



United States Department of the Interior

WM R 1 File 101-4

WM Project 10
Docket No. _____
PDR _____
LPDR _____

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JUL 13 1983

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

Dear Mr. Hodel:

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 letters dated March 29 and June 3, 1983, the Confederated Tribes of the Umatilla Indian Reservation in Oregon (Umatilla Tribe or Umatillas) 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. 1/ In order for the Umatilla Tribe to be deemed an "affected

1/ In a letter to you dated March 30, 1983, we certified that the Yakima Indian Nation qualified as an "affected Indian tribe" in regard to the Basalt Waste Isolation Project site.

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Indian tribe" within the meaning of section 2(2)(B) of the Act, the following conditions must be met: (1) the Umatilla Tribe must meet the definition of "Indian tribe" under section 2(15) of the Act; (2) the Umatilla Tribe must possess congressionally ratified treaty rights outside the boundaries of the Umatilla 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.

Indian Tribe

The Umatilla 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, 1855, the United States concluded a treaty with the Walla Walla, Cayuse, and Umatilla Tribes. Treaty with the Walla Walla, Cayuse, and Umatilla Tribes, June 9, 1855, ratified March 8, 1859, 12 Stat. 945. Article 1 of the Treaty provides in pertinent part:

Provided, also, That the exclusive right of taking fish in the streams running through and bordering said reservation is hereby secured to said Indians, and at all other usual and accustomed stations in common with citizens of the United States, and of erecting suitable buildings for curing the same; the privilege of hunting, gathering roots and berries and pasturing their stock on unclaimed lands in common with citizens, is also secured to them.

The off-reservation treaty right of the Umatilla to take fish "at all usual and accustomed places. . ." has been judicially affirmed. See Maison v. Confederated Tribes of the Umatilla Indian Reservation, 314 F.2d 169 (9th Cir. 1963), cert. denied, 375 U.S. 829 (1963); Sohappy v. Smith, 302 F. Supp. 899 (D. Ore. 1969). Moreover, the Ninth Circuit has recognized the Umatillas' treaty right to hunt for subsistence purposes on "unclaimed lands" outside their reservation boundaries. Holcomb v. Confederated Tribes of the Umatilla Indian Reservation, 382 F.2d 1013 (9th Cir. 1967).

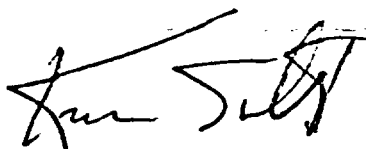
Treaty Rights may be Substantially and Adversely Affected

We find that the proposed location of the Hanford repository is in close proximity to the Umatillas' reserved fishing locations on the Lower Yakima River and other tributaries 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 Umatilla tribal members for commercial and subsistence fishing which is of significant economic and cultural importance to the Umatillas. 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 and the Yakima River fisheries. However, due to the proximity of the proposed repository to the fisheries in these river basins, 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 Umatilla 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,

A handwritten signature in black ink, appearing to read "James S. Smith". The signature is written in a cursive style with a large, sweeping initial "J".

Assistant Secretary - Indian Affairs