



UNITED STATES
ATOMIC ENERGY COMMISSION
NEVADA OPERATIONS OFFICE
P. O. BOX 14100
LAS VEGAS, NEVADA 89114

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JUN 2 1972

Martin R. Hoffmann, General Counsel, HQ

ENIWETOK LEGAL MATTERS

Attached is a copy of a memorandum to me, dated May 24, 1972, subject as above, from Roger Ray, Assistant Manager for Operations, NV. I concur in Mr. Ray's concern and am ready to participate in any way you may desire in this obvious problem.

Original Signed by
THOMAS O. FLEMING

Thomas O. Fleming
Chief Counsel

Enclosure:
Memo, 5/24/72, Ray
to Fleming

BEST COPY AVAILABLE

REPOSITORY DOE History Division
COLLECTION RG 326, Tommy McGraw, J65# 1320
BOX No. 5
FOLDER Organization



[REDACTED]

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May 24, 1972

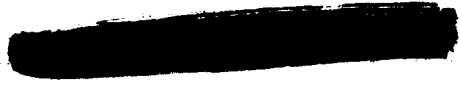
Thomas O. Fleming, Chief Counsel

ENIWETOK LEGAL MATTERS

As you know, a number of actions are now underway which will ultimately lead to the return of Eniwetok Atoll to the Eniwetokese (Marshall Islanders who are presently living on Ugelang). On the visit which I just completed accompanying a group of Eniwetokese to the Atoll, there were as many lawyers in the party as there were Marshallese natives (6). Five of these are practicing attorneys; the sixth is the Deputy High Commissioner of the Trust Territory. Three have an active lawyer-client relationship with the former residents of Eniwetok and a fourth, who has just been admitted to the bar in Micronesia, will most likely join them. The fifth practicing attorney is the District Attorney of the Marshall Islands District--a Trust Territory Government employee. Except as this man, Mr. Russ Walker, may be considered to represent the Government of the United States, that Government was not represented by Counsel; and presumably it is against the United States Government that the actions, if any, of the Eniwetokese will lie.

The issues are many and complex and surely not all of them have yet surfaced. As examples, I cite the following:

- a. The instruments whereby the United States obtained the use of the Atoll leave much to be desired in precision and clarity. There appears to be a real question as to whether what was obtained was a lease, a use permit or title to the lands; and whether under any of these possible interpretations the United States was legally free to destroy or damage the land.
- b. There is a large amount of capital equipment at Eniwetok. The Marshallese undoubtedly will claim much or all of it. The Trust Territory may well wish to relocate some of it to other areas as was done at Bikini. The question of U. S. Government rights to what is currently considered U. S. Government property will surely be an issue.



- c. The Environmental Impact Statement for the Air Force PACE program is still in draft; yet the program itself is proceeding and has already led to what some perceive to be a gross environmental insult. Does the Environmental Quality Act apply in the Trust Territory? And does similar legislation recently passed by the Congress of Micronesia apply?
 - d. If there are land areas at Eniwetok which are not habitable, must we lease them, buy them or convey equivalent land areas to which we hold title?
 - e. What would such actions imply for the ultimate settlement of our Bikini account?
 - f. If the Atoll is returned legally to the Trust Territory at the end of CY 1973, does Micronesian law then apply? And what does that imply as to taxation, duty free entry, etc., during a cleanup operation which could last for 2 years or more?
- . . . and so on.

The Federal agencies which will be concerned with future actions on Eniwetok are at least the following:

- Department of State
- Department of the Interior
- Department of Defense
- Office of Economic Opportunity
- Department of Commerce (minor)
- Department of Treasury (U. S. Coast Guard)
- Department of Transportation (perhaps)
- Atomic Energy Commission
- Department of Justice

I have listed Justice last because to my knowledge Justice is not yet in the picture. But I believe it is imperative that the Justice Department attorney who will have this responsibility be designated forthwith in order that he not find himself hopelessly behind when the time comes for him to represent the United States against an aggressive group of attorneys who are even now gathering real and damaging evidence.

[REDACTED]

Thomas O. Fleming

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I seek your advice as to what I ought to do to help make this come about.

Ray
Roger Ray, Assistant Manager
for Operations

cc: Robert E. Miller, Manager

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ADDENDUM

Prior to WW I, Germany assumed a "protectorate" over the Marshalls. The Germans developed Eniwetok economically with the introduction and cultivation of coconut, arrowroot, and monitor lizards.

At the outbreak of WW I Japan seized the Atoll; Japan subsequently received a League of Nations mandate to control the Marshalls upon Germany's surrender. By 1943, the Japanese had secretly developed Eniwetok into a well fortified complex. An airstrip on Engebi was built and used as an important fighter staging point during WW II. The capture of Eniwetok, as the third phase in the Central Pacific Offensive of 1943-44, was approved by Roosevelt and Churchill in early 1943. The battle began on February 17; victory was achieved on February 20, 1944. At the time of its capture, Engebi was reported to have been more thoroughly pulverized by heavy bombardment than any other objective captured by an Allied amphibious force in 1944. All coconut trees and most vegetation had been obliterated by landing time.

At the war's conclusion the U. S. was granted a United Nation's Trusteeship for the Marshalls. In 1946, when the AEC decided to conduct a major atomic testing program at Eniwetok, the 136 natives on Eniwetok were resettled on Ujelang Atoll, 150 miles to the southeast. Between 1946 and 1958 more than 30 nuclear tests were conducted at Eniwetok.

Soon after the voluntary nuclear test moratorium went into effect (November 1, 1958), Eniwetok Atoll became an impact and scoring area for ICBMs launched from Vandenberg AFB. Since 1969 the Atoll has not functioned as an impact area and only a few minor test programs have been conducted. The most notable were two beryllium rocket tests between 1966 and 1969 on the Island of Engebi.