

**Comments  
on the  
Announcement of the Revised Department of Energy  
American Indian and Alaska Native Tribal Government Policy  
Seattle, Washington  
October 31, 2000**

**by Russell Jim, Manager  
Environmental Restoration / Waste Management Program  
for Lonnie Selam, Sr., Tribal Chairman  
Yakama Nation**

Thank you for the opportunity to speak today, Mr. Secretary, and distinguished members of the audience. What we are dealing with today is the new policy of the Department of Energy, meant to address its relations with the original sovereigns of this land.

The policy of the newcomers to this land has taken many twists and turns in the short time since Columbus lost his way and stumbled upon what he thought was the West Indies. Many of the honored guests here today are still known as Indians by virtue of this error some five hundred years ago – by no means, though, was this the most egregious transgression visited upon the original inhabitants, nor is it the only one which needs to be redressed.

The first American Indian policy was based upon international law developed by Spanish legal theorists in the 16<sup>th</sup> century. This original doctrine held that Native Americans possessed inherent natural legal rights, maintained jurisdiction over their property and their territory, and were free of European authority. Now that five centuries have passed, perhaps it is time to look at implementing this policy.

Without considering why this enlightened policy was summarily dismembered, and without recounting the litany of crimes against the Natives of this land, suffice it to say that Indian people have good reason to be skeptical of high-minded words put forth as Indian policy, even when done with the best of intentions.

What is a policy? Is a policy simply a means to implement the law? Can policy be utilized to advance the law, or to subvert it?

The Yakama Nation is the government perhaps most affected by actions of the U.S. Department of Energy. The greatest concentration of radioactive and hazardous waste in the Western Hemisphere is on Yakama ceded land at DOE's Hanford Site. Restoration of that land is not only a matter of the health and welfare for Northwest citizens, but also is a matter of Treaty compliance. The fate of the salmon and other native fish lies in large part with DOE's Bonneville Power Administration. Bringing the salmon back from the brink of extinction and to their former sustainable levels is a concern for all who have an interest in the future – it is also a concern of Treaty compliance.

How will the new DOE American Indian Policy address these matters? Without knowing for sure, it may be safe to say that actions will speak louder than words.

The revised American Indian and Alaska Native Tribal Government Policy states that there exists a

“legally enforceable fiduciary obligation of the United States to protect tribal sovereignty and self-determination, tribal lands, assets, resources, and treaty and other federally recognized and reserved rights.”

At the Hanford site, the Yakama have such assets, resources, Treaty rights and reserved rights. Yet, when the Yakama Nation proposed a draft agreement to DOE a year ago concerning an intergovernmental process and means to protect such resources and rights, the response from your staff, Mr. Secretary, was concern that the agreement might create “newly enforceable obligations.” It is difficult to see how enforceable obligations derived from a Treaty signed 145 years ago can be considered ‘new.’ So, the gulf remains between words and actions.

If the American Indian Policy defines a process for intergovernmental relations, then Treaty compliance must define the substance.

DOE has another policy in the works now for its nuclear complex sites, known as ‘stewardship.’ Under this policy, cleanup would cease, and extensive tracts of land upon which Tribal governments maintain resources would be designated off-limits, to be managed through ‘institutional control.’ As one observer noted, the only problem with managing nuclear waste through institutional control is that there is no institution, and no

control. Some of these wastes are considered the most dangerous substances on Earth - while the prospect of putting fences around such sites to protect the environment has been questioned by the National Academy of Sciences and others, little attention has been given to the impact of excluding Tribal people, sometimes permanently, from their resources.

The Yakama Nation has the right and the obligation to work with the Department of Energy to make sure that land, water and other Tribal resources damaged by national endeavors, whether hydroelectric or nuclear weapons related, are restored in a manner which complies with the letter and spirit of the Treaty. There remains fear that Tribal technical staff can only hinder the tremendous effort which lies ahead in choosing the best path forward to restoring the environment - those fears are being shown to be unfounded. By incorporating Tribal concerns when planning is still in its pre-decisional stage, great effort and costs can be saved later when it is confirmed that Treaty rights do create enforceable obligations. The task of every Tribal government, and of the DOE, is to develop constructive guidelines by which such obligations can be complied with - this will take more than recognizing that such obligations exist.

Mr. Secretary, as the Tribal manager designated to speak today for our Chairman, I request your assistance in providing an example of how this new policy can improve intergovernmental relations. Your recent words are taken earnestly, that "DOE intends to comply with its obligations under the Treaty of 1855." What those obligations are, and how they are to be fulfilled cannot be determined unilaterally, but is a matter for

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government to government agreement. Your direct assistance may be necessary to help move beyond acknowledgement that DOE intends to comply with its obligations, and to achieve agreement on what those obligations mean. Hopefully, the new American Indian policy can help provide the framework to make progress on this important matter.

In closing, thank you for the opportunity to address these issues, which are at the heart of Tribal sovereignty, self-determination, and relations with the Federal government. Finally, I would like to thank my good friend, Mr. Robert Holden of the National Congress of American Indians, for his tireless work in bringing together representatives of Tribal governments from around this land, and officials from the Department of Energy, to strengthen and more clearly define the principles for relations between the original sovereigns of this land and the United States.

**SCIENCE'S COMPASS**  
SCIENTISTS ORIENTING SCIENTISTS

# Genetic Benefit Sharing

Human Genome Organization Ethics Committee

**C**ommercialization of genetic information is a phenomenon concomitant with the near completion of the Human Genome Project. Furthermore, there is considerable likelihood that future for-profit research in genetics will increase inequalities between rich and poor nations and between rich and poor people within each nation. Until recently, there has been little comment from national or international ethics committees.

Huge profits are expected to accrue from genetic research. Although corporate members of the Biotechnology Industry Organization (BIO), which represents over 800 companies that do much of the commercial genetic research, reported a collective loss of \$5 billion last year, a turnaround is expected as pharmaceutical companies allied to BIO members begin to market drugs and vaccines based on genetic research. The pharmaceutical industry as a whole has the highest percentage of net profits—19%—of all Fortune 500 industries. Applied research in both the industrial and academic sectors has focused on diseases commonly found in North America, Europe, Japan, Israel, Australia, and New Zealand, where significant numbers of people can afford the new genetic technologies.

Yet, there is now increasing international recognition that benefits should be more equally distributed. To date, the concept of benefits seems to be limited to the payment of research participants or the therapeutic benefits of clinical trials. Unless action is taken, it is likely that benefits from the Human Genome Project may accrue only to rich people within rich nations. This, we believe, is unfair and inequitable. Thus, the Human Genome Organization (HUGO), an international organization of genetic researchers, has developed a statement\* addressing this critical issue and suggesting benefit sharing as an attempt to address inequities.

The issues surrounding benefit sharing are complex. Should it be specific to families or communities that contributed to research? Should it be limited to those with particular disorders, or should it be more general? The most practical solution is that benefits be distributed broadly, perhaps to the health care infrastructures of entire nations.

There are three fundamental arguments in favor of benefit sharing. First, we share 99.9% of our genetic makeup with all other humans. In the interests of human solidarity, we owe each other a share in common goods, such as health. Second, starting with Hugo Grotius's law of the sea in the 17th century and proceeding to international law governing air and space in the 20th century, such global resources have been viewed as common, equitably and peacefully available to all humanity, and protected in the interests of future generations. International law may therefore set a precedent for regarding the human genome as a common heritage. Third, when there is a vast difference in power between an organization carrying out research and the people providing material for that research, and when the organization stands to make a substantial profit (albeit taking the risk of investment), concerns about exploitation arise that benefit sharing can address. Considerations

of justice require action to meet basic health care needs.

Creating specific mechanisms for benefit sharing may well prove difficult, especially in the cases of large groups and multifactorial diseases. Further, profits may accrue many years after the initial research and to a different entity. Patent rights may expire before or soon after a product becomes profitable. It is therefore preferable that companies act directly, voluntarily, and in harmony with community values and preferences.

The payment of corporate taxes does not fulfill the moral obligation of benefit sharing, as this is clearly a civic duty that falls on everyone. Companies involved in human health have special moral obligations above and beyond payment of taxes. Canada's Newfoundland Genomics devotes 1% of net profits to a charitable trust for the general population. A figure of 1 to 3% of net profits for benefit sharing (which is over and above R&D on diseases found in developing nations) seems most reasonable. In setting this figure, we intend to provide a minimal moral guideline to encourage companies to become good global citizens. Our views are not meant to antagonize but to promote discussion and set a realistic benchmark for sharing our common heritage.

Bartha Maria Knoppers is the chair of the HUGO Ethics Committee. E-mail: [knoppers@drott.umontreal.ca](mailto:knoppers@drott.umontreal.ca). \*HUGO Ethics Committee, Statement on Benefit-Sharing (<http://www.gene.ucl.ac.uk/hugo/benefit.html>).



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"[W]e owe each other a share in common goods, such as health."

# Energy chief promises a new deal for Indians

**Tribal leaders hope action follows words on policy to treat them like nations**

BY SCOTT SUNDE  
PI reporter

U.S. Energy Secretary Bill Richardson yesterday introduced a revised policy that calls for his agency to give new respect to the nation's Indian tribes and treat them as sovereign governments.

Tribal leaders immediately called on Richardson, who was in Seattle to present the revised policy, to make sure it is as good on the ground as it is on paper.

The policy requires the department to consult with tribes before taking action that would affect them, to comply with the law to better protect tribal resources and to uphold treaty rights.

He said his department has not always understood tribes and tribal rights. "They didn't know how to deal with tribal governments," Richardson told tribal leaders at the Bell Harbor International Conference Center.

Tribal leaders praised the policy statement, but said they have to see it in action on their reservations where their people live.

"We still eat the fish. We still go

to the river. We still harvest the game," said Carla Higheagle of the Nez Perce Tribal Executive Committee.

She and Russell Jim of the Yakama Tribe challenged Richardson to apply the new policy to the Energy Department's Hanford Nuclear Reservation.

"Indians have good reason to be skeptical of high-minded words," said Jim, noting disputes in the past over treaty language.

He pointed out that "the greatest concentration of radioactive and hazardous waste in the Western Hemisphere is on Yakama-ceded land at DOE's Hanford site."

A year ago, the Yakama Tribe proposed an agreement to the Energy Department concerning Hanford and protecting resources and treaty rights, said Jim, the Yakama's manager of environmental restoration and waste management. But Energy Department officials expressed concerns that the pact could create new obligations.

"It is difficult to see how enforceable obligations, derived from a treaty signed 145 years ago, can be considered new," Jim said. "So the gulf remains between words and action."

Richardson promised Jim action, saying he will send a team to meet with Yakama representatives. "I'll send our best negotiators to see how we can bridge the gap," he told Jim.

Richardson said his team would focus on the government-to-government relations between the Energy

Department and the tribe, funding for cleaning up Hanford and issues surrounding the Hanford Reach on the Columbia River. President Clinton recently declared the 51-mile stretch on the Columbia a national monument.

Indian tribes weren't the only group Richardson was trying to mollify yesterday. He also held a closed-door meeting with Asian American leaders.

He acknowledged that there have been concerns in America's Asian community about racial profiling by the Energy Department. Those concerns stem from the prosecution of Wen Ho Lee, a researcher at the department's Los Alamos National Laboratory.

Lee was singled out in an investigation of espionage at Los Alamos, fired and jailed for nine months. Ultimately, federal prosecutors dropped all but one of 59 charges against him, and no evidence surfaced that he passed nuclear secrets to anyone.

Richardson said he does not believe that Lee was a victim of racial profiling. He has held similar meetings in New York and California with Asian Americans, an important voting block next week in what may be the closest presidential election in 40 years.

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## Policeman held in sex-video case

**Alleged relations involve teenage girl in Explorer group**

THE ASSOCIATED PRESS

BANDON, Ore. — The discovery of a sexually explicit video of four teenage police Explorers has led to the arrest of a police officer on sexual charges involving another 17-year-old Explorer.

Bandon Police Chief Bob McBride said furor over the video — which apparently was copied and distributed widely in Bandon — indirectly led to the discovery of Peters' alleged sexual contact with the girl.

The girl's parents, who had heard about the video, read their daughter's diary and learned about the alleged relationship, which they reported to police, McBride said.

Peters was placed on paid administrative leave, but resigned Monday.

McBride told The (Coos Bay) Herald that the girl had been an Explorer

tion.

McBride told the newspaper the relationship with the girl may have occurred during police time while she went on ride-alongs with Peters.

Peters doesn't appear in the video, which shows the four police Explorers — two boys and two girls — engaged in sexual activity, McBride said. Police are continuing to investigate and have not ruled out Peters' involvement in its production.

Peters denied doing more than lending Police Department video equipment to the teenager and said