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YAKIAM INDIAN NATION INVOLVEMENT IN RCRA ON TRIBAL AND CEDED LANDS

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

NOV 5 1990

NOTE TO: Sylvia Lowrance

THROUGH: Dev Barnes

FROM: Susan Absher

SUBJECT: Yakima Indian Nation Involvement in RCRA Program Decisionmaking on Tribal and Ceded Lands

We recently received a memorandum from Region X concerning an issue raised by an Indian Tribe during the public comment period of a Washington State program revision decision. The Yakima Indian Nation (YIN) raised the question of Federal and State laws and regulations that allegedly affect YIN Treaty rights under the Treaty of 1855. Under that Treaty the YIN ceded land to the United States Government (land, which subsequently became 25.4% of the State of Washington), and the U.S. Government guaranteed the YIN certain rights (fishing, hunting, etc., at "all usual and accustomed places"). The YIN have expressed concern that current and future HWMFs may "affect the Yakima way of life, its cultural resources, the freedom to practice religion on tribal and ceded lands, or the promises guaranteed in the Treaty of 1855 (emphasis added).

At this time the YIN has not asserted any legal claim but is requesting the opportunity to be involved on a "government-to-government" basis in RCRA program decisionmaking on tribal and ceded lands. The Tribe also wishes to be assured that their Treaty rights are not disregarded by agreements between EPA and the State. Finally, the YIN believe that EPA and the State must provide technical and financial assistance to the YIN to develop the ability needed to protect their Treaty rights and resources.

The Washington revision program decision has become effective. Region X wrote the YIN agreeing to explore the

"ceded" land issue, and has sent information on the issue to OGC. Region X ORC has the lead on researching the issue further. We will track developments through the Region and OGC.

The Tribe's claim of an interest in "ceded" land is interesting. One of the fundamental cases of U.S. Indian law, U. S. v. Winans, 198 U.S. 371 (1905), was brought by the U.S., in behalf of the YIN, to ensure the Tribe's fishing rights under that same Treaty, on "ceded," and now State/private land. In that decision "the Indians were given a right in the [ceded] land - the right of crossing it to the river - the right to occupy it to the extent and for the purpose mentioned [in the Treaty]." It is unlikely that fishing and hunting rights can be broadened to general environmental rights in the "ceded" lands, but it is certainly possible that a court could so rule, especially in the event a HWMF were to be proposed near one of the "usual and accustomed places."

cc: Jeff Denit
Matt Hale
Suzanne Rudzinski
Karen Morley
Judi Kane