

Committee on Resources

Full Committee

Testimony

STATEMENT OF ALLEN P. STAYMAN

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DEPARTMENT OF THE INTERIOR

BEFORE THE HOUSE COMMITTEE ON RESOURCES

REGARDING RADIATION-RELATED MATTERS AND

THE RESETTLEMENT, RELOCATION, AND RADIOLOGICAL REHABILITATION OF THE BIKINI, ENEWETAK, RONGELAP AND UTRIK ATOLLS

MAY 11, 1999

Mr. Chairman. I am pleased to be here with you to discuss the status of nuclear claims, and relocation and resettlement efforts in the Marshall Islands. I wish to thank the representatives of Enewetak, Rongelap and Utrik Atolls, who are here and hosted my staff and me during our visit to their islands two months ago. I can personally attest to the benefits derived from learning first-hand about the lives of the peoples with whom our offices work. I look forward to visiting the people of Bikini on Kili during my next visit to the Pacific, I hope, before the end of next month.

CLOSE, WORKING RELATIONSHIPS

As the official with day-to-day responsibility for all Federal financial and program assistance being provided to the Marshall Islands, the Director of the Office of Insular Affairs enjoys a close working relationship with the Marshall Islands Embassy in Washington, D.C. The Marshall Islands' Ambassador and Minister to the United States, the Honorable Banny de Brum and Mattlan Zackhras, and their assistant, Ms. Holly Barker, serve the people and government of the Marshall Islands with the greatest ability and spirit of cooperation. As during the tenure of the prior Ambassador, the Honorable Wilfred Kendall, now a distinguished member of the Nitijela, the Marshall Islands Embassy is a valued partner with the United States Government in advancing the welfare of the peoples of the four nuclear-affected atolls.

SECTION 177

The keystone of United States' policy regarding the nuclear testing program is Section 177 of the Compact of Free Association, the subsidiary agreement implementing that section, and the law approving it. Here as elsewhere, the United States Government "accepts the responsibility for compensation owing to citizens of the Marshall Islands . . . for loss or damage . . . resulting from the nuclear testing program . . . conducted . . . between June 30, 1946, and August 18, 1958." In fulfilling its obligations under Section 177, the United States Government provided to the Marshall Islands Government one hundred fifty million (150,000,000)

dollars to create an independent nuclear claims fund. Under Article I, Section 1, the Marshall Islands Government is to invest these funds with the goal of producing \$18 million annually for disbursement.

Article II, Distribution of Annual Proceeds, requires the Fund Manager to disburse to the Government fixed amounts for health (\$2 million annually for 15 years), medical surveillance and radiological monitoring (\$1 million annually for 3 years), and to the fixed amounts in payment of claims for loss or damage to property and person including: \$75 million for the people of Bikini, \$48.75 million for Enewetak, \$37.5 million for Rongelap and \$22.5 million for Utrik. These disbursements are to be made in 60 quarterly payments over 15 years. Section 8 of this Article obliges the governments of the four atolls, in order to provide long-term means to address the consequences of the nuclear testing program, to establish individual trust funds "with all or a portion" of the proceeds received under Section 177 to "provide a perpetual source of income" for the peoples of the atolls (article II, section 8, sentence 2).

The subsidiary agreement empowers the government of each of the four atolls to take these funds and to choose whether they should "be distributed, placed in trust or otherwise invested (last phrase of sections 2-5 of article II).

FOUR-ATOLL HEALTH CARE

Under Article II, Section 1(a), of the Section 177 Subsidiary Agreement, the Fund Manager disburses two million (2,000,000) dollars annually to the Marshall Islands Government to provide for the four-atoll health care program. Over the years of Compact I the Federal funds allocated under just this one subsection will total thirty million (30,000,000) dollars, with a possible four-million-dollar extension until October 21, 2003. These funds are in addition to the amounts provided to the four atolls as their share as constituent governments of the Marshall Islands under Compact sections 216(a)(2) [\$1,791,000 annually for nationwide health and medical programs, including referrals] and 221(b) [\$10,000,000 annually for education and health care]. Still in article II, section 1(d) provides the supplemental food program to which I refer on page six of this statement.

CLAIMS TRIBUNAL

Article IV of the Section 177 Subsidiary Agreement requires the Marshall Islands Government to establish a claims tribunal, independent of the powers of both the President of the Marshall Islands and the Nitijela, to render final determination upon all claims related to the nuclear testing program and upon all disputes arising from distributions of the nuclear claims fund. \$45.75 million is to be available "for whole or partial payment" of claims, to be disbursed up to \$2.25 million during the first 3 years and \$3.25 million during the next 12 years. As of the most recent figures available to my office, the overall, net personal injury compensation totals sixty-three million, one hundred twenty-seven thousand (63,127,000) dollars as of December 31, 1997. This represents sixteen hundred eighty-five (1685) awards to or on behalf of fifteen hundred forty-nine (1549) individuals.

Although Section 177 provides for the "full and final settlement of claims" in the payment of one-hundred fifty million dollars, it also provides that the Marshall Islands Government may at any time petition the Congress for additional compensation in the event of *changed circumstances* under article IX of the Section 177 subsidiary agreement. Such a request would, by definition, have to be based on the so-called *changed circumstances* that injuries resulting from the nuclear testing program in the Marshall Islands "were not and could not reasonably have been identified as of [October 21, 1986], and [that] such injuries render[ed] the provisions of this Agreement manifestly inadequate." Article IX of the Section 177 Subsidiary Agreement

goes on to say that the Congress is not committed to authorize or appropriate funds. Consequently, were the Congress to find that there was a change in circumstances, legislation would have to be enacted to authorize as well as to appropriate funds to provide further compensation for these injuries. The Marshall Islands Government has indicated its intent to file such a petition, and the Administration stands ready to assist the Congress in its consideration of such a request.

OTHER AUTHORIZATIONS

In addition to Section 177, the Compact Act authorized several resettlement programs (Bikini, section 103(l); Enjebi, section 103(k); and Rongelap, section 103(i)), the United States Department of Agriculture food program (section 103(h)(ii)(B)), the work of the United States Department of Energy (section 103(h)(i)), and my own department's agricultural and supplemental food program for Enewetak (section 103(h)(ii)(A)). My colleagues from the Department of Energy will describe their activities. I will detail how these other authorizations affect each of the four atolls.

BIKINI: Background of Authorization and Funding

In fulfilling the U.S. Government's obligations to the people of Bikini, the Congress appropriated ninety million (90,000,000) dollars over a five-year period for the clean-up and resettlement of Bikini, that was added to the twenty million (20,000,000) dollars appropriated in 1985. The Congress based its further appropriation on the full-faith-and-credit commitment contained in the Compact Act, section 103(l). Moreover, the Congress designed and intended this appropriation, in the words of the then Ranking Minority Member of the Committee on Energy and Natural Resources, Senator James A. McClure (Rep.-Idaho), on the floor of the Senate on September 8, 1988:

to fulfill both the moral and legal commitment of the U.S. Government to the people of Bikini contained in section 103(l) of the Compact Act . . . and in article VI of the Compact Section 177 Agreement . . . and . . . to provide for the full and final settlement of all claims arising from the Nuclear Testing Program. . . . There are those who may incorrectly argue that this appropriation is made outside of the Section 177 Agreement and therefore Congress did not intend for section 177 to provide a final settlement. The opposite is true. . . . It is intended that these funds will be deposited in the existing resettlement trust fund - of approximately \$20 million - and that the terms of that trust will be modified to provide that the corpus and income from the trust may be used for the rehabilitation and resettlement of Bikini Atoll and that up to \$2 million per year⁽¹⁾ may be used for projects on Kili and Ejit⁽²⁾. Following rehabilitation and resettlement, these funds will no longer be available to Kili and Ejit, and any funds remaining in the trust, not identified for future needs, shall be deposited in the U.S. Treasury. It is anticipated that these future needs . . . will include: first, maintenance of the resettlement infrastructure until the Bikinians are prepared to assume that task; second, training the Bikinians for the operations and maintenance of the infrastructure; Once this objective is reasonably met, then all funds in the trust shall revert to the United States. The people of Bikini will then need to rely on other funds, such as the other \$75 million provided pursuant to [the Section 177 Subsidiary Agreement, article II, section 2], In the context of the Section 177 Agreement the Bikinians will have accepted this trust arrangement as full and final discharge of all United States obligations . . . related to their relocation from Bikini . . . and no further appropriations will be required in order, finally, to have fulfilled the United States commitments to the Bikini people, except as provided under article IX of the Section 177 Agreement.

Right from this inception of Congressional funding of the separate Resettlement Trust Fund for the People of Bikini, the U.S. Government had as its full-fledged partner the people and local government of Bikini. As the then Chairman of the Committee on Energy and Natural Resources, the Honorable J. Bennett Johnston (Dem.-La.), noted on the floor of the Senate on September 8, 1988:

The work of the Bikini Atoll Rehabilitation Committee (BARC) . . . provided the information needed to quantify the obligation of the United States Government to clean up and resettle Bikini. It was from the BARC information that this \$90 million appropriation was developed. . . . [L]anguage was specifically included in the statute to rebut any indication that enactment of the Compact did not constitute a full and final settlement and a complete and absolute bar to either continued or further litigation. The analysis . . . set forth in the record at the time of passage is clear: . . . '[A]dditional ex gratia ' - and I want to emphasize the words ' ex gratia ' - 'assistance will be available in the future if circumstances warrant and this provision in no manner lessens the concern which we have for the population of the affected atolls.' . . . These funds are provided to the Bikinians so that they, and not the United States Government, will be responsible for the management and the decisions involved in returning to their homeland. . . . It is the responsibility of the people of Bikini to . . . expend these funds so that they meet the objectives of rehabilitation and resettlement and provide for limited future needs. . . . All decisions and responsibilities for rehabilitation and resettlement of Bikini rest with the people of Bikini.

BIKINI: Current Circumstances

While having a limited, on-island presence in their home atoll -- about twenty-five persons -- principally connected with the atoll government's commercial dive program, most Bikinians live in Majuro Atoll, including Ejit Island (about one thousand), or elsewhere in the Marshall Islands (about eleven hundred), principally Ebeye and Kili Islands and Lae Atoll.

Representatives of the people of Bikini have sought to know whether the United States Government backs the September 1996 final draft International Atomic Energy Agency (IAEA) report on radiological conditions at Bikini. The IAEA Advisory Group concluded that:

- (1) Bikini Island not be permanently resettled under the present radiological conditions without remedial measures if inhabitants were going to eat entirely locally produced foodstuffs;
- (2) the diet of the peoples of the Marshall Islands, including the people of Bikini, contained and would continue to contain a substantial proportion of radionuclide-free, imported food;
- (3) provided certain remedial measures were taken, especially continued potassium fertilization, Bikini Island could be permanently reinhabited; and
- (4) should such remedial steps be taken, radiation doses for people living on Bikini Island would be acceptable in terms of international standards and their health would be adequately protected against radiation exposure due to the atoll's residual radioactive materials.

Meeting with the senior Bikini leadership in his offices on April 21, 1998, Secretary Babbitt emphasized that the IAEA report was credible, reliable, and detailed, and that the elected leaders and voters of Bikini needed to consider the report's findings and then arrive at their own decision regarding the process and

standards for resettlement. As the Secretary stressed, no one speaking of behalf of the Clinton Administration is going to deem Bikini "safe" or "unsafe". On behalf of the Department, the Secretary agreed with the IAEA Advisory Group that (1) no further independent measurement or assessment of radiological conditions at Bikini was necessary and (2) the people of Bikini needed a limited program of radiation monitoring, in which they themselves should participate.

BIKINI: Other Issues

There are two other issues specific to Bikini Atoll Local Government which I would like to raise in this statement, the supplemental food program and a proposed three per centum distribution from the Resettlement Trust Fund corpus. Concerning the first, because the people of Bikini have not returned to their home islands where they could grow their traditional crops, the U.S. Department of Agriculture (USDA) has provided supplemental food to the people of Bikini and the peoples of the other three radiation-affected atolls for more than twenty years. The authorization for this program has been extended by the Congress from time-to-time and we appreciate the action of the Congress in doing so again last year.

Regarding the second issue, in order to counter the effects of El Nino, the people of Bikini want a distribution of three per centum from their Resettlement Trust Fund corpus in order to purchase water catchments and to supply themselves with fresh water, food and other necessities during this emergency. However, the Department of the Interior believes that the Bikini Resettlement Trust Fund instrument does not provide for such an invasion of corpus and that it would need to be authorized by the Congress. If asked, we would be pleased to work with the Committee on this matter.

ENEWETAK: Background of Authorization and Funding

This atoll was the site of forty-three of the sixty-six nuclear tests conducted by the U.S. Government in the Marshall Islands 1948-58. The nuclear testing program inflicted serious damage to the atoll. Five islands were completely or partially destroyed; the remaining islands in the atoll's northern half, including Enjebi and Runit, were contaminated by radioactivity. The atoll's southern islands of Enewetak and Medren were mostly covered by concrete and asphalt as they were used for various facilities required by the nuclear testing program. As a result, the entire atoll was devastated, vegetation was completely stripped from many islands and nearly all vegetation was destroyed.

In order to permit the people of Enewetak to begin their return home, from 1977 to 1980, the U.S. Government undertook a resettlement program which included the clean-up of affected islands and the atoll's revegetation. Radiation-contaminated soil from this clean-up, was placed in a nuclear test-created crater on the north of Runit Island.

ENEWETAK: Enjebi Trust Fund

Section 103(k) of the Compact Act and the accompanying subsidiary agreement established an ex gratia trust fund for the Enewetak community from Enjebi and credited to the fund the amount of seven million, five hundred thousand (7,500,000) dollars, which the U.S. Government transferred to the Marshall Islands Government. Under article I, section 4, of the agreement, if the people of Enewetak from Enjebi resettle their island by October 21, 2011, the people will receive from the fund such amounts as will be necessary to re-establish their community and to replant their island appropriately. However, if they do not resettle by this date, then the fund manager will distribute the fund to the people for their resettlement at some other location. Whichever route the people of Enewetak from Enjebi take, prior to and during the distribution of

the fund's corpus, they may receive at least quarterly the interest earned by the fund.

ENEWETAK: Current Circumstance

The resettlement program has included revegetating the atoll. Crops of coconut, pandanus, breadfruit, taro, bananas and lime have been planted since 1979: the planting continues as a part of the Office of Insular Affairs-funded Enewetak Food and Agriculture Program, whose funding level has been approximately \$1,091,000 annually since fiscal year 1986. It is regrettable that the crops have never produced the projected quantity of food and do not now provide sufficient food for the people of Enewetak. The problem is exacerbated by having less than one-third of the atoll's land useable for food production. However, for as long as the people of Enewetak need substantial amounts of off-island food, as recommended by the U.S. Department of Energy-Lawrence Livermore Laboratory's environmental rehabilitation program, there will be a need for some supplemental Federal support in this area, such as that provided by the United States Department of Agriculture's food program, and the Department of the Interior-funded agricultural program. This will remain constant even if Enewetak Government increases local food production significantly above current levels. It is especially true in light of Lawrence Livermore's well-based preference for potassium treatment instead of scrapping top soil.

Perhaps the most significant, bilateral issue outstanding is the condition of Runit Island, a responsibility that the Enewetak Government claims still rests with the U.S. Departments of Defense or Energy. The Federal position is that, although either or both Federal departments have occasionally sent personnel to inspect the condition of the Runit dome, this has been *ex gratia*. As article VII, sentence one, of the Section 177 Subsidiary Agreement states:

The Government of the United States is relieved of and has no responsibility for, and the Government of the Marshall Islands, . . . shall have and exercise responsibility for, controlling the utilization of areas in the Marshall Islands affected by the Nuclear Testing Program.

The most positive aspect in the relationship between the Office of Insular Affairs and the people of Enewetak Atoll is the three-story Enewetak Elementary School, equipped with sixteen classrooms, and reconstructed from an abandoned Department of Defense facility by means of an appropriation to the Office of Insular Affairs. As a part of the continuing ties between my office and the leaders of Enewetak, the atoll's local government arranged for my staff and me to visit Enewetak this past March 10th, the first visit to Enewetak by an Interior official since at least 1986.

RONGELAP: Background of Authorization and Funding

A forty-five-million-dollar agreement to assist the people of Rongelap with resettlement was signed on September 19, 1996, in Washington, D.C., by the Secretary of the Interior and two of the witnesses for today's hearing, the Mayor of Rongelap Atoll, the Honorable James Matayoshi, and the Marshall Islands Ambassador to the United States, the Honorable Banny de Brum. In 1995, after years of studies and negotiations involving the Departments of the Interior and Energy, independent scientists, Congressional committees and representatives of the Rongelap people, the Congress set forth the general parameters for a final settlement in section 118(d) of Public Law 104-134 (April 26, 1996). In August 1996, after nearly three years of negotiations with Rongelap Government representatives, my office reached a settlement which the September 1996 agreement embodies.

The agreement's terms constitute, in accordance with section 118(d) of Public Law 104-134, "a full and final

settlement of all obligations of the United States to assist in the resettlement of Rongelap Atoll" pursuant to section 103(i) of the Compact Act. The agreement requires the building of sufficient homes after construction of dock, water, electric, school, and local government facilities. Property will be surveyed, and cemeteries located.

The agreement provided thirty-nine million, seven hundred forty thousand (39,740,000) dollars for the resettlement of Rongelap, the fund then having eighteen million, one hundred twenty-seven thousand (18,127,000) dollars available. The balance of the nineteen million, five hundred thirty thousand (19,530,000) was provided by the Office of Insular Affairs through a reprogramming of surplus appropriations authorized by the Congress. The remaining amount, one million, nine hundred eighty-three thousand (1,983,000) dollars, was included in the fiscal year 1997 Department of the Interior appropriations. The balance of the settlement funding was derived from interest earnings on the Trust Fund. The agreement further provided that eight million (8,000,000) dollars be available as grants from my office and that the balance be placed in the Trust Fund.

RONGELAP: Current Circumstances

Of the one hundred (100) or so persons on Rongelap Island and surrounding islands in 1954, approximately seventy-three (73) are still living. The people of Rongelap are the least resettled of the four nuclear-affected communities with, approximately, eight hundred Rongelapese in Majuro Atoll and fourteen hundred on islands in Kwajalein Atoll. However, in partnership with the Clinton Administration, the people and government of Rongelap have outshone nearly all other Marshall Islanders for their unwavering commitment to rehabilitate and resettle their home island. On June 25, 1998, Rongelap Atoll Local Government and a contractor, Pacific International, Inc., signed a master contract for the construction of Phase I of Rongelap Island's resettlement. Generally speaking, Phase I includes establishment of a base camp, the construction of essential infrastructure and completion of the remediation recommendations of the independent scientific management team. The contractor is in the process of completing or has already completed the following on-island projects: constructing a dock, launching ramp, warehouse, maintenance buildings, a sanitary landfill and a field station to support forty persons; renovating the airport and roads; removing and replacing soil; producing and distributing electric power and water; storing water and fuel; and collecting and disposing of sewage. Operations and maintenance of these facilities are an integral part of the master contract.

Just as the atoll government asked me to inaugurate the new Rongelap City Hall in Majuro in November 1997, Rongelap Government arranged for me to visit Rongelap Island itself this past March 11th - the first visit by an Interior official since at least 1986 - for the grand opening of the Phase I facilities on Rongelap.

UTRIK

The people of Utrik number around three thousand, of whom about twelve hundred have resettled the islands of their atoll. Of the remaining eighteen hundred or so not in Utrik, approximately twelve hundred fifty live in Majuro Atoll and four hundred fifty on Ebeye Island. About one hundred Utrikese live in Honolulu or the mainland United States.

The Compact Act did not include an authorization for resettlement for the people of Utrik. Of the four nuclear-affected Marshall Islands atolls, Utrik has had only sporadic contact with the U.S. Government since 1986. Until June 26, 1998, when Secretary Babbitt received Utrik's senior leadership at the Department of the Interior, no one from Utrik had ever met a Secretary of the Interior or any Department of the Interior

official in Washington, D.C. The meeting between Secretary Babbitt and Utrik Government representatives established formal communications between the Department of the Interior and Utrik Government. Prior to the meeting, during the Clinton Administration, there were two other occasions when the Department of the Interior interacted with Utrik Government: at a U.S. Department of Energy meeting in May 1996 in Honolulu and a November 1997 meeting in Majuro at which the Mayor of Utrik and his fiscal officer and legal counsel had informal discussions with a member of my staff and me. The atoll's local government arranged for a member of my staff and me to visit Utrik this past March 9th, again the first visit by any Interior official since at least 1986.

Other than monitoring of environmental conditions on their islands, the people of Utrik have the least significant rehabilitation problems and have secured the highest level of resettlement among the four nuclear-affected atolls.

ACTIVE IMPLEMENTATION OF FEDERAL RESPONSIBILITIES

Since 1993, the Office of Insular Affairs has successfully: advocated the commitment of forty million (40,000,000) dollars to fund Rongelap resettlement; reached a resettlement agreement with the government of Rongelap Atoll; approved, on a regular basis, the budgets of the Bikini and Rongelap governments; worked with the National Academy of Sciences and the Marshall Islands Government Nationwide Radiological Study; and met regularly with representatives from the four atolls. Together, we join our colleagues at Defense, Energy and State in the faithful and active implementation of the Federal responsibilities under the Compact.

Attachment

(revised)

Summary of U.S. Funding for Nuclear-Testing-Related Islands

Compact Section 177 Nuclear Claims Settlement ((\$150 million earning \$18 million/year):

Section Purpose Amount Total

Article II, Sec. 1(a) Health \$2 million/year x 15 years \$30 million

- Survey \$3 million/year x 3 years \$3 million

Sec. 2 Bikini \$1.25 million/quarter x 60 quarters \$75 million

Sec. 3 Enewetak \$812,000/quarter x 60 quarters \$48.75 million

Sec. 4 Rongelap \$625,000/ quarter x 60 quarters \$37.5 million

Sec. 5 Utrik \$375,000/quarter x 60 quarters \$22.5 million

Sec 6(a)(b) Tribunal \$500,000/year x 15 years \$7.5 million

Admin.

- Claims \$2.25 million/year x 3 years \$45.75 million

\$3.25 million /year x 12 years

Additional *ex gratia* Authorizations:

Sec. 103 (i) Rongelap Resettlement \$40 million

(k) Enjebi Resettlement \$10 million

(l) Bikini Resettlement \$90 million⁽³⁾

(h)(1) DOE Marshall Islands approx. \$6 million/yr (h)(2) USDA food for the 4 atolls approx. \$800,000/yr

Sec. 105 (c) Enewetak Agricultural prog. \$1.1 million/yr

1. ¹ In enacting the Department of the Interior Fiscal Year 1998 Appropriations Act (Public Law 105-83; November 14, 1997), the Congress increased this amount per fiscal year by five hundred thousand (500,000) dollars. 2. ² In enacting the Department of the Interior Fiscal Year 1992 Appropriations Act (Public Law 102-154; November 13, 1991), the Congress redefined "projects on Kili and Ejit" as "projects on Kili and all of Majuro Atoll." 3. The \$90 million Bikini Resettlement funding authorized in the Compact of Free Association was in addition to \$20 million appropriated in 1985.