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Environmental Justice and Native Americans at the Department of Energy Hanford Site

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ESSAYS

ENVIRONMENTAL JUSTICE AND NATIVE AMERICANS AT THE DEPARTMENT OF ENERGY HANFORD SITE

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INTRODUCTION

In March 1998, the Environmental Protection Agency produced a guidance document that provided the following definition of environmental justice:

> Environmental justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, culture, or income with respect to the development, implementation, enforcement and compliance of environmental laws, regulations, and policies. Fair treatment means that no groups of people, including racial, ethnic, or socioeconomic groups, should bear a disproportionate share of negative environmental consequences resulting from industrial, municipal, and commercial

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> operations or the execution of federal, state, local and tribal programs and policies. [1]

The Department of Energy (DOE) has made considerable headway in addressing the issue of environmental justice at the Hanford Site. However, that has not always been the case. To provide a full understanding of environmental justice at Hanford, this Essay presents the background of the Hanford Site, the current challenges of dealing with the waste at the Site, and the efforts of the DOE to address those challenges.

I. THE HANFORD SITE

The Hanford Site, located in southeast Washington State, is approximately 560 square miles of semiarid shrub and grasslands and borders both sides of the Columbia River.[2] It was constructed to help build the atomic bomb, the weapon that would end World War II.[3] The first impacts from the creation of the Hanford Site were felt by American Indians, as well as Euro-American farmers and ranchers in the area of two small towns, Hanford and White Bluffs.[4]

The Confederated Tribes and Bands of the Yakama Nation and the Confederated Tribes of the Umatilla Indian Reservation ceded large amounts of land including the land on which the Hanford Site is located to the

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1. ENVIRONMENTAL PROTECTION AGENCY, OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE, STATE AND TRIBAL ENVIRONMENTAL JUSTICE APPLICATION GUIDANCE FY 1998, at 2 (1998).

2. *See* UNITED STATES DEPARTMENT OF ENERGY, HANFORD SITE: 1998 ENVIRONMENTAL REPORT 1.1-1.3 (1998).

3. *See* MICHELE STENEHJEM GERBER, ON THE HOME FRONT: THE COLD WAR LEGACY OF THE HANFORD NUCLEAR SITE 2 (1992).

4. *See* CLICK RELANDER, DRUMMERS AND DREAMERS 302 (1956).

United States government in the Treaties of 1855.[5] These two tribes as well as the Nez Perce Tribe were removed to reservations but retained fishing rights on portions of the Columbia River.[6] The tribes reserved the right to fish "at all usual and accustomed places" and the privilege to hunt and gather on open and unclaimed land.[7]

A small band of Indians known as the Wanapum who lived, fished, and gathered food and medicines in the Hanford area were asked to leave in 1943.[8] At the same time non-Indian ranchers and farmers were notified that the Federal government was asserting their powers of eminent domain and needed their property for the war effort.[9] The U.S. Army Corps of Engineers' Manhattan Engineering District (the "Manhattan Project"), had found an area that met the criteria for siting a plutonium production facility – a large, remote tract of land, an abundant clean water supply, a large electric power supply, and ground that could bear heavy loads.[10] The same government that displaced the Indians also displaced the Euro-Americans.

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5. *See* Treaty with the Yakima, June 9, 1855, 12 Stat. 951; Treaty with the Walla Walla, Cayuse, June 9, 1855, 12 Stat. 945; Treaty with the Nez Perces, June 11, 1855, 12 Stat. 957; *see also* UNITED STATES DEPARTMENT OF ENERGY, FINAL HANFORD COMPREHENSIVE LAND-USE PLAN ENVIRONMENTAL IMPACT STATEMENT SUMMARY DOE/EIS-0222-F, S-88 (Sept. 1999).

6. *See id.*

7. *See id.*

8. *See* RELANDER, *supra* note 4, at 302.

9. *See id.*

10. For a discussion on the early involvement of the United States Army Corps of Engineers' Manhattan Engineering District see generally F.G. GOSLING, THE MANHATTAN PROJECT: MAKING THE ATOMIC BOMB DOE/MA-0001 11-20 (Jan. 1999).

Once the land had been acquired, construction was very fast.[11] Speed and secrecy were vital to the Manhattan Project.[12] In 1943, the crucial race to develop nuclear weapons changed the quiet, desert lands of Hanford into a huge construction site.[13] The world's first plutonium production reactors were built along the banks of the Columbia River.[14] Plutonium produced by Hanford was detonated over Nagasaki, Japan on August 9, 1945, and five days later, on August 14, 1945, Japan surrendered.[15]

II. SHIFTING PRIORITIES AT THE HANFORD SITE

After World War II ended, the Cold War began. From 1947 to the Cuban Missile Crisis in 1962, the peak years of the Cold War, Hanford's plutonium production rate grew substantially each year,[16] and by 1964 nine plutonium reactors were in operation.[17]

Until 1989, the Hanford site was dedicated primarily to the production of plutonium for national defense and the management of the resulting wastes.[18] However, the Site complex also housed facilities for the entire nuclear process cycle, including fuel fabrication, chemical processing, waste management, and research.[19] The

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11. *See generally* UNITED STATES DEPARTMENT OF ENERGY, HANFORD HISTORY PAMPHLET RL-F97-015 (June 1999).

12. *See* GOSLING, *supra* note 10, at 32.

13. *See id.*

14. *See id.*

15. *See* GOSLING, *supra* note 10, at 53-54.

16. *See* UNITED STATES DEPARTMENT OF ENERGY, HANFORD PAMPHLET, *supra* note 11.

17. *See id.*

18. *See id.* (discussing the activities at Hanford before 1989).

19. *See id.*

Hanford production mission generated two-thirds of all the nuclear waste, by volume, in the DOE complex. [20]

Today, there are no longer any operating plutonium production reactors at Hanford.[21] The DOE mission at Hanford has changed significantly since the end of the Cold War; the primary missions include safe storage, treatment, and disposal of Hanford's legacy wastes, environmental restoration, and science and technology development.[22]

In 1986, the DOE released thousand of pages of reports detailing the early history of Hanford.[23] From these documents and from thousands of additional pages of documentation released in the next six years, the world learned of the immense waste discharges from the Hanford facility[24] totaling billions of gallons of liquids and billions of cubic meters of gases emitted from the Hanford plant since 1944.[25] The Hanford Site spread radioactivity into the Columbia River and into the air and soil of the Columbia Basin.[26] By the late 1950's, underground tanks holding the most toxic concentrations began to leak into the ground.[27]

Solving the serious waste-management and contamination problems of this legacy will take decades and hundreds of billions of dollars. Even then, the task will not be fully completed because the sites and facilities

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20. *See* M.S. GERBER, LEGEND AND LEGACY: FIFTY YEARS OF DEFENSE PRODUCTION AT THE HANFORD SITE, WHC-MR-0293, Revision 2, v (June 1995).

21. *See* UNITED STATES DEPARTMENT OF ENERGY, HANFORD PAMPHLET, *supra* note 11.

22. *See id.*

23. *See* GERBER, ON THE HOME FRONT, *supra* note 3, at 2.

24. *See id.* at 2-3.

25. *See id.* at 3.

26. *See id.*

27. *See id.* at 2-4.

will need continued guarding and monitoring of stored waste.[28]

Tribal governments became eligible for grants as potentially affected governments under the Nuclear Waste Policy Act of 1982.[29] Since that time, the Department of Energy has provided affected tribes funding to support their involvement in the decision-making processes at Hanford.

Today, Hanford's involvement with Native American tribes is guided by DOE's American Indian Policy and implemented by the Indian Nations Program in the Office of Intergovernmental, Public and Institutional Affairs.[30] The Department of Energy, Richland Operations Office ("DOE Richland"), presently manages the Hanford Site. American Indian tribal governments have a special trust relationship with the federal government of the United States, defined by history, treaties, statutes, court decisions, and the U.S. Constitution.[31]

The DOE American Indian Policy states, "[t]he Department will consult with Tribal governments to assure that Tribal rights and concerns are considered prior to DOE taking actions, making decisions, or implementing programs that may affect Tribes."[32] In addition to the American Indian Policy, there are other laws that require consultation with tribal governments. The Trea-

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28. *See* OFFICE OF ENVIRONMENT MANAGEMENT, U.S. DEP'T OF ENERGY, CLOSING THE CIRCLE ON THE SPLITTING OF THE ATOM: THE ENVIRONMENTAL LEGACY OF NUCLEAR WEAPONS PRODUCTION IN THE UNITED STATES AND WHAT THE DEPARTMENT OF ENERGY IS DOING ABOUT IT 9 (Jan. 1995).

29. 42 U.S.C. §§ 10101-10270 (1994).

30. *See* United States Department of Energy, *Indian Nations Program* (visited Feb. 9, 2000) <http://www.hanford.gov/doe/inp/programum.html>.

31. *See* FELIX S. COHEN, HANDBOOK OF FEDERAL INDIAN LAW 70 (1982) (discussing the series of actions defining the United States National Policy toward Indian affairs).

32. United States Department of Energy Order 1230.2, Attachment 1, at 2 (April 8, 1992).

ties of 1855, federal policy, executive orders, laws, and regulations provide the basis for tribal participation in the Hanford Site plans and activities.[33]

The DOE Richland Operations Office established the Indian Nations Program (INP) in 1991, to help facilitate government-to-government interactions on the issues potentially affecting tribal interests at Hanford.[34] The mission of the INP is to provide a proactive program to guide the implementation of the DOE's American Indian policy in an honorable and consistent manner.[35] Further, the INP aims to provide effective ombudsman services and initiate opportunities for meaningful tribal participation in decision-making at Hanford.[36]

Native American tribes are particularly concerned about the threat to the Columbia River from Hanford contaminants. The River is approximately 1,200 miles long, making it the largest waterway flowing into the Pacific Ocean from the North American coast.[37] It runs through the Hanford Site and remains the principal natural spawning area for Columbia River chinook salmon.[38] Much of tribal culture, religion, and lifeways are tied to the river.[39] The tribes want to assure themselves that the Hanford environment is clean and healthy so that they can safely exercise their treaty rights.

The safety of the Columbia River from atomic wastes was an early concern of the Manhattan Engineer Dis-

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33. *See id.*

34. *See id.*

35. *See id.*

36. *See id.*

37. *See* GERBER, LEGEND AND LEGACY, *supra* note 20, at 35.

38. *See* HANFORD REACH OF THE COLUMBIA RIVER: COMPREHENSIVE RIVER CONSERVATION STUDY AND ENVIRONMENTAL IMPACT STATEMENT 99 (June 1994).

39. *See id.* at 12. Tribes in the area still rely on the salmon, the foods, and the medicines present around the Hanford site. *See id.*

trict officials who built the Hanford Engineer Works.[40] More recently, in order to gain a clearer understanding of the potential radiation effects, the DOE undertook "dose reconstruction" studies around several of its major facilities, including Hanford.[41] Efforts began with trying to determine how much radiation citizens living near the Hanford Site had received.[42] The DOE assembled hundreds of documents addressing the environmental impacts of its operations from 1945 to 1985.

The DOE, EPA, and the Washington State Department of Ecology signed a comprehensive cleanup and compliance agreement on May 15, 1989.[43] The Hanford Federal Facility Agreement and Consent Order, or Tri-Party Agreement, is an agreement for achieving compliance with the remedial provisions of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA)[44] and with the Resource Conservation and Recovery Act (RCRA)[45] treatment, storage, and disposal unit regulations and corrective action provisions.[46] The Tri-Party Agreement: (1) defines and ranks CERCLA and RCRA cleanup commitments, (2) establishes responsibilities, (3) provides a basis for budgeting, and (4) reflects a concerted goal of achieving full regulatory compliance and remediation, with enforceable milestones in an aggressive manner.[47]

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40. *See* GERBER, LEGEND AND LEGACY, *supra* note 20, at 35.

41. *See* THE U.S. DEPARTMENT OF ENERGY OFFICE OF ENVIRONMENTAL MANAGEMENT, CLOSING THE CIRCLE ON THE SPLITTING OF THE ATOM 73 (Jan. 1995).

42. *See id.*

43. *See* United States Department of Energy, *Tri-Party Agreement* (visited Feb. 8, 2000) <http://www.hanford.gov/tpa/tpahome.html>.

44. 42 U.S.C. §§ 9601-9675 (1980).

45. 42 U.S.C. §§ 6901-6991 (1994).

46. *See* United States Department of Energy, *Tri-Party Agreement*, *supra* note 43.

47. *See id.*

DOE Richland is committed to assessing the public health effects of past emissions as well as assessing current safety issues. In 1990 the DOE and the Department of Health and Human Services (DHHS), issued a memorandum of understanding assigning the responsibility for conducting public health studies to the DHHS as well as the National Institute of Occupational Safety and Health and the National Center for Environmental Health.[48] This memorandum was initiated to allow organizations outside the Hanford site to conduct DOE employee health studies.[49]

The Hanford Openness Workshops (HOW) are a collaborative effort among the DOE, the Consortium for Risk Evaluation with Stakeholder Participation (CRESP), the Oregon Office of Energy, and regional Tribal and citizen representatives.[50] HOW's mission is to resolve issues affecting the availability of information important to public health, the environment, understanding, and decision-making at the Hanford Site.[51] A special workshop was held to identify and address concerns particularly important to tribes.[52] The primary recommendation for tribal openness focused on the need to declassify documents.[53] At the Hanford Site, public involvement in the 1990's is the product of two forces:

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48. United States Department of Energy, Memorandum of Understanding Between Department of Energy and Department of Health and Human Services 1990 (visited March 5, 2000) <http://www.hanford.gov/safety/healthstudies/mou.html>.

49. *See* United States Department of Energy, *Hanford Health Studies Information* (visited Feb. 17, 2000) <http://www.hanford.gov/safety/healthstudies/index.html>.

50. *See* UNITED STATES DEPARTMENT OF ENERGY, IS OPENNESS WORKING? A PROGRESS REPORT HANFORD OPENNESS WORKSHOPS, HOW-991015-1; TRAC-0828, Rev. 0, I (Fall 1999).

51. *See id.*

52. *See id.* at IV.

53. *See id.*

citizens' insistence on a role in Hanford cleanup, and DOE's willingness to open policy decision processes to public scrutiny and debate.[54] The DOE Richland operations office and the regulators do not have to give up any of their decision-making authority, or their accountability for decisions, when they involve the stakeholders and tribal governments in pre-decisional analysis.[55]

In September of 1999, the DOE issued a Final Comprehensive Land-Use Plan Environmental Impact Statement for the Hanford Site.[56] The Nez Perce Tribe and the Confederated Tribes of the Umatilla Indian Reservation participated as consulting tribal governments and helped draft portions of the document.[57] Environmental justice impacts to American Indians as well as the health impacts from subsistence consumption of fish and wildlife were evaluated.[58]

CONCLUSION

The Department of Energy is addressing environmental justice and trust responsibilities toward Native Americans by seeking the advice and recommendations of tribal governments on Hanford cleanup and providing the financial means and opportunities to participate in decision-making processes. The DOE intends to accomplish the clean-up of Hanford in a manner that protects health and welfare of workers, the public and

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54. *See* United States Department of Energy, *A Message from the Hanford Site Manager* (visited Feb 9, 2000) <http://www.hanford.gov/doe/pubinvolve/pip/pip.html>.

55. *See id.*

56. *See id.*

57. *See id.* at S-87.

58. *See* M.K. Wright, *The Prehistoric Period of the Hanford Site and Associated Portion of the Columbia River* 17 (visited Feb. 8, 2000) <http://www.hanford.gov/doe/culres/mpd/sec2.html>.

the environment, and minimizes further infringement of the rights and interests of the Native American tribes at Hanford.