



Department of Energy
Washington, D.C. 20585

Tommy

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JUN 15 1982

MEMORANDUM TO JOSEPH DISTEFANO

FROM:

Stephen H. Greenleigh
STEPHEN H. GREENLEIGH

SUBJECT:

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES AND THE GOVERNMENT OF THE MARSHALL ISLANDS FOR THE IMPLEMENTATION OF SECTION 177 OF THE COMPACT OF FREE ASSOCIATION

In reviewing a copy of the subject signed Agreement which was received by my office on June 14, I discovered what appears to be a significant omission. Article 1 of the Agreement provides that "The Government of the United States shall provide on a grant basis \$30 million. . ." without restriction. Presumably this grant is intended to be used by the Marshall Islands Government to include in its integrated, comprehensive and universal medical health-care system the health care and surveillance programs and radiological monitoring activities contemplated by Public Laws 95-134 and 96-205, as was provided in the Proposed Statement of Principles. Unfortunately, however, the Agreement language in no way defines the intended use of the grant of \$30 million and no other provisions appear to cover the health care of the Marshallese. Unless the intended use of this grant is so specified, the United States arguably will be legally as well as morally required to continue its existing health care programs. This could be an issue of great sensitivity when the Agreement is considered by Congress. Hopefully the omission of the intended use of the grant can be clarified in an agreed supplement to the Agreement prior to the plebiscite in August.

One way of initiating such a clarification effort would be for the Department to transmit as soon as possible a formal communication of our concerns to the Office of Micronesian Status Negotiations. If I can be of assistance to you in that effort, please let me know.

cc: R. Tenney Johnson
James DeFrancis
Roger Ray
Leon Silverstrom
Bruce Wachholz ←
William Burr
Jim Thiessen
Dennis Bevans
Martha Crosland
Avie Fingeret

Agreement Between
the Government of the United States and
the Government of the Marshall Islands for
the Implementation of Section 177 of the
Compact of Free Association

Agreement Between
the Government of the United States and
the Government of the Marshall Islands for
the Implementation of Section 177 of the
Compact of Free Association

PREAMBLE

The Government of the United States and the Government of the Marshall Islands:

In recognition of the free association relationship between the United States of America and the Republic of the Marshall Islands;

In fulfillment of the provisions of Section 177 of the Compact of Free Association relating to the nuclear testing program which the Government of the United States conducted in the Northern Marshall Islands between June 30, 1946, and August 18, 1958 (the nuclear testing program);

In recognition of the enduring friendship between the Government of the United States and the Government of the Marshall Islands;

In recognition of the authority and responsibility of the Government of the Marshall Islands to provide medical and health care to all of the people of the Marshall Islands;

In recognition of the expressed desire of the Government of the Marshall Islands to include in its integrated, comprehensive and universal medical health-care system the health care and surveillance programs and radiological monitoring activities contemplated by United States Public Law 95-134 and United States Public Law 96-205; and

In recognition of the desire of the Government of the Marshall Islands to enhance the capability of that health-care system to deal with the possible health effects of economic and physical dislocation and other consequences of the United States nuclear testing program;

NOW THEREFORE AGREE:

Article I

Section 1

The Government of the United States shall provide on a grant basis \$30 million to be paid as follows:

(a) \$4 million annually for five years commencing on the effective date of this Agreement; and

(b) \$1 million annually for ten years commencing on the fifth anniversary of the effective date of this Agreement.

Section 2

Before the first anniversary of the effective date of this Agreement, the Government of the United States shall honor the request of the Government of the Marshall Islands to provide a Whole Body Counter, including training of an operator, to be located in a suitable facility chosen and supplied by the Government of the Marshall Islands.

Article II

In recognition of certain unique needs and circumstances, particularly with respect to the people of Bikini, Enewetak, Rongelap and Utirik, resulting from the nuclear testing program, the Government of the United States shall provide:

Section 1

A direct grant of \$500,000 to the Government of the Marshall Islands to continue the planting and agricultural maintenance program at Enewetak Atoll.

Section 2

Food supplies until the first anniversary of the effective date of this Agreement to enable the Government of the Marshall Islands to continue the existing food programs established for the people of Enewetak at Enewetak Atoll at the level provided during the year preceding the effective date of this Agreement. On the first anniversary of the effective date of this Agreement, the Government of the United States shall pay into the distribution to be established in accordance with Section 4 of this Article the sum of \$7.2 million, which sum shall be devoted exclusively to the continuation of the Enewetak people's food programs for a period of not less than 10 years.

Section 3

Food supplies until the first anniversary of the effective date of this Agreement to enable the Government of the Marshall Islands to continue the existing food programs established for the people of Bikini at Kili Island and for the people of Bikini at other locations as may be determined by the Government of the Marshall Islands, at the level provided during the year preceding the effective date of this Agreement. On the first anniversary of the effective date of this Agreement, the Government of the United States shall pay into the distribution to be established in accordance with Section 4 of this Article the sum of \$9.0 million, which sum shall be devoted exclusively to the continuation of the Bikini people's food programs for a period of not less than 10 years.

Section 4

The sum of \$66 million (the distribution) for the benefit of the people of Bikini, Enewetak, Rongelap and Utirik. :

(a) The Government of the United States shall provide \$33 million of the distribution by the first anniversary of this Agreement and \$6.6 million annually thereafter for each of the next five years.

(b) The annual amounts shall be paid to owners in proportion to their respective percentage share of the total distribution. The distribution shall be owned as follows:

- (1) by the people of Bikini, \$ **25** million;
- (2) by the people of Enewetak, \$ **16** million;
- (3) by the people of Rongelap, \$ **15** million;
- (4) by the people of Utirik, \$ **10** million;

(c) No owner of any portion of the distribution shall have control over any other portion.

(d) The distribution and any earnings derived therefrom may be used for special needs, including education and island rehabilitation, as each owner may dictate, and distributed or reinvested as each owner may determine.

(e) The distribution and any earnings derived shall not be taxable by the Government of the United States, to the extent that:

(1) those earnings derive from investment in instruments of the Government of the United States and other investments as may otherwise be mutually agreed; and

(2) The distribution remain intact in an institution in the United States. This provision is without prejudice to the ability of the owners to redistribute all or a portion of the distribution and its earnings to individuals or other entities. The redistribution transaction itself shall not be taxable by the Government of the United States, but after redistribution, the earnings of such redistributed funds shall be taxable.

Article III

The sum of \$ **34** million for utilization by the Government of the Marshall Islands in implementation of its programs and services related to the consequences of the nuclear testing program. The Government of the Marshall Islands shall allocate, as it may deem proper, this distribution among the following three categories of programs:

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Section 1

The sum of \$4 million to be paid on the effective date of this Agreement.

(a) As compensation for use of lands on which the people of the Marshall Islands have been resettled as a result of the nuclear testing program. The Government of the Marshall Islands shall use such compensation to settle all claims to ownership of such lands, including its claim to public lands in Kili Island, Ujelang Island, Ejit Island and parcels of land in Debet, Jar and Bokalaplapp Islands and the parcel of land known as "Lojokar Weto" in Jaluit Atoll. Determination and settlement of such claims shall be in accordance with the constitutional processes of the Marshall Islands.

(b) To conduct a survey and analysis of the radiological status of the Marshall Islands within two years after the effective date of this Agreement. If requested by the Government of the Marshall Islands, the Government of the United States may provide such technical assistance for this purpose as is mutually agreed.

Section 2

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The sum of \$30 million shall be paid to the Government of the Marshall Islands to compensate for all claims resulting from the nuclear testing program which are not otherwise compensated pursuant to this Agreement. The Government of the Marshall Islands shall establish and implement procedures in accordance with its constitutional processes for the settlement of these claims. When all claims have been duly considered by the Government of the Marshall Islands, the Government of the Marshall Islands shall certify to the Government of the United States that it has completed its constitutional processes for the settlement of all claims. Upon such certification the Government of the United States shall pay the total sum to the Government of the Marshall Islands. Any portion of this sum which is not distributed for the compensation and settlement of all claims shall revert to the Government of the Marshall Islands.

Article IV

The Government of the United States reaffirms its commitment to provide funds for the resettlement of Bikini Atoll by the people of Bikini at a time which cannot now be determined.

Article V

The Government of the United States affirms that any title to cable situated in the Bikini lagoon which it may have shall vest, without reimbursement or transfer of funds, in the Government of the Marshall Islands pursuant to Section 234 of the Compact. By acceptance of such title the Government of the Marshall Islands agrees to hold harmless the Government of the United States from

any loss or damage associated with such cable. The Government of the Marshall Islands shall transfer, in accordance with its constitutional processes, any such title to the people of Bikini.

Article VI

The Government of the Marshall Islands shall have the exclusive responsibility, and the Government of the United States shall be relieved of any responsibility, for the utilization of areas in the Marshall Islands affected by the nuclear testing program. The Government of the Marshall Islands affirms that the assistance to be provided by the Government of the United States in the exercise of such responsibility is set forth in full in this Agreement.

Article VII

The Government of the United States has concluded that:

(a) The Northern Marshall Islands Radiological Survey and related environmental studies conducted by the Government of the United States represent the best effort of that Government accurately to evaluate and describe radiological conditions in the Marshall Islands.

(b) The Northern Marshall Islands Radiological Survey and related studies have been made available to the Government of the Marshall Islands and can be used for the evaluation of the food chain and environment in determining health consequences of Marshallese people's residing in the Marshall Islands.

Article VIII

The Government of the Marshall Islands intends to conduct the study and survey referred to in Section 1(b) of Article III of this Agreement in order to confirm these conditions. If, based on this study and survey, the Government of the Marshall Islands concludes that the facts are materially, substantially and adversely different from those set forth in the studies cited in Article VII of this Agreement, the Government of the United States and the Government of the Marshall Islands shall resolve the issue exclusively through the means of Article II of Title Four of the Compact.

Article IX

Section 1

This Agreement constitutes the full settlement of all claims, past, present and future, of the Government of the Marshall Islands and its citizens and nationals, based upon, arising out, or in any way relating to the nuclear testing program, against the United States, its agents, employees, contractors and citizens and nationals, and of all claims for equitable or other judicial relief in connection including any of those claims which may be pending or which may be filed in any court or other judicial or adminis-

trative forum, including the courts of the Marshall Islands and the courts of the United States and its political subdivisions.

Section 2

The Government of the Marshall Islands shall terminate any legal proceedings in the courts of the Marshall Islands against the Government of the United States its agents, employees, contractors and citizens and nationals, involving claims of the Government of the Marshall Islands, its citizens and nationals, arising out of the nuclear testing program and shall nullify all attachments or any judgments attained relating to such proceedings.

Article X

Subject to Article XIII, in consideration for the payment of the amounts set forth in the Agreement, the Government of the Marshall Islands, on behalf of itself and its citizens and nationals, shall indemnify and hold harmless the United States, its agents, employees, contractors and citizens and nationals, all claims set forth in Article IX of this Agreement, and all actions or proceedings which may hereafter be asserted or brought by or on behalf of the Government of the Marshall Islands, its citizens and nationals, in any court on other judicial forum based on, arising out of or in anyway related to the nuclear testing program.

Article XI

Upon approval of this Agreement by the Congress of the United States, all claims described in Article IX and X of this Agreement shall be terminated, and no court of the United States shall have jurisdiction to entertain such claims. Any pending claims pending in the courts of the United States shall be dismissed forthwith.

Article XII

Section 1

This Agreement shall come into effect simultaneously with the Compact and in accordance with the procedures set forth in Section 411 of the Compact.

Section 2

Those provisions of this Agreement may be amended at any time by mutual consent of the Government of the Marshall Islands and the Government of the United States.

Section 3

This Agreement shall remain in full force and effect until terminated or otherwise amended by mutual consent.

Section 4

The Definition of Terms set forth in Article VI of Title Four of the Compact are incorporated in this Agreement.

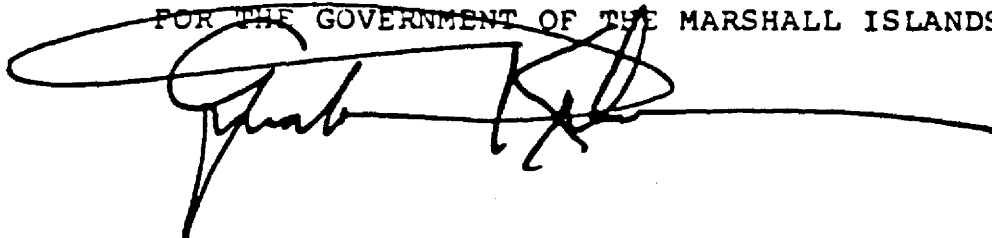
IN WITNESS WHEREOF, the undersigned, duly authorized for this purpose have signed the present Agreement.

DONE at Honolulu, Hawaii, in duplicate, this 30th day of May, one thousand nine hundred eighty-two.

FOR THE GOVERNMENT OF THE UNITED STATES:



FOR THE GOVERNMENT OF THE MARSHALL ISLANDS:



Agreed Minute

Article IV: Subject to Congressional approval, before or at the effective date of this Agreement, the Government of the United States will have provided \$20.6 million for the resettlement of the Bikini people in the Marshall Islands.

Article VII: The Government of the United States shall provide the Government of the Marshall Islands a bibliography and copies of the Northern Marshall Islands Radiological Survey and related environmental studies referenced in Article VII of this Agreement as soon as all such material is available. Subparagraph (b) of Article VII states: " The Northern Marshall Islands Radiological Survey and related studies have been made available to The Government of the Marshall Islands ... " (emphasis supplied). Some of this material has not been made available as of the date of the signature of this Agreement but shall be made available immediately upon publication.

x: WJ Bair (2)
6/10/82

Agreement Between
the Government of the United States and
the Government of the Marshall Islands for
the Implementation of Section 177 of the
Compact of Free Association

RECEIVED
JUN 10 1982

C. D. FRANSEN

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the Government of the United States and
the Government of the Marshall Islands for
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PREAMBLE

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In recognition of the free association relationship between the United States of America and the Republic of the Marshall Islands;

In fulfillment of the provisions of Section 177 of the Compact of Free Association relating to the nuclear testing program which the Government of the United States conducted in the Northern Marshall Islands between June 30, 1946, and August 18, 1958 (the nuclear testing program);

In recognition of the enduring friendship between the Government of the United States and the Government of the Marshall Islands;

In recognition of the authority and responsibility of the Government of the Marshall Islands to provide medical and health care to all of the people of the Marshall Islands;

In recognition of the expressed desire of the Government of the Marshall Islands to include in its integrated, comprehensive and universal medical health-care system the health care and surveillance programs and radiological monitoring activities contemplated by United States Public Law 95-134 and United States Public Law 96-205; and

In recognition of the desire of the Government of the Marshall Islands to enhance the capability of that health-care system to deal with the possible health effects of economic and physical dislocation and other consequences of the United States nuclear testing program;

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The Government of the United States affirms that any title to cable situated in the Bikini lagoon which it may have shall vest, without reimbursement or transfer of funds, in the Government of the Marshall Islands pursuant to Section 234 of the Compact. By acceptance of such title the Government of the Marshall Islands agrees to hold harmless the Government of the United States from

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trative forum, including the courts of the Marshall Islands and the courts of the United States and its political subdivisions.

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Subject to Article XIII, in consideration for the payment of the amounts set forth in the Agreement, the Government of the Marshall Islands, on behalf of itself and its citizens and nationals, shall indemnify and hold harmless the United States, its agents, employees, contractors and citizens and nationals, all claims set forth in Article IX of this Agreement, and all actions or proceedings which may hereafter be asserted or brought by or on behalf of the Government of the Marshall Islands, its citizens and nationals, in any court on other judicial forum based on, arising out of or in anyway related to the nuclear testing program.

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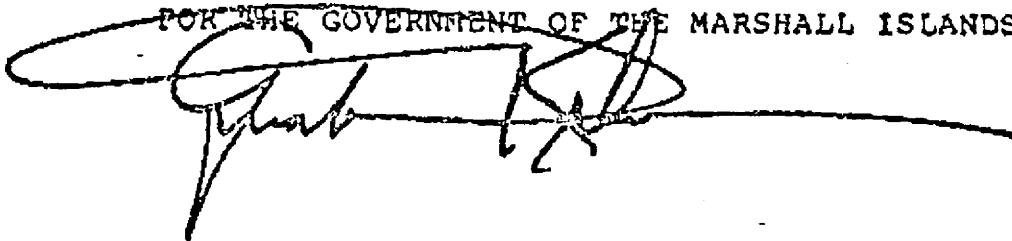
IN WITNESS WHEREOF, the undersigned, duly authorized for this purpose have signed the present Agreement.

DONE at Honolulu, Hawaii, in duplicate, this 30th day of May, one thousand nine hundred eighty-two.

FOR THE GOVERNMENT OF THE UNITED STATES:



FOR THE GOVERNMENT OF THE MARSHALL ISLANDS:



Agreed Minute

Article IV: Subject to Congressional approval, before or at the effective date of this Agreement, the Government of the United States will have provided \$20.6 million for the resettlement of the Bikini people in the Marshall Islands.

Article VII: The Government of the United States shall provide the Government of the Marshall Islands a bibliography and copies of the Northern Marshall Islands Radiological Survey and related environmental studies referenced in Article VII of this Agreement as soon as all such material is available. Subparagraph (b) of Article VII states: "The Northern Marshall Islands Radiological Survey and related studies have been made available to The Government of the Marshall Islands ..." (emphasis supplied). Some of this material has not been made available as of the date of the signature of this Agreement but shall be made available immediately upon publication.