management accountability for compliance with Federal statutes, Executive orders, treaties, DOE orders, and implementation guidance. The Department also ensures that DOE contractors are obligated to implement DOE programs and projects in a manner that is consistent with this Policy and that reflects this commitment in site management contracts.

The background statement in "Management of Cultural Resources at Department of Energy Facilities" (DOE 2001b) further states that

DOE recognizes the cultural and scientific value of the resources that may exist on the properties under its management or over which it has direct or indirect control. Therefore, DOE has implemented a program to protect these resources and ensure that all DOE facilities and programs comply with all existing cultural resource executive orders, laws, and regulations. Thus, DOE is able to preserve, protect, and perpetuate cultural resources for future generations.

The DOE management document (DOE 2001b) defines cultural resources to include "historic properties" as defined in the National Historic Preservation Act, "archaeological resources" as defined in the Archaeological Resources Protection Act of 1979, and "cultural items" as defined in the Native American Graves Protection and Repatriation Act (see Section 6.14).

The National Historic Preservation Act authorizes the Secretary of the Interior to maintain a National Register of Historic Places (16 USC 470a[a][1]). Federal agencies are to consider the effect of their actions on properties included in or eligible for inclusion in the Register and afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on such actions (16 USC 470f).

The Archaeological Resources Protection Act of 1979 prohibits the excavation of material remains of past human life on public or Indian lands that have archaeological interest and are at least 100 years old without a permit from the appropriate federal land manager or an exemption (16 USC 470aa, 470bb, 470ee).

The Native American Graves Protection and Repatriation Act of 1990 prohibits the intentional excavation or removal of human remains or cultural items without a written permit, and prescribes protective measures and repatriative actions to be taken in the event that human remains or cultural items are discovered inadvertently (25 USC 3001 et seq.).

DOE and Hanford Site contractor compliance with cultural resources compliance legislation is discussed in Section 2.2.14 of the *Hanford Site Environmental Report for Calendar Year 2001* (Poston et al. 2002).

6.13 Treaties, Statutes, and Policies Relating to Native Americans

DOE's relationship with American Indians is based on treaties, statutes, Executive Orders, and DOE policy statements. Representatives of the United States negotiated treaties with leaders of various Columbia Plateau American Tribes and Bands in June 1855 at Camp Stevens in the Walla Walla Valley. The negotiations resulted in three treaties, one with the 14 tribes and bands of the group that would

become the Confederated Tribes and Bands of the Yakama Nation, one with the three tribes that would become the Confederated Tribes of the Umatilla Indian Reservation, and one with the Nez Perce Tribe. The U.S. Senate ratified the treaties in 1859. The negotiated treaties are as follows:

1. Treaty with the Walla Walla, Cayuse, etc. (June 9, 1855; 12 Stats. 945)

2. Treaty with the Yakama (June 9, 1855; 12 Stats. 951)

3. Treaty with the Nez Perce (June 11, 1855; 12 Stats. 957)[(a)].

The Confederated Tribes and Bands of the Yakama Nation, the Confederated Tribes of the Umatilla Indian Reservation, and the Nez Perce Tribe are federally recognized tribes that are eligible for funding and services from the Bureau of Indian Affairs by virtue of their status as Indian tribes (67 FR 46328).

The terms of the three preceding treaties are similar. Each of the three tribal organizations agreed to cede large blocks of land to the United States. The Hanford Site is within the ceded lands of the Yakama Nation and the Confederated Tribes of the Umatilla Indian Reservation. The treaties reserved to the Tribes certain lands for their exclusive use (the three reservations). The treaties also secured to the Tribes certain rights and privileges to continue traditional activities outside the reservations. These included (1) the right to fish at usual and accustomed places in common with citizens of the United States, and (2) the privileges of hunting, gathering roots and berries, and pasturing horses and cattle on open and unclaimed lands. None of the activities involved in the HSW EIS would take place on open and unclaimed land.

The *U.S. Department of Energy American Indian and Alaska Native Tribal Government Policy* (DOE 2000) states, in part, that DOE

- recognizes the federal trust relationship with American Indians and Alaska Native Nations and will fulfill its trust responsibilities to them

- recognizes and commits to a government-to-government relationship and will institute appropriate protocols and procedures for program and policy implementation

- compliance with applicable federal cultural resource protection and other laws and executive orders will assist in preservation and protection of historic and cultural sites and traditional religious practices.

The American Indian Religious Freedom Act (42 USC 1996) establishes that U.S. policy is to protect and preserve for American Indians their inherent rights of freedom to believe, express, and exercise their traditional religions, including access to sites, use and possession of sacred objects, and the freedom to worship through ceremonies and traditional rites.

(a) The three treaties, as well as additional treaties, are included in Appendix A of the Hanford Comprehensive Land-Use Plan EIS (DOE 1999).

The Native American Graves Protection and Repatriation Act establishes the right of lineal descendents, Indian Tribes, and Native Hawaiian organizations to certain Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony discovered on federal lands after November 16, 1990 (25 USC 3001 et seq.). When discovered during an activity on federal lands, the activity is to cease and appropriate tribal governments are to be notified. Work on the activity may resume, if resumption of the activity is otherwise lawful, 30 days after the receipt of certification that tribal governments have received the notice.

Executive Order 13007, "Indian Sacred Sites," (61 FR 26771) directs federal agencies, to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions, to (1) accommodate access to and ceremonial use of American Indian sacred sites by their religious practitioners, and (2) avoid adversely affecting the physical integrity of such sacred sites. Where appropriate, agencies are to maintain the confidentiality of sacred sites.

The DOE Richland Operations Office (DOE-RL) interacts and consults regularly and directly with the three federally recognized tribes affected by Hanford Site operations, that is, the Nez Perce Tribe, the Confederated Tribes of the Umatilla Reservation, and the Yakama Nation. In addition, the Wanapum, who still live adjacent to the Hanford Site, are a non-federally recognized tribe that has strong cultural ties to the Site. The Hanford area was also used by groups whose descendants are now enrolled members of the Confederated Tribes of the Colville Reservation. The Wanapum and the Confederated Tribes of the Colville Reservation are also consulted on cultural resource issues in accordance with DOE policy and relevant legislation.

6.14 Environmental Justice and Protection of Children

Section 2-2 of Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," (59 FR 7629) states that:

> Each Federal agency shall conduct its programs, policies, and activities that substantially affect human health or the environment, in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under, such programs, policies, and activities, because of their race, color, or national origin.

The CEQ has issued guidance for federal agencies to use in implementing Executive Order 12898 in conjunction with NEPA (CEQ 1997). DOE has also issued an information brief for DOE staff covering Executive Order 12898 (DOE 1997).

Section 1 of Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks," (62 FR 19885) requires federal agencies to: