

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.

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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.

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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.

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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 ^{DOE ARCHIVES} 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.

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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

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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.

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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. **BEST AVAILABLE COPY**

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

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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.

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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

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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.

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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.

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The People of Bikini have a strong desire to

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.

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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.

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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.

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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

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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

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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

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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.

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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.

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IX. 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.

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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 DOE ARCHIVES 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. **BEST AVAILABLE COPY**

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. **BEST AVAILABLE COPY**

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 **DOE ARCHIVES** 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.

Respectfully submitted,

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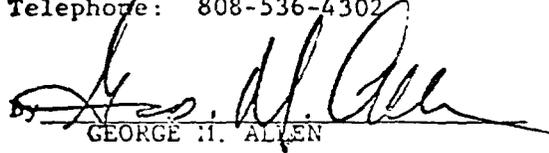
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