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Received 8/25/78
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August 11, 1978

MEMORANDUM FOR THE CHAIR AND MEMBERS OF INTERAGENCY
TASK FORCE ON CLAIMS

SUBJECT: Negotiating Positions on Radiation-
Related Claims

At the first meeting of the Interagency Task Force on claims, interested agencies were asked to prepare negotiating positions on radiation-related claims for discussion on August 16. We are pleased to submit for your consideration a position on health and medical claims and a position on land use claims.

The broad objective of this Task Force should be to develop a negotiating position. The Marshallese are represented by able and experienced counsel of their own choosing who can be expected aggressively to assert the interests of their clients. The Task Force must assume that negotiation of these claims will involve considerable pressure to bargain upward from any position that it proposes. Thus, the precise responsibility of the Task Force should be to establish an initial negotiating position, and to set the outer limits beyond which the United States Government is not willing to negotiate.

The negotiating position for health and medical claims should have two goals. First, a comprehensive program of health and medical care must be provided for all radiation-related injuries. Second, injured individuals must be compensated adequately for their harm. To achieve these goals, the negotiating position must include periodic medical examinations to identify radiation-related injuries; comprehensive health and medical care to treat all such injuries; and adequate compensation.

There is no reason to treat health and medical claims by individuals of one atoll differently from those made by individuals of any other atoll. The

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negotiating position should offer the same program to all individuals without distinction. Existing legislation sponsored by the Department of the Interior for the peoples of Rongelap and Utirik Atolls is an excellent starting point for this program. The benefits of this legislation should be extended to all affected peoples and supplemented as needed to achieve the goals outlined above. To avoid double recovery, the value of compensation already received should be taken into account.

Because the United States Government has had different experiences with the peoples of the atolls involved, the negotiating position for land use claims should be tailored to deal with the specific facts of each case. In all cases the United States Government should pursue the following objectives:

(1) Involve the Marshallese in establishing and implementing policy for use of land that may be radiologically contaminated. A permanent mechanism must be created to accomplish this objective.

(2) Compensate for loss of use or damage to land. The most that may be demanded of the United States Government is to make injured land-owners whole, either by restoring the land or by making compensatory payments. There should be no attempt to go beyond this limited objective.

Our land use analysis balances the amount of land use compensation already made against the value of land involved. Because it represents a position already taken by the United States Government in connection with passage of Public Law No. 94-34 and is reasonable, the Department of the Interior valuation of Ujelang Atoll is adopted as the standard for the initial negotiating position. Again, to avoid double recovery, the value of compensation already received should be taken into account. Finally, it is important to recognize that in two instances legally binding release and hold harmless agreements for land use claims have already been given by the people involved.

Concern has been expressed that any agreement negotiated with the Marshallese be fair and equitable to both the peoples and their leadership. Of course, primary responsibility in this regard must rest with counsel for the peoples. Nevertheless, the United States Government should be sensitive to this concern.

We believe that these negotiating positions provide a sound basis for settlement of all radiation-related claims through serious negotiation with the Marshallese. We have been in close consultation with Department of Energy and, although they have not completed their internal coordination process, we are authorized to state that there is general agreement between Department of Energy and Department of Defense with respect to these negotiating positions.

RJK

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NEGOTIATING POSITION FOR HEALTH AND MEDICAL CLAIMS

The United States Government negotiating position ought to be as follows:

A. Periodic Medical Examination.

The United States Government will provide a comprehensive medical examination annually to individuals as follows:

(1) Enewetak and Bikini Atolls. To each resident of the atolls.

(2) Rongelap and Utirik Atolls. To each person who was a resident on March 1, 1954, and to progeny of such persons.

B. Health and Medical Care.

The United States Government will provide comprehensive health and medical care for any radiation-related injury, such care to include any necessary hospitalization, surgery, post-operative care and rehabilitation. The details of this program should be the subject of negotiation.

C. Compensation.

The United States Government will make payments in compensation for radiation-related injuries as follows:

(1) \$25,000 to each person, or his heirs or legatees per stirpes and not per capita, who has had his thyroid gland or a neurofibroma in the neck surgically removed, or who has developed thyroid atrophy resulting in myxedema or who develops a radiation-related malignancy;

(2) \$100,000 to the heirs or legatees per stirpes and not per capita of any person who dies as a result of a radiation-related cause;

(3) \$1,000 to each person, or his heirs or legatees per stirpes and not per capita, who was an inhabitant of Rongelap Atoll or Utirik Atoll on March 1, 1954, and \$1,000 to each person, or his heirs or legatees per stirpes and not per capita, who was a resident of Bikini Atoll during the period January 1, 1970 to date;

(4) \$25,000 or less, as the Secretary of the Interior shall determine, as "compassionate compensation" for radiologically-related injuries, apart from those mentioned above.

Each of these amounts should be subject to negotiation up to an agreed upon maximum figure established by the Interagency Task Force on Claims.

D. Release.

In exchange for the foregoing, the people of Enewetak, Bikini, Rongelap and Utirik Atolls shall provide a general release of all health and medical claims against the United States Government and the Government of the Trust Territory of the Pacific Islands. Additionally, each person wishing to receive any of the above-described benefits shall provide in advance as a condition precedent to receipt thereof an individual release of all health and medical claims.

NEGOTIATING POSITION FOR LAND USE CLAIMS

The United States Government negotiating position ought to be as follows:

A. Future Land Use Policy.

Establishment and implementation of future land use policy where radiological contamination may be a factor must involve the Marshallese people. The Enewetak people have been involved in the planning and implementation of the clean-up and rehabilitation of that atoll. A permanent mechanism must be created to insure Marshallese participation in all future decision-making. Accordingly, the United States Government should propose the establishment of a joint Commission to consist of representatives of the governments of the Northern Marshall Islands and of the United States. This Commission should be empowered to make future land use policy and enforcement decisions where radiological contamination may be a factor.

B. Compensation.

1. Enewetak Atoll.

The Enewetak people are the beneficiaries of a clean-up and rehabilitation program that will cost the United States Government more than \$96 million. They have agreed that this program constitutes the total commitment of the United States Government for the clean-up of the atoll.

The Enewetak people also have received \$1,195,000 and title to Ujelang Atoll (428.8 acres valued at \$425,000), for a total of \$1,620,000 in compensation for land use claims. Under the Department of the Interior formula established to value Ujelang Atoll, the entire land area of the atoll (1760 acres) is worth \$1,760,000. Thus, in effect the Enewetak people have received compensation for the full value of all land on the atoll. Moreover, they are bound by a release and hold harmless agreement given for legally sufficient consideration to the United States.

Under the circumstances, the initial negotiating position with the Enewetak people ought to be as follows:

(1) The United States Government will provide no further monetary compensation for land use claims;

(2) The United States Government will complete the present clean-up and rehabilitation program as planned; and

(3) The United States Government will provide a follow-up program to monitor the land of the atoll for radiological contamination.

(4) In exchange for the foregoing, the Enewetak people will release the United States Government and the Government of the Trust Territory of the Pacific Islands from any and all land use claims.

To accommodate upward bargaining pressure, the United States Government should be prepared to negotiate additional compensation in a total amount not to exceed a figure established by the Interagency Task Force on Claims.

2. Bikini Atoll.

In compensation for land use claims, the Bikini people have received payments totaling \$3,425,000. Under the Department of the Interior formula established to value Ujelang Atoll, the entire land area of the atoll (1920 acres) has a value of \$1,920,000. Thus, even disregarding the \$4,000,000 spent on clean-up and rehabilitation, the Bikini people already have received compensation payments equal to almost twice the value of the entire land area of the atoll. Moreover, they too are bound by a release and hold harmless agreement given for legally sufficient consideration to the United States.

Under these circumstances, the negotiating position with the Bikini people ought to be as follows:

(1) The United States Government will provide no further monetary compensation for land use claims; and

... program to monitor the
... the atoll for radiological con-
tamination.

(3) In exchange for the foregoing, Bikini people will lease the United States Government and the Government of the Trust Territory of the Pacific Islands from any and all land use claims.

To accommodate upward bargaining pressure, the United States Government should be prepared to negotiate additional compensation in a total amount not to exceed a figure established by the Interagency Task Force on Claims. Additionally, the United States Government might agree to clean-up any major concentrations of transuranics.

3. Other Atolls.

Should significant contamination be discovered on other atolls in the Northern Marshall Islands, the negotiating position with the people of those atolls ought to be as follows:

(1) The United States Government will provide monetary compensation for any such land use claims at the rate of \$1,000 per acre; and

(2) The United States Government will provide a follow-up program to monitor any such land for radiological contamination.

(3) In exchange for the foregoing, the people who own rights to any such land will release the United States Government and the Government of the Trust Territory of the Pacific Islands from any and all land use claims.

To accommodate upward bargaining pressure, the United States Government should be prepared to negotiate additional compensation up to the rate of a per acre figure established by the Interagency Task Force on Claims. Additionally, the United States Government might agree to clean-up any major concentrations of transuranics.