
 1. funds necessary to pay the direct costs incurred by the State, local, or tribal government in complying with the mandate are provided by the Federal Government; or
 2. the agency, prior to the formal promulgation of regulations containing the proposed mandate, provides to the Director of the Office of Management and Budget a description of the extent of the agency's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, any written communications submitted to the agency by such units of government, and the agency's position supporting the need to issue the regulation containing the mandate.

- b. Each agency shall develop an effective process to permit elected officials and other representatives of State, local, and tribal governments to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.

Sec. 2. Increasing Flexibility for State and Local Waivers.

- a. Each agency shall review its waiver application process and take appropriate steps to streamline that process.
- b. Each agency shall, to the extent practicable and permitted by law, consider any application by a State, local, or tribal government for a waiver of statutory or regulatory requirements in connection with any program administered by that agency with a general view toward increasing opportunities for utilizing flexible policy approaches at the State, local, and tribal level in cases in which the proposed waiver is consistent with the applicable Federal policy objectives and is otherwise appropriate.
- c. Each agency shall, to the fullest extent practicable and permitted by law, render a decision upon a complete application for a waiver within 120 days of receipt of such application by the agency. If the application for a waiver is not granted, the agency shall provide the applicant with timely written notice of the decision and reasons therefor.
- d. This section applies only to statutory or regulatory requirements of the programs that are discretionary and subject to waiver by the agency.

Sec. 3. Responsibility for Agency Implementation.

The Chief Operating Officer of each agency shall be responsible for ensuring the implementation of and compliance with this order.

Sec.4 Executive Order No. 12866.

This order shall supplement but not supersede the requirements contained in Executive Order No. 12866 ("Regulatory Planning and Review").

Sec.5 Scope

- a. Executive agency means any authority of the United States that is an "agency" under 44 U.S.C. 3502 (1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502 (10).
- b. Independent agencies are requested to comply with the provisions of this order.

Sec. 6. Judicial Review.

This order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

Sec. 7. Effective Date.

This order shall be effective 90 days after the date of this order.

WILLIAM J. CLINTON

THE WHITE HOUSE
October 26, 1993

3. Executive Order 13175; Consultation and Coordination with Indian Tribal Governments

Executive Order 13175--Consultation and Coordination With Indian Tribal Governments

November 6, 2000

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, to strengthen the United States government-to-government relationships with Indian tribes, and to reduce the imposition of unfunded mandates upon Indian tribes; it is hereby ordered as follows:

Section 1. Definitions.

For purposes of this order:

- a. "Policies that have tribal implications" refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.
- b. "Indian tribe" means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.
- c. "Agency" means any authority of the United States that is an "agency" under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).
- d. "Tribal officials" means elected or duly appointed officials of Indian tribal governments or authorized intertribal organizations.

Sec. 2. Fundamental Principles.

In formulating or implementing policies that have tribal implications, agencies shall be guided by the following fundamental principles:

- a. The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions. Since the formation of the Union, the United States has recognized Indian tribes as domestic dependent nations under its protection. The Federal Government has enacted numerous statutes and promulgated numerous regulations that establish and define a trust relationship with Indian tribes.
- b. Our Nation, under the law of the United States, in accordance with treaties, statutes, Executive Orders, and judicial decisions, has recognized the right of Indian tribes to self-government. As domestic dependent nations, Indian tribes exercise inherent sovereign powers over their members and territory. The United States continues to work with Indian tribes on a government-to-government basis to address issues concerning Indian tribal self-government, tribal trust resources, and Indian tribal treaty and other rights.
- c. The United States recognizes the right of Indian tribes to self-government and supports tribal sovereignty and self-determination.

Sec. 3. Policymaking Criteria.

In addition to adhering to the fundamental principles set forth in section 2, agencies shall adhere, to the extent permitted by law, to the following criteria when formulating and implementing policies that have tribal implications:

- a. Agencies shall respect Indian tribal self-government and sovereignty, honor tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments.
- b. With respect to Federal statutes and regulations administered by Indian tribal governments, the Federal Government shall grant Indian tribal governments the maximum administrative discretion possible.
- c. When undertaking to formulate and implement policies that have tribal implications, agencies shall:
 1. encourage Indian tribes to develop their own policies to achieve program objectives;
 2. where possible, defer to Indian tribes to establish standards; and
 3. in determining whether to establish Federal standards, consult with tribal officials as to the need for Federal standards and any alternatives that would limit the scope of Federal standards or otherwise preserve the prerogatives and authority of Indian tribes.

Sec. 4. Special Requirements for Legislative Proposals.

Agencies shall not submit to the Congress legislation that would be inconsistent with the policymaking criteria in Section 3.

Sec. 5. Consultation.

- a. Each agency shall have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications. Within 30 days after the effective date of this order, the head of each agency shall designate an official with principal responsibility for the agency's implementation of this order. Within 60 days of the effective date of this order, the designated official shall submit to the Office of Management and Budget (OMB) a description of the agency's consultation process.
- b. To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications, that imposes substantial direct compliance costs on Indian tribal governments, and that is not required by statute, unless:
 1. funds necessary to pay the direct costs incurred by the Indian tribal government or the tribe in complying with the regulation are provided by the Federal Government; or
 2. the agency, prior to the formal promulgation of the regulation,
- c. consulted with tribal officials early in the process of developing the proposed regulation;
- d. in a separately identified portion of the preamble to the regulation as it is to be issued in the Federal Register, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency's prior consultation with tribal officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and
- e. makes available to the Director of OMB any written communications submitted to the agency by tribal officials.
- f. To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications and that preempts tribal law unless the agency, prior to the formal promulgation of the regulation,
 1. consulted with tribal officials early in the process of developing the proposed regulation;
 2. in a separately identified portion of the preamble to the regulation as it is to be issued in the Federal Register, provides to the Director of OMB a tribal summary impact

statement, which consists of a description of the extent of the agency's prior consultation with tribal officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and

3. makes available to the Director of OMB any written communications submitted to the agency by tribal officials.
- g. On issues relating to tribal self-government, tribal trust resources, or Indian tribal treaty and other rights, each agency should explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.

Sec. 6. Increasing Flexibility for Indian Tribal Waivers.

- a. Agencies shall review the processes under which Indian tribes apply for waivers of statutory and regulatory requirements and take appropriate steps to streamline those processes.
- b. Each agency shall, to the extent practicable and permitted by law, consider any application by an Indian tribe for a waiver of statutory or regulatory requirements in connection with any program administered by the agency with a general view toward increasing opportunities for utilizing flexible policy approaches at the Indian tribal level in cases in which the proposed waiver is consistent with the applicable Federal policy objectives and is otherwise appropriate.
- c. Each agency shall, to the extent practicable and permitted by law, render a decision upon a complete application for a waiver within 120 days of receipt of such application by the agency, or as otherwise provided by law or regulation. If the application for waiver is not granted, the agency shall provide the applicant with timely written notice of the decision and the reasons therefor.
- d. This section applies only to statutory or regulatory requirements that are discretionary and subject to waiver by the agency.

Sec. 7. Accountability.

- a. In transmitting any draft final regulation that has tribal implications to OMB pursuant to Executive Order 12866 of September 30, 1993, each agency shall include a certification from the official designated to ensure compliance with this order stating that the requirements of this order have been met in a meaningful and timely manner.
- b. In transmitting proposed legislation that has tribal implications to OMB, each agency shall include a certification from the official designated to ensure compliance with this order that all relevant requirements of this order have been met.
- c. Within 180 days after the effective date of this order the Director of OMB and the Assistant to the President for Intergovernmental Affairs shall confer with tribal officials to ensure that this order is being properly and effectively implemented.

Sec. 8. Independent Agencies.

Independent regulatory agencies are encouraged to comply with the provisions of this order.

Sec. 9. General Provisions.

- a. This order shall supplement but not supersede the requirements contained in Executive Order 12866 (Regulatory Planning and Review), Executive Order 12988 (Civil Justice Reform), OMB Circular A-19, and the Executive Memorandum of April 29, 1994, on Government-to-Government Relations with Native American Tribal Governments.
- b. This order shall complement the consultation and waiver provisions in sections 6 and 7 of Executive Order 13132 (Federalism).

- c. Executive Order 13084 (Consultation and Coordination with Indian Tribal Governments) is revoked at the time this order takes effect.
- d. This order shall be effective 60 days after the date of this order.

Sec. 10. Judicial Review.

This order is intended only to improve the internal management of the executive branch, and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the United States, its agencies, or any person.

William J. Clinton

The White House,
November 6, 2000.

4. DOE American Indian and Alaska Native Tribal Government Policy

The Secretary of Energy

Washington, DC 20585

January 20, 2006

MEMORANDUM FOR: HEADS OF DEPARTMENTAL ELEMENTS

FROM: SAMUEL W. BODMAN

SUBJECT: DOE American Indian and Alaska Natives Tribal Government Policy

DOE American Indian and Alaska Natives Tribal Government Policy

I am committed to ensuring that the Department of Energy (DOE) meets its responsibilities to Indian Nations and works in a consistent manner with the government-to-government relationships between federally recognized tribes and the U.S. Government.

The attached American Indian and Alaska Natives Tribal Government Policy Reaffirms that commitment and outlines the principles for the Department to follow. I am modifying this existing policy to provide for “periodic” summits. I request that you be responsive to the Department’s policy and look for ways to improve its implementation in order to ensure that all employees are aware of this Policy and its provisions. Tribal participation is frequently critical to DOE’S decision-making processes.

If further guidance is needed, or if you have suggestions to improve the current policy, please contact Mr. Eric Ciliberti, Deputy Assistant Secretary for Intergovernmental Affairs, Office of Congressional and Intergovernmental Affairs, at (202) **586-4220**.

U.S. DEPARTMENT OF ENERGY AMERICAN INDIAN & ALASKA NATIVE TRIBAL GOVERNMENT POLICY

PURPOSE

This Policy sets forth the principles to be followed by the Department of Energy (DOE) to ensure an effective implementation of a government to government relationship with American Indian and Alaska Native tribal governments. This Policy is based on the United States Constitution, treaties, Supreme Court decisions, Executive Orders, statutes, existing federal policies, tribal laws, and the dynamic political relationship between Indian nations and the Federal government.¹ The most important doctrine derived from this relationship is the trust responsibility of the United States to protect tribal sovereignty and self-determination, tribal lands, assets, resources, and treaty and other federally recognized and reserved rights. This Policy provides direction to all Departmental officials, staff, and contractors regarding fulfillment of trust obligations and other responsibilities arising from Departmental actions which may potentially impact American Indian and Alaska Native traditional, cultural and religious values and practices; natural resources; treaty and other federally recognized and reserved rights.

BACKGROUND

Indian nations are sovereign with unique political and legal standing derived from a longstanding relationship as stated in the Purpose section of this document. The Indian nations retain an inherent right to self-governmental authority, and, therefore, Federal activities affecting self-governance rights and impacting upon trust resources require policy implementation in a knowledgeable and sensitive manner protective of tribal sovereignty and trust resources. The DOE released its Indian Policy in 1992 and subsequently issued DOE Order 1230.2 that established the responsibilities and roles of the DOE management in carrying out its policy. At the request of Indian nations in 1998, the Secretary of Energy agreed to revise the 1992 American Indian Policy and effect comprehensive implementation. This revision was based in part on comments from Indian nations and their leadership and replaces the 1992 Policy that is part of the 1992 Order.

DEFINITIONS

Indian Nation means any American Indian or Alaska Native Tribe, Band, Nation, Pueblo, or other organized group or community, including any Alaska Native village [as defined or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)], which is acknowledged by the Federal government to constitute a tribe with a government to government relationship with the United States and eligible for the programs, services, and other relationships established by the United States for indigenous peoples because of their status as American Indian and Alaska Native tribes, Bands, Nations, Pueblos or communities.

American Indian and Alaska Native Tribal Government means the recognized government of an Indian nation and any affiliated or component band government of such nation that has been determined eligible for specific services by Congress or officially recognized in 25 CFR Part 83, “Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs,” as printed in the Federal Register.

Trust Responsibility includes, but is not limited to: promotion and protection of tribal treaty rights, federally recognized reserved rights, and other federally recognized interests of the beneficiary American Indian and Alaska Native nations; determining, documenting, notifying, and interacting with tribal governments with regard to the impact of Departmental programs, policies, and regulations to protect American Indian and Alaska Native traditional and cultural lifeways, natural resources, treaty and other federally recognized and reserved rights.

Consultation includes, but is not limited to: prior to taking any action with potential impact upon American Indian and Alaska Native nations, providing for mutually agreed protocols for timely communication, coordination, cooperation, and collaboration to determine the impact on traditional and cultural lifeways, natural resources, treaty and other federally reserved rights involving appropriate tribal officials and representatives throughout the decision-making process, including final decision-making and action implementation as allowed by law, consistent with a government to government relationship.

Cultural Resources include, but are not limited to: archaeological materials (artifacts) and sites dating to the prehistoric, historic, and ethno-historic periods that are located on the ground surface or are buried beneath it; natural resources, sacred objects, and sacred American Indian and Alaska Native nations regard as supportive to their cultural and traditional lifeways.

Treaty and Trust Resources and Resource Interests include, but are not limited to: natural and other resources specified and implicit in treaties, statutes, and agreements, or lands or other resources held in trust by the United States for the benefit of tribes or individual Indian beneficiaries, including land, water, timber, fish, plants, animals, and minerals. In many instances, Indian nations retain hunting, fishing, and gathering rights, and access to these areas and resources on lands or waters that are outside of tribally owned lands.

POLICY PRINCIPLES

I. DOE RECOGNIZES THE FEDERAL TRUST RELATIONSHIP AND WILL FULFILL ITS TRUST RESPONSIBILITIES TO AMERICAN INDIAN AND ALASKA NATIVE NATIONS.

The DOE will be diligent in fulfilling its federal trust obligations to American Indian and Alaska Native governments in policy implementation and program management recognized and reserved rights of the Indian nations and peoples. The Department recognizes that some Tribes have treaty-protected and other federally recognized rights to resources and resource interests located within reservation boundaries, aboriginal territories, and outside reservation

and jurisdictional boundaries, and will, to the extent of its authority, protect and promote these treaty and trust resources and resource interests, and related concerns in these areas.

When internal policies, regulations, and statutes, or other barriers prohibit or hinder the DOE trust protection actions or participation in eligible program initiatives, the Secretary will direct the agency to seek corrective protection measures, and tribal government program inclusion.

The DOE is committed to protecting treaty compliance and trust interests of Indian nations during interactions with state and local governments and other stakeholders with regard to DOE actions impacting upon American Indian and Alaska Native governments and peoples. The Department will inform and educate state and local governmental entities and other stakeholders about the DOE'S role and responsibilities regarding its trust relationship with Indian nations.

The DOE will seek to determine the impacts of Departmental- proposed legislation upon Indian nations, in extensive consultation and collaboration with tribes. The Secretary will implement this notice and consultation effort consistent with the intent and purpose of this Policy.

11. THE DEPARTMENT RECOGNIZES AND COMMITS TO A GOVERNMENT TO GOVERNMENT RELATIONSHIP AND WILL INSTITUTE APPROPRIATE PROTOCOLS AND PROCEDURES FOR PROGRAM AND POLICY IMPLEMENTATION.

The DOE recognizes Tribal governments as sovereign entities with primary authority and responsibility for the protection of the health, safety and welfare of their citizens. The Department will recognize the right of each Indian nation to set its own priorities and goals in developing, protecting, and managing its natural and cultural resources. This recognition includes separate and distinct authorities that are independent of state governments.

The Department, in keeping with the principle of self-governance, recognizes American Indian and Alaska Native governments as necessary and appropriate non-Federal parties in the federal decision-making process regarding actions potentially impacting Indian country energy resources, environments, and the health and welfare of the citizens of Indian nations. The DOE will establish protocols for communication between tribal leaders, the Secretary, and federal officials. The DOE will ensure consistent application of program and policy implementation with Indian nations through periodic review, assessment, and collaboration with tribal representatives to audit protocol systems.

Principles of consistent policy implementation will be tempered with consideration of the diverse cultures and ideals of the Indian nations.

111. THE DEPARTMENT WILL ESTABLISH MECHANISMS FOR OUTREACH, NOTICE, AND CONSULTATION, AND ENSURE INTEGRATION OF INDIAN NATIONS INTO DECISION-MAKING PROCESSES.

To ensure protection and exercise of tribal treaty and other federally recognized rights, the DOE will implement a proactive outreach effort of notice and consultation regarding current and proposed actions affecting tribes, including appropriate fiscal year budget matters. This effort will include timely notice to all potentially impacted Indian nations in the early planning stages of the decision-making process, including pre-draft consultation, in the development of regulatory policies on matters that significantly or uniquely affect their communities. As appropriate, the DOE will provide delivery of technical and financial assistance related to DOE-initiated regulatory policy, identifying programmatic impacts, and

determining the significance of the impact. The DOE will continue to conduct a dialogue with Indian nations for long and short term decision-making when DOE actions impact Indian nations. The DOE will comply with the Consultation and Coordination With Indian Tribal Governments Executive Order 13084, May 14, 1998, and the Government to Government Relations With Native American Tribal Governments Executive Memorandum, April 29, 1994.

The DOE will implement permanent workshops and programs for field and headquarters staff on American Indian and Alaska Native cultural awareness and tribal governance. Due to the nature of the trust responsibility to tribal governments, performance reviews of consultation activities will be conducted, in collaboration with tribal governments.

IV. DEPARTMENT-WIDE COMPLIANCE WITH APPLICABLE FEDERAL CULTURAL RESOURCE PROTECTION AND OTHER LAWS AND EXECUTIVE ORDERS WILL ASSIST IN PRESERVATION AND PROTECTION OF HISTORIC AND CULTURAL SITES AND TRADITIONAL RELIGIOUS PRACTICES.

The Department will consult with any American Indian or Alaska Native tribal government with regard to any property to which that tribe attaches religious or cultural importance which might be affected by a DOE action. With regard to actions by DOE in areas not under DOE control or when an action of another federal agency takes place on DOE land, DOE will consult with tribes in accordance with this Policy. Such consultation will include tribal involvement in identifying and evaluating cultural resources including traditional cultural properties; facilitating tribal involvement in determining and managing adverse effects; collaboration in the development and signing of memoranda of understanding with DOE, when appropriate.

Departmental consultation will include the prompt exchange of information regarding identification, evaluation and protection of cultural resources. To the extent allowed by law, consultation will defer to tribal policies on confidentiality and management of cultural resources. Consultation will include matters regarding location and management methodology; repatriation and other disposition of objects and human remains; access to sacred areas and traditional resources located on DOE lands, consistent with safety and national security considerations; and cultural resources impact assessment of potential loss to tribal communities.

The DOE will comply with current and forthcoming cultural resource protection laws and Executive Orders including Native American Graves Protection and Repatriation Act; Archaeological Resources Protection Act; American Indian Religious Freedom Act; National Historic Preservation Act; National Environmental Policy Act; Freedom of Information Act; Privacy Act; Indian Sacred Sites Executive Order 13007, May 24, 1996; Consultation and Coordination With Indian Tribal Governments Executive Order 13084, May 14, 1998; Government to Government Relations With Native American Tribal Governments Executive Memorandum, April 29, 1994; Tribal Colleges and Universities Executive Order 13021; Executive Order 12898 on Environmental Justice.

V. THE DEPARTMENT WILL INITIATE A COORDINATED DEPARTMENT WIDE EFFORT FOR TECHNICAL ASSISTANCE, BUSINESS AND EDUCATION, AND TRAINING PROGRAMS & ECONOMIC SELF-DETERMINATION DEVELOPMENT OPPORTUNITIES.

The Department will implement a consistent national outreach and communication effort to inform tribal leaders and tribal program officials about access to internships and scholarships; availability of technical assistance and training opportunities; conventional and renewable energy development programs; related tribal business and individual member business enterprise, service-provider, and contracting opportunities.

The DOE recognizes the need for direct funding and technical assistance from applicable DOE-sponsored programs within the Department and the National Laboratories which deal with regulation, energy planning, and development of energy resources on tribal lands and Alaska Native site-controlled and trust lands.

The Department will provide information and outreach programs to tribal and individual member businesses on opportunities to participate, compete, and participate in renewable and conventional energy generation, transmission, distribution, marketing and energy services, grants, and contracts. The Department will assist in development of balanced, sustainable, and viable American Indian and Alaska Native communities by continuing to implement Title XXVI, Indian Energy Resources, of the National Energy Policy Act that

The Secretary will create programs that encourage and support the establishment of assistance and coordinate with other federal agencies in the development of energy related projects.

VI. THE SECRETARY OF ENERGY WILL CONDUCT PERIODIC SUMMITS WITH TRIBAL LEADERS FOR PERFORMANCE REVIEW OF POLICY IMPLEMENTATION AND ISSUE RESOLUTION.

The Secretary will engage tribal leaders in periodic dialogue, to discuss the Department's implementation of the American Indian and Alaska Native Policy. The dialogue will provide an opportunity for tribal leaders to assess policy implementation, program delivery, and discuss outreach and communication efforts, and other issues.

VII. THE DEPARTMENT WILL WORK WITH OTHER FEDERAL AGENCIES, AND STATE AGENCIES, THAT HAVE RELATED RESPONSIBILITIES AND RELATIONSHIPS TO OUR RESPECTIVE ORGANIZATIONS AS THEY RELATE TO TRIBAL MATTERS.

The DOE will seek and promote cooperation with other agencies that have related responsibilities. The Department's mission encompasses many complex issues where cooperation and mutual consideration among governments (federal, state, tribal, and local) are essential. The DOE will encourage early communication and cooperation among all governmental and non-federal parties regarding actions potentially affecting Indian nations. The DOE will promote interagency and interdepartmental coordination and cooperation to assist tribal governments in resolving issues requiring mutual effort.

¹ This Policy is not intended to, and does not, grant, expand, create or diminish any legally enforceable rights, benefits, or trust responsibilities, substantive or procedural, not otherwise granted or created under existing law. Nor shall this Policy be construed to alter, amend, repeal, interpret, or modify tribal sovereignty, any treaty rights of any Indian tribes, or to preempt, modify, or limit the exercise of any such rights. Nothing herein shall be interpreted as amending or changing current DOE orders and guidance regarding classified information, including need to know.

5. DOE American Indian Tribal Government Interactions and Policy DOE O 144.1

**U.S. Department of Energy
WASHINGTON, D.C.
DOE O 144.1**

Approved: 1-16-09

SUBJECT: DEPARTMENT OF ENERGY AMERICAN INDIAN TRIBAL GOVERNMENT INTERACTIONS AND POLICY

1. **PURPOSE.** This Order communicates Departmental, programmatic, and field responsibilities for interacting with American Indian Governments and transmits the Department of Energy's (DOE) American Indian and Alaska Native Tribal Government Policy (hereafter "Indian Policy") including its guiding principles, and transmits the Framework for Implementation of the Policy.
2. **CANCELLATION.** DOE O 1230.2, American Indian Tribal Government Policy, dated 4-8-92. Cancellation of a directive does not, by itself, modify or otherwise affect any contractual obligation to comply with the Order. Contractor Requirement Documents (CRDs) that have been incorporated into or attached to a contract remain in effect until the contract is modified to either eliminate requirements that are no longer applicable or substitute a new set of requirements.
3. **APPLICABILITY.**
 - a. **DOE Elements.** Except for the exclusions in paragraph 3c, this Order applies to all Departmental elements, including those created after the Order is issued. (Go to www.directives.doe.gov/pdfs/reftools/org-list.pdf for the current listing of Departmental elements.)

The Administrator of the National Nuclear Security Administration (NNSA) will assure that NNSA employees and contractors comply with their respective responsibilities under this Order. Nothing in this Order will be construed to interfere with the NNSA Administrator's authority under section 3212(d) of Public Law (P.L.) 106-65 to establish Administration specific policies, unless disapproved by the Secretary.

- b. DOE Contractors.
 - (1) Except for the exclusions in paragraph 3c, the Contractor Requirements Document (CRD), Attachment 1, sets forth requirements of this Order that will apply to contracts that include the CRD.
 - (2) The CRD must be included in site/facility management contracts when contract work and contractor interactions could reasonably be expected to result in an impact on the traditional and cultural lifeways, natural resources, treaty and reserved treaty rights and any other legal rights of a federally-recognized American Indian Tribe. CRD requirements will apply to the extent set forth in each contract.

c. Exclusions.

- (1) This directive does not affect Departmental interactions with State-recognized Tribes with respect to matters provided for by statute or regulation.
- (2) Bonneville Power Administration under DOE Secretarial Delegation No. 00-033.00A of 9-27-02. DOE Order 1230.2 on “American Indian Tribal Government Policy” originally was delegated to the BPA Administrator. The current Secretarial Delegation No. 00-033.00A to the BPA Administrator continues this approach.

4. REQUIREMENTS.

a. Tribal Focus. The DOE Tribal Energy Steering Committee (see Attachment #4) will represent offices with a tribal focus within the Department to:

- (1) coordinate on tribal energy issues across affected DOE programmatic offices;
- (2) provide a formal mechanism to help DOE tribal liaisons deal promptly with cross-cutting tribal energy concerns and to identify opportunities for synergy across various sectors within DOE, to

ensure that tribal rights, including concerns regarding cultural resources management are considered;

- (3) share information among members and to solve problems affecting members;
- (4) make recommendations directly to the Deputy Secretary on implementing tribal energy policies, procedures, or requirements;
- (5) conduct regular conference calls or meetings with Headquarters and field American Indian Government points of contact; and
- (6) eliminate regulatory, statutory, and/or procedural impediments to the Department working directly with tribes.

b. Interaction with American Indian Government.

- (1) A point of contact system will be enhanced to promote internal communications mechanisms among Departmental and field personnel whose responsibilities include interacting with American Indian Government representatives.
- (2) Headquarters and field elements will develop and seek to enhance procedures for site-specific consultation with American Indian Governments as appropriate to ensure that tribal rights, including concerns regarding cultural resources management, are considered.
- (3) Departmental elements will cooperate with Federal and state agencies that have related American Indian Government responsibilities.

c. Training.

Personnel whose work has, is likely to have, or could potentially have an impact on tribal governments, entities, officials and/or representatives, must receive training including: (1) the Indian Policy and its principles; (2) sensitivities in working with American Indian tribes; (3) the federal

government-to-government obligation; and (4) the requirements of this Order, and any other relevant tribal guidance etc.

d. Contracts.

- (1) Contracting and procurement officials will include the provisions of the CRDs (see Attachment #1) for contractors that could reasonably be expected to result in an impact on the traditional and cultural lifeways, natural resources, treaty and reserved treaty rights and any other legal rights of a federally-recognized American Indian Tribe. Training on how to add tribal provisions to solicitations and contracts should be instituted where appropriate.
- (2) An appropriately designated DOE tribal point of contact will be responsible for the review of the CRD and must coordinate with other relevant tribal points of contact as appropriate. The content of CRD will include the following.
 - (a) An introduction identifying affected DOE sites.
 - (b) If the DOE tribal point of contact has determined there is a need to add Departmental training and education material, require—
 - 1 the contractor to develop the training and educational materials and
 - 2 submission of the offeror’s approach for developing this material.
 - (c) A list of applicable agreements in Section J of the contract.
- (3) For DOE site/facility management contracts that are not management and operating contracts ensure that the applicable laws and regulations and references to CRDs in other DOE directives are included in the contract.

- (4) The Department of Energy Acquisition Regulation clause 970.5204-2, Laws, Regulations and DOE Directives, identifies and lists the applicable directives, regulations and laws in the solicitation and the contract as required by this clause in Section J of the contract.
- (5) After contract award, issue the memorandum to designate the DOE tribal point of contact(s), and state their responsibilities to include supporting the contracting officer representative (COR) for American Indian issues under the Contract. Include in the COR designation that the COR will coordinate with the designated DOE tribal point of contact(s).
- (6) If applicable, include the following in each procurement request package requiring the application of this Order.
 - (a) Identification of the Order.
 - (b) Inclusion of the CRD and designation of the tribal point of contact who will support the COR on American Indian issues.
 - (c) Identification of the specific requirements with which an offeror or a contractor is to comply, including any related DOE agreements with an American Indian Tribe, or if this is not practicable, identification of the specific paragraphs or other portions of this Order with which a contractor is to comply with that are not already described in detail in the CRD. Any contractor requirements must be included in the CRD. Reference to directives paragraphs are not sufficient for setting contractor requirements.
 - (d) Requirements for the flowdown of provisions of this Order to any subcontract. This information may be set forth in a written communication to the contracting officer.
 - (e) Guidelines should include, but are not limited to, statutory and other procedures

for consultation with American Indian Tribes and suggested approaches to address impediments.

- (f) Determine which programs, contracts, projects, policies, and regulations impact or potentially impact American Indian Tribes and ensure tribal participation in the development of such Departmental actions.
- e. Reporting. An annual report must be submitted by January 30 each year to the Assistant Secretary for Congressional Affairs outlining the program's interactions with American Indian Governments and compliance with the principles of the DOE American Indian Policy.

5. RESPONSIBILITIES

- a. Heads of Headquarters Elements.
 - (1) Designate programmatic Headquarters points of contact.
 - (2) Inform the Deputy Assistant Secretary for Intergovernmental and Tribal Affairs (DAS) of meetings, briefings, or similar levels of interactions with American Indian Government officials or tribal organizations. The DAS must be consulted regarding all meetings, and a determination must be made whether a representative from the Office of Congressional and Intergovernmental Affairs should be present.
 - (3) Submit annual reports to the Assistant Secretary for Congressional Affairs outlining the Program's interactions with American Indian Governments and the Program's compliance with the principles of the Indian Policy.
 - (4) Supervise the programmatic Headquarters and field points of contact whose responsibilities include regular interaction with senior management about American Indian Government representatives.
 - (5) Ensure that all personnel whose work has, is likely to have, or could potentially have an

impact on tribal governments, entities, officials and/or representatives, receive training on the Indian Policy, sensitivities in working with American Indian tribes, the federal government's government-to-government obligation, etc.

- (6) Develop and/or apply existing internal guidelines as needed to implement the DOE American Indian Policy (see Attachment #2) in areas under their cognizance.

b. Heads of Field Elements in Conjunction with Responsible Heads of Headquarters Elements.

- (1) Supervise the programmatic field point of contact whose responsibilities include regular interaction with senior management about the program's interaction with American Indian Government representatives. This programmatic field point of contact will:
 - (a) Serve as a liaison and resource for management and staff to facilitate consistent interactions, consultation, and government-to-government relations with American Indian governments.
 - (b) Coordinate with the programmatic Headquarters point of contact for purposes of the DOE Tribal Energy Steering Committee meetings and other Tribal points of contact meetings.
 - (c) Inform the programmatic Headquarters point of contact of tribal interactions at the field level.
 - (d) Serve as the point of contact for the Contracting Officer, as needed, to assist with tribal provisions in applicable solicitations and contracts.
 - (e) Maintain a list of current contact information for the tribal leadership and staff for whom there are regular interactions and update the Headquarters point of contact accordingly.

- (f) Educate and train or facilitate the education and training of management and relevant staff about this Order, the American Indian Policy and its principles and requirements, and any other relevant tribal guidance.
 - (2) Ensure that all employees whose work has, is likely to have, or could potentially have an impact on tribal governments, entities, officials and/or representatives, receive training on the Indian Policy, sensitivities in working with American Indian tribes, and the federal government's government-to-government obligation.
 - (3) In accordance with the Tribal Framework (see Attachment #3) or as needed, develop or apply existing internal guidelines to assist management in its responsibilities to implement the Indian Policy in areas under their cognizance.
 - (a) Guidelines should include, but are not limited to, statutory and other procedures for consultation with American Indian Tribes and suggested approaches to address impediments.
 - (b) Determine which programs, contracts, projects, policies, and regulations impact or potentially impact American Indian Tribes and ensure tribal participation in the development of such Departmental actions.
 - (4) Inform the programmatic Headquarters points of contact about all meetings, briefings, or similar levels of interactions with American Indian Government officials or tribal organizations.
- c. Assistant Secretary for Congressional and Intergovernmental Affairs.
 - (1) Collects from the heads of departmental elements an annual report due January 30 of each year that details interactions with American Indian Governments and compliance with the principles of the Indian Policy. This report will be submitted

to the Secretary of Energy by March 30 of each year.

- (2) Chairs the DOE Tribal Steering Committee as outlined in the Charter. See Attachment 4.

d. Deputy Assistant Secretary for Intergovernmental and Tribal Affairs (DAS).

- (1) Executes the responsibilities of the DOE Tribal Energy Steering Committee as outlined in the committee charter (Attachment 4).
- (2) Hosts regular conference calls or meetings with programmatic Headquarters and field American Indian Government points of contact.
- (3) Provides policy guidance to heads of Departmental elements concerning the Department's relationships with the American Indian Tribes.
- (4) Serves as the Department's overall point of contact for American Indian Governments and Tribal organizations on the DOE webpage and other internal communication documents.
- (5) Identifies and maintains a point of contact system and internal communications mechanisms among Departmental and field personnel whose responsibilities include interacting with American Indian Government representatives.
- (6) Maintains and distributes reference resources needed to support Tribal policy implementation activities on a regular basis.
- (7) Identifies and monitors progress toward eliminating regulatory, statutory, and/or procedural impediments to the Department working directly with tribes.
- (8) Develops and monitors Headquarters and field implementation of procedures for consultation with American Indian Governments to ensure that tribal rights, including concerns regarding cultural resources management, are considered.

- (9) Promotes cooperation with Federal and state agencies that have related American Indian Government responsibilities.
 - e. General Counsel provides advice to DOE elements and the DOE Tribal Steering Committee pertaining to legal requirements, policy and regulations concerned with American Indian Governments.
 - f. Programmatic Headquarters and Field DOE Tribal Points of Contact.
 - (1) Serve as information resources and liaisons for management and staff to facilitate consistent interaction, consultation, and government-to-government relations with American Indian governments.
 - (2) Serve as resource for the contracting officer, as needed, to assist with tribal provisions in applicable solicitations and contracts.
 - (3) Educate and train or facilitate the education and training of management and relevant staff about requirements of this Order, the Indian Policy and its principles and requirements, and any other relevant tribal guidance.
 - g. Head of the Contracting Activity, in conjunction with the responsible head of field element, must support the CRD (Attachment 1) in the applicable solicitations and contracts.
 - h. Contracting Officer must work with the designated DOE tribal point of contact, as identified by the responsible head of Headquarters element or head of the field element, to edit and complete the CRD as appropriate and include the CRD in the solicitation and contract.
6. REFERENCES. The following references are included by reference in this Order.
- a. DOE American Indian and Alaska Native Tribal Government Policy (“Indian Policy”), dated January 20, 2006, or its successor (Attachment 2).

- b. Framework to Provide Guidance for Implementation of US Department of Energy's American Indian and Alaska Native Tribal Government Policy, dated November 27, 2007, or its successor. (Attachment 3)
- c. DOE Tribal Energy Steering Committee Charter, dated March 1, 2006, or its successor (Attachment 4).
- d. Executive Order 13175 of November 6, 2000, Consultation and Coordination with Indian Tribal Governments.
- e. DOE P 141.1, Department of Energy Management of Cultural Resources, dated 5-2-01, or its successor.

7. DEFINITIONS.

- a. Indian Nation. Any American Indian or Alaska Native Tribe, Band, Nation, Pueblo or other organized group or community, including any Alaska Native village [as defined or established pursuant to the Alaska Native Claims Settlement act (43 U.S.C. 1601 et seq.)], which is acknowledged by the Federal government to constitute a tribe with a government-to-government relationship with the United States and eligible for the programs, services, and other relationships established by the United States for indigenous peoples because of their status as American Indian and Alaska Native tribes, Bands, Nations, Pueblos or communities.
- b. American Indian and Alaska Native Tribal Government. The recognized government of an Indian nation and any affiliated or component band government of such nation that has been determined eligible for specific services by Congress or officially recognized pursuant to 25 CFR Part 83, in the most recent Bureau of Indian Affairs Federal Register Notice, "Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs." See Federal Register / Vol. 72, No. 55 / Thursday, March 22, 2007.
- c. Trust Responsibility. Promotion and protection of tribal treaty rights, federally recognized reserved rights, and other federally recognized interests of the beneficiary American Indian and Alaska Native nations; determining, documenting, notifying, and interacting with tribal

governments with regard to the impact of Departmental programs, policies, and regulations to protect American Indian and Alaska Native traditional and cultural ways of life, natural resources, treaty and other federally recognized and reserved rights.

- d. Consultation. Prior to taking any action with potential impact upon American Indian and Alaska Native nations, providing for mutually agreed protocols for timely communication, coordination, cooperation, and collaboration to determine the impact on traditional and cultural ways of life, natural resources, treaty and other federally reserved rights involving appropriate tribal officials and representatives throughout the decision-making process, including final decision-making and action implementation as allowed by law, consistent with a government to government relationship.
 - e. Cultural Resources. This includes but is not limited to “historic properties” as defined in the National Historic Preservation Act, “archaeological resource” as defined in the Archaeological Resources Protection Act, and “cultural items” as defined in the Native American Graves Protection and Repatriation Act.
 - f. Treaty and Trust Resources and Resource Interests. Natural and other resources specified and implicit in treaties, statutes, and agreements, or lands or other resources held in trust by the United States for the benefit of tribes or individual Indian beneficiaries, including land, water, timber, fish, plants, animals, and minerals. In many instances, Indian nations retain hunting, fishing, and gathering rights, and access to these areas and resources on lands or waters that are outside of tribally owned lands.
 - g. DOE Tribal Steering Committee. A group representing offices with a tribal focus within the Department. The purpose of the Tribal Energy Steering Committee is to coordinate on tribal energy issues across affected DOE programmatic offices.
8. NECESSITY FINDING STATEMENT. In compliance with Sec. 3174 of P.L. 104-201 (50 U.S.C. 2584 note), DOE hereby finds that this Order is necessary for the protection of human health and the environment or safety,

fulfillment of current legal requirements, or conduct of critical administrative functions.

9. CONTACT. Questions concerning this Order should be directed to the Office of Congressional and Intergovernmental Affairs at 202-586-5450.

BY ORDER OF THE SECRETARY OF ENERGY:

JEFFREY F. KUPFER

Acting Deputy Secretary

ATTACHMENT 1

CONTRACTOR REQUIREMENTS DOCUMENT
DOE O 144.1, Department of Energy American Indian Tribal
Government Interactions and Policy

Regardless of the performer of the work, the site/facility management contractor is responsible for complying with the requirements of this contractor requirements document (CRD) and flowing down CRD requirements to subcontractors (greater than \$100,000, if applicable, or less than \$100,000 for work that may impact an American Indian Tribe), to the extent necessary to ensure contractor compliance.

The CRD applies to the DOE site/facility management contractor and their subcontractors, who could reasonably be expected to perform work or interact with American Indian Tribes representatives as part of their duties as agents to DOE. This work, anticipated work, interaction and/or meetings may result in an impact of the traditional and cultural lifeways, natural resources, treaty and reserved treaty rights, and legal rights of a federally-recognized American Indian Tribe.

As may be directed by the Contracting Officer, the Contractor will assist the Department in meeting its responsibilities under Executive Order (E.O.) 13084, Consultation and Coordination With Indian Tribal Governments; the DOE American Indian and Alaska Native Tribal Government Policy and its seven guiding principles; if applicable, the Framework to Provide Guidance for Implementation of the US Department of Energy's American Indian

and Alaska Native Tribal Government Policy (reference 6.b of the DOE Order); DOE P 141.1, Department of Energy Management of Cultural Resources; and any applicable Federal laws, regulations, and treaties to ensure that tribal rights and interests are identified, considered, and protected with respect to work and other activities at DOE-owned and controlled sites and facilities. In sum, the Contractor will assist DOE on an ongoing basis to achieve meaningful consultation with American Indian Tribes on a government-to-government basis.

As applicable, the contractor must:

1. Designate a point of contact(s) within their organization to interact with the Contracting Officer Representative (COR) and in coordination with the designated DOE tribal point of contact(s).
2. Ensure that its activities and work conducted, by the contractor or its subcontractors, at the site or facility appropriately protect the human health and safety, the environment, cultural resources, treaty rights, reserved treaty and other legal rights of the federally-recognized American Indian Tribes.
3. Ensure adequate and appropriate contractor management visibility and accountability within the Contractor's organization and appropriate integration with DOE's American Indian Tribal Government interactions. Utilize existing Departmental training programs or develop educational materials to train employees about affected Tribes, their Tribal Governments, culture, treaty and reserved treaty and other legal rights. If materials need to be developed, coordination must occur with the designated DOE tribal point of contact(s).
4. Communicate timely and openly with the Contracting Officer, DOE Management, the designated DOE tribal point of contact(s), and the Federally-recognized American Indian Tribal Governments about the contractor's proposed work that may involve tribal rights and interests (including, but not limited to: environmental monitoring and compliance, emergency operations and management, local citizens' advisory boards, etc). Include tribal governments throughout the development and implementation of the proposed work. In all cases, notification is intended to allow for a reasonable and timely comment by the American Indian Tribe

prior to the preparation and execution of the proposed work.

5. Support and cooperate with DOE in meeting its obligations under applicable laws, regulations, treaties and other applicable agreements in its government-to-government relations and consultations with federally-recognized American Indian Tribal Governments.

ATTACHMENTS 2 AND 3

Are available in the PDF

ATTACHMENT 4

DEPARTMENT OF ENERGY TRIBAL ENERGY STEERING COMMITTEE

March 1, 2006

Purpose

The Department of Energy Tribal Energy Steering Committee is a formal group of senior liaisons representing offices with a tribal focus within the Department. The purpose of the Tribal Energy Steering Committee is to coordinate on tribal energy issues across affected DOE programmatic offices. The committee will (1) provide a formal mechanism to help DOE tribal liaisons deal promptly with cross-cutting tribal energy concerns and to identify opportunities for synergy across various sectors within DOE, (2) share information among members and to solve problems affecting members, and (3) make recommendations directly to the Deputy Secretary on implementing tribal energy policies, procedures, or requirements.

Membership

Membership will be limited to a single top-level tribal liaison from each of the Program Offices with portfolios that involve tribal activities. The members will be comprised of officials from the following offices:

- “ Office of Civilian Radioactive Waste Management
- “ Office of Congressional & Intergovernmental Affairs
- “ Office of Economic Impact & Diversity
- “ Office of Electricity Delivery and Energy Reliability
- “ Office of Energy Efficiency and Renewable Energy
- “ Office of Environmental Management
- “ Office of Fossil Energy
- “ Office of Nuclear Energy, Science and Technology
- “ National Nuclear Security Administration
- “ Office of Security and Safety Performance Assurance
- “ Office of Science

The Assistant Secretary of Congressional & Intergovernmental Affairs will serve as the Council Chairperson and will call meetings, set agendas, and ensure actions are completed. The Assistant Secretary may appoint a designee to chair the meetings in her absence. The Assistant Secretary will appoint a non-member Council Secretariat to record and distribute meeting minutes and provide general logistic and administrative assistance.

Meetings

The Council will hold a regular meeting each month. The agenda for regular meetings will be prepared from topics each member submits to the Council Secretariat no less than ten (10) days prior to the meeting. The Chairperson reviews the candidate topics and prepares the final agenda which is distributed to members five (5) days prior to the meeting. Minutes for meetings will be distributed by the Council Secretariat within five (5) days following the meeting. Special meetings, including off-sites, may be scheduled by the Council Chairperson as necessary.

6. Presidential memorandum for the Heads of Executive Departments and Agencies

Memorandum of November 5, 2009

Tribal Consultation

Memorandum for the Heads of Executive Departments And Agencies

The United States has a unique legal and political relationship with Indian tribal governments, established through and confirmed by the Constitution of the United States, treaties, statutes, executive orders, and judicial decisions. In recognition of that special relationship, pursuant to Executive Order 13175 of November 6, 2000, executive departments and agencies (agencies) are charged with engaging in regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, and are responsible for strengthening the government-to-government relationship between the United States and Indian tribes.

History has shown that failure to include the voices of tribal officials in formulating policy affecting their communities has all too often led to undesirable and, at times, devastating and tragic results. By contrast, meaningful dialogue between Federal officials and tribal officials has greatly improved Federal policy toward Indian tribes. Consultation is a critical ingredient of a sound and productive Federal-tribal relationship.

My Administration is committed to regular and meaningful consultation and collaboration with tribal officials in policy decisions that have tribal implications including, as an initial step, through complete and consistent implementation of Executive Order 13175. Accordingly, I hereby direct each agency head to submit to the Director of the Office of Management and Budget (OMB), within 90 days after the date of this memorandum, a detailed plan of actions the agency will take to implement the policies and directives of Executive Order 13175. This plan shall be developed after consultation by the agency with Indian tribes and tribal officials as defined in Executive Order 13175. I also direct each agency head to submit to the Director of the OMB, within 270 days

after the date of this memorandum, and annually thereafter, a progress report on the status of each action included in its plan together with any proposed updates to its plan.

Each agency's plan and subsequent reports shall designate an appropriate official to coordinate implementation of the plan and preparation of progress reports required by this memorandum. The Assistant to the President for Domestic Policy and the Director of the OMB shall review agency plans and subsequent reports for consistency with the policies and directives of Executive Order 13175.

In addition, the Director of the OMB, in coordination with the Assistant to the President for Domestic Policy, shall submit to me, within 1 year from the date of this memorandum, a report on the implementation of Executive Order 13175 across the executive branch based on the review of agency plans and progress reports. Recommendations for improving the plans and making the tribal consultation process more effective, if any, should be included in this report.

The terms ``Indian tribe,' ' ``tribal officials,' ' and ``policies that have tribal implications' ' as used in this memorandum are as defined in Executive Order 13175.

The Director of the OMB is hereby authorized and directed to publish this memorandum in the Federal Register.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person. Executive departments and agencies shall carry out the provisions of this memorandum to the extent permitted by law and consistent with their statutory and regulatory authorities and their enforcement mechanisms.

(Presidential Sig.)

THE WHITE HOUSE,

Washington, November 5, 2009.

[Federal Register: November 9, 2009 (Volume 74, Number 215)]

Memorandum of November 5, 2009--Tribal Consultation

Presidential Documents

7. Presidential memorandum for the Heads of Executive Departments and Agencies

Memorandum of January 26, 2021

Tribal Consultation and Strengthening Nation-to-Nation Relationships

Memorandum for the Heads of Executive Departments and Agencies

American Indian and Alaska Native Tribal Nations are sovereign governments recognized under the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions. It is a priority of my Administration to make respect for Tribal sovereignty and self-governance, commitment to fulfilling Federal trust and treaty responsibilities to Tribal Nations, and regular, meaningful, and robust consultation with Tribal Nations cornerstones of Federal Indian policy. The United States has made solemn promises to Tribal Nations for more than two centuries. Honoring those commitments is particularly vital now, as our Nation faces crises related to health, the economy, racial justice, and climate change—all of which disproportionately harm Native Americans. History demonstrates that we best serve Native American people when Tribal governments are empowered to lead their communities, and when Federal officials speak with and listen to Tribal leaders in formulating Federal policy that affects Tribal Nations.

To this end, [Executive Order 13175](#) of November 6, 2000 (Consultation and Coordination With Indian Tribal Governments), charges all executive departments and agencies with engaging in regular, meaningful, and robust consultation with Tribal officials in the development of Federal policies that have Tribal implications. Tribal consultation under this order strengthens the Nation-to-Nation relationship between the United States and Tribal Nations. The Presidential Memorandum of November 5, 2009 (Tribal Consultation), requires each agency to prepare and periodically update a detailed plan of action to implement the policies and directives of [Executive Order 13175](#). This memorandum reaffirms the policy announced in that memorandum.

Section 1. Consultation. My Administration is committed to honoring Tribal sovereignty and including Tribal voices in policy deliberation that affects Tribal communities. The Federal Government has much to learn from Tribal Nations and strong communication is fundamental to a constructive relationship. Accordingly, I hereby direct as follows:

(a) The head of each agency shall submit to the Director of the Office of Management and Budget (OMB), within 90 days of the date of this memorandum, a detailed plan of actions the

agency will take to implement the policies and directives of [Executive Order 13175](#). The plan shall be developed after consultation by the agency with Tribal Nations and Tribal officials as defined in [Executive Order 13175](#).

(b) Each agency's plan and subsequent reports shall designate an appropriate agency official to coordinate implementation of the plan and preparation of progress reports required by this memorandum. These officials shall submit reports to the Assistant to the President for Domestic Policy (APDP) and the Director of OMB, who will review agency plans and subsequent reports for consistency with the policies and directives of [Executive Order 13175](#).

(c) The head of each agency shall submit to the Director of OMB, within 270 days of the date of this memorandum, and annually thereafter, a progress Start Printed Page 7492report on the status of each action included in the agency's plan, together with any proposed updates to its plan.

(d) The Director of OMB, in coordination with the APDP, shall submit to the President, within 1 year from the date of this memorandum, a report on the implementation of [Executive Order 13175](#) across the executive branch based on the review of agency plans and progress reports. Recommendations for improving the plans and making the Tribal consultation process more effective, if any, should be included in this report.

Sec. 2. Definitions. The terms “Tribal officials,” “policies that have Tribal implications,” and “agency” as used in this memorandum are as defined in [Executive Order 13175](#).

Sec. 3. General Provisions. (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

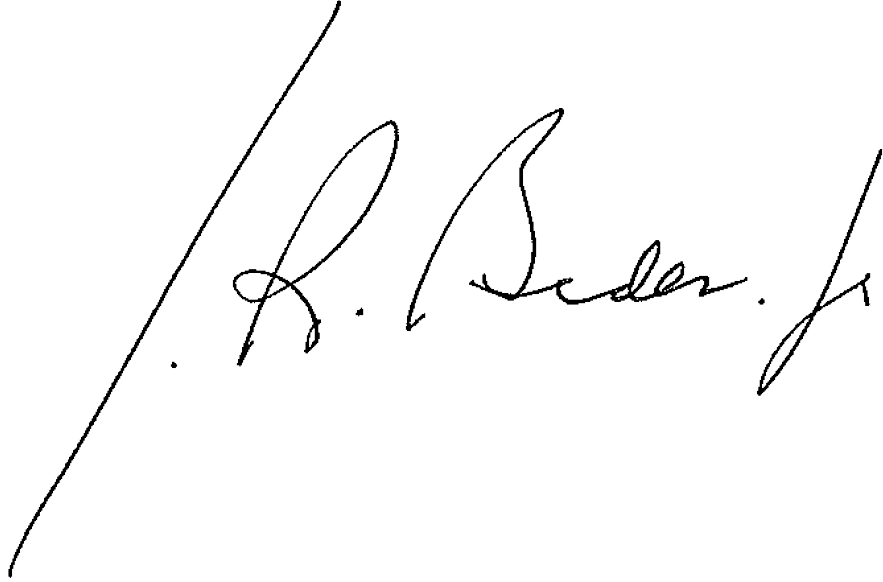
(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Sec. 4. Publication. The Director of OMB is authorized and directed to publish this memorandum in the *Federal Register*.

A handwritten signature in black ink, appearing to read "A. H. Beder, Jr." with a long, sweeping underline that extends to the left.

THE WHITE HOUSE, Washington, January 26, 2021 Filed 1-28-21; 8:45 am]

[FR Doc. [2021-02075](#)

Appendix E

Risk Assessment

The cleanup of hazardous waste sites is largely driven by an assessment of the risk to human health and the environment. An Ecological Risk Assessment (ERA) evaluates the potential adverse effects that human activities have on the living organisms that make up ecosystems. The risk assessment process provides a way to develop, organize and present scientific information so that it is relevant to environmental decisions. When conducted for a particular place, such as the Columbia River, the ERA process can be used to identify vulnerable and valued resources, prioritize data collection activity, and link human activities to their potential effects. ERA results provide a basis for comparing different management options,

and enabling decision-makers to make better informed decisions about the management of ecological resources. The framework for ERA is described in the Framework for Ecological Risk Assessment (EPA/63-/R-92/001) and is discussed further in the Guidelines for Ecological Risk Assessment (EPA/630/R-95/002F).

The framework consists of three phases (problem formulation, analysis, and risk characterization) with analysis consisting of the following two parts: characterization of exposure and characterization of effects.

Risk assessments evaluate the likelihood that adverse ecological effects are occurring or may occur as a result of exposure to physical (*e.g.*, site cleanup activities) or chemical (*e.g.*, release of hazardous substances) stressors at a site. These assessments often contain detailed information regarding the interaction of these "stressors" with the biological community at the site. Part of the assessment process includes creating exposure profiles which describe the sources and distribution of harmful entities; identify sensitive organisms or populations; characterize potential exposure pathways; and estimate the intensity and extent of exposures at a site.

Risk assessments are usually conducted during the Remedial Investigation/Feasibility Study (RI/FS) phase of the Superfund response process. Risk Assessments can be conducted quickly for removal actions, should there be an eminent threat to ecological receptors. However, these instances are rare and these Risk Assessments follow the same process outlined for long-term Risk Assessments conducted during the RI/FS.

Hanford Risk Assessments

Hanford has been conducting ecological risk assessments for many years. Some of the more significant Risk Assessments have been conducted in the 100/300 Area, Columbia River Corridor, BC reactor area, the Central Plateau (200 Area), and the near shore environment along the Columbia River.

The Columbia River, groundwater, air, soil, flora and fauna in the region are at risk from current and potential radionuclide and toxic chemical releases from the Hanford Site. By implication Tribal members who use these resources or other resources affected by the water are also at risk. The Nez Perce Tribe is aware that the potential for inadvertent releases of hazardous materials is still a problem at the Hanford Site.

The risk assessments conducted at Hanford should do the following: 1) Determine health and environmental problems associated with river and groundwater, air, soil, flora and fauna issues; 2) compare new and existing technologies of the effectiveness of techniques to reduce risk; 3) determine cleanup standards and goals as stipulated by Nez Perce Tribe standards, RCRA, CERCLA and MTCA; and 4) determine acceptable exposure standards (*e.g.* drinking water, water quality standards).

There should be no remaining adverse effects on cultural and natural resources that would preclude tribal members from using the site in the future. The Nez Perce Tribe Hanford End-

State Vision states it is critical that the Hanford Site air, soil, groundwater and surface water are restored to uncontaminated, unrestricted pre-Hanford use in order to protect the natural resources and the people. The health and safety of tribal members as they exercise their traditional, cultural, and commercial practices at Hanford is paramount. (Reference: 1855 Treaty with the Nez Perce Tribe Article 3)