

Final draft

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SUMMARY SHEET

Subject: ACTION REGARDING PAYMENT OF COSTS OF SPECIAL MEDICAL CARE FOR INHABITANTS OF RONGELAP AND UTIRIK ATOLLS

Purpose: This paper provides the background for and recommendations regarding an impending decision as to whether or not the AEC should assume costs of special transportation and medical care for Rongelap and Utirik people in the Marshall Islands. The paper further relates this issue to an anticipated later request for compensation for personal and property damage to the Pacific Islands and their inhabitants.

Discussion: The Micronesian Congress has passed a bill to improve year-round care of persons exposed to radioactive fallout on Rongelap and Utirik atolls in March 1954, to their offspring and to controls. The bill directs the High Commissioner of the Trust Territory to seek an executive agreement whereby expenses incurred under the act will be defrayed by the Atomic Energy Commission. Three alternatives, presented and discussed in section 9 and 10, are:

- a. Refuse to offer reimbursement on grounds that government rather than agency action is appropriate.
- b. Unconditionally agree to payment as requested in the bill.
- c. Propose provisional agreement under which costs will be shared with Department of Interior pending revision of bill in next session of Micronesian Congress and fully assumed by AEC subsequent to acceptable revision.

Issue: Payment of medical costs as requested in Micronesian S.B. No. 89

Recommendation: That the Commission approve alternative c., negotiation of a provisional agreement to share costs with Department of Interior until certain provisions of bill are revised at a later date and assume all costs subsequent to acceptable revision of the bill.

Coordination: In addition to the offices of the Controller and General Counsel, the following AEC Division concur:

- a. Military Applications
- b. International Programs

No further coordination appears warranted.

Scheduling: To be filled in later

REPOSITORY DOE-FORRESTAL
 COLLECTION MARKEY FILES
 BOX No. 6056
 FOLDER MARSHALLESE AGREEMENT
MARSHALLESE CURRENT WORK

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ATOMIC ENERGY COMMISSION

ACTION REGARDING PAYMENT OF COSTS OF SPECIAL MEDICAL
CARE FOR INHABITANTS OF RONGELAP AND UTIRIK ATOLLS

THE PROBLEM

1. To consider the response of the Atomic Energy Commission to a forthcoming request by the High Commissioner of the Pacific Islands Trust Territory for reimbursement of expenses incurred under Micronesian Senate Bill No. 89, which provides to inhabitants of Rongelap and Utirik atolls exposed to radioactive fallout in 1954, their offspring and their controls, transportation to and medical care at hospitals in Majuro or Ebeye.

BACKGROUND AND SUMMARY

2. The inhabitants of Rongelap and Utirik atolls in the Marshall Islands were accidentally exposed to fallout radiation following a detonation of a high yield thermonuclear device during tests at Bikini in the Pacific Proving Grounds in March 1954. The radiation exposure ranged from 14 rads of whole body radiation to persons on the Utirik Atoll up to an estimated dose of 175 rads of whole body gamma radiation to the population on the Rongelap Atoll. The Rongelap inhabitants also incurred internal deposition of radioactive isotopes, especially including those of iodine; the latter resulted in the onset of thyroid abnormalities several years after the event. Thyroid nodules were first detected nine years after the detonation and ultimately affected 23 of 67 persons who were exposed on the island of Rongelap at the time of the detonation. Four malignant thyroid tumors have been diagnosed in the Rongelap and Utirik populations. A case of acute leukemia was detected in a 19 year old Rongelap male during the Brookhaven medical survey in September 1972; the boy died two months later. Compensation was provided to the people of Rongelap in accordance with U. S. Public Law 88-485, passed on August 22, 1964. The payment, made in full settlement and discharging all claims against the United States arising out of the detonation, provided to each exposed individual or his heirs approximately \$11,000 as a lump sum payment. (See Enclosure 2 for additional information concerning the radiation exposure, medical sequelae and compensation.)

3. Because of the physical geography of the area (many small islands

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inhabited by few persons spread over a considerable region of the Pacific Ocean), medical care for inhabitants of the outlying islands such as Rongelap and Utirik is provided by medical aides who have a level of competence equivalent to that of pharmacist mates or medical assistants. The regional hospital at Majuro provides better care than that available on the outlying islands, but the care at Majuro is probably below the level^{of} care delivered in an average hospital on the mainland. The Rongelap population has benefited from the excellent annual medical surveys conducted by the Brookhaven survey team, which are to be supplemented by midyear hematologic surveys in the future.

In providing medical care, the Trust Territory has not distinguished between the population exposed to fallout and the unexposed residents of other Pacific island. However, we understand that the Trust Territory is now willing to recognize that the exposed population is distinctive from a medical standpoint and entitled to closer medical surveillance than unexposed populations. The Micronesian Senate Bill is designed primarily to improve the year-round care of the exposed and related populations of Rongelap and Utirik.

4. A special joint committee of the Micronesian Congress was created by Public Law No. 4C-33 early in 1972 "to insure that the people of Rongelap and Utirik Atolls receive. . .the best medical treatment available and...compensation for the injuries that they have suffered." In February 1973, Senate Bill No. 89 (Enclosure 3) was passed by the Micronesian Senate; it was signed into law by the Deputy High Commissioner on April 12, 1973 as Public Law No. 5-52. It provides benefits in the form of regular or emergency transportation to hospitals at Majuro or Ebeye (the latter under construction), per diem expenses, housing and medical care to exposed persons from Rongelap and Utirik atolls, their offspring and control persons and an accompanying member of the family. The class of illness covered by the bill is restricted by the statement that "this section (6 in the bill) shall not be construed to allow persons the aforesaid benefits if the ailment or complaint could have been treated at the person's place of residence by the health personnel available." The annual cost to the government under the bill is projected at not more than \$9,000 per year by the Special Joint Committee of the Micronesian Congress.

Although the bill provides for reimbursement of medical care, the major part of the cost will be for transportation since charges for medical and hospital services in the Trust Territory are quite nominal. Section 10 of the bill directs the Office of the High Commissioner "to seek an executive agreement with the Atomic Energy Commission whereby the expenses under the provisions of this act will be defrayed either directly or on a reimbursable basis by the AEC."

The apparent reason for seeking payment of expenses by the AEC rather than the Department of the Interior is the expectation that Interior Department funds would be taken from the federal grant to the Trust Territory. AEC payment would provide funds in addition to those normally received whereas Interior Department funding would involve a reallocation of existing monies and, therefore, a corresponding reduction in some other service. In addition, the AEC is held responsible for conducting the tests in the Marshall Islands and, therefore, "for the damage" (see cover letter in enclosure 3).

S. B. No. 89 contains an excessively broad definition of controls; we would suggest that it be narrowed by revision of the bill during the next session of the Micronesian Congress. In Section 3, controls are defined to include "those persons now living in the Marshall Islands district who were not exposed to fallout from the March 1, 1954, test, but who agree as hereinafter provided in this act, to be examined and tested in like manner as exposed persons." We favor limiting the class of controls to persons accepted by the Brookhaven medical team as members of their control population for purposes of their study.

Dr. Robert A. Conard, head of the Brookhaven medical survey team, has also raised a question as to the propriety of including the offspring of the exposed population among persons eligible for benefits under the bill. He feels that the lack of evidence of genetic damage thus far to the offspring of the Japanese A-bomb survivor population makes it unlikely that the Marshallese offspring will show adverse effects as a result of the exposure of their parents. On the other hand, the exclusion of offspring from the bill may be difficult politically, especially since studies on the offspring of Japanese survivors are quite incomplete.

5. In view of the provision in P. L. No. 88-485 that the payment made in 1964 to the Rongelapese discharged all claims against the United States arising out of the detonation, there is probably no legal basis for providing additional compensation payments to that population in the absence of new enabling legislation. Medical research on the Rongelap population can be justified as in the past. Activities funded under the bill could contribute to the Brookhaven

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study the interim observation of disease events that might otherwise not be detected by the Brookhaven survey team or by medical aides in residence on the outlying islands. If a decision were reached to provide payment in accordance with S. B. No. 89, it would probably be necessary to state that the funds are research funds and that they are subject to the usual periodic review of research expenditures.

6. On 2-12-73 the Micronesian Congress passed another bill, S. B. No. 146 (Enclosure 4), which extended the life of the special Joint Committee for two additional years and considerably broadened its scope to include investigation of the "results of irradiation to the people, reef, land and marine life of Rongelap and Utirik Atolls in the Marshall Islands District and any other effects of atomic weapons testing in the Trust Territory" and obtaining "compensation for the people of Rongelap and Utirik atolls for their dislocation, injury, deprivation, illness and suffering, both physical and mental, and for damage to the islands, their flora and fauna, reefs, lagoons and sources of food or livelihood as a result of exposure to irradiation."

To date, the Committee has not acted on that part of its mission concerned with obtaining compensation for the people "for the injuries which they have suffered." We may infer that postponement of action on the compensation issue was linked to broadening the scope of compensation to mental as well as physical injury and to damage to the islands and environment as detailed in the preceding paragraph.

7. In February 1973, the Special Joint Committee issued a 264 page report titled "A Report on the People of Rongelap and Utirik Relative to Medical Aspects of the March 1, 1954, Incident-Injury, Examination and Treatment." The report presents a scientific introduction, a historical narrative of the thermonuclear detonation and its after effects on the population and certain complaints against AEC and DOD as well as a set of recommendations (see Enclosure 5 for further discussion of the Committee report).

8. Any actions or negotiations undertaken by the AEC with respect to the Marshallese must be considered in the larger context of the relations between the U. S. Government and the Pacific Islands. There are a number of issues under consideration by the Trust Territory such as property negotiations concerning other islands, continued DOD testing in the Marshall Islands, and long-term continuation of the trusteeship. Political influences such as complaints to the Trusteeship Council of the U. N. may be brought to bear on the situation. The issue of personal injury to the Marshallese is perhaps the most newsworthy in this complex picture.

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9. In the bill providing for continuation of its life, the Special Joint Committee is instructed to seek broad compensation for a variety of damages. S. B. No. 89 may be viewed as the first round in a series of negotiations that will involve larger compensation questions later.

ALTERNATIVES

10. Three alternative actions may be considered for the AEC in negotiating an executive agreement with the High Commissioner.

- a. Refuse to offer reimbursement on grounds that government rather than agency action is appropriate.
 - b. Unconditionally agree to offer payment as requested in the bill.
 - c. Propose a provisional agreement under which costs would be shared with Department of Interior pending acceptable revision of bill in next session of Micronesian Congress and then fully assumed by AEC.
11. a. Refuse to offer reimbursement on grounds that government rather than agency action is appropriate.

(1) Pros:

- (a) The AEC could not be interpreted as assuming responsibility for damage to the exposed populations.
- (b) Consultation with other departments or agencies of the government such as the State Department would become possible.
- (c) The AEC could not be accused of circumventing the intent of Congress as expressed in U. S. Public Law 88-485.

(2) Cons:

- (a) In contrast to ^{probably favorable} press treatment of the ^{U.S.} government of the Trust Territory, which signed the bill into Law, the AEC might be subjected to adverse publicity for failure to cooperate.
- (b) The medical care provided in the bill also provides medical information of possible value to the Brookhaven survey team and therefore can be viewed as a research activity.
- (c) There are precedents for provision of medical care in support of research as in the activities of the ABCC and certain AEC laboratories.
- (d) There may be advantages in handling this inexpensive item separately from the large compensation package which is likely to come later.

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b. Unconditionally agree to payment as requested in the bill

(1) Pros:

(a) Unconditional agreement would place AEC in most favorable light from public relation standpoint.

(2) Cons:

(a) Unconditional agreement will eliminate any chance of obtaining alteration of bill in next session of Micronesian Congress to meet AEC objections.

(b) Such action may encourage Micronesian Congress to make further demands without recognition of the need for negotiation with AEC or other U. S. government agencies.

(c) Legal authority for this is questionable unless the funding is designated to be for research purposes.

(d) Cost is difficult to project with broad definition of controls in bill as passed.

c. Proposal of provisional agreement under which costs would be shared with Department of Interior pending acceptable revision of bill in next session of Micronesian Congress and then fully assumed by AEC.

(1) Pros:

(a) Potential unfavorable reaction may be mitigated by declaration of earnest implicit in willingness to assume part and then all of cost.

(b) Need to negotiate with AEC or any other agency of U. S. Government rather than legislate demands will be conveyed to Micronesian Congress.

(c) Opportunity to rectify objectionable features in bill would be gained.

(d) Information about interim medical events in support of Brookhaven study will be acquired.

(2) Cons:

(a) Micronesian Congress may react unfavorably to less than complete immediate assumption of payments by AEC, thus resulting in adverse publicity despite positive action.

- (b) Unfavorable reaction may render later negotiation concerning compensation issues more difficult.

STAFF JUDGMENTS

12. To be filled in later

RECOMMENDATIONS

13. The General Manager recommends that the Atomic Energy Commission:
- a. Propose provisional agreement under which costs will be shared with Department of Interior until certain provisions of bill are revised at a later date and assume all costs subsequent to acceptable revision of the bill.
 - b. Adopt a fallback position of unconditional agreement to assume costs incurred in the bill. Include in the record statement concerning objection to offending passages.

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