

STATEMENT OF JONATHAN M. WEISGALL
LEGAL COUNSEL TO THE PEOPLE OF BIKINI
BEFORE THE HOUSE APPROPRIATIONS COMMITTEE
SUBCOMMITTEE ON INTERIOR

May 1, 1985

Mr. Chairman and Members of the Subcommittee:

Thank you for providing the people of Bikini an opportunity to testify before you today. With me today are Mayor Tomaki Juda, Natnan Note, Johnny Johnson, Kethaesar Jibas, Senator Henchi Balos, and Ralph Waltz.

I. Cleanup of Bikini Atoll

One year ago today, the people of Bikini filed suit in federal court in Honolulu seeking an injunction to require the executive branch of the U.S. Government to clean up Bikini. Seven weeks ago, in this hearing room, the Bikinians and the United States amicably settled that lawsuit, as the Government stated in a settlement agreement that the "United States views with favor the rehabilitation and resettlement of Bikini Atoll by the people of Bikini and pledges to the people of Bikini to use its best efforts to facilitate the steps necessary to achieve these objectives."

Under the settlement agreement, a copy of which is attached to my testimony as Exhibit A, the United States has agreed to provide funds under Article VI of the Section 177 Agreement to the Compact of Free Association to assist the Bikinians in

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resettling Bikini Atoll. Furthermore, "the United States intends that these funds be used for resettlement activities which, to the maximum extent practicable, contribute to the rehabilitation of Bikini Atoll, and especially Bikini Island." Under the agreement, the availability of these funds depends upon the following conditions:

1. Submission of a final report to Congress by Professor Konn's Bikini Atoll Rehabilitation Committee;
2. Acceptance by the Bikinians of this final report; and
3. The development of a plan by the United States, in consultation with the people of Bikini and based to the maximum extent practicable on the final report, for the use of these funds.

In addition, the Compact must be in effect, since it constitutes the funding source, and Congress must appropriate the funds requested by the executive branch.

As you know, the Bikinians have sought a cleanup of their atoll since their second removal in 1978, and this historic agreement represented a breakthrough in U.S.-Bikinian relations. Mayor Juda, speaking for the Bikini community, stated: "We

look forward to working together with the United States to restore Bikini so that we can finally return home." Similarly, James Berg of Ambassador Zeder's Office for Micronesian Status Negotiations stated: "This marks a real shift and an important one in the position of the Bikinians and also of us. It marks the beginning of a cooperative attitude where previously there had been litigation and a very negative atmosphere."

It is obviously premature for the Administration to seek these rehabilitation funds, since the Compact has not yet passed Congress and Professor Kohn intends to submit more reports. But this raises two key questions. First, assuming the Compact passes, from what appropriations committee will the Administration seek these funds? Since the Administration has sought to fund the Compact out of the State Department's budget, does it intend to switch its appropriations requests from this appropriations subcommittee to the subcommittee on Commerce, Justice and State? If so, this hearing may constitute this subcommittee's last opportunity to commence funding for the cleanup of Bikini.

Second, when will Professor Kohn submit a "final report," or at least a report the Administration can use for a definitive estimate of the rehabilitation and resettlement costs? The Bikinians believe that Professor Kohn's November 15, 1984 "Report No. 1" constitutes just such a report. Indeed, Professor Kohn's

Interim Report of November 23, 1983, stated (page 8) that his committee "will present its final report in 1984 on feasibility and cost," and Professor Kohn stated in his prepared testimony to you last year: "Our final report will be ready in . . . 1984, as scheduled." (Part 11, Interior and Related Agencies Appropriations for 1985 at p. 346.)

While Professor Kohn's 1984 report provides a careful analysis of the cleanup costs and techniques, it appears that more research is needed. The Bikinians, of course, want the scientific work to move forward, but they are concerned that this scientific research may go on for years and years before a commitment is made to fund a cleanup.

Although it is difficult today to predict exactly how long it will take to clean up Bikini Atoll or the precise cost, two facts are clear. First, Eneu Island, the second largest in the atoll, is safe now. Second, the cleanup of the atoll will have to proceed in stages, and the logical place for a base camp is Eneu, given its size, radiological safety and 5000-foot airstrip.

For these reasons, the Bikinians urge this subcommittee to add \$14.4 million to the FY 1986 budget to begin the first stage of the cleanup of Bikini Atoll with the establishment of a base

camp at Eneu and logistical support for the cleanup. The cost breakdown is as follows:

<u>Item</u>	<u>Cost</u>
1. Permanent piers on Eneu and Bikini (3,500 square feet each)	\$2,800,000
2. Purchase and reconditioning of a floating pier (used Navy YFU) for use during rehabilitation	\$335,000
3. Base camp	\$1,083,000
a. Maintenance shop (3,500 square feet)	\$105,000
b. Construction office	\$42,000
c. Work crew, scientific, engineering and supervisory quarters and dining facilities	\$936,000
4. Electric power and desalination plant	\$1,300,000
a. 2-600 KW diesel generators and building	\$700,000
b. Desalination plant	\$300,000
c. Power distribution	\$200,000
d. Water storage	\$100,000
5. Rehabilitation of Eneu coconut groves	\$500,000
6. Rehabilitate Eneu airstrip and apron	\$2,600,000
a. Rehabilitate airstrip 5000' x 150'	\$2,500,000
b. Seal coat apron	\$100,000
7. Water catchment system for Bikini and Eneu using airstrip and apron	\$825,000
a. 5 million gallon storage	\$400,000
b. Piping 15,000 linear feet from Eneu to Bikini	\$350,000
c. Pumps and sump	\$75,000

8. Study to inventory condition of sunken vessels and cable at Bikini lagoon and to determine the identity and location of the sunken vessels, the condition of the oil and ordnance on the ships, and the salvageability of this material, taking into account radiation levels in the lagoon and possible hazards associated with unexpended ordnance and the possibility of oil spills	\$300,000
9. Health physics program	\$600,000
10. Mobilize equipment and crew	<u>\$750,000</u>
Subtotal	\$11,093,000
11. Design and program management 13%	<u>\$1,443,000</u>
Subtotal	\$12,536,000
12. Contingence at 15%	<u>\$1,880,000</u>
TOTAL	\$14,416,000

I would also propose, along the terms of the settlement agreement, that these funds be appropriated through the Interior Department to the Bikini/Kili/Ejit Local Government Council, which would select a program manager, fiscally responsible to the Interior Department, to carry out the project. I think that anyone involved in the Enewetak cleanup, including the members of the National Academy of Science committee that conducted a post facto study of the project, would conclude that private sector control of the cleanup of Bikini would result in substantial savings of time and money.

The people of Bikini view an Eneu base camp as the first step in the cleanup of Bikini Atoll. They have stated repeatedly, and they continue to maintain, that they want the entire atoll cleaned up, but they recognize that the logical first step is to set up a base camp at Eneu.

II. Resettlement Trust Fund

The Resettlement Trust Fund for the People of Bikini, passed by Congress in 1982 under P.L. 97-257, provides funds "for the relocation and resettlement of the Bikini people in the Marshall Islands, principally on Kili and Ejit Islands." The Bikini people, as you know, have been living "temporarily" on Kili for nearly 37 years, and they do not want to wait on Kili any longer. Recognizing that a cleanup of Bikini could take as long as ten years, the people have concluded, as a group, that they would like to resettle temporarily on Maui in the State of Hawaii until such time as it is safe for them to return to Bikini. They therefore asked this subcommittee, which proposed the legislation establishing the Resettlement Trust Fund, to amend the language of P.L. 97-257 to permit resettlement outside the Marshall Islands until such time as Bikini is deemed safe for resettlement.

Your subcommittee then asked the Interior Department to conduct a study of a temporary relocation to Maui. The Bikini people are pleased that this study, which presents an accurate picture of the situation, reports that the Interior Department

"does not object to the request from the people of Bikini that Congress authorize the utilization of the Trust Fund outside the Republic of the Marshall Islands" provided that such revision does not change the requirement of Interior Department approval of distributions of income in excess of \$50,000.

The Bikinians again urge your subcommittee to amend P.L. 97-257 to permit them to use Resettlement Trust Fund corpus or income to resettle outside the Marshall Islands pending the rehabilitation of Bikini Atoll. This amendment would involve no new expenditure of federal funds, since the trust fund was established under 1982 funding.

III. Food Assistance

As matters stand now, the U.S.D.A. food program for the people of Bikini will cease on the effective date of the Compact, unless the Marshall Islands Government requires the United States to continue the program on a reimbursable basis. There is no indication that the Marshalls Government will make this request.

The U.S.D.A. food program should continue in the post-Trusteeship period. Professor Kohn's studies have assumed the ongoing availability of imported food at Bikini, so this type of program will be needed when people return to Bikini Atoll to live. Moreover, Kili and Ejit cannot presently support the food needs of the Bikini people. The U.S.D.A. food program is meant to be only a supplement to the diet, but due to conditions

on Kili and Ejit it constitutes a large part of the diet. The people of Bikini already spend nearly 75% of their income to purchase food commercially to supplement U.S.D.A. food shipments, and they urge your subcommittee to add \$500,000 to the FY 1986 budget to continue the U.S.D.A. food program for Kili and Ejit.

Some have suggested that the Bikinians should buy their own food with their compensation under the Section 177 Agreement. There are several responses to this argument. First, if the Compact is not in effect by October 1, the Bikinians will have neither the U.S.D.A. food program nor the Section 177 funds with which to buy food. Second, under the Section 177 Agreement the Bikinians will receive \$2.4 million each year for 15 years, plus 35% of the interest earned by the Bikini Claims Trust Fund. First-year income, assuming a 10% return on the trust, will thus total \$2,445,500, or \$5.30 per day per person. Food costs on Kili are approximately double the costs on Majuro, because of added freight costs. Air freight, for example, which is the only reliable means of transportation, costs 40 cents per pound, so a five-pound bag of sugar, which costs about \$2.00 in Majuro, costs \$4.00 on Kili. It is not unreasonable to compute food costs of at least \$3 per day per person, absent the U.S.D.A. food program. The \$75 million to be paid to the Bikinians under the Compact is, to quote from the Section 177 Agreement, "in

payment of claims arising out of the Nuclear Testing Program for loss or damage to property and person of the people of Bikini" For the Bikinians to allocate nearly 60% of this compensation for survival simply seems unfair; that is not the intended purpose of the payment. The U.S.D.A. food program for the Bikinians, which costs the United States approximately \$500,000 annually, cannot be duplicated at anywhere near that price, and the Bikinians urge you to continue the program in the post-Trusteeship period.

* * * :

The people of Bikini deeply appreciate the strong support you and your subcommittee have given to their desire to return to Bikini Atoll. Given the uncertainty of future appropriations committee jurisdiction under the Compact, it is critically important to commence funding the cleanup of Bikini Atoll this year. The Bikinians ask you to give serious consideration to their requests, as you have in the past. I would be pleased to answer any questions you may have.

Thank you.

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

THE PEOPLE OF BIKINI,)	
et al.,)	
)	
Plaintiffs)	
)	
v.)	Civil Action No. 84-0425
)	
UNITED STATES OF AMERICA,)	
et al.,)	
)	
Defendants.)	

MEMORANDUM OF AGREEMENT

Plaintiffs (hereafter referred to as the people of Bikini) and defendants (hereafter referred to as the United States) in the above-entitled action agree as follows:

Preamble

The people of Bikini desire to set forth in this Memorandum of Agreement certain undertakings and intentions with respect to the benefits which they expect to receive under the Compact of Free Association (the Compact) between the Government of the United States and the Government of the Marshall Islands, its related agreements and this Memorandum of Agreement. In light of the provisions of the Compact and the Agreement referred to in Compact Section 177 (the Compact Section 177 Agreement), the people of Bikini believe that the benefits which they will derive

from the Compact, the Compact Section 177 Agreement and this Memorandum of Agreement provide the means to accomplish their goal of the rehabilitation and resettlement of Bikini Atoll.

The United States desires to set forth in this Memorandum of Agreement certain actions, either taken or intended, which it believes appropriate and relevant to the implementation of the Compact Section 177 Agreement and to the actions of the people of Bikini set forth in this Memorandum of Agreement.

Article I

The Rehabilitation and Resettlement of Bikini Atoll By the People of Bikini

Section 1.

The United States views with favor the rehabilitation and resettlement of Bikini Atoll by the people of Bikini and pledges to the people of Bikini to use its best efforts to facilitate the steps necessary to achieve these objectives.

Section 2.

The United States shall provide funds, pursuant to Article VI of the Compact Section 177 Agreement, to assist the people of Bikini in their resettlement of Bikini Atoll. The United States intends that these funds be used for resettlement activities which, to the maximum extent practicable, contribute to the rehabilitation of Bikini Atoll, and especially Bikini Island. The United States will not be in a position to implement Article VI of the Compact Section 177 Agreement, or the intention of this section, unless and until the following events have taken place:

- a. the submission of a final report to the Congress of the United States by the Bikini Atoll Rehabilitation Committee;
- b. the acceptance by the people of Bikini of the final report and conclusions of the Bikini Atoll Rehabilitation Committee; and
- c. the development of a plan by the United States, in consultation with the people of Bikini, for the use of the funds to be provided by the United States for the resettlement of Bikini Atoll by the United States in accordance with Article VI of the Compact Section 177 Agreement and approval of the plan by the people of Bikini in the context of their agreement to resettle Bikini Atoll. This plan shall, to the maximum extent relevant and practicable, incorporate material from the final report of the Bikini Atoll Rehabilitation Committee, and the United States shall expeditiously complete the plan following submission of a final report to the Congress of the United States by the Bikini Atoll Rehabilitation Committee.

Section 3.

Recognizing the desire of the people of Bikini for the rehabilitation and resettlement of Bikini Atoll, and in order to make the most effective use of funds available to the Bikini Atoll Rehabilitation Committee pursuant to Public Law 98-473, the United States shall assist the Bikini Atoll Rehabilitation Committee, on a reimbursable basis unless otherwise agreed, to conduct at Bikini Atoll the pilot decontamination studies,

topographic survey, draft environmental impact statement, detailed surface radiation survey and other activities referred to in H. Rep. No. 98-386, at 60-61 (June 29, 1984). Such assistance shall include but not be limited to logistical arrangements with respect to transportation to and from Bikini Atoll, technical assistance from the Lawrence Livermore National Laboratory and other assistance as shall be deemed reasonable by the United States to expedite the work of the Bikini Atoll Rehabilitation Committee.

Article II

Dismissal of Litigation

The people of Bikini, within three days of the date of this Memorandum of Agreement, shall dismiss with prejudice the action entitled The People of Bikini, et al, v. The United States of America, et al. No. 84-0425, currently pending in the United States District Court for the District of Hawaii.

Article III

Non-Admissibility of Agreement

This Memorandum of Agreement shall not be introduced as evidence or in any way brought before the court by the parties in the case of Tomaki Juda, et al. v. The United States of America, No. 172-81L, currently pending before the United States Claims Court. This Memorandum of Agreement does not constitute a waiver of any legal rights, claims, defenses or arguments which any of the parties may have in any other litigation which may be brought in any court of the United States, in any other court or before

the Claims Tribunal referred to in Article IV of the Section 177 Agreement.

Article IV

Legal Effects

This Memorandum of Agreement creates no new or independent legal rights in the people of Bikini.

Article V

Amendment

This Memorandum of Agreement may be amended or terminated in whole or in part at any time by mutual agreement.

Respectfully submitted,

RICHARD K. WILLARD
Acting Assistant Attorney General

DANIEL A. BENT
United States Attorney

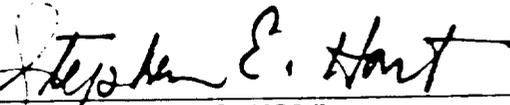
MARK BENNETT
Assistant United States Attorney



JONATHAN M. WEISGALL
ELIZABETH LANGER
RICHARD A. CLIFTON

Attorneys for Plaintiffs

Dated: March 13 1985



DENNIS G. LINDER
STEPHEN E. HART
HAROLD N. ISELIN

Attorneys for Defendants