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UNITED STATES
ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION
WASHINGTON, D.C. 20545

February 2, 1976

M. Silvestro
CC

Honorable Peter R. Taft
Assistant Attorney General
Land and Natural Resources Division
ATTN: Floyd L. France, Chief
General Litigation Section
Department of Justice
Washington, D. C. 20530

REPOSITORY DOE/PASO
COLLECTION DOE/NV
BOX No. 1234
FOLDER BIKINI-MISC CORR/ RPTS
01/1976 - 09/1978

Dear Mr. Taft:

THE PEOPLE OF BIKINI, et al. v. SEAMANS, et al., CIVIL NO. 75-348,
U.S.D.C., D. HAWAII (FLF: 90-1-4-1284)

This will respond to Mr. France's inquiries as to whether ERDA has been able to secure definitive resolution--from the Office of Management and Budget or otherwise--of the outstanding questions regarding the funding of the desired aerial survey of certain islands in the Northern Marshalls including Bikini Atoll. We recognize that the conduct of this survey appears to be the principal demand of plaintiffs in this litigation, and may even provide a basis for settlement of the lawsuit. A brief recapitulation of the Pacific involvement of the defendant agencies may be useful before a discussion of the present status.

During the period 1946 to 1958, the United States Government conducted nuclear weapons tests at the Pacific Atolls of Bikini and Enewetak. Before the tests were begun, the U.S. evacuated the island people. The testing program and the use of these Pacific Atolls for testing were approved by the President. All but one of the test series were performed by Joint Task Force that reported jointly to the Atomic Energy Commission and to the Department of Defense. The exception predated the establishment of the AEC and was the first post World War II series of tests performed at Bikini in 1946, to study the effects of the atomic bomb on Naval ships.

For many years, the Bikini people were dissatisfied with their living conditions and were asking to return home. Following a radiological survey by the Atomic Energy Commission and an evaluation of safety aspects of resettlement, a cleanup and rehabilitation program was undertaken at Bikini Atoll jointly by the Atomic Energy Commission and the Department of Defense in 1969. This was in response to President Johnson's letter of August 12, 1968. (Exhibit A to the complaint in this action)



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During the cleanup of Bikini Atoll, the Department of Defense, the Atomic Energy Commission, and the Department of the Interior cooperated in the safety studies, and in the cleanup and rehabilitation activities. The Atomic Energy Commission was primarily responsible for the radiological surveys, safety evaluations, and advice and recommendations on radiological matters related to cleanup and rehabilitation. The Department of Defense performed the cleanup and disposal of radioactive debris and the Department of the Interior and Trust Territory were responsible for the rehabilitation of the islands and return of the people. The specific division of responsibility between the Atomic Energy Commission and the Department of Defense for this cleanup was set forth in the February 11, 1969, Memorandum of Understanding, Attachment 1 to this letter.

In 1974, the Department of the Interior, Office of Trust Territories, requested ERDA assistance in reviewing plans for the second phase of housing construction on Bikini Island. To facilitate this review, and because of the difficulty in surveying so large an island on foot, an aerial survey was proposed. Such a survey would also provide the Department of the Interior with needed data on interior portions of other islands in the Atoll for long-range planning. The Department of Defense was requested by the Department of the Interior to provide the necessary logistics support to ERDA. In our view, provision of this logistic support by the Department of Defense at no cost would be entirely consistent with Paragraph 8 of the Memorandum of Understanding, and the continuing responsibility of that Department for the residual evidence or its operations in the Pacific. The Department of Defense advised that they were unable to provide the necessary logistics support, without cost reimbursement. Because of the need for timely advice to the Department of the Interior, ERDA fielded a limited survey using ground monitoring. This was sufficient to answer specific questions about home locations on Bikini and Eneu Islands, but did not provide any new data on other islands in the Atoll, and did not provide the same amount of detailed data on Bikini and Eneu Islands as an aerial survey would.

It has become increasingly apparent that the U.S. will soon end the Trust Territory Agreement. We believe that before the U.S. does this, a complete and comprehensive radiological survey ought to be conducted of all of the Pacific Islands which were subjected to testing and close-in fallout to document the status today. For its part, ERDA is prepared to fund the FY 1976 operating costs for the technical aspects of the survey. The Department of the Interior and ERDA have repeatedly requested the Department of Defense to provide logistic support for this survey. That Department has requested financial reimbursement as a condition of such support. Neither ERDA nor the Department of Defense has programmed, nor otherwise has available, funds for this logistic support. Requests for such funds have not survived budgetary reviews.

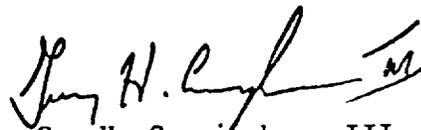
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The details of the survey, and its merit have been thoroughly discussed at staff levels between all three agencies both before and after the initiation of the instant lawsuit. ERDA has provided extensive briefings for the Assistant Secretary of Defense (Health & Environment), to the Department of the Interior, Office of Trust Territories, to staff members of the Office of Management and Budget, and to the Chairman of the Council on Environmental Quality. Since neither ERDA, the Department of the Interior, nor the Department of Defense, are in a position to commit the necessary resources for such a survey, there is a need for higher-level resolution of agency funding responsibilities.

Several methods of informally triggering this resolution have been explored, without success, since the preliminary conference with Judge King on November 1, 1975. Just as the agencies are unable to agree on where the funding responsibility lies, they are unable to agree on a joint presentation to the Office of Management and Budget. ERDA's reluctance to go to the Office of Management and Budget stems from a feeling that the matter will be regarded as an interagency squabble and referred back for resolution by the agencies. This is reinforced by the knowledge that cognizant Office of Management and Budget examiners have been fully briefed on this issue, but have initiated no action which would lead to a resolution.

While ERDA is unwilling to go directly to the Office of Management and Budget--even if it means defending this suit on the merits in lieu of settlement--we would welcome a definitive resolution of the funding situation. Accordingly, we suggest that it might be appropriate for the Department of Justice to seek an Office of Management and Budget determination of this matter, emphasizing that the Department's efforts to secure unanimity among its client agencies has been unsuccessful, and pointing out that there is a strong Government interest in settling this lawsuit.

Sincerely,



Guy H. Cunningham, III
Assistant General Counsel
Litigation and Legislation

Enclosure:
As stated

cc: As shown on page 4

Honorable Peter R. Taft

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cc: H. Gregory Austin, Solicitor
ATTN: C. Brewster Chapman
Assistant Solicitor - Territories
Division of General Law
Department of the Interior

Richard H. Wiley
General Counsel
Department of Defense

MEMORANDUM OF UNDERSTANDING BETWEEN THE DIVISION OF MILITARY APPLICATION,
ATOMIC ENERGY COMMISSION, AND THE DEFENSE ATOMIC SUPPORT AGENCY, DEPARTMENT
OF DEFENSE, ON CLEANUP OF BIKINI ATOLL

1. On August 12, 1968, the President requested that the Chairman, Atomic Energy Commission, and the Secretary of Defense work with the Secretary of the Interior and the High Commissioner of the Trust Territory in planning a comprehensive resettlement program for Bikini Atoll and assist them in carrying it out.

2. The Department of Defense (DOD) and the Atomic Energy Commission (AEC) have agreed to cooperate with the Department of Interior in the cleanup of the Bikini Atoll for the return of the native population. The cleanup involves the removal of vegetative overgrowth, debris, structures and other materials residual from the use of the Atoll for atomic testing which could pose radiation or accident hazards to the population or interfere with their reasonable use of the land.

3. The DOD will manage the cleanup, utilizing the Defense Atomic Support Agency (DASA) including the Joint Task Force EIGHT (JTF-8) and its existing organizational relationships with the AEC and AEC contractor support. The JCS have designated the Director, DASA to act as Project Manager and have provided him appropriate instructions. The project will provide a unique opportunity for exercising the readiness capability of JTF-8 in planning and organizing the deployment of men and equipment to undeveloped islands on short notice, at minimum demands upon outside resources, in manner similar to that which would be required in support of the treaty safeguards if nuclear testing were ordered resumed in the environments prohibited by the Limited Test Ban Treaty.

4. The DOD and the AEC have agreed to provide \$300,000 each in fiscal year 1969 for the cleanup. Total AEC funding shall not exceed \$300,000 for the entire project and AEC funds shall not be used to pay costs which accrue subsequent to June 30, 1969. The DOD funds will be available for obligations until June 30, 1969. The DOD/AEC funds (\$600,000) will be made available by the AEC to DASA (Nevada Operations Office to CJTF-8) to provide the Project Manager with financial resources to begin the task. Approximately half of this \$600,000 is attributable to the cost of eliminating radiological contamination. Existing DASA-AEC (JTF-8) procedures will be utilized by the Project Manager in providing and accounting for these DOD/AEC funds for payment of the AEC contractor, and to defray transportation, military travel, per diem, and other associated costs attributable to the task and not included under payments to the contractor. It is expected that the same procedures will be followed in respect to the \$700,000 expected to be forthcoming in FY 70 from the Department of Interior.

5. The AEC contractor will provide planning, engineering and technical staff support and labor for cleanup as well as camp support operations and other tasks as determined by the Project Manager. Except for matters pertaining to contract administration, CJTF-8 will exercise operational control over the contractor. Contract administration will be performed by the AEC Honolulu area office.

6. The AEC will be responsible for determining that radiological health and safety requirements are met at the completion of this project. These requirements, as developed in project plans, will be subject to

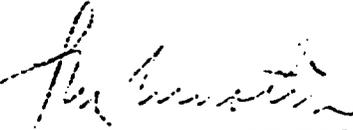
AEC approval prior to the beginning of field operations. AEC will follow the progress made and keep interested agencies informed.

7. The handling and removal of contaminated scrap will be conducted so that exposures to personnel will be within the standards for workers established by the Federal Radiation Council. The contractor will use Trust Territory island natives as feasible and as determined between the Project Manager and the Trust Territory representative. Trust Territory native residents may not be employed in collecting and removing contaminated scrap material.

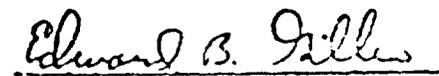
8. Equipment or other assets available to the AEC and DOD may be used providing this arrangement is in the best interest of the U. S. Government. If mutually agreed between the providing party and the Project Manager, these assets will be made available to the Bikini cleanup project, at no cost other than for transportation, operating, and maintenance charges, if required.

9. The Bikini cleanup will not interfere significantly with maintenance of the test readiness posture.

10. The Director, DASA as Project Manager will act for the AEC in accordance with the provisions of this memorandum.


L. M. Mustin
Vice Admiral, USN
Director, DASA

11 February 1969


Edward B. Giller
Major General, USAF
Assistant General Manager
for Military Application

11 February 1969