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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

4	THE PEOPLE OF BIKINI. by the BIKINI)	CIVIL ACTION NO. 75-348
5	COUNCIL; Scribe; Magistrate:)	
6	and)	
7	Plaintiffs,)	
8	v.)	
9	ROBERT C. SEAMANS, JR., Administrator,)	
10	United States Energy Research and)	
11	Development Administration; WILLIAM J.)	
12	STANLEY, Director, Pacific Area Support)	
13	Office, United States Energy Research)	
14	and Development Administration; JAMES R.)	
15	SCHLESINGER, Secretary of Defense; KENT)	
16	FRIZZELL, Acting Secretary of Interior;)	
17	FRED M. ZEDER, Director, Office of)	
18	Territories, United States Department)	
19	of Interior; EDWARD C. JOHNSTON, High)	
20	Commissioner, Trust Territory of the)	
21	Pacific Islands; OSCAR DEBRUM, District)	
22	Administrator, Marshall Islands)	
23	District, Trust Territory of the)	
24	Pacific Islands; and GERALD R. FORD,)	
25	President of the United States,)	
26	Defendants.)	

FILED IN THE
1 30 0
By _____ Deputy

AMENDED MOTION FOR PRELIMINARY INJUNCTION
AND
NOTICE OF MOTION

PRIVACY ACT MATERIAL REMOVED

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BOX No. 1234

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5052063 BIKINI - MOTION FOR
PRELIM INJUNCTION
AFFIDAVIT OF T.P.
COCHRAN (EXHIBIT A)

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF HAWAII

3
4 THE PEOPLE OF BIKINI, etc.,)
5 Plaintiffs,)
6 v.) Civil No. 75-348
7 ROBERT C. SEAMANS, JR., et al.,)
8 Defendants.)
9

10 AMENDED MOTION
11 FOR
12 PRELIMINARY INJUNCTION

13 COME NOW the plaintiffs, pursuant to Rule 65, F.R.Civ.P.,
14 28 U.S.C., and upon the basis of the verified complaint heretofore
15 filed in this action, and upon the memorandum and affidavits
16 accompanying plaintiffs' original motion for preliminary
17 injunction, hereby amend and withdraw the original motion and
18 move the Court to grant them preliminary relief as follows:

19 I. Enjoin each and all of the defendants from
20 proceeding further with the Bikini Resettlement Program, or any
21 aspect or part thereof, until the defendants have complied with
22 the requirements of the National Environmental Policy Act ("NEPA"),
23 42 U.S.C. § 4321 et seq., by:

24 A. Completing a comprehensive, systematic,
25 interdisciplinary, integrated study and analysis of the potential
26 impact of the Bikini Resettlement Program upon the quality of the
27 human environment at Bikini Atoll, and

28 B. Compiling a detailed environmental impact
29 statement setting forth the foregoing study and analysis, and

30 C. Carefully and thoroughly reviewing and
31 considering the contents of that environmental impact statement
32 in developing final plans for proceeding with the Bikini
Resettlement Program.

1 II. Enjoin the defendants to immediately commence, and
2 carry out with all due deliberate speed with maximum reasonable
3 consultation with plaintiffs, the comprehensive, integrated
4 environmental impact study and analysis referred to in
5 paragraph I., supra, and to include in the study,

6 A. A comprehensive radiological survey and
7 analysis of Bikini Atoll, including investigation and discovery
8 of all radioactive materials in the Bikini Atoll ecosystem;
9 investigation and analysis of the distribution, concentration
10 and re-distribution of radionuclides in the Bikini ecosystem;
11 investigation and analysis of the potential effect upon the
12 People of Bikini of all radioactive materials in the Bikini
13 Atoll ecosystem; and investigation and analysis of remedial
14 measures to remove radioactive materials from the Bikini Atoll
15 ecosystem, and

16 B. A comprehensive and careful investigation
17 and analysis of means to accomplish resettlement of the People
18 of Bikini to Bikini Atoll at the earliest possible time in a
19 condition of social, economic and physical well-being.

20 III. Enjoin defendants from reprogramming or otherwise
21 diverting any and all funds previously requested, appropriated
22 or earmarked for the Bikini Resettlement Program.

23 IV. Enjoin defendants to submit to the Court within
24 thirty (30) days, a detailed plan for funding, carrying out,
25 and completing a special radiological study of the Bikini
26 People now residing, or formerly residing within the past
27 ten (10) years, on Bikini Island at Bikini Atoll, said study to

28 A. be made by a panel of at least three scientists,
29 not presently employed by or affiliated with defendants, approved
30 by the Court and plaintiffs;

31 B. include at least the following elements for each
32 person now residing on Bikini Island:

1 1. the taking and analysis of individual
2 medical history, including any previous radiation exposure;
3 2. a complete physical examination;
4 3. a complete blood count, including a blood
5 chemistry profile;
6 4. urinalysis, including assays for all
7 radionuclides;
8 5. in vivo measurements for all radionuclides,
9 including plutonium-239 in the chest;
10 6. roentgenograms of the lateral skull, chest,
11 pelvis, knee and elbow, feet and teeth;
12 7. pulmonary cytology;
13 8. chromosome analysis; and
14 9. any other procedures deemed to be advisable
15 or necessary by the independent scientists engaged to conduct
16 the study;

17 C. include evaluation of all available data on the
18 radiocontamination of Bikini Island, including the kinds and
19 concentrations of radionuclides in the soil, flora, groundwater,
20 and air;

21 D. include evaluation of all available data on the
22 external radiation dose;

23 E. be supported by defendants in at least the
24 following ways:

25 1. by provision of the necessary funds;
26 2. by provision of the vessel LCU-Liktanur for
27 transportation;
28 3. by provision of the necessary equipment;
29 4. by provision of all available information
30 and data to the panel of independent scientists on the
31 radiocontamination of Bikini Island, including the kinds and
32 concentrations of radionuclides in the soil, flora, groundwater,

1 and air, and all available information and data on the external
2 radiation dose;

3 F. by provision of any and all technician and
4 laboratory assistance which, in the view of the independent
5 scientists, is necessary; and

6 G. by provision of such other assistance, including
7 but not limited to assistance in transportation, communications,
8 and funding, as is necessary for the prompt and careful completion
9 of the study.

10 DATED this 3rd day of October, 1975.

13 Respectfully submitted,

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Attorneys for Plaintiffs

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32
By: Edward C. King

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2 FOR THE DISTRICT OF HAWAII
3

4 THE PEOPLE OF BIKINI. by the BIKINI) CIVIL ACTION NO. 75-348
5 COUNCIL: Magistrate;)
6 Scribe;)
7 and)
8 Plaintiffs,)
9 v.)
10 ROBERT C. SEAMANS, JR., Administrator,)
11 United States Energy Research and)
12 Development Administration; WILLIAM J.)
13 STANLEY, Director, Pacific Area Support)
14 Office, United States Energy Research)
15 and Development Administration; JAMES R.)
16 SCHLESINGER, Secretary of Defense; KENT)
17 FRIZZELL, Acting Secretary of Interior;)
18 FRED M. ZEDER, Director, Office of)
19 Territories, United States Department)
20 of Interior, EDWARD C. JOHNSTON, High)
21 Commissioner, Trust Territory of the)
22 Pacific Islands; OSCAR DEBRUM, District)
23 Administrator, Marshall Islands)
24 District, Trust Territory of the)
25 Pacific Islands; and GERALD R. FORD,)
26 President of the United States.)
27 Defendants.)

PRIVACY ACT MATERIAL REMOVED

20 NOTICE OF MOTION

22 TO: ALL DEFENDANTS

23 PLEASE TAKE NOTICE that the Plaintiffs' Amended Motion for
24 Preliminary Injunction will be presented before the Honorable
25 Samuel P. King, Judge of the above-entitled Court, in his
26 Courtroom in the Federal Building, Honolulu, Hawaii, on
27 _____ the _____ day of _____, 197____, at
28 the hour of _____ o'clock ____ .M., of said day, or as soon
29 thereafter as counsel can be heard.

30 DATED: Honolulu, Hawaii, _____.

31 
32 _____
Attorney for Plaintiffs

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

THE PEOPLE OF BIKINI, by THE BIKINI
COUNCIL; Scribe; and
Plaintiffs,
vs.

CIVIL NO. 75-348

ROBERT C. SEAMANS, JR., Administrator,
United States Energy Research and
Development Administration; WILLIAM J.
STANLEY, Director, Pacific Area Support
Office, United States Energy Research
and Development Administration; JAMES R.
SCHLESINGER, Secretary of Defense; KENT
FRIZZELL, Acting Secretary of Interior;
FRED M. ZEDER, Director, Office of
Territories, United States Department
of Interior; EDWARD E. JOHNSTON, High
Commissioner, Trust Territory of the
Pacific Islands; OSCAR DEBRUM, District
Administrator, Marshall Islands
District, Trust Territory of the
Pacific Islands; and GERALD R. FORD,
President of the United States,
Defendants.

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3 50 p
(s) Leimomi Y. C. Calderon

MOTION FOR PRELIMINARY INJUNCTION
NOTICE OF MOTION
MEMORANDUM IN SUPPORT OF MOTION
FOR PRELIMINARY INJUNCTION
AFFIDAVITS AND EXHIBITS

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FOLDER BIKINI - MOTION FOR PRELIMINARY INJUNCTION AFFIDAVIT OF T.P. COCHRAN (EXHIBIT A)

ATTORNEY: A True Copy
WALTER A. H. CHIN
Clerk, United States District
Court, District of Hawaii
By Amelora J. ...
Deputy

(Cover Sheet Continued)

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

THE PEOPLE OF BIKINI ATOLL,
Plaintiffs,
vs.
ROBERT C. SEAMANS, JR., et al.,
Defendants.

4 34
CIVIL NO. 75-348

CIV

MOTION FOR PRELIMINARY INJUNCTION

By this Motion Plaintiffs request that this Court grant preliminary injunctive relief pursuant to Rule 65, F.R.C.P.

Factual support for the preliminary injunction is found in the Verified Complaint and the affidavits which are attached to this motion and incorporated herein by reference. An index to the affidavits, listing them by author and subject matter, follows the signature page of this motion.

On the basis of the facts set forth in the Verified Complaint and in the affidavits attached, we respectfully submit that permanent and irreparable injury is taking place now and will continue to take place unless this Court grants this motion for preliminary injunction and orders preliminary injunctive relief as set forth below.

The Plaintiffs hereby seek the following preliminary injunctive relief:

LIMITATION OF ACCESS TO BIKINI ATOLL

The principal means of transportation within the

Atoll
CIVIL
Honorable L. T. Young

Marshall Islands consists of field trip ships operated by the Division of Transportation of the Trust Territory Government or privately operated ships, subject to the regulatory authority of the Trust Territory Government. During the past several years approximately 75 people, most of them members of the Bikini community, have taken up permanent residence in some of the 40 concrete houses constructed on Bikini Island, Bikini Atoll. The field trip ships and other ships subject to Trust Territory Government regulations continue to provide a means of access to Bikini Atoll.

Statements of representatives of the United States Atomic Energy Commission (AEC) and United States Energy Research and Development Administration (ERDA) have given the People of Bikini a basis to believe return to Bikini Atoll is a safe thing for them to do. In other words, Defendants have collectively acted to create a presently existing situation in which some members of the Bikini People may go to Bikini for the purpose of permanent residence there.

Completion of a valid radiological survey of Bikini Atoll may show that permanent residence in the Atoll is not acceptable on any practical basis, or completion of such a survey may show that residence on Bikini Atoll must be made subject to conditions not presently known. Thus, any person who now goes to Bikini may face a need for further relocation upon completion of a radiological survey. Irreparable injury may ensue from either the need for further relocation or from radiation exposure incurred while at Bikini Island, or both.

To prevent such irreparable injury, this Court

should strictly limit access to Bikini Atoll, with an injunction providing that the Defendants must prevent anyone from using the means of transportation presently available to take up permanent residence at Bikini except under such conditions as the Court may order.

The Court should not permit any person to take up permanent residence at Bikini Atoll unless that person is fully apprised of the potential risks which attend such a relocation, with that advice to be given in Marshallese if the person does not read or understand English, and with further condition that the Defendants, particularly ERDA, should agree to bear the expense of all future needs with regard to health care, shelter and nutrition, and any necessary further relocation, of any person who, notwithstanding advice as to risks, may, nevertheless, decide to return to Bikini Atoll.

II. CONTINGENCY PLANNING FOR RELOCATION OF PRESENT BIKINI ISLAND RESIDENTS.

Completion of a valid radiological survey with regard to Bikini Atoll may well show, on the basis of the preliminary results of the 1975 survey, that permanent residence on Bikini Island is unacceptably risky, no matter what precautions are taken. Alternatively, such a survey may reveal that risks may be minimized by the taking of additional precautions not presently recommended. That information may be available within a matter of days after completion of an aerial radiation survey together with consideration of probable patterns of life style of persons expected to live on Bikini Atoll. In the event the information

obtained from such a survey does indicate a need for relocation of the persons presently living on Bikini Atoll, that relocation should not await further months of study and planning. Contingency planning for the possible need for further relocation of the present Bikini Island residents should be undertaken immediately in order to prevent further irreparable injury to them by way of additional radiation exposure. This Court should order the Defendants to submit such a contingency plan within sixty days after entry of the preliminary injunction.

III. REQUIREMENT FOR INFORMATION IN MARSHALLESE AS WELL AS ENGLISH.

While most of the People of Bikini do not read or understand the English language, virtually all are well educated persons who read Marshallese. Much of the willingness on the part of the People of Bikini to accept the risks of movement to Bikini has been based on the failure on the part of Defendants to furnish them with scientific information known to Defendants. Ultimately, it is the Bikini People, not the Defendants who must make the decisions as to where they will live. They can only participate in those decisions on a meaningful basis if they are furnished necessary information in their own language. So long as information known to Defendants is withheld from the People of Bikini by means of failure to translate it into Marshallese, the People of Bikini will continue to be irreparably injured by their inability to participate in making decisions which affect them. The Court should order Defendants to furnish all further material information, such as reports, inter-agency communications, the Radiological Survey Report, Environmental Impact Statement

and Master Plan, together with related material in Marshallese, as well as English.

IV. IMMEDIATE EXAMINATION OF PERSONS WHO HAVE BEEN PLACED AT RISK

August 12, 1968 was the date of inception of the Bikini Resettlement. On that date President Lyndon B. Johnson announced the availability of Bikini Atoll for return to the Bikini People. Verified Complaint # 60. In a press release on the same date AEC deemed its own role in the decision to initiate the Resettlement "greatly satisfying".

The decision to initiate the Resettlement, simultaneously announced by AEC and the President, was based on a 1967 radiation survey of Bikini Atoll, performed by the AEC and an evaluation of the results of that survey by an Ad Hoc Committee, most of whose members had active AEC ties at the time they served on the Committee.

As a result of the 1967 survey and the 1968 report of the Ad Hoc Committee, the Bikini Resettlement was begun, leading eventually to clean-up of debris and scrub vegetation on the islands of Bikini and Eneu, replanting of Bikini and Eneu with coconuts, pandanas, and breadfruit and construction of Phase I Housing (consisting of 40 houses) on Bikini Island.

Marshallese laborers, including some members of the People of Bikini, were used for the work on Bikini Island. After construction of the Phase I Housing, several Bikini families voluntarily moved back to Bikini Island, including the family of _____ one of the Plaintiffs in this action.

At present approximately 75 people live on Bikini Island and perhaps as many as 100 to 150 people have been placed at risk as a result of their presence on Bikini Island, exposed to what are now known to be very high levels of

external gamma radiation, for substantial periods of time.

As shown by his affidavit, _____ and his family are among those who have been exposed to high radiation on Bikini Island over substantial time. Meanwhile, for reasons made clear in his affidavit, he and others similarly situated, have experienced a total loss of confidence in health care monitoring offered first by AEC and now by ERDA, under the direction of Dr. Robert Conard. Dr. Conard is a member of the staff of the Brookhaven National Laboratory at Upton, L.I., New York. Brookhaven was formerly an AEC institution and is now associated with AEC's successor agency, ERDA.

Clearly _____ and others similarly situated are entitled to immediate examination of the type prayed for in the Verified Complaint. It is equally clear that whatever Dr. Conard's credentials may be, and others similarly situated have no confidence in his concern for their wellbeing. In order that the Bikini People may have confidence in the results of whatever evaluation is made of those who have been placed at risk, the evaluation must be made by scientific personnel independent of either AEC or ERDA as to whose selection the People of Bikini have had some meaningful role.

This Court should order that scientific evaluation of the type prayed for in the Verified Complaint be made immediately available to _____ and his family and all of the persons who now reside on Bikini Island and to all other persons who have been on Bikini Island for substantial

PRIVACY ACT MATERIAL REMOVED

periods of time, with a requirement that ERDA furnish technical assistance and facilities for the examinations which must be made, including its vessel Liktanur. ERDA should be ordered to contract with the scientific personnel approved by the Court to carry out the examinations and, where indicated, treatment.

Arrangements for these examinations should be implemented with maximum possible speed in order that such treatment as may be indicated of the exposed persons can be commenced as soon as possible. The Court should order ERDA to contract with scientific personnel to make the examinations in not more than five days after the date of the entry of the preliminary injunction order and should order that the vessel Liktanur depart from its base at Kwajelein Atoll for Bikini Island not more than 10 days after the date of entry of the preliminary injunction. The Court should further order that the Department of Defense, which maintains extensive logistical support facilities at the Kwajelein Missile Range provide all necessary support personnel and equipment for carrying out examinations of the persons at Bikini Island as promptly as possible.

V. PROHIBITION OF COMMUNICATION

Department of Interior, as the agency specifically charged with responsibility for administration of the Trust Territory, cannot realistically be expected to cease communications with any of the citizens of Micronesia. ERDA, however, has no functional need to communicate on an official basis with any of the citizens of the Trust Territory. Official communication by representatives of first AEC and

ERDA with the People of Bikini has been the cause of much of the damage already done to the Bikini community.

For example, it was AEC's recommendation that the People might go back to Bikini Island without appreciable risk of exposure to radiation which lead to willingness on the part of Bikineans, such as to actually take their families and return to Bikini.

By August and September, 1975, communication from different agencies of the United States Government to the People of Bikini had become totally contradictory.

At the same time a representative of ERDA was at Kili telling the People of Bikini that Bikini Island was "safe" and that he would himself have no reservation about living there, the Department of Interior was announcing officially in Washington that the further Resettlement of Bikini Island must be stopped because of the apparent risks of radiation based on the August 1975 preliminary reports by ERDA.

For the People of Bikini, who have heard these conflicting statements only in spoken form, in English translated into Marshallese, without opportunity to review the underlying scientific or technical documents in their own language, the result has been confusion and heartbreak.

By their own terms, the August 1975 ERDA documents are so preliminary in nature that expression of conclusions as to safety of Bikini Island is not warranted. The documents themselves state that many tests have yet to be completed, including such vitally important tests as that of radioactivity of ground water at Eneu Island.

The People of Bikini have a strong desire to

PRIVACY ACT MATERIAL REMOVED

return to their homeland if that is possible. Particularly among the older people, for whom the past thirty years have been an exile, the desire to go home is overpowering.

Until completion of a valid radiological survey and analysis of it and completion of examinations of those who have been at risk, there will not be any point at which there is any real need for the People of Bikini to hear from ERDA. Promises of a Resettlement by AEC and ERDA have not been fulfilled and, clearly, are not going to be fulfilled within the next several months.

Further communication by ERDA to the People of Bikini is likely, at this point, only to further confuse the process they must go through of evaluating the risks they face.

In order to facilitate the orderly transmission of substantial bodies of technical information to the People of Bikini in Marshallese, this Court should enjoin all Defendants except the Department of Interior and the Trust Territory Government from official communication with the People of Bikini except for such communication as has either specific Court approval or the consent of Plaintiffs and their counsel.

VI. COMPLETION OF RADIOLOGICAL SURVEY

The Enewetak Radiological Survey, completed in 1973, at a cost of more than \$3,000,000 sets a minimum standard for the quality of comprehensive radiological survey which must be performed with regard to Bikini Atoll in order to make it possible for the People of Bikini to determine whether they wish to expose themselves to the risk of radiation at their homeland.

As shown by the Verified Complaint, all of the agency Defendants are agreed that the radiological survey performed thus far at Bikini is inadequate to the need for information, on the part of not only the Bikini People, but also the Defendant agencies.

It is clear that compliance with the National Environmental Policy Act (NEPA) can only be attained by first completing a valid aerial radiological survey, then analyzing the data from the survey as well as the data from evaluation of persons who have been exposed to radiation on Bikini Island.

Without completion of an aerial radiological survey, there cannot ever be NEPA compliance. Furthermore, so long as a radiological survey is not completed, the People of Bikini are precluded from making any decisions as to where they will live or what will be their future. Irreparable injury is thus ongoing so long as the information to be gained from a survey is unavailable.

Obviously, the survey is not going to be completed unless it is, at some point, begun. ERDA itself expressed a willingness to start a radiological survey in April 1975. Verified Complaint ¶ 74. Request was made that the Department of Defense provide helicopters necessary to such a survey. The Department of Defense did not bother to reply to the March 1975 request from Department of the Interior for helicopter support until May 29, 1975, almost three months later. As ¶¶ 76-79 of the Verified Complaint show, letters from one cabinet officer to another went all the way around the horn from ERDA to Interior to Defense and back again but no helicopters were provided and no aerial radiological

survey was conducted. All parties concede the need for a survey. Until the survey has started, irreparable harm will continue and there will be a continuing failure to begin even minimal compliance with NEPA requirements.

This Court should order the several government agency Defendants to quit passing the buck and get on with the job of completing an aerial radiological survey of Bikini and such other Northern Marshall's Atolls as are necessary to draw valid conclusions as to the risks of radiation posed by the Bikini Resettlement and so that the irreparable injury to which the People of Bikini have been subjected can come to an end at the earliest possible date and so that all of the agency Defendants can come into compliance with requirements of NEPA at the earliest possible date.

It is requested that this Court order the several agencies to commence actual onsite aerial radiological surveillance no later than 30 days after the date the preliminary injunction is issued and order that the aerial radiological survey be completed no later than 120 days after the date of the Court's order.

VII. INDEPENDENT ANALYSIS

As stated above, the People of Bikini have utterly lost faith in the conclusions which have been expressed to them by first AEC then ERDA. They cannot make decisions with which they, as a community, are satisfied, unless they have confidence in the scientific advice upon which those decisions must be based. Furthermore, compliance with NEPA requires an ability for analysis of technical data independent

from persons responsible for operational levels of agency projects.

Therefore, this Court should order that ERDA contract with a panel of competent scientific personnel approved by the Court for the purpose of analysis and evaluation of the data produced by aerial radiological surveillance.

As the aerial radiological survey will probably require a minimum of 60 days for completion, after the date the helicopters are on site, the Court has several months within which to review with the parties the selection of a panel for analysis of the data produced by the surveillance. ERDA should be required to contract with independent experts approved by the Court no later than 60 days after the date of entry of the preliminary injunction for analysis of the data produced by the surveillance.

VIII. COMPLETION OF RADIOLOGICAL ANALYSIS OF FLORA AND FAUNA

The two reports distributed at the August 12, 1975 Livermore, California meeting indicate that the Lawrence Livermore Laboratory is presently engaged in analysis of water, soil and other types of samples from Bikini and Eneu Islands. The panel of independent scientific personnel whom we have asked the Court to appoint under Heading VII should make recommendations to the Court as to such additional analysis as may be indicated with regard to similar samples for the remaining 21 islands of Bikini Atoll and such other Northern Marshalls Atolls as may be reasonably necessary in order to draw valid conclusions as to the degree of risk presented to the People of Bikini by the Bikini Resettlement.

III. CONTROL OF AGENCY SPENDING AND CONTRACTS

The developments of the past several months, including the meeting at Livermore, California, August 12, 1975, and the interagency meeting at Washington, D.C. September 19, 1975, indicate that while the Defendant agencies are continuing to fail to comply with the requirements of NEPA and are continuing to perpetrate irreparable harm upon the People of Bikini by their failure to move forward with the Bikini Resettlement, they are not failing to spend substantial sums of money, both within their agencies and by contract, all supposedly directed toward advancing the Bikini Resettlement.

The collapse of the Bikini Resettlement represents a classic case of bureaucratic dysfunction. Money is still being spent; meetings are still being held; bureaucrats continue to fly all over the northern hemisphere on government expense accounts, but nothing is being done about the People of Bikini.

Spending hundreds of thousands, if not millions of dollars on a major federal action without any attempt at compliance with the requirements of NEPA is not only wasteful, it is also illegal.

The only avenue open to Plaintiffs to insure that the money which has been appropriated for the Bikini Resettlement is spent toward that end is to request that this Court use its power under NEPA to halt further intraagency, interagency and contract spending on the Bikini Resettlement until such time as the Defendant agencies show that the money they wish to spend is to be spent in compliance with NEPA and without continuing irreparable harm to the People of Bikini.

Plaintiffs wish to make it very clear, however, that they do not want Bikini Resettlement stopped. They only want it halted long enough to bring it under control and organize it so there is compliance with NEPA and some reasonable chance that the project will result in benefit to the People of Bikini.

It is requested that this Court enter an order requiring that the Defendant agencies be required to seek and obtain step-by-step prior Court approval of further spending on the Bikini Resettlement and that they be required to report to the Court on a regular basis, not less frequently than every 45 days, as to the progress of those steps of the Resettlement which have been approved by the Court for further action.

It should be clear that Plaintiffs are at this time willing to consent to further agency spending on those specific steps which they have asked the Court to order Defendants to take in the next few days and months, without need for the Defendants to seek further Court approval before taking those steps. Thus, the specific affirmative steps which are sought in this Motion for Preliminary Injunction can be undertaken by the Defendant agencies and money can be spent on them without any need on the part of Defendant agencies to obtain prior Court approval for such spending.

However, all other spending supposedly related to the Bikini Resettlement, apart from the steps specifically requested to be affirmatively ordered above, should be halted immediately, including intraagency, interagency and contract payments until such time as the Court approves

specific contracts and steps to be taken. That approval should be withheld until the Defendants are able to show, on a step-by-step basis, that further steps will bring them into compliance with NEPA, leading with all due deliberate speed to completion of Draft Environmental Impact Statement (DEIS), which DEIS should be furnished to Plaintiffs and the persons they represent in both English and Marshallese at the earliest possible date, and, in any event, no later than one year after the date of entry of the preliminary injunction.

X. FURTHER MONITORING OF THE RESETTLEMENT BY THE COURT

In order to insure that the Bikini Resettlement does not again stall out into its present posture, Plaintiffs request that the Court affirmatively require that the Defendants submit all further activity to regular monitoring by the Court, with each Defendant being required to submit a report to the Court and Plaintiffs and their counsel in both English and Marshallese every 45 days detailing such action as has been taken by the agency during the 45 day period and requesting approval for such further steps as the agency wishes to take.

In the alternative, Plaintiffs request that the Court order the several agencies to agree on a Project Manager to be an individual also agreeable to Plaintiffs and their counsel to assume personal administrative control of the entire Bikini Resettlement, with a requirement that the Project Manager discharge the reporting function to the Court, Plaintiffs and their counsel, every 45 days.

It is respectfully submitted that only by the affirmative injunction steps requested herein can the Bikini Resettlement be brought into compliance with NEPA and only by

the taking of those steps can further irreparable injury to the People of Bikini be prevented.

Some of the damage which has been done can never be repaired. Some people have been exposed to radiation, needlessly, with probable adverse impact to their health which cannot be remedied. However, by this Court's use of its broad equity power and its power to enforce the provisions of NEPA, the Bikini Resettlement can be brought under control and coordinated so that the People of Bikini can have the benefit of rights protected under NEPA and so they can begin to participate in planning for their future.

DATED: Honolulu, Hawaii, 9 October, 1975.

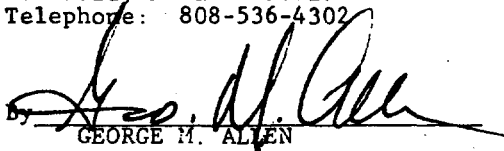
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PRIVACY ACT MATERIAL REMOVED

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

THE PEOPLE OF BIKINI, by THE BIKINI
COUNCIL: Magistrate:

Scribe;

and

Plaintiffs,

vs.

ROBERT C. SEAMANS, JR., Administrator,
United States Energy Research and
Development Administration; WILLIAM J.
STANLEY, Director, Pacific Area Support
Office, United States Energy Research
and Development Administration; JAMES R.
SCHLESINGER, Secretary of Defense; KENT
FRIZZELL, Acting Secretary of Interior;
FRED M. ZEDER, Director, Office of
Territories, United States Department
of Interior; EDWARD E. JOHNSTON, High
Commissioner, Trust Territory of the
Pacific Islands; OSCAR DEBRUM, District
Administrator, Marshall Islands
District, Trust Territory of the
Pacific Islands; and GERALD R. FORD,
President of the United States,

Defendants.

CIVIL NO. _____

CIV 75-0348

PRIVACY ACT MATERIAL REMOVED

CLERK OF THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

1975
34

PLAINTIFFS' MEMORANDUM IN SUPPORT OF
MOTION FOR PRELIMINARY INJUNCTION

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I. Factual Background

A. The Past Thirty Years - The verified complaint describes in some detail the painful events of the past thirty years and will not be restated at length here. The essential truths, however, must be kept in mind. After living as a community in near solitude on their isolated atoll from time immemorial, the people of Bikini came under the control of the United States as an apparently insignificant part of World War II, in 1944. Verified Complaint, ¶¶ 29, 42.

Early in 1946, American armed forces, who had dispatched the Japanese from the Marshall Islands in convincing and overwhelming fashion, made plain to the people of Bikini the United States' desire to use Bikini to conduct atomic tests, "for the good of mankind and to end all world wars." Verified Complaint, ¶ 43. III Richard, United States Naval Administration of the Trust Territory of the Pacific Islands 510 (1957).

With some of the trappings, but little or none of the content, of voluntary, knowing agreement,¹ the people of Bikini were removed from their homeland within a month. Verified Complaint, ¶¶ 43, 50. Since March of 1946, when they arrived on Rongerik Atoll, the life of the people of Bikini has been a constant struggle to avoid starvation, to survive as a people, and most of all, to return to their ancestral home. Id., ¶¶ 32-41, 50, 52-55. The Bikinians were shuttled from Rongerik, to Kwajalein and, in the latter part of 1948, to Kili Atoll, where most of them now remain. Id., ¶¶ 32-41.

¹In addition to the "big stick" represented by any United States official, speaking however softly, Commodore B. Wyatt bemused the Bikinians with biblical comparisons between them and the children of Israel, "whom the Lord saved from their enemy and led into the Promised Land." III Richard, supra 509-510; Kiste, "The Bikinians: A Study In Forced Migration" 27-28 (1974).

Throughout all of this, from before the first atomic tests on July 1, 1946 up to the present day, they have constantly reiterated their desire to return to Bikini.² Id., ¶ 52-57. See generally, Richard, *supra*, and Kiste, The Bikinians: A Study In Forced Migration (1974).

During this same period, the United States engaged in nuclear testing programs which rendered Bikini Atoll uninhabitable.³ On August 12, 1968, however, more than twenty two (22) years after the people had been removed from Bikini, President Lyndon B. Johnson finally announced the conclusion that "the major islands of the atoll are now safe for human habitation." Verified Complaint ¶ 60, Exhibit A. At the same time he noted that the tasks involved in the resettlement program were "beyond the means of the former Bikini people and of the Trust Territory Government" and he directed the Secretary of Defense, Mr. Clark M. Clifford, "to work with the Secretary of the Interior and the High Commissioner of the Trust Territory in planning a comprehensive resettlement program and to assist them in carrying it out with all possible dispatch." Id.

In response to President Johnson's directive, the Departments of Defense and Interior and the Atomic Energy Commission (now the

²The strong feelings of the people of Bikini receive poignant expression in this Bikinian song:

Nothing can be right for me, I cannot be happy.
As I sleep on my sleeping mat and pillow, I dream
about my atoll and its beloved places.
My dreams remind me too painfully
About all those places I used to know.

When in dreams I seem to hear the sounds I once knew
My memories make me "Homesick."
It is then that nostalgia overwhelms me and makes me weep
Because it is more than I can stand.
(Kiste, *supra* 111-112, quoting a translation from Marshallese prepared by P. Drucker for the naval historian Richard.)

³The first nuclear explosion, "Able", part of Operation Crossroads, occurred on June 30, 1946 (per U.S. side of the International Date Line). Twenty-two nuclear detonations followed on Bikini, the last being the July 22, 1953 "Juniper" shot, the finale of Phase II of Operation Hardtack. Verified Complaint, ¶ 44.

Energy Research and Development Administration, "ERDA") agreed to cooperate in a program aimed at resettling the some five hundred Bikinians on Bikini Atoll. Verified Complaint, ¶ 62.

Of course the people of Bikini received the announcement of these events and the February 1974 announcement by the Department of the Interior that some persons would be allowed to return by April of 1974, with great joy. Verified Complaint, ¶¶ 63, 82-85. The announcements intensified their desire to return to Bikini by making the return seem imminent.

For several years, the defendants have been carrying out a Bikini resettlement program. Verified Complaint, ¶¶ 62-79. Some cleanup of the atoll has occurred, crops have been planted, and forty concrete houses have been constructed on Bikini Island. Id. Yet, more than seven (7) years have now elapsed since President Johnson's announcement and none of the people have been relocated, although a number of persons and families have returned independently or as workers, and now reside on Bikini Island. Verified Complaint, ¶ 90. Much still remains to be done. Plans for construction of a dispensary, church, store and thirty eight (38) more concrete houses, and for actual relocation of the Bikinians to their atoll, have not yet been finalized. Verified Complaint, ¶¶ 67 & 70, Exhibit D.

B. Problems With The Bikini Resettlement Program - Despite the extraordinary cultural, environmental and medical implications of a plan aimed at constructing homes and other buildings for a displaced Marshallese community, and then actually resettling that community on an atoll long declared uninhabitable because of radiation levels caused by extensive nuclear testing programs, there has been no preparation of an environmental impact statement and no colorable attempt to comply with any of the requirements of the National Environmental Policy Act ("NEPA"). 42 U.S.C. §§ 4321 et seq.

Resettlement of the people of Bikini involves scientific, medical, economic and cultural implications of the very greatest magnitude and complexity. Full interagency cooperation and coordination is essential to assure, for example, that houses are constructed at locations where radiation levels are not prohibitively high, and that the houses themselves are of a design compatible with normal Marshallese dwelling use. Similar expertise and coordination is required to establish whether the fish, coconut crabs, pandanus, breadfruit, coconuts, groundwater and other plants and animals which may be found in the lagoon and on the islands of Bikini Atoll are safely edible and sufficient to sustain the people of Bikini. Finally, it is necessary for the agencies to bring their resources to bear in a coordinated and enlightened fashion to help the people of Bikini promote their economic advancement and self-sufficiency in a manner compatible with their traditions and cultures. Such enlightened interagency cooperation, coordination, and communication has been lacking, resulting in unnecessary delay, wasted effort, and perhaps even grave physical and economic risk to the people of Bikini.

A recent series of incidents, described in the verified complaint, paragraphs 73 to 77, is illustrative. Exhibit D to the complaint is a letter, dated March 7, 1975, from former United States Secretary of the Interior Rogers C.B. Morton to Secretary of Defense Schlesinger. The letter explained that, "Recent radiological information indicates a need for a comprehensive follow-on survey..." and pointed out that ERDA was prepared to conduct an additional radiological survey of Bikini Atoll, beginning in April, 1975, but needed logistics support. The Department of Defense was requested to provide that support.

Instead of granting the "early response" needed to permit the radiological survey to take place in April, Defense delayed until May 29, then said it was "unable to provide the requested support at this time." Verified Complaint, ¶ 75, Exhibit E.

As a result, although a radiological survey did take place in the latter part of June, 1975, Interior admits that it represented an "unsuccessful effort to perform the best possible survey on Bikini." Id., ¶ 76, Exhibit F. Now, within the past several weeks the defendants have advised counsel for the people of Bikini that they do not contemplate filing an environmental impact statement with respect to the Bikini resettlement program because of lack of funds. Verified Complaint, ¶ 93.

C. Posture Of The People Of Bikini - This lawsuit is filed, not from a sense of anger, or lack of gratitude for that which has been done properly, but out of grave concern that, because of interagency difficulties and confusion, the return of the Bikinians to their homeland may have been, and may continue to be, unnecessarily delayed. Plaintiffs also fear that when the return is accomplished it may occur without proper provision for the protection of the health and economic well-being of the people of Bikini.

Over the years, the people of Bikini have been told many confusing and apparently conflicting things. For many years Bikini was said to be uninhabitable and there was substantial doubt that the people could ever return. Verified Complaint, ¶ 83. President Johnson then declared, in August of 1968, that "the major islands of the atoll are now safe for human habitation." Id., ¶ 84. Later that same month some of the Bikini leaders were taken on a voyage to Bikini and from that time on the return of the

Bikinians has understandably seemed imminent to them. Verified Complaint, ¶ 63, Exhibit B. Indeed, in the latter part of 1973, the Trust Territory Deputy High Commissioner said the Bikinians would be allowed to return to Bikini "permanently by Christmas this [1973] year." Verified Complaint, ¶ 84. Exhibit I. Again in February of 1974, the Department of the Interior announced that the first group of Bikinians could be resettled in mid-April 1974. Verified Complaint, ¶ 85.

No such resettlement was carried out in 1974 or at any time up to the present. To the contrary, the preliminary radiological reports released in August, 1975, indicate that residence in the only houses thus far constructed in the Bikini resettlement will be unsafe unless the people adhere to living patterns significantly different from normal Bikinian customs. Id., ¶¶ 80, 86.

Recently, an ERDA representative told the Bikinians that neither ERDA nor its predecessor, the Atomic Energy Commission, had ever recommended the construction of houses on Bikini Island but had recommended that Eneu Island be resettled first. Id., ¶ 87. Such a statement was stunning to the people of Bikini, who throughout the Bikini resettlement program had believed that the Federal agencies involved understood and agreed upon what needed to be done to make their atoll safe and were taking all possible steps for the protection of the people.

Another critical and unnerving inconsistency involves the groundwater on Bikini Atoll. In June of 1971, the Atomic Energy Commission advised defendant Johnston that there was not sufficient radiation in the groundwater on Bikini Island to make it unsafe to drink. Verified Complaint, ¶ 71, Exhibit C. The August, 1975 preliminary reports indicate that Bikini Island groundwater should only be used for agricultural purposes. Id., ¶ 80.

At this point, the situation for the people of Bikini is most difficult. Land has a very special place in Marshallese society. This is not only because it is scarce and a critical source of sustenance, but also because land rights are intrinsically interwoven with, and determinative of, Marshallese societal relationships. A Bikinian is essentially identified within his culture by his land rights. Verified Complaint, ¶¶ 52-54. Thus, the removal of the people of Bikini from their atoll has had an enormously disruptive effect upon the Bikinian society and culture. Id., ¶ 55. In addition, the people of Bikini also feel that same strength of desire to return to their homeland that any other people with extraordinary closeness to the land would feel. In short, the intensity of the desire of the people of Bikini to return to their atoll is almost beyond the understanding of most of Western man.

At the same time, the people throughout the Marshall Islands have long been acquainted with the invisible, yet inescapable and agonizing threat that excessive radiation exposure poses. Verified Complaint, ¶¶ 80-82. The people of Bikini want to protect their health. They do not want to jeopardize their well-being.

Finally, while they want to return to Bikini Atoll as soon as possible, they also want to be able to sustain themselves there. The memories of near starvation at Rongerik and Kili are too strong to permit the people of Bikini to overlook their need for self-sufficiency on Bikini.

On the one hand then, the people have an enormous desire to return to Bikini. Houses are standing on Bikini Island today and the people fervently desire to return at once if they can, without exposing themselves to physical peril. But there

is great concern about exposure to physical harm to themselves, or future generations, from exposure to excessive radiation. Nor do any of them look forward to a life of near-starvation or deprivation.

Even with the most assiduous and trustworthy assistance and information, the decision concerning a return to Bikini could be a most difficult one, involving a delicate balancing of crucial values. Unfortunately, because of the previous conflicting statements and actions of the defendants in connection with the Bikini resettlement program, it is very hard for the people of Bikini to place confidence in what they hear from the defendants. It is therefore impossible for them now to make an intelligent judgment as to whether they should return to Bikini.

The people of Bikini now seek assistance from the United States, whose scientific, technical and economic capabilities were employed to render their tiny atoll uninhabitable for some thirty years. They ask that the United States, which has assumed full governmental powers and responsibilities toward them, use its capabilities to undo, or limit the effect of, the destruction it has done, by acting promptly to do all that is reasonably possible to make their atoll once again a healthful and productive place to live.

Lastly, while these steps are being taken and after they are completed, the people want at all times to be apprised, in understandable and believable fashion, of risks to them and their future generations from living on Bikini.

III. The National Environmental Policy Act
Applies And Has Been Violated

A. NEPA Applies In The Trust Territory - NEPA governs the actions of Federal agencies in the Trust Territory. In People of Enewetak v. Laird, 353 F.Supp. 811 (D.C. Hawaii 1973), this District Court carefully and extensively considered whether actions of the Department of Defense and of the Air Force, taken in the Trust Territory, were subject to NEPA. Federal District Judge Samuel P. King concluded that NEPA did apply and therefore enjoined further conduct of a high explosives testing program on Enewetak Atoll in the Marshall Islands because the Federal defendants had failed to prepare an environmental impact statement as required by NEPA.

In People of Saipan v. Department of Interior, 356 F.Supp. 6-8, aff'd as modified, 502 F.2d 90, cert. denied, 43 U.S.L.W. 3525 (S.Ct. March 1975) Judge King once again carefully considered, then affirmed, his previous holding that NEPA is applicable to the actions of Federal officials in the Trust Territory. Upon appeal, the Court of Appeals for the Ninth Circuit specifically recognized, and affirmed, that conclusion. 502 F.2d 90, 94-95.

See also Presidential Exec. Order No. 11752, 3 C.F.R. _____ (Supp. _____), in which President Nixon on December 17, 1973 set out the responsibilities of Federal agencies under NEPA and other environmental laws in constructing facilities within the United States. The term "United States" is defined to include the Trust Territory. Ibid., §2(5).

B. The Bikini Resettlement Program Is A Federal Action - Bikini Atoll was chosen as the site for nuclear testing by President Harry S. Truman. Verified Complaint, ¶ 48. The nuclear testing on Bikini was an integral part of the United States nuclear weapons development

program, upon which more than twenty billion (\$20,000,000,000) dollars was expended. Id., ¶ 49.

In ordering the resettlement program, President Johnson explicitly noted that such a program is "beyond the means of the Trust Territory and the people of Bikini." Verified Complaint, Exhibit A. He therefore ordered direct Federal participation in "planning. . . and. . . carrying. . . out. . . with all possible dispatch. . . .", a "comprehensive resettlement program." Id., ¶ 60.

Ordered by President Johnson in 1968, pursued since then under a Federal interagency agreement, Id., ¶ 62, and financed with funding obtained from the United States Congress,⁴ there can be no doubt that the Bikini resettlement program is a Federal action within the meaning of NEPA, -2 U.S.C. § 4332(2)(C).

C. The Bikini Resettlement Program Is A Major Action

Undertaken For The Purpose Of Significantly Affecting The

Quality Of The Human Environment - The very purpose of the Bikini

resettlement program is to affect significantly the quality of every facet of the human environment of the people of Bikini.⁵ The aim of the

⁴The Guidelines On Preparation Of Environmental Impact Statements promulgated by the Council on Environmental Quality (hereafter the "CEQ Guidelines"), 40 C.F.R. Part 1500, confirm that recommendations or favorable reports relating to legislation, including requests for appropriations, are actions within the meaning of NEPA. § 1500.5(a). See also, e.g., regulations of the Department of the Interior, 30 Fed. Reg. 193-11, Part 316.5.A.(1), and Department of Defense, 32 C.F.R. 321-3.0211.

⁵The Eniwetok resettlement program is being conducted by the same agencies which are defendants here, with identical general goals, i.e., resettlement to their home atoll of a Marshall Islands community displaced by nuclear testing programs. The agencies have admitted that program is subject to NEPA and have prepared a five-volume environmental impact study, more than 1,000 pages in length, supplemented by a three-volume radiological survey report. Verified Complaint, ¶ 81. See Defense Nuclear Agency Environmental Impact Statement, Cleanup, Rehabilitation, Resettlement of Eniwetok Atoll-Marshall Islands (April 1975).

program is to "clean up" an atoll rendered bleak and uninhabitable, with a devastated ecology, by a series of nuclear explosions, and to rehabilitate and resettle the atoll so it will once again be a safe, productive and pleasant home for the people of Bikini. As such, the program must consider and significantly affect every aspect of the marine, terrestrial and atmospheric environment of Bikini Atoll and of the human environment of the people of Bikini.

For instance, the soil has been contaminated by radionuclides. Verified Complaint, ¶ 45. It may also have been rendered unproductive or affected in other ways, by events of the past thirty years. The program requires that the contamination and damage be carefully studied and that proper remedies be determined. This will in turn necessitate considering whether the soil, or some parts of it, should be replaced, or whether ameliorative measures short of this may be adequate. See Verified Complaint, ¶ 68.

Similar attention and action must be devoted to every phase of the Bikini environment. To what extent has there been harm, by irradiation, siltation, sedimentation or otherwise, to the lagoon and ocean waters? How can this harm be remedied? Is the air and atmosphere of Bikini safe? See Verified Complaint, ¶ 46.

The groundwater also demands serious attention. Is it now safe from excessive irradiation? Verified Complaint, compare ¶¶ 71 & 80. Has the Ghyben-Herzberg water lens been affected, thereby reducing the supply of potable, non-brackish drinking water? How should problems of this sort be treated?

The marine and animal life, as well as the atoll's vegetation also require thorough consideration. Various radionuclides, including Plutonium-239, Cesium-137, Strontium-90, Cobalt-60 and Americium-241, have been introduced into the atoll's environment and virtually every form of life there, including fish, shell fish and coconut crabs. Verified Complaint, ¶ 45. Is the marine and animal life on Bikini Atoll safely edible, and in sufficient quantity to sustain the people?

Plaintiffs have also learned that some of the dangerous radioactive materials in the water and soil will be taken up by pandanus and breadfruit trees, and concentrated in the fruit. Verified Complaint, ¶ 45. This requires decisions as to which, if any, of the foods growing on trees in the atoll are safe to eat, and perhaps whether other kinds of vegetation could be introduced to supplement the food supply safely.

The resettlement program will also pervasively and directly affect the quality of the human environment for the people of Bikini. The program requires decisions as to which of the atoll's islands the people will live on. Placement and design of the houses must be compatible with land rights, normal cultural usage and aesthetic values of the people, as well as with other environmental considerations. A sewage system must also be installed, keeping in mind its environmental impact.

A school and dispensary are also planned. Verified Complaint ¶ 66. Aside from the obvious questions of location and type of construction and design of the buildings, environmental considerations rather unique to the people of Bikini are also raised. Can the school curriculum, design or operation be adjusted to assist a resettled people meet their special problems, or to assist people to live healthfully, productively and happily in an atoll environment? Should the dispensary have special clinicians, equipment or medicine to treat special medical problems which might afflict the people as a result of the nuclear testing programs on their atoll?

Knowledge and assistance in the social services will also be needed. There can be no doubt that the forced exile of the past thirty years has imposed enormous pressures on the people of Bikini, as a community and individually. No doubt the attitudes of some of the people on certain subjects have changed. Appetites for imported foods may have increased, attitudes toward certain forms

of labor may have evolved, and thinking as to the need for travel, and communication with the outside world, may well have changed.

The economic well-being of the people is also an important objective of the program. What steps, consistent with Bikinian customs and cultural values, can be taken to enable the people of Bikini to be self-sufficient and maintain themselves at an acceptable standard of living?

The interrelated character of these environmental decisions and actions must also receive special attention. For example, if soil is replaced with uncontaminated soil, what effect will this have upon the groundwater lens? Fundamental decisions, like the number and kinds of trees planted on the atoll, will have a critical effect upon the economic well-being of the people.

The fact that the program is aimed at affecting beneficially, rather than detrimentally, every aspect of the terrestrial, marine, atmospheric and human environment of Bikini in no way reduces the applicability of NEPA to the project. NEPA is couched in affirmative rather than negative terms. It is intended to "encourage productive and enjoyable harmony between and his environment" and "stimulate the health and welfare of man." 42 U.S.C. § 4321.

NEPA also declares a federal governmental policy to "use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature exist in productive harmony, and fulfill the social, economic and other requirements of present future generations of Americans." Id., § 4331(a). Throughout, NEPA emphasizes the requirement that federal agencies not merely avoid adverse effects but that they are affirmatively to "improve" Federal programs, Id., § 4331(b), "assure" healthful and productive surroundings, Id., § 4331(b)(2), "attain" beneficial uses, Id., § 4331(b)(3), "achieve" resource use which will permit a high standard of living, Id., § 4331(b)

and "enhance" the quality of the human environment. Id., § 4331 (b);

Section 102 of the Act, imposing the environmental impact statement requirement, also emphasizes the same affirmative theme. It dictates that:

"(1) all agencies of the Federal government shall:

(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by subchapter III of this chapter, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations.

In the same vein, Section 102(2)(C), 42 U.S.C. § 4332(2)(C), calls for an environmental impact statement for all actions "significantly" (not "adversely" or "detrimentally") affecting the quality of the human environment. Thus, where a proposed major Federal action is thought likely to have a significant effect upon the quality of the human environment, the involved agencies are required to consider and study the anticipated environmental impact and to consider possible methods of maximizing beneficial effects and minimizing detrimental effects.

The DEB Guidelines adhere to this approach, generally employing the term "significant" and avoiding terms such as "adverse", "harmful" or "detrimental." They contain no suggestion that the "significant" effect of concern in DEB is limited to beneficial effects. The Guidelines include the following explicit statement:

Significant effects also include actions which may have both beneficial and detrimental

effects, even if on balance the agency believes that the effects would be beneficial. . . .

40 C.F.R. § 1500.6(b).

The Department of Defense regulations, instructing as to what is to be considered a "major action significantly affecting the quality of the human environment", state:

1. . . . It is essential that all the environmental effects of an action be assessed, whether those effects are adverse or beneficial. In determining whether or not the effects of an action are significant, the proponent must evaluate the nature and degree of all effects on the environment. These may be significant even though the net environmental impact effect of the proposed action will be beneficial.

* * *

2. . . . The proponent of the action should consider all aspects of the action to determine if it will interfere unreasonably with the living conditions of man, wildlife or marine life, or with any ecosystems on an immediate, short-range or long-range basis. Examples of factors to be considered are:

(1) Effect on water

* * *

(ii) Will the action improve the quality of a body of water?

(2) Effect on atmosphere

* * *

(iii) Will the action tend to reduce the amount of pollution in the atmosphere?

(3) Effect on natural resources

* * *

(i) Will the action enhance the quality of vegetation, wildlife or marine life?

(4) Other values

(i) Will the action significantly affect, beneficially or adversely, the health or welfare of man, including aesthetic considerations?

(ii) Will the action significantly affect, beneficially or adversely, other forms of life or ecosystems of which they are a part?

The Department of Interior regulations, Part 516.5.B.(2),

state:

Significant effects include those that significantly degrade or enhance the quality of the environment, curtail or extend the range of beneficial uses of the environment, or serve short-term, to the disadvantage of long-term, environmental goals. Significant effects can also include actions which have both beneficial and detrimental effects even if on balance in the Bureau's office believes that the effect will be beneficial. Significant effects on the quality of the human environment include both those that directly and indirectly affect human beings.

The very purpose, no mere side effect, of the Bikini resettlement program is to have a significant and beneficial effect upon the quality of every aspect of the human environment of the people of Bikini. NEPA mandates that such a program be considered carefully and that consideration be given to methods of maximizing the beneficial environmental impact of the program.

It also remains true, however, that there will be some actions taken in the program which will have both beneficial and detrimental effects, even if the total effect of the action will be beneficial on balance. For example, construction of a house prevents growth of a tree or other vegetation at that particular place. Construction of a sewage system will presumably have some undesirable environmental effects although perhaps fewer adverse effects than any possible alternative. Moreover, some aspects of the program as presently being conducted could have calamitous effects. If houses are built in areas unsafe for habitation, and people are settled there, the entire program could be a human and environmental disaster.

It is therefore crucial that the most careful consideration be given to each proposed action to minimize or avoid adverse effects and to maximize beneficial effects.

Other ancillary considerations confirm that the Bikini resettlement program is a "major action significantly affecting the quality of the human environment within the meaning of NEPA."

The program involves three (3) major federal agencies, the Department of Defense, the Department of the Interior, and the Energy Research and Development Administration. The program also requires requests to the United States Congress for appropriation of funds, the expenditure of substantial amounts of money, and has already consumed more than seven (7) years since President Johnson requested that the resettlement activities be undertaken.⁵ Nevertheless, the salient and dispositive point is that the Bikini resettlement program involves the resettling of an entire people, more than five hundred (500) persons, and their physical well-being. This resettlement of approximately five hundred (500) persons on an atoll which has been subjected to some twenty-three (23) nuclear explosions and was until recent years declared uninhabitable, is unprecedented in all of history. It involves considerations and actions "significantly affecting the quality of the human environment."

The following cases are examples of actions that have been thought to significantly affect the quality of the human environment. People of Enewetak v. Laird, 353 F.Supp. 811 (D.C. Hawaii 1973) (a high explosives testing program conducted on an uninhabited atoll in the Pacific Ocean admitted by the Department of Defense to be a major federal action); (People

⁵The program also involves relinquishment by the United States of the exclusive possession of Bikini Atoll taken from the people of Bikini in 1946. Interior Department regulations state that projects "involving a Federal lease, permit, license, certificate, or other entitlement for use" are to be considered "Federal actions." 36 Fed.Reg. 19344, Part 516.5A(b)(1). See also People of Saipan v. Department of Interior, supra, and Davis v. Morton, 469 F.2d 593 (10th Cir. 1972), both holding leases of land to be major actions significantly affecting the quality of the human environment.

the "more sophisticated and sensitive instrumentation" which has become available since the radiological surveys in the 1960's (see Secretary Norton's letter, Exhibit D to the Complaint), many additional critical decisions remain to be made, or reconsidered. Obviously, it must be decided what further steps are necessary to protect the health of returning Bikinians. Consideration must also be given to promoting their economic health and self-sufficiency. A decision must be made as to the proper location for any other buildings, including the thirty-eight additional houses and the dispensary, school, church and store planned for the project. It seems that even the fundamental decisions, whether the people of Bikini will in fact be permitted to resettle on Bikini Atoll, and whether those presently there will be allowed to remain, can not now be made with assurance of their safety. Finally, decisions as to the need for further funding of the "comprehensive resettlement program" ordered by President Johnson, and of matters discussed in the preceding section of this memorandum will be necessary.

Numerous major Federal decisions have been made and actions taken in this program since NEPA became effective on January 1, 1970. Many additional major actions must take place in the future. The language of NEPA, the regulations adopted thereunder, and the cases construing the statute and regulations all make plain that the Bikini resettlement project has for almost five years been an "ongoing project" subject to NEPA.

1. Statute And Regulations - The National Environmental Policy Act makes it:

the continuing policy of the Federal Government
... To use all practicable means and measures
... in a manner calculated to foster
and promote the general welfare, to create
and maintain conditions under which man and
nature can exist in productive harmony, and

consequences. It is also important in further action that account be taken of environmental consequences not fully evaluated at the outset of the project or program.

- 516.3.B. § 1511.13, (emphasis added).

The Department of the Interior's regulations follow the CEQ Guidelines, ordering reconsideration of ongoing projects authorized prior to January 1, 1970, and reshaping of such projects to minimize adverse environmental consequences. They require an environmental statement and consideration of alternatives for any such project having "significant impact." Interior's regulations also expressly require preparation of an environmental statement for any actions not yet authorized or funded before January 1, 1970, even though connected with an ongoing project in effect before that date. The pertinent language is at § 516.3.B:

Actions initiated before January 1, 1970. The provisions of this chapter apply to continuing major Federal actions having a significant effect on the environment even though they arise from projects or programs initiated prior to the effective date of the Act. Where it is not practicable to reassess the basic course of action, continuing major actions should be shaped to minimize adverse environmental consequences. It is also important in continuing actions that account be taken of environmental consequences not fully evaluated at the outset of the project or program. Ongoing or uncompleted programs and projects which were authorized prior to January 1, 1970, shall be reconsidered to determine whether they constitute major Federal actions significantly affecting the quality of the human environment. If the program or project has significant impact alternatives should be considered and an environmental statement must be prepared. The program or project need not be stopped or delayed pending preparation of the statement; except that, if such an ongoing program or project entails individual actions which have significant environmental impact and which are not authorized or not yet funded, an environmental statement must be provided before these actions can be carried out.

49 Fed.Reg. 198-- (Oct. 2, 1971).

1. Court Decisions - The courts have been conscientious in enforcing the congressional policy evoked by NEPA. Except in

those instances where federal actions were practically completed by the time that NEPA became effective, ongoing projects have typically been held subject to the Act.

In Environmental Defense Fund v. Corps. of Engineers, 325 F.Supp. 723 (E.D.Ark. 1970), the court was faced with a claim by the Corps of Engineers that the project in question was exempt from NEPA because decisions had been made and work carried out on the project prior to NEPA's effective date. The court said, at page 7-8:

The Court is not suggesting that the status of the work should not be considered in determining whether to proceed with the project. It is suggesting that the degree of the completion of the work should not inhibit the objective and thorough evaluation of the environmental impact of the project as required by NEPA. Although the attitude of the defendants is understandable, nevertheless, as the court interprets NEPA, the Congress of the United States is intent upon requiring the agencies of the United States government, such as the defendants here, to objectively evaluate all of their projects, regardless of how much money has already been spent thereon and regardless of the degree of completion of the work.

The courts have recognized that there may be circumstances in which NEPA cannot feasibly be applied to a program initiated before January 1, 1970. Even in recognizing this possibility however, most courts hold that there must be compliance with NEPA if substantial actions are yet to be taken on the project, unless the defendants can show that the costs of altering or abandoning the project "definitely outweigh" whatever benefits might accrue therefrom. See Application Coalition On Transportation, 438 F.2d 1000, 1011 (5th Cir. 1972) ("It is whether the critical stage has been reached must be resolved in favor of applicability"); Jones v. Lynn, 487 F.2d 885, 889 (1st Cir. 1973) ("The only correct interpretation would seem to be that if the provisions of the act can feasibly be applied - even if the project in question was begun prior to NEPA - then they should in

fact be applied"); Environmental Defense Fund v. TVA, 468 F.2d 116- (6th Cir. 1972); Scherr v. Volpe, 466 F.2d 1027, 1034 (7th Cir. 1972); Morningside-Lenox Park Association v. Volpe, 334 F.Supp. 132, 144 (N.D.Ga. 1971)(compliance with § 102 of the NEPA is required as to an ongoing federal project on which substantial actions are yet to be taken, regardless of the date of 'critical' federal approval of the project").⁸ See also Calvert Cliffs' Coordinating Committee v. AEC, 449 F.2d 1109 (D.C.Cir. 1971).

III. The Trusteeship Agreement Imposes Affirmative
Obligations Upon The Defendants To Restore The
People Of Bikini To Their Lands, To Protect
Their Health And To Provide For Their
Social And Educational Advancement
And Their Economic Advancement And
Self-Sufficiency

The Trusteeship Agreement for the Former Japanese Mandated Islands, July 18, 1947, 61 Stat. 3301, T.I.A.S. No. 1665 was executed by the United States and the Security Council of the United Nations pursuant to the provisions of the United Nations Charter dealing with non-self-governing territories. Article 73 of the United Nations Charter, treating non-self-governing territories in general, provides, in part:

Members of the United Nations which have or assume
responsibilities for the administration of territories

⁸ A somewhat different analysis is sometimes employed in considering projects where the federal involvement is substantially limited to approval of concept or design, and funding. Under such circumstances, some courts seek to determine the "critical" federal action or legal events which committed the federal government to approval and funding of the project, considering this the only "major Federal action" which takes place with respect to such a project. See Bikinswood Community Club v. Volpe, 506 F.2d 1366 (9th Cir. 1974) (final design approval determines the impact of a highway and is the Federal action for the project). Even under this approach however if there is major Federal action after the "critical" action or event for the ongoing project, NEPA is triggered. See San Francisco Tomorrow v. Romney, 472 F.2d 1021 (9th Cir. 1973)(critical date, and last major Federal action in usual urban renewal project is execution of loan and grant contract, but a subsequent amendment changing the project from an industrial park to a neighborhood development is a major Federal action). The analysis reflected in these cases is inapposite for the Bikini resettlement project, which has involved full Federal participation in the actual execution of the project.

those people have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost . . . the well-being of the inhabitants of these territories, and to this end: a. to ensure, with due respect for the wishes of the peoples concerned their political, economic, social, and educational advancement, their just treatment, and their protection against abuses. . . .

(emphasis added) It may be argued that this language, in a treaty ratified by the United States, 59 Stat. 1031, T.S. No. 993 (1945) and therefore the supreme law of the Land, Const., Art. VI, Cl. 2, standing alone creates affirmative and judicially enforceable obligations in this case.³ In any event, Articles 75-85 of the Charter detail the legal framework for non-self-governing territories placed under trusteeship. Article 79 provides the means for converting Article 73's broad principles into specific obligations:

The terms of trusteeship for each territory to be placed under the trusteeship system, including any alteration or amendment, shall be agreed upon by the states directly concerned. . . .

Thus, the United Nations Charter "establishes the general principles to govern the administration of the trust territories and defines the functions that the various organs of the United Nations are to perform. The obligations and responsibilities of the

³ See *Dyama v. California*, 332 U.S. 633, 649-50, 673 (1948) (concurring opinions by Justices Black and Murphy); *Hurd v. Hodge*, 162 F.2d 239, 255, 257 (D.C. Cir. 1947), *rev'd*, 331 U.S. 24 (1948) (dissenting opinion of Judge Robert H. Keener v. United States, 219 F.2d 843 (D.C. Cir. 1949); *International Refugee Organization v. Republic Steamship Corp.*, 117 F.2d 1001, 1015 (1st Cir. 1941); *Baldwin, Christie & Co. v. United States*, 21 F.2d 1011, 1012 (D.C. Cir. 1927); See *Evans v. California*, 217 F.2d 1011 (9th Cir. 1955), *cert. denied*, 353 U.S. 902 (1957), but *aff'd* on other grounds, 353 U.S. 918, 2-11-55 (1957); Evans, "Self-Executing Treaties in the United States of America", 30 *Brit. Y.B. Int'l L.* 178, 189 (1953).

Administering authorities, however, are not set out in detail in the Charter but are covered by the terms of the individual trusteeship agreements." Goodrich, Hambro & Simons, Charter of the United Nations: Commentary & Documents 502 (3d ed. 1969).

International legal scholars agree that these obligations and responsibilities, as well as the trust relationship itself, are legal in character and constitute restrictions on the power, of the administering authorities. Thus: "The terms 'trust' and 'tutelle' (in the French text of the Charter) are terms of generally accepted legal connotation implying a delegation and fundamental limitation of authority - a limitation inconsistent with the exclusive advantage or an unrestricted plenitude of power in the authority entrusted with the functions of administration.

I. L. Oppenheim, Treatise On International Law § 94n, at 236 (8th ed. H. Lauterpacht 1955). Trust territories must "be administered in accordance with the beneficial purposes laid down in the Charter of the United Nations and the individual trusteeship agreements." G. Schwarzenberger, A Manual of International Law 6- (5th ed. 1967). See also H. Lauterpacht, International Law & Human Rights 160-61 (1950); C. de Visscher, Theory & Reality In Public International Law 213 (rev.ed. P. Corbett transl. 1968); Goodrich, Hambro & Simons, Charter of the United Nations: Commentary & Documents -75, 502-03 (3d ed. 1969); Rest. 2d, Foreign Relations Law § 1-, illus. 1, at 71 (1965).

The Trusteeship Agreement provides in Article 6 that "the administering authority [the United States] shall. . . promote the economic advancement and self-sufficiency of the inhabitants and to this end shall regulate the use of natural resources; encourage the development of fisheries, agricultures, and industries; and improve the means of transportation and communication; protect the inhabitants against the loss of their lands and resources. . . ." Article 6, § 1. It also mandates that the administrative authority shall. . . promote the social advancement. . . and . . . protect the

health of the inhabitants...", Article 6, Section 3, and "promote the educational advancement of the inhabitants, and to this end shall take steps toward the establishment of a general system of elementary education; facilitate the vocational and cultural advancement of the population..." Article 6, Section 4. The language used is mandatory. And Article 4 of the Trusteeship Agreement specifically binds the United States to act in accordance with this mandate. Article 4 is identical to the draft text submitted to the Security Council by the United States Representative, with this comment:

This article explicitly places the United States under obligation to apply the objectives of the international trusteeship to the people of the trust territory. Since these objectives were designed primarily for the protection and benefit of the inhabitants this undertaking on the part of the United States is of fundamental importance. In Articles 5, 6, 7 and 8 the draft agreement outlines the specific measures by which the United States proposes to implement these objectives.

Draft Trusteeship Agreement for the Japanese Mandated Islands, quoted at L. Whiteman, Digest of International Law 788 (1963).¹⁰

In People of Saipan v. United States Department of Interior, 502 F.2d 90 (9th Cir. 1974), provisions of the Trusteeship Agreement were held to be self-executing and judicially enforceable. There the plaintiffs challenged execution by the High Commissioner of the Trust Territory of a lease permitting Continental Airlines to

¹⁰Interior, exercising its legislative power in the Trust Territory, has declared that the Trusteeship Agreement shall be in full force and have the effect of law in the Trust Territory. High Commissioner Executive Order No. 32, Dec. 22, 1952, as amended by High Commissioner Executive Orders Nos. 56, 920, March 27, 1954, and 60, Oct. 10, 1956; now codified at 1 Trust Territory Code 3111 (1971 ed.). Interior is of course bound by its own pronouncements intended to have the force and effect of law. Thorpe v. Housing Authority, 398 U.S. 268, 271-76 (1969); Titarelli v. Seaton, 359 U.S. 535 (1959).

construct and operate a hotel on public land in Saipan. Among other contentions, the plaintiffs urged that such a lease was violative of the provisions of Article VI, § 2 of the Trusteeship Agreement requiring the United States to "promote the economic advancement and self-sufficiency of the inhabitants, and to this end * * * regulate the use of natural resources" and to "protect the inhabitants against the loss of their lands and resources * * * ." 502 F.2d at 97. The Ninth Circuit held that the Trusteeship Agreement constitutes the basic constitutional document for the people of the Trust Territory and that the rights asserted were judicially enforceable. The court said, at pages 97-99:

The preponderance of features in this Trusteeship Agreement suggests the intention to establish direct, affirmative, and judicially enforceable rights. The issue involves the local economy and environment, not security; the concern with natural resources and the concern with political development are explicitly in the agreement and are general international concerns as well; the enforcement of these rights requires little legal or administrative innovation in the domestic fora; and the alternative forum, the Security Council, would present to the plaintiffs obstacles so great as to make their rights virtually unenforceable.

* * *

. . . we hold that the Trusteeship Agreement is a source of individual legal rights.¹¹

IV. The Preliminary Relief Sought By Plaintiffs
Here Is Required By The Trusteeship Agreement
And By NEPA

In his letter of August 12, 1968, President Johnson noted the Defense Department conclusion that "security requirements"

¹¹The Ninth Circuit also held that, under principles of judicial estoppel, the Trusteeship Agreement issues in the People of Saipan case should be decided in the first instance in the Trust Territory High Court. That conclusion, however, was based upon the Secretary of the Interior's assurance that "his department did not participate in anyway in the decision to grant a lease to Continental." 502 F.2d at 99. Here, where federal agencies are indisputably participating in and directing the project, the doctrine of comity can have no possible application.

...announcing the return of the people to Bikini had ended, and outlined various objectives of a resettlement program. At that time the focus for Bikini shifted from the "strategic" provisions of the Trusteeship Agreement, relied upon as a basis for conducting nuclear testing programs in the Trust Territory, to the protective or beneficial provisions, which must guide and control the actions of the United States in resettling the people on Bikini.

President Johnson himself recognized it would not be sufficient for the United States simply to advise the people of Bikini that, after twenty-two (22) years, the nuclear testing was completed and the people could return.

The return of these people, cannot, however, be accomplished overnight. There remains the major task of working with the Bikini leadership in planning the return, of removing any remaining sources of radiological contamination, of clearing the land and of replanting it to crops which sustain human life and which will provide a source of income. New homes and new community facilities must be built with the active participation of the returning people. These tasks require resources beyond the means of the former Bikini people and of the Trust Territory government. . . .

Exhibit A to the Verified Complaint.

The preliminary relief sought by the plaintiffs here is fully in accord with the objectives outlined by President Johnson, and embodied in the Trusteeship Agreement, as both are supplemented by NEPA.

President Johnson's directive, the Trusteeship Agreement, and NEPA all call for the preparation and implementation of a plan aimed at returning the people of Bikini to their homes at the earliest possible date, but doing so in a manner that will protect their health, provide adequate community facilities and allow them to be economically self-sufficient. Thus all three sources support the preliminary relief sought by the plaintiffs.

4. Preparation Of An Environmental Impact Study, Including
Consideration Of The Effects Upon The Health; Social, Educational And
Economic Advancement; And Self-sufficiency Of The People Of Bikini -

President Johnson spoke of a "comprehensive resettlement program" and made clear that such a program had to protect the health ("removing any remaining sources of radiological contamination"), promote the economic advancement and self-sufficiency ("clearing the land and . . . replanting it to crops which sustain human life and which will provide a source of income") and promote social and educational advancement ("new homes and new community facilities must be built") for the people of Bikini.

NEPA calls for preparation of an environmental impact statement but emphasizes throughout that health¹² and economic¹³

¹²A fundamental purpose of NEPA is to "stimulate the health and welfare of man." 42 U.S.C. § 4321. The Act declares a Federal policy to ". . . use all practicable means and measures. . . to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony. . ." Id., § 4331(a).

In NEPA, Congress also recognizes that "each person should enjoy a healthful environment. . .", § 4331(c), and acknowledges "the continuing responsibility of the Federal Government to use all practicable means. . . to improve and coordinate Federal plans. . ." so "the Nation may:" * * * "(2) assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings" and "(3) attain the widest range of beneficial uses of the environment without. . . risk to health or safety. . ." § 4331(b) .

¹³NEPA declares a national policy to "encourage productive. . . harmony between man and his environment. . ." and "promote efforts which will. . . stimulate the. . . welfare of man." 42 U.S.C. § 4321. It also declares a Federal policy to ". . . use all practicable means and measures, including financial and technical assistance in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans." Id. § 4331(a).

Congress also acknowledges the Federal Government's "continuing responsibility. . . to use all practicable means. . . to improve and coordinate Federal plans. . . and resources to the end that the Nation may: * * * (1) assure for all Americans. . . productive. . . surroundings, (2) attain the widest range of beneficial uses of the environment. . . (3) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities." Id. § 4331(b).

and social¹⁴ considerations are critical to any environmental study.

The Trusteeship Agreement, as Micronesia's basic constitutional document, affects all governmental actions of the United States or its representatives in the Trust Territory. Here, it requires that the United States restore the people of Bikini to their land at the earliest possible time, but also that it do so in a manner that will protect the health, and promote the economic, social and educational advancement, and the self-sufficiency of the Bikinians.¹⁵ See Article 6, Sections 2 to 4.

"This is expressed in the purpose to "stimulate the health and welfare of man." 2 U.S.C. § 321. It is pertinent here too that the Act calls for the use of "all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can live in productive harmony, and fulfill . . . social, economic and other requirements. . . ." 22 U.S.C. § 331(a).

Responsibility is also acknowledged to "improve and coordinate Federal plans" to "assure . . . esthetically and culturally pleasing surroundings", 16 U.S.C. § 331(b)(2), and to "preserve important historic, cultural, and natural aspects of our national heritage. . ." Id. § 331(b)(4). The Act also seeks to "insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment", § 331(a), and "insure that presently unquantified environmental values and amenities may be given appropriate consideration in decisionmaking. . ." § 331(a)(3).

¹⁵It is no imposition of exceptional responsibilities to require the United States, in restoring this annihilated atoll to its rightful owners, to protect the health and promote the economic and social advancement of the Bikinians. In executing the Trusteeship Agreement and confirming its sweeping powers in Micronesia, including the power to conduct such nuclear tests as those on Bikini, the United States assumed just such broad governmental, health, economic and social responsibilities to all Micronesians. The relief sought here is simply a mitigation of the responsibilities of the United States to all Micronesians. Here, however, the United States is restoring to all, almost "de novo", and therefore has unique responsibility and opportunity to observe the requirements of the Trusteeship Agreement in arriving at and carrying out the resettlement plan.

Thus, all three authorities, President Johnson's instructions, NEPA and the Trusteeship Agreement, establish the need for the prompt relief sought by the plaintiffs here.

President Johnson issued his directive more than seven years ago. At that time he said the major islands of Bikini Atoll are "now safe" for human habitation, and he directed that the planning and carrying out of a comprehensive resettlement program be accomplished with "all possible dispatch." Even today, only one-half the intended houses are built, and no decision has yet been made as to the proper location for the others.

There loom now before the people of Bikini the twin, but distinct, dangers of further delay in return to their land and the alternative risk of precipitous action, which might return the Bikinians to their land at the cost of their health or their ability to sustain themselves. Both dangers arise from the same fault, lack of interagency planning, coordination and cooperation and both pose an immediate and unjustifiable risk to the people of Bikini.

Thus, expeditious action is needed to prevent further violation of the Trusteeship Agreement, essentially "constitutional", rights of the people of Bikini to be protected from the loss of their lands, but the action must be planned in order to prevent violation of other critical Trusteeship Agreement rights, their rights to protection of their health and to promotion of their self-sufficiency, and economic, social and educational advancement.

In People of Saipan, the Court noted, 502 F.2d at 99, that the "general direction" of NEPA could serve as a guide to enforcement of the Trusteeship Agreement. The parallelism is similarly apparent here; and is supported by President Johnson's statements in ordering the resettlement program.

All three sources call for a comprehensive consideration of the program, with consideration of alternatives, and their effects

with the environment, including the health, economic, social and educational status of the people of Bikini. While the Trusteeship Agreement speaks of promoting economic, social and educational advancement, and self-sufficiency, NEPA declares a Federal Government policy "to use all practicable means and measures, including financial and technical assistance. . . to create. . . conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans."¹⁶

§101(a).

Thus, the facts and legal authorities here require prompt preparation of an environmental impact statement, with special emphasis upon the impact of present plans upon the health, economic advancement and self-sufficiency, and social and educational advancement of the Bikinians, plus consideration of feasible alternative steps which may promote or protect these interests of the people of Bikini, and disclosure of all such considerations to them.

¹⁶References in NEPA to "Americans" should not be read as excluding peoples of the Trust Territory. As this District Court noted in the Enakerak case, 353 F.Supp. at 819, the United States Representative, in negotiating the Trusteeship Agreement made the following statement to the United Nations Security Council: ". . . My Government feels that it has a duty towards the peoples of the trust territory to govern them with no less consideration than it would govern any part of its sovereign territory. It feels that the laws, customs and institutions of the United States form a basis for the administration of the trust territory compatible with the spirit of the Charter. For administrative, legislative and jurisdictional convenience in carrying out its duty towards the peoples of the trust territory, the United States intends to treat the trust territory as if it were an integral part of the United States. . ." U.N. Security Council Off.Rep., 116th Meeting, March 7, 1957, p. 73 quoted in 1 Whiteman, Digest of International Law at 718 (1963).

Thus, in absence of limiting language, i.e., "United States citizens" or "United States nationals", Micronesians come within the general term "Americans" in an Act intended to be applied in the Trust Territory, just as the Trust Territory is often considered within the terms "State" or "United States" in such laws. See, e.g., the Federal Environmental Pesticide Control Act, 7 U.S.C.A. §§ 136, 136aa, Supp. 1975, the Federal Water Pollution Control Act, as amended, 33 U.S.C.A. §§ 1251, 1321(a)(5) and Executive Order 11752 cited at page 26, supra.

In People of Saipan, the Ninth Circuit acknowledged that the substantive rights guaranteed through the Trusteeship Agreement are not "precisely defined." 502 F.2d at 99. However, the Court went on to say:

. . . we do not believe that the agreement is too vague for judicial enforcement. Its language is no more general than such terms as "due process of law", "seaworthiness", "equal protection of the law", "good faith", or "restraint of trade", which courts interpret every day. Id.

In the case of the Bikinians it is apparent that these substantive rights here require judicial protection.

1. Article 6, Section 3: Protect The Health - Creation of a risk of excessive radiation, and then unnecessarily exposing the Bikinians to that risk without using the best possible instrumentation, and current radiological standards and guidelines, and without providing the best possible medical examinations, care, equipment, and understandable and believable advice for them, is not "protecting the health of the inhabitants."

2. Article 6, Section 2: Promote Economic Advancement And Self-Sufficiency - The people of Bikini have been removed from their atoll, taken from place to place and exposed to conditions of near starvation. Meanwhile their atoll, including all parts of the marine and terrestrial environments, upon which they traditionally have relied for sustenance, was devastated. Its use and productivity upon their return is questionable. Return of the people, without technical and financial assistance to determine the extent of their economic problems and to devise solutions, is not "promoting the economic advancement and self-sufficiency of the inhabitants."

3. Article 6, Sections 3 And 4: Promote Social And Educational Advancement - The people of Bikini have for thirty (30)

has been upon a forced migration. Their living patterns have been wholly disrupted. They have been exposed to new places, different ideas and other ways of life. Many inconsistent and untrue promises and assurances have been made to them. Their community, and each member of it, have been forced to try to adjust to almost intolerable pressures. Some members of the community have departed. Returning the Bikinians to Bikini Atoll and establishing a traditional school, without determining the changes wrought upon them and their consequent social and educational needs, would not be "promoting the social or educational advancement of the inhabitants."

As previously pointed out, NEPA emphasizes the same considerations. Therefore the "best possible"¹⁷ radiological survey employing the "more sophisticated and sensitive instrumentation" which has become available since the 1960's¹⁸ and the "more stringent. . . accepted radiological practices"¹⁹ should be carried out in conjunction with, or as part of the § 102(2)(c) environmental impact study. The same holds true of the medical examinations requested in plaintiffs' motion for preliminary injunction and the social, economic and educational considerations discussed supra in this memorandum.

B. The Bikini Resettlement Program Must Be Enjoined Pending Completion And Consideration Of The Environmental Impact Study -
For all the reasons discussed in this memorandum, an injunction is necessary pending completion of the environmental study.

¹⁷See Verified Complaint, ¶ 76, Exhibit F, in which Interior Assistant Secretary Hughes, in a letter dated June 19, 1975, speaks of the "recent unsuccessful effort to perform the best possible survey in Bikini."

¹⁸Interior Secretary Rogers C.B. Norton's letter of March 7, 1975. Verified Complaint, ¶ 74, Exhibit D.

¹⁹Id.

W. The Standards For Granting Temporary
Restraining Order And Preliminary
Injunction Are Met Here

A. The Failure To Comply With NEPA And The Trusteeship Agreement Requires
An Injunction In This Case Under The "NEPA" And "Constitutional" Standards
For Injunctive Relief - The need for immediate relief, pending
determination on the merits, is apparent here and the plaintiffs
are therefore seeking a temporary restraining order and a preliminary
injunction.

There exists special urgency for medical examination and care
for those families and workers who have already been permitted to live
on Bikini Atoll. Verified Complaint, ¶ 65. These persons may have
been exposed to excessive radiation. They require immediate
examination and, quite likely, immediate treatment.

Further, if the defendants are permitted to invest more time
and money into the present "plan", this will increase the danger
that earlier decisions made without proper regard to NEPA and the
Trusteeship Agreement will become irrevocable, or almost prohibitively
expensive in terms of money and added delay. If the defendants are not
required at once to prepare an environmental impact study, with special
emphasis upon the health, economic, social and educational needs of the
Bikinians, the people of Bikini may one day soon be offered assistance
in returning to their atoll, but with no means of determining the threat
to their health and economic well-being which such a return would pose.
If nothing is done, or if inefficient or ill-advised steps are taken,
this can irreparably prolong the delay in the return of the land
to the people of Bikini.

Many courts, in cases involving attempts to prevent violations
of constitutional requirements or important congressional policies,
have issued injunctions to effectuate the policies without
regard to the traditional standards for issuance of injunctive
relief. Thus, in United States v. City And County Of San
Antonio, 313 U.S. 16, 30, 31, (1942), the Supreme Court:

... We are satisfied that this case does not call for a balancing of the equities or for the invocation of the generalities of judicial maxims in order to determine whether an injunction should be issued. . . . The equitable doctrines relied on do not militate against the capacity of a court of equity as a proper forum in which to make a declared policy of Congress effective.

This principle is well established with respect to enjoinder of constitutional violations. See, for example, Henry v. Greenville Airport Commission, 284 F.2d 631, 633 (4th Cir. 1960) ("The District Court has no discretion to deny relief by preliminary injunction to a person who clearly establishes by undisputed evidence that he is being denied a constitutional right."); Lewis v. Kugler, 446 F.2d 13-3, 1350 (3rd Cir. 1971) ("Persons who can establish that they are being denied their constitutional rights are entitled to relief. . ."); Demons v. Board of Education, 228 F.2d 853, 857 (5th Cir.), cert.denied, 350 U.S. 1006 (1956) ("While the granting of an injunction is within the judicial discretion of the District Judge, extensive research has revealed no case in which it is declared that a judge has judicial discretion by denial of an injunction to continue the deprivation of basic human rights.")

The Trusteeship Agreement, identified by the Ninth Circuit Court of Appeals as the "basic constitutional document"²⁰ for Micronesians is entitled to no less deference.

The same standard has also been applied for violations of NEPA. In Lathan v. Volpe, 455 F.2d 1111, 1116 (9th Cir. 1971) the court in a NEPA case granted an injunction relying upon the reasoning of United States v. City and County of San Francisco, supra. In support of its conclusion the Court emphasized circumstances facing

²⁰People of Saipan v. Department of Interior, supra, 502 F.2d at 98.

is, strikingly similar to the situation here (pages 1116-17):

Here, the basic facts are not disputed. The only question is how the admittedly applicable statutes must be applied. That the statutes are designed to implement important public policies is conceded. The manner and timing of their application is crucial. . . . The longer the delay in applying NEPA. . . . the less will be the chance to protect the city and its people. . . . In short this is one of those comparatively rare cases in which, unless the plaintiffs receive now whatever relief they are entitled to, there is danger that it will be of little or no value to them or to anyone else when finally obtained.

In Stop H-3 Association v. Volpe, 349 F.Supp. 1047, 1048

(D. Hawaii, 1972) this District Court followed the Lathan holding:

Lathan v. Volpe. . . sets forth the proper test for determining whether a preliminary injunction should issue in a NEPA action. . . . A less stringent standard is required to effectuate the declared policy of Congress, set forth in NEPA. . . .

In Bradford Township v. Illinois State Toll Highway Authority, 463

F.2d 537, 539 (7th Cir. 1972), the Seventh Circuit stated:

. . . Failure to comply. . . [with the NEPA procedural] is basis for an injunction. . . .

Judicial relief is available to correct failure on the part of a federal agency to follow the procedural requirement under NEPA. at 539.

In Environmental Defense Fund v. TVA, supra, 468 F.2d 1184, the

Sixth Circuit Court of Appeals said:

Finally, the preliminary injunction, as we stated earlier in this opinion, is the vehicle by which a declared congressional policy can be effectuated. Sufficient irreparable harm, even apart from the considerations discussed above, can be found in the continuing denial by appellants of appellees' right under the NEPA. Izaak Walton League of America v. Schlesinger, 337 F.Supp. 287, 295 (D.D.C. 1971); City of New York v. United States, supra, 337 F.Supp. at 160, and

this is enough to justify issuing the injunction.
Lathan v. Wolpe, supra, 455 F.2d at 1116-1117.

See also Scherr v. Wolpe, 466 F.2d 1027, 1034 (7th Cir. 1972), Northside Tenants' Rights Coalition v. Wolpe, 346 F.Supp. 244 (E.D.Wis. 1972) and People of Enewetak v. Laird, supra at 821 ("The test is whether the primary purpose of the activity is to further the project which has been enjoined. If so, and defendants are unable to show any irreparable injury that will result as a consequence of not being allowed to go forward, then the activity must be enjoined.")

This principle is implicit in several other cases under NEPA. In Greene County Planning Board v. FPC, 455 F.2d 412 (2d Cir. 1972), there is no indication at all from the opinion that the plaintiffs made any showing of the physical injury the project would cause. The same is true for National Helium v. Morton, 455 F.2d 650 (10th Cir. 1971) where the Court enjoined the termination of a contract until there was full compliance with NEPA. The Court's approach in Horningside-Lenox Park Association v. Wolpe, 33 F.Supp. 132 (N.D. Ga. 1971) was simply to ascertain whether full compliance with NEPA was required. If so, the injunction would issue pending such compliance. See also: Davis v. Morton, 469 F.2d 593 (10th Cir. 1972); West Virginia Highlands Conservancy v. Island Creek Coal Co., 441 F.2d 232 (4th Cir. 1971); Named Individual Members of the San Antonio Conservation Society v. Texas Highway Dept., 446 F.2d 1013 (5th Cir. 1971) (no injunction issued but court ordered halt to the project pending full compliance with NEPA).

The circumstances of this case, as shown in the Verified Complaint, give rise to the need for immediate and summary relief, to prevent unnecessary delay but also to avoid the gathering momentum and agency commitment which comes from investment of time, effort and money to even an unplanned and ill-conceived course of action. As Mr. Justice Douglas has so aptly pointed out:

... When that point is reached, when millions have been invested, the momentum is on the side of the [project], not on the side of the public. The momentum is not only generated by the desire to salvage an investment. No agency wants to be the architect of a white elephant.

Power Reactor Development Co. v. International Union Of Electrical, Radio and Machine Workers, 367 U.S. 396, 417 (1961)(dissenting opinion).

B. The Failure To Comply With NEPA And The Trusteeship Agreement Requires Injunctive Relief Under The Traditional Standards For Issuance Of An Injunction - Some NEPA cases rely on the traditional standards for injunctive relief. See e.g., Natural Resources Defense Council v. Morton, 337 F.Supp. 165 (D.D.C. 1971). The traditional standard has four interrelated factors all of which indicate the propriety of the issuance of an injunction granting the relief sought by plaintiffs here. See generally 7 MOORE, FEDERAL PRACTICE, § 65.04 (2nd ed. 1971).

1. A Showing By The Plaintiff Of Irreparable Injury If The Injunction Does Not Issue -

A plaintiff asking an injunction because of the defendant's violation of a statute is not required to show that otherwise rigor morcis will set in forthwith; all that "irreparable injury" means in this context is that unless an injunction is granted, the plaintiff will suffer harm which cannot be repaired. At least that is enough where, as here, the only consequence of an injunction is that the defendant must effect a compliance with the statute which he ought to have done before.

Sandaker Corp. v. Bittlin, 360 F.2d 692, 698 (2nd. Cir. 1966).

Here, the threat of severe irreparable harm is immediate and great. Each day away from Bikini atoll is irreparable harm to the people of Bikini. A return to their atoll, however, threatens the Bikinians with irreparable harm to their health. Continuation of the building program without the environmental study mandated

by NEPA, could result in misallocation of limited resources, irreparably delaying completion of the resettlement program and reducing its quality. This reduction in quality could in turn jeopardize the health and economic self-sufficiency of the people of Bikini.

Particularly urgent is the need for the medical examinations requested in plaintiffs' motion. If the persons who have been on Bikini Atoll may have been exposed to excessive radiation, a day's delay in examination and care could bring irreparable, even fatal harm.

2. A Balancing By The Court Of The Likely Injury

To The Plaintiffs And The Inconvenience To The Defendants - The likely injury to the plaintiffs would be substantial and irreparable harm without the injunctive relief requested. The relief sought by plaintiffs will pose no inconvenience to the defendants, other than requiring them to comply with a statutory mandate and the Trusteeship Agreement obligations assumed by the United States toward the people of Bikini and all Micronesians. Such compliance, plaintiffs firmly believe, will enhance rather than hinder the defendants' efforts to complete the Bikini resettlement program as instructed by President Johnson.

In any event, the courts have recognized that compliance with NEPA may entail some delay and administrative cost and inconvenience, but have not been deterred by these factors from granting injunctive relief to uphold the congressional mandate reflected in NEPA. Greene County Planning Board v. FCC, 455 F.2d 1141 (2d Cir.) cert. denied, 409 U.S. 849 (1972); Salwert Cliffs' Environmental Committee v. AEC, 449 F.2d 1109 (D.C. Cir.) cert. denied 407 U.S. 922 (1971); Speaking v. Brinegar, 511 F.2d 489 (2d Cir. 1974).

3. The Likelihood Of The Plaintiffs' Ultimate Success

On The Merits Of Their Claims - There is a very strong likelihood

that plaintiffs will prevail on their claims. The defendants have admittedly failed to comply with an applicable federal statute and have plainly ignored the judicially enforceable terms of the Trusteeship Agreement.

4. The Public Interest - The public interest in this case is unquestionably on the side of the plaintiffs. There is no public interest in favor of delaying the return of the Bikinians, exposing them to dangers of excessive radiation, or locating further buildings in hazardous locations. Moreover, the true public interest lies in a comprehensive and profound study of the environmental implications of the resettlement program before further steps are taken.

Thus, plaintiffs submit that based on the traditional standards for injunctive relief, the Court should preliminarily enjoin further construction work on the Bikini resettlement project and order immediate preparation of an environmental impact study.

VI. All Defendants Are Subject To The Injunctive Relief Requested By Plaintiffs

A. Federal Agencies - NEPA provides that "all agencies of the Federal Government shall. . . (C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official. . . ." 42 U.S.C. § 4332(2)(C).

The CEQ Guidelines provide the following amplification for multi-agency projects such as this one.

Where more than one agency (1) directly sponsors an action, or is directly involved in an action through funding, licenses, or permits, or (2) is involved in a group of actions directly related to each other because of their functional interdependence and geographical proximity, consideration

should be given in preparing one statement for all the Federal actions involved (see § 1500.17(c)(1)). Agencies in such cases should consider the possibility of joint preparation of a statement by all agencies concerned, or designation of a single "lead agency" to assume supervisory responsibility for preparation of the statement. Where a lead agency prepares the statement, the other agencies involved should provide assistance with respect to their areas of jurisdiction and expertise. In either case, the statement should contain an environmental assessment of the full range of Federal actions involved, and should reflect the views of all participating agencies, and should be prepared before major or irreversible actions have been taken by any of the participating agencies. Factors relevant in determining an appropriate lead agency include the time sequence in which the agencies become involved, the magnitude of their respective involvement, and their relative expertise with respect to the project's environmental effects. As necessary, the Council will assist in resolving questions of responsibility for statement preparation in the case of multi-agency actions. Federal Regional Councils, agencies and the public are encouraged to bring to the attention of the Council and other relevant agencies appropriate situations where a geographic or regionally focused statement would be desirable because of the cumulative environmental effects likely to result from multi-agency actions in the area.

1500.17(c).

It is apparent then, in the multi-agency Environmental Resettlement Project, that the agencies should "consider the possibility of joint preparation of a statement by all agencies concerned, or designation of a single 'lead agency'." Yet, no agency is relieved of responsibility for assuring preparation and consideration of a statement before taking major Federal actions in this project. All participating Federal agencies remain subject to the requirements of NEPA and the Trusteeship Agreement, and therefore all are subject to the Court's injunctive powers.

B. Defendants Johnson and DeBum - All defendants in this action are persons who derive their authority from the United States, and upon the recommendation and direction of the United States Government and are deriving out the responsibility of the United States Government. It is obvious with respect to all the defendants except defendants Johnson and DeBum. Those two, although nominally Trust Territory officials, actually perform

their functions under the supervision of the Secretary of the Interior and carry out the responsibilities of the United States, which has full governmental powers and responsibilities in the Trust Territory under the Trusteeship Agreement. Executive Order No. 11021, 3 C.F.R. 1959-63 Comp. at 600; Department of the Interior Order No. 2918. Defendant Johnston is an appointee of the President of the United States, subject to the advice and consent of the Senate. 48 U.S.C. § 1681a. Defendant DeBrum is an appointee of the High Commissioner of the Trust Territory.

Plaintiffs are not contending that defendants Johnston and DeBrum are federal agents and directly subject to NEPA. Nevertheless they do remain subject to this Court's injunctive powers to insure compliance with NEPA and the Trusteeship Agreement.

As the complaint shows, these are operating officials in the Trust Territory. Verified Complaint, ¶¶ 13 & 14. They have general responsibilities for the people of Bikini and perform and supervise operating functions with respect to the Bikini resettlement project. Control over the program requires jurisdiction over these officials and this Court may therefore assume such jurisdiction and enjoin these "non-federal" parties. See Silva v. Romney, 473 F.2d 287 (1st Cir. 1973)(private developer enjoined from proceeding with project wrongfully approved by HUD without prior NEPA compliance).

The case law of NEPA is replete with decisions in which non-federal parties are enjoined in order to enforce NEPA. Most often, this is done on the theory that the non-federal party has become a "partner" of the Federal government on the particular project. Silva v. Romney, supra; Elm v. Melde, 497 F.2d 252, 257 (4th Cir. 1974)(case remanded to District Court with instruction that if State attempts to retain Federal funds originally granted for a penal center, without returning the funds or compliance with NEPA, the State should be permanently enjoined. "...The state cannot retain the fruits of federal partnership in this venture..."); Named Individual Members Of The San Antonio Conversation Society v. Texas Highway Dept., 446 F.2d 1013, 1027 (5th Cir. 1971), cert. denied,

-1973- 933 (1972) . . . the North Expressway is subject to the laws of Congress, and the State as a partner in the construction of the project is bound by those laws." Cf. Proetta v. Dent, 481 F.2d 1146 (2nd Cir. 1973).

In other instances, the injunction is issued against the non-Federal defendants because the action in question may not begin without prior Federal approval. Cf. Biderman v. Morton, 497 F.2d 1141, 1147 (2nd Cir. 1974), citing Greene County Planning Board v. EPC, *supra*, and West Virginia Highlands Conservancy v. Island Creek Co., 441 F.2d 232 (4th Cir. 1971).

In still other cases involving NEPA violations, the courts have issued injunctions against non-Federal parties without any discussion of the point. See Lathan v. Wolpe, *supra* (case remanded to District court with instructions to issue preliminary injunction against state as well as federal defendants); Brooks v. Wolpe, 460 F.2d 1193 (9th Cir. 1972); Speckhard v. Brinegar, 511 F.2d 489 (2nd Cir. 1974) (injunction against Commissioner of New York State Department of Transportation, as well as Secretary of Federal Department of Transportation, to enjoin violation of NEPA in construction of bridge over Lake Chautaugua); Morningstar-Lenox Park Assoc. v. Wolpe, 334 F.Supp. 132 (N.D. Ga. 1971) (Federal Secretary of Transportation and Director of Georgia State Highway Department enjoined from proceeding with highway development pending NEPA compliance). See also Scenic Rivers Assoc. v. EPA, -- F.2d -- [8 E.R.C. 1021] (10th Cir. July 1975).

Here, the "non-Federal" defendants hold a unique status. In Peckham v. Saipan v. Department of Interior, *supra*, this District Court recognized that:

the High Commissioner and his immediate subordinates in the executive branch of the Northern Mariana Territory Government are federal officials acting as a component of the Department of the Interior. . . .

17 F.Supp. at 6-8. While Judge King held that such officials are excluded from the term "Federal agencies" as used in NEPA and the Administrative Procedure Act, 5 U.S.C. § 702, there can be no doubt that the High Commissioner and his immediate appointee and subordinate, defendant DeBrum, District Administrator of the Marshalls District, are subject to enjoinder to prevent violations of NEPA in Federal programs.

In addition, the Ninth Circuit in the People of Saipan case explicitly held that

. . . the High Commissioner has the responsibility to act in a manner consistent with the duties assumed by the United States itself in the Trusteeship Agreement.

502 F.2d at 98. The High Commissioner and his immediate subordinate in the Marshall Islands both operate under such a duty. Thus, the defendants' violations of the Trusteeship Agreement furnish an independent grounds for issuing injunctive relief against these "non-federal" defendants.

VII. No Bond Is Required

Rule 65(c) of the Federal Rules of Civil Procedure provides that. . .

No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the United States or of an officer or agency thereof.

Under the circumstance here plaintiffs do not believe that a bond is required or would be appropriate.

In Scherr v. Volpe, 466 F.2d 1027 (7th Cir. 1972), defendants appealed from issuance of a preliminary injunction, without

... carrying a highway project pending compliance with NEPA. In response to the appellants' contention that posting of a security bond is a prerequisite to the granting of a preliminary injunction, the court said:

... the failure of a district court to require a security under this rule [65(c)] before issuing a restraining order is not reversible error. . . . Since the amount of the security rests within the discretion of the district judge, the matter of requiring a security in the first instance was recognized . . . as also resting within the discretion of the trial judge. Considering this as well as the strong likelihood of success on the merits which the plaintiffs have demonstrated, we find that the district court did not abuse the discretion in failing to require the plaintiffs to post a security.

Generally, courts have recognized the rule that security requirements should not be imposed where they would thwart the purpose of NEPA or other rights such as those here of a constitutional nature, being asserted in the public interest. In a case such as this one, an injunction can and should be issued with nominal bond or none at all. See Natural Resources Defense Council, Inc. v. Morton, 337 F.Supp. 167 (D.D.C. 1971); Environmental Defense Fund v. Corps of Engineers, 331 F.Supp. 925, 927 (D.D.C. 1971); Goose Hollow Foothills League v. Romney, 39 F.Supp. 377, 380 (D.D.C. Oreg. 1971); People of Enewetak v. Laird, 353 F.Supp. 511 (D.Hawaii 1972)(\$5.00 bond) West Virginia Highlands Conservancy v. Island Creek Co., 441 F.2d 232, (4th Cir. 1971), all NEPA cases. See also Rowellton Civic Home Owners Ass'n v. Department of Housing and Urban Development, 284 F.Supp. 309, 340 (E.D. Pa. 1968)(housing); Winters v. Board of Education and Orphanage for Bibb County, 284 F.Supp. 377 (D. Ga. 1967) (school desegregation); Denny v. Health and Social Board of the State of Wisconsin Department of Health and Social Services, 285 F.Supp. 526 (E.D. Wisc. 1968)(welfare); March v. Moore, 325 F.Supp. 392 (D.Mass. 1971)(prison rights);

Webain v. Knapp Bros. Manufacturing Co., 217 F.2d 810, 815 (6th Cir. 1954) (patent infringement involving only private parties).

VIII. Conclusion

Based upon the reasons set forth in this memorandum, and the entire record in this case, including the verified complaint and any affidavits filed and other evidence and testimony introduced, plaintiffs respectfully request this Court immediately to grant the relief requested in plaintiffs' motion for preliminary injunction.

Respectfully submitted,

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By 
GEORGE M. ALLEN

Attorneys for Plaintiffs

WASHINGTON)
) ss:
DISTRICT OF COLUMBIA)

DR. THOMAS B. COCHRAN, being first duly sworn,
deposes and says:

1. My background and professional qualifications relevant to the substance of this affidavit include the following:

(a) Since April 1973, I have been a staff scientist at Natural Resources Defense Council (NRDC). My work at NRDC has been primarily related to the U.S. civilian nuclear power industry. With Dr. Arthur R. Tamplin I have written Radiation Standards for Hot Particles, February 14, 1974 (a report on the inadequacy of existing radiation protection standards related to internal exposure of man to insoluble particles of plutonium and other alpha-emitting hot particles), and Radiation Standards for Occupational Whole Body Exposure, September 25, 1975. These reports are attached as Exhibits A and B, respectively. These reports served as the basis for NRDC's petitions to the U.S. A.E.C., U.S.E.P.A. and U.S. Nuclear Regulatory Commission to amend their radiation protection standards as more fully described in the reports.

(b) Between June 1971 and April 1973 I was employed at Resources for the Future (RfF), Washington, D. C., where I wrote the book, The Liquid Metal Fast Breeder Reactor: An Environmental and Economic Critique, published by RfF in 1974.

(c) From 1969 to 1971 I was employed by Litton-Mellonics Division, Scientific Support Laboratory, Fort Ord, California. I was Modeling and Simulation Group Supervisor, supervising the activities of several operation research analysts engaged in military research pertinent to the evaluation of U.S. Army field experiments designed to test U.S. Army weapons, material and concepts.

(d) From 1967 to 1969 I was a Lieutenant in the U.S. Navy on active duty at the Naval Postgraduate School, Monterey, California. I was an Assistant Professor of Physics, a member of the Radiation Safety Committee and conducted part-time research involving computer studies of radiation production in beam transport systems at the Stanford Linear Accelerator, Stanford, California.

(e) I received a Bachelor of Engineering degree (cum laude) from Vanderbilt University in 1962, a Master of Sciences degree from Vanderbilt in 1965 in physics and radiation chemistry, and Doctor of Philosophy degree from Vanderbilt in 1967 in the field of high energy nuclear physics. During the period 1962-1964 I was an AEC Health Physics Fellow and received applied health-physics training at Oak Ridge National Laboratory. I spent the summer of 1969 at the Summer Institute of Theoretical Physics, University of Colorado, Boulder, Colorado.

(f) I am a member of the American Physical Society, American Nuclear Society, Health Physics Society, American Association for the Advancement of Science and Sigma Xi.

2. I have read and I am familiar with:

(a) "Preliminary Report; Radiological Evaluation of Phase II Housing Construction Bikini Atoll," August 6, 1975.

(b) "Preliminary External-Dose Estimates for Future Bikini Atoll Inhabitants," by Paul H. Gudiksen and William L. Robison, August 6, 1975.

My comments below, based on my personal knowledge, relate to the radiological evaluation of the Bikini Atoll as set forth in these two reports (hereafter referred to as references (a) and (b)).

3. Attached as Exhibit C is a copy of Table 3-1 taken from the National Academy of Sciences' BEIR Report (also attached as part of Exhibit C is a copy of the title page of the report). In order to make a similar evaluation for Bikini Atoll one must correct for differences in population and rate of exposure. For example, assume there will be roughly 1,000 people on the atoll (784 persons claim land rights on Bikini Atoll according to p.6 of reference (b)) after the complete resettlement, and assume they are exposed at 0.2 rem/year (see Cases 2-4 in Table 4 of reference (a)). This does not include the internal dose estimate. The correction needed to normalize the data in Table 3-1 of the BEIR Report to the Bikini exposure under these exposure assumptions would be

$$\frac{1000}{2,000,000} \times \frac{0.2}{0.1} = 1/100,000$$

In other words, divide the entries in Table 3-1 by 100,000.

For reasons that are discussed in Exhibit B, I believe you should use the upper limit estimate in Table 3-1 (i.e., the relative risk model - cases (b)). Under these assumptions you could expect about 9,078/100,000 - 0.09 cancers per year, or one cancer every 10 years as a result of this exposure.

One must also consider the genetic risk. The same BEIR Report estimated that the total incidence of all identified serious genetic diseases due to 5 rem per 30 year reproductive generation to the U.S. population would be between 1,100 and 27,000 per year at equilibrium. In addition, there would be an increase of between 0.5% and 5% in the ill health of the population. Since my Bikini exposure assumption is equivalent approximately to 5 rem/generation to 1,000 people, the BEIR Report genetic effect estimate must be multiplied by

$$1,000/200,000,000 = 1/200,000$$

Thus, one could expect between 0.005 and 0.14 serious genetic effects per year, or up to 1 serious genetic effect every 7 years. Again, for reasons noted in the report by Tamplin and me the upper limit estimate should be used.

In summary, based on the assumptions I have made, the combined risk would be 1 cancer every 10 years and one genetic effect every 7 years plus a 0.5% to 5% increase in overall ill health.

This rather simple illustrative calculation does not include what is undoubtedly a minor correction to account for differences in the age distribution of people of Bikini and the U.S. population (1967 statistics). Also, not included is the risk associated with internally deposited radioactivity.

Depending on the case involved it may be appropriate to roughly double the risk estimated above to include the internal radiation exposure resulting from the food chain. One can make the necessary corrections for different assumptions about the dose rate and the number of people involved. The people of Bikini presented with this type of estimate could decide whether it is

an acceptable level of risk. My own opinion is that it is too high, but its not my homeland.

ERDA or other U.S. government scientists should be required to estimate the number of cancers and genetic effects rather than simply comparing the doses to the current radiation protection standards (which in my opinion are inadequate).


4. Based on the material I have seen it appears that ERDA's preliminary radiation evaluation is based heavily on a gamma ray survey on a 30 m and 120 m rectangular grid for Bikini and Eneu islands, respectively. In my opinion these surveys are too course to identify possible hot spots of radio-activity which could carry a greater risk than the evaluation would indicate. Furthermore, there is no evidence that the government has conducted a comprehensive survery of alpha-emitters, or searched for high specific activity debris. This should be done and should have been part of the preliminary evaluation.



Thomas B. Cochran

Subscribed and sworn to before me

this 25th day of October, 1975.



NOTARY PUBLIC

Notary Public, District of Columbia

My Commission expires:

My Commission Expires April 14, 1979

For approximately 30 months affiant, together with his wife and seven children lived in the interior of Bikini Island at the place marked in the aerial photograph attached hereto with a red "x" in Janai Weto, where external gamma radiation is between 65 and 75 microroentgens per hour.

Affiant and his family consumed well water and ate locally available foods as well as imported foods.

Affiant and his family consumed bananas, potatoes, papayas, pandanus, coconut, and fish, all from Bikini Island.

Dr. Conard, when he made studies at Bikini in 1974, took urine samples from affiant and his wife, but not from any of their children.

Aside from the urine samples, no other tests were administered to affiant or his family.

Affiant now knows that he and his family, like others who have lived or are living at Bikini, has been placed at risk by exposure to radiation and that to understand the extent of exposure and, if necessary treat results of that exposure, extensive examination will be necessary.

Affiant, as a trained and experienced Health Aide, knows that he and his family require immediate and extensive medical examination and possible treatment.

Dr. Conard knew, when urine samples were taken from affiant and his wife, that they were living in the interior of Bikini Island.

By that time (late 1974) Dr. Conard reasonably must have known of the probability of extremely high radiation risk to affiant and his family.

Nevertheless neither Dr. Conard nor any other ERDA or AEC physician furnished affiant or his family with appropriate examination or care.

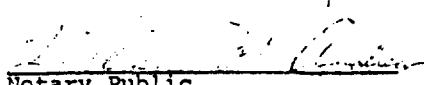
Affiant has no confidence in Dr. Conard or other ERDA-AEC health care personnel. Affiant believes he and his family and others who have been placed at risk on Bikini Island should

have a right to select their own physicians for the examination and possible treatment they now require.

By reason of ERDA's having allowed affiant and his family to have been placed at risk to high radiation (external gamma dosage approximately 20 times greater than in American cities and 35 times greater than elsewhere in the Western Pacific Islands) affiant believes ERDA-AEC should bear the entire expense of examination of himself, his family and others similarly situated, as well as the expense of treatment if remedial treatment should be indicated or possible.

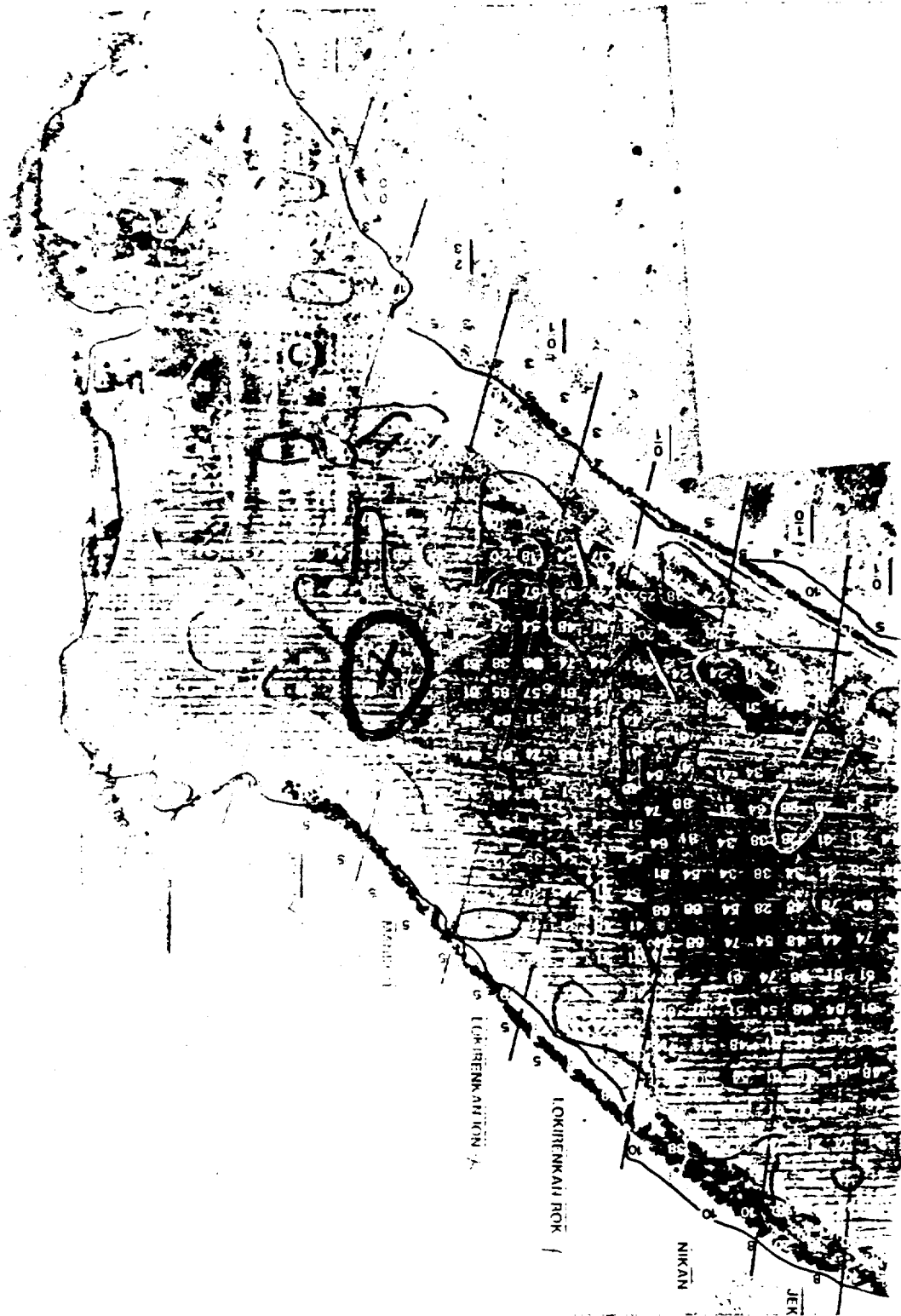
Affiant is willing to have physicians he chooses release results of examination of himself and his family to Dr. Conard and ERDA-AEC but affiant is not willing to entrust his or his family's health care to Dr. Conard or ERDA-AEC as affiant has a reasonable basis to believe, for the reasons set forth above, that Dr. Conard and other physicians employed by ERDA-AEC are concerned with ERDA-AEC and not with the Bikini People.

Subscribed and sworn to
before me this 7th day of October, 1975.


Notary Public
LILLIAN M. ANDREW, Notary Public
TRUST TERRITORY OF THE PACIFIC ISLANDS
MARSHALL ISLANDS DISTRICT
my commission expires on the
day of February, 1978.

PRIVACY ACT MATERIAL REMOVED

5052154



FFIDAVIT

TRUST TERRITORY OF THE)
 PACIFIC ISLANDS)
) ss
 MARSHALL ISLANDS DISTRICT)
)
 _____)

Affiants,

being duly sworn, state:

Each is a member of the People of Bikini and a named
 plaintiff in this action. Affiants are the
 Magistrate and Scribe, respectively, of the Bikini Council.

Affiants read and understand Marshallese but
 not English. Affiant speaks and reads both Marshallese
 and English.

Affiants have all read carefully the document titled,
 "Preliminary External-Dose Estimates For Future Bikini Atoll
 Inhabitants" dated August 6, 1975. That document has been
 translated into Marshallese by counsel for affiants and affiants
 have read it in Marshallese. Affiant
 has read it in both English and Marshallese.

Affiants have read with particular attention Table 2 of
 the document, appearing at page six of the English language version
 and at pages 10 and 11 of the Marshallese copy of the document.
 Affiants are advised by their counsel, George M. Allen of Micro-
 nesian Legal Services, that representatives of ERDA-AEC responsible
 for preparation of the document, particularly Paul H. Gudiksen,
 one of its authors and Roger Ray, have attributed the contents
 of Table 2 to interviews of the Enewetak People who have been
 removed to Ujelang Atoll and whose life-style was presumed by
 ERDA-AEC to be similar to anticipated future residents of Bikini
 Atoll.

PRIVACY ACT MATERIAL REMOVED

Affiants are advised by their counsel that ERDA-AEC representatives attributed the contents of Table 2 to the Enewetak Survey at meetings at Livermore, California on August 12, 1975 and in private conversations between Allen and Gudiksen and Ray in the Marshalls in September, 1975.

Affiants can state flatly that Table 2 bears no resemblance to any probable life-style of future Bikini residents. The estimates of time to be spent in the interior of the island are far too low and the estimates for time to be spent on the beaches and lagoon are far too high. Affiants understand clearly that these estimates have been used for computer analysis of probable external gamma radiation dose estimates and that the integrity of the conclusions in the document rests entirely on the validity of Table 2. In the judgment of affiants, Table 2 is utterly lacking in validity. It contemplates a life-style with an unrealistically high amount of time to be spent on the beach and lagoon, where external gamma radiation is apparently low and with an unrealistically low amount of time to be spent in the interior of Bikini Island, where radiation is extremely high.

Because we understand representatives of ERDA-AEC base Table 2 on Enewetak data (see footnote 1, page six, English version, specifically attributing the data to the Enewetak Survey), we compared Table 2 to the comparable material in the Enewetak Survey, set forth at page 33 of Volume I.

We find no valid resemblance between Table 2 and the contents of Table 4 at Volume I, page 33 of the Enewetak Survey. A photocopy of that Table is attached for comparison with Table 2, a copy of which is also attached.

For example, comparing women over age 20 in the August 6, 1975 Preliminary Bikini Estimates to women and children to age five from Table 4, Volume I, page 33 of the Enewetak Survey (based on data from Ujelang, the northern Marshalls Atoll where the Enewetak People now live), we note Bikini Table 2 contemplates women will spend only 15 percent of their time in the highly radioactive interior of Bikini Island whereas Table 4 of the Enewetak Survey estimates 95 hours per week, or about 55 percent of their time in the interior of Ujelang for the nearest comparable group, women and children to age five. Even if we add to the fifteen percent interior of island estimate in Table 2 the figures of 10 percent for "Within 10m of home" and another 10 percent for "Elsewhere in village", we reach a total of only 35 percent for Bikini compared to about 55 percent for the Enewetak comparable group.

We believe Table 4 of the Enewetak Survey, Volume I, page 33, represents a reasonably valid prediction of life-style for a resettled Bikini, based on our own personal knowledge of Marshallese living patterns.

We also understand clearly that if Table 4 of the Enewetak Survey had been used by ERDA-AEC in predicting External-Dose Estimates for Future Bikini Inhabitants the predicted doses would have been much higher.*

We know of no basis whatever for the assumptions set forth in Table 2. We do know, however, that reliance on data such as this could lead our people to acceptance of unknown and unreasonable risks of cancer and other genetic and health problems. We also know that we are competent to personally evaluate only a small part of the data in ERDA-AEC reports but that, based on the data we can evaluate, such as comparison of the Table discussed above, we have no basis for confidence in ERDA-AEC's reports or recommendations.

TRANSLATOR'S VERIFICATION

TRUST TERRITORY OF THE)
PACIFIC ISLANDS)
MARSHALL ISLANDS DISTRICT) SS
_____)

Robert R. Zachary, being first duly sworn,
states he is fluent in both English and Marshallese and that he
has carefully translated the foregoing Affidavits into Marshallese
and read the same to

Robert R. Zachary

Subscribed and sworn to
before me this 7th day of October, 1975.

PRIVACY ACT MATERIAL REMOVED

Lillian M. Andrew
Notary Public
LILLIAN M. ANDREW, Notary Public
TRUST TERRITORY OF THE PACIFIC ISLANDS
MARSHALL ISLANDS DISTRICT
my commission expires on the
____ day of _____, 19____

Table 2. Population breakdown by age and geographical living patterns.

	Infants and small children	Children and adolescents	Men	Women
Age bracket (years)	0-4	5-19	20+	20+
Fraction of population (%)	16	41	22	21
Fraction of time spent in respective areas (%):				
Inside home	50	30	30	30
Within 10 m of home	15	10	5	10
Elsewhere in village	5	10	5	10
Beach	5	5	5	5
Interior of island	5	15	20	15
Lagoon	0	10	10	5
Other islands	20	20	25	25

shown as area 3 in Fig. 4. As far as the external dose assessment is concerned, cases 5 and 6 are identical. Since the expected living patterns are most likely to differ between the various age groups, it is necessary to utilize the age distribution data presented in Table 2. These data were obtained from the 1974 census taken on Kili Island of the 784 persons who claim land rights on Bikini Atoll.⁴ The geographical living patterns, also shown in Table 2, were assumed to be similar to those expected for the returning Eneweak people.¹

Even though the gamma-ray exposure rates vary widely, it was necessary, for the purpose of the external dose calculations, to derive the most reasonable values of the mean exposure rates for each specific geographical area under consideration. These are shown in Table 3. The mean exposure rates for specific areas on Bikini Island were obtained by weighting the mean exposure rates within each contour interval with the area within the contour. Since the exposure rates on Eneu Island are relatively uniform, the mean exposure rates were chosen by inspection of Fig. 3. Since this survey did not include the other islands of the atoll, it was necessary to rely on data from previous surveys to determine the contribution the radioactivities of these islands make to the total population dose. Gamma exposure rate data reported by Bennett and Beck,⁷ Held,⁵ Lynch et al.,⁶ and by Smith and Moore⁸ and Robinson et al.⁹ were used for this purpose. Their results, in combination with a simplified area weighting scheme yielded the values presented in Table 3. It should be pointed out that these are rough estimates since the data are scattered and were collected over a span of almost ten years. The exposure rate over the lagoon was estimated to be 0.5 R/hr due to the cosmic ray contribution and an additional

trip to other parts of the lagoon takes place. Fishing in general will be discussed in a separate section.

Children up to the age of about 3-4 years spend most of their time around the village close to or inside their houses, under the supervision of their mother and older children. Children from about 4 years up to about 10-15 years spend their time in school and playing around the village between the ocean and lagoon.

At least half of the children's free time is spent playing on the lagoon beach and in shallow water; the remainder is about evenly divided among the village, surrounding forest, and ocean beach. Girls from about 12 to 15 perform many of the arduous household tasks, such as grating coconut or preparing breadfruit. Boys of this same age climb the coconut and breadfruit trees to harvest green "drinking coconuts" or ripe breadfruit.

School was not in session in July; they observe a June-to-September recess. Children start first grade at about 4 years and are required to attend through the eighth grade. School hours are 8-12 a.m. and 1-3 p.m. The school

is a one-room structure, and students sit on the floor. Subjects taught are English, mathematics, social studies, science, and physical education. Most eighth grade graduates can read and write Marshallese. If students wish to attend high school, they go to the district center at Majuro, and the official language is English. At about age 15, if they do not attend high school, children begin to assume more of the duties of adults.

Table 4 provides a rough estimate of the amount of time spent by men, women, and children in various locations. For dose-assessment calculations, hours per week is probably the best unit. Hours per day would carry a large standard deviation (~20-50%), while hours per month would be unnecessarily coarse, except for time spent off the main island. How these estimates would change for Enewetak is very difficult to predict. With the much larger and less protected lagoon there, transportation will have a strong influence. If reliable boats are available, the total time spent by men on the lagoon water and other islands would probably about double or triple, at the

Table 4. Time spent in various areas of the Ujilang Atoll.

Location	Men	Time, hr/wk	
		Women (children to age ~5)	Children (~5 to ~15)
Inside houses	60	60	60
Interior of island—outside	10	95	43
Lagoon beach	10	10	50
Lagoon water	5	0	7
Other islands	5	1	1
Ocean beach	3	2	7
Open sea	5	0	0

Natural Resources Defense Council, Inc.

917 15TH STREET, N.W.
WASHINGTON, D.C. 20005

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George M. Allen, Esquire
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Corporation
Post Office Box 376
Majuro
Marshall Islands 96960

Dear Mr. Allen:

This is in response to your letter of September 12, 1975. Several pages of my copy of the report on the Kili meeting are not legible. From what I can read I gather you have replaced Ted Mitchell on the case. Is this correct? Is Ted still Executive Director of the Micronesia Legal Services, as your letterhead indicates?

Enclosed is a copy of Table 3-1 taken from the National Academy of Sciences' BEIR Report (attached to a copy of the title page of the report). In order to make a similar evaluation for Bikini Atoll one must correct for differences in population and rate of exposure. For example, assume there will be roughly 1,000 people on the atoll (784 persons claim land rights on Bikini Atoll according to p.6 of the report by Gudiksen and Robison [your reference 1]) after the complete resettlement, and assume they are exposed at 0.2 rem/year (see Cases 2-4 in Table 4 of the ERDA August 6, 1975 Draft Report [your reference 2]). This does not

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September 19, 1975

George M. Allen, Esquire
Page 2
September 19, 1975

include the internal dose estimate. The correction needed to normalize to the Bikini exposure under these assumptions would be

$$\frac{1000}{2,000,000} \times \frac{0.2}{0.1} = 1/100,000$$

In other words, divide the entries in Table 3-1 by 100,000.

For reasons that are discussed in the enclosed report by Art Tamplin and me I believe you should use the upper limit estimate in Table 3-1 (i.e., the relative risk model - cases (b)). Under these assumptions you could expect about 9,078/100,000 = 0.09 cancers per year, or one cancer every 10 years as a result of this exposure.

You must also consider the genetic risk. The same BEIR Report estimated that the total incidence of all identified serious genetic diseases due to 5 rem per 30 year reproductive generation to the U.S. population would be between 1,100 and 27,000 per year at equilibrium. In addition, there would be an increase of between 0.5% and 5% in the ill health of the population. Since my Bikini assumption is equivalent approximately to 5 rem/generation to 1,000 people, the BEIR Report genetic effect estimate must be multiplied by

$$1,000/200,000,000 = 1/200,000$$

Thus, one could expect between 0.005 and 0.14 serious genetic effects per year, or up to 1 serious genetic effect every 7 years. Again, for reasons noted in the report by Tamplin and me the upper limit estimate should be used.

In summary, based on the assumptions I have made, the combined risk would be 1 cancer every 10 years and one genetic effect every 7 years plus a 0.5% to 5% increase in overall ill health.

George M. Allen, Esquire
Page 3
September 19, 1975

Depending on the case involved it may be appropriate to double this risk to include the internal radiation exposure resulting from the food chain. You can make the corrections for different assumptions about the dose rate and the number of people involved. The people of Bikini presented with this type of estimate should decide whether it is an acceptable level of risk. My own opinion is that it is too high, but its not my homeland.

In any event you should require the ERDA (and the other government) scientists to estimate the number of cancers and genetic effects rather than simply comparing the doses to the current radiation protection standards (which in my opinion are inadequate).

Sincerely,



Thomas B. Cochran

Enclosures

AFFIDAVIT

TRUST TERRITORY OF THE)
PACIFIC ISLANDS)
MARSHALL ISLANDS DISTRICT) SS
_____)

being duly sworn, states:

1. As shown by the Verified Complaint, the United States Energy Research and Development Administration (ERDA) has stated return to Bikini Atoll, is, under certain extreme conditions, acceptable for the People of Bikini.
2. Means of transportation, consisting of field trip ships of the Trust Territory, are presently available and in operation by which People of Bikini, or others, such as Contract workers, might in fact travel to and live at Bikini Atoll.
3. Notwithstanding ERDA's preliminary 1975 radiation findings and recommendation, a complete radiological survey may show all or part of Bikini Atoll, particularly Bikini Island, to be unsafe or unacceptably risky for long-term or permanent habitation on any practical basis, in which case any persons who move there may have to be again relocated, as may, in fact the persons presently residing on Bikini Island.
4. Unless this Court enjoins defendants from permitting movement of persons to Bikini Atoll, permanent and irreparable damage to those persons and to the Bikini People as a whole will result.
5. Notwithstanding this request for Preliminary Injunction certain persons, particularly elderly people, may wish to return to Bikini. If after explanation of the risks associated with such return they continue to wish to do so, they should be permitted to, and the defendants should, in those cases, which would

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PRIVACY ACT MATERIAL REMOVED

based on affiant's personal knowledge, number not more than three families and 20 total persons, agree to assume all liability for any and all future health care, shelter and nutritional needs of such persons because any present willingness to return of such persons has been abetted by the statements of representatives of ERDA.

6. Neither affiant nor most of the People of Bikini can read or understand English. Nevertheless the Bikini People are well-educated and virtually all adults read Marshallese.

7. Unless defendants are required to supply information to plaintiffs and the persons they represent in Marshallese, they will be unable to participate meaningfully in decisions relating to their Resettlement and they will necessarily be permanently and irreparably injured thereby.

8. Defendants have spent hundreds of thousands, if not millions, of dollars toward the Bikini Resettlement without any attempt whatever to comply with the National Environmental Protection Act and have, in the process disseminated misinformation and lies and wasted countless sums of money. Unless they are enjoined from further agency spending and contract spending on the Bikini Resettlement except with Court approval, further illegal conduct and irreparable injury is inevitable.

9. Communication with the Bikini People by representatives of ERDA has created a decade of heartbreak without any productive value whatever. Information communicated by ERDA representatives on technical matters has frequently been simplistic lies or half-truths calculated to serve the interests of ERDA or its predecessor, the United States Atomic Energy Commission, not the Bikini People. Irreparable harm has already been caused by this type of communication and unless it is enjoined except for such communication as has specific court approval or consent by plaintiffs, further irreparable harm will be inevitable.

10. Unless defendants are immediately ordered to commence preparation of a Draft Environmental Impact Statement in both

English and Marshallese, under direct court supervision as to agency spending and work assignments, plaintiffs' hopes of ultimate successful resettlement have no chance of success and the irreparable harm will continue.

The above statements have been translated into Marshallese and read to me and are true to the best of my knowledge.

Magistrate
Bikini Council

Subscribed and sworn to
before me this 24 day of October, 1975.

Lillian M. Andrew
LILLIAN M. ANDREW, Notary Public
TRUST TERRITORY OF THE PACIFIC ISLANDS
MARSHALL ISLANDS DISTRICT
my commission expires on the
17 day of February, 1976

TRANSLATOR'S VERIFICATION

TRUST TERRITORY OF THE)
PACIFIC ISLANDS)
MARSHALL ISLANDS DISTRICT)
_____)

SS

_____, being first duly sworn, states he is fluent in both English and Marshallese and that he has carefully translated the foregoing Affidavit into Marshallese and read it to Lore Kessibuki.

Subscribed and sworn to
before me this 24 day of October, 1975.

Lillian M. Andrew
Notary Public
LILLIAN M. ANDREW, Notary Public
TRUST TERRITORY OF THE PACIFIC ISLANDS
MARSHALL ISLANDS DISTRICT
my commission expires on the
17 day of February, 1976

PRIVACY ACT MATERIAL REMOVED

AFFIDAVIT OF HENCHI BALOS

STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

Affiant, being duly sworn on oath, deposes
and says:

Affiant is one of the persons in this action.

Affiant reads, writes and speaks both English and Marshallese.

Affiant was personally present at the meeting at Kili Island on September 4 and 5, 1975, at which a presentation was made to the People of Bikini by Representative Roger Ray and Paul Gudiksen, representatives of the United States Energy Research Development Administration.

A tape recording of the September 4-5, 1975 presentation at Kili Island was been made and reviewed, in part, by Affiant immediately prior to preparation of this affidavit.

The tape recording is in the possession of counsel for Plaintiffs and is believed by Affiant to be available to all parties.

Affiant has been furnished by counsel for Plaintiffs the documents which are attached to this affidavit as Exhibit "A", which documents were disseminated at the September 19, 1975 Interagency Meeting in Washington D. C., at which George M. Allen, Counsel for Plaintiffs, was personally present.

On the basis of the materials already set forth in the Verified Complaint, paragraphs 1 through 90, the Kili meeting, the Washington, D. C. meeting, and a news release by the United States Department of the Interior, Affiant has concluded that the following positions of the agencies which are Defendants in this case have been established:

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PRIVACY ACT MATERIAL REMOVED

1. ERDA believes the radiological surveys thus far performed at Bikini Atoll are inadequate and that an adequate radiological survey of the entire northern Marshalls is indicated, utilizing helicopters. The materials at the Washington meeting distributed by ERDA and attached hereto support this conclusion unequivocally.

2. ERDA believes, notwithstanding the fact that it has done only preliminary and admittedly inadequate radiological surveying, that under certain conditions, summarized in the materials attached hereto, permanent residence by the Bikini People on Bikini Island is practical and acceptable from a standpoint of exposure to radiation. Affiant, after review of all of the materials available to him, which constitute all of the materials available to any person whose only ^{language} ~~rank~~ which is Marshallese and some materials available only in English, disagrees with ERDA's conclusion that permanent residence on Bikini Island, subject to written restrictions, is an acceptable risk at the present time. Affiant hopes that a conclusion along those lines can be reasonably drawn after complete radiological survey of the Northern Marshalls.

However, Affiant does not believe such a conclusion can be drawn at the present time on the basis of information now available.

3. The Department of the Interior is apparently in agreement with Affiant, as it has taken the position since late August, 1975, after the August 12, 1975 Livermore, California meeting that the Bikini Resettlement must be halted pending completion of a complete radiological survey.

4. The Department of Defense, which has helicopters necessary for completion of a valid radiological survey, has not yet made those helicopters available and apparently will not do so unless some other agency pays it \$1.5 million or it is otherwise motivated to furnish the helicopters.

FURTHER AFFIANT SAYETH NAUGHT.

Subscribed and sworn to before me
this 9 day of October, 1975.

Karen S. Jones
Notary Public, First Judicial Court
State of Hawaii

My commission expires: 9-7-78

PRIVACY ACT MATERIAL REMOVED

Dr. [unclear]

9-19-75
Wash., D.C.

J. W. G.

A REVIEW OF PERSONNEL MONITORING AT BIKINI

As a result of the recent meeting at Kili by Trust Territory, ERDA and Micronesian Legal Service officials concerning restrictions on rehabilitation of Bikini it is apparent that there are several points of misunderstanding in the minds of the Bikini people concerning statements I have made regarding the radiological safety of Bikini. Before reviewing the radiological monitoring obtained on the people living at Bikini I would like to clarify some of the confusion. First, at the time of the Ad Hoc Committee meeting, the visit of the Trust Territory and AEC officials to Kili in 1968 and my visit to the island in 1969, the statements made about the radiological safety of Bikini were justified based on the survey data compiled at that time. Subsequent analyses of personnel monitoring data on the people living at Bikini showed low levels of radioactivity in the people confirming the original conclusions. In all sincerity, I disclosed this as additional assurance to the people living there. Based on these findings I would not hesitate to live in one of the houses on Bikini. I am sad about the statements a few people made about me at the Kili meeting. I have great friendship and respect for the people of Bikini and in no way and at any time have I tried to mislead them. From the beginning there were certain restrictions concerning rehabilitation of Bikini. It is only very recently that radiological survey data has made it necessary to impose further restrictions.

I would like to clear up another point of confusion regarding "medical" examinations. We have never done medical examinations on the Bikini people for possible radiation effects. The reason is that the radiation levels are so low that such examinations are not necessary. For this reason it is wrong for anyone to accuse us of using the people living at Bikini to study radiation

effects. Radiation there is too slight for medical studies to be of interest since no radiation effects would likely be detectable. The urine collection and measurements of the body for radioactivity are not medical procedures and are done by technicians. These measurements are important since they form the basis for reassurance of the people living on Bikini regarding their radiological safety. Though we are not doing medical examinations if our doctors are at Bikini, as in the past, we will always be glad to see, treat and prescribe for any people that are sick - but only at the request of the individual or the health aide. Unless requested by the people it is not even necessary for our doctors to go to Bikini.

In 1969 personnel monitoring procedures were begun on a group of 30 workmen at a work camp on Eneu Island. By 1972 about 3 Bikini families had moved back (about 50) and also about 25-30 workers and agriculturists. Radiological monitoring at Bikini has been carried out annually since 1969. The size of the population has not changed much since 1973.

In order to assess the radiological hazard the following personnel monitoring procedures have been carried out:

1. Radiochemical analyses on urine samples: (individual 24 hour and pooled samples). These analyses require complicated chemical procedures and are done for us by the ERDA Health and Safety Laboratory in New York City. Such radiochemical analyses have also been carried out on water and local food products.
2. Direct measurement of radiation in the people by gamma spectrographic analysis: To do this tons of radiation-free lead bricks were shipped to the Marshalls and a shielded counting facility set up in one of our air-conditioned trailers and transported to Bikini on our vessel (LCU-Liktankur).

The measurement of body radiation by such analysis is very sensitive and requires complex electronic equipment and personnel highly trained in electronics from Brookhaven National Laboratory.

3. Personnel exposure to gamma radiation: Gamma levels on the island were derived from data furnished by other radiological survey groups.

MONITORING DATA

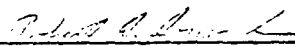
The results of the personnel monitoring data on people living at Bikini since 1969 are presented in the accompanying tables. The data on urine analyses are presented on Table I. Note that average pCi/liter for Bikini urine compared with Rongelap was for ^{90}Sr 2.5/3.8 and for ^{137}Cs 638/3260. Based on standard guide lines (International Congress of Radiation Protection - ICRP) these isotopes have been well below maximum permissible levels. Reassuring also is the virtual absence of plutonium in the samples. Levels for internally absorbed ^{137}Cs as measured by spectrographic analyses are presented in Table 2. Note the average values for males and females on Bikini compared with those on Rongelap (in nCi/pg body weight) was 1.4/6.4, again well below the maximum permissible levels. The graphs in figures 1 and 2 show that body burden (extrapolated) for ^{90}Sr and ^{137}Cs in the Bikini people are well below the peak values noted in the Rongelap people. The Rongelap people reached a peak of 6-11% of the maximum ^{90}Sr permissible level (for general populations) and of about 22% for ^{137}Cs . These low values for internally absorbed radionuclides is in accord with the fact that the people on Bikini have been subsisting mainly on imported foods. The contribution of gamma radiation to the people on Bikini is somewhat greater than on Rongelap.

Table 3 compares the total bone marrow dose (the critical organ for somatic radiation effects) for people living at Bikini, Rongelap, Utirik, Long Island, New York and Denver, Colorado. Since the people living at Denver have a considerably higher natural radiation and medical, dental contribution, the exposure to the people living there is probably higher than people living on Bikini. The estimated dose to people on Long Island is somewhat less than Bikini doses, also it might be noted that many thousands of people living in areas of South America and India are exposed to higher levels than indicated for Bikini due to high thorium content of the soil. There have been no reports of increased cancer or other illness in Denver or these other high level populations that might be related to their increased radiation exposure.

More recent data from radiological surveys last June at Bikini showing higher than expected radiation levels in the interior of Bikini and higher levels in pandanus and breadfruit have resulted in some further restrictions on the future living patterns of the Bikini people. At the time of the Ad Hoc Committee meeting it was not known about plans for building houses in the interior of Bikini Island. Recommendations to put the first village and food crops on Eneu were not followed, nor was the recommendations to remove topsoil from planting sites of pandanus and breadfruit on Bikini followed. The recommendation for the addition of powdered milk to the diet of the people is being implemented. The restriction regarding consumption of pandanus and breadfruit may eventually be removed following investigation on growth of these plants at Eniwetak. Table 4 shows results of analyses of water samples from Bikini. Based on these findings the well water is in the permissible range. Catchment (rain) water is very low in activity. With the

construction of new cisterns and mending of leaking ones there should be ample catchment water for drinking and cooking. Consumption of marine life offers no radiation problem. Coconut crabs (see Table 5) appears to be high enough in activity to be avoided. They are quite scarce in any event. Further analyses of local products (pigs, chickens, vegetables, etc.) have not been completed. However, it is reassuring that the present consumption of available local foods and ground water based on these findings, have not raised body burdens of radionuclides above the low levels reported.

The direct measurement of radiation levels in the people living on Bikini is the critical test of radiological safety. The exposure of the people there, based on the present living pattern, are in the permissible range and as pointed out lower than some other communities in the world. As was pointed out radiation exposure is so low on Bikini that medical effects would not be discernable in this population (see ERDA letter of June 27, 1974 from Mr. J. Liverman to Mr. Chips Barry for estimated effects). We believe that continuation of personnel monitoring is important, however, to maintain a close check on the radiological status of the people. Also negative findings are important reassurance for the people living there.


Robert A. Conard, M.D. Sept. 19, 1975

RAC:lm

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TABLE 1

Radiochemical Analyses of Coconut Crabs From Bikini (Data in pCi wet weight)

Year	Wet wt., g	% Ash	g Ca per kg wet wt.	⁹⁰ Sr	¹³⁷ Cs	²³⁸ Pu	²³⁹ Pu
1970	1164	23.3	81	23,000	11,000	0.06 ± 50%	1.5 ± 10%
	1930	18.5	61	23,000	13,000	0.001 ± 100%	0.07 ± 37%
1971	1812	17.8	60	132,000	11,400		
	1827	21.5	72	412,000	8,600		
1973	1190		63.5	45,700	9,200		
				$\bar{X}(23,360)$	$(15,77)$		

TABLE 2

Radiochemical Analyses of Well Water From Bikini (Data in pCi/liter)

Year	Sample	Vol., ml	⁹⁰ Sr *	¹³⁷ Cs **	PH	²³⁸ Pu
1971	"good well"	1830	6.0 ± 17%	600 ± 1%	770 ± 40%	0.04 ± 20%
	"bad well"	1830	25 ± 3%	850 ± 1%	1040 ± 30%	0.05 ± 20%
	"good well" (closed)	1810	103 ± 2%	1044 ± 1%		0.058 ± 20%
	"good well" (opened)	1980	125 ± 3%	818 ± 1%		5.76 ± 10%
	drinking water (camp area)	3580	0.46 ± 4%	1.53 ± 8%		0.004 ± 10%
1972	well water	1000	15.4 ± 9%	800 ± 1%		
	drinking water	1950	0.61 ± 6%	1.8 ± 8%		
1973	new well	60	32	600		0.38 ± 10%
	B-1 well	225	11	724		0.08 ± 10%

* MPC 4×10^{-6} $\mu\text{Ci}/\text{ml}$
 ** MPC 2×10^{-6} "

TABLE III

Estimated Dose to Bone Marrow (mrem/yr)*

SOURCE	USA					
	BIKINI	ENEU	RONGELAP	UTIRIK	DENVER	LONG ISLAND
Natural	80	80	80	80	325**	190
Medical - Dental	0	0	10	10	70	70
Contamination						
Gamma	165	7	20	7		
Internal	21	21	68	31		
TOTAL	266	108	178	128	395	260

* Dose on Marshall Islands based on personnel and environmental data collected to date

** As high as 480.

TABLE 4

Radiochemical Analyses of Urine (Data in Average $\mu\text{Ci/liter}$)

Year	No. in group	Average, ml	Average, $\mu\text{Ci/liter}$	^{90}Sr	^{137}Cs	^{239}Pu	^{240}Pu	^{241}Pu
<u>U.S.S.R.</u>								
1970	20	393.5	152.4	3.5	2700.			
1971	15	544.5	336.1	3.7	2400.			
1972	18	160.8	120.3	2.4	2600.			
1973	11	249.6	247.2	6.5	4600.			0.21
1974	14	557.9	706.8	2.8	4500.			
<u>U.S.S.R.</u>				<u>2.8</u>	<u>4500.</u>			
1974	11	542.5	734.9	1.3	1300.			
<u>Bikini</u>								
1970	2 pooled		120.0	1.2	0115.	0.003	0.003	
	Urine G	1100.0		2.2		0.013	0.020	
	Urine M	950.0		1.9		0.015	0.024	
	HASL* control	3600.0	160.0	1.0	0012.	0.003	0.003	
	HASL control	1000.0		1.6		0.014	0.022	
1971	Pooled	2670.0	84.5	1.7	0183.			0.004
1972	Pooled	2700.0	204.0	1.2	0910.			
1973	14	253.9	173.5	6.7	1500.			
1974 (Spring)	11	141.4	310.0	2.0	1100.			0.02
				<u>2.5</u>	<u>1100.</u>			

*USABC Health and Safety Laboratory, New York, N.Y.

TABLE 5

Mean Cesium-137 Levels Obtained by Whole-Body Counting, 1974

	Male			Female		
	No.	nCi	nCi/kg body wt.	No.	nCi	nCi/kg body wt.
Bikini	8	128	9.4 (0.43-5.11)	13	73	1.15 (0.22-4.26)
Utirik	9	262	4.05 (2.64-6.44)	13	133	2.13 (0.96-3.65)
Rongelap	22	475	7.76 (4.37-16.3)	24	304	5.13 (2.71-13.46)
BNL med. team	4	293	0.0352 (0.0134-0.0791)			

* MPC 43 nCi/kg.

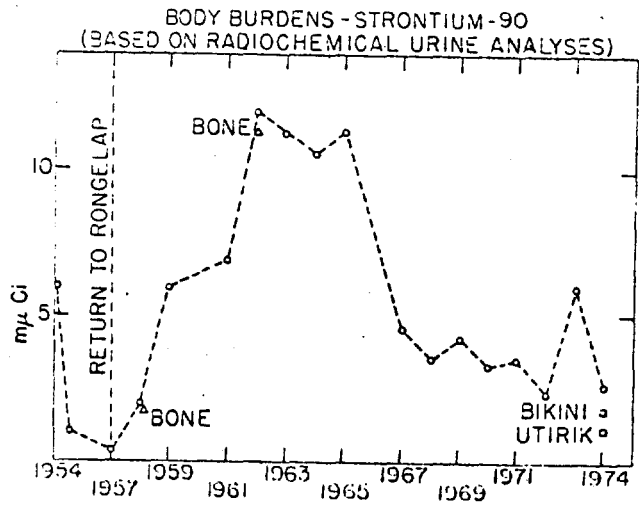


Fig. 1

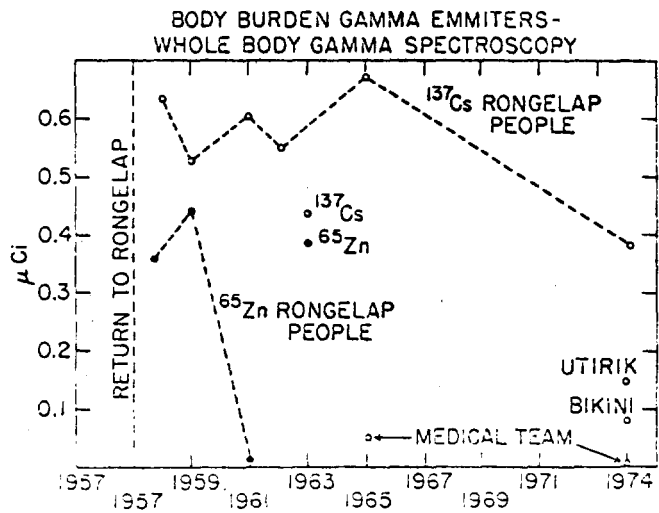


Fig. 2

from Lonsdale
7-19-75
Wash. D.C.

TABLE 1.

Radiochemical Analyses of Coconut Crabs From Bikini (Data in pCi wet weight)

Year	Wet wt. g	% Ash	g Ca per kg wet wt.	⁹⁰ Sr	¹³⁷ Cs	²³⁸ Pu	²³⁹ Pu
1970	1164	23.3	81	21,000	11,300	0.06 ± 50%	1.5 ± 100%
	1900	18.5	61	21,000	14,300	0.001 ± 100%	0.07 ± 37%
1971	1312	17.8	60	132,000	11,400		
	1827	21.5	72	112,000	8,600		
1973	1190		63.5	45,700	9,290		

Σ(23,360 - 10,178)

TABLE 2.

Radiochemical Analyses of Well Water From Bikini (Data in pCi/liter)

Year	Sample	Vol., ml	⁹⁰ Sr**	¹³⁷ Cs**	Th	²³⁸ Pu/ ²³⁹ Pu
1971	"good well"	1000	6.0 ± 17%	660 ± 1%	770 ± 40%	0.01 ± 27%
	"bad well"	1000	25 ± 3%	850 ± 1%	1040 ± 30%	0.05 ± 20%
	"good well" (closed)	1000	103 ± 2%	1014 ± 1%		0.658 ± 15%
	"good well" (opened)	1000	125 ± 3%	818 ± 1%		5.76 ± 6%
	drinking water (camp area)	5000	0.46 ± 4%	1.33 ± 8%		0.004 ± 100%
1972	well water	1000	15.4 ± 9%	800 ± 1%		
	drinking water	1000	0.61 ± 6%	1.8 ± 8%		
1973	new well	60	52	600		0.38 ± 40%
	B-1 well	225	11	724		0.08 ± 30%

** MPC 4×10^{-6} μ Ci/ml
*** MPC 2×10^{-6} "

TABLE III

Estimated Dose to Bone Marrow (mrem/yr)*

SOURCE	USA					
	BIKINI	ENEU	RONGELAP	UTRIK	DENVER**	LONG ISLAND
Natural	80	80	80	80	325**	190
Medical - Dental	0	0	10	10	70	70
Contamination Gamma	155	7	20	7		
Internal	21	21	68	31		
TOTAL	256	198	178	128	395	260

* Dose on Marshall Islands based on personnel and environmental data collected to date

** As high as 490.

TABLE 4
Radiochemical Analyses of Urine (Data in Average $\mu\text{Ci}/\text{liter}$)

Year	No. in group	Avg. vol., ml	Avg. Ca, mg/liter	^{90}Sr	^{137}Cs	^{239}Pu	^{240}Pu	^{241}Pu
<u>Rongelap</u>								
1970	20	395.5	152.4	3.5	2700.			
1971	15	534.5	336.1	3.7	2100.			
1972	18	460.8	120.3	2.4	2600.			
1973	11	249.6	217.2	6.5	4600.			0.21
1974	14	557.9	706.8	2.8	4500.			
				<u>3.5</u>	<u>3360</u>			
<u>Utirik</u>								
1974	11	542.5	734.9	1.3	1300.			
<u>Bikini</u>								
1970	Pooled		120.0	1.2	0115.	0.003	0.003	
	Urine G	1100.0		2.2		0.013	0.020	
	Urine M	930.0		1.9		0.015	0.024	
	HASL* control	3000.0	160.0	1.0	0012.	0.003	0.003	
	HASL control	1000.0		1.6		0.014	0.022	
1971	Pooled	2670.0	84.5	1.7	0183.			0.004
1972	Pooled	2700.0	204.0	4.2	0910.			
1973	14	293.9	173.5	6.7	1500.			
1974	11	141.4	310.0	2.0	1100.			0.02
(Spring)				<u>2.5</u>	<u>628</u>			

*US AEC Health and Safety Laboratory, New York, N.Y.

TABLE 5
Mean Cesium-137 Levels Obtained by Whole-Body Counting, 1974

	Male			Female		
	No.	nCi	nCi/kg body wt.*	No.	nCi	nCi/kg body wt.*
Bikini	8	128	2.8 (0.43-5.11)	13	73	1.15 (0.22-3.26)
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SNL med. team	4	2.93	0.0352 (0.0134-0.791)			

* MPC 43 nCi/kg.

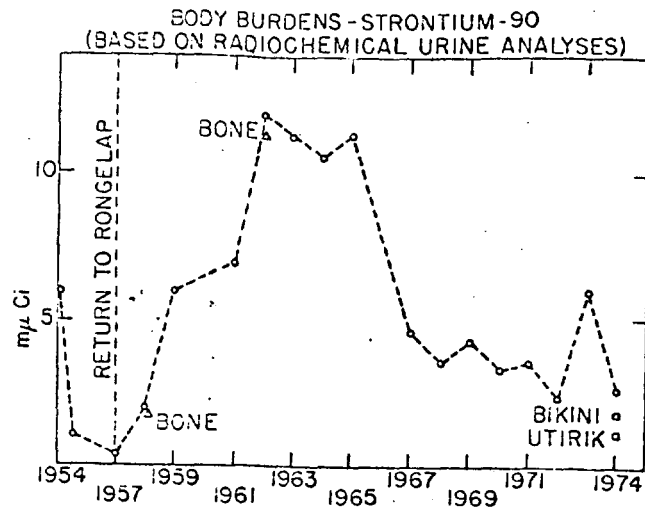


Fig. 1

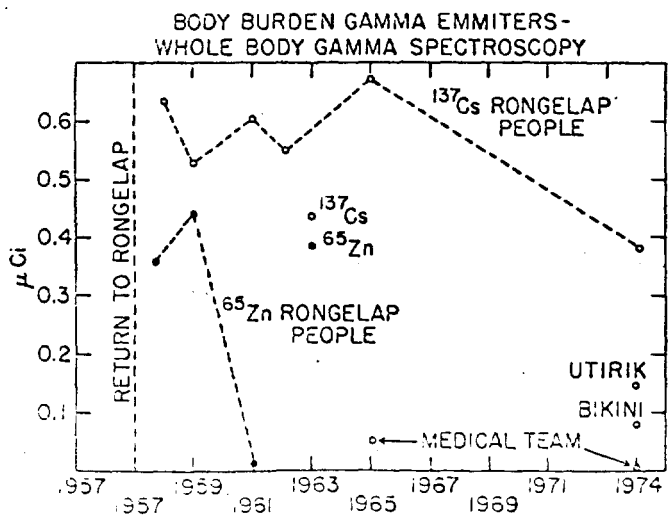


Fig. 2

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Exhibit
A,
cont.

CONCLUSIONS

1. PEOPLE LIVING ON BIKINI ISLAND MAY RECEIVE A RANGE OF EXPOSURE ABOVE AND BELOW THE STANDARDS DEPENDING WHERE THEY LIVE AND THE SOURCE OF CERTAIN FOODS THEY EAT.
2. EXPOSURE ESTIMATES FOR PEOPLE LIVING IN THE INTERIOR OF BIKINI ISLAND ARE HIGHER THAN FOR LIVING IN THE PRESENT 40 HOUSES.
3. GROWING ALL FOODS ON BIKINI ISLAND GIVES DOSE ESTIMATES ABOVE THE ANNUAL STANDARDS FOR BOTH WHOLE-BODY AND BONE MARROW AND WELL ABOVE THE 30-YEAR STANDARD FOR WHOLE-BODY.
4. IMPORTING A NUMBER OF FOODS THAT ARE A NORMAL PART OF THE DIET OR GROWING THESE FOODS ON ENEU ISLAND IS REQUIRED TO REDUCE DOSE ESTIMATES FOR THE 40 HOUSES TO LEVELS BELOW THE STANDARDS.
5. IMPORTING ALL FOOD IS REQUIRED TO BRING DOSES WITHIN THE STANDARDS FOR HOUSES IN THE INTERIOR OF BIKINI ISLAND.
6. LIVING ON ENEU ISLAND AND GROWING ALL FOODS THERE GIVES DOSE ESTIMATES WELL BELOW THE RADIATION STANDARDS FOR BOTH ANNUAL AND 30-YEAR DOSES. NO RESTRICTIONS ON USE OF LAND OR ON FOOD GROWN ON THE ISLAND ARE NEEDED FOR ENEU.

RECOMMENDATIONS

1. NO ADDITIONAL HOUSES SHOULD BE CONSTRUCTED IN THE INTERIOR OF BIKINI ISLAND OR ALONG THE LAGOON ROAD. THE EXISTING HOUSES ALONG THE LAGOON ROAD MAY BE OCCUPIED IF CERTAIN RESTRICTIONS ARE FOLLOWED.
2. THE ADDITIONAL HOUSES AT BIKINI ATOLL SHOULD BE CONSTRUCTED ON ENEU ISLAND. ENEU ISLAND SHOULD BE THE POPULATION CENTER OF THE ATOLL FOR THE INDEFINITE FUTURE.
3. COMMUNITY FACILITIES PLANNED FOR THE VILLAGE AREA AT BIKINI ISLAND MAY BE CONSTRUCTED TO SERVE THE NEEDS OF THE PEOPLE WHO WILL OCCUPY THE EXISTING HOUSING THERE. HOWEVER, ADDITIONAL FACILITIES SHOULD BE CONSTRUCTED ON ENEU ISLAND, INCLUDING ANY WHICH ARE DESIGNED TO SERVE THE ENTIRE BIKINI-ENEU POPULATION.
4. RESTRICTIONS SHOULD BE PLACED ON USE OF CERTAIN LOCAL FOODS FROM BIKINI ISLAND. THESE RESTRICTIONS ARE AS FOLLOWS:
 - A. FISH, BIRDS, BIRD EGGS -- NO RESTRICTIONS.
 - B. COCONUT -- NO RESTRICTIONS.
 - C. PANDANUS GROWN ON BIKINI ISLAND SHOULD NOT BE USED.
 - D. BREADFRUIT GROWN ON BIKINI ISLAND SHOULD NOT BE USED.
 - E. PIGS AND CHICKENS -- NO RESTRICTIONS PENDING ANALYSIS OF SAMPLES.

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- F. COCONUT CRABS MAY BE EATEN ONLY FROM ENEU, AERKIJ, AERKIJLAL, AND BIGIREN ISLANDS.
- G. OTHER FOODS SUCH AS BANANA AND PAPAYA GROWN ON BIKINI ISLAND SHOULD NOT BE USED UNTIL THEY HAVE BEEN ANALYZED AND DECLARED ACCEPTABLE.
- 5. NO RESTRICTIONS ARE NEEDED ON ANY FOOD ITEMS GROWN ON ENEU ISLAND.
- 6. CRUSHED CORAL GRAVEL AROUND THE HOUSES RESULTS IN A REDUCTION OF EXTERNAL EXPOSURE RATES. THIS PRACTICE SHOULD BE MAINTAINED AT ALL HOUSES AND COMMUNITY FACILITY LOCATIONS ON BIKINI ISLAND.
- 7. LENS WATER ON BIKINI AND ENEU ISLANDS SHOULD BE USED FOR AGRICULTURE ONLY. ALTHOUGH IT IS NOT EXPECTED THAT ANY PERMANENT RESTRICTION WILL BE NEEDED ON USE OF ENEU WATER FOR COOKING AND DRINKING, A FINAL STATEMENT TO THIS EFFECT MUST AWAIT LABORATORY ANALYTICAL RESULTS EXPECTED IN OCTOBER 1975.

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NEED FOR DETAILED SURVEYS

BEFORE SURVEYS USING GOOD TECHNOLOGY

MODERN TECHNOLOGY IDENTIFIES SPECIFIC ISOTOPES

• IDENTIFY SOURCE OF METAL SURVEY

• LOCATION OF HOUSES AND CROPS

• ADDRESS USE TO MAKE ELEMENTAL SURVEY

• REQUIRE FOR SOURCE OF BRAVO FALLOUT ISLANDS

• LEGAL TERRITORY OR OF TRUST AGREEMENT

• OBLIGATION TO DOCUMENT CONDITIONS

NEED FOR DETAILED SURVEYS

Exhibit A, cont.

PROBLEMS IN THE PACIFIC OCEAN REGION

1. RADIOACTIVE FALLOUT THROUGHOUT PACIFIC ISLANDS.
2. RADIATION HAZARD TO NON-INDIGENOUS PEOPLE.
3. MAINTAINING RADIATION LEVELS OF BIRDS AND FRESHWATER PEOPLE.
4. ... AND ... (C. SHIPS).
5. CONSEQUENCES OF RADIATION LEVELS IN FRESHWATER ORGANISMS.
6. RADIATION IN ... (COPRA) AND COPRA PRODUCTS.

AFRICAL RADIOLOGICAL SURVEY

HASTEN

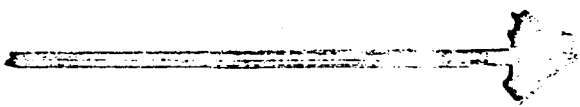
CHEAPER

RESEARCH DEPARTMENT OF COMMERCE
CONTOURS

ISOTOPIC DEFINITION

COMPREHENSIVE COVERAGE OF ISLANDS AND REEFS

CONFORM AUTOMATICALLY TO



FALLOUT PATTERNS

BRavo ELEMENT ~15 MI
MARCH 1, 1954

BIKAR ATOLL ISLAND

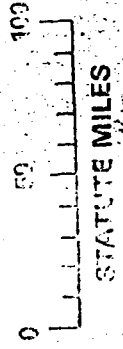
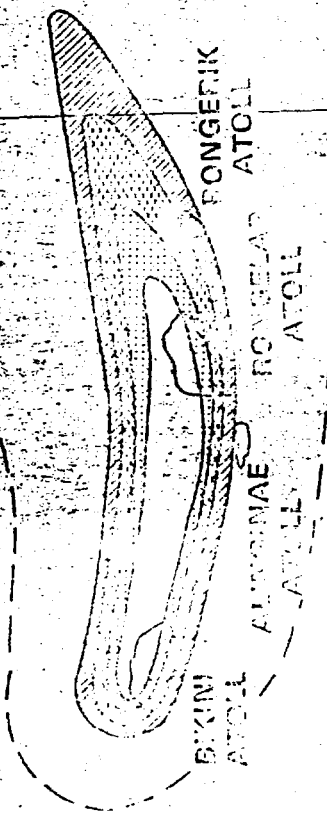
UTIRIK ATOLL
TAKA UTIRIK
ATOLL ISLAND

FONGERIK
ATOLL

RONGELAP
ATOLL

ALBOMAE
ATOLL

BIKINI
ATOLL



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FALLOUT FROM PACIFIC TESTS

EVENT	LOCATION	DATE	ISLANDS AND ATOLLS IN FALLOUT AREA
SANDSTONE - ZEBRA	ENIWETOK	5/43	AILINGINAE, RONGELAP, RONGERIK
IVY - KING	ENIWETOK	11/52	UJELANG
CASTLE - BRAVO	BIKINI	2/54	AILINGINAE, RONGELAP, RONGERIK, TAKA, LIKIEP, UTIRIK, BIKAR, WOTHO, JEMO, AILUK
CASTLE - UNION	BIKINI	4/54	AILINGINAE, RONGELAP, RONGERIK
CASTLE - YANKEE	BIKINI	5/54	AILINGINAE, RONGELAP, RONGERIK, BIKAR
HARDTACK - MAGNOLIA	ENIWETOK	5/58	UJELANG
HARDTACK - MAPLE	BIKINI	6/58	AILINGINAE, WOTHO