



Department of Energy
Washington, D.C. 20545

December 3, 1979

Those on Attached List

Gentlemen:

It has been some time since I last updated you on activities re the Marshall Islands. Inasmuch as several matters have occurred during that time, I shall try to briefly identify recent events. These may be the subject of further discussion at the next meeting.

I. General

1. I have been relocated within the Office of Health and Environmental Research as a program manager responsible to Dr. Burr. Mr. Tommy McCraw likewise has been transferred to OHER. A full time secretary and a 3rd staff person are in the process of being obtained.
2. Three projects funded by OES (the LLL Dose Assessment project, the BNL whole body counting activities, and the Univ. of Washington studies) also are being transferred to OHER beginning in FY 81. Thus all funding re the Pacific will originate from OHER with the exception of the 13 atoll survey and the Enewetak support programs, both of which are scheduled to terminate in CY 1980.
3. Mrs. Linda Hurley, who since 1974 has assisted me in secretarial matters (and who also was Dr. Carter's secretary), has since early October lived at the NIH hospital where her son is undergoing diagnostic tests and treatment. She has not been available during that time, nor is it likely that she will return to full time work for some weeks to come. Consequently, correspondence and other office activities have slowed down considerably.

II. Enewetak

1. Several of you have commented upon the observation that "planning and preparation have begun for northern island planting." Also, by letter of October 12, 1979, Dr. Bair

requested an update on this issue. By telephone the Department of Interior (DOI) requested an estimate of the potential radiation exposure contribution to Enewetak people assuming that they live on Japtan, Medren and Enewetak islands, and that they visit the six northeastern islands solely to tend coconut trees and harvest copra, particularly under the assumptions of time and ingestion given in the LLL dose assessment. It was pointed out to DOI that there also was the question of the marketability of the copra, but they were interested primarily in the potential exposure to people under the stated conditions. A copy of the response to them has already been sent to you (Enclosure A). Based upon this information DOI decided to approve the planting of coconut trees on the six northeastern islands. This matter subsequently has been discussed with the Office of Territorial Affairs and with the Solicitor General of DOI. Their position is that a) the potential exposures are within both FRC guidance and AEC recommendations, b) to plant the islands is in keeping with the master plan, and c) they have 6-8 years to consider the issue of marketability - if in fact they are contaminated. On several occasions I have told DOI that a) at present we have no basis on which to offer any hope that "science" will find a way to reduce or eliminate the uptake of radionuclides, especially of Cs and Sr, in coconuts, b) work is continuing in an effort to identify the location of radionuclides in the coconut, and c) once the Trust Territory Agreement ends, who will be responsible for decisions? (For example, if in 3-5 years it becomes apparent that the copra is not marketable, who will decide what, if anything should be done, e.g., to destroy the crop? Will this be the responsibility of the Marshall Islands Government, the Enewetak Council, Mr. Mitchell, or who? This is of particular importance since there will be no Trust Territory of the Pacific Islands, no High Commission and no Department of Interior presence.) DOI's informal response was that even if the coconuts are not saleable, they will only rot on the islands and the people are no worse off than if they never were planted.

On this and other matters DOI recently sent us a draft letter to Congressman Yates for comment. A copy of their draft and our comments are enclosed. (Enclosures B and C).

Last week DOI also wrote us on another matter (to be discussed below), and it is our intention to address the coconut issue again in our reply to this letter.

2. In response to a request from Mr. Mitchell that DOE present dose assessments and risk assessments to the people of Enewetak, and in fulfillment of a commitment made by Joe Deal in December, 1978, to do so, a number of people traveled to Ujelang on September 18-20 to do so. DOE was represented by Hal Hollister, Tommy McCraw, Bill Brown, Roger Ray, Harry Brown and me; Leo Krulitz (Solicitor General) represented DOI; Allen Richardson represented EPA; Alice Buck, John Iaman, John Healy and Bill Bair also attended at our request. Mr. Mitchell was accompanied by Randy Brill, Mike Bender and Bill Ogle. The Deputy High Commissioner also attended, as did the Chief Secretary of the Marshall Islands and the CBS "60 Minutes" camera crew. I will be pleased to discuss the trip in detail at your convenience.

The primary DOE contribution to the meeting was the presentation and explanation of the book "Enewetak Today," which has already been sent to you. The President of the Marshall Islands also sent an open letter to the people of Enewetak (Enclosure D). Following our meeting with the people, their Council met with Mr. Mitchell and his advisors; this meeting resulted in a petition to DOI to reconsider the resettlement to Enjebi (Enclosure E).

A personal note - the generosity and hospitality of the people were overwhelming.

3. DOE has discussed the desirability, if not necessity, of preparing a supplemental EIS to consider the resettlement of Enjebi. Mr. Mitchell has challenged the need for this, as well as the relevance of Radiation Protection Guides and Protection Action Guides (see Enclosure F, see also previously sent EPA letter to Mrs. Van Cleve). Upon receipt of the letter, DNA indicated that they wanted a meeting with Krulitz and staff, Clusen and staff, and EPA staff to discuss the necessity of a supplemental EIS, DNA's interest presumably based upon the fact that DNA prepared the original EIS. This meeting has not yet been scheduled, however.

4. LLL is recalculating the dose assessment in the light of a) additional information now available from the remainder of the islands, and b) in conformance of ICRP-30. While the specific numbers will change, the changes are not expected to be sizeable ones.

5. In reviewing the LLL preliminary dose assessment, Ed Bramlitt, DNA Field Command, questioned the calibration procedures used in the IMP's, specifically the soil composition used in calibration vs. the soil composition at Enewetak. (You may recall that the general issue of calibration is one which you have raised in the past). Indications from Las Vegas are that Mr. Bramlitt is correct, and that errors of 20-25% may have been introduced, the readings being lower than actual radioactivity levels. Until this is clarified and the extent of revisions is assessed, LLL revised dose assessments are on "hold." Perhaps more important is the possibility that island certification documents may have to be revised and that island usage reconsidered per the guidelines for TRU levels. Roger Ray's only communication on this subject is enclosed (Enclosure G). A team has gone out to Enewetak to make additional measurements for calibration.
6. With LLL in the process of writing a "final" dose assessment, any comments, suggestions, criticisms, etc., which you may have should be transmitted to Dr. Robison as soon as possible.
7. The Corps of Engineers asked DNA what plans were made for continuing monitoring of the structural integrity of the crypt. DNA replied that they end their involvement on April 15, 1980, and that DOE will monitor lagoon water, fish, etc. Presumably the direct question was not answered, although I have not seen DNA's response.
8. Except for a request for additional copies of the book "Enewetak Today," we have not heard from Mr. Mitchell since the meeting with the Enewetak people. He is, however, attempting to rally Congressional support for resettlement of Enjebi.
9. It is reasonable to assume that Congressional hearings may be held on this subject sometime within the next few months.
10. DOI recently requested the number of years before exposure on Enjebi would be within U.S. exposure limits. Their letter and a draft of our reply are enclosed (Enclosures H and I), the latter addressing several other issues as well. Any comments would be appreciated ASAP.
11. Whole body counting of the Enewetak people at Ujelang and at Japtan is scheduled tentatively for January-February, 1980. This will give us baseline data prior to their return to the Atoll in April, 1980.

12. Formal ceremonies are being planned by DNA for return of the Enewetak people to the Atoll on April 8, 1980.

III. Bikini

1. En route to/from Ujelang, DOI (Krulitz) and DOE (Hollister) stated to Bikini representatives that if requested we would prepare a book for the similar to "Enewetak Today" and would meet with them sometime in 1980, presumably no later than September, 1980. (Any comments or recommendations which any of you might wish to make regarding the content and effectiveness of the book "Enewetak Today" would be most welcome so that they might be considered prior to the preparation of a book for the Bikinians.)

2. The Bikinians are seriously considering relocating on Wake Island.

3. On November 20, Tommy McCraw and I met with DOI, representatives of the Bikini Council and the Council's legal counsel, Mr. Jonathon Weisgall. Their concerns were several:

- a. Comparison of Eneu with Enjebi and the southern islands of Enewetak.
- b. Potential effectiveness of scraping the surface of Eneu.
- c. Potential exposure levels of a rotating Bikini population living on Eneu for a period of 6 months at a time roughly once every 4-5 years.
- d. Comparison of Eneu with U.S. exposure levels (radiological maps of continental U.S. and of Marshall Islands/Eneu/Bikini were provided).

4. LLL is about 2 months away from a final dose assessment for Eneu and Bikini. Pending another meeting with Mr. Weisgall, LLL may be asked to include potential doses:

- a. With and without imported food,
- b. Resulting if the top 6 inches of soil were removed from Eneu,
- c. If families lived on Eneu for 6 months at a time at 4-5 year intervals,

d. With varying amounts of time spent on Bikini.

5. The Bikinians and their legal counsel do not seem to challenge the applicability of U.S. exposure limits to their situation (although Mr. Mitchell does).

6. The Bikinians, should they decide to return to Eneu regardless of circumstances, might be willing to sign statements releasing the U.S. from liability for future related health consequences. The value of such a release is unknown. (Mr. Mitchell takes the position that should people return to Enjebi, the U.S. must share in that increased risk by accepting continued liability for any radiological consequences).

7. LLL would very much like to hire a Marshallese to tend the garden plot on Eneu. Roger Ray wrote to the Marshall Islands Government re this, with a copy to DOI and, subsequently, to DOE. DOI asked DOE if we concurred in this request (which we had not) and expressed concern that the Bikini people would interpret this as discrimination (i.e., if "he" can live there, why can't we?). Discussions are continuing and the issue is not yet resolved.

IV. The Burton Bill

1. On October 10 the Senate held hearings on the Burton Bill. While Mr. Mitchell and DOI were invited to testify, DOE was not asked for comments. Their formal statements are enclosed, including both DOE testimony and written reply (Enclosures J, K, and L).

2. Prior to the hearing, OMB was concerned about these items: that the open-ended health care plan be modified to periodic examination for radiation related effects and treatment if necessary, and that DOE responsibilities be funded directly rather than through DOI. These concerns are reflected in DOI's statement.

3. The presiding Senator, Matsunaga of Hawaii, apparently offered two opinions: that since DOI is the lead agency covering a broad scope of programs in the Pacific, funding and responsibility should be located in DOI rather than fragmented among departments, and that a comprehensive program plan would seem desirable. No requests were made or directives given, however.

4. The bill currently is under study with the Senate subcommittee.

V. Office of Micronesian States Negotiation

DOE continues to be actively involved in the interagency discussions and activities, particularly re nuclear claims.

VI. Brookhaven National Laboratory

A number of issues have been raised addressing personnel, financial and programmatic matters. A number of these issues are directly linked to NVOO and PASO interactions and activities. I will be pleased to discuss them in more detail should you so desire.


VII. Hearings

The Senate Energy and Natural Resources Committee (including Senators Jackson, Johnston and Matsunaga) is expected to hold 2 days of hearings re Bikini and Enewetak resettlements during the week of January 21 in Honolulu.

VIII. Palomares

I had the opportunity to accept Dr. Iranzo's kind invitation to visit Palomares with him. I will be pleased to discuss this matter with you if you wish, and to share photographs with you.

Sincerely,



Bruce W. Wachholz, Ph.D.
Office of Environment

12 Enclosures



Department of Energy
Washington, D.C. 20545

Enclosure A

September 28, 1979

Mrs. Ruth Van Cleve
Director, Office of
Territorial Affairs
Department of Interior
Washington, D. C. 20240

Dear Mrs. Van Cleve:

The following is in response to your verbal request that the Department of Energy assess for you the radiological consequences which might accrue to the people of Enewetak assuming that they reside only on the islands of Enewetak, Medren and Japtan, and assuming that coconut trees are planted on the northeastern islands of the Enewetak Atoll, specifically the islands of Lujor, Lojwa, Aomon, Bijire, AeJ and Alembel.

In what follows we are concerned only with potential health consequences to the people of Enewetak and not with the question of the acceptability or marketability of copra produced from the coconut trees on the world market or at specific processing facilities, nor with any possible U.S. involvement with respect to the acceptability or marketability of the copra. Information regarding the distribution or binding properties of radionuclides of concern in coconuts is not yet available, and the commercial implications of same is an issue not addressed in this letter.

The exposure estimates below are based upon preliminary information analyzed by the staff of the Lawrence Livermore Laboratory and included in their draft report entitled, "Preliminary Reassessment of the Potential Radiological Doses for Residents Resettling Enewetak Atoll." It must be emphasized that while these values are best estimates, they are only estimates and could be in error by a factor of 2 or more. Furthermore, they are based upon average values (e.g., average diets, average island contamination values, average uptake of radionuclides by food plants, etc.), and individuals will depart from the average--in either direction--to varying degrees depending upon personal lifestyles, proclivities, and diet preferences. Nor do the exposure estimates consider those individuals who might, for whatever reason, engage in practices which could lead to excessive exposures.

Although the data base for the potential exposure estimates is not yet complete (e.g., the island of Lujor had not yet been factored into the dose calculations), it is not expected that additional information will substantively alter the exposure estimates; should this occur, however, we will immediately inform you.

The calculated radiation exposure levels for living only on Enewetak, Medren and Japtan islands are:

	<u>Maximum Individual</u>	<u>30-Years</u>
with imported food	11 millirem/year	100 millirem-bone marrow 69 millirem-whole body
without imported food	24 millirem/year	220 millirem-bone marrow 120 millirem-whole body

If it is assumed that 15% of their time is spent on the northern islands, and that 10% of their total intake of coconut meat/milk originates from the coconut trees of the northeastern islands, the calculated radiation exposure levels are:

	<u>Maximum Individual</u>	<u>30-Years</u>
with imported food	28 millirem/year	250 millirem-bone marrow 200 millirem-whole body
without imported food	51 millirem/year	460 millirem-bone marrow 270 millirem-whole body

For purposes of reference, it may be recalled that U.S. exposure criteria are:

Maximum exposure to an individual in any one year: 500 millirem

Integrated 30-year exposure level: 5000 millirem

Because of the uncertainties and assumptions which are inherent in deriving radiation exposure estimates of this nature, the Atomic Energy Commission Task Group report recommended the following exposure limits for planning and cleanup purposes:

Maximum exposure to an individual in any one year: 250 millirem

Integrated 30-year exposure level: 4000 millirem

Mrs. Ruth Van Cleve

- 3 -

September 28, 1979

Given the assumptions and limitations stated, it is apparent that all of the radiation exposure estimates are below both the U.S. exposure guidance and the AEC recommendations.

I hope that this information is helpful to you and responsive to your request.

Sincerely,

Bruce W. Wachholz
Bruce W. Wachholz, Ph.D.
Office of Environment

Enclosure B

Honorable Sidney R. Yates
Chairman, Subcommittee on Interior
Committee on Appropriations
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

As promised in my progress report of July 3, 1979, on Enewetak Rehabilitation and Resettlement Project to your Committee, I am submitting this followup report on recent developments.

The Department of Energy during March and April of this year conducted a new soil survey of Engebi Island and other northern islands of Enewetak Atoll, and the results were analyzed by the Lawrence Livermore Laboratory. A draft report entitled, "Preliminary Reassessment of the Potential Radiological Doses for Residents Resettling Enewetak Atoll" was issued by DOE on July 23, 1979. This preliminary report has not yet been released because survey results on one additional ^{ASTEAN} ~~northern~~ island, Lujor, ^{AND ALL OF THE ISLANDS IN THE NORTHWEST} still have to be factored into the dose calculations. It is not expected that the additional information will substantially alter the ^{FOR THE LIFESTYLES CONSIDERED, HOWEVER.} exposure estimates. ^{DA} Copies of the final reassessment report will be provided to the Committee as soon as it is released by the Department of Energy.

discussion of decision based upon risk to standards?

The preliminary assessment report, however, enabled actions to take place on a number of pending items, and it is on these that I report.

Planting of the Northern Islands

You will recall from my July 3, 1979, progress report, that planting of the six northern islands of Enewetak (exclusive of Engebi Island) had been held up pending the results of the new soil analysis. The planting of these six northern islands was part of the Enewetak Rehabilitation Master Plan. The Enewetak Rehabilitation Master Plan, as funded by appropriations through your Committee, called for residence only on the three southern islands of the Atoll, Enewetak, Medræn, and Japtan. Coconut and other agricultural planting was to be confined to the southern islands and certain of the northern islands. The people of Enewetak agreed to these stipulations.

The exposure analyses in the "Preliminary Reassessment Report" demonstrated that, under certain assumptions and limitations, all of the radiation exposure estimates would be below the U.S. exposure guidance and A.E.C. recommendations. ^(THIS DOES NOT ADDRESS THE ISSUE OF THE ACCEPTABILITY OF THE POSSIBILITY OF COPRA FROM THESE COCONUT TREES, HOWEVER.) The potential situation is outlined in a September 28, 1979, letter from the Department of Energy to the Director of the Office of Territorial Affairs. A copy of that letter is enclosed for your information.

On the basis of the DOE analysis, the decision was made in September to proceed with the planting of coconut trees on these six northern islands and the planting program on these islands now is underway.

Dose Assessment Meeting

The "Preliminary Dose Reassessment Report" also permitted the "Dose Assessment" meeting that the people of Enewetak had requested in December 1978, to take place. This meeting with the people of Enewetak originally had been scheduled for May 1979. For various reasons, it had to be rescheduled and the meeting was held on Ujelang Island on September 19 and 20. The ^{MAJORITY} ~~bulk~~ of the people of Enewetak still reside on Ujelang pending a return to Enewetak Atoll. The Department of the Interior was represented at the September meeting on Ujelang by the Solicitor of the Department, Mr. Leo Krulitz.

At the December 1978 meeting, the Department of Energy had been requested to give a risk assessment review to the people of Enewetak. Subsequently, in July 1979, the Legal Advisor for the people of Enewetak, Mr. Theodore Mitchell, Micronesian Legal Services Corporation, informed the Department of Energy that he had retained scientific consultants and he would not need to rely upon the Department of Energy for that type of information. The Department of Energy and this Department believes^p, however, that the United States

executive branch also had a responsibility to report on conditions at Enewetak Atoll to the people. The Department of Energy, accordingly, prepared a presentation which was given to the people of Enewetak at the meeting on Ujelang. The presentation was given in Marshallese, slides were shown, and a booklet describing the conditions on Enewetak Atoll was distributed to the people. The booklet, entitled "Enewetak Atoll Today", is in Marshallese and English and copies were provided ^{TO} ~~for~~ ^{MEMBERS} ~~adults~~ of the community. A copy of "Enewetak Atoll Today" is enclosed for the Committee's information.

The Legal Counsel for the people of Enewetak and the independent consultants presented a risk assessment to the people at a closed session to which government representatives were not invited. Copies of the presentation given by scientists retained by the Micronesian Legal Services Corporation will be provided as soon as they are received from the Legal Advisor for the people of Enewetak.

Engebi Resettlement

The consultants for the Micronesian Legal Services Corporation contend that the risks from living on Engebi Island are so small as to be essentially insignificant. In their estimation, only approximately one additional cancer death in the lifetime of the population would result, and they believe that it might take five generations before even one

extra case of a birth defect would appear.

The Department of Energy and its scientific advisors agree, in general, with this interpretation of the risk analysis. The DOE risk analysis for living on Engebi Island under varying conditions are shown in the diagrams and explanations on pages 22-24 of the Booklet, "Enewetak Atoll Today".

This Department, however, holds that as long as the United States retains a trust responsibility for the people of Enewetak, and so long as the United States is potentially liable for erroneous decisions, there will be some issues relating to Enewetak Resettlement that cannot be decided by vote of the Enewetakese. It is our opinion that, even though the risk of living on Engebi Island appears to be slight, and even though the people of Engebi have expressed a strong desire to live on Engebi, a final decision cannot be made without further study.

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it seen on C-TV
it limits on. rad.
Mr. Linn*

It should be noted that when the Cleanup Program was authorized and funded by the Congress, the Armed Services Committee made clear that there was to be no resettlement permitted in Enewetak Atoll unless the ^{RECOMMENDED EXPOSURE LIMITS} radiation ~~standards~~ established by the Energy Research and Development Administration were met.

Senate Armed Services Committee Report 94-157 of May 22, 1975, page 10, on the Enewetak Cleanup funding by the Department of Defense stated: (Underlining ours)

"The Committee agreed to a one time authorization of \$20 million to accomplish the cleanup. The Department is charged to accomplish the cleanup within that amount using every possible economy measure. The Committee insists that radiation standards established by the Energy Research and Development Agency be met before any resettlement be accomplished."

In hearings that gave rise ^{to} that report, Mr. Mitchell, then as now counsel for the people of Enewetak, supported the above result, at hearings of May 7, 1975 on H.R. 5210 before the Subcommittee on Military Installations and Facilities (page 162 - 165), stated:

" ERDA has been, I think wisely conservative in the standards that they have set.

So that the ultimate objective, the premise of the clean-up program, is that when it is done, there will not be a danger, a risk, for these people, for the entire atoll.

. . . . I don't want these people to be endangered at all.

. . . . No danger to the people."

Similarly, when the Department of Interior's request for rehabilitation and resettlement funds was under consideration before your Subcommittee on March 17, 1977, there was

strong reiteration that Federal Radiation standards would be followed. General Warren D. Johnson, then Director of DNA, was a backup witness at this hearing and testified: (p. 768)

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and other?

" . . . The Department of Defense is committed to clean the island up to the standards established by ERDA, and ERDA is committed to assure we have reached those standards, so this is a coordinated effort. In other words, we cannot move anybody back until ERDA says, "You have done what we have said has to be done."

The Master Plan for the Enewetak Rehabilitation and Resettlement Program that was submitted to your Committee for funding in 1977 was developed around the radiation standard stipulations set forth by the Department of Energy and by Congress when it approved the cleanup funding. As noted earlier in this report, the Master Plan called only for the rehabilitation and resettlement of the three southern islands, Enewetak, Medran, and Japtan, and for the planting of only certain of the northern islands as well as the southern islands. Engebi Island was not to be used for the next 35-50 years, i.e., until natural decay of strontium ^{AND} cesium ~~elements~~ ^{RESULTED IN POTENTIAL RADIATION EXPOSURE LEVELS WHICH WOULD BE WITHIN THE APPLICABLE STANDARDS.} elements in the soil had ~~brought about acceptable levels.~~

The people of Enewetak agreed to these stipulations and had a major role in the development of the approved Master Plan. Thus, in addition to the radiation risk elements still unresolved, resettlement of the Engebi people on Engebi

Island at this time would be a major change in the cleanup and rehabilitation plan. Congress also has not authorized funds, as yet, to provide for housing and community facilities on Engebi.

Nonetheless, given the present desire of the people of Engebi, that in spite of the risk elements involved they wish to reside on Engebi Island, this Department has indicated that it would study the matter further with knowledge of the people's preference. This study now is underway.

Irrespective of the final decision with respect to Engebi, of which we will advise you when it is made, additional funding for the Enewetak Project would appear to be necessary. Should it finally be decided that housing and community facilities should be built at this time on Engebi, funding for these facilities will be required. Conversely, if the decision is that Engebi should remain "off-limits" for residential and other purposes for another 35-50 years, it is our belief that the U.S. Government has a moral and legal obligation to provide, before termination of the trusteeship, a suitable financial arrangement that would insure the ability of the people of Engebi to build appropriate housing and community facilities on Engebi at a period in the future when the ~~reduced~~ radiation levels of the island will ~~not pose a risk~~ ^{BE REDUCED TO SUCH A LEVEL} ~~hazard to them.~~ ^{THAT APPLICABLE STANDARDS WOULD NOT BE EXCEEDED.} This matter also is under study and we will keep the Committee informed of developments.

Sincerely,

UNDER SECRETARY

Enclosures.



Department of Energy
Washington, D.C. 20545

OCT 29 1979

~~Enclosure~~
Enclosure C
1290
-1-

Mr. John E. DeYoung
Territorial Officer, Trust Territory
of Pacific Islands and Guam
Department of the Interior
Room 4308
18th & C Streets, N.W.
Washington, D.C. 20240

Dear John:

Enclosed are our comments on your draft letter to Representative Yates.

We appreciate the opportunity to offer comments on this letter, and we trust that they will be helpful to you.

Sincerely,

Bruce W. Wachholz, Ph.D.
Office of Environment

Enclosure

1240
-2-

Comments on Draft Letter from Department of Interior to
Representative Yates

Major Comments

1. The primary point of the letter seems to be a discussion of the possible resettlement of Enjebi. It would seem appropriate, therefore, for this issue to be discussed at the beginning of the letter rather than at the very end.

2. The space devoted to discussion of coconut planting and of the Ujelang conference seem disproportionately large compared to the primary purpose of the letter (i.e., the possible resettlement of Enjebi).

3. There seems to be an imbalanced discussion of the two alternate ways of approaching the question of Enjebi: cost-risk-benefit evaluation versus strict application of radiation exposure limits. The discussion of the "Enjebi Resettlement" does not clearly or adequately address the subject of U.S. radiation exposure limits. The first two paragraphs of this section discuss risk, the third addresses Interior's position, while those following state what various opinions (e.g., Congress, Mr. Mitchell) were on the AEC/ERDA recommended exposure limits at the time of the authorization. Either prior to or following the third paragraph (i.e., Interior's position), it would be helpful to clarify the background of radiation exposure limits: FRC guidance, AEC/ERDA recommendations to Interior (and why they differed from the FRC), and the recent EPA position (although this also might logically come later in the discussion). The two philosophies (risk vs. exposure level) should be understood by the reader. (A restructuring of this

section - e.g., FRC, AEC/ERDA recommendations, Mr. Mitchell's and Congress' opinion, cleanup plan, risk and the peoples' preference, Interior's position, then the current last paragraphs might be more informative. With the "Ujelang Conference" immediately preceding this section, however, the paragraphs on risk do follow naturally.)

4. Using FRC guidance as the exposure limit (rather than the AEC/ERDA recommendations) which was endorsed by the EPA, the length of elapsed time until potential radiation exposures on Enjebi Island would be within the FRC guidance varies according to the assumed living pattern:

- A. Live on Enjebi
Imported food available and a daily part of the diet
Coconuts available only from the southern islands
Waiting period - 0 years
- B. Live on Enjebi
No imported food available
Coconuts available only from the southern islands
Waiting period - 10-15 years
- C. Live on Enjebi
Coconuts grown in north
Waiting time - 30-70 years depending upon
 - a) Whether or not food is imported
 - b) Whether coconuts are grown on Enjebi, and/or
 - c) Whether coconuts are grown on the other six northeastern islands

If the decision already has been made to plant coconuts on the six northeastern islands, then options A and B above become academic, and the waiting period becomes 30 to about 65 years depending upon the availability and use of imported foods. Of course, use of the AEC/ERDA/DOE recommendations would extend this time period.

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-5. It should be made clear that the decision to plant the coconut trees on the six northeastern islands was based solely upon the additional potential radiation exposure to people assumed to reside on Enewetak, Japtan, and Medren Islands. More specifically, presumably the decision did not consider the acceptability or unacceptability of copra from these coconut trees at processing plants or on the world market. This should be clarified. The following sentence, inserted after the first sentence of the last paragraph on the bottom of page 2, would be appropriate: "The Preliminary Reassessment Report does not address the issue of the acceptability on the world market of copra obtained from coconut trees planted on those six islands, however, and the implication of this issue, particularly in view of the experience of copra from trees planted on Bikini Island, has yet to be resolved." The decision to plant the trees, and the bases for it, are recognized to be Interior's responsibility, however.

Additional Comments

Page 1, Paragraph 2

We have no problem with the two sentences beginning "This preliminary..." being omitted. If they are retained, however, "northern" should be replaced by "northeastern," and the words "and all of the islands in the northwest" should be inserted before the word "still." Furthermore, after "exposure estimates" please insert the words "for the lifestyles considered, however."

Page 2, Paragraph 3

The terms "all of the radiation exposure estimates..." should be clarified that the statement pertains only to the living conditions identified in the preceding paragraph.

1240
-5-

Page 3, Line 12

Replace "bulk" with "majority."

Page 3, Line 18

Insert "by Mr. Mitchell" between "requested" and "to."

Page 3, Line 25

Typo - "believed"

Page 4, Line 7

Omit comma after "entitled."

Page 4, Line 9

Replace "for" with "to," and replace "adults" with "members."

Page 5, Line 20

Replace "...the radiation standards established by..." with "...the radiation exposure limits recommended by..."

Page 6, Line 8

Insert "to" between "rise" and "that."

Page 7, Line 15

Typo - "earlier"

Page 7, Line 20, and Page 8, Line 17

"30-50 years" should be "30-65 years"

Page 7, Line 20

"...strontium and cesium"

Page 7, Line 21

Suggest "...soil had resulted in potential radiation exposure levels which would be at least within the U.S. exposure limits."

1240
-4-

Page 8, Line 23

Omit "reduced"

Page 8, Lines 23-24

Replace "...not pose a risk to them." with "...be reduced to such a level that applicable exposure limits would not be exceeded."



GOVERNMENT OF THE MARSHALL ISLANDS
MAJURO, MARSHALL ISLANDS 96960

ENCLOSURE
Cable: GOVMAR

Enclosure D

September 12, 1979

AN OPEN LETTER

TO : IROIJLAPLAP JOANES,
IROIJLAPLAP BINTON
MEMBERS OF THE COUNCIL OF UJELANG AND ENEWETAK AND
THE PEOPLE OF UJELANG AND ENEWETAK

I HAVE ASKED OUR CHIEF SECRETARY OSCAR DEBRUM TO CONVEY THIS MESSAGE TO YOU, EXTENDING OUR GREETINGS AND WARM WISHES FOR A WISE AND CONSIDERED DECISION DURING THE DELIBERATIONS OF THE ENEWETAK RADIATION DOSE ASSESSMENT MEETINGS. I WISH ALSO TO EXTEND DEEP REGRETS FOR MY INABILITY TO BE WITH YOU DURING THESE MEETINGS TO DISCUSS THE MOST SERIOUS AND DIFFICULT QUESTION WHICH YOU YOURSELVES MUST RESOLVE FOR YOUR LIVES AND THE LIVES OF YOUR FUTURE GENERATIONS.

DESPITE MY ABSENCE FROM THESE IMPORTANT MEETINGS, I WISH TO ASSURE YOU OF OUR CONTINUED CONCERN FOR YOU AS YOU FACE ALL THESE COMPLICATED PROBLEMS WROUGHT UNFORTUNATELY UPON AN, INNOCENT AND NATURE-LOVING PEOPLE, AND TO AGAIN REITERATE THAT THE POSITION OF THE GOVERNMENT OF THE MARSHALL ISLANDS WITH RESPECT TO THESE PROBLEMS, WHICH HAS BEEN SHARED WITH SOME OF YOU ON SEVERAL OCCASIONS IN THE PAST, HAS NEVER BEEN ALTERED.

THE GOVERNMENT OF THE MARSHALL ISLANDS UNDERSTANDS AND DEEPLY APPRECIATES THE LONG HARDSHIP YOU AS A DISPLACED PEOPLE HAVE SUFFERED AND ENDURED DURING THE MANY YEARS SINCE YOU WERE

(PAGE TWO)

EVACUATED FROM YOUR BELOVED HOMELAND, AND THE BURNING DESIRES AND ANXIETIES WHICH HAVE RENDERED IT UNBEARABLE FOR YOU TO WAIT ANY LONGER TO RETURN TO YOUR LONG MISSED HOMELAND. HOWEVER, YOUR GOVERNMENT, IN ALL FAIRNESS, MUST ADVISE YOU THAT IT CANNOT BLESS NOR PARTICIPATE IN ANY DECISION MAKING FOR YOUR RETURN TO ENEWETAK WITHOUT BEING ABSOLUTELY CERTAIN OF ALL ASPECTS OF THE LINGERING DANGER OF RESIDUAL RADIATION IN ENEWETAK. THE RECENT GAO REPORT ON THE APPARENT RADIATION DANGER IN ENEWETAK HAS GIVEN US MUCH CONCERN AND GROUND FOR SERIOUS DOUBTS WHETHER YOUR RETURN TO ENEWETAK UNDER SUCH CIRCUMSTANCES AT THIS TIME IS ALL THAT PRUDENT AND SAFE. WE CANNOT BE SURE WHETHER THE CONCRETE ENTOMBMENT OF THE RADIO-ACTIVE ELEMENTS AND MATTERS BURIED IN THE BOMB CRATER IN ONE OF THE ISLANDS IN THE LAGOON OF ENEWETAK IS PERMANENTLY SECURED AGAINST ANY POSSIBLE LEAKAGE IN THE FUTURE. AND IF SUCH POSSIBILITY DOES EXIST, WE ARE NOT AWARE THAT THERE ARE PROPER AND ADEQUATE MEANS OF PRECAUTIONARY MONITORING TO CHECK AND WARN AGAINST FUTURE LEAKAGE. WE HAVE ALSO NOTED THAT THE RADIATION LEVEL ON THE ISLAND OF ENIU IN BIKINI ATOLL IS ANALOGOUS TO THAT OF THE HABITABLE ISLANDS IN ENEWETAK ATOLL. IF SUCH IS ACCURATE, IT IS, INDEED, DIFFICULT TO UNDERSTAND WHY THESE ISLANDS IN ENEWETAK ARE CONSIDERED SAFE WHILE ENIU ISLAND OF EQUAL RADIATION LEVEL HAS BEEN DECLARED UNSAFE FOR THE BIKINIANS TO RESETTLE. THERE ARE A NUMBER OF QUESTIONS TO WHICH YOUR GOVERNMENT MUST HAVE, BUT DOES NOT HAVE THE ANSWERS, IN ORDER TO BE BETTER POSITIONED TO ADVISE YOU OF THESE PROBLEMS.

THE GOVERNMENT OF THE MARSHALL ISLANDS IS VERY MUCH

(PAGE THREE)

AWARE OF ITS PROBLEM OF NOT HAVING BEEN FULLY INFORMED ON ALL THE ASPECTS OF RADIATION DANGER IN ENEWETAK, BUT WE SHALL ENDEAVOR TO SEEK FURTHER AND BROADER KNOWLEDGE SO WE MAY BE HELPFUL TO YOU. DESPITE THESE UNCERTAINTIES, WE HAVE NO RESERVATION IN INFORMING YOU THAT ENEWETAK ATOLL AND THE ISLANDS DESIGNATED FOR YOUR RESETTLEMENT ARE NOT, AND WILL NOT FOR A LONG TIME, BE ONE HUNDRED PER CENT SAFE FOR YOUR LIVES AND THE LIVES OF YOUR GENERATIONS TO COME. THIS IS THE CRUX OF THE DOSE ASSESSMENT MEETINGS WHERE YOU WILL BE ASKED TO CONSIDER THE AMOUNT OF RADIATION RISK AND, MOST IMPORTANTLY, THE CONTROLLED AND DISCIPLINED CONDITIONS UNDER WHICH YOU WILL HAVE TO DRASTICALLY ADJUST YOUR LIVING STYLES. THE OLD, FREE AND BEAUTIFUL ENEWETAK THAT YOUR ELDERS KNEW AND LOVED HAS FAR GONE. IT IS NOW A HOMELAND, SCARRED BY WAR, DEFACED BY NUCLEAR OBLITERATION, AND IN THE CASE OF RUNIT, FOREVER CONDEMNED. FORTUNATELY, SOME OF ITS FAMILIAR SCENERY AND CHARMS HAVE SURVIVED ALL THESE NIGHTMARES. A REHABILITATION PROGRAM BY THE UNITED STATES MILITARY TO REMOVE HAZARDOUS DEBRIS OF YESTERDAY HAS PROGRESSED WELL AND WILL BE COMPLETED BY NEXT YEAR. MODERN EDIFICES AND HOMES HAVE BEEN BUILT ON THE RESETTLEMENT SITES. ENEWETAK TODAY IS A DIFFERENT HOMELAND, WHICH IN FACT REQUIRES YOU TO CONFORM TO THE DICTATES OF YOUR NEW ENVIRONMENT AND CHANGE YOUR LIVING HABITS IN ORDER TO SURVIVE. BUT TO THOSE OF YOU WHO LOVE NATURE AND THE TRADITIONAL WAY OF LIVING, YOU WILL FIND THAT MUCH HAS BEEN LOST, AND MORE CRITICALLY, MUCH OF YOUR FREEDOM WILL BE CURTAILED BECAUSE MUCH OF YOUR DOMAIN HAS BECOME UNSUITABLE FOR THE FULL ENJOYMENT OF ISLAND LIVING THAT YOU USED TO KNOW.

(PAGE FOUR)

LASTLY, THE GOVERNMENT OF THE MARSHALL ISLANDS IS EXTREMELY CONCERNED WHETHER THESE INITIAL DOSE ASSESSMENT MEETINGS CAN ACHIEVE A PROPERLY INFORMED CONSENT BY THE PEOPLE OF UJELANG AND ENEWETAK TO THE SATISFACTION OF ALL CONCERNED. WE HAVE NO DOUBT THAT THE TECHNICAL AND SCIENTIFIC EXPERTISE OBTAINED TO RENDER YOU ADVICE AND ASSISTANCE IN FULLY UNDERSTANDING THE RAMIFICATIONS OF THE SERIOUS DECISION ARE COMPETENT. BUT IT WILL BE MOST IMPROPER THAT THEY MAKE THE DECISION FOR YOU BECAUSE IT IS NEITHER THEIRS, NOR THE VARIOUS GOVERNMENT REPRESENTATIVES' TO MAKE. IT IS, INDEED, YOURS ALONE TO MAKE. IF YOU FEEL THAT YOU ARE NOT READY TO MAKE IT AT THIS TIME, WE ASK THAT YOU DO NOT RUSH WITH IT. BUT IF YOU FEEL THAT YOU ARE READY TO ENTERTAIN IT, WE PRAY THAT GOD HELP YOU IN YOUR DILIGENT DELIBERATIONS AMONG YOURSELVES.

IN CONCLUSION, WE WISH AGAIN TO ASSURE YOU THAT WHATEVER THE FATE OF UJELANG AND ENEWETAK PEOPLE WILL BE IN THE FUTURE BY THEIR OWN DECISION, THE GOVERNMENT OF THE MARSHALL ISLANDS WILL ALWAYS BE READY AND WILLING TO SHARE YOUR PROBLEMS AND ASSIST YOU IN ANY WAY IT CAN.

WITH MY DUE RESPECT AND REGARDS TO YOU, I AM

SINCERELY YOURS
MATA KIBUA, PRESIDENT

RESOLUTION
OF
THE COUNCIL OF ENEWETAK

WHEREAS:

While the People of Enewetak are one people, consisting of two subgroups known as the People of Engebi and the People of Enewetak, and

Within the Atoll of Enewetak, the island of Enewetak is the traditional dwelling place for the People of Enewetak, and

Engebi island is the traditional residence island of the People of Engebi, and

It is of vital importance to the People of Engebi to re-establish their homes upon Engebi Island; and

All of the people of Enewetak Atoll fervently hope and pray that the People of Engebi will be assisted by the United States of America in achieving the fulfillment of their desire; and

Representatives of the Department of Energy have explained the radiological conditions which exist at Engebi Island; and

The People of Enewetak and Engebi have carefully considered the radiological report of the Department of Energy; and

The People have consulted with their own independent advisors regarding the conditions at Engebi Island; and

The People of Enewetak are satisfied that they have sufficient information to make an intelligent decision regarding the resettlement of Engebi Island; and

The People of Enewetak believe that it is their fundamental right to decide their future and to call upon the United States to assist them in the fulfillment of their desire to resettle Engebi Island; and

THEREFORE BE IT RESOLVED THAT:

The People of Engebi shall and must return to live on the island of Engebi at Enewetak Atoll; and

The United States Government be implored to concur in this decision and to provide all necessary assistance to enable the People of Engebi to return to their traditional homeland.

Joannes Peter P1784
Iroij Joannes Peter

Binton Abraham
Iroij Binton Abraham

John Abraham
John Abraham, Magistrate

Samson Samson
Samson Samson, Councilman

Sam Livai
Sam Livai, Councilman

Joseph Hernes
Joseph Hernes, Councilman

Abner Edward
Abner Edward, Councilman

Saul Abraham
Saul Abraham, Councilman

Benji Gideon
Benji Gideon, Councilman

Lombwe Mark
Lombwe Mark, Councilman

Renton Joannes
Renton Joannes, Councilman

Sam Luke
Sam Luke, Councilman

Moses Abraham
Moses Abraham, Councilman

Alik Jorem
Alik Jorem, Councilman

Balik Paul
Balik Paul, Councilman

DONE THIS 20TH DAY OF SEPTEMBER, 1979, AT UJELANG
ATOLL.

Enclosure F

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PLEASE REPLY TO Washington Office
November 6, 1979

Ms. Ruth C. Clusen
Assistant Secretary for Environment
Department of Energy
6128 CPB
20 Massachusetts Avenue, N.W.
Washington, D.C. 20585

Dear Ms. Clusen:

Since you and your agency have a direct interest in the environmental impact statement for the cleanup, rehabilitation and resettlement of Enewetak atoll, I want to share with you my recent letter to Leo Krulitz on the question of whether the proposal to resettle Enjebi requires a supplemental impact statement.

Sincerely,

Theodore R. Mitchell

31044

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PLEASE REPLY TO Washington Office

October 30, 1979

Leo M. Krulitz
 Solicitor
 Department of the Interior
 Washington, D.C. 20240

Dear Leo:

Since we were at Ujelang last month I have been thinking about your observation that a supplemental environmental impact statement may be required with respect to the proposed resettlement of Enjebi. Within the last few days I have been able to focus on the question and I would like to share my views with you.

You know firsthand the intensity of the feeling of the people of Enewetak regarding the resettlement of Enjebi. In May of 1972 they made the first visit to the atoll since leaving it in 1947. At a meeting chaired by Peter T. Coleman, then Deputy High Commissioner, on behalf of the Trust Territory Government, a pledge was made to permit the people to plan the resettlement. Steps were immediately taken to develop a master plan for the program.

Leo M. Krulitz
October 30, 1979
Page Two

At our request, architect Carlton Hawpe (who speaks Marshallese and English) was engaged by Holmes & Narver and Holmes & Narver was engaged to assist in the drafting of the master plan. It went very well. In November 1973, the plan was completed. It included two major settlements: one at Enewetak island in the south and the other at Enjebi. Enjebi was included because that is what the people wanted and because no one in the government even suggested that Enjebi could not be included.

In September 1974, when General Warren D. Johnson, then DNA director, came to Enewetak atoll to meet with the people and present the draft environmental impact statement, the people were informed for the first time that the Atomic Energy Commission recommended against the resettlement of Enjebi and would oppose the funding of the entire program if Enjebi were included. General Johnson was accompanied by high level representatives of the Atomic Energy Commission, the Department of the Interior, the Environmental Protection Agency and the Trust Territory Government.

It was clear to all of us, that is to the people of Enewetak and their counsel, that we had no real choice. It was a matter of acceding to the AEC "recommendation" and revising the Master Plan to cut Enjebi out, or having no cleanup and resettlement program at all. EIS, Vol. I §7.

The people of Enewetak returned to Ujelang to revise the Master Plan, to move everyone to residences in the southern islands of Enewetak, Medren and Japtan. That was not an easy accomodation to achieve, even though they are a remarkably cohensive and cooperative group, but it worked out and the revised Master Plan of March 1975 excluded Enjebi. EIS, Vol. II, Tab D.

I want to make it very clear that the people of Enewetak never did agree to forego the resettlement of Enjebi. They acceded to it at the time because they had no real choice. To be sure, the "Case 3", which excluded Enjebi, was presented as a "recommendation." See draft EIS §5.4.3. But the AEC had made up its mind unilaterally, in advance, and without the support of the AEC, the government's radiation experts, prospects for funding of the program were scant if not nonexistent.

Leo M. Krulitz
October 30, 1979
Page Three -

I shall come in due course to the question whether the 1975 impact statement is adequate for today's issues, but I should point out here that Enjebi was the issue. Early results from the 1972 radiological survey regarding conditions in the southern islands did not surprise anyone. They presented no radiological problem whatever. Enjebi and the other islands in the north were the only questionable areas from the beginning. And the resettlement of Enjebi was the most thoroughly studied single issue because it was known, if not fully appreciated, by the people at AEC that the resettlement of Enjebi was the objective of prime importance to the beneficiaries of the program.

It is very important to recall exactly how the AEC arrived at its adverse recommendation. During the interagency discussion which took place before the draft EIS was released in September 1974, the Director of the Defense Nuclear Agency insisted with the AEC that the Enjebi question called for a cost-benefit analysis which took into account "the entire problem: biological — political — and fiscal, as well as the social and economic effects on the Enewetakese people . . ." Letter, W. D. Johnson to Dixy Lee Ray, June 7, 1974. The AEC rejected that approach. Instead, it applied radiation protection standards. EIS, Vol. II, Tab B, pp. 4-5 and Appendix III.

In its selection of the standards to be applied, the AEC chose the 1960 and 1961 Radiation Protection Guides (RPGs) and then reduced those numerical limits by 50% in the case of exposure to the whole body, bone marrow, bone and thyroid. Gonadal exposures were to be limited to 80% of the RPG value. Id. Appendix III, p. III-10 to III-11. (This apparent inconsistency was never satisfactorily explained, by the way.)

We pointed out in "Radiation Protection at Enewetak Atoll" that if any radiation protection standards are to be employed in making decisions about Enewetak, it is the Protective Action Guides (PAGs), and not the RPGs. I have discovered that we were not the first to make that observation. - During review of the draft version of the AEC Task Group Report, then Deputy Director of DNA, John W. McEneary, quite

Leo M. Krulitz
October 30, 1970
Page Four

clearly pointed out to the AEC that the PAGs applied and that the "particular case of Enjebi should be . . . individually evaluated on such bases as relative risks or cost v. benefit . . ." "The present AEC Report," he went on, "seems wholly inadequate in such evaluations." Letter, J. W. McEnergy to Martin B. Biles, May 14, 1974. I would have had General McEnergy make the related point that the RPGs do not apply at all. He did not, but his advice was quite sound all the same.

The Environmental Protection Agency gave the AEC essentially the same counsel, saying that "numerical values for the dose limits are only preliminary guidance and . . . a cost-benefit analysis must be undertaken . . ." Letter, W. D. Rowe to Martin B. Biles, USAEC, May 17, 1974.

The facts essential to a relative risk or cost-benefit analysis were all there, but despite the unanimous advice it was given, the AEC chose to decide the matter on the basis of the modified RPGs. (We pointed out in "Radiation Protection at Enewetak Atoll" that neither AEC or EPA has any authority to modify radiation protection standards. Only the President can do that.) When the modified standards were applied to Enjebi, the AEC found that the projected doses would be "near or slightly above the radiation criteria" and on that basis rejected that alternative. EIS, Vol. II, Tab V, p. 23. Under Case 4, residence on Enjebi was expected to increase the 30 year cancer risk from 0.3 cases to 0.8 cases. EIS, Vol. I, Table 5-13, p. 5-51. The Task Group Report did not make this kind of comparison, but it did recognize explicitly that at the dose levels of concern the risk of harm was comparatively low. EIS, Vol. II, Tab B, p. III-12 to III-13. Nonetheless, the AEC clung to the security of the RPGs.

Now, in light of the foregoing, what does the National Environmental Policy Act of 1969 require of us? We were the first to suggest that NEPA is applicable here and that an environmental impact statement was required for this project. That is a matter of record. I will not trouble you with the details, but simply mention that we insisted that the NEPA requirement of an impact statement for every "major federal action significantly affecting the quality of

Leo M. Krulitz
October 30, 1979
Page Five

the human environment" necessarily included the study of a proposed action which was intended to improve the "quality of the human environment." It is not my purpose now to attempt to circumvent the spirit or the letter of NEPA.

NEPA, of course, requires study of the potential consequences of a proposed action prior to a decision being taken on the proposal. Calvert Cliffs' Coordinating Committee v. AEC, 449 F.2d 1109 (D.C. Cir. 1971). The question, here, is whether the matter of resettlement of Enjebi island was sufficiently well-studied in the April 1975 impact statement.

I think the answer is yes.

As I have said before, Enjebi was far and away the most significant single issue during the planning phase of the program. Enjebi figured in several of the alternatives considered by the AEC Task Group and in alternative schemes for resettlement which were considered.

The principal alternatives, in the EIS, were termed "cases." Case 1 posited full resettlement of the entire atoll with no cleanup. Obviously, that was ruled out by all concerned. Case 2 restricted use to the southern part of the atoll for all purposes. Case 3 called for residence only in the south, with unrestricted travel throughout the atoll and limited food gathering from the north. Case 4 included Enjebi as one of the two principal residential sites, with unrestricted travel throughout the atoll and certain dietary restrictions for those living on Enjebi. Case 5 included Enjebi as well. For a discussion of these alternatives see EIS, Vol. I §5.

The Report By The AEC Task Group on Recommendations For Cleanup and Rehabilitation of Enewetak Atoll, dated June 19, 1974, which was included in its entirety in the impact statement, Vol II, Tab V, gave a good deal of attention to Enjebi. The Task Group Report, in turn, was based to a great extent upon the enormous three volume work entitled Enewetak Radiological Survey, NVO-140, USAEC, October 1973. Those three volumes alone must contain over 2,000 pages of text, tables, plates and charts. It has been described

Leo M. Krulitz
October 30, 1979
Page Six

to me as the most comprehensive radiological survey yet performed by anyone and, of course, it included Enjebi.

Altogether, the radiological considerations with respect to resettlement of the atoll in general and resettlement of Enjebi in particular, consumed the largest share of the EIS. See EIS, Vol. I §§5-6; Vol. II, Tab A, p. P-8; Vol III, Tab B, pp. 1-53 (including appendices I-IV). In effect, the entire Enewetak Radiological Survey was incorporated by reference into the EIS, a practice which is expressly permitted by the NEPA regulations. 40 C.F.R. §1502.21 (43 F.R. 55978, 55997).

In other words, it seems to me that the radiological implications of resettlement of Enjebi were thoroughly developed and considered in the statement. That laid the foundation for considering one of the two principal issues presented by Enjebi, that is, the radiological health effects associated with resettlement of a human population to Enjebi island. I shall come back to this matter of health effects shortly.

The other aspect of the Enjebi question which must be considered in any decision are the cultural implications of denying resettlement. That matter, too, was adequately covered in the course of the development of the draft EIS and the EIS itself. The importance of Enjebi to the people of Enewetak was treated in Vol. I §§3.4, 3.5, 4.5, 5.4.1.3, 5.4.2.2, 5.5, 5.7, 6.1, 7.3.3.4, 8.35, 9.7, and Vol. IIA, Tab F.

At the latter reference, you will find the observations of Dr. Robert C. Kiste, which standing alone probably say all that can be said about the cultural significance of Enjebi to the people who want to resettle there:

The people of Enjebi will be greatly disappointed. And it is not a simple matter of not being able to return to what they think of as home. Marshallese attitudes regarding land, particularly ancestral homelands are difficult for Westerners to appreciate. There is almost a sacred quality about an islander's emotional attachment to his home atoll — and more specifically — those parcels of land within that atoll to which he has rights.

Leo M. Krulitz
October 30, 1979
Page Seven

As I have said, the two principal considerations which are relevant to a decision about Enjebi, are the likely health effects from radiation exposure, if the island is to be resettled, and the likely adverse impact of denying resettlement.

The dose estimates were done and set forth in the AEC Task Group Report and in §5.6.1 of the EIS. The risk estimate, that is the estimated number of health effects associated with each resettlement alternative, was calculated and set forth in Table 5-12, Vol. I of the EIS. The same subject is treated in the text at §5.6.2. A comparison of the health effects for all five cases is contained in Table 5-13 at p. 5-51.

The health effects predicted in 1975 for the resettlement of Enjebi are not substantially different from those which have been calculated on the basis of the most recent data. The dose estimates which we find in the EIS, at §5.6.1 (which are in turn drawn from the AEC Task Group Report and the Enewetak Radiological Survey), are somewhat higher than current predictions, I suspect, because of the unrealistic dietary model which was used. See Enewetak Radiological Survey, NVO-140, Vol. I, pp. 492-498. (Dr. W.L. Robison observed that "it would . . . appear that dose calculations based upon [the NVO-140 dietary model] may overestimate the total dose via the food chains. . . ." Id. p. 497.) In any case, we were faced then with health effects on the order of less than a single case of cancer or a single genetic defect as a result of resettlement of Enjebi, a prospect essentially the same as we now have before us.

I have not discussed the concern with exposure from the transuranics via the inhalation pathway. That situation has been improved, insofar as more rigorous permissible limitations have been imposed than those included in the impact statement. I am not sure of this, however, but it seems to me that the soil removal may have reduced the concentrations of fission products as well.

While it seems clear to me that the proposal to resettle Enjebi was thoroughly studied in 1975 in the course of the environmental impact statement, there is one serious flaw

Leo M. Krulitz
October 30, 1979
Page Eight

in the decisionmaking process which was based upon it. As we have said, the AEC insisted that all questions of radiological health and safety be resolved in terms of radiation protection standards, rather than the more realistic basis of expected health effects from projected doses of radiation. See EIS, Vol. I, §§5.3.2 to 5.4; and Vol. II, Tab B, pp. 4-5. This is not the place to devote the attention it deserves to the question of the relevance and utility of United States radiation protection standards to the resettlement of Enewetak atoll. You have our "Radiation Protection for Enewetak Atoll" and we are working on a revised version which will incorporate the risk estimates recently performed by our advisors. Suffice it to say here that it is simply not possible for one to make decisions in matters of this kind in terms of numerical limits which are in themselves the result of one kind of cost-benefit analysis of potential adverse health effects weighed against known benefits of the use of radiation by members of a large population.

But take the Protective Action Guides, for the sake of discussion, and apply them to the case at hand. The question then becomes which will do the people of Enewetak more harm, living at Enjebi or denial of that opportunity? And a closely related, extremely important question: What will do the people of Enewetak the greater harm, permitting them to decide their own fate, or denying them that right?

When measured by the major concern which we all share, that is the potentially adverse health effects of radiation exposure, the risk today, if anything, is lower than in 1975, when the predicted health effects contained in the EIS (Vol. I, Tables 5-12 and 5-13), are compared with those based upon the most recent dose assessment.

These are the facts essential to rational consideration of and decision in this matter. The most significant difference between 1979 and 1975, is that the people of Enewetak are now exercising their last chance to take a look at this matter. They have made their own evaluation and called upon you to reconsider. The relevant facts, as set forth in the EIS, are essentially the same today as they were in

Leo M. Krulitz
October 30, 1979
Page Nine

1975. What we are asking you to do is apply a different, more rational form of analysis to them. Indeed, the new dose assessment done by Lawrence Livermore Laboratory and the risk estimates done by our own independent advisors simply confirm the essential accuracy of the information contained in the EIS.

What is required is the preparation of a "record of decision" in accordance with 40 C.F.R. §1505.2. In response to the October 8 request by the people of Enewetak, the earlier Enjebi decision should be reconsidered. In other words the decisionmaking process which is to be guided by 40 C.F.R. Part 1505 should be commenced and the "alternatives described in the environmental impact statement" should be considered anew. Id. §1505.1(e). Then the decision taken and the reasoning by which it was reached, including a discussion of alternative courses of action which were considered, are not to be included in the impact statement itself, but rather set forth in "a concise public record of decision." Id. §1505.2(a) and (b).

If you would like to discuss this matter, you have only to call.

Best regards,



Theodore R. Mitchell

xc: R.R. Monroe, DNA
R.C. Clusen, DOE
R.G. Van Cleve, OTA
W.A. Mills, EPA



NOV 15 1979

~~CONFIDENTIAL~~
Enclosure G

Department of Energy
Nevada Operations Office
P.O. Box 14100
Las Vegas, NV 89114

L. Joe Deal, HQ (EV-123)
B. W. Wachholz
Office of Environment, HQ (EV-212)

TRANSURANICS DATA, ENEWETAK

Over the past several weeks, NV (ERSP) has been evaluating a systematic error in the in situ measurement of Americium at Enewetak. This error derives from the improper use of a soil composition which is not representative of the actual. In calculating the attenuation of 60 KEV energy, the error is significant (in the range of 20-25%). Before introducing a wholesale correction in the Enewetak transuranics data base, ERSP is evaluating other uncertainties, both systematic and random. This may require a modest amount of additional field work.

Assuming that the current 20-25% (low) estimate is verified, all Imp transuranics numbers will require adjustment. At first look, it appears that this will place the certification of the following islands technically in question: Irene, Janet, Kate, Mary, Olive, Sally. On Janet (Engebi) for example, a total of twelve quarter hectare-sized areas cannot now be certified to be below the 40 pCi/gm residential standard. The highest average reading in any such quarter hectare will be somewhere between 40 and 50 pCi/gm. The total affected area (that which may exceed the standard) will be approximately 2.5% of the total island area; the island average, however, will remain well below 25 pCi/gm. This reflects the conservatism which has been built into ERSP application of the 40-80-160 standards.

As it turns out, the technicality of island-by-island certification remains ambiguous enough to accommodate even the current situation. This is because the terms "Residential", "Agricultural" and "Food Gathering", recommended for adoption by the Bair Committee have not been precisely defined. I drafted a definition paper (copy enclosed) which was telecopied to Tom McCraw on Jan 30, 1978. I later (June 12, 1979) telecopied it to you* for comment and/or staffing for approval. It took the form of a "strawman" of a DOE (Liverman) memo to me and to DOI and DNA. Since that strawman has not been acted upon, our certification document remains ambiguous in that it refers in Par III to the

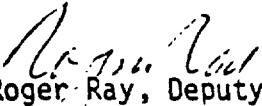
* B.W. Wachholz

DOE definition of a "Residence" (or "Agricultural", etc.) Island. Such DOE definition does not exist. In practice, we on our own initiative applied the 40 pCi/gm standard to each quarter hectare because that was the area module which we had adopted for cleanup guidance. This is probably far too fine-grained for land use decisions, wherefor island averages (or, for Engebi, quadrant averages) would make more sense.

At the present time, we are reviewing all of the uncertainties in the measurement and calculation of Imp derived transuranics numbers. We expect then to provide to Bill Robison a revised basis for his evaluation of the inhalation pathway. From preliminary conversations neither he nor we expect the effect on dose commitment to be significant. Never the less, I feel obliged to correct our certification documents. That task would be facilitated by the availability of the definition document referred to above. Now, however, with the radiological cleanup completed, I would suggest that the definition document contemplate use in considering resettlement options rather than cleanup criteria. It might thus deal with island averages or, for large islands or those with wide variations, in some subdivision of an island such as a zone or quadrant.

When a definition document is written, I strongly suggest that it incorporate the sense of the second paragraph of the earlier strawman, i.e.

1. The assignment of one of the three designators to an island should not be taken as an unconditional recommendation that the island be so used.
2. Earlier, designators were devised to assist in providing guidance for cleanup decisions. Resettlement decisions should be based upon all available information of all nuclides and pathways, upon dose assessments derived therefrom and upon continuing risk-benefit evaluation.


Roger Ray, Deputy for
Pacific Operations



United States Department of the Interior

Enclosure #

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

OCT 22 1979

Dr. Bruce Wachholz
Environment Division
Department of Energy
Washington, D.C. 20543

Dear Dr. Wachholz:

This Department has been requested by the people of Enewetak, through their legal counsel, Mr. Theodore Mitchell, Micronesian Legal Services Corporation to consider at this time the agricultural redevelopment of Engebi Island and reestablishment of a community on that island for the Engebi people. As you know, the revised Environmental Impact Statement of 1975, as well as the revised Master Plan for the Enewetak Resettlement and Rehabilitation Program, had excluded the use of Engebi Island.

This request is under study within the Department. It would be extremely helpful if the Department of Energy could provide us with an estimate of the period of time which must elapse before exposure levels on Engebi island would meet applicable exposure limits.

Sincerely yours,

Ruth G. Van Cleve

Mrs. Ruth G. Van Cleve
Director
Office of Territorial Affairs

65372

*Mr. Wachholz
action
request
info*

~~CONFIDENTIAL~~
Enclosure I
Draft #2
12/3/79

Mrs. Ruth G. Van Cleve, Director
Office of Territorial Affairs
U. S. Department of the Interior
Office of the Secretary
Washington, D.C. 20240

Dear Mrs. Van Cleve:

Reference is made to your letter of October 22, 1979, in which you state that the Department of the Interior is considering the agricultural redevelopment of Enjebi Island and the reestablishment of a community on that island for the Enjebi people. As part of this consideration you requested estimates of the time which must elapse before exposure levels on Enjebi Island would meet exposure limits.

Current estimates of the number of years which must pass if exposure limits are to be adhered to are based upon the potential dose estimates provided in the Preliminary Dose Assessment Report prepared by the staff of the Lawrence Livermore Laboratory (LLL). These dose estimates have been compared to the exposure guidance, and, based upon known radioactive decay rates of the radionuclides involved, time intervals have been calculated. U. S. Federal Radiation Council recommended exposure levels (adopted also by the Environmental Protection Agency) are 500 mrem to the maximum exposed individual in any one year (and assumes that the maximum exposed individual does not vary from the average population exposure by more than a factor of 3, resulting in a recommended average population exposure level of 170 mrem per year) and 5000 mrem over a 30 year period. Atomic Energy Commission recommendations, recognizing the uncertainties inherent in such dose estimates, were one-half of the FRC guidance for the maximum

individual, or 250 mrem in any one year and eighty per cent of the 30 year exposure value, or 4000 mrem over 30 years.

Several different scenarios and living patterns and conditions were examined assuming that people would be living on Enjebi:

<u>Living Pattern</u>	<u>Potential Exposure(mrem)</u>	<u>Years to Meet FRC Guidance</u>
a. Local and imported food consumed Coconuts only from southern islands	300	0
b. No imported food available Coconuts only from southern islands	560	10-15
c. Local and imported food consumed Coconuts only from Enjebi	975	35-40
d. Local and imported food consumed Coconuts from Enjebi to Billae	900	30-35
e. No imported food available Coconuts only from Enjebi	2000	65-70
f. No imported food available Coconuts from Enjebi to Billae	1860	60-65

(The assumptions underlying these estimates are identified in the LLL preliminary report and should be recalled, e.g., time spent on islands other than Enjebi, coconuts consumed from other islands, etc.)

If the AEC recommendations are applied, the time intervals increase by about 30 years. For example, category "c" above would be about 65-70 years, category "d" would be 60-65 years, category "e" would be about 95-100 years, and category "f" would be about 90-95 years.

see insert A

Presumably this decision was based at least in part upon our letter to you of September 28, 1979, in which we estimated the potential additional radiation exposure to people assumed to live on Enewetak,

—We note that the Department of the Interior is proceeding with the planting of coconut trees on the six northeastern islands of Enewetak Atoll. This decision eliminates all of the above options except for "d" and "f."

Japtan and Medren islands, should the six islands be planted with coconut trees. The assumptions inherent in those dose estimates were identified in that letter. As we pointed out in that letter, however, the dose estimates do not account for those individuals who might, for whatever purpose, engage in activities and practices which would lead to greater exposures than those indicated.

Furthermore, we stated in that letter that the acceptability of copra from those coconut trees at processing facilities or its marketability in world commerce was not being addressed. At present there is no basis for encouraging the expectation that "science" will find a way to reduce the uptake of radionuclides, particularly cesium and strontium, by coconut trees. While studies to modify this uptake continue to be in progress, currently there is no justification for optimism on this matter.

An additional question is the administrative mechanism by means of which decisions will be made in the years to come should the concentration of radionuclides in the coconuts be unacceptable on the world market. Based upon the experience at Bikini Island, and in view of Mr. Deal's letter of September 29, 1978, to Admiral Monroe, the unacceptability of these coconuts on the world market would appear to be a very real possibility. In view of the changing relationships in the Marshall Islands, it is not clear where responsibility and authority may reside should this matter need to be addressed in the future.

Enclosed are 20 copies of the book "Enewetak Today," which was presented to and discussed with the Enewetak people at Ujelang. These may help to supplement those which you previously received directly from Dr. Bair.

I hope that this information is responsive to your request. Please let me know if we can be of further assistance.

Sincerely,

Bruce W. Wachholz, Ph.D.
Office of Environment

20 Enclosures

bcc: McCraw, Deal, Burr, Hollister, Clusen

Concurrence: McCraw, Deal, Burr, Hollister, Watters, McCammon



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

OCT 9 1979

Honorable Henry M. Jackson
Chairman, Committee on
Energy and Natural Resources
United States Senate
Washington, D. C. 20510

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of

Dear Mr. Chairman:

This responds to your request for a report on H.R. 3756 as passed by the House of Representatives on May 7, 1979, a bill "To authorize appropriations for certain insular areas of the United States, and for other purposes." The Administration recommends that H.R. 3756 be enacted with the amendments described below.

Section 101

Section 101 would provide an open-ended authorization of funds for the Trust Territory of the Pacific Islands after 1980, both as to time and amount. The Administration has no objection to the open-ended provisions. We believe that language that is open-ended as to amount gives recognition to the need for Trust Territory budget flexibility in light of the changes taking place there. Open-ended timing would accommodate the schedule that might arise from agreement reached with the Micronesians on future political status terminating the trusteeship by the end of 1981.

Section 102

Section 102 would authorize the appropriation of 50 percent of the outstanding amounts payable under the adjudicated claims and final awards made by the Micronesian Claims Commission under Title I of the Micronesian Claims Act of 1971. These awards amount to \$34.3 million. To date, Japan and the United States have made available a total of \$11.8 million (with Japan's share in goods and services), which has been paid or made available on a pro rata basis to Title I claimants. P.L. 95-134 authorizes payment of the remaining amounts outstanding upon a 50 percent contribution by Japan. Since Japan has made no further contribution, the balance of \$22.6 million in Title I awards remains unpaid. Claims relating to the immediate post-secure and post war period (the Title II claims), totaling approximately \$32 million, have been paid.

The Administration at this time continues to oppose further Title I payment. In addition, because of the uncertainty now existing as to the amount needed to settle Title I claims, and the additional uncertainty as to when the question about amount will be finally established, we think, at a minimum, it is premature to support the authorization contained in section 102.

These uncertainties arise because of pending litigation. The United States Court of Appeals for the District of Columbia reversed and remanded earlier decisions of the United States District Court in two suits involving three claims, holding that the Micronesian Claims Act and its legislative history do not preclude judicial review of final decisions of the Micronesian Claims Commission (Ralpho v. Bell, 569 F.2d 607 (1977); Melong v. Micronesian Claims Commission, 469 F.2d 630 (1977)).

The first question before us, and itself not a difficult one to resolve, is where those three claims should be reheard, inasmuch as the Micronesian Claims Commission has long since disbanded. We would be prepared to offer legislation to provide a forum for this purpose, but it may be that the problem is immensely more complicated than that. This is so because after the Court of Appeals ruling, the District Court ruled against class certification, but this class action issue is now on appeal. If the lower court ruling against the class certification is overturned, substantial effort would have to be expected in re-determining a large number of claims. It is estimated that as many as 10,000 Title I claims might then require readjudication. Such readjudications would probably (a) require creation of some new instrumentality to perform the adjudicatory work, (b) result in a change in the total amount of \$22.6 million unfunded—but whether upward or downward, we are unable to project, and (c) consume many months to complete.

The Administration remains opposed to further Title I payments at this time. We will await the Court of Appeals decision on the class action suit before determining what other steps may be required. Only then will we know the magnitude of the problem before us.

Section 103

Section 103 would establish a comprehensive medical care and monitoring program under the direction of the Secretary of the Interior for the inhabitants of Bikini, Eniwetok, Rongelap, and Utirik who were subjected to radiation damage as a result of United States nuclear testing in the Pacific.

The Administration strongly believes that it is the responsibility of the United States to insure that the people of the Marshall Islands who have been exposed to radioactive hazards resulting from nuclear testing at Eniwetok and Bikini receive proper medical follow-up and, where appropriate, medical care.

The amendment contained in section 103 would change the present procedure where the Department of Energy performs and pays for the services rendered under the current medical surveillance, care and monitoring program, to one where the Secretary of the Interior would fund the program, but could request the Department of Energy to administer it.

The Department of Energy is presently conducting a program under a general authorization for (1) radiological monitoring of people and the environment of Rongelap, Utirik, Bikini, and Enewetak, and (2) providing medical care to those people who may have suffered illness or injury as a result of our nuclear weapons testing program. The medical part of the program primarily consists of quarterly examinations of the exposed people and the stationing of a resident physician in the Marshall Islands. In addition, general sick-calls are periodically held for all persons on the affected atolls. Those who have non-radiation related ailments are referred to appropriate Trust Territory medical personnel. Specialized examinations are also conducted on a periodic basis. Individuals who are diagnosed as suffering from illnesses or injuries which are likely related to radiation exposure receive comprehensive treatment under the Energy program. Program costs in fiscal year 1979 were about \$3 million, with 590 persons under direct medical surveillance.

The Administration agrees that the present program should be specifically authorized, but recommends that the Department of Energy continue to administer both the medical surveillance and radiological monitoring. The Department of Energy has both the medical and scientific expertise necessary for proper program management and continuity, without the administrative complexity and cost of one department contracting with another to perform the program. We also believe that the program should be funded through Energy (in consultation with Interior and others) so that program costs are clearly reflected as arising from this country's nuclear testing program, not from our administration of the territories.

We, therefore, propose a substitute to section 103 that contains the Administration's recommended changes. Our proposed substitute would not only fully extend the Department of Energy's present program to Enewetak, but it would also give the Secretary of Energy discretion to designate as eligible for assistance any other atoll in the Marshalls, the people of which are determined to be in need of medical surveillance and care. We believe this flexibility is necessary in order to provide assistance to any other Marshallese who may be subsequently found to have been exposed to radiation as a result of the nuclear weapons testing program.

The Administration's substitute would also clarify the fact that the program would provide medical care for illnesses or injuries which may have resulted from nuclear testing, and is not intended to provide comprehensive health care for general medical or psychiatric problems that are unrelated to the testing program.

Our substitute for section 103 is as follows:

Sec. 103. The Act entitled "An Act to authorize certain appropriations for the territories of the United States, to amend certain Acts relating thereto, and for other purposes" (91 Stat. 1159; Public Law 95-134) is amended—

(1) in subsection 104(a), by striking out paragraph (4) and redesignating paragraph (5) as paragraph (4); and

(2) by inserting after section 105, the following new section:

"Sec. 106. (a) Notwithstanding any other provision of law, the Secretary of Energy shall provide for the people of the atolls of Bikini, Eniwetok, Rongelap, Utirik, and such other atolls as the Secretary of Energy may designate, and for their descendants, a program of medical surveillance and treatment, and environmental research and monitoring, for any illness or injury which, in the sole opinion of the Secretary of Energy, may have been the result of the United States nuclear weapons testing program at or near such atolls during the period of 1946 to 1958. Such program shall include—

"(1) a periodic medical surveillance of such people and their descendants with special emphasis on diagnosis and treatment of injury or illness that may have resulted from such nuclear weapons testing program;

"(2) a periodic comprehensive monitoring and analysis of the radiological status of the people and environment of the atolls described in subsection (a) of this section, employing the most current scientific and technical methods available, with emphasis on radionuclide pathways to man through the food chain;

"(3) at appropriate intervals, but not less frequently than once every five years, the development of an updated radiation dose assessment, together with an estimate of the risk associated

with the predicted human exposure, for each such atoll;

"(4) an education and information program to enable the people of such atolls to more fully understand nuclear radiation and its effects, to the end that unrealistic fears will be minimized and measures to discover, treat, or reduce human exposure to radiation at such atolls will be maximally effective.

"(b) (1) In the development and implementation of the program provided by this section, the Secretary of Energy shall consult and coordinate with the Secretary of the Interior, the Secretary of Defense, the High Commissioner of the Trust Territory of the Pacific Islands, and the President of the Marshall Islands; and in consultation with the National Academy of Sciences, shall establish a scientific advisory committee which shall review and evaluate the conduct of such program and make such recommendations regarding its improvement as they deem advisable.

"(2) At the request of the Secretary of Energy, any Federal agency shall provide such information, personnel, facilities, logistical support, or other assistance as the Secretary of Energy deems necessary to carry out the functions of this program; the costs of all such assistance shall be reimbursed to the provider thereof out of the sums authorized to be appropriated by this section.

"(3) There are authorized to be appropriated to the Secretary of Energy such sums as may be necessary to plan, implement, and operate the program authorized and directed to be provided by this section.

"(c) The Secretary of Energy shall report to the appropriate committees of the Congress, and to the people of the atolls described in subsection (a) of this section, annually, or more frequently if necessary, on the activities of the program provided by this section. Each such report shall include a description of the health status of the individuals examined and treated under the program, an evaluation of the program by the scientific advisory committee, and any recommendations for improvement of the condition of such individuals. The first such report shall be submitted not later than one year after this section becomes law."

Section 104

Section 104 states that ". . . Federal programs shall not cease to apply to the Trust Territory of the Pacific Islands either before or after the termination of the trusteeship, without the express approval of Congress."

We presume that this section is directed, at least in part, toward a policy concerning Federal programs in the Trust Territory that this Department adopted in November 1978. That policy was in turn based upon the expectation that, upon termination of the Trusteeship, which the President has targeted for 1981, the many Federal grant programs now applicable to the Trust Territory would, for the most part, cease. That is the basis upon which the future political status of the Trust Territory is being negotiated. The Federal programs in question are now of major significance in terms of revenue resources in the Trust Territory. They have totaled about \$25 million per year in recent years (with the figure excluding a controversial feeding program, which is now largely terminated except for emergencies). It was this Department's view in November 1978, and it remains our view, that the Federal assistance level needs to be phased down, so that the post-trusteeship entities in Micronesia are not required to absorb the shock of a sudden termination of Federal aid of that magnitude.

That November 1978 policy has, however, been criticized. It has been argued, for example, that under it this Department would be violating the Impoundment Control Act, because Federal funds would be prohibited from flowing to the Trust Territory when the Congress had made such flow mandatory. That was not then nor is it now our purpose. We do not intend that any Federal program that is, by law, required to be implemented in the Trust Territory be terminated without appropriate notification to the Congress, through the authorization/appropriation process, or the Impoundment Control Act. However, our November 1978 policy was mainly directed at "discretionary" programs, those that the grantor or the grantee can apply if they so choose, as a matter of policy. It has also been argued that our November 1978 policy interferes with economic development, by foreclosing the application in the Trust Territory of Federal programs directed to that end. Again, that was not and is not our purpose.

Because of the controversy that has developed on this question, we are engaged now in a revision of that November 1978 policy statement. We shall share the new statement with the interested Committees when we have completed our consultations within the Executive Branch.

Under these circumstances, the Administration strongly urges the deletion of section 104 as duplicative and unnecessary. Quite apart from the considerations described above, we think the section as drafted contains inherent ambiguities. If the section is to be construed to mean that the legal eligibility of the Trust Territory for Federal programs shall not cease without congressional approval, then section 104 is a restatement of existing law and is unnecessary. If, on the other hand, this wording is construed to mean that Trust Territory participation in applicable, discretionary, Federal programs may not cease without the approval of Congress, then we strongly oppose the section. As of December 30, 1977, the Trust Territory was legally eligible for 482 Federal programs; it participated in 166. We think the Trust Territory Government and this Department ought to retain the authority to decide which discretionary programs should be implemented in the Trust Territory, and which ones should not.

Section 201

Section 201 provides that the Department of the Interior shall pay the salary and expenses of the government comptroller of the Northern Mariana Islands. The Administration supports this section.

The salary and expenses of the government comptroller of Guam are paid by this Department and currently the Northern Mariana Islands are under his jurisdiction. We recommend the specific inclusion of the Northern Mariana Islands in the statute that extended the authority of the comptroller to the Trust Territory of the Pacific Islands (48 U.S.C. 1681b). Present application of existing law would not change, but an amendment would insure continued application of the statute to the Northern Mariana Islands (which will become a part of the United States when it assumes fully the status of the Commonwealth of the Northern Marianas) at such time as the trusteeship over Micronesia is terminated. We recommend the following amendment to the Act of June 30, 1954, as amended by the Act of September 21, 1973 (48 U.S.C. 1681b):

(1) strike the words "government of the Trust Territory of the Pacific Islands" wherever they appear and insert in lieu thereof the words "governments of the Trust Territory of the Pacific Islands or the Northern Mariana Islands,";

(2) after the words "High Commissioner of the Trust Territory of the Pacific Islands" insert the words "or Governor of the Northern Mariana Islands, as the case may be,";

(3) wherever the words "High Commissioner" appear and are not followed by the words "of the Trust Territory of the Pacific Islands" insert the words "or Governor as the case may be,"; and

(4) after the words "District Court of Guam" insert the words "or District Court of the Northern Mariana Islands, as the case may be".

Section 202

Section 202 would authorize \$24.4 million (indexed to October 1979 prices) for health care services in the Northern Mariana Islands.

The \$24,400,000 authorization for health care facilities for 16,000 people appears to us to be excessive when compared with health care facility costs in the Virgin Islands and Guam. While we agree that current facilities are in need of upgrading, their ultimate cost should be more in line with health facility funds already appropriated for Guam and authorized to be spent in the Virgin Islands. Public Law 95-134 authorized \$25,000,000, which has been appropriated for the purchase of a modern 250-bed hospital facility to service 100,000 people on Guam. Public Law 95-348 authorized about \$52,000,000 for two 250-bed hospitals on St. Croix and St. Thomas, a small facility on St. John, and related outpatient facilities and clinics to service a 1983 population of 161,000 in the Virgin Islands.

Additionally a 90-bed hospital in the Northern Marianas would provide 5.6 beds per thousand people; the HEW ceiling standard recommends 4 beds per thousand. Considering these statistics, the proposed facilities appear to be larger than necessary for the population of the Northern Marianas and the projected costs for the facilities appear to be excessive. Furthermore, the ability of the government of the Northern Marianas to staff and maintain elaborate facilities on a cost-effective basis is uncertain.

We do not doubt that upgraded facilities are necessary. At the present time, however, we cannot offer a firm figure to substitute for the one in the bill.

The Administration, therefore, cannot support the authorization contained in section 202. The Department of the Interior will undertake, in cooperation with the Department of Health, Education, and Welfare, to report to the Congress by June 1, 1980, as to the Northern Marianas hospital needs and their costs. We would not object to such an endeavor's being statutorily required.

Sections 203, 301, 402, and 502

Sections 203, 301, 402, and 502 would have the Secretary of the Treasury administer and enforce, to varying degrees, income tax and customs laws in the territories of the Northern Mariana Islands, Guam, the Virgin Islands, and American Samoa. We understand that the sponsors of this concept believe that additional revenue would accrue to the territorial governments under administration and collection of taxes and duties by the Internal Revenue Service.

The Department of the Interior defers on this issue to the Department of Treasury, which will present a detailed report on these sections for the Administration.

We stress, however, that the issues raised by these sections are complex. Customs laws, which may be Federal or local, may be applicable in one territory but not another. Also, the application of United States income tax laws differs from territory to territory. For example, the mirror theory of taxation applies in the Virgin Islands, but not in the other territories; United States income tax laws apply in Samoa, not by virtue of Federal enactment but by virtue of territorial incorporation of Federal law.

The collection of taxes has been traditionally the function of local territorial governments. The Governors of Guam and the Virgin Islands believe that the Federal administration of taxes would intrude into territorial prerogatives and therefore oppose mandatory Federal collection of territorial taxes. We agree that the proposal now contained in H.R. 3756 raises a significant question as to whether it reverses the long-standing United States Government policy of fostering greater local self-government for the territories.

The Interagency Task Force reviewing territorial policy is addressing various issues, including tax administration, considered in these sections. Presidential decisions will be forthcoming later this year. Among the options to be considered by the Administration will be Federal training and technical assistance for territorial tax collection agencies.

Section 204

Section 204 would extend the date of initial applicability of the Federal income tax to the Northern Mariana Islands from January 1, 1979, to January 1, 1982. Federal income tax laws became applicable to the Northern Mariana Islands beginning January 1, 1979. The Administration has no objection to section 204.

The Governor of the Northern Mariana Islands states that section 204 would result in the loss of approximately \$300,000 in revenue to the Northern Marianas' treasury and he prefers the provisions of section 3(d) of P.L. 95-348 to section 204.

Section 205

Section 5(g) of Public Law 95-348 authorized \$3,000,000 for the "development, maintenance and operation" of the American Memorial Park on Saipan. The Government of the Northern Mariana Islands is interested in developing the park as a memorial to those who died in World War II fighting on Saipan and as a facility for recreation. Section 205 of H.R. 3756 would provide for an open-ended authorization for maintenance and operation, and up to \$3,000,000 for development. The Administration supports section 205.

Section 302

Section 302 would forgive the payment of interest by Guam on all funds borrowed pursuant to the Guam Rehabilitation Act of November 4, 1963, and would apply interest already paid against principal owed.

The 1963 Act was designed to aid Guam in its rehabilitation after the destruction of typhoon Karen in 1962. The amount originally borrowed under the authorization was \$41,500,000. Principal in the amount of \$5,900,000 and interest in the amount of \$18,000,000 have been paid by Guam through May 15, 1979. If previously paid interest were converted to principal according to H.R. 3756, the principal outstanding would be reduced from \$35,600,000 to \$17,500,000.

The Administration continues to oppose debt forgiveness for Guam because valid existing debts should be repaid in order to affirm the principle of fiscal responsibility.

Section 303

Section 303 would extend from December 31, 1980, to December 31, 2010, the loan to the Guam Power Authority (approximately \$36,000,000) guaranteed by the Secretary of the Interior against the possibility that the Guam Power Authority may not be able to refinance this obligation in the private market by December 31, 1980; provide for repayment through the Government of Guam; and forgive interest to the Government of Guam.

The Administration supports extension of the guarantee and loan. However, as noted below, we favor modifying certain aspects of this section.

In particular, we object to the provisions whereby the Guam Power Authority must pay principal and interest to the Government of Guam, but the Government of Guam is forgiven the payment of interest to the Federal Government. Such a plan would constitute a windfall to the Government of Guam financed by the customers of the Guam Power Authority and the Federal Government. The 1976 loan to the Guam Power Authority was a business loan to a failing public utility. The Secretary of the Interior guaranteed the loan on the authority given him by the United States Congress and is liable to the Federal Financing Bank for the unpaid principal and interest. Nonpayment of interest beyond December 31, 1980, as proposed by section 303, would leave the Secretary of the Interior with a liability for which no funds are appropriated. While we support an extension, we object strenuously to the nonpayment of interest provision of section 303.

We have been informed by officials of the Guam Power Authority that, with the approval by the Public Utility Commission of two rate increases, the Guam Power Authority will be able to achieve a 2.0 ratio of income to debt service requirements that would make its long-term obligations attractive to the private bond market. Assuming that such a ratio could be maintained, it is anticipated that within 10 years or less the Authority will be able to obtain private financing and end its dependence on the Federal guarantee and loan. We understand that, for this reason, the Guam Power Authority would prefer a 10-year extension to the 30-year extension contained in section 303, which provides for the amortization of a principal.

There is ample incentive for the Guam Power Authority to return to the private market as soon as possible. The private tax free bond rates should be substantially less than comparable Federal rates. Additionally, Guam Power Authority is very much interested in reestablishing its credit rating in order to reenter the private bond market for expansion financing. The Administration endorses the idea of a 10-year extension and proposes that the following language be substituted for the current language of section 303:

Sec. 303. Section 11 of the Organic Act of Guam (64 Stat. 387; 48 U.S.C. 1423a), as amended, is hereby amended by deleting all after the words "December 31, 1980.", and substituting the following language:

The Secretary, upon determining that the Guam Power Authority is unable to refinance on reasonable terms the obligations purchased by the Federal Financing Bank under the fifth sentence of this section by December 31, 1980, may, with the concurrence of the Secretary of the Treasury, guarantee for purchase by the Federal Financing Bank, and such bank is authorized to purchase, obligations of the Guam Power Authority issued to refinance the principal amount of the obligations guaranteed under the fifth sentence of this section. The obligations that refinance such principal amount shall mature not later than December 31, 1990, and shall bear interest at a rate determined in accordance with section 6 of the Federal Financing Bank Act (12 U.S.C. 2285). Should the Guam Power Authority fail to pay in full any installment of interest or principal when due on the bonds or other obligations guaranteed under this section, the Secretary of the Treasury, upon notice from the Secretary, shall deduct and pay to the Federal Financing Bank or the Secretary, according to their respective interests, such unpaid amounts from sums collected and payable pursuant to section 30 of this Act (48 U.S.C. 1421h). Notwithstanding any other provisions of law, Acts making appropriations may provide for the withholding of any payments from the United States to the Government of Guam which may be or may become due pursuant to any law and offset the amount of such withheld payments against any claim the United States may have against the Government of Guam or the Guam Power Authority pursuant to this guarantee. For the purposes of this Act, under section 3466 of the Revised Statutes (31 U.S.C. 191) the term "person" includes the Government of Guam and Guam Power Authority. The Secretary may place such stipulations as he deems appropriate on the bonds or other obligations he guarantees.

Section 401

Section 401 would extend the guaranteed borrowing authority granted to the Virgin Islands under P.L. 94-392 from the October 1, 1979 deadline to October 1, 1989. The purpose of P.L. 94-392 was to provide construction funds for economic stimulation in 1976 and for urgently needed public facilities. The Government of the Virgin Islands has not, however, used much of this guaranteed borrowing authority to finance capital projects. Of the \$61,000,000 in guaranteed borrowing authority granted the Virgin Islands under

the above-cited Public Law, only \$22,000,000 had been drawn down by June 1, 1979. An additional \$10,000,000 is available to be drawn down for projects approved by this Department. Of the \$22,000,000 in cash transferred to the Virgin Islands, only \$5,000,000 has been obligated, leaving \$17,000,000 unused. Only \$3,000,000 has been actually paid out for construction. The Virgin Islands is paying interest and principal to the Federal Financing Bank on the \$22,000,000 but also receiving interest on its deposits.

The Administration recommends a three year extension, until 1982, and we further recommend that all funds borrowed, but not obligated by that time, be returned to the lending institution from which they were borrowed. Such a plan would encourage the early obligation of funds with the benefit of meeting some of the urgent capital improvement needs of the territory.

Section 403

Section 403 would transfer to the Virgin Islands property that was acquired from Denmark by the United States and that was not reserved or retained by the United States in accordance with provisions of P.L. 93-435.

In addition, a Committee amendment to the original Administration proposal includes parcels of land on St. Croix purchased by the Government of the Virgin Islands from the General Services Administration (GSA), subject to a mortgage. It is our understanding that the GSA and Virgin Islands officials discussed the matter of release of approximately ten, of more than 230, acres mortgaged in order to construct a National Guard armory. The amount owing on the ten acres is approximately \$125,000. The outstanding balance on the 230+ acres is approximately \$2,800,000. GSA is willing to grant such a release upon payment in full of the amount owing on the ten acres. The committee amendment appears to be an attempt to release the 230+ acres from the mortgage. Section 403, however, mentions nothing about a release from the mortgage, and, in fact, states that the transfer of the 230+ acres would be "subject to valid existing rights,..." (the mortgage).

The Administration recommends (1) that the substance of section 403 be returned to the form in which it originally appeared in section 404 of H.R. 3756 as introduced, and (2) that the House Committee amendment be stricken and a new section be added to H.R. 3756, at the end of title IV, to read as follows:

Sec. . The General Services Administration shall release from the mortgage dated January 26, 1972, given by the Government of the Virgin Islands to the Administrator of the General Services Administration, approximately ten acres of such mortgaged land for construction of the proposed St. Croix armory upon payment by the Government of the Virgin Islands of the outstanding principal due on such ten acres.

This proposed new section would allow construction of the armory and at the same time permit fulfillment of Virgin Islands contractual obligations.

Section 404

Section 404 would require express approval of the House Committee on Interior and Insular Affairs and the Senate Committee on Energy and Natural Resources for any extension, renewal, or renegotiation of the lease of real property on Water Island, to which the United States is a party, before 1992. We defer to the Department of Justice for the position of the Administration on this matter.

Section 405

Section 405(a) would reinstate (with the exception of the deduction attributable to preclearance operations) the deduction of the cost of collection from the duties, taxes, and fees covered into the treasury of the Virgin Islands for the period from August 18, 1978, to January 1, 1982. If sections 402 and 405 are both enacted as currently written, they would be in conflict with each other during the 1978-1982 period. Section 402 would require the Secretary of the Treasury to collect all customs duties derived from the Virgin Islands "without cost to the government of the Virgin Islands." Section 405(a) states that such duties will be covered into the treasury of the Virgin Islands "less the cost of collecting."

Section 405(b) is intended as a conforming amendment. Language would be inserted in section 4(c)(2) of the Act of August 19, 1978, after the phrase "the amount of duties, taxes, and fees." That phrase appears three times in section 4(c)(2). The Administration supports enactment of section 405(b) if section 405(a) is enacted. In the interest of clarity, however, we suggest that the period at the end of section 405(b) be stricken and that the words "wherever the latter phrase appears." be inserted in lieu thereof.

Section 501

Section 501 would provide for the payment of salary and expenses of the government comptroller for American Samoa by the Department of the Interior. This Department is already paying such salary and expenses and thus the Administration has no objection to section 501.

Section 601

Section 601 would require the consolidation of all Department of the Interior grants-in-aid to a territory by making certain optional provisions of Title V of P.L. 95-134 mandatory. It would also waive any requirements for local matching funds and for written application or reports associated with such grants.

The Administration opposes this provision because it believes that the Department of the Interior should not be singled out in this manner. The Department has only four programs that provide the type of grants to the territories that we believe Title V of P.L. 95-134 was intended to cover. The grants of two of these programs have already been consolidated. The Department has under consideration the possibility of consolidating the other two grant-in-aid programs. Further, the Department of the Interior has explored the implications of waiving local matching requirements for these grants before deciding to await the results of the ongoing Interagency Policy Review on Territories.

It also appears that the provisions of section 601 would apply to the various forms of financial assistance provided annually to the territories through appropriations to the Department's Office of Territorial Affairs. If so, it would be possible for a territory to utilize funds appropriated for the construction of health care facilities for other purposes authorized by grants provided by the Department, such as historic preservation. The Administration does not believe that this type of flexibility is in the best interests of the territories or the Federal Government.

Section 602

Section 602 provides that moneys authorized by this Act but not appropriated would be authorized for succeeding years. The Administration has no objection to section 602.

Section 603

Section 603 provides that governments of the territories and Trust Territory of the Pacific Islands may avail themselves of the services, facilities, and equipment of agencies and instrumentalities of the United States Government on a reimbursable basis. Federal services, facilities, and equipment now extended to the territories on a non-reimbursable basis would continue to require no reimbursement. The Administration has no objection to section 603.

Section 604

Section 604 would make authorizations for appropriations enacted under H.R. 3756 effective on October 1, 1979. The Administration has no objection to section 604.

Section 605

Section 605 would provide that new borrowing, or paying, authority provided in H.R. 3756 would be effective only to the extent and in such amounts as are provided in advance in appropriation Acts. The Administration has no objection to section 605.

In addition to the provisions included in H.R. 3756 as passed by the House of Representatives, the Administration recommends the enactment of two other provisions.

The first of these provisions involves additional compensation for a limited number of nuclear fallout victims.

Section 104 of P.L. 95-134, paragraph a(1), provided for the compensation to the inhabitants of Rongelap Atoll and Utirik Atoll for removal of the thyroid gland or a neurofibroma in the neck or the development of hypothyroidism or a radiation-related malignancy that may have arisen due to radiation exposure sustained as a result of a thermonuclear detonation at Bikini Atoll in the Marshall Islands on March 1, 1954. At the time P.L. 95-134 (H.R. 6550) was being considered, all concerned with the problem of the fallout victims believed that section 104 of H.R. 6550 covered all potential cases for compensation.

Recently, however, several cases which warrant additional compensation have been called to our attention. These cases involve individuals who have already received compensation under section 104(a)(1) of P.L. 95-134. In the opinion of the Administration, these individuals should receive additional compensation. However, this Department's Solicitor has determined that one of the individuals is not entitled to receive additional payments under section 104(a)(3) of P.L. 95-134, since she received compensation under section 104(a)(1).

Two of these individuals were compensated under section 104(a)(1) for one condition and later developed another condition listed in section 104(a)(1). The third individual of whom we are aware had her parathyroid glands removed in error at the U.S. Naval Hospital in Guam. It was her thyroid gland which should have been removed because of her exposure to radioactive material which fell on Rongelap in 1954. The parathyroidectomy presents a more serious condition than a thyroidectomy, with more serious consequences.

In view of the very special circumstances surrounding these cases, the Administration requests that the Secretary be authorized to grant additional compassionate compensation. It recommends the following corrective legislation:

Sec. 104(a)(3) of Public Law 95-134 (91 Stat. 1159) is hereby amended by deleting all after the word "cause" and inserting in lieu thereof the following words, ", even if such an individual has been compensated under paragraph (1) of this section."

While it is possible under this language for a person to receive a third payment if he suffers a third paragraph (1) malady, no such cases have arisen. We hope none do arise. But if they do, we believe such individuals are entitled to additional compensation. Our proposed amendment to section 104(a)(3) would preserve the Secretary's right to determine the amount of additional payment for another malady, and indeed, whether or not such payment shall be made at all.

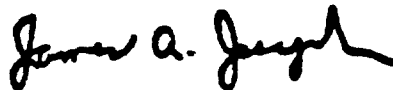
Congress has appropriated sufficient funds for compensation of the Rongelap and Utirik fallout victims entitled to payment under P.L. 95-134, including a small reserve for contingency cases. In addition to this request for legislation, the Secretary intends to make a full report, as required in P.L. 95-134, by December 31, 1980, concerning whether or not additional compassionate compensation may be justified for individuals on Rongelap and Utirik Atolls.

The second provision we recommend be added to H.R. 3756 involves the location of sessions of Legislature of the Virgin Islands. By resolution numbered 976, the 13th Legislature of the Virgin Islands has requested that the Revised Organic Act of the Virgin Islands be amended to permit sessions of the Legislature to be held other than in the capitol of the Virgin Islands at Charlotte Amalie, St. Thomas. It is believed that the requirement that such sessions be held in St. Thomas precludes greater participation in the governmental process by residents of St. Croix and St. John. The Administration recommends that the request of the Legislature be accommodated and that H.R. 3756 be amended by adding the following language:

Sec. . The Revised Organic Act of the Virgin Islands is amended by deleting subsection 7(b) (68 Stat. 500; 48 U.S.C. 1573(b)).

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,



UNDER SECRETARY James A. Joseph

STATEMENT OF MRS. RUTH G. VAN CLEVE, DIRECTOR,
OFFICE OF TERRITORIAL AFFAIRS, DEPARTMENT OF
THE INTERIOR, ON H.R. 3756, BEFORE THE SENATE
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
OCTOBER 10, 1979.

Dear Mr. Chairman:

We are pleased to have the opportunity to appear before your Committee in order to express the Administration's views on H.R. 3756, an omnibus territories bill dealing with a number of different issues.

The Department of the Interior has submitted a rather lengthy report on H.R. 3756; it contains our definitive statement on the individual provisions of the bill. Today, I will endeavor to summarize our views on the bill by referring to those provisions of which we approve, those provisions of which we disapprove, and those provisions of which we would approve, if amended.

The Administration approves of the following provisions:

- Section 101 would provide an open-ended authorization of funds for the Trust Territory of the Pacific Islands after 1980, both as to time and amount. The open-ended language gives recognition to the need for budget flexibility in light of the rapid changes taking place in Micronesia.
- Section 104 states ". . . Federal programs shall not cease to apply to the Trust Territory of the Pacific Islands either before or after the termination of the trusteeship, without the express approval of Congress." We approve of this section, assuming that it is construed to mean that "legal eligibility for" rather than "participation in" Federal programs by the Trust Territory shall not cease without Congressional approval.
- Section 204 would extend the date of initial applicability of the Federal income tax to the Northern Mariana Islands from January 1, 1979, to January 1, 1982. We have no objection to such a provision; however, the Governor of the Northern Mariana Islands prefers Section 3 (d) of Public Law 95-348 to Section 204.
- Section 205 would provide an open-ended authorization for maintenance and operation, and up to \$3 million

for development of the American Memorial Park on Saipan. We support Section 205.

- Section 501 would provide for the payment of salary and expenses of the Government Comptroller of American Samoa by the Department of the Interior. This Department is already paying such salary and expenses and thus we have no objection to Section 501.
- Section 602 provides that moneys authorized by this Act but not appropriated would be authorized for succeeding years. We have no objection.
- Section 603 provides that the governments of the territories and Trust Territory may avail themselves of the services, facilities, and equipment of agencies and instrumentalities of the United States Government on a reimbursable basis. We have no objection.
- Section 604 would make authorizations for appropriations enacted under H.R. 3756 effective on October 1, 1979. We have no objection.
- Section 605 would provide that new borrowing or paying authority provided in H.R. 3756 would be effective only to the extent and in such amounts as are provided in advance in appropriation acts. We have no objection.

The Administration disapproves of the following sections:

- Section 102 would authorize the appropriation of up to 50% of the outstanding amounts payable under the adjudicated claims and final awards made by the Micronesian Claims Commission under Title I of the Micronesian Claims Act of 1971. That percentage of such outstanding awards amounts to approximately \$11.3 million. At present, there are Micronesian claims cases on appeal in the Federal courts where the plaintiffs request class action certification. If such class action certification is granted it could open 10,000 of the approximately 13,000 adjudicated claims cases. The Administration continues to oppose additional payments on Title I awards. In these circumstances we think we must await the Court of Appeals decision on class action certification before we can intelligently deal with whatever steps remain.
- Section 202 would authorize \$24.4 million (indexed to October 1979 prices) for health care services in the Northern Mariana Islands. Such an authorization seems to be out of line with hospital construction costs in other territories. In addition, the contemplated 90-bed hospital would provide 5.6 beds per thousand

people, whereas the HEW ceiling standard recommends 4 beds per thousand. We, therefore, cannot support the authorization contained in Section 202. However, the Department of Interior in cooperation with HEW is willing to report to Congress by June 1, 1980, as to the Northern Mariana hospital needs and costs. We would not object to having such an endeavor be required by statute.

- Section 302 would forgive the payment of interest by Guam on all funds borrowed pursuant to the Guam Rehabilitation Act of November 4, 1963, and would apply interest already paid against principal owed. As of May 15, 1979, \$35.6 million in principal remained outstanding out of \$41.5 million originally borrowed. Since borrowing the money, Guam has paid \$18.1 million in interest. If the interest forgiveness provision of Section 302 becomes law, \$17.5 million in principal would remain to be paid by Guam. The Administration continues to oppose debt forgiveness for Guam.
- Section 601 would require the consolidation of all Department of the Interior grants-in-aid to a territory by making certain optional provisions of Section 5 of Public Law 95-134 mandatory, and would also waive any requirements for local matching funds and for written applications or reports associated with such grants. The Administration opposes this provision because it believes that the Department of the Interior should not be singled out in this matter.

The Administration would approve the following sections if amended:

- Section 103 would establish a comprehensive medical program under the direction of the Secretary of the Interior to ensure medical treatment for the inhabitants of Bikini, Enewetak, Rongelap, and Utirik who were subjected to radiation damage as a result of United States nuclear testing in the Pacific. We strongly believe that the people of the Marshalls who have been exposed to radioactive hazards resulting from nuclear testing require regular medical surveillance, and where necessary, treatment. At present, the Department of Energy provides such service, and has conducted radiological surveys of the affected atolls. The Administration believes that such a program must continue and has no objection to it being statutorily required. We strongly recommend, however, that the language of Section 103 be amended as requested in our

report on H.R. 3756 to reflect more accurately the medical surveillance and treatment program and the radiological survey program currently conducted by the Department of Energy. That amendment contemplates continuing Department of Energy responsibility for and funding of the program.

- Section 201 provides that the Department of the Interior shall pay the salary and expenses of the Government Comptroller of the Northern Mariana Islands. We support this section but recommend in our report the specific inclusion of the Northern Mariana Islands in the statute that extended the authority of the Comptroller of Guam to the Trust Territory of the Pacific Islands. Present application of existing law would not change, but such an amendment would ensure continued application of the statute to the Northern Mariana Islands at such time as the trusteeship over Micronesia is terminated.
- Section 303 would extend from December 31, 1980, to December 31, 2010, the loan of approximately \$36 million to the Guam Power Authority guaranteed by the Secretary of the Interior, provide for repayment through the Government of Guam, and forgive interest to the Government of Guam. We disapprove of the interest forgiveness provision whereby the Government of Guam would reap a windfall at the expense of the customers of the Guam Power Authority and the Federal Government. We recommend, however, an extension of the guaranteed loan for 10 years. Our proposed language for amending Section 303 appears in our report on H.R. 3756.
- Section 401 would extend the guaranteed borrowing authority granted to the Virgin Islands under Public Law 94-392 from the October 1, 1979, deadline to October 1, 1989. The original purpose of such guaranteed borrowing authority was to provide construction funds for urgently needed public facilities that would also result in economic stimulation in the years immediately after 1976. We recommend in our report that Section 401 be amended to provide a 3 year extension until 1982, by which time all such guaranteed funds would have to be obligated.
- Section 403 would enact the Administration request for transfer to the Virgin Islands of property that was acquired from Denmark by the United States and that was not reserved or retained by the United States in accordance with provisions of Public Law 93-435. In addition, this section purports to transfer some 230 acres to the Government of the Virgin Islands in order

for the Virgin Islands to build an armory on approximately 10 acres. We believe that section 403 would result in a "second" transfer of the 230 acres in question from the United States to the Virgin Islands but would not relieve the Virgin Islands of its responsibilities under the mortgage given at the time of the first transfer. In our report on H.R. 3756 the Administration recommends (1) that the substance of Section 403 be returned to the form in which it originally appeared in Section 404 of H.R. 3756 as introduced, and (2) that the House Committee amendment be stricken and a new section be added to H.R. 3756, at the end of Title IV allowing the General Services Administration to release from the mortgage given by the Virgin Islands approximately 10 acres of land for the construction of an armory for St. Croix. We believe that such an amendment would accomplish the purpose of facilitating armory construction.

On the following provisions we defer to other agencies:

- Section 203, 301, 402, and 502 would have the Secretary of the Treasury administer and enforce, to a varying extent, income tax and customs laws in the territories of the Northern Mariana Islands, Guam, the Virgin Islands, and American Samoa. The Department of the Interior defers on this issue to the Department of the Treasury. We stress, however, that the issues raised by these sections are complex. Customs laws, which may be Federal or local, may be applicable to one territory but not another. Also, the application of United States income tax laws differs from territory to territory. The collection of taxes has been traditionally the function of local territorial governments. The Governors of Guam, the Virgin Islands, and the Northern Mariana Islands believe that the Federal administration of taxes would intrude into territorial prerogatives, and therefore oppose mandatory Federal collection of territorial taxes. We agree that the proposal contained in H.R. 3756 raises a significant question as to whether it reverses the long standing United States Government policy of fostering greater local self-government for the Territories.

The Interagency Task Force reviewing territorial policy is addressing various issues, including tax administration considered in these sections. Presidential decisions will be forthcoming later this year. Among the options to be considered by the Administration will be federal training and technical assistance for territorial tax collection agencies.

- Section 404 would require express approval of the House Committee on Interior and Insular Affairs and the Senate Committee on Energy and Natural Resources for any extension, renewal, or renegotiation of the lease of real property on Water Island, to which the United States is a party, before 1992. We defer to the Department of Justice for the position of the Administration on this matter.

This concludes our statement on H.R. 3756. It has been a pleasure for me to again appear before the Committee.

Enclosure L

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STATEMENT OF
THEODORE R. MITCHELL AND DONALD JUNEAU
OF
MICRONESIAN LEGAL SERVICES CORPORATION
BEFORE THE
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
96th CONGRESS,
1st SESSION,
ON
H.R. 3756

October 10, 1979

INTRODUCTION

We are honored to appear before your Committee on behalf of our Micronesian clients who have an interest in this important legislation.

The Micronesian Legal Services Corporation was founded nine years ago by a group of Micronesians, for the purpose of providing civil legal representation for those Micronesians who do not have the means to employ an attorney. We are wholly supported by the Legal Services Corporation which, as you know, is a creature of this Congress. With offices throughout Micronesia, our attorneys have assisted thousands of Micronesians with all manner of legal problems.

We are here today because of the interest of our clients in three of the provisions in this bill. We are counsel for the people of Enewetak, the people of Rongelap and the people of Utirik, who are all vitally interested in the radiological health and monitoring program which would be created by section 103.

We represented many Micronesians in proceedings before the Micronesian Claims Commission and we are counsel for the plaintiffs in the pending federal litigation which seeks to correct the injustices which resulted from the failure of the Micronesian Claims Commission to carry out its work in accordance with the clear statutory mandate of the Congress. On their behalf, we support passage of section 102.

Throughout Micronesia people have come to our offices to express concern and even consternation with the unilateral decision of the Department of the Interior to curtail and eliminate federal programs. In addition to providing very needed employment, many of these programs have increased the quality of education, improved the delivery of health care, and otherwise met needs which would never have been addressed by the ordinary Trust Territory programs. Thus, we support enactment of section 104.

We will now turn to a brief discussion of the Trusteeship Agreement, which is of course the fundamental basis of the presence of the United States in Micronesia, then we will discuss each of the three provisions referred to above.

THE TRUSTEESHIP AGREEMENT

The events leading up to the United States Trusteeship of Micronesia are very familiar to this Committee, as are the precise provisions of the Trusteeship Agreement itself. We briefly sketch that history and those obligations in order to provide an appropriate context for what we have to say about the specific provisions of the measure before this Committee.

In the immediate post-war period, while Micronesia was still administered by the United States Navy, the question of Micronesia's future was debated at the highest level of government. Advocates for annexation of the area argued the

imperative necessity of avoiding a recurrence of the surprise attack on Pearl Harbor. Others insisted that the area should be submitted to the trusteeship system which was to become part of the United Nations Charter. Ultimately, President Truman worked out a compromise which rejected annexation but resulted in the only trusteeship which permitted the administering authority to use the area for military purposes, a so-called strategic trust.

We have been unable to find any historical evidence of consultation with the Micronesians about their future, prior to establishment of the Trusteeship. The Trusteeship Agreement itself was drafted by the United States and ultimately approved in essentially the same form as originally submitted to the Security Council. 1 Whiteman, Digest of International Law 788 (1963); see also, H.Rep.No. 889, 80th Cong., 1st Sess. 3-4 (1947).

It would be hard to improve, nonetheless, on the language in Article 6 of the Trusteeship Agreement, which embodies the principal aims of the entire Trusteeship and the humanitarian obligations undertaken by the United States. Couched in mandatory terms, the United States agreed to:

Foster the development of such political institutions as are suited to the trust territory and shall promote. . . self-government or independent . . .

Give the Micronesians a progressively increasing share in the administrative services in the territory . . .

Develop their participation in government . . .

Give due recognition to the customs of the Micronesians . . .

Promote the economic advancement and self-sufficiency of the inhabitants.

Improve the means of transportation and communication . . .

Promote . . . social advancement.

Protect the health of the Micronesians . . .

Promote the educational advancement of the Micronesians.

The juridical status of the Trusteeship Agreement has been the subject of litigation in the federal courts three times. In 1958 the United States District Court for the District of Columbia, in an action brought by Dr. Linus Pauling and Dwight Heine, refused to enjoin the Hardtack series of nuclear weapons tests at Enewetak. Pauling and Heine argued that the detonation of the nuclear weapons would "produce radiation or radioactive nuclei [which] will inflict serious genetic and somatic injuries upon [the] plaintiffs and the population of the world in general, including unborn generations." Pauling v. McElroy, 164 F. Supp. 390, 392 (1958).

Among other things, Pauling and Heine argued that the nuclear testing program was a violation of the Trusteeship Agreement. The court disagreed and dismissed their complaint. On appeal, a panel of judges which included now Chief Justice Warren E. Burger, disposed of the matter on different grounds, holding that the plaintiffs did not have standing to bring the lawsuit in the first place. Pauling v. McElroy, 278 F.2d 252 (D.C. Cir. 1960), cert. denied, 364 U.S. 835 (1960). A similar attempt by the same plaintiffs to accomplish the same purpose was also rejected in 1964. Pauling v. McNamara, 331 F.2d 796 (D.C. Cir. 1964).

The first case to squarely reach the question of enforceability of the terms of the Trusteeship Agreement was People of Saipan v. U.S. Department of the Interior, 356 F. Supp. 645 (D. Hawaii 1973), aff'd. as modified, 502 F.2d 90 (9th Cir. 1974). The United States Court of Appeals for the Ninth Circuit held that:

The preponderance of features in this Trusteeship Agreement suggests the intention to establish direct, affirmative, and judicially enforceable rights.

* * *

Moreover, the Trusteeship Agreement constitutes the plaintiffs' basic constitutional document. . . 502 F.2d at 97-98. The Government sought review of this decision in the United States Supreme Court, but was refused. 420 U.S. 1003 (1974).

Thus, this Trusteeship Agreement which was written by the Executive and approved by the Congress, gives rise to an affirmative obligation on the part of the Executive Branch to fulfill the purposes of the Trusteeship Agreement. For a failure to do so, the Executive can be held accountable to the Micronesians, in the federal courts.

We believe that sections 102, 103, and 104 of H.R. 3756, if enacted, will make an important contribution to fulfillment of the obligations of the United States under the Trusteeship Agreement.

SECTION 103 -

RADIOLOGICAL HEALTH AND ENVIRONMENTAL
MONITORING PROGRAM

We applaud the inclusion of this radiological health and environmental program in the legislation and strongly recommend its approval by this Committee, with some relatively minor modifications which we offer in the hope of improving the program somewhat.

The plight of the peoples of Bikini, Enewetak, Rongelap and Utirik is very well known to this Committee and need not be recounted by us in any detail. It may be helpful, however, if we briefly describe the circumstances of each as it relates to this program.

The atolls of Bikini and Enewetak were used by the United States in its nuclear weapons testing program during the

period from 1946 to 1958. At Bikini there were a total of 23 nuclear tests conducted, most of them on barges anchored either in the lagoon or on the exterior reef. Normally there would not have been very much radioactive contamination of the land surfaces of the atoll, but on March 1, 1954 there was considerable radioactive fallout from the thermonuclear explosion known as the Bravo test of the Castle series. This was the second experimental thermonuclear device constructed and detonated by the United States, the first having been the Mike explosion of the Ivy series at Enewetak in 1952.

These atolls had been chosen, among other reasons, for their remoteness and the prevailing northeasterly winds, but on this occasion there was an unfortunate "combination of circumstances involving the energy yield of the explosion, the height of burst, the nature of the surface below the point of burst, the wind system over a large area and to a great height, and other meteorological conditions." S. Glasstone, ed. The Effects of Nuclear Weapons 464 (rev. ed. 1962).

In particular, the upper level wind direction was miscalculated and substantial amounts of radioactive fallout were deposited on the eastern rim of the Bikini atoll and significant amounts were detected as far away as 300 miles east of Bikini. Id. 462. Within the first 96 hours following the detonation, Bikini island at Bikini atoll received at least 2100 roentgens. Id. 462.

After their removal from Bikini, the people were taken to various places including Rongerik and Kwajelein, but eventually were resettled at the exceedingly inhospitable island of Kili in the southern Marshalls, a very small place without a lagoon. Such efforts as the government has made to fulfill the wish of the people of Bikini to resettle their atoll have been marked by poor coordination among the relevant executive agencies, poor planning and even more disappointing execution. The people of Bikini have never actually excepted the return of the atoll from the United States, because they have never been satisfied that everything that can reasonably be done to clean up the atoll and redevelop it has been done. After the resettlement of the atoll by a few Bikinians nearly 10 years ago, the atoll was ordered evacuated last August by the Department of the Interior, putting the entire project right back where it started in 1968 with the announcement by President Lyndon B. Johnson that the people would be resettled to their homeland.

During the time those few Bikinians were living at Bikini atoll, they received some radiation exposure, but the Department of Energy has never published a scientific or technical report on the matter. As we have said, we are not counsel for the people of Bikini, but we are informed that they have a strong desire to return to and resettle Bikini atoll.

The People of Enewetak

The people of Enewetak were unceremoniously removed from their atoll on December 21, 1947 and taken directly to Ujelang atoll where they have lived to this day. In their absence, 43 nuclear tests were conducted at Enewetak atoll, including the world's first thermonuclear explosion on November 1, 1952, the Mike test. That explosion and the later Koa explosion completely "vaporized" three islands.

The decision to permit the return of the people to their atoll was announced in 1972. An elaborate program for the clean-up, rehabilitation and resettlement of the atoll has been underway for several years and is, in fact, scheduled for completion in the spring of 1980. The clean-up program, conducted under the auspices of the Defense Nuclear Agency, is an outstanding success and we have enjoyed a very productive and cooperative relationship with the Director of the Defense Nuclear Agency, Vice Admiral Robert R. Monroe, and his staff. The program has exceeded all original objectives.

This Committee was kind enough to authorize the rehabilitation and resettlement program for Enewetak atoll in 1977. That program, under the auspices of the Department of the Interior, has gone reasonably well.

Return to Engebi

The Enewetak resettlement program, as currently planned, does not include resettlement of Engebi island, the traditional

community of the Engebi subgroup. Last month, in a meeting at Ujelang atoll, the people of Enewetak decided that for their part they would like to reestablish the Engebi community. Their decision has been communicated to this Committee and more detailed information will follow in due course.

Radiological Needs of Enewetak
and Bikini

The needs of the people of Bikini and Enewetak are approximately the same. We do not expect anyone in either group to receive anything like a large dose of radiation. On the other hand, the natural environment at both atolls has been studied considerably and deserves further study in order to increase understanding of the concentration of the radionuclides and their behavior in the ecosystem. Of special significance is the movement of the radioactive materials from the soil, through the food web, to man.

What is believed about ionizing radiation sometimes bears little relation to what is actually known by those knowledgeable in field. This is and can be a rather complex and troublesome problem. Even if there may be no danger whatsoever, or a danger so slight that it gets lost in the ordinary dangers of everyday life, a person living at Bikini or Enewetak could become unnecessarily worried. A person might simply begin to worry about it. At the same time, radiation is the subject of considerable public debate, world-wide, including in the Marshall Islands, and is likely to continue to be so for many years

to come. The people of Enewetak and Bikini are certain to be affected by that kind of public debate. Some will advocate that radiation constitutes no danger at all. Others will express great alarm and fear with even that amount of radiation which is quite naturally part of the environment anywhere in the world.

The private worry and anxiety and public embarrassment can be very real individual problems, in the absence of any detectable health effects. The only solution is true understanding and an education program to impart that understanding.

The People of Rongelap and Utirik

The cloud formed by the Bravo explosion at Bikini atoll in 1954 was carried by the winds so far eastward that it deposited significant amounts of radioactive material at the atolls of Rongelap, Ailinginae and Rongerik. At its eastern-most extension, there was fallout at Uterik atoll. Since there were no measuring instruments on those islands at the time, the precise dosimetry is not available, but various personnel were sent to each of those islands within about two days to arrange for evacuation of the people and to attempt to determine the extent of radiation exposure.

Deposition of radioactive material varied considerably from atoll to atoll and among the islands at each. The

northwestern part of Rongelap received at least 3,300 roentgens during the first 96 hours of fallout from the cloud, while across the atoll amounts as low as 170 roentgens were measured. The people of Rongelap, who were living in the south, are estimated to have received a dose of "up to 175 roentgens before they were evacuated." S. Glasstone, ed., op cit. 463. This was the estimated whole body exposure to gamma radiation. At Utirik the whole body gamma exposure was estimated at 14 rads. R.A. Conard, A Twenty-Year Review of Medical Findings in a Marshallese Population Accidentally Exposed to Radioactive Fallout 11 (Brookhaven National Laboratory 1975) [hereinafter referred to as "Brookhaven Report"].

At Rongelap, within 4 to 6 hours after the Bravo explosion, the radioactive ash began to reach the ground. To these people of the tropics, the strange, snowlike material fluttering down from the sky gave no hint of its true nature. Children played in it as it collected in large amounts on the ground. The curious touched it and tasted it in an effort to understand this heretofore unknown phenomenon.

At Ailinginae and Rongerik, 4 to 8 hours after the explosion, radioactive fallout of a mistlike quality was observed by the people.

The estimated dose of gamma radiation received by the people at these atolls was between 69 and 79 rads.

All in all, the effects varied with the amount of radiation dose received, with the greatest exposure at Rongelap and the least amount at Utirik. There were early acute effects at Rongelap, including skin burns, loss of hair, vomiting and depression of blood elements. Exposure of the thyroid gland occurred in people at Rongelap, Ailinginae and Utirik from gamma radiation during the initial fallout and from other radionuclides ingested with food and water. Brookhaven Report 5-10.

Because of the latency period between exposure and the onset of cancer and genetic effects, it is reasonable to be concerned about health effects in the Rongelap, Ailinginae and Utirik populations for some time to come. This is also true if there is residual radiation at those islands which could result in exposure via food.

Biological Effects of Ionizing Radiation

In this country the standard work on the subject of human health effects as a result of radiation exposure is a report entitled, The Effects on Populations of Exposure to Low Levels of Ionizing Radiation. This report was prepared by the prestigious National Academy of Sciences Advisory Committee on the Biological Effects of Ionizing Radiations in 1972, after thorough review of all of the scientific data available. We shall refer to this Committee as the "BEIR Committee" and its report as the "BEIR Report."

The BEIR Committee studied the effects of long-term, low-level radiation exposure. With the exception of the acute effects suffered by the people of Rongelap in the weeks and months immediately following their exposure, the information and findings of the BEIR Committee are relevant to the conditions at Rongelap, Ailinginae, Rongerik, Utirik, Bikini and Enewetak.

From the BEIR Report we learn that there are two principal concerns that one should have about radiation exposure at low levels. First, although the precise mechanisms are not understood, it is known that radiation increases the risk of cancer and of genetic abnormalities. BEIR Report 46-48, 86. Second, the relation between the amount of radiation to which one is exposed and the risk of ill-effects is such that even small amounts of radiation can cause harm. BEIR Report 51, 64, 89.

Radiation does not create any new health problems. Both cancer and birth defects are known to occur in conditions where nothing more than background radiation is present. It is also observed that any number of nonradioactive substances can play a part in causing both cancer and genetic defects. Radiation simply increases the risk of cancer and genetic defects, but because the underlying biological mechanisms are not fully understood, the precise role of any form of carcinogen or mutagen cannot be fully understood.

But because of the great value we place upon human life and health, the BEIR Committee recommends the use of the linear hypothesis for the purpose of estimating health risks associated with radiation at low levels. Simply put, this means that for a given unit dose of radiation exposure, a given health effect can be expected and as the dose increases or decreases, the likely effect changes in direct proportion.

One more observation is important to this topic of the health effects of radiation. A cancer or a birth defect which may have in fact been induced by ionizing radiation, that is, without the presence of the radiation it would not have occurred when it did, is indistinguishable from the same type of cancer or the same type of birth defect which has occurred spontaneously. BEIR Report 46, 86. Until there is a full scientific understanding of the human organism, the link between radiation and deleterious health effects is a statistical one. The ill effects are observed as an increase in the otherwise normal rate of gene mutations, chromosomal aberrations, and malignant tumors.

Thus, if the normal incidence of cancer and birth defects in these Marshallese populations is the same as that observed in the United States, we can expect approximately 15% of the people to die of cancer and 11% of the live births to be afflicted with some kind of genetic anomaly. As a result of the radiation exposure at Rongelap, Utirik and

Bikini, and any exposure which may occur at Enewetak, however slight, we can expect the incidence of these conditions to increase in direct proportion to the amount of the exposure. BEIR Report 58-60, 87-91.

The Sources of Ionizing Radiation

The sources of ionizing radiation with which we are concerned here are of two kinds. First, the relatively brief, high exposure of the people as a result of the fallout from Bravo. Second, the long-term, low-level exposure at all of the islands from terrestrial sources of radiation and, of greater significance, the internal exposure of residual radiation via the food web.

For those who received relatively high exposures, there is nothing to be done but observe and treat any ill effects that may have resulted from the initial exposure. Future potential doses through the diet, however, are subject to modification, if enough is known about the environmental sources of the radiation and the movement of the radionuclides through the food web.

Summary of Needs

It seems to us that, in varying degrees, the people of Enewetak, Bikini, Rongelap and Utirik have the same needs. They are four-fold:

(1) There is a need for medical screening and comprehensive health care. In one way the medical needs of the people varies in direct proportion to the amount of the exposure, for the reason that the health effects are directly proportional to the dose. In another way, however, even those who have or will experience low to exceedingly low doses, can still have worries and fears and can be the object of unrealistic fear on the part of others, as lepers were once feared.

Thus, the people at Utirik, or the people at Enewetak, for example, may need medical screening in an effort to establish the absence of any serious problem.

(2) As a result of the nuclear weapons tests, there is radiation in the environments of each of these atolls and there is simply no way to remove it. It can be studied and understood, however, and the information derived can be used to estimate the risk to the people and develop any protective measures which appear to be necessary.

This is the means by which the radiation will be discovered and understood before it finds its way into the human being, so that measures can be instituted to reduce or prevent exposure.

(3) From time to time it will be necessary to take all that is known about the presence and transport of the radionuclides in the environment, to put that together

with what is known of the diet and living patterns of the people, and perform what the scientists call a "dose assessment." This is an exceedingly elaborate process which attempts to take measurements and perform calculations so as to predict the future exposure. Only by this means can one make a judgment whether it is within acceptable limits, or whether some protective measures must be undertaken.

(4) Unfortunately perhaps, the people of these islands cannot afford to be ignorant about radiation. They must understand a fair amount about the physics of radioactive materials, they must be educated about radionuclides in the environment and they must be informed about the health effects of ionizing radiation.

At Bikini and Enewetak we would expect the program to give greater emphasis to environmental study, dose assessment, and education. At Rongelap all four elements would receive equal, high emphasis.

For those who need medical care, such as the people at Rongelap, it makes no sense to try to take care of only what is thought to be their "radiation-related" problems. As we have said, there is no way to search for and find the problems which may have in fact resulted from the radiation and distinguish those from any others. Nor is it humane for a health care program serving Rongelap to examine the patient for a thyroid

problem or a tumor and ignore the patient's diabetes, or polio or broken arm. At the same time, medical attention which is not justified can do more harm than good, because it makes the people think that there is something seriously wrong when that is not the case at all. It creates what is referred to as the "worried well" syndrome, which has been a serious problem for the delivery of medical care in this country. S.R. Garfield, et al., "Evaluation of an Ambulatory Medical-Care Delivery System," 294 New England Journal of Medicine 426 (1976). The consumption of health care services by those who are well and nevertheless worried, is a luxury which we cannot afford in a program of this kind. Furthermore, it is simply a way of creating a new and unneeded problem for the people themselves.

In order for the program to provide for each group and each atoll that which is appropriate, and no more, the entire program will have to be carefully and thoroughly integrated under centralized management. All four elements of the program are essential to all of the people concerned, but at the outset and over time the emphasis of each or several will necessarily vary.

Program Administration

Although the bill does not prescribe any particular structure for the management of this radiological program, we think that it will require both a group to set policy and

a clear staff organization for implementation and management of the program. Indispensable to success of the program is involvement of representatives of the people to be served. Representatives of each of the groups should be included in a formal way in both policy formulation and in the actual implementation of the program. Part of the educational effort should be to train and education a few people on each island so that they can educate others and assist in the actual work of the program.

In this connection; there is a very serious omission from subsection (b) (1), the provision which has to do with planning and implementation of the program. It completely overlooks the people of the islands affected by the program, while it enumerates the various governmental officials who are to participate. Surely this is an inadvertent oversight which can be remedied by the addition of a few words to provide for the selection of representatives from each of the islands.

Plan First, Execute Later

We strongly urge your approval of this provision in essentially its present form, so that the program will be authorized and can be eventually instituted. With equal force, however, we urge you to modify the language of section 103(b) (1), to provide a distinct planning phase during which

the governmental, scientific and Marshallese representatives will develop a program design. We think that this plan should be developed as quickly as possible and should be submitted to the Congress for its review and approval prior to the appropriation of funds.

The plan should include a detailed description of what the program plans to do for each group and for each atoll with respect to each of the four principal elements of the program. The governing body of the program and its organizational structure should be set out with clarity and careful cost estimates should be developed.

The development of the plan can and should be done in consultation with the relevant Committees of the Congress.

Summary and Recommendation

We think section 103 of H.R. 3756 is an extremely important piece of legislation, founded on humanitarian concern for some innocent people whose lives have been radically affected in one way or another by the nuclear weapons testing program. The United States used those Micronesian islands for nuclear testing so as to minimize the risk of harm to its own people. With little thought for the welfare of the native inhabitants, there were wholesale forced migrations, years of exile and actual exposure to radioactive fallout. Amends have been made in some ways and for that the people are deeply grateful. In a very real sense, this kind of long-

range, radiological program is the one thing which remains to be done. It is infinitely more valuable than the disbursement of even large amounts of cash. It would, if properly planned and wisely executed, provide the best and only remedies known to us, for the actual losses suffered by the people as a result of the testing program.

WAR CLAIMS

This Committee is eminently well informed about the Micronesian War Claims program, but we would like to touch upon one issue raised by section 102 of H.R. 3756, and support its approval.

You are familiar with the decisions of the United States Court of Appeals for the District of Columbia, holding that the Micronesian Claims Commission utterly failed to adjudicate the claims of Micronesians in the manner prescribed by this Congress. Ralpho v. Bell, 186 U.S.App.D.C. 368, 569 F.2d 607, reh. denied, 186 U.S.App.D.C. 397, 569 F.2d 636 (1977); Melong v. Micronesian Claims Commission, 186 U.S.App.D.C. 391, 569 F.2d 630, reh. denied sub nom Ralpho v. Bell, 186 U.S.App.D.C. 397, 569 F.2d 636 (1977). We have provided members of the Committee and your staff with copies of the eloquent opinions in those cases, written by Judge Spotswood W. Robinson, III.

Those actions were brought by Ralpho and Melong on behalf of all of the Micronesians who had been similarly ill-treated

by the Micronesian Claims Commission. Instead of receiving each claim and the evidence to support it, and making a judgment based upon the merits of each case, the Commission at the very outset of the program set up arbitrary values for every conceivable kind of loss. It then proceeded to grind out the decisions one after another in exactly the same amounts, without regard to the specific losses suffered by each claimant, despite the clear statutory mandate that the Commission was to "render final decisions in accordance with the laws of the Trust Territory of the Pacific Islands and international law."

50 U.S.C.App. §2019c(a).

When the plaintiffs in Melong and Ralpho were successful on appeal, the cases were remanded to the District Court, where for the first time the class action issue was reached by the trial judge. Despite the fact that all of the Micronesian claimants had received the same standardized mistreatment by the Commission, the District Court denied relief for anyone other than those who had actually been named in the complaint. We have appealed that decision, the briefs are all in for both sides and we expect the Court to hear the appeal sometime in the next few months. Copies of our briefs and the briefs filed by the government have been provided to this Committee.

We are aware that two years ago, in its deliberations upon the Omnibus Territories Act of 1977, this Committee felt that because of the pendency of this litigation, legislation

to pay the outstanding and unpaid final awards of the Micronesian Claims Commission should not be enacted. S.Rep.No. 95-332, 95th Cong., 1st Sess. 7 (1977). We must respectfully disagree with this conclusion. In the original legislation, a total of \$10 million was available for the payment of awards under Title I, for losses suffered during the actual hostilities. 50 U.S.C.App. §2019(a). One-half was a contribution from Japan and the other one-half was contributed by the United States. The total of all claims filed by Micronesians under Title I is about \$2.5 billion. 1976 FCSC Ann. Rep. 102. The total amount awarded by the Commission was only \$34.3 million, or 98% less than the total of all claims. Id.

Under Title II, the total amount claimed was about \$11.1 billion. Id. The total of all awards granted by the Commission under Title II is \$32.6 million, a difference when compared with the total amount claimed of over 99%. Id.

To a great extent, the disparity between the amount claimed and the amount awarded is the result of the arbitrary manner in which the Commission ignored solid evidence and the applicable legal measure of damages. That is the issue which is being litigated by our clients. If they are successful, each and every claimant who elects to do so must be given the opportunity to have his claim reopened, properly heard and correctly decided. This can only result in an increase in the total amount of the awards.

It seems to us that the awards of the Commission which are outstanding and unpaid are a bare minimum of the actual amount of the losses suffered, which the Micronesian Claims program was intended to compensate. Payment of these losses by the United States was, to be sure, ex gratia and we do not advocate approval of section 102 on any other basis than that it is the morally right and proper thing to do, just as was the original \$5 million appropriation. Enactment of the original program was seen as another way of the United States to fulfill its "responsibility for the welfare of the Micronesian people" under the Trusteeship Agreement. 85 Stat. 92; 117 Cong. Rec. 18973-90 (daily ed., June 9, 1971).

In that same spirit, we urge you to authorize at least that amount of money necessary to pay the United States' 50% share of the outstanding, unpaid claims awards.

FEDERAL PROGRAMS

Section 104 of H.R. 3756 would prohibit the executive branch of the United States from reducing any federal program before or after the termination of the Trusteeship. This section is a reaffirmation of the positive promises of the Trusteeship Agreement. It is especially necessary now, in view of the unilateral decision of the Department of the Interior to reduce and terminate all federal programs by 1981, the year when it is proposed that the Trusteeship will end.

The Unilateral Decision

There is no doubt that it is now departmental policy at Interior to curtail and eliminate all the federal programs in Micronesia. On December 8, 1978, during a radio interview, Ambassador Peter Rosenblatt stated: "Federal programs will end with the Trusteeship with the exception of a few technical programs to be identified in our compact with the Micronesian governments." And in a letter dated February 27, 1979, Interior Under Secretary James A. Joseph told then H.E.W. Secretary Califano that the Interior Department "will not seek or recommend new authorization for Federal programs to

be extended to the Trust Territory," will request other Federal agencies not to increase their existing programs to the Trust Territory" and will eliminate or phase out the existing federal programs.

This decision has raised a storm of protest from citizens and elected political leaders of the Trust Territory. For example, the Speaker of the Congress of the Federated States of Micronesia, the Honorable Bethwel Henry, in a letter to Interior Secretary Andrus dated July 17, 1979, stated that "there is no provision in [the Trusteeship Agreement] that would justify a phasing-down of programs which promote the economic and educational advancement and the health of the inhabitants of the Trust Territory during the life of the Agreement." There have also been numerous resolutions, petitions and memorials from various Micronesian groups and associations. There has been no meaningful response to any of this by the Department of Interior.

The Programs Cut

The reductions can be briefly summarized. As of Fiscal Year 1979, \$21,395,664 was budgetted for the federal programs in Micronesia; Fiscal Year 1980, \$12,091,622, a reduction of 43%; and Fiscal Year 1981, the supposed last year of the Trusteeship, \$9,489,622, a reduction of 22%.

There are approximately 77 categorical federal programs now operating in the Trust Territory. A list of them, and a program description of each has been provided to this Committee

for its perusal. Also provided is another list of programs which sets out how each is to be terminated.

The programs are addressed to concerns in social welfare, health, education and culture, and to merely read their names is to see how the programs are part of the specific performance by the United States of its promises in the Trusteeship Agreement.

Education Programs

For example, in the area of education, there was \$945,651 in Fiscal Year 1978 for Bilingual Education under Title VII of Elementary and Secondary Education Act, \$527,608 for Fiscal Year 1979, and none for 1980 and 1981. Another example is the scaling down of three different programs for the handicapped.

Vocational Rehabilitation

FY 1978	FY 1979	FY 1980	FY 1981
\$400,000	400,000	0	0

Vocational Rehabilitation Innovation and Expansion

FY 1978	FY 1979	FY 1980	FY 1981
\$ 50,000	50,000	0	0

Education for the Handicapped

FY 1978	FY 1979	FY 1980	FY 1981
\$732,554	732,554	400,000	400,000

The Trusteeship Agreement obligates the United States "to promote the education advancement of the inhabitants, and to this end [the United States] shall take steps towards the

establishment of a general system of elementary education; facilitate the vocational and cultural advancement of the population; and shall encourage qualified students to pursue high education, including training on the professional level." 61 Stat. 3303 (1947).

Health Programs

In the area of health, where the United States in the Trusteeship Agreement promised to "protect the health of the inhabitants," 61 Stat. 3303, there was \$302,374 budgeted for Maternal and Child Health for Fiscal Year 1978, \$575,800 for Fiscal Year 1979, \$475,000 for Fiscal Year 1980, and \$375,000 for Fiscal Year 1981, a yearly decline of \$100,000. The Comprehensive Public Health Service grant of \$413,500 for Fiscal Year 1979 would be reduced to \$400,000 for each of Fiscal Years 1980 and 1981.

The Right of Self-Determination

There are numerous other specific examples. But there is a more fundamental problem here. Before stating it, it is important to realize that these programs are not exercises in altruism, that we are not dealing here with eleemosynary activities on the part of the United States, that the people of Micronesia are not mendicants. The United States drafted the Trusteeship Agreement which gave it the right to establish military bases and station armed forces in Micronesia (see

Article 5 of the Trusteeship Agreement, 61 Stat. 3302). In return for this, it imposed upon itself the series of specific obligations which we set forth at the outset. Paramount among these is the promise to foster the development of political institutions in the Trust Territory, and to promote the development of the people of the Trust Territory toward self-government or independence. Towards this end, the United States agreed to give to the people of the Trust Territory a progressively increasing share in the administrative services and develop their participation in government.

This new policy of the Department of Interior is a retrograde step against the development of democratic institutions in the Trust Territory, since in effect it says that it will decide what is and is not good for the people of Micronesia. It also will put the fledgling governments in Micronesia on a weakened basis, at one of the most crucial times of nationhood, that of birth. It is hard to think of a more undemocratic and anti-democratic act by the Interior Department, especially in view of the consistent support Congress has given the people of Micronesia by extending these federal programs to the Trust Territory.

Violation of Congressional Policy

The decision by the Department of Interior to terminate the federal programs in the Trust Territory also violates the constitutional power vested in Congress to appropriate

mopies, and it is further a discriminatory act depriving the people of Micronesia of equal protection of the laws, in violation of the Due Process Clause of the Fifth Amendment to the Constitution.

The Human Consequences

The effect of the policy is not only destructive of the developing political institutions in the Trust Territory, but it has a devastating impact upon the human beings who are the beneficiaries of these federal programs. A sworn statement by one of our clients, _____ of Yap, is a poignant example of this. _____ has a seventeen year-old son who is enrolled in the Yap Vocational Rehabilitation Program because his left leg was amputated at the hip. Vocational Rehabilitation was to have terminated at the end of September last. _____ affidavit says:

If the program is eliminated in September of 1979, as is projected, my son is likely to suffer greatly. Sometime in late July my son is scheduled to visit Majuro Hospital, Marshall Islands, to be measured for a prosthetic device. In that the program will soon be terminated, his scheduled trip to the Marshalls may be cancelled. Even if he is successfully measured for the prosthetic device, the program may not be able to order it before its scheduled termination.

Even if he is measured for, and does receive the prosthetic device, he will only be in the middle of his comprehensive plan, which calls for continued medical evaluation, counselling services, and a new prosthetic device if he continues to grow at the same rate that he has been growing.

A Recommendation

Since the many federal programs which have been reduced or eliminated have such far reaching effects, we think it is imperative that this Committee condemn the unilateral decision of the Department and call upon the Secretary to appear before it in a special hearing to explain his actions. Let him provide detailed information on precisely which programs are being curtailed and the exact effects of such reductions.

If any federal assistance programs are to be denied to Micronesia, let that be a decision of the Congress, after due deliberation, not a decision in camera by the Secretary of the Interior. He has abused his discretion. Let his powers be curtailed accordingly.

CONCLUSION

Thank you very much for the opportunity of appearing before this Committee. We will be happy to confer with you or your staff upon request.