# APPENDIX D

# COMMENT AND RESPONSES

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Confederated Tribes and Bands
of the Yakama Indian Nation

Established by the
Treaty of June 9, 1855

July 17, 2002

Mr. Paul Dunigan, Jr.
U.S. Department of Energy
Richland Operations Office
P.O. Box 550
Richland, WA 99352

**RE: Comments on *Draft Environmental Assessment (EA) for Expansion of the Volpentest Hazardous Materials Management and Emergency Response (Hammer) Training and Education Center, Hanford Site, Richland, Washington,* DOE/EA-1412**

Dear Mr. Dunigan:

The Confederated Tribes and Bands of the Yakama Nation is a federally recognized sovereign pursuant to the Treaty of June 9, 1855 made with the United States of America (12 Stat. 951). As a sovereignty recognized by the U.S. Constitution, the Yakama Nation was not consulted on this proposed action that will impact Treaty reserved resources and rights on ceded lands. The cumulative impacts to these resources from this proposed action and other past and future actions diminish the resources available for future generations of the Yakama people to utilize as part of their culture. Because of that, compensatory mitigation is an essential component of this action for it to proceed.

**Consultation**
Under Section 7.0 of the EA, USDOE lists organizations consulted and includes the Yakama Nation. The Yakama Nation is not an organization but a federally recognized sovereign government and interactions must be conducted on a government-to-government basis. USDOE's trust responsibilities include consulting to the greatest extent practicable and to the extent permitted by law with tribal governments prior to taking actions that affect federally recognized tribal governments. Staff-to-staff interactions may precede government-to-government consultation. Unfortunately, this level of interaction was not even taken by USDOE in the development phase of this proposed action. Instead, USDOE-RL released the EA for public comment without any communication leading up to its release. This is not how consultation should work. Without communication, consultation is thwarted and a mutual decision is impossible. Establishing a government-to-government relation late in any process becomes awkward. Consultation on this action still needs to be initiated by USDOE-RL because USDOE-RL has a permanent legal obligation to exercise statutory and other authorities to protect tribal resources and treaty rights.

**Transfer of Land**
USDOE indicates in the document, under section 1.2.2, that it intends to transfer ownership of 80 acres of land for the National Utilities Training Services (NUTS) to the Northwest Public Power Association, which is a nonprofit association. This decision appears to violate transfer procedures under existing federal laws, such as the Federal

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Post Office Box 151, Fort Road, Toppenish, WA 98948 (509) 865-5121

Property and Administrative Services Act of 1949 (FPASA). It also appears that USDOE may be attempting to transfer land that is public domain lands that were withdrawn from BLM. From the maps provided it is difficult to discern whether the proposed site overlays public domain lands. The proposed transfer does not meet the purposes of the Atomic Energy Act of 1954(AEA) that allows USDOE to dispose of such property for nuclear-related activities. The purpose of NUTS does not meet the requirements of the AEA for transfer and therefore would have to be transferred in accordance with the FPASA. By circumventing the federal transfer process, USDOE is preventing the Yakama Nation from procuring the property. From the purpose statement, the Yakama Nation sees no need for USDOE to transfer this land from federal ownership to a non-profit organization that may turn around and sell the property to a private individual or company, therefore, abrogating all rights that the Yakama Nation now retains. Consultation with the Yakama Nation is needed on this matter.

**Alternatives**
A reasonable range of alternatives has not been presented or analyzed in the EA to avoid impacting Tribal reserved resources and rights. For example, NUTS could be sited on Benton or Franklin County owned land or at an existing facility somewhere else in the country that is being under utilized and that could accommodate the need.

**Impacts to Treaty Resources**
This proposed action will significantly impact 210 acres of ceded Yakama Nation land and impact reserved Treaty resources and rights. Therefore, USDOE must include mitigation measures in the final decision. USDOE-RL needs to consult the Yakama Nation to cooperatively develop and reach agreement on appropriate mitigation measures for this proposed action prior to the issuance of the final decision, i.e. mitigated FONSI.

**Conclusions**
USDOE needs to initiate consultation with the Yakama Nation on this proposed action. Discussions need to include transfer of federal lands as proposed in the action, development of additional alternatives that may be more acceptable and reduce impacts to Tribal reserved resources and rights, and development of appropriate mitigation measures for those impacts that cannot be avoided.

Please contact me at (509) 452-2502, to initiate staff-to-staff discussions on this matter to determine whether our concerns can be resolved at that level or whether they need elevated to the government-to-government level.

Sincerely,

Russell Jim, Manager
ER/WM Program
Yakama Nation

**Department of Energy**
Richland Operations Office
P.O. Box 550
Richland, Washington 99352

02-SES-0365

Mr. Russell Jim, Manager
Environmental Restoration/
Waste Management Program
Confederated Tribes and Bands
of the Yakama Nation
2808 Main Street
Union Gap, Washington 98948

Dear Mr. Jim:

COMMENTS ON DRAFT ENVIRONMENTAL ASSESSMENT (EA) FOR EXPANSION OF THE VOLPENTEST HAZARDOUS MATERIALS MANAGEMENT AND EMERGENCY RESPONSE (HAMMER) TRAINING AND EDUCATION CENTER, HANFORD SITE, RICHLAND, WASHINGTON, DOE/EA-1412

Thank you for commenting on the subject EA and for meeting with us on September 4, 2002. We offer the following information in response to those comments:

Enclosed is a Mitigation Action Plan (MAP) that includes re-vegetating the area disturbed for construction of the Emergency Vehicle Operations Course (EVOC) with species native to the Hanford Site. A seed mixture, approved by Pacific Northwest National Laboratory/Ecology will be used on this project and any future projects undertaken by HAMMER. Forbs will be broadcast planted with the grass seed prior to mid March 2003. HAMMER Operations will construct and place 20 artificial burrowing owl nests at strategic locations throughout the unused portion of the EVOC site. HAMMER Operations will work with Hanford Site Operations, Transportation Services, to control the spread of rush skeleton, a Class B noxious weed, identified at the EVOC construction site. In the event HAMMER would need to remove sagebrush in an identified "sagebrush island," a sagebrush compensation will be completed with a planting ratio of 1.5:1. No current plans are expected to affect the existing sagebrush islands.

The Cold Test Facility (CTF) proposes mitigating their construction impacts by contributing funds that will be used to collect additional seeds from forbs species during the spring and summer of 2003, which will be broadcast seeded during the fall of 2003. The CTF construction site was largely in previously disturbed land (an abandoned borrow pit).

A letter of intent has been received from the Northwest Public Power Association (NWPPA) Director, National Utilities Training Services assuring their intent to keep and renew the natural vegetation to the best of their ability.

Mr. Russell Jim -2-
02-SES-0365

We will include the MAP as a supplement to the final EA.

We respect the sovereignty of the Yakama Nation and apologize for listing the Yakama Nation under organizations consulted. We will revise Section 7.0 accordingly in this EA and in future documents.

The land transfer to NWPPA is currently on hold, pending completion of the NEPA process. The legal authority under which the proposed transfer is proposed to take place is the Federal Property and Administrative Services Act of 1949 (40 U.S.C § 471, et seq), as amended. This Act gives to the Administrator of General Services, as the government's real property agent, the authority to assign property to the U.S. Department of Education for conveyance for educational public benefit. The U.S. Department of Education is authorized to make such a transfer by Section 484 (K) (1) of the Federal Property and Services Act of 1949, as amended (40 U.S.C.) 484 (k) (1).

The General Services Administration published a notice of surplus determination and availability to public agencies in February 2002. We recognize that this does not constitute consultation with the Yakama Nation. We will enter into consultation with the Yakama Nation early in the conceptual phase of any future proposed land transfers.

We found our staff-to-staff discussions very helpful. If you have any questions please contact me on (509) 376-6667, or Randy Small, Security and Emergency Services Division, on (509) 373-6290.

Sincerely,

Paul F. X. Dunigan Jr.
NEPA Compliance Officer

Enclosure
1. MAP

**Department of Energy**
Richland Operations Office
P.O. Box 550
Richland, Washington 99352

02-HMR-0023

JUN 14 2002

Mr. Patrick Sobotta, Director
Environmental Restoration/
Waste Management Program
Nez Perce Tribe
P.O. Box 365
Lapwai, Idaho 83540

Dear Mr. Sobotta:

DRAFT ENVIRONMENTAL ASSESSMENT (EA) FOR EXPANSION OF THE VOLPENTEST HAZARDOUS MATERIALS MANAGEMENT AND EMERGENCY RESPONSE (HAMMER) TRAINING AND EDUCATION CENTER, HANFORD SITE, RICHLAND, WASHINGTON (DOE/EA-1412)

As authorized by the U.S. Department of Energy's National Environmental Policy Act (NEPA) Implementing Procedures (10 CFR 1021), enclosed is the subject draft EA for your comments prior to July 22, 2002. Comments received after that date will be considered to the extent practicable.

Please direct any questions about this proposed action to Randy W. Small, HAMMER Team, on (509) 531-6584. Questions regarding the NEPA process may be directed to me on (509) 376-6667.

Sincerely,

Paul F. X. Dunigan, Jr.

Paul F. X. Dunigan, Jr.
NEPA Compliance Officer

HMR:RWS

Enclosure

cc w/o encl:
C. M. Borgstrom, EH-42
A. Fredin, CCT
R. Gay, CTUIR
R. Jim, YN
L. Seelatsee, Wanapum
K. (Kim) R. Welsch, FHO
Admin Record, H6-08

Nez Perce
ENVIRONMENTAL RESTORATION & WASTE MANAGEMENT
P.O. BOX 365 · LAPWAI, IDAHO 83540-0365 · (208) 843-7375 / FAX: 843-7378

July 2, 2002

Paul F. X. Dunigan, Jr.
NEPA Compliance Officer
U.S. Department of Energy
Richland Operations Office
P.O. Box 550
Richland, Washington 99352

RE: Draft Environmental Assessment (EA) For Expansion of the Volpentest Hazardous Materials Management and Emergency Response (HAMMER) Training and Education Center, Hanford Site, Richland, Washington (DOE/EA-1412)

Dear Mr. Dunigan,

The Nez Perce Tribe's Environmental Restoration and Waste Management Program (ERWM) have reviewed the above-mentioned document.

Since 1855, reserved treaty rights of the Nez Perce Tribe in the Mid-Columbia have been recognized and affirmed through a series of Federal and State actions. These actions protect Nez Perce rights to utilize their usual and accustomed resources and resource areas in the Hanford Reach of the Columbia River and elsewhere. Accordingly, the Nez Perce Tribe's ERWM Program responds to actions that impact the Hanford ecosystem.

The ERWM has a history of supporting the mission and objectives of the HAMMER Training Facility and has been involved in various training and courses offered there. As a general comment we do not have any objections to the proposed expansion except for one stipulation noted below.

In the Appendices section there are two biological surveys that were conducted by PNNL in August 2001. Both surveys discuss the need for compensatory mitigation based on the Level III habitat found in the area and the fact that species of concern such as burrowing owls and loggerhead shrikes reside in the area.

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The August 3rd survey specifically states that, "*a binding compensatory mitigation strategy with concurrence from PNNL Ecological Compliance staff and the cognizant RL technical monitor which addresses the above mentioned items is required before the ecological compliance review process is complete.*"

The ERWM concurs with this recommendation that some kind of revegetation or restoration activity be conducted as compensation for destroying 80 acres of shrub/steppe habitat. We could not find anywhere in this document where this kind of compensatory mitigation was discussed. The EA does indicate that part of the project was shifted slightly to minimize impacts to burrowing owls but we feel that more needs to be done based on guidance contained within the Hanford Biological Resource Management Action Plan (BRMaP).

It would seem that since this survey and recommendation was provided one year ago that there has been plenty of time to formulate a mitigation plan and/or strategy. We think it appropriate that such a plan should be included as an Appendix in this EA. Such a plan would provide information about the number of acres that would be revegetated, location, and composition of plant species.

One potential solution would be to team with the USFWS who are in the process of revegetating lands on the Hanford Reach National Monument as part of an ERDF compensatory mitigation effort. The HAMMER facility could provide funds to restore an additional 80-240 acres on the Monument.

If you have any questions please contact Dan Landeen of my staff at 208-843-7375.

Sincerely,

Patrick Sobotta
ERWM Director

Cc: Kevin Clarke
Laurie Vigue
Tom Zeilman
Greg Hughes
Larry Goldstein

**Department of Energy**
Richland Operations Office
P.O. Box 550
Richland, Washington 99352

02-SES-0364

OCT 17 2002

Mr. Patrick Sobotta, Director
Environmental Restoration/
Waste Management
Nez Perce Tribe
P.O. Box 365
Lapwai, Idaho 83540

Dear Mr. Sobotta:

COMMENTS ON DRAFT ENVIRONMENTAL ASSESSMENT (EA) FOR EXPANSION OF THE VOLPENTEST HAZARDOUS MATERIALS MANAGEMENT AND EMERGENCY RESPONSE (HAMMER) TRAINING AND EDUCATION CENTER, HANFORD SITE, RICHLAND, WASHINGTON, DOE/EA-1412

Thank you for commenting on the subject EA. We offer the following in response to those comments:

Enclosed is a Mitigation Action Plan (MAP) that includes re-vegetating the area disturbed for construction of the Emergency Vehicle Operations Course (EVOC) with species native to the Hanford Site. A seed mixture, approved by Pacific Northwest National Laboratory will be used on this project and any future projects undertaken by HAMMER. Forbs will be broadcast planted with the grass seed prior to mid March 2003. HAMMER Operations will construct and place 20 artificial burrowing owl nests at strategic locations throughout the unused portion of the EVOC site. HAMMER Operations will work with Hanford Site Operations, Transportation Services, to control the spread of rush skeleton, a Class B noxious weed, identified at the EVOC construction site. In the event HAMMER would need to remove sagebrush in an identified "sagebrush island," a sagebrush compensation will be completed with a planting ratio of 1.5:1. No current plans are expected to affect the existing sagebrush islands.

A letter of intent has been received from the Northwest Public Power Association Director, National Utilities Training Services assuring their intent to keep and renew the natural vegetation to the best of their ability.

Mr. Patrick Sobotta -2-
02-SES-0364

OCT 17 2002

RL will incorporate these planned mitigation measures into the final EA. If you have any questions you may contact me on (509) 376-6667, or contact Randy W. Small, of the Security and Emergency Services Division, on (509) 509 373-6290.

Sincerely,

Paul F. X. Dunigan Jr.
NEPA Compliance Officer

Enclosure
1. MAP

cc w/encl:
B. M Akers, FHI
L. S. Angerman, FHI
N. M. Menard, FHI
M. R. Sackshewsky, PNNL
N. M. Welsh, FHI

State of Washington
**DEPARTMENT OF FISH AND WILDLIFE**
**Mailing Address: 600 Capitol Way N • Olympia, WA 98501-1091 • (360) 902-2200, TDD (360) 902-2207**
Main Office Location: Natural Resources Building • 1111 Washington Street SE • Olympia, WA

July 9, 2002

Mr. Paul F.X. Dunigan, Jr.
NEPA Compliance Officer
U.S. Department of Energy
Richland Operations Office
P.O. Box 550
Richland, WA 99352

Dear Mr. Dunigan;

RE: DRAFT ENVIRONMENTAL ASSESSMENT (EA) FOR EXPANSION OF THE VOLPENTEST HAZARDOUS MATERIALS MANAGEMENT AND EMERGENCY RESPONSE (HAMMER) TRAINING AND EDUCATION CENTER, HANFORD SITE, RICHLAND, WASHINGTON (DOE/EA-1412)

The Washington Department of Fish and Wildlife (Department) has completed review of the expansion of the Hammer facility EA.

The mandate of the Department is to preserve, protect, perpetuate, and manage the wildlife and food fish, game fish, and shellfish in the state waters and offshore waters. Wildlife, fish, and shellfish are the property of the state (RCW 77.04.012). The goal of the Department's mitigation policy is to maintain the functions and values of fish and wildlife habitat, and we strive to protect the productive capacity and opportunities reasonably expected of a site in the future. In the long-term the Department shall seek a net gain in productive capacity of habitat through restoration, creation and enhancement.

The main concern the Department has with this EA is that no compensatory mitigation is being presented, despite the recommendations from Michael Sackschewsky, from Pacific Northwest National Laboratory. Mr. Sackschewsky makes the statement within a letter in Appendix B, "relatively high diversity of forbs and residual sprouting of bitterbrush following the fire indicates the area is recovering from the fire.... and small unburned sage 'islands' remain". This is important habitat for the two state candidate species observed during the field survey, burrowing owl and loggerhead shrike. Shrub steppe is a priority habitat for the Department.

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Mr. Paul F.X. Dunigan, Jr.
July 9, 2002
Page 2

The loggerhead shrike is also a state listed candidate species as well as a federal species of concern. The WDFW references used in the Sackschewsky letter, Appendix B, are outdated. In the future, we recommend that DOE obtain the most updated priority habitats and species list from the Department prior to completing a field survey. Additionally, the Department recommends that species surveys be completed between April and June in order to capture more nesting species.

The timing restrictions for protecting the burrowing owl are inadequate in this EA. Our PHS guidelines for burrowing owl recommends a timing restriction, from human disturbance, from March 15 through August 15, and this timing restriction would also help other species nesting in the area (M. Vander Haegen, pers.comm). The ecological characteristics of areas used by burrowing owls should be maintained which includes preserving areas of native vegetation and protection of species providing nesting habitat for burrowing owls.

The Department believes compensatory mitigation is appropriate for 80 acres of shrub steppe habitat impacted by this project, given this "recovering habitat" is providing habitat for two stated listed species. Adjusting the site to accommodate a nesting burrowing owl is not adequate mitigation. A map that illustrates how the site was reconfigured to avoid the burrowing owl nest was not provided within this EA. As indicated in Hanford Site Biological Resources Management Plan (BRMaP), level III biological resource requires compensatory mitigation.

The EA did not indicate that any rare plant surveys were performed at this site. Given the number of remnant islands of shrub steppe habitat on this site, a rare plant survey should be completed. Is there going to be a hazardous spill prevention plan created for this site? It would seem appropriate in order to protect ground water from future spills of hazardous substances.

I can be reached at (360) 902-2425 if you have any questions. Thank you.

Sincerely,

Lauri Vigue
Fish and Wildlife Biologist

Cc: Larry Goldstein, WDOE
Tom Zeilman, Yakama Indian Nation
Tom O'brien, USFWS
Dan Landeen, Nez Perce Tribe
Ted Clausing, WDFW

Mr. Paul F.X. Dunigan, Jr.
July 9, 2002
Page 3

Personal Communication

Matt Vander Haegen, Research Scientist
Wildlife Program
Washington State Department of Fish and Wildlife
600 Capitol Way North
Olympia, Wa 98501

**Department of Energy**
Richland Operations Office
P.O. Box 550
Richland, Washington 99352

02-SES-0363

OCT 17 2002

Ms. Laurie Vigue
Fish and Wildlife Biologist
State of Washington
Department of Fish and Wildlife
600 Capital Way North
Olympia, Washington 98501

Dear Ms. Vigue:

COMMENTS ON DRAFT ENVIRONMENTAL ASSESSMENT (EA) FOR EXPANSION OF THE VOLPENTEST HAZARDOUS MATERIALS MANAGEMENT AND EMERGENCY RESPONSE (HAMMER) TRAINING AND EDUCATION CENTER, HANFORD SITE, RICHLAND, WASHINGTON, DOE/EA-1412

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A letter of intent has been received from the Northwest Public Power Association Director, National Utilities Training Services assuring their intent to keep and renew the natural vegetation to the best of their ability.

Ms. Laurie Vigue -2- OCT 17 2002
02-SES-0363

RL has provided your comments regarding obtaining the most up to date priority habitats and species lists prior to completing a field survey to our survey personnel, and will incorporate the MAP into the final EA. If you have any questions, you may contact me on (509) 376-6667, or Randy Small, Security and Emergency Services Division, on (509) 373-2690.

Sincerely,

Paul F. X. Dunigan Jr.
NEPA Compliance Officer

Enclosure
1. MAP

cc w/encl:
B. M Akers, FHI
L. S. Angerman, FHI
N. M. Menard, FHI
M. R. Sackshewsky, PNNL
N. M. Welsh, FHI

Telephoned Comment from Oregon Department of Energy

June 12, 2002 from Dirk, Dunning, Oregon Department of Energy to Paul F. X. Dunigan, Jr, DOE-RL

Comment:
Page 4-3, Section 4.2.4 The statement concerning "state candidate species" doesn't square with statements in Section 5.1.10 or with the Hanford Solid Waste EIS list of candidate species which show both burrowing owls and loggerhead shrikes as Washington State candidate species.

Response:
The discussions will be made consistent to reflect the candidate status of these species.