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PLEASE REPLY TO Washington Office

November 6, 1979

R

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

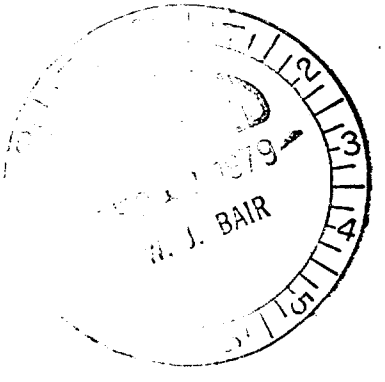
Dear Ms. Clusen:

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,

Ted

Theodore R. Mitchell



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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.

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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.

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.

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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 Enewetal 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. McEnery, quite

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. McEnery to Martin B. Biles, May 14, 1974. I would have had General McEnery 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

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

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.

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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

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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,

Ted

Theodore R. Mitchell

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

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Reviewed by [illegible] Date 4/20/97