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MEMORANDUM FOR:

Robert E. Browning, Acting Director
Division of Waste Management

RJWRIGHT & r/f

PDR

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Michael J. Bell, Chief
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Division of Waste Management

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Distribution:

(Return to WM, 623-SS)

Hubert J. Miller, Chief
High-Level Waste Technical
Development Branch
Division of Waste Management

FROM:

Robert J. Wright
High-Level Waste Technical
Development Branch
Division of Waste Management

SUBJECT:

PUBLIC HEARING ON PROPOSED NOMINATION OF BWIP FOR
SITE CHARACTERIZATION, RICHLAND, WA., MARCH 25, 1983

Attached are (1) the statement of the DOE representative and (2)
the comments of the Yakima Indian Nation representative.

"ORIGINAL SIGNED BY"

Robert J. Wright
High-Level Waste Technical
Development Branch
Division of Waste Management

Attachments:
As stated

*(End 2 in File 101.4 w/ Hr of 3-24-83 to HJ Miller
frn Sampson)*

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U. S. DEPARTMENT OF ENERGY

PUBLIC HEARING

Announcement of the Department of Energy's Proposal to Nominate the Basalt Waste Isolation Project Site Within the State of Washington for Characterization Studies as a Possible Geological High Level Radioactive Waste Repository

Statement by DOE Representative

Good morning. I am Ralph Stein, the Department of Energy's Deputy Director for Geologic Repositories. My office is at DOE-Headquarters in Washington, D.C.

On January 7, 1983, the Nuclear Waste Policy Act was signed into law. This Act establishes a process and schedule for the development of nuclear waste repositories. For selection of a first repository site, the Department of Energy is required to nominate at least five sites as suitable for site characterization. By no later than January 1, 1985, the Secretary of Energy is required to recommend three of the nominated sites to the President for characterization as candidate sites. No later than March 31, 1987, the Secretary is to have recommended the site for the first repository to the

President and the President is to have recommended the first site to Congress. A site for a second repository is to be recommended no later than March 31, 1990. In order to provide sufficient time to characterize and evaluate the three sites under consideration for the first repository, DOE expects to have recommended those three sites to the President by the end of the summer of 1983.

Under the provisions of the Nuclear Waste Policy Act, before nominating any site DOE must hold public hearings in the vicinity of such site to inform the residents of the area of the proposed nomination of such site and to receive their comments. At such hearings, DOE must also solicit and receive any recommendations of such residents with respect to issues that should be addressed in the environmental assessment which must be prepared and accompany a site nomination and on the site characterization plan which is to be prepared after approval of the site for characterization. The Nuclear Waste Policy Act also requires the Department of Energy to issue general guidelines for the recommendation of sites for repositories and that these general guidelines be evaluated in the development of the environmental assessment and site characterization plan for candidate sites.

Proposed general guidelines for the recommendation of sites for nuclear waste repositories were developed by the Department and published in the Federal Register on February 7, 1983, and

made available to States and the public. Public hearings on the proposed guidelines have been held in Chicago, New Orleans, Washington, D.C., Salt Lake City, and Seattle. After considering both oral and written comments from the public; consulting with the Council on Environmental Quality, the Administrator of the Environmental Protection Agency, the Director of the U. S. Geological Survey, and interested Governors; and obtaining Nuclear Regulatory Commission concurrence, the Department of Energy will issue these guidelines in final form. Under the provisions of the Nuclear Waste Policy Act, DOE must publish the siting guidelines in final form by no later than July 6, 1983. These proposed siting guidelines are not the subject of today's hearing; however, they are available to facilitate public comment on the proposed nomination of the Basalt Waste Isolation Project site. The way in which these proposed guidelines are used in the screening process and the various decision points that are now required by the National Waste Policy Act are described in the aforementioned Federal Register notice of February 7, 1983.

In fulfilling its responsibilities, the Department has previously examined a full range of alternatives for commercial waste disposal which were discussed in a final environmental impact statement published in October 1980. In a decision published in May 1981, the Department concluded that

placement in deep mined geologic repositories was the preferred means of disposal of highly radioactive wastes. Congress has confirmed its preference for geologic disposal by passage of the Nuclear Waste Policy Act.

Deep mined geologic repositories will be constructed in carefully selected geologic formations at a depth of up to several thousand feet. The selection of sites for construction of such repositories requires the careful screening of various regions and selective evaluation until specific sites are found which appear to possess suitable natural barriers for isolation of the wastes. Once potentially suitable sites are found, detailed examination will be required, including the excavation of shafts down to the proposed repository depth.

The Department has, of course, been conducting investigations of possible sites for repositories for many years. The initial recommendation, to consider deep bedded salt formations for disposal of radioactive wastes, was made by a committee of the National Academy of Sciences in 1957. Experimental work was conducted in bedded salt in Kansas in the mid to late 1960's, and the investigation for potential sites in New Mexico began around 1972 upon the recommendation of the United States Geological Survey.

After these early studies, it was determined that many types of geologic media throughout the United States should be studied under a systematic, broader based program. As a

result, in 1976, the National Waste Terminal Storage Program was established by the Energy Research and Development Administration, a predecessor agency to the Department of Energy, to provide the research and development needed to support the assessment of suitability of several rock formations, including salt, tuff, granite, and basalt, as a nuclear waste repository. Sites containing these rock types are located throughout the United States.

Additionally, as far back as 1957, the National Academy of Sciences recommended that basins that were hydrologically isolated be drilled and tested to determine their suitability for long-term storage of solidified radioactive material. Since that recommendation, the Columbia Plateau basalts and Pasco Basin basalts underlying the Hanford Site have been studied for that purpose. As part of that initial study, an existing deep borehole, south of the Hanford Site, was tested hydrologically. This deep borehole was used to evaluate the deep basalts adjacent to and within the Hanford Site. As a result of the information obtained from the borehole studies, funding was provided from 1968 through 1972 to drill several additional holes at the Hanford Site to further characterize the underlying basalts. Four of the deep holes drilled in basalt between 1968 and 1972 were to depths in excess of 3,000 feet and served to obtain rock core samples and information

about the hydrology of the deep strata. Such hydrologic testing indicated that the basalts beneath the Hanford Site are of very low permeability and were potentially suitable for a high level nuclear waste repository.

As part of the National program initiated in 1976, the basalt studies received additional funding, with emphasis on characterizing the Hanford basalt to determine its suitability as a repository site and to assess the feasibility of constructing a nuclear waste repository in basalt. Based on information acquired through the BWIP effort to date, we believe that Hanford contains a potentially acceptable site for a nuclear waste repository. The findings to date can be summarized, briefly, as follows: The basalt flows located more than 2,000 feet below the ground surface are not subject to significant erosion, and several flows are thick enough and expansive enough to accommodate the construction of a repository. The sequence of the basalt flows is well understood and depth to the flows can be predicted with accuracy. The basalt-flow interiors have low permeability and preliminary assessments indicate that they would prevent radionuclides from reaching the accessible environment in concentrations above established guidelines. The physical and chemical conditions of the basalt rock, groundwater, and

materials to be placed in terminal storage are compatible in that they favor long-term stability. No faults have been identified that would have an adverse impact on a repository at the reference location, and the potential for renewed volcanism is very low. There is also an extremely low probability of any adverse climatic impact on a repository in basalt at the Hanford Site. There are presently no economic resources extracted from the basalt in the vicinity of the Hanford Site, other than groundwater pumped from shallow aquifer above the repository level. The reference location is accessible to transportation, available to support and service facilities, and remote from population centers. Finally, there is no land conflict with planned or existing facilities on the Hanford Site. Studies to date have not revealed any technological impediment to siting a nuclear waste repository in the basalts beneath the Hanford Site. The results of those studies in much greater detail were documented in a Site Characterization Report for the Basalt Waste Isolation Project which was submitted in November 1982 to the Nuclear Regulatory Commission as required by 10 CFR Part 60. Copies of that report were provided to the State of Washington and made available to the public. As I noted earlier, the conclusion reached from these studies is that the BWIP site at Hanford is a potentially acceptable site and is suitable for characterization as a candidate repository site.

Consistent with the requirements of the Nuclear Waste Policy Act, on February 2, 1983, the Secretary of Energy, Donald Paul Hodel, sent letters to Governor Spellman and the Washington State Legislature that identified a potentially acceptable site for a high-level nuclear waste repository at Hanford in Washington State. Other States given similar notification were Texas, Utah, Mississippi, Louisiana, and Nevada. On March 2, 1983, Mr. Robert Morgan, Nuclear Waste Policy Act Project Director, also sent letters to the Governor and Legislature apprising them that the Department had determined that the Department's Hanford Site may be one of the sites nominated for site characterization to determine its suitability for selection as the first repository site. Those letters also confirmed that a hearing would be held today in Richland to inform the residents of the Hanford area of the proposed nomination and receive their comments on the nomination and their recommendation on issues that should be addressed in the Environmental Assessment and Site Characterization Plan which are required by the Act.

DOE has prepared a draft Environmental Assessment for the BWIP site which will be issued in final form to accompany the nomination of the site for characterization. The availability of this draft Environmental Assessment was announced in the March 4, 1983, Federal Register notice of this Public Hearing and was distributed to our public mailing list at that time.

This draft Environmental Assessment has been made available to facilitate public participation in this hearing and in providing written recommendations to DOE on issues which should be addressed in the final Environmental Assessment. The November 1982 issue of the Site Characterization Report has also been made available to the public to facilitate their participation in this public hearing.

Additional copies of both the draft Environmental Assessment and the Site Characterization Report are available and may be obtained here today.

In closing, I would like to again refer to the Nuclear Waste Policy Act of 1982 and its provision in Section 112 that the Department hold Hearings in the vicinity of a site to inform the residents of the proposed nomination of such a site for site characterization. This Hearing is being held in accordance with the provisions of the Act and the Hanford Site is being proposed for nomination today for site characterization to determine its long-term performance as a repository. The Basalt Waste Isolation Project site at Hanford will be one of five sites throughout the United States which are nominated. At least three of the nominated sites will be recommended to the President for detailed characterization. The sites approved for detailed characterization by the President will undergo geologic, hydrologic and geochemical evaluation to determine their long-term performance as a repository. These evaluations will be conducted to support the

recommendation by the Secretary of Energy to the President and the President's recommendation to Congress in 1987 for the first repository site, which will be accompanied by an Environmental Impact Statement supporting the recommended action. Therefore, the actions associated with the nomination of the Basalt Waste Isolation Project site for characterization, the subject of this hearing, are solely site evaluation and not the construction of a repository and do not involve the placement of any nuclear waste in the basalts at Hanford. At this time we invite your comments on the proposed nomination and recommendations on issues that should be addressed in the Environmental Assessment and Site Characterization Plan.

Thank you very much. Copies of this statement are available for the hearing record.

CONFEDERATED TRIBES AND BANDS

Yakima Indian Nation

GENERAL COUNCIL
TRIBAL COUNCIL

ESTABLISHED BY THE
TREATY OF JUNE 9, 1855
CENTENNIAL JUNE 9, 1955

POST OFFICE BOX 151
TOPPENISH, WASHINGTON 98948

ORAL

**COMMENTS ON PROPOSED NOMINATION OF
BASALT WASTE ISOLATION PROJECT (BWIP) FOR
CHARACTERIZATION STUDIES AND RECOMMENDATIONS ON
ISSUES THAT SHOULD BE ADDRESSED IN THE
ENVIRONMENTAL ASSESSMENT (EA) AND THE SITE
CHARACTERIZATION PLANS (SCP) REQUIRED BY THE
NUCLEAR WASTE POLICY ACT OF 1982 (ACT)**

BEFORE THE

UNITED STATES DEPARTMENT OF ENERGY

BY THE CONFEDERATED TRIBES AND BANDS

OF THE YAKIMA INDIAN NATION

**MARCH 25, 1983
RICHLAND, WASHINGTON**

Good morning.

I am Mel Sampson, representing the Confederated Tribes and Bands of the Yakima Indian Nation. I serve the Yakima Nation as Chairman of the Yakima Tribal Council Legislative Committee.

The Yakima Indian Nation was created in 1855 by a treaty with the United States. Treaty With the Yakimas, 12 Stat. 951. The Yakima Indian Nation was created from indigenous tribes and bands which had occupied and used lands within Oregon and Washington Territories for thousands of years. These confederated tribes and bands ranged in a food-gathering economy as far south as the now border of California to above the now Canadian-United States border, from the Puget Sound area on the west to as far east as the Bitterroot Mountains in now Montana state. In this larger area of over 20 million acres, these confederated tribes and bands exercised absolute dominion and control and occupied over 10 million acres in the south-central portion of now Washington state. This 10-million-acre area, called the Ceded Area, with the exception of approximately 1,300,000 acres which were reserved as the Yakima Indian Reservation, was ceded to the United States reserving certain treaty usage and possessory rights within the Ceded Area. These reserved treaty rights in the Ceded Area include gathering rights, hunting rights, pasturing rights, fishing rights and right of travel within the Ceded Area. The Yakima Indian Reservation was reserved for the exclusive use and benefit of the Yakima Indian Nation as a homeland for the Yakima Indian Nation and its members. The present membership of the Yakima Nation is over 7000.

The Yakima Indian Nation and its Tribal Council have been recognized as an Indian tribe and an appropriate governmental body, respectively, by the President, Congress, Federal Judiciary, Secretary of Interior and all departments of the Executive Branch of the United States of America.

The Department of Energy has, by letter dated March 4 and received March 14, 1983, informed the Yakima Indian Nation of its potential rights under the Nuclear Waste Policy Act of 1982 (the Act). The Yakima Indian Nation, by petition dated March 8, and delivered March 10, 1983, has petitioned the Secretary of Interior for recognition of its status as an affected Indian tribe under the Act as regards the Basalt Waste Isolation Project (BWIP) at Hanford, Washington. Our conversations with responsible public officials both within Congress and within the

Executive Branch lead us to believe that our status as an affected Indian tribe will be recognized.

We appreciate today's time for us to express ourselves preliminarily on the limited purpose of this hearing. We underline "limited purpose of this hearing", for a hearing on the nomination of the Hanford site, its Environmental Assessment, and its Site Characterization Plan is premature. However, at this preliminary stage we will do the best we can and will further supplement our remarks by additional written comments.

Initially, as regards those written comments, we would formally request, as we have previously, that the date for submission of written comments be extended. By the extension of time we will be able to be of more assistance to DOE in our role as an affected tribe under the Act. An extension will not inconvenience the Department as the general guidelines which are a necessary base for the nomination, EA and SCP, have yet to be adopted.

Furthermore, at this early date we wish to record that the mere opportunity by the Yakima Nation to testify and submit written comments on these important steps is not sufficient compliance with the Act. In discussing the public hearings at these steps, the floor manager for the Act pointed out that the Act required additional tribal consultation and tribal participation. We quote:

"In addition, the Act goes on to require the Secretary to consult and work with the governors of the legislators of the states and the governing bodies of any Indian tribes that might be affected."

128 Congressional Record 8794.

At Monday's hearing on the guidelines the panel was informed by the Governor's office and the appropriate legislative committee that contemplated state consultation and participation had not taken place as regards the guidelines and we must presume that a similar situation exists regarding these additional steps. At least we can definitely say that the Department has not consulted with or worked with the governing body of the Yakima Nation as the Act required, regarding any of these steps.

Likewise, you must realize that until required funding under the Act for an affected Indian tribe is received, our consultation and participation will not be able to reach the level that the Act contemplates. Because of the serious reduction of tribal income, basically because of lower returns

from timber sales, we will not be able to participate as Congress intended without financial assistance. We note that even before the Act was passed, the State of Washington has been provided with some funds for this purpose.

In order to facilitate the equality of participation by Indian tribes that the Act contemplates, we would appreciate funds being provided as soon as possible. Indeed, your haste in asking us to comment now raises the question of whether you really intend to follow the Act's requirements regarding both state and tribal participation and consultation. Your Notice does not contemplate such participation or consultation and even your guidelines say nothing more than that you shall seek to enter into binding written agreements to specify procedures for consultation and cooperation with the affected state or Indian tribe. The State of Washington, the Yakima Nation, and, we suggest, no reviewing authority, will be satisfied with "the guidelines, EA and SCP have already been promulgated" excuse when our rights to meaningfully participate have been denied because of delay of funds and other assistance under the Act have not been received. We suggest that your first order of business should be providing this assistance, not rushing into these matters before we can meaningfully participate.

Initially, we must take issue with the conclusions in the Notice that site characterization activities may continue at Hanford while certain requirements of the Act are being implemented, if this is interpreted to mean that the work may continue while the Environmental Assessment is being prepared. Section 112(B) makes it clear, as does an inquiry from Representative Morrison during the enactment of the bill, that the EA must be in place and hearings held on the EA before the drilling and site characterization may continue. 128 Congressional Record H8198. Further, since general guidelines are the necessary foundation for the EA, it is clear that these guidelines adopted pursuant to the tribal and state consultation and participation procedure must also be in place before site characterization may continue or the EA be adopted.

Even though it is too early for us to be very helpful as regards the suitability of basalt as a host for a nuclear waste repository, we will be furnishing written comments regarding what we perceive to be departmental misdirection as regards hydrogeology, geochemistry, seismicity and other areas. We find the proposed EA and the previous EA prepared to sustain a negative declaration for the shaft to be deficient both as to form and to content. An EA should at a minimum inform all persons of any environmental impacts in detail and must be written in language that is understandable to the layman as well

as contain scientific reasoning to alert specialists to particular problems within their expertise. The proposed EA doesn't meet these minimum standards. It likewise fails to follow the standards set forth in Section 112 of the Act.

Indeed, the draft EA admits that DOE does not have complete information regarding this area. Considering the serious problems involved, this is understandable. What we can't understand is the failure of either the draft EA or the SCP to make an honest assessment of the information that is available, and proceeding before the information is available. We must take issue with DOE's advocacy and failure to present a balanced approach. We note with concern that even Rockwell's own Hydrology and Geology Overview Committee reported that Hanford basalts are extremely difficult to characterize and model, and "from a hydrogeological perspective the Columbia River Basalt Group as a whole is not well suited for a high-level waste repository". RHO-BWI-LD-50.

However, it is not too early to question, that even presuming that basalt is a gracious host for these radioactive materials, why the proposed site location?

We note the proximity of the site proposed for nomination to the Yakima and Columbia Rivers. The major importance of the Columbia River to the entire region cannot be ignored. Indeed, it is this great river that makes this portion of the United States the productive area that it is.

It is impossible to find in the extensive Columbia Basin basalts a location that is closer to these two important rivers and we wonder why this obvious drawback to this location hasn't determined that another site within the extensive Columbia River Basalts wasn't nominated for study and characterization. Your furnished materials readily supply the answer from your point of view. It is apparently a primary objective of the DOE to locate the repository within lands already dedicated to nuclear activities. As we have previously testified in the guideline hearings, such non-geologic considerations are improper criteria for the location of a nuclear waste repository under the Act. DOE emphasizes that it has been working in the Hanford area for many years. We suggest that this alone is a good reason that DOE should back up and take another look at the proposed site under the general guidelines. Congress has made it clear in the legislative history of the Act that it does not wish any site or host or site location to be predetermined. Congress has also found that the past efforts to devise a solution to this waste problem have not been adequate. Section 111(a)(3) of the Act.

So while it may be expedient for you to proceed with your past determinations and select an area where the political climate may be favorable and where you have done some work, we must advise that in our opinion such a course raises a reasonable conclusion that it is business as usual at DOE and that the Act is merely a fence that DOE must jump rather than containing the parameters that Congress intended. If you pursue such a course, you must stand ready to have your intransigence viewed as noncompliance with the Act.

We object to the proposed site because of the effect that such a repository site will have on treaty-reserved rights and the persons who retain those rights. A national purpose exists in these United States that transcends the contemporary standards of private dealing and a principle that is firmly established in the Law of this Land. From the first great act of the National Congress (Northwest Ordinance, Act of July 13, 1787) it has been firmly established as a national principle that the property rights or liberty of Indian people should not be "invaded or disturbed" without their consent or just wars. This national purpose is even more important today as the indigenous people who have been gracious hosts to those coming to this land have had their holdings reduced to a small portion of those previously possessed and used.

Indeed morality, if not this national purpose, would require that primary consideration be given to any impact on the little these indigenous peoples reserved. Not even an extreme nuclear power advocate would suggest that at treaty time it was contemplated that a high-level nuclear waste repository would be located on government land in the Ceded Area near the two rivers so necessary to the livelihood of these people indigenous to the land. The Law of this Land clearly holds that what was not implicitly or impliedly conveyed is reserved. ~~Any impact to reserved treaty rights of the Yakimas should not and cannot be considered.~~ In a paraphrase of "I gave at the office", it must be considered that we have already given and an additional burden in the name of progress should not be forthcoming.

As the Supreme Court said:

"At the treaty council the United States negotiators promised, and the Indians understood, that the Yakimas would forever be able to continue the same off-reservation food gathering and fishing practices as to time; method, species and extent as they had or were exercising. The Yakimas relied on these promises and they formed a material

and basic part of the treaty and of the
Indians' understanding of the treaty."

Washington v. Fishing Vessel, 443 US 658
at 667-68 (1979).

DOE should respect these promises and select another site. You must consider in these guidelines that, contrary to those people who have a predilection to seek new ground, the Yakimas have no place to go. We have been here and will remain here. In our minds we want you to know that we consider the thousands of years we have been here merely prologue, not past. We are entitled to peaceful enjoyment of our reserved rights and enjoyment of our reserved reservation homeland without fear or concern. No decent people would propose any other alternative and the Act implicitly embodies this concern. This important concern is absent from DOE considerations in the furnished materials.

Thank you for the opportunity to appear here today. We will continue to cooperate with you and continue to fulfill our responsibilities not only to our membership but to the land, water and all living things.

CONFEDERATED TRIBES AND BANDS

Yakima Indian Nation

GENERAL COUNCIL
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ESTABLISHED BY THE
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COMMENTS ON PROPOSED NOMINATION OF
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NUCLEAR WASTE POLICY ACT OF 1982 (ACT)

BEFORE THE

UNITED STATES DEPARTMENT OF ENERGY

BY THE CONFEDERATED TRIBES AND BANDS

OF THE YAKIMA INDIAN NATION

MARCH 25, 1983
RICHLAND, WASHINGTON

YAKIMA INDIAN NATION STATEMENT
ON THE DOE PROPOSAL TO NOMINATE
THE BASALT WASTE ISOLATION PROJECT
FOR CHARACTERIZATION STUDIES

March 25, 1983
Richland, Washington

My name is Melvin Sampson, I am Chairman of the Legislative Committee of the Yakima Indian Nation Tribal Council. I appreciate this opportunity to present the preliminary comments of the Yakima Indian Nation on DOE's proposal to nominate the Basalt Waste Isolation Project for characterization studies. The Yakima Indian Nation will be submitting additional written comments by the deadline, which we urge you to extend by at least another month to provide more realistic time for meaningful comments on these complex issues.

I must begin these comments by strongly protesting the procedures and timing of this action. The expressed purposes of this hearing are to solicit comments on: 1) the nomination, 2) issues to be included in an Environmental Assessment, and 3) issues to be addressed in the Site Characterization Plan. As the Yakimas have already made clear in correspondence with the Secretary of Energy, we believe it is inappropriate for DOE to be drafting or soliciting comments on an environmental assessment ("EA") and Site Characterization Plan ("SCP") prior to the issuance of final siting guidelines as required by section 112(a) of the Nuclear Waste Policy Act of 1982.

Both the EA and the SCP are supposed to be based, in part, on the siting guidelines which are only now being developed. It is self-evident that we cannot properly comment on what should be in an EA or SCP without those final guidelines. Proposed guidelines were issued on February 7. We presented a statement commenting on serious deficiencies in those guidelines at the hearing in Seattle on March 21, and will be presenting additional written comments before the April 7 deadline. We understand DOE is receiving severe criticism from many quarters about the proposed guidelines. It is clear to us that they will require very extensive modifications before they will comply with the requirements of the Nuclear Waste Policy Act. In light of that, we object to the need to submit comments on an EA and SCP when part of the legal framework for those documents--the guidelines--does not yet exist. While we firmly believe that the time to draft and discuss EAs and SCPs

has not yet come, we nevertheless do submit comments so that we are not later prejudiced by failure to do so at this time.

We also object to the very short time periods which DOE has allowed to prepare for this hearing and comments. Less than three weeks is not sufficient notice to adequately deal with the complex issues at hand, even for parties with the necessary resources to do a proper job of it. Considering the volume of background documents which must be reviewed to meaningfully evaluate an EA, and the inadequate availability of those documents, together with the simultaneous need to comment on the draft guidelines, the three week period is ridiculous.

We strongly urge you to extend the deadline for written comments by at least an additional month so that this serious procedural deficiency is at least partially mitigated. There is nothing in the Nuclear Waste Policy Act ("NWPA") which requires such haste in proposing to nominate sites for characterization. In fact, DOE is attempting to shorten the period for choosing 3 sites for characterization from 2 years to 8 months. This rush only makes it clear that the guidelines have nothing at all to do with the choice of sites, and damages DOE's credibility with the public.

As you know, the Yakima Indian Nation has petitioned the Secretary of Interior to be designated an "affected Indian tribe" under the NWPA so that we may receive information, consultation and cooperation rights, and financial assistance to participate in the decision-making process under the Act. Until the Interior Secretary makes this determination, we are placed at an enormous disadvantage in terms of participation. Unfortunately, DOE is proceeding at a headlong pace at BWIP while we wait, and key steps in the process are taking place with the Yakima Indian Nation unable to participate meaningfully.

Finally, we object to the issuance a couple weeks ago of a document called "Draft Environmental Assessment for Characterization of the Hanford Site Pursuant to the Nuclear Waste Policy Act of 1982," (DOE/EA-021J). We submit that the only possible purposes for this document are illegitimate. There is no provision for a "draft EA" in the Nuclear Waste Policy Act. The Act requires an EA based, in part, on the guidelines established pursuant to section 112(a). Since compliance with section 112(a) is only now in process, there are, as yet, no guidelines "established under subsection (a)," and consequently there can be no legally sufficient EA.

About a month ago, DOE was about to begin sinking the exploratory shaft at BWIP, in clear violation of sections

112(f) and 113(b) of the NHPA, which require completion of the EA and SCP, respectively, prior to shaft drilling at Hanford. In response to protests from the Yakima Indian Nation and others, DOE backed off from the position that no prior EA was required, and decided to publish the "Draft EA" and hold this hearing before deciding whether to proceed with shaft drilling. The "Draft EA" cannot satisfy the Act's requirement for an EA described in section 112(b)(1), for the reasons discussed above. It is clear from sections 112 and 113 of the Act that any shaft sinking which DOE undertakes before preparing a final EA and a final SCP based on final siting guidelines will be illegal.

Moreover, if the "Draft EA" was published with the intent that it does comply with the Act, why is DOE now soliciting comments on what the public thinks should be in the EA? We understand that it is quite unusual to publish a draft environmental document and at the same time ask for comments on what should be in the document. It would make sense to have this "scoping hearing" after the guidelines which form the framework for the EA are completed, and before the drafting of the document has been done.

Assuming the "Draft EA" represents DOE's present idea of what an EA based on the proposed guidelines should look like, we present some comments on that document here, to inform DOE why that is not what a legally sufficient EA should include. We do so under protest, as we believe comments on the content of an EA are untimely prior to issuance of final guidelines, and as the "Draft EA" is not published for any legitimate purpose. Nevertheless, we submit the following comments to avoid the possibility of prejudice from failure to do so.

Comments on the "Draft EA"

As an example of what DOE believes an EA should look like, the "Draft EA" bears some comment. As a general matter, the "Draft EA" is not a scientific document. It is an advocacy piece quickly assembled by DOE in an attempt to justify its earlier decision to develop the Hanford Site as a repository. It does not honestly assess the pros and cons of the site. Quite the contrary, it relies almost entirely on work with results favorable to the site by DOE contractors, and virtually ignores many serious problems which have been identified by independent scientists and even its own scientific overview committee.

Chapter 3 of the "Draft EA" purports to constitute compliance with the six EA requirements of section 112(b) of

the NWPA, so our comments will focus primarily on that part of the document.

As to the first statutory requirement, evaluation "as to whether [a] site is suitable for site characterization under the guidelines established under subsection [112(a)]," DOE states:

Where a complete evaluation has not been possible in this assessment, a discussion of the current status of activities relating to the guidelines (currently available information and a brief summary of planned activities) is presented in conjunction with a preliminary conclusion that directly relates to conformance with the proposed siting guidelines.

(p. 3-2). It is understandable that DOE does not yet have complete information on all the issues. The problem with the "Draft EA" is that DOE has not made an honest assessment of all the information that is available. DOE has spent seven years and millions of dollars collecting and analyzing data associated with this site, generating over 700 technical and programmatic documents. We submit that the final EA should include the most thorough possible assessment based on all the information DOE has at this time. Section 3.1 of the "Draft EA" does not do this. In most cases, it merely presents preliminary, favorable indications and avoids obviously adverse ones. (See below.)

The second statutory EA requirement is an evaluation "whether such site is suitable for development as a repository under each such guideline that does not require site characterization as a prerequisite for application of such guideline." DOE declares that "only five of the eighteen proposed siting guidelines were determined to not require site characterization prior to assessing site suitability for development as a repository." (pp. 1-1, 3-63). After so declaring, DOE says absolutely nothing new about those five guidelines in section 3.2, but only refers back to the "available information" and "preliminary conclusions" on those topics in section 3.1, and declares that no disqualifying factors apply. DOE implies that there are inadequate data to address thirteen out of eighteen criteria, but it presents no less data for those than for the five it says it can address at this time.

Technical Comments

A preliminary review of the "Draft EA" by hydrogeologists we have retained reveals numerous technical flaws in DOE's analysis. For one thing, whenever DOE addresses a guideline for which a finding of a "potentially adverse condition" is clearly called for, it stubbornly refuses to make that finding. Probably the most glaring example of this is DOE's preliminary conclusions regarding its proposed system guideline 960.3-2, "Performance After Permanent Closure." The proposed guideline states that a potentially adverse condition is

Geologic setting, site geometries and characteristics, and radionuclide-transport characteristics that are extremely difficult to characterize and model.

The preliminary conclusions in the "Draft EA" state:

The characteristics of the basalts are in some cases rather straight-forward and simple. In other cases, characterization and, hence, a proper understanding and modeling are more difficult and challenging.

(p. 3-8). The fact is, even Rockwell Hanford Operations' own Hydrology and Geology Overview Committee has concluded that the Hanford basalts are extremely difficult to characterize and model. It is widely understood in the geologic community that basalt is hydrologically extremely variable and that transmissivity of groundwater cannot be considered uniform even over short distances. Proper analysis of the groundwater flow field at Hanford will require specialized knowledge of regional systems because traditional methods of characterizing groundwater storage and transmission from point analysis of aquifers must be used very cautiously in basalts. In addition, no inferences regarding flow velocities can be made from hydraulic gradient data in basalt.

Taken as a whole, the extreme complexity of hydrogeologic characterization and modeling at Hanford must be considered an adverse condition, even under the inadequate guidelines DOE has proposed. Indeed, the site may need to be disqualified because "the characteristics that influence radionuclide transport are too complex to allow reasonable confidence of compliance with the proposed [EPA standards]". (Proposed system guideline 960.3-2). The complexity of this site can be appreciated when one realizes that DOE has spent seven years and millions of dollars—drilling more than 20 boreholes and collecting geologic and hydrologic samples, and yet still cannot address the basic guidelines involving the flow system with any degree of

confidence. The addition of a few more data points may not significantly improve this situation. We strongly urge DOE to be more forthcoming when it drafts the final EA for Hanford, and admit that the site is not ideal with respect to many of the guidelines.

Another example where DOE should be more honest and admit there is a potentially adverse condition at Hanford is for the proposed guideline on shaft construction, 960.5-2-3. That proposed guideline states that a potentially adverse condition is:

Rock or ground-water conditions that would require complex engineering measures in the design and construction of the underground facility or in the sealing of boreholes and shafts.

The "Draft EA" admits that there are at least 15 aquifers of significant conductivity between the surface and the repository horizon at BWIP, and that there are "potential high-production horizons" in at least six formations. Whether the blind hole drilling technique or the drilling and blasting technique described in the "Draft EA" (p.3-30) is used, it is clear that complex engineering measures will be required to drill such a large, deep shaft through so many aquifers without flooding the shaft. In addition, the high horizontal compressive stress in the basalt layers may further complicate shaft drilling. Indications are that the state of the drilling art will be taxed in any event. In the comparative section of the "Draft EA", DOE admits that shaft construction at Hanford "presents a challenge." (p.3-83). But rather than confront this obviously adverse condition, DOE's preliminary conclusion simply states its wishful thinking that construction of the shaft at Hanford will show that it can be done (p. 3-31), thus inadvertently admitting that it has never been done before.

DOE has unjustifiably downplayed numerous other technical issues of major concern in its "Draft EA". The final EA should discuss the following issues in greater detail and more forthrightly:

1. With respect to human intrusion through potential resource exploration, DOE argues that the Hanford Site is no more attractive than the area within a 60 mile radius for resource exploration and development. This relates to a deficiency in the proposed guidelines, but the real question should be whether the entire region is attractive relative to others. In that regard, the drilling of four wildcat natural gas wells within a few tens of miles of Hanford by Shell Oil should not be brushed off with the casual observation that no

economical quantities have as yet been found. That Shell is willing to spend millions of dollars per well to drill on the outskirts of the Pasco Basin at a time of vast oversupply of natural gas is some indication that the Columbia Plateau will be favorable for hydrocarbon exploration in the time period relevant to this analysis. The chance of finding quantities of gas important to future generations must be viewed as a very real possibility.

2. In addition, DOE is quick to discount the fact that groundwater will be a resource of future economic value. The fact that groundwater exploitation from the deep basalts is not presently viewed as economic cannot dispense with the issue. Water shortages are occurring presently in other parts of the Columbia Plateau, and water availability is certain to become an increasingly critical issue. In areas quite close to the Pasco Basin agricultural demands have caused large pumping stresses on the upper aquifer system. This has caused large drawdowns to occur and cones of depression have entered the Grande Ronde formation, which is the repository horizon. There is evidence that increased pumping on the Oregon side of the Columbia River south of the Hanford Site has caused water to change its natural gradient and be pulled under the Columbia from Washington State into Oregon. Future water demands cannot so easily be discounted. In the final EA, the potential effects on the deeper system must be analyzed as to possible changes in hydraulic gradient through the repository horizon.

3. DOE has discounted the potential effects of the proposed Ben Franklin Dam and Reservoir on the deep groundwater flow system without any analysis. This is merely conjecture until the planned studies are complete.

4. The groundwater travel time estimates quoted in the EA cannot be considered realistic. Field tested porosity values released in the Site Characterization Report are much lower than those used in all modeling attempts to date. Consequently, travel time estimates given by DOE are probably much too high, since decreasing the porosity directly increases the pore velocity. DOE cannot support its claim that all modeling efforts show travel times to the accessible environment greater than 10,000 years based on this newly released data.

5. DOE's assertion that groundwater flow within the Pasco Basin includes no significant vertical mixing component also is in question. Data recently released by DOE indicates that upwelling and vertical mixing could be occurring in the Pasco Basin. Rates of this mixing must be determined before its significance can be ascertained. More detailed evidence and

analysis of this data will be submitted with our written comments.

6. The "Draft EA" references Arnett, et al. (1980) to substantiate the statement that various credible scenarios would have no significant impact on the flow systems. This report evaluates scenarios such as faults and earthquake swarms on the flow field and flow properties such as permeabilities. Some of the conclusions of this report are seriously in error. The author states that in the case of certain scenarios, "permeability is decreased from 1.0 E-11 to 1.0 E-9 ... and therefore no significant effect occurs." This is in fact a two order of magnitude increase in permeability, not a decrease. The final EA cannot rely on works of this quality.

Guideline-Based Deficiencies

Some criticisms of the "Draft EA" which ultimately go to inadequacies in the proposed guidelines follow.

It is impossible to make a reasonable evaluation of the Hanford Site without quantitative weighting factors for the technical guidelines. The entire presentation in the "Draft EA" concerning evaluation of the site under the guidelines is utterly subjective, as is the comparison of Hanford with other sites currently undergoing investigation as possible repository sites. This type of presentation does not permit an independent analyst to judge the relative merit of the respective sites. The reader of the "Draft EA" must simply accept DOE's judgement as to what constitutes a favorable site. Obviously the fact that the site is on a federally controlled nuclear reservation is a major administrative convenience and a prime motivation to DOE, but that fact should not be permitted to outweigh the "detailed geologic considerations" that are supposed to be the "primary criteria for the selection of sites," (NWSA § 112(a)), and that are of serious concern to the scientific community.

The Hanford Site has not been through the Regional and Area Phase screening processes now required by the NWSA. Its feasibility must be evaluated carefully in this regard. It has not been established that the Columbia Plateau Basalts are a favorable repository medium, and in fact it has long been felt in the scientific community that they are unfavorable. Even Rockwell's own Hydrology and Geology Overview Committee, made up primarily of university-based scientists, told Rockwell in a 1981 report:

There is really only one solid justification for studying this site and it is the sociopolitical fact

that the land is a U.S. nuclear reservation. From a hydrogeological perspective, the Columbia River Basalt Group as a whole is not well suited for a high-level waste repository. It may well be that with further data and/or careful engineering design it can be shown to be acceptable, but it cannot be stated that the 'geology is favorable.'

(Hydrology Overview Committee, Report on Hydrologic Studies Within the Columbia Plateau, Basalt Waste Isolation Project, RHO-BWI-LD-50, June 1980, p. 3).

The obvious intent of the NWPA is that DOE compare a group of sites to each other and eventually select the best site considering all factors. Otherwise, the Act would not require the EA to include a comparative evaluation by the Secretary of the sites that have been considered. Yet, under DOE's approach in the proposed guidelines, there will be no effort to rank the sites according to desirability for nomination. Instead, it appears DOE simply wishes to perpetuate its previous rush to develop the Hanford Site, regardless of the site's technical weaknesses.

Although the Hanford Site has been dedicated to nuclear activities for the past 40 years, these activities have little relevance to the issues at hand. It was selected as the location for a plutonium production plant in 1943 by the Manhattan District of the Corps of Engineers. According to Foster (1972), the criteria which resulted in the selection of the site were 1) availability of cooling water; 2) low population and agricultural development; 3) availability of deep, dry soil above the water table for storage of waste (not deep storage); 4) atmospheric stability characteristics which would disperse airborne radioactivity; 5) mild climate allowing year-round construction and operation; and 6) adequate electric power supplies.

Hanford was not selected as a federal nuclear reservation on the basis of its subsurface geology and hydrology. Deep geologic storage or disposal of high level waste was not considered when the site was developed. DOE now attempts to subvert the intent of the NWPA that detailed geologic considerations constitute the primary criteria for site selection, by improperly adding as a starting point for site screening and as a favorable condition the fact of federal ownership of land for nuclear activities. This is not dictated by the Act and it is clearly not consonant with the Act. The final guidelines should delete this emphasis on federal nuclear reservations and the final EA for Hanford should assess the site according to its relative geologic merits as the NWPA

clearly requires.

Finally, DOE's final EA should consider in its sections dealing with regional and local impacts and environmental and socioeconomic effects the fact that the permanent homeland of the Yakima Indians is nearby, and many of our usual and accustomed fishing places on the Columbia and Yakima Rivers are very close to the proposed repository location. Because of our perpetual relationship to our land, the concept of evacuation for protection from accidents is unavailable to the Yakima people. DOE should consider the fact that the fish in the rivers and other natural foods are important to the Yakimas both for dietary reasons and as part of our traditional religious practices, and that any radioactive or other contamination of those fish, or of other natural foods which we have Treaty rights to take, is totally unacceptable to the Yakimas. The final EA should not completely ignore--as does the "Draft EA"--the fact that a significant number of the nearby neighbors of the proposed repository are American Indians with a very different cultural heritage than other non-Native Americans.

Our location, our culture, and our religious beliefs make us considerably more "risk-averse" as regards a potential high level waste repository than most citizens. The DOE officials who will be making these decisions are undoubtedly among the least risk-averse individuals who can be found. DOE should bear in mind that everybody does not share their unbridled technological optimism, and they should consider the Yakima Indians as we are. A final EA should consider these facts.

Comments on the Nomination

The Yakima Indian Nation strongly opposes the nomination of the Hanford Site for characterization before the siting guidelines are finalized.

Comments on the SCP

Our statement on the content of the SCP will be reserved until we submit our written comments. (Supplemental, to be submitted later.)

ESTABLISHED BY THE
TREATY OF JUNE 9, 1855
CENTENNIAL JUNE 9, 1955

CONFEDERATED TRIBES AND BANDS

Yakima Indian Nation

GENERAL COUNCIL
TRIBAL COUNCIL

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COMMENTS ON PROPOSED GENERAL GUIDELINES

FOR THE RECOMMENDATION OF SITES FOR

NUCLEAR WASTE REPOSITORIES,

PURSUANT TO THE

NUCLEAR WASTE POLICY ACT OF 1982

BEFORE THE

UNITED STATES DEPARTMENT OF ENERGY

BY THE CONFEDERATED TRIBES AND BANDS

OF THE YAKIMA INDIAN NATION

MARCH 21, 1983
SEATTLE, WASHINGTON

Good Afternoon.

I am Mel Sampson, representing the Confederated Tribes and Bands of the Yakima Indian Nation. I serve the Yakima Nation as Chairman of the Yakima Tribal Council Legislative Committee.

The Yakima Indian Nation was created by a treaty with the United States. Treaty With the Yakimas, 12 Stat. 951. The Yakima Indian Nation was created from indigenous tribes and bands which had occupied and used lands within Oregon and Washington Territories for millenniums. These confederated tribes and bands ranged in a food-gathering economy as far south as the now border of California to above the now Canadian-United States border, from the Puget Sound area on the west to as far east as the Bitterroot Mountains in now Montana state. In this larger area of over 20 million acres, these confederated tribes and bands exercised absolute dominion and control and occupied over 10 million acres in the south-central portion of now Washington state. This 10 million-acre area, called the Ceded Area, with the exception of approximately 1,300,000 acres which was reserved as the Yakima Indian Reservation, was ceded to the United States reserving certain treaty usage and possessory rights within the Ceded Area. These reserved treaty rights in the Ceded Area include gathering rights, hunting rights, pasturing rights, fishing rights and right of travel within the Ceded Area. The Yakima Indian Reservation was reserved for the exclusive use and

benefit of the Yakima Indian Nation as a homeland for the Yakima Indian Nation and its members. The present membership of the Yakima Nation is approximately 7000.

The Yakima Indian Nation and its Tribal Council have been recognized as an Indian tribe and an appropriate governmental body, respectively, by the President, Congress, Federal Judiciary, Secretary of Interior and all departments of the Executive Branch of the United States of America.

The Department of Energy has, by letter dated March 8, and received March 14, 1983, informed the Yakima Indian Nation of its potential rights under the Nuclear Waste Policy Act of 1982 (the Act). The Yakima Indian Nation, by petition dated March 4 and delivered March 10, 1983, has petitioned the Secretary of Interior for recognition of its status as an affected Indian tribe under the Act as regards the Basalt Waste Isolation Project (BWIP) at Hanford, Washington. Our conversations with responsible public officials both within Congress and within the Executive Branch lead us to believe that our status as an affected Indian tribe will be recognized.

We are appearing here today to register our strong objections to DOE's proposed repository siting guidelines, which we believe violate the intent and purpose of the Act.

Initially we must express our concern that meaningful comment on these guidelines is at best difficult and probably futile. DOE has already published announcements that it

proposes to nominate the Hanford Site and a Nevada Test Site (48 Federal Register 9332-9578).

The adoption of these guidelines is contemplated before either EPA's standards or NRC's criteria for a repository siting have been promulgated or NRC concurrence obtained. Proceeding currently are the Department of Energy's hearings and determination on the Environmental Assessment at Hanford, Washington. This haste gives us concern.

As one reads the proposed guidelines, one must come to the conclusion that they are composed of a combination of bits and pieces of other rules and qualifying factors which are so vague and open-ended as to be useless to serve the purposes required by the Act. As one reads the proposed guidelines, they appear to be directed more as a rationale for the selection of the Hanford and Nevada test sites rather than guidelines to be used for the selection and nomination of the Hanford and Nevada test sites. This is contrary to the legislative history of the Act. Two amendments to the Act were passed "to make it clear that the Secretary's preliminary determination that sites are suitable for development as repositories is to be made consistent with the Secretary's guidelines". (128 Congressional Record S-15642.)

We further call to the Department of Energy's attention that the Nuclear Regulatory Commission must concur in these regulations and we suggest that under proper rulemaking procedure that hearings would have to be held by the NRC to

substantiate their concurrence in these rules. Further, as a general comment we must advise that we believe the haste in adopting these guidelines while the petition of the Yakima Nation to be determined to be an affected tribe by the Secretary of Interior and therefore before the Yakima Nation can take effect of the consultation and funding provided for it under the Act, is to limit the Yakima Nation's participation as contemplated by the Act.

The proposed guidelines describe three starting points that "may be used" for the site selection process: 1) focusing on specific geologic media, 2) focusing on particular hydrogeologic settings, or 3) focusing on federal lands already dedicated to nuclear activities.

There is absolutely no indication as to the relationship between these very dissimilar site screening procedures and the guidelines which follow. The third method (focusing on federal lands already dedicated to nuclear activities) is completely at odds with the statutory directive that the guidelines "shall specify detailed geologic considerations that shall be primary criteria for the selection of sites in various geologic media." Nowhere in the Act is there any hint that existing federal nuclear reservations should be primary criteria for site selection or considered "favorable conditions" in screening sites. Non-geologic considerations are therefore improperly treated as primary criteria in the guidelines. DOE attempts to perpetuate or grandfather its previous determination in siting

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a nuclear waste repository at Hanford, in derogation of the explicit requirements of Section 112(a) and the congressional finding that "[f]ederal efforts during the past 30 years to devise a permanent solution to the problems of civilian radioactive waste disposal have not been adequate." Act Sec. 111(a)(3).

Moreover, there are no quantitative values, or other prioritization of the various factors. This maximizes the likelihood of subjectivity and choices based primarily on non-relevant factors. Indeed, the guidelines seem to have been designed so that no DOE-contemplated sites can be excluded on the basis of them, not as a basis for determining what sites should be contemplated. The fact of federal ownership, existing nuclear activities and approval from some governmental officials may be administratively convenient to DOE, but they certainly cannot be allowed to assume importance in the site selection.

Specification as to respective weight would help engender confidence that siting decisions were not being made on the basis of political or other non-relevant considerations.

The guidelines also do not clearly distinguish between criteria which are to be used in choosing sites as candidates for characterization and those which are to be used in selecting a repository site from those which have been characterized.

Likewise, the guidelines do not specify qualifying or disqualifying factors for each of the parameters, as required by Sec. 112(a) of the Act.

Further, the guidelines place entirely too much emphasis on the capabilities of engineered systems to compensate for less than favorable geologic conditions.

Finally, the proposed guidelines ignore the intergenerational risk issue and impacts on the treaty-reserved rights of Indian tribes as guidelines in determining site suitability.

The generations who receive the benefits from nuclear power generation made possible by high-level waste repositories should not be allowed to pass the risks to future generations. In the main it is the future generations that will bear the greatest risks under the proposed guidelines. The proposed guidelines do not consider future generations at all in its consideration of socio-economic impacts. Indeed, the focus is all on the money the repositories will generate for the current generation.

The Yakima Indian Nation in its stewardship over the natural resources and treaty-reserved rights must keep this issue in mind. The officials of the Yakima Nation take an oath that they will exercise their stewardship with concern for "those yet unborn".

We suggest that the people of the United States of America have a similar goal. Certainly Congress had this principle in

mind when it specifically concerned itself with water rights, other natural resources and federal reservations of parks, wildlife refuges, scenic rivers, wilderness areas or forest lands in Sec. 112(a) of the Act. Section 111 of the Act in its findings and purpose clearly specifies that the cost burden relating to waste disposal shall be borne by the persons responsible for generating such waste or spent fuel.

The guidelines ignore this intergenerational risk factor. Indeed, the years that the guidelines propose protection will be provided are clearly inadequate. The guidelines' specified periods may tempt those who count their three score and ten, or contemplate the lives of their issue. However, the law, religion and culture of those indigenous people who have had the responsibility of the land and water in this area for millenniums and now call themselves Yakimas, require that the Yakima Nation must object to any impact to the environment, land or water regardless of the time period. The indigenous peoples who possessed and used this area and now call themselves Yakimas have already been here for more than the contemplated 1,000 or 10,000 years.

Guidelines directed by the Act should consider the impacts that a repository site will have on treaty-reserved rights and the persons who retain those rights. A national purpose exists in these United States that transcends the contemporary standards of private dealing and a principle that is firmly established in the Law of this Land. From the first great act

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of the National Congress (Northwest Ordinance, Act of July 13, 1787) it has been firmly established as a national principle that the property rights or liberty of Indian people should not be "invaded or disturbed" without their consent or just wars. This national purpose is even more important today as the indigenous people who have been gracious hosts to those coming to this land have had their holdings reduced to a small portion of those previously possessed and used.

Indeed morality, if not this national purpose, would require that primary consideration be given to any impact on the little these indigenous peoples reserved. Not even an extreme nuclear power advocate would suggest that at treaty time it was contemplated that a high-level nuclear waste repository would be located on government land in the Ceded Area near the two rivers so necessary to the livelihood of these people indigenous to this land. The Law of this Land clearly holds that what was not implicitly or impliedly conveyed is reserved. Any impact to reserved rights of the Yakimas should not and cannot be considered. In a paraphrase of "I gave at the office", it must be considered that we have already given and an additional burden in the name of progress should not be forthcoming.

As the Supreme Court said:

"At the treaty council the United States negotiators promised, and the Indians understood, that the Yakimas would forever be able to continue the same off-reservation food gathering and fishing practices as to time,

method, species and extent as they had or were exercising. The Yakimas relied on these promises and they formed a material and basic part of the treaty and of the Indians' understanding of the treaty." Washington v. Fishing Vessel, 443 US 658 at 667-68 (1979).

Any guidelines should have as a primary consideration respect by DOE of these promises.

You must consider in these guidelines that, contrary to those people who have a predilection to seek new ground, the Yakimas have no place to go. We have been here and will remain here. In our minds we want you to know that we consider the thousands of years we have been here merely prologue, not past. We are entitled to peaceful enjoyment of our reserved rights and enjoyment of our reserved reservation homeland without fear or concern. No decent people would propose any other alternative and the Act implicitly embodies this concern. This important concern is absent from these proposed guidelines.

Because of time restraints, we have not addressed sections of these proposed guidelines with specificity. We will furnish additional material before the April 7 deadline and thereafter. We take the responsibility to consult and participate under the Act as an affected Indian tribe seriously. Unfortunately, the speed with which DOE is proceeding and the fact that we have not yet been furnished the tools to aid us specified by the Act will make our contribution less than the Act considered. We will do our best prior to April 7. We will continue to advise even after that time as

resources forthcoming under the Act allow us to adequately study the matter.

Thank you for the opportunity to appear here today. We will continue to cooperate with you and continue to fulfill our responsibilities not only to our membership but to the land, water and all living things.