



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

SEP 17 1984

Honorable Donald Paul Hodel
Secretary of Energy
Washington, D. C. 20585

Dear Mr. Secretary:

The Department of Energy has identified the Basalt Waste Isolation Project Site at Hanford, Washington as a potentially acceptable site for a high-level radioactive waste repository and intends to nominate this site for site characterization pursuant to section 113 of the Nuclear Waste Policy Act of 1982, Public Law 97-425 (Act).

As you are well aware, the Act affords certain rights and status to affected Indian tribes. An affected Indian tribe is entitled to participate in repository siting decisions and is eligible for financial assistance under section 118 of the Act. Section 2(2) of the Act defines "affected Indian tribe" as follows:

(2) The term "affected Indian tribe" means any Indian tribe--

(A) within whose reservation boundaries a monitored, retrievable storage facility, test and evaluation facility, or a repository for high-level radioactive waste or spent fuel is proposed to be located;

(B) whose federally defined possessory or usage rights to other lands outside of the reservation's boundaries arising out of congressionally ratified treaties may be substantially and adversely affected by the locating of such a facility: Provided, That the Secretary of the Interior finds, upon the petition of the appropriate governmental officials of the tribe, that such effects are both substantial and adverse to the tribe;

By letter dated August 7, 1984, the Nez Perce Tribe of the Nez Perce Indian Reservation in Idaho petitioned the Secretary of the Interior to certify that they qualify as an "affected Indian tribe" within the meaning of section 2(2)(B) of the Act. In order for the Nez Perce Tribe to be deemed an "affected Indian tribe" within the meaning of section 2(2)(B) of the Act, the following conditions must be met: (1) the Nez Perce Tribe must meet the definition of "Indian tribe" under section 2(15) of the Act; (2) the Nez Perce Tribe must possess congressionally ratified treaty rights outside the boundaries of the Nez Perce Indian Reservation; and (3) 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.

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SEP 24 1984

WM Record File

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WM Project 10

Docket No. _____

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Indian Tribe

The Nez Perce Tribe is eligible for services provided to Indians by the Secretary of the Interior and, therefore, meets the definition of "Indian tribe" as defined in section 2(15).

Congressionally Ratified Treaty Rights

On June 9, 1863, the United States concluded a treaty with the Nez Perce Tribe. Treaty with the Nez Perce, June 9, 1863, ratified April 17, 1867, 14 Stat. 647. Article 3 of the Treaty provides in pertinent part:

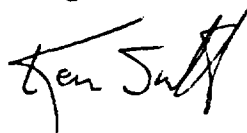
Provided, also, The exclusive right of taking fish in all the streams where running through or bordering said reservation is further secured to said Indians; as also the right of taking fish at all usual and accustomed places in common with citizens of the Territory; and of erecting temporary buildings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

Treaty Rights may be Substantially and Adversely Affected

We find that the proposed location of the Hanford repository is in close proximity to the Nez Perce tribal reserved fishing locations of the Columbia River Basin. In addition, the Hanford Reservation, which surrounds the Hanford Reach of the Columbia River, contains the fishing, spawning, and rearing locations of salmon and steelhead. This area is customarily used by Nez Perce tribal members for commercial and subsistence fishing which is of significant economic and cultural importance to the Nez Perce. At this time, there is no scientific data available to prove that the Hanford repository will indeed have substantial and adverse impacts on the Columbia River. However, due to the proximity of the proposed repository to the fisheries in this river basin, the fact remains that there is a definite potential for such adverse impacts.

Therefore, the Department of the Interior, in accordance with section 2(2)(B) of the Act, certifies that the Nez Perce Tribe may be substantially and adversely affected should the Hanford site be recommended by the Secretary of Energy as an acceptable nuclear waste repository in the State of Washington.

Sincerely,



Assistant Secretary - Indian Affairs



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

SEP 17 1984

Allen V. Pinkham, Chairman
Nez Perce Tribal Executive Committee
Box 305
Lapwai, Idaho 8354

Dear Mr. Pinkham:

We are pleased to transmit a copy of a letter that designates the Nez Perce Tribe as an "affected Indian tribe" as required under Section 2(2)(B) of the Nuclear Waste Policy Act of 1982, Public Law 97-425.

We are also pleased that the Nez Perce Tribe will hereafter work closely with the U.S. Department of Energy in determining whether Hanford is a suitable site for a repository for high-level nuclear waste.

If we can be of any further assistance, please do not hesitate to call me or my staff.

Sincerely,

Assistant Secretary - Indian Affairs

Enclosure