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June 8, 1954

AEC 620/11
COPY NO.

ATOMIC ENERGY COMMISSION

PAYMENT OF CLAIMS OF MARSHALL ISLAND INHABITANTS

Note by the Secretary

The attached letter to the Secretary of Defense is circulated for the information of the Commission.

ROY B. SNAPP
Secretary

AEC
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Carl Wilson 3/22/84
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H.R. Schmidt 7/1/85
By: W. Trench 3/17/86

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6-8-54

My check paid to the Secretary of Defense

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UNITED STATES
ATOMIC ENERGY COMMISSION
WASHINGTON 25, D. C.

May 28, 1954

Dear Mr. Secretary:

Early in the current series of tests being conducted by Joint Task Force SEVEN at the Pacific Proving Grounds, it became necessary, because of radioactive fall-out, to evacuate the natives living on two of the Marshall Islands. We anticipate that claims will be received from some of these natives alleging personal injuries based on exposure to radiation and alleging other damages such as loss of profits which they would otherwise have realized from sale of copra. Expeditious settlement of meritorious claims which may be made by these natives is considered highly desirable in order to mitigate adverse international reaction to United States test activities in the Marshall Islands.

The Atomic Energy Commission has no special statutory authority which enables it to settle claims arising out of weapons test activities; like most other Government agencies, the Commission considers and settles claims under the authority of the Federal Tort Claims Act. However, the Federal Tort Claims Act specifically excludes from its coverage claims "arising in a foreign country". In view of the decision of the U. S. District Court in Brunell v. U. S., 77 F. Supp. 68 (1948), it seems reasonably clear that the Marshall Islands, though administered by the United States under a trusteeship agreement with the United Nations, must nevertheless be considered a "foreign country" within the meaning of this exception to the Federal Tort Claims Act. Consequently, the Commission is not in a position to settle any claims which may be received from natives of the Marshall Islands arising out of test activities at the Pacific Proving Grounds.

Although the Commission does not have authority to settle claims of the kind here involved, informal staff discussions with representatives of the Department of Defense indicate that the Department of Defense may have such authority. The Foreign Claims Act, 31 U.S.C.A. §224d, authorizes the military departments to settle claims not in excess of \$5,000 on account of property damage or personal injury to inhabitants of a foreign country, arising in such foreign country, where the damage or injury is caused by United States military forces or is incident to non-combat activities of such forces. On the basis of language contained in the Brunell case, it appears to us that the Marshall Islands would properly be considered a "foreign country" within the meaning of the Foreign Claims Act. It also seems that claims by natives of these Islands for either personal injuries or property damage arising out of test activities conducted by Joint Task Force SEVEN would meet the various other qualifications set forth in the Foreign Claims Act.

If it is concluded by the Department of Defense that the Foreign Claims Act is applicable to this situation, it will be appreciated if you will take such steps as you may consider

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necessary to authorize the appropriate service to consider and settle claims by natives of the Marshall Islands for personal injuries or property damage arising out of Joint Task Force activities pertaining to atomic tests.

Sincerely yours,

/s/

Lewis L. Strauss
Chairman

The Honorable Charles E. Wilson
Secretary of Defense

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