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COMMUNICATION FROM MR. JONATHAN M. WEISGALL, ON BEHALF OF THE
PEOPLE OF BIKINI, CONCERNING THE TRUST TERRITORY OF THE
PACIFIC ISLANDS

(Circulated in accordance with rule 24 of the rules of procedure
of the Trusteeship Council)

GINSBURG, FELDMAN, WEIL AND BRESS
1700 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

30 March 1981

The Honourable Kurt Waldheim
Secretary-General of the United Nations
United Nations Headquarters
New York, New York 10017

Dear Mr. Secretary-General:

Pursuant to rule 24 of the rules of procedure of the Trusteeship Council, I
request, on behalf of the people of Bikini, that the enclosed petition filed on
16 March in the United States Court of Claims be transmitted and circulated to the
members of the Trusteeship Council.

Sincerely,

(Signed) Jonathan M. WEISGALL

Enclosure

RECEIVED

-UNITED STATES COURT OF CLAIMS

MAR 16 1981

OFFICE OF THE CLERK
U. S. COURT OF CLAIMS

TOMAKI JUDA; NATHAN NOTE;)
 JOHNNY JOHNSON; JIBAS LEJETO;)
 KILON BAUNO; JACOB JOHNSON; RUBON)
 JUDA; MOSES LEWIS; TITIKOS LAUDRAM;)
 MARTIBON BEJIKO; LAIJO JELANG;)
 LORE KESSIBUKI; ANDREW JAKEO;)
 PERO JOEL (all members of the)
 BIKINI COUNCIL); and SENATOR)
 HENCHI BALOS, for themselves and)
 for a class consisting of the)
 PEOPLE OF BIKINI,)
)
 Plaintiffs,)
)
 v.)
)
 UNITED STATES OF AMERICA,)
)
 Defendant.)

No. 172-81 L

PETITION IN THE NATURE OF A CLASS ACTION FOR JUST
COMPENSATION FOR UNLAWFUL TAKINGS OF PROPERTY
AND FOR DAMAGES FOR BREACHES OF FIDUCIARY DUTIES

NATURE OF ACTION

1. This Petition seeks just compensation under the Fifth Amendment to the United States Constitution for two separate takings by defendant of property rightfully belonging to the named plaintiffs and the members of the class they represent:

(a) the taking by defendant on or about March 7, 1946 of the land and lagoon that comprise Bikini Atoll. This taking lasted as a matter of law until January 24, 1979, when defendant deeded back all its legal rights in Bikini Atoll to the named plaintiffs

and the members of their class; and (b) the taking of Bikini Atoll by defendant that began on January 24, 1979, and will continue in whole or in part for the next 20 to 60 years. This Petition also seeks redress for the repeated and continuing breaches of fiduciary duties owed named plaintiffs and members of their class, which have benefited defendant and severely injured named plaintiffs and their class.

JURISDICTION

2. This Court has jurisdiction pursuant to 28 U.S.C. § 1491.

PARTIES

3. The people of Bikini, the class for which this Petition is filed, are citizens of the Trust Territory of the Pacific Islands (hereinafter "Trust Territory" or "Micronesia") and of the Marshall Islands. All were members of the Bikini community in 1946 when Bikini Atoll was evacuated prior to "Operation Crossroads," the first American atomic tests in the Pacific, or are direct descendants of such members. All class members possess land rights on Bikini Atoll. The people of Bikini are governed by the Bikini Council, whose membership is determined in accordance with their customs and traditions. There are presently fourteen Council members -- twelve from Kili Island and two from Ejit Island, which are in the Marshall Islands. The three principal officials of the Council are the Magistrate, Scribe and Treasurer. All the members of the Bikini Council are named plaintiffs in this action.

4. Plaintiff Tomaki Juda is a citizen of the Trust Territory and the Marshall Islands, and is the Magistrate of the Bikini Council. He was born on Bikini Atoll in 1942, resided there until his relocation in 1946, and now lives on Kili.

5. Plaintiff Nathan Note is a citizen of the Trust Territory and the Marshall Islands, and is the Scribe of the Bikini Council. He was born on Bikini Atoll in 1918. He was a member of the Bikini community (but not living on Bikini Atoll) when its members were relocated in 1946. He now lives on Kili.

6. Plaintiff Johnny Johnson is a citizen of the Trust Territory and the Marshall Islands, and is the Treasurer of the Bikini Council. He was born on Kili in 1948, and now lives on Kili.

7. Plaintiff Jibas Lejeto is a citizen of the Trust Territory and the Marshall Islands, and is a member of the Bikini Council. He was born on Bikini Atoll in 1908, resided there until his relocation in 1946, and now lives on Kili.

8. Plaintiff Kilon Bauno is a citizen of the Trust Territory and the Marshall Islands, and is a member of the Bikini Council. He was born on Bikini Atoll in 1921, resided there until his relocation in 1946, and now lives on Kili.

9. Plaintiff Jacob Johnson is a citizen of the Trust Territory and the Marshall Islands, and is a member of the Bikini Council. He was born on Bikini Atoll in 1922, resided there until his relocation in 1946, and now lives on Kili.

10. Plaintiff Rubon Juda is a citizen of the Trust Territory and the Marshall Islands, and is a member of the

Bikini Council. He was born on Bikini Atoll in 1930, resided there until his relocation in 1946, and now lives on Kili.

11. Plaintiff Moses Lewis is a citizen of the Trust Territory and the Marshall Islands, and is a member of the Bikini Council. He was born on Bikini Atoll in 1924, resided there until his relocation in 1946, and now lives on Kili.

12. Plaintiff Titikos Laudram is a citizen of the Trust Territory and the Marshall Islands, and is a member of the Bikini Council. He was born on Bikini Atoll in 1909, resided there until his relocation in 1946, and now lives on Kili.

13. Plaintiff Martibon Bejiko is a citizen of the Trust Territory and the Marshall Islands, and is a member of the Bikini Council. He was born on Bikini Atoll in 1906, resided there until his relocation in 1946, and now lives on Kili.

14. Plaintiff Laijo Jelang is a citizen of the Trust Territory and the Marshall Islands, and is a member of the Bikini Council. He was born on Bikini Atoll in 1910, resided there until his relocation in 1946, and now lives on Kili.

15. Plaintiff Lore Kessibuki is a citizen of the Trust Territory and the Marshall Islands, and is a member of the Bikini Council. He was born on Bikini Atoll in 1909, resided there until his relocation in 1946, and now lives on Kili.

16. Plaintiff Andrew Jakeo is a citizen of the Trust Territory and the Marshall Islands, and is a member of the Bikini Council. He was born on Bikini Atoll in 1912 and resided

there until his relocation in 1946. He moved back to Bikini Atoll in 1970 and resided there until he was again relocated in August 1978. He now lives on Ejit.

17. Plaintiff Pero Joel is a citizen of the Trust Territory and the Marshall Islands, and is a member of the Bikini Council. He was born on Bikini Atoll in 1925 and resided there until his relocation in 1946. He moved back to Bikini Atoll in 1970 and resided there until he was again relocated in August 1978. He now lives on Ejit.

18. Plaintiff Henchi Balos is a citizen of the Trust Territory and of the Marshall Islands, and is the elected representative of the Bikinians to the Marshall Islands legislature, the Nitijela. He was born on Rongerik Atoll in 1946 and now lives on Majuro Atoll in the Marshall Islands.

19. The named plaintiffs sue on their own behalf and on behalf of the class they represent.

20. The defendant United States of America has taken and controls access to Bikini Atoll, and has assumed fiduciary responsibilities to the Bikini people.

CLASS ACTION ALLEGATIONS

21. This Petition is filed on behalf of the named plaintiffs and all others similarly situated, including all living persons who were members of the Bikini Community prior to the 1946 evacuation of Bikini Atoll and all living descendants of those evacuated.

22. The members of the class on whose behalf this action is brought are so numerous that their joinder is impracticable. There are currently over 990 members of the Bikini community.

23. This action involves common questions of law and fact, and the claims of the named plaintiffs are typical of the claims of the class. The named plaintiffs will adequately and fairly protect the interests of the class, and they are represented by counsel experienced in class action litigation. Defendant's actions generally affected the entire class, thus making final relief appropriate with respect to the class as a whole. Adjudications with respect to claims by individual class members as a practical matter would be dispositive of the interests of other members, and would thus impair or impede the latter's ability to protect such interests.

24. The common questions of law and fact involved predominate over individual questions, if any. Class action treatment is the superior method for the fair and efficient adjudication of this controversy because it permits numerous injured persons to prosecute their common claims jointly in a single forum and thus avoids unnecessary duplication. A class action provides an efficient, manageable method to adjudicate fairly the rights and obligations of named plaintiffs, class members, and defendant. Unless a class action is allowed, the claims of numerous Bikinians may not be litigated.

INTRODUCTION AND BACKGROUND

25. Bikini Atoll is located in the Ralik Chain of the Marshall Islands. It is one of 29 atolls and 5 islands comprising the Marshall Islands, which are scattered over 357,000 square miles north of the equator in the central Pacific Ocean. A map of the Marshall Islands is attached as Exhibit A and incorporated by reference.

26. The Marshall, Caroline and Mariana Islands are the component parts of the Trust Territory, or Micronesia, which consists of more than 2,000 islands and atolls dispersed throughout an ocean area approximately the size of the continental United States.

27. In 1885, Germany seized control of the Marshall Islands from Spain, which had exercised nominal control of all Micronesia since the late 1600's. Germany purchased Spain's remaining holdings in Micronesia in 1899 and controlled the islands until Japan seized them at the outbreak of World War I. Japan administered Micronesia under a League of Nations Mandate until World War II, when the islands were occupied by the United States in 1944.

28. Shortly after the United States invaded Majuro Atoll on January 30, 1944, Admiral Chester W. Nimitz, Military Governor of the Marshall Islands, issued Proclamation No. 1, pursuant to which the United States assumed all powers of government in the Marshall Islands. Proclamation No. 1 became effective as to Bikini Atoll on March 29, 1944, when the atoll was occupied by United States forces.

/...

29. On July 18, 1947, Micronesia became a United Nations strategic trust territory administered by the United States. See Congressional Joint Resolution, 61 Stat. 397, and the Trusteeship Agreement for the Former Japanese Mandated Islands ("Trusteeship Agreement"), 61 Stat. 3301, T.I.A.S. No. 1665.

30. The Trusteeship Agreement recognizes certain fiduciary obligations of the United States to the people of the Trust Territory, including the Bikinians. The Trusteeship Agreement, inter alia, obligates defendant to:

. . . promote the economic advancement and self-sufficiency of the inhabitants . . . [Article 6(2)]

. . . protect the inhabitants against the loss of their lands and resources . . . [Article 6(2)];

. . . improve [their] means of transportation and communication . . . [Article 6(2)]

. . . protect the rights and fundamental freedoms of all elements of the population without discrimination . . . [Article 6(3)];

. . . protect the health of the inhabitants . . . [Article 6(3)].

31. In 1947, President Truman terminated the military government of the Trust Territory and delegated administration of the Trust Territory to the Secretary of the Navy. Exec. Order No. 9875. In 1951 administrative responsibilities were transferred to the Interior Department (Exec. Order No. 10265), which has administered the Marshall Islands, including Bikini Atoll, since 1951.

32. The executive authority of the Government of the Trust Territory is vested in the High Commissioner of the Trust

Territory. He and other subordinate Trust Territory officials act under the general supervisory authority of the Secretary of the Interior and are agents of the Secretary and the United States Government. See Department of the Interior Orders Nos. 2918 (December 27, 1968), 3027 (September 29, 1978) and 3029 (April 25, 1979). The High Commissioner is appointed by the President with the advice and consent of the United States Senate.

33. In 1969, negotiations commenced between the Government of the United States and the inhabitants of the Trust Territory regarding the future political relationship between Micronesia and the United States. During the course of these negotiations, the Trust Territory fragmented politically into four governmental entities: the Northern Mariana Islands, Palau, the Marshall Islands, and the Federated States of Micronesia.

34. In 1976, the Northern Mariana Islands obtained commonwealth status. See Public Law 94-241 (March 24, 1976). Negotiations with Palau, the Marshall Islands and the Federated States of Micronesia are nearing conclusion and in 1980 produced a Compact of Free Association, which defines their future relationships with the United States and the international community.

STATEMENT OF THE CASE

A. Bikini And Its Early History

35. The 26 islands of Bikini Atoll have a combined land area of 2.32 square miles. Bikini Island, the largest of

the atoll's islands, covers .66 square miles. The islands enclose a lagoon area of approximately 243 square miles. A map of Bikini Atoll is attached as Exhibit B and incorporated by reference.

36. As the northernmost atoll in the Marshall Island's western chain, Bikini is relatively distant and isolated from other atolls. Its closest neighbor, Rongelap Atoll, is more than 80 miles to the east. Before 1946, the Bikinians maintained no regular contacts with other communities and were among the last Marshallese people affected by foreign influences. As a result, the people developed an extremely well integrated society bound together by close ties of kinship, association and tradition.

37. Like other Marshallese, the Bikinians developed strong attachment to their homeland. Under traditional Marshallese law and custom, each Bikinian was -- and still is -- born with land rights in the islands of Bikini Atoll. These rights are intended to provide security to the members of the community. Because land in the Marshall Islands is scarce, the Marshallese do not regard land as a commodity that can be sold. Each individual is identified with the land that is his birthright, and ties to the land are therefore unusually strong. One commentator has noted: "Land is regarded as sacred, 'something to fight and die for' and as far as may be ascertained, has never been sold or given away to outsiders except through fear of physical or moral sanction being applied." Tobin, Land Tenure in the Marshall Islands (1958) at 4.

38. Prior to their removal from Bikini Atoll in 1946, the Bikinians relied almost exclusively upon its land and lagoon for their material needs. The Bikinians also produced copra for export purposes in order to provide them with the money needed for the occasional purchase of imported items. (Copra, or dried coconut meat, is the cash crop of the Marshalls; when processed, it yields coconut oil.) The people remained economically self-sufficient from the time they first settled on Bikini until 1946.

B. World War II

39. Foreigners did not reside at Bikini until World War II, when five Japanese soldiers landed at the atoll to establish a weather station. The Bikinians submitted to their orders establishing curfew, suspending Christian services and conscripting labor.

40. On March 29, 1944, the five Japanese soldiers committed suicide rather than surrender to a small unit of invading American troops. This date marks the beginning of American administration of Bikini Atoll.

C. Selection of Bikini for Operation Crossroads

41. On July 16, 1945, the United States exploded the world's first atomic bomb at Alamogordo, New Mexico. It detonated the second over Hiroshima, Japan, three weeks later, and the third over Nagasaki three days after Hiroshima. Japan announced its surrender to the United States the next day.

42. At the war's end, United States scientific, military and political leaders had little knowledge about the force and effect of atomic weapons. The government therefore determined to study the future role of nuclear weapons and, within weeks after the war ended, began to plan for controlled tests to study the effects of atomic bombs on naval vessels.

43. On November 10, 1945, the United States Joint Chiefs of Staff formed a subcommittee to develop plans for a series of tests, code-named Operation Crossroads, and to search for an appropriate test site.

44. On January 11, 1946, the Joint Chiefs directed the task force commander in charge of the tests to "prepare plans for the naval test including selection of a suitable site which will permit accomplishment of the test with acceptable risk and minimum hazard."

45. The test site for Operation Crossroads had to meet the following requirements:

- Be controlled by the United States;
- Be uninhabited or have a small population that easily could be relocated;
- Be located far from U.S. population centers;
- Have a large, shallow, lagoon suitable for anchoring target vessels;
- Be located within 100 miles of a B-29 base;
- Be located in an area free from severe cold and violent storms;

-- Have predictable winds from sea level to 60,000 feet; and

-- Have predictable water currents that would not bring radioactive material to important fishing areas and inhabited shorelines.

46. In January 1946, the Joint Chiefs selected Bikini Atoll for Operation Crossroads. President Truman subsequently approved this choice.

D. Removal From Bikini

47. On Sunday, February 10, 1946, the American military governor of the Marshall Islands, Commodore Ben Wyatt, flew by seaplane to Bikini and, at the conclusion of their church services, told the Bikinians that they must leave their homes so the United States could test nuclear weapons. According to official accounts, Commodore Wyatt

"compared the Bikinians to the children of Israel whom the Lord saved from their enemy and led unto the Promised Land. He told them of the bomb that men in America had made and of the destruction it had wrought upon the enemy."

III D.E. Richard, United States Naval Administration of the Trust Territory of the Pacific Islands (1957) at 509-10.

48. The Bikinians did not wish to leave their atoll, but, in view of the United States' defeat of Japan and Commodore Wyatt's description of nuclear weapons, they believed themselves powerless to resist the United States. To stay on Bikini and tell the United States to look elsewhere was not a realistic option. The Bikinians were also accustomed to taking military

orders, having been under the control of Japanese soldiers during World War II. Moreover, the Bikinians were told they could return to their atoll when the United States no longer needed it for nuclear testing.

49. On March 7, 1946, the U.S. Navy moved the 167 inhabitants of Bikini from their atoll.

E. Rongerik, Kwajalein, And The Move To Kili

50. From Bikini Atoll, the U.S. Navy took the Bikinians by boat to Rongerik Atoll, 150 miles east of Bikini, and left them with a few weeks' supply of food and water. A Navy press release stated that "Rongerik is about three times larger than Bikini Coconuts here are three or four times as large as those on Bikini and food is plentiful."

51. In fact, Rongerik Atoll has nearly 75% less land area than Bikini Atoll. Coconut palms and pandanus on Rongerik were considerably less productive than those on Bikini, and the quantity and quality of fish in Rongerik's lagoon were inferior to those at Bikini. Moreover, in a report prepared before the relocation, the Navy officer in charge of moving the Bikinians stated that the quality of coconuts on Rongerik was inferior and that the potential copra yield was poor.

52. Many species of fish eaten at Bikini proved toxic in Rongerik's lagoon. Because the Bikinians believed they would be living on Rongerik for only a short time, they failed to tell the Navy that, according to Marshallese mythology, Rongerik was inhabited by an evil spirit that contaminated the fish.

53. In May 1946, two months after the move to Rongerik, the Bikinians asked the Navy for permission to return home. Their request was denied. Severe food shortages then occurred, eventually reducing the people to near starvation. A doctor sent to examine the Bikinians in July 1947 reported that "they were visibly suffering from malnutrition."

54. Following newspaper disclosures of conditions on Rongerik, the Navy began to search for other resettlement sites. In October 1947, the Navy announced that the Bikinians would be moved to Ujelang Atoll, 300 miles southwest of Bikini. On November 22, ten Bikini men and 20 Navy Seabees arrived on Ujelang and began to construct a village. Less than two weeks later, however, the U.S. Government announced that Enewetak Atoll would be used for atomic tests and that Enewetak's inhabitants would be relocated on Ujelang. The Enewetak people were moved to Ujelang on December 21, and the Bikinians remained on Rongerik.

55. In February 1948, an anthropologist sent by the U.S. Government to examine the Bikinians found starvation conditions on Rongerik. He discovered that the people rationed themselves to one bucket of water per household per day and that they were cutting down young palm trees to eat the heart (thus killing the tree) because there was nothing else to eat.

56. The shortage of coconuts on Rongerik severely hindered the Bikinians' food-gathering activities. The Bikinians used coconut husk fiber to make sennit, which in turn was used to maintain eight large sailing canoes. Due to a shortage of sennit, four of the eight canoes shortly became unusable and the

other four, which were improperly repaired, could not be used in the open ocean. Fishing was therefore restricted to lagoon areas near the main island of Rongerik where the fish were toxic.

57. Because of the conditions on Rongerik, the Navy moved the Bikinians in March 1948 to a temporary campsite on Kwajalein Atoll, which was then being developed as a United States military base. The Bikinians lived in tents on Kwajalein for six months, and then were moved in September 1948 to the island of Kili, 400 miles southeast of Bikini Atoll.

F. Kili

58. Of the approximately 990 Bikinians living today, approximately 550 reside on Kili.

59. Kili's 230 acres amount to only approximately one-sixth the land area of Bikini Atoll. Kili is an island, not an atoll, and has neither a lagoon nor sheltered fishing grounds. Thus, the superior fishing skills the Bikinians developed on Bikini are largely useless on Kili. Moreover, because Kili has no lagoon and its longitudinal access lies almost parallel to the southeast-northeast trade winds, there is no protected anchorage on the island. From late October to late spring, access to the island by vessel is extremely hazardous, and high surf conditions greatly restrict deep sea fishing efforts. Moreover, infrequent visits by field trip ships to Kili have left the Bikinians with little incentive to produce copra.

60. Serious food shortages occurred on Kili in 1949, 1950, 1952, 1958, 1960, and 1968-69. The situation in 1952 was so severe that it was necessary to air drop food to the island.

This was done without the aid of parachutes, and most of the food was smashed and rendered inedible. The 1958 and 1960 food shortage resulted from a devastating typhoon on Kili in 1957 that killed all the taro and nearly half the breadfruit trees.

61. Conditions on Kili have been and remain adverse. Health care is deficient; there are no adequate medical personnel or facilities on Kili. Housing conditions are also inadequate. Moreover, defendant has failed to provide suitable means for transportation to and from Kili. The lack of adequate transportation has in essence made the people captives on Kili for at least part of each year. As a result of Kili's isolation, the Bikinians living there have almost no cash producing activities and the local economy is severely depressed.

62. Despite adverse conditions on Kili and the disruptions to their former life style, the majority of Bikinians continue to reside there today because they have no other place to go.

G. Bikini Proving Grounds

63. During Operation Crossroads, the first series of atomic tests at Bikini, the United States deployed 250 ships (70 of which were placed in the target area in Bikini lagoon), more than 150 aircraft, and 42,000 military, scientific, and technical personnel and observers.

64. The United States detonated 23 atom and hydrogen bombs at Bikini Atoll between June 30, 1946 and July 22, 1958.

Most of the devices were detonated on barges anchored in Bikini lagoon or on the atoll's reef. Two tests were air drops (Able in 1946 and Cherokee in 1958) and two devices were detonated underwater (Baker in 1946 and Maple in 1958).

65. The 23 nuclear tests caused severe destruction to the atoll and its environs. For example, the Baker shot in 1946 dumped 500,000 tons of radioactive mud on the atoll's islands and into the lagoon. Oil released from target ships in the lagoon destroyed coral, algae and shellfish on the reef. The 1954 "Bravo" shot, the second U.S. hydrogen bomb test, was the largest explosion ever detonated by the United States, and was at least 750 times more powerful than the atomic bomb dropped on Hiroshima. The bomb annihilated three small islands and portions of others, and left a one-mile circular hole in the reef, creating an additional passage from the lagoon to the ocean. In 1956, the Atomic Energy Commission ("AEC") stated: "All of the islands [in Bikini Atoll] received in varying degrees the resultant radioactive fusion and activation products which were spread about the area."

66. In 1958, President Eisenhower declared a moratorium on U.S. atmospheric nuclear testing, ending the twelve-year nuclear testing program in the Marshall Islands.

67. At the conclusion of the testing program, all the coconut palms and other plants of economic value on Bikini Atoll were totally destroyed. The atoll was covered by dense scrub vegetation and a large amount of equipment and debris from the tests.

68. The testing at Bikini was a critical part of the U.S. nuclear weapons development program. In its 1948 Annual Report to Congress, the AEC explained the need for the testing program:

America's pre-eminence in the field of atomic weapons is not static. It depends upon achievement fully proved through tests and upon observation by scientists of nuclear phenomena that can only adequately be studied by actual full scale test operations.

69. Although the atomic testing program cost at least \$20 billion, the United States has never questioned its value. In its 1953 Annual Report, the AEC stated:

Each of the tests involved a major expenditure of money, manpower, scientific effort and time. Nevertheless, in accelerating the rate of weapons development, they saved far more than their cost.

In this report, the AEC also explained why the tests had been held on Bikini: "The Commission felt that tests should be held overseas until it could be established more definitely that continental detonations would not endanger the public health and safety."

H. 1967 Survey Of Bikini Atoll

70. In April and May 1967, the AEC conducted a radiological survey of Bikini Atoll to determine whether the Bikinians could return safely. The AEC measured two aspects of total radiation dose -- external and internal -- and made predictions as to future safety. See "Radiological Report on Bikini Atoll" (April 1968).

71. In order to assess internal dose, the AEC made calculations based on certain dietary assumptions. Noting that detailed information on the Bikinians' diet was "largely lacking," the report used as "a starting point" a 1957 study by AEC researcher Gordon Dunning on the diet of the Rongelapese people. The Radiological Report estimated the levels of radiation generated by this diet and concluded that "the probable total exposure to the Bikinians upon their return will be acceptable."

72. The AEC made no attempt in 1967 to conduct an independent study of the Bikinians' diet on Kili or to verify the 1957 Dunning report.

73. The 1957 Dunning study showed an average daily intake of 9 grams of coconut meat and milk. Nine grams constitutes less than one-third of an ounce, or several tablespoons. The AEC should have known that this figure was grossly in error and should have been 50 to 100 times greater.

74. Other studies of the Marshallese diet, including those prepared by defendant, have shown that consumption of coconut meat and milk averages as much as 600 to 900 grams per day per person.

75. Of all the foodstuffs listed in the 1957 Dunning study, the coconut makes the most important contribution to radiation intake.

76. A reasonable estimate of the Bikinians' coconut consumption would have produced much greater radiation dose

estimates and would have resulted in the conclusion that it was unsafe to live on Bikini and consume locally produced food.

77. The 1967 AEC report also reviewed a 1964 study of ground water on Bikini and concluded:

Well water could be used safely by the natives upon their return to Bikini. In summary it appears that radioactivity in drinking water may be ignored from a radiological safety standpoint.

78. In 1968, an AEC Ad Hoc committee reviewed the results of the AEC's 1967 survey and declared that Bikini was "once again safe for human habitation." This committee's report concluded: "The exposures to radiation that would result from the repatriation of the Bikini people do not offer a significant threat to their health and safety."

I. Bikini Resettlement And Survey Dispute

79. Relying on the conclusions of the AEC Ad Hoc committee, President Johnson announced on August 12, 1968, that "the major islands of [Bikini Atoll] are now safe for human habitation" and that the Bikinians could return to their atoll. This announcement, made in a letter to the Secretary of Defense, also ordered commencement of a federal program to resettle and rehabilitate Bikini.

80. In February 1969, the U.S. Department of Defense ("DOD") and the AEC commenced a cleanup of debris and equipment on Bikini Atoll. The AEC contemporaneously announced that "there is virtually no radiation left, and we can find no discernible effect on either plant or animal life."

81. In June 1969, eight Bikinians returned to Bikini to assist in the resettlement project. Six months later, an additional 23 workers moved from Kili to Bikini Atoll. The Department of the Interior ("DOI") began construction of 40 homes, and more Bikinians were moved from Kili to Bikini in the early 1970's.

82. In June 1971, the AEC stated that well water samples had been taken periodically from several locations on Bikini Island over a period of time and that, "from a radiological viewpoint, the water is safe to drink."

83. In 1972, defendant conducted a thorough radiological survey of Enewetak Atoll, the site of 42 U.S. nuclear tests, using the best technological equipment then available. This equipment was more sophisticated and sensitive than that used to survey Bikini in the 1960's. The AEC released a three-volume radiological survey of Enewetak Atoll in 1973.

84. In November 1974, the AEC presented DOI with recent radiological findings on Bikini and stated that a sophisticated "follow-on" radiological survey was desirable. Upon receipt of this information, DOI halted construction and resettlement activities on Bikini.

85. On March 7, 1975, DOI Secretary Morton wrote DOD Secretary Schlesinger stating that the Energy Research and Development Administration ("ERDA"), which had recently assumed all AEC functions regarding Bikini, was prepared to conduct a thorough radiological survey of Bikini Atoll in April if DOD could provide the necessary financial and logistic support.

86. While Secretary Morton's March 7, 1975 letter stated that ERDA was prepared to begin a radiological survey in April, DOD did not respond to it until the end of May 1975. DOD then wrote that it could conduct a survey "at reimbursable cost of \$609,000," but stated that "we are unable to provide the requested support at this time."

87. On June 19, 1975, the Assistant Secretary of Interior wrote ERDA and DOD again requesting a thorough radiological survey. He declared that neither DOI nor ERDA could provide funds to reimburse DOD, and stated that he was therefore

deeply concerned that a quality radiological survey such as that performed on Enewetak, whose people will not be coming back for some time, cannot be made available in a timely fashion for the Bikinians whose return is imminent.

. . . [O]ur commitments to insure the safe return of the Bikinians . . . make it imperative that they in their environment be attended to with the best testing equipment available.

It appears that none of the involved Departments has budgeted adequately for this needed and highly warranted effort in order to meet our statutory and moral commitments to the people of this area

88. Meanwhile, in response to the Bikinians' desire to locate some homes in Bikini Island's interior, a limited ground radiological survey of the island was conducted in June 1975. While this survey was not performed with the best available equipment, it found the island's interior too radioactive for housing and some wells too radioactive for drinking purposes. It also showed that breadfruit and pandanus, two staples in the Bikinians' diet, contained unacceptably high levels of radiation.

89. At an August 12, 1975 meeting in Livermore, California, ERDA officials distributed two reports, which concluded that the Bikinians would receive external gamma radiation in excess of federally prescribed limits if the Bikini resettlement program proceeded as previously planned. The reports also recommended that groundwater on Bikini Island be used only for agricultural purposes.

90. On October 10, 1975, the Bikinians brought suit in United States District Court in Hawaii, seeking to compel the United States to conduct a comprehensive radiological survey of Bikini Atoll. The People of Bikini v. Seamans, et al., Civ. 75-0348 (D. Ha). In the complaint, the Bikinians said: "For us to make an intelligent decision to resettle Bikini Atoll, we must be able to weigh our desire to return against the radiological risks of returning. We have not been provided with that information. . . ."

91. Settlement discussions followed, but the various U.S. Government agencies involved -- ERDA, DOD, DOI and the Department of Energy ("DOE"), which assumed ERDA's functions in 1977 -- continued to disagree until 1978 as to which agency would pay for the survey.

92. A copy of the Memorandum Agreement settling the litigation in The People of Bikini v. Seamans is attached as Exhibit C and is incorporated by reference. This Agreement provided, inter alia, that a radiation survey of Bikini Atoll, "using the latest and most effective technology," would be completed by December 31, 1978 (Paragraph 8), and that "all major

[Bikini resettlement] project documents, including documents relating to radiation exposure, shall be translated or summarized in the Marshallese language to the maximum feasible extent" (Paragraph 6). This requirement was included because only a few Bikinians speak or read English.

93. A thorough radiological survey of Bikini was conducted in late 1978. This survey essentially employed equipment that was available as early as 1972 and used to survey Enewetak Atoll. The final results of the Bikini Atoll survey still have not been published, but a preliminary report, dated May 15, 1979, indicated that Bikini Atoll was not safe for habitation.

J. Second Removal From Bikini

94. Before the radiological survey was conducted, tests in 1977 had shown that the level of radioactive strontium-90 in Bikini Island well water exceeded acceptable U.S. standards. Coconuts were also found to have high radiation levels, and the people living on Bikini Island were told to eat only one coconut per day, well below their normal intake of five to ten.

95. In April 1978, a medical team arrived on Bikini to test the islanders again. The people living on Bikini, who still did not understand the risks they were exposed to, offered coconuts, the most radioactive crop on the island, to arriving scientists as a sign of friendship. Examinations showed an "incredible" one-year 75% increase in body burdens of radioactive cesium-137, causing U.S. scientists to conclude that the people

likely had ingested the largest amounts of radiation of any known population. Other examinations showed unacceptably high body burdens of radioactive strontium and plutonium.

96. In August 1978, as a result of these findings, defendant once again moved the people from Bikini. Some of the Bikinians were relocated to Ejit Island in Majuro Atoll. Others were moved back to Kili. No one has been allowed to reside at Bikini Atoll since that time.

K. Recent U.S. Statements On Conditions At Bikini Atoll

97. Although defendant has made conflicting statements, the official U.S. position is that the Bikinians cannot safely return to Bikini Island for 30 to 60 years, and to Eneu Island (the second largest in the atoll) for 20 to 25 years.

98. On July 1, 1979, DOI wrote to the Bikini leaders stating:

All of us here deeply regret that Eneu Island cannot be used for residence for at least another 20-25 years, since we understand the deep feelings of the people of Bikini and their hopes, that even though Bikini Island is not useable now, Eneu Island possibly might have been. This is not now possible.

Copies of these letters are attached as Exhibit D and incorporated by reference.

99. On July 1, 1979, DOI also sent a report on Bikini to the U.S. Congress that contained, inter alia, defendant's final assessment of the radiological safety of Bikini and Eneu Islands:

By mid-March 1979, the first results of the aerial radiological survey [of Bikini Atoll] . . . became available.

[T]he Department of the Interior [has drawn] the conclusion that the new data reaffirmed that Bikini Island could not be used by the people of Bikini for at least the next 30 years, and possibly the next 60 years. . . . [T]here was no question that the island of Eneu must be placed off limits as a place of residence for the Bikini people for at least another 20-25 years.

Progress Report to Congress on Bikini Resettlement Efforts
As Required By P.L. 95-348 (Section 2(c)) at 2.

100. Despite defendant's agreement (see paragraph 92, supra) to translate or summarize in Marshallese all major documents relating to Bikini resettlement, defendant has never informed the Bikinians in Marshallese that Bikini Island cannot be resettled for 30 to 60 years and that the Eneu Island is off-limits for 20 to 25 years.

101. The only document that meets the terms of Paragraph 6 of the Memorandum Agreement (see paragraph 92, supra) is an English-Marshallese booklet entitled Melelen Radiation Ilo Ailin Bikini (The Meaning of Radiation at Bikini Atoll), which was prepared by DOE and distributed at a two-day dose assessment meeting meeting on Kili in October 1980. The Bikinians requested the meeting to obtain information from the U.S. Government regarding the radiological safety of Bikini Atoll. The meeting was attended by seven DOE officials and scientists and three DOI officials.

102. The DOE booklet fails to state that defendant had already determined that Bikini Island cannot be resettled for 30 to 60 years and that Eneu Island is off-limits for 20 to 25 years.

103. Rather, the impression given the Bikinians was that Eneu was once again safe for habitation. One DOE scientist stated unequivocally that he would not hesitate to live on Eneu with his family.

104. At the meeting, a Bikinian leader asked DOE officials what had occurred to change the assessment in DOE's July 1, 1979 letters to the Bikinian leaders that Eneu could not be resettled for 20 to 25 years (see paragraph 98, supra). The DOE officials replied that they were not aware of this conclusion. Upon information and belief, several DOE officials present at the dose assessment meeting were fully aware of the conclusion found in those letters.

105. The DOE booklet attempted to justify the 1968 decision to allow the return to Bikini by stating (pp. 28-29):

1. The information available at that time was insufficient regarding the amount of radioactive atoms that would go from the soil up into the fruits of plants like coconuts.
2. The information at that time was insufficient regarding the amount of each kind of food people eat. For example, people ate more from the coconut tree than the amount scientists thought they would.

The booklet failed to state that defendant in 1967 grossly and carelessly miscalculated the Bikinians' diet by assuming an average daily per person intake of only 9 grams of coconut meat and milk. See paragraphs 70-76, supra.

L. Documents And Related Actions Concerning
The Legal Status Of Bikini Atoll

106. The taking, occupancy, and use by defendant of Bikini in 1946 was not legitimized by any contemporaneous written agreement between defendant and the people of Bikini.

107. On April 27, 1951, the Trust Territory Government, defendant's agent, and certain Bikini alabs (family heads) signed a purported "Release of Rights To Bikini Atoll" and a purported "Deed," copies of which are attached as Exhibits E and F, respectively, and incorporated by reference. These documents purported to convey Kili and three islets in Jaluit Atoll to the Bikinians in exchange for Bikini Atoll. Of the approximately thirteen Bikinian alabs, only a few signed both documents, despite pressure from U.S. officials, and a lawful exchange was not concluded. The alabs were not represented by counsel.

108. On November 22, 1956, the Trust Territory Government and the Bikini alabs, who were not represented by counsel, entered into a purported agreement entitled "Agreement In Principle Regarding Use Of Bikini Atoll." A copy of this document is attached as Exhibit G and incorporated by reference. This document, which referred to the Bikinians as the "owners" of Bikini Atoll, allowed defendant to continue to "occupy and use" Bikini Atoll, and further provided that:

The Government of the Trust Territory of the Pacific Islands and/or the Government of the United States of America shall possess the full use right to Bikini Atoll until such time as it determines it will no longer be necessary to occupy and use the said Atoll.

109. In exchange for the grant of use rights in Bikini Atoll, the Bikinians received "full use rights" in Kili and four small parts of Jaluit Atoll, \$25,000 in cash and a \$300,000 trust fund administered by the High Commissioner. The purported 1956 agreement demonstrates that defendant did not consider that the purported 1951 exchange of islands was valid.

110. Defendant also induced the alabs who signed the 1956 document to agree that "any future claims by Bikinians based on the use of Bikini by the Governments of the United States or the Trust Territory, or on the moving of Bikini people from Bikini Atoll to Kili Island, shall be against them and not against the Government." (Emphasis added.)

111. Two weeks before the 1956 agreement was signed, the High Commissioner visited Kili and stated that, if the Bikinians accepted the agreement, he would promptly send a representative back to Kili with an additional \$25,000 in cash for the people.

112. The trust fund established by the 1956 agreement yielded \$9,035.28 in interest per year, or \$12 a year for each Bikinian. In 1970, the value of the corpus of the trust fund had inexplicably decreased to \$196,000.

113. On or about June 20, 1957, the Trust Territory conveyed its "use and occupancy rights" in Bikini Atoll to the United States through an agreement purportedly "made as of the 15th day of April, 1946." See "Use And Occupancy Agreement For Land In The Trust Territory Of The Pacific Islands Under The

Administrative Responsibility Of The Department Of The Interior," a copy of which is attached as Exhibit H and incorporated by reference. The Agreement provided at paragraph 2:

- A. Use To Be Consistent With Trusteeship Agreement. The use to which the land [Bikini] is put by the United States of America shall be consistent with the provisions and purposes of the Trusteeship Agreement relating to the Administration of the Trust Territory of the Pacific Islands.
- B. Review of Need for Land Every Five Years. On or about June 30, 1961, and on a similar date each five-year period thereafter, an agency of the United States of America having the use and occupancy of [Bikini] . . . and Grantor [Trust Territory] shall jointly review and determine the need for continuing the use and occupancy granted . . . hereby.

* * * *

- D. Terminations of Use and Occupancy. In the event of a decision . . . that a need for the continued use and occupancy of said land does not exist, the use granted . . . hereby shall terminate thirty days from the date of such decisions and all interest in said land shall revert to the Grantor. . . .

As described in paragraph 79, supra, defendant determined and announced in 1968 that the Bikinians could return to their homeland.

114. On March 17, 1970, the United States and the Trust Territory entered into an agreement entitled "Agreement Acknowledging The Return Of Bikini Atoll To The Trust Territory Of The Pacific Islands Subject To Certain Retention Areas And Rights Of The United States of America," a copy of which is

attached as Exhibit I and incorporated by reference. This agreement, with minor exceptions, terminated the "use and occupancy" rights that had been given the United States by the Trust Territory "as of April 15, 1946" and all other U.S. interests in Bikini Atoll.

115. On January 24, 1979 the High Commissioner executed a Quitclaim Deed pursuant to DOI Secretarial Order No. 3030 that, inter alia, conveyed to named plaintiffs and members of their class "all rights, title and interest of the Government of the Trust Territory of the Pacific Islands" in Bikini Atoll. A copy of the Quitclaim Deed is attached as Exhibit J and incorporated by reference. Thus, on January 24, 1979, Bikini Atoll was returned to the Bikinians as a matter of law.

M. Prohibitions Against Return to Bikini Atoll

116. Since May 1946, two months after they were evacuated, the Bikinians have consistently and continually made known to the U.S. Government their desire to return to Bikini Atoll. Defendant, in turn, has repeatedly affirmed that its occupation and use of Bikini was temporary only and that the Bikinians could return when defendant no longer needed the atoll for nuclear testing and it was safe for resettlement. Defendant's use and occupancy of the atoll has ceased. However, the Bikinians are prohibited from returning to Bikini Atoll by defendant and by the unsafe conditions defendant has created.

FIRST CAUSE OF ACTION:
UNLAWFUL TAKING OF BIKINI ATOLL
FROM MARCH 7, 1946
TO JANUARY 24, 1979

117. Plaintiffs incorporate the allegations of Paragraphs 1-116 by reference.

118. Between March 7, 1946 and January 24, 1979, defendant unlawfully engaged in a total or partial taking of the land and lagoon of Bikini Atoll without providing just compensation to the Bikinians as required by the Fifth Amendment of the United States Constitution. The taking was effected on March 7, 1946, when defendant compelled the Bikinians to move from their atoll in preparation for Operation Crossroads. This taking ended as a matter of law (except as described in paragraph 119, infra) on January 24, 1979, when defendant's agent, the Trust Territory Government, deeded back to named plaintiffs and members of their class all legal rights to Bikini Atoll. See paragraph 115, supra.

119. As described in paragraph 65, supra, several islands of Bikini Atoll were totally annihilated by the 1954 "Bravo" shot. These islands were not returned to the Bikinians in 1979, and thus have been permanently taken without just compensation.

120. The taking of Bikini Atoll was not made legal by the purported 1951 and 1956 agreements between the Bikinian alabs and defendant's agent, the Trust Territory. These purported agreements had no legal effect. As described in paragraph 107, supra, not all the alabs signed the 1951 documents. Moreover, the alabs who signed the 1951 and 1956 agreements, who were not represented by counsel, were made aware of defendant's superior bargaining power and thus believed they had no choice

but to sign. Defendant was guilty of overreaching, and any resulting agreements were unconscionable, unreasonable, onerous contracts and/or contracts of adhesion, which were null and void.

121. Defendant was obligated under the Trusteeship Agreement to "protect the [Bikinians] against the loss of their lands and resources," and thus owed fiduciary duties to the Bikinians concerning their homeland. As a party whose interests were adverse to the Bikinians, defendant, as their trustee, had a conflict of interest concerning the purported 1951 and 1956 agreements. Defendant could not lawfully consummate agreements that greatly advantaged it and severely disadvantaged the Bikinians.

122. The unconscionable, unreasonable and onerous nature of the purported 1956 agreement is underscored by two facts: (1) the alabs signing it were forced to agree therein that all future claims by the Bikinians for use of their atoll and for resettlement on Kili must be brought against those representatives, not against the United States or the Trust Territory (see paragraph 110, supra); and (2) the Bikinians were unfairly induced to sign the agreement by the High Commissioner's promise that \$25,000 would be immediately distributed to the people if they accepted the agreement.

123. While the named plaintiffs and members of their class have been given other islands to reside on and certain monetary and other benefits, these "compensations" fall far

short of being "just." Rather, as described in paragraphs 50-62, supra, the resettlement arrangements forced on the Bikinians by defendant have been sadly inadequate. In fact, the removal from Bikini in 1946 and the subsequent resettlements have caused plaintiffs and members of their class severe suffering, hardships, and social and cultural dislocation.

SECOND CAUSE OF ACTION:
UNLAWFUL TAKING BEGINNING
JANUARY 24, 1979, AND CONTINUING

124. Plaintiffs incorporate the allegations of paragraphs 1-116 and 118-123 by reference.

125. Since January 24, 1979, defendant has unlawfully taken the land and lagoon of Bikini Atoll from named plaintiffs and the members of their class without providing them just compensation as required by the Fifth Amendment to the United States Constitution.

126. As of January 24, 1979, the Trust Territory returned legal title and all legal rights to Bikini Atoll to named plaintiffs and members of their class. However, since that date the Bikinians have been prevented from returning to the atoll that they legally own by defendant and the unsafe conditions caused by defendant. Defendant has recognized that Bikini Atoll, because of radioactivity in its soil, water and vegetation caused by defendant's nuclear tests, is not safe. The best available evidence indicates that Bikini Island will not be safe for habitation for approximately 30 to 60 years, and that Eneu Island will not be habitable for approximately 20 to 25

years. Defendant thus has effectively taken all or part of the atoll for the next 20 to 60 years. See paragraphs 97-99, supra.

127. Even if, contrary to the allegations of this complaint, the purported 1951 and 1956 agreements referred to in paragraphs 108-110, supra, are determined to have some legal effect, these agreements terminated as a matter of law on January 24, 1979, the date of execution of the Quitclaim Deed, if not before.

THIRD CAUSE OF ACTION:
BREACHES OF FIDUCIARY DUTIES
ENTITLING NAMED PLAINTIFFS
AND THEIR CLASS TO DAMAGES

128. Plaintiffs incorporate the allegations of paragraphs 1-116, 118-123 and 125-127 by reference.

129. When defendant removed the Bikinians from their atoll on March 7, 1946, it assumed fiduciary responsibilities for the people. The Bikinians recognized these fiduciary obligations by placing themselves in defendant's care. In fact, the circumstances of their removal from Bikini Atoll created a contract implied in fact between the Bikinians and defendant obligating defendant as a fiduciary to protect the health, well-being and economic condition of the Bikini people.

130. On various occasions the United States has recognized and expressed its obligations as trustee to the Bikini people. For example, in a "Statement Of Understanding On The Part Of The Government Of The United States And The Government Of The Trust Territory Of The Pacific Islands Concerning The Move Of The

People Of Bikini Island, August, 1978," defendant declared that "[t]he Government of the United States considers itself generally responsible for the well being of the Bikini people and their descendants" The Statement of Understanding is attached as Exhibit K and incorporated by reference.

131. Defendant has recognized its fiduciary obligations to the Bikinians in various other ways, including the provisions of a trust fund, an ex gratia payment, food, and temporary housing. Such actions, however, have not met the full fiduciary obligations owed the Bikinians by defendant.

132. The existence of defendant's fiduciary obligations does not depend upon the Trusteeship Agreement, which was consummated in July 1947, over one year after defendant assumed fiduciary responsibilities for the Bikini people. The Trusteeship Agreement, however, does memorialize defendant's responsibilities as trustee to protect the rights and health of the Bikinians, to guard against loss of their lands and resources, to promote their economic advancement and self-sufficiency, and to improve their means of transportation. These obligations are also mandated by the Trust Territory Code, 1 T.T.C. §101(1).

133. This cause of action is for unliquidated damages for breaches of the fiduciary obligations imposed on defendant in 1946 by a contract implied in fact between defendant and the Bikinians. These obligations were created before the Trusteeship Agreement came into being, and exist independently and did not grow out of that Agreement. In addition, named plaintiffs and

their class sue for unliquidated damages under that Agreement, which is self-executing and establishes direct, affirmative, judicially enforceable rights, but is not a "treaty entered into with foreign nations" as that term is used in 28 U.S.C. §1502. In addition, named plaintiffs and their class sue for unliquidated damages for breaches of fiduciary obligations placed on defendants by the Trust Territory Code, 1 T.T.C. §101(1), which made the Trusteeship Agreement part of Trust Territory law and established independent rights that are judicially enforceable.

134. Defendant has breached its fiduciary obligations to the Bikinians by failing to observe the high standards of care required in resettling certain Bikinians at Bikini Atoll during 1969 to 1978. As discussed in paragraphs 70-105, supra, because of its failure to exercise the high degree of care required, defendant erroneously underestimated the radiological risks of resettling the Bikinians on Bikini Atoll, and in that regard:

- (a) relied upon a grossly inaccurate AEC diet study in erroneously determining in 1968 to permit resettlement (see paragraphs 70-76, supra); and
- (b) erroneously concluded on at least three occasions in 1964, 1967 and 1971 that Bikini's well water was radiologically safe (see paragraph 77, 82, 88 and 94, supra).

135. Defendant has never informed plaintiffs and members of their class of the breaches of fiduciary duties discussed in paragraph 134, supra. Rather, it has concealed these breaches

from named plaintiffs and members of their class, who have been unaware of their existence until recently.

136. Defendant has also breached its fiduciary obligations to the Bikinians by failing from 1972 until 1978 to conduct a thorough radiological survey of Bikini Atoll with the best available equipment, even though it (a) allowed Bikinians to remain at the atoll and receive potentially dangerous amounts of radiation; and (b) knew as early as 1974 that serious questions existed as to the atoll's safety.

137. Defendant has also breached its fiduciary obligations to the Bikinians by:

- (a) presenting to them misleading, erroneous, incomplete and contradictory information as to when radiological conditions on Bikini will permit them to return to their homeland; and
- (b) failing to comply with Paragraph 6 of the Memorandum Agreement settling the 1975 lawsuit (see paragraph 93, supra), which requires defendant to translate or summarize in Marshalese all major documents relating to the resettlement of Bikini.

138. Defendant has also failed to meet its fiduciary responsibilities by allowing conditions to exist on Kili that have been, and continue to be, detrimental to the health and economic well being of the Bikini people, as discussed in paragraphs 59-62, supra. Defendant, in this regard, has failed to provide adequate housing and health care for the Bikinians. Moreover, defendant has not provided adequate means of transportation to and from Kili and thus caused severe depression of the local economy.

139 Defendant has also breached its fiduciary obligations to the Bikinians by its continued takings of their homeland and its refusal to return their atoll to them in habitable condition.

140. The above described breaches of fiduciary duties by defendant have benefited defendant and resulted in substantial injuries, including severe physical, emotional, and financial injuries to named plaintiffs and members of their class. Upon information and belief, certain Bikinians have sustained physical injuries that are inherently unknowable at this time.

DEMAND FOR JUDGMENT

WHEREFORE, named plaintiff and their class pray:

1. That this Court enter an order establishing this action as a class action and allowing named plaintiffs to represent the class described herein.
2. That the Court enter judgment against defendant for the unconstitutional taking described in the First Cause of Action in an amount to be determined, but not less than \$150,000,000.
3. That the Court enter judgment against defendant for the unconstitutional taking described in the Second Cause of Action in an amount to be determined, but not less than \$150,000,000.
4. That the Court enter judgment against defendant for the breaches of fiduciary duties described in the Third Cause of Action in an amount to be determined, but not less than \$150,000,000.
5. That the Court order an accounting to determine the amounts in which named plaintiffs and the members of their class have been damaged by defendant.

6. That the Court grant such other and further relief as it deems just and proper.

Respectfully submitted,


James Hamilton


Jonathan M. Weigall

GINSBURG, FELDMAN, WEIL AND BRESS
1700 Pennsylvania Avenue, N.W.
Suite 300
Washington, D.C. 20006
(202):637-9000

Attorneys for Plaintiff

Dated: March 16, 1981

UNITED STATES COURT OF CLAIMS

TOMAKI JUDA; NATHAN NOTE;)
JOHNNY JOHNSON; JIBAS LEJETO;)
KILON BAUNO; JACOB JOHNSON; RUBON)
JUDA; MOSES LEWIS; TITIKOS LAUDRAM;)
MARTIBON BEJIKO; LAIJO JELANG;)
LORE KESSIBUKI; ANDREW JAKEO; and)
PERO JOEL (all members of the)
BIKINI COUNCIL); and SENATOR)
HENCHI BALOS, for themselves and)
for a people consisting of the)
PEOPLE OF BIKINI,)
)
Plaintiffs,)
)
v.)
)
UNITED STATES OF AMERICA,)
)
Defendant.)
)

AFFIDAVIT

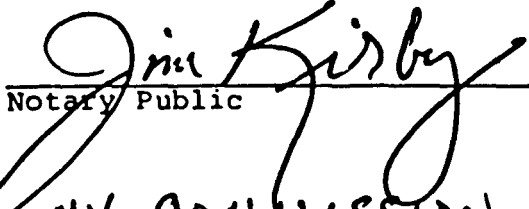
Henchi Balos, being first duly sworn, deposes and states:

1. I am the elected representative of the People of Bikini to the Marshall Islands legislature, the Nitijela.
2. I am fluent in both English and Marshallese.
3. I have carefully translated the foregoing Petition into Marshallese to the Bikini Council.

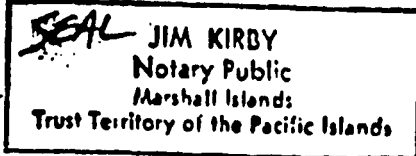


 Henchi Balos

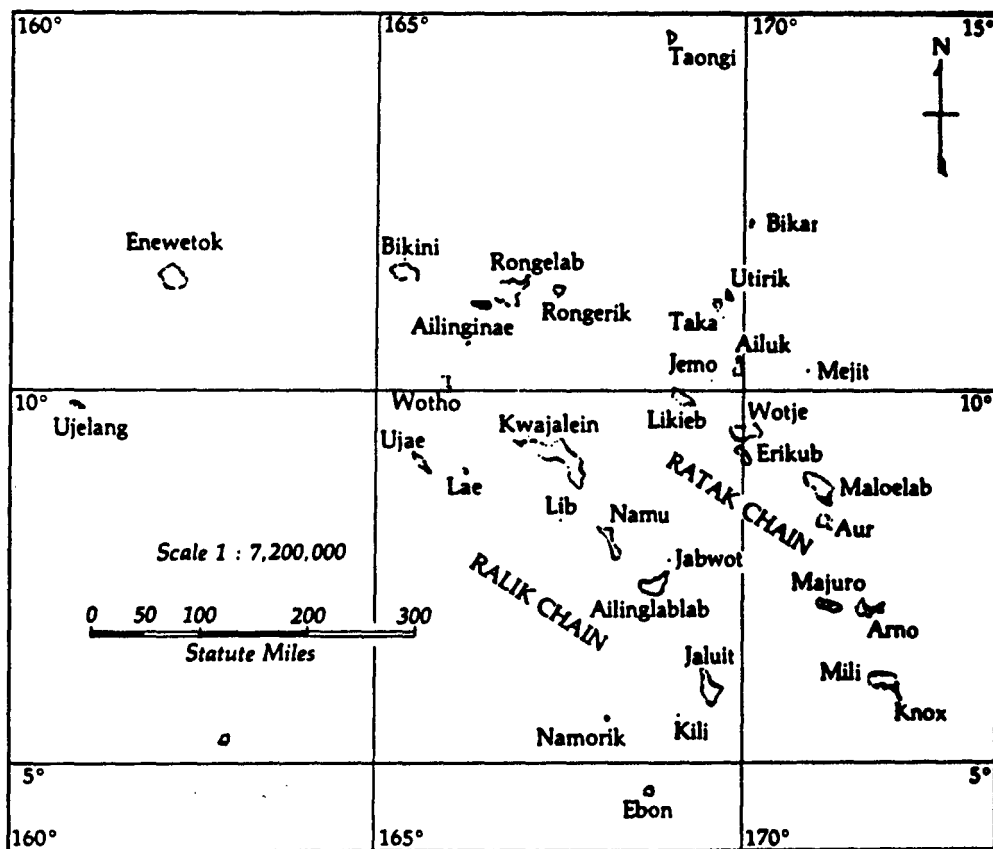
Subscribed to and sworn to me this 18th day of February, 1981.



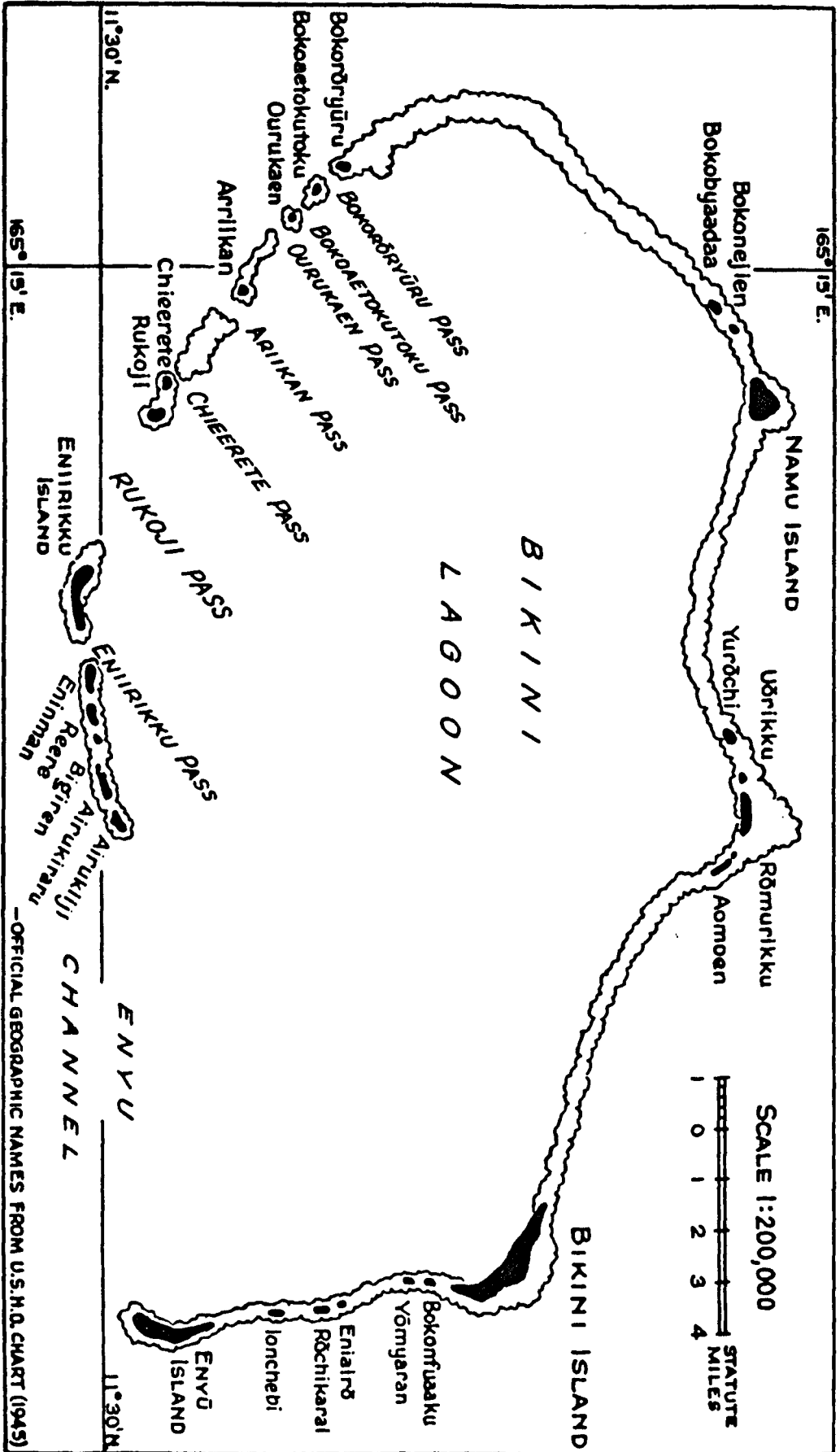
 Notary Public



MY COMMISSION EXPIRES DEC 18, 1981



The Marshall Islands.



MAP OF BIKINI ATOLL

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

THE PEOPLE OF BIKINI,)	
<u>et al.</u> ,)	
)	
Plaintiffs,)	
)	
v.)	Civil No. 75-348
)	
)	
ROBERT C. SEAMANS, JR.,)	
<u>et al.</u> ,)	
)	
Defendants.)	

MEMORANDUM AGREEMENT

The parties to the above-entitled action, recognizing the interest of the Bikini people in their resettlement, agree as follows:

I. Coordination, Planning and Management of the Bikini Resettlement Project

1. Maximum practicable participation by the Bikini people in the Bikini resettlement project, including both its planning and execution phases, is necessary and desirable.

2. Operational supervision of the project shall be the responsibility of the High Commissioner of the Trust Territory of the Pacific Islands or his appointee, and there shall be a project manager who will reside in the Marshall Islands during the life of the project.

3. The Bikini Council shall be consulted with respect to the appointment of the project manager, and the project manager shall have an obligation to inform and consult with the Bikini Council at all times with respect to the project.

4. The project manager shall hold a meeting with the Bikini people at their principal place of residence

(presently Kili Island) no less frequently than once each six months to report on the status of the project.

5. Funds shall be specifically budgeted for the expense of participation in project planning and execution by representatives of the Bikini people and such funds shall specifically include funds for transportation and lodging expense for representatives of the Bikini people to facilitate the maximum practicable participation by the Bikini people in the planning and execution of the project.

6. All major project documents, including documents relating to radiation exposure, shall be translated or summarized in the Marshallese language to the maximum feasible extent and the project manager shall be responsible for causing such translations or summaries to be made and delivered to the Bikini people.

7. No final disposition of any rights of any kind relative to Bikini Atoll, Kili Island or certain lands of the Bikini people on Jaluit Atoll shall be made without the consent of those who have rights in Bikini Atoll under Marshallese custom and tradition and applicable Trust Territory of the Pacific Islands law, and no additional land or land rights for resettlement of the Bikini people shall be obtained without the concurrence of those who have rights in Bikini Atoll in accordance with Marshallese custom and tradition and applicable Trust Territory of the Pacific Islands law.

II. Radiation Survey

8. A radiation survey, using latest and most effective technology, including aerial radiation surveying, shall be completed no later than December 31, 1978, with respect to Bikini Atoll in connection with the radiation survey of the Northern Marshalls including, in addition to

Bikini Atoll, Ujelang Atoll, Wotho Atoll, Rongelap Atoll, Likiep Atoll, Ailinginae Atoll, Rongerik Atoll, Taka Atoll, Utirik Atoll, Ailuk Atoll, Bikar Atoll, Mejit Island, and Jimo Islands.

9. Raw (readable hard copy) data results of such surveying shall be made immediately available to legal counsel and advisers of the Bikini people.

III. Independent Analysis of Survey Data

10. In recognition of the desire of the Bikini people to have available to them an independent scientific judgment and analysis of the radiation survey data to assist them in making a decision with respect to resettlement, the Bikini people shall be entitled to select a qualified scientist having generally accepted scientific training and experience to participate in the process of analysis of survey results and preparation of the final survey report.

11. The United States Department of Energy, as the agency in charge of the radiation survey, shall arrange to contract with the individual selected by the Bikini people for the purposes set forth in the preceding paragraph, provided only that terms of any such contract with respect to compensation and expenses shall be reasonably based on prevailing consultation fees and expenses for work of similar character.

12. The individual selected by the Bikini people to participate in the analysis of survey data and preparation of the final survey report shall be guaranteed independence and full access to all survey data available to the Department of Energy and shall have a full opportunity to make a complete and detailed report of his or her findings, analyses, recommendations and conclusions.

IV. General Provisions

13. It is the intention of the parties to this agreement that the terms of the agreement shall survive any change in the political status of the Marshall Islands, subject to the wishes of the Bikini people.

14. The execution of this document in no way constitutes an admission that the Trust Territory of the Pacific Islands defendants have submitted to the jurisdiction of the United States District Court for the District of Hawaii.

The People of Bikini by
Bikini Counsel

By: 

Jonathan M. Weisgall

Attorney for Plaintiffs

October 27, 1978

Federal Defendants

(Department of the Interior
on behalf of the Government
of the Trust Territories
of the Pacific Islands)

By: 

Gary B. Randall

Attorney for Federal Defendants

October 27, 1978



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

JUN 1 1979

Magistrate Tomaki Juda
Kili-Bikini Council
Kili, Marshall Islands 96960

Dear Magistrate Juda:

I am enclosing for your information a copy of the official letter sent by Under Secretary James A. Joseph to High Commissioner Winkel on the Eneu situation. I regret that the Under Secretary's absence from Washington precluded his signing this letter in time for it to reach you for the meeting in Honolulu last week. I did relay to the High Commissioner informally the gist of the Under Secretary's letter and I am sure that he communicated the decision to you and others in the Bikini delegation.

All of us here deeply regret that Eneu Island cannot be used for residence for at least another 20-25 years since we understand the deep feelings of the people of Bikini and their hopes, that even though Bikini Island is not useable now, Eneu Island possibly might have been. This is not now possible.

We must turn now to the very immediate and pressing problem of where resettlement can be arranged for the people of Bikini. I assure you that here in Interior this matter has the highest priority. We shall, in cooperation with the High Commissioner, the Government of the Marshalls, and the people of Bikini and their legal counsel, press forward on all fronts to seek a satisfactory solution.

Please relay my warm regards to the people of Bikini. The welcome that they extended to Under Secretary Joseph, to Deputy Under Secretary Wallace Green and to me when we visited Bikini and Kili last August is one none of us will ever forget.

Sincerely yours,

RUTH G. VAN CLEVE
Mrs. Ruth G. Van Cleve
Director
Office of Territorial Affairs

Enclosure

EXHIBIT D



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

Honorable Henchi Balos
Member of Parliament
Nitijela
Majuro, Marshall Islands 96960

JUN 1 1979

Dear Mr. Balos:

I am enclosing for your information a copy of the official letter sent by Under Secretary James A. Joseph to High Commissioner Winkel on the Eneu situation. I regret that the Under Secretary's absence from Washington precluded his signing this letter before you left for the meeting with the Bikini delegation in Honolulu last week. I did relay to the High Commissioner informally the gist of the Under Secretary's letter and I am sure that he communicated the decision to the Bikini delegation.

All of us here deeply regret that Eneu Island cannot be used for residence for at least another 20-25 years since we understand the deep feelings of the people of Bikini and their hopes, that even though Bikini Island is not useable now, Eneu Island possibly might have been. This is not now possible.

We must turn now to the very immediate and pressing problem of where resettlement can be arranged for the people of Bikini. I assure you that here in Interior this matter has the highest priority. We shall, in cooperation with the High Commissioner, the Government of the Marshalls, and the people of Bikini and their legal counsel, press forward to seek a satisfactory solution.

Please relay my warm regards to the people of Bikini. The welcome that they extended to Under Secretary Joseph, to Deputy Under Secretary Wallace Green and to me last August when we visited Bikini and Kili is one none of us will ever forget.

Sincerely yours,

RUTH G. VAN CLEVE
Mrs. Ruth G. Van Cleve
Director
Office of Territorial Affairs

Enclosure

EXHIBIT D

RELEASE
OF RIGHTS TO BIKINI ATOLL

In consideration of the grant of the islands and islets of

Kili, also known as Hunter's Island, located at 5 degrees
38 minutes 45 seconds North Latitude and 169 degrees
7 minutes East Longitude

Devet located on the eastern side of the Jaluit Atoll at
6 degrees 7 minutes 46 seconds North Latitude and
169 degrees 33 minutes 43 seconds East Longitude

Djar located on the eastern side of Jaluit Atoll at 6 de-
grees 7 minutes 36 seconds North Latitude and 169
degrees 33 minutes 46 seconds East longitude

Bokalablab located on the eastern side of Jaluit
Atoll at 6 degrees 6 minutes 50 seconds North
Latitude and 169 degrees 35 minutes 10 seconds
East Longitude

We, the undersigned, by established Marshallese custom, the duly cons-
tituted and acknowledged representatives of the people of Bikini Atoll, with
the right to act for any and all the people of said Bikini Atoll, jointly and
severally, for ourselves and the said people of Bikini do hereby release to
the High Commissioner of the Trust Territory of the Pacific Islands, all of the
right, title and interest of all the people of the Bikini Atoll, including the
rights of all of the undersigned, to the Bikini Atoll, and any and all of the
islands and islets of said atoll, located in the Marshall Islands, between 11
degrees 29 minutes and 11 degrees 43 minutes North Latitude and 165 degrees 11
minutes and 165 degrees 34 minutes East Longitude, together with all rights
appurtenant thereto.

/s/ Judak
Alab

/s/ Jakis
Alab

/s/ Lakuar
Alab

/s/ Eykel
Alab

/s/ Livitikin
Alab

/s/ Merrition
Alab

/s/ Kelep
Alab

/s/ Mak
Alab

/s/ Janien
Alab

27 April 1951
Witness
/s/ W. S. DODD, JR.
W. S. DODD, JR.

DEED

WHEREAS, in order for the Trust Territory of the Pacific Islands to play its part in the maintenance of international peace and security it became necessary for the United States of America, the administering authority for the said Trust Territory, to take, occupy and use all of the atoll of Bikini located in the Marshall Islands, between 11 degrees 29 minutes and 11 degrees 43 minutes North Latitude and 165 degrees 11 minutes and 165 degrees 34 minutes East Longitude, thus forever deprived the owners of rights in the said atoll from possession, enjoyment and use of the said atoll;

NOW THEREFORE, I, Arthur W. Radford, High Commissioner of the Trust Territory of the Pacific Islands, in accordance with the agreement between my representatives and the representatives of the owners of rights in Bikini Atoll to provide other lands to the people of Bikini, and in consideration for the transfer of all rights, title and interest in Bikini Atoll to the United States as administering authority for the Trust Territory of the Pacific Islands, do hereby grant to those persons who at theof the occupancy of Bikini by the United States owned any right or interest in the said Bikini Atoll, the following islands and islets from the public domain of the said Trust Territory :

- Kili, also known as Hunter's Island, located at 5 degree 38 minutes 43 seconds North Latitude and 169 degree 7 minutes East Longitude
- Devet (Jebot) located on the eastern side of the Jalait Atoll at 6 degrees 7 minutes 46 seconds North Latitude and 169 degrees 33 minutes 43 seconds East Longitude
- Djar (Jar) located on the eastern side of Jalait Atoll at 6 degrees 7 minutes 36 seconds North Latitude and 169 degrees 33 minutes 46 seconds East Longitude
- Bokalablab located on the eastern side of Jalait Atoll at 6 degrees 6 minutes 50 seconds North Latitude and 169 degrees 35 minutes 10 seconds East Longitude

to have and to hold unto them, the said former owner of the rights in Bikini Atoll, forever, with each individual having the same rights, or similar rights, as he had, has, or will have under the customs and indigenous laws of the Marshallese people and

the laws of the Trust Territory of the Pacific Islands as they are, have been, or may be. Provided, however, that any tracts which shall be assigned to individuals in any of the above named islands or islets, shall be assigned according to established Marshallese custom subject to the approval of the Civil Administrator of the Marshall Islands of the Trust Territory of the Pacific Islands.

ARTHUR W. RADFORD
HIGH COMMISSIONER OF THE
TRUST TERRITORY OF THE
PACIFIC ISLANDS

Accepted for the people of Kili, formerly of Bikini

Jemita K.
Broj of Ralik chain having
interest in Bikini

✓
27 April 1951
witnessed

W. S. DODD, Jr.
W. S. DODD, Jr.

Kekap

Alab

MAK

Alab

Tanjan

Alab

✓ 27 April 1951
Witness
W. S. DODD, Jr.
W. S. DODD, Jr.

Kelap

Alab

MAK

Alab

Tanjung

Alab

✓ 27 April 1951

Witness

W. S. Bodd, Jr.

W. S. BODD, Jr.

TRUST TERRITORY OF THE PACIFIC ISLANDS
Majuro, Marshall Islands

November 22, 1956

AGREEMENT IN PRINCIPLE REGARDING THE USE OF BIKINI ATOLL

WHEREAS, in order for the Trust Territory of the Pacific Islands to play its part in the maintenance of international peace and security it became necessary for the United States of America, the administering authority for the said Trust Territory, to occupy and use, with the consent of the inhabitants, all of the atoll of Bikini located in the Marshall Islands, between 11 degrees 29 minutes North latitude to 11 degrees 43 minutes North latitude, and 165 degrees 11 minutes East longitude to 165 degrees 34 minutes East longitude, thus depriving the owners of the use of the said atoll;

WHEREAS, an assembled meeting was held on Kili Island on November 9, 1956 with the majority of the people who possess rights in Bikini Atoll to discuss a settlement for the past and future use of Bikini Atoll, and

WHEREAS, agreement was reached at said meeting with no one present dissenting,

It is hereby agreed as follows:

1. The Government of the Trust Territory of the Pacific Islands will grant and convey to all of the people who possess land rights in Bikini Atoll, that is the commoners, according to the accepted Marshallese custom, full use rights in the following islands, islets and land parcels from the public domain of the said Trust Territory:

Kili, also known as Hunter's Island, located at 5 degrees 38 minutes 45 seconds North latitude and 169 degrees 7 minutes East longitude;

Jebet (Devet) located on the eastern side of the Jaluit Atoll at 6 degrees 7 minutes 46 seconds North latitude and 169 degrees 33 minutes 43 seconds East longitude;

Jar (Njar) located on the eastern side of Jaluit Atoll at 6 degrees 7 minutes 36 seconds North latitude and 169 degrees 33 minutes 46 seconds East longitude;

Bokalablab located on the eastern side of Jaluit Atoll at 6 degrees 6 minutes 50 seconds North latitude and 169 degrees 35 minutes 10 seconds East longitude;

and the land on the southern end of Jebvar Island located on the eastern side of Jaluit Atoll known as Lojokar. All government lands south of Lojokar wato to the end of Lullol wato.

All these lands may be divided among the former Bikini people as they shall mutually agree, and the use rights to the land, lagoon, or reefs of the above mentioned lands, together with all buildings and trees thereon shall be held by them, and their heirs and assigns in accordance with the accepted Marshallese customs.

2. The aforesaid use rights in the aforesaid government lands shall continue until such time as it may be possible for the people to return to Bikini, providing they wish to return to occupy said Atoll.

3. The Government of the Trust Territory of the Pacific Islands and/or the Government of the United States of America shall possess the full use rights to Bikini Atoll until such time as it determines it will no longer be necessary to occupy and use the said Atoll.

4. The sum of \$325,000.00 shall be conveyed to those persons, those commoners, who possess rights in Bikini Atoll. This money is to be administered as follows: (1) \$25,000.00 receipt of which is hereby acknowledged, to be paid the aforesaid parties at the time of signing this agreement and may be divided among those who possess aforesaid rights in Bikini Atoll, or otherwise utilized as all parties concerned agree; and (2) the remaining \$300,000.00 to be placed in a trust fund to be established and administered by the High Commissioner until such time as said trust fund can be administered by a qualified institution. The trust fund shall be invested only in United States Government securities and interest accrued from said fund will be paid in such manner as may be further agreed upon by the alabs and people with vested land rights in Bikini.

5. The people and alabs signing this Agreement in Principle represent that they have the full and complete right to represent the interests of any and all individuals who by reason of having lived on Bikini or Kili, may now or at any future date have a claim against the United States or Trust Territory Government by reason of their use of Bikini Atoll.

Accordingly, the people and alabs signing this agreement agree that any future claims by Bikinians based on the use of Bikini by the Governments of the United States or the Trust Territory or on the moving of the Bikini people from Bikini Atoll to Kili Island shall be against them and not against the Government.

This Agreement was made voluntarily and without any compulsion or coercion whatsoever.

FOR THE PEOPLE OF BIKINI ATOLL:

ALABS OF BIKINI ATOLL

<u>/s/ Juda</u>	<u>/s/ Jansen (by Kunda)</u>	_____
<u>/s/ Jibay</u>	_____	_____
<u>/s/ Josep (by K)</u>	_____	_____
<u>/s/ Juokdu</u>	_____	_____
<u>/s/ Beyked</u>	_____	_____
<u>/s/ Laijo</u>	_____	_____
<u>/s/ Lenig (Kauda)</u>	_____	_____
<u>/s/ Lore</u>	_____	_____
<u>/s/ Jukura (by andru)</u>	_____	_____

ALABS OF KILI ISLAND

<u>/s/ Killan</u>	<u>/s/ Pero</u>	<u>/s/ Jebara (for Glibo)</u>
<u>/s/ Livitikoj</u>	<u>/s/ Barito</u>	_____
<u>/s/ Ritab (by Kauda)</u>	<u>/s/ Samuel</u>	_____
<u>/s/ Jattie</u>	<u>/s/ Jay</u>	_____

FOR THE GOVERNMENT OF THE TRUST TERRITORY OF THE PACIFIC ISLANDS

Delmas H. Nucker /s/ Delmas H. Nucker
High Commissioner

WITNESS:

Jack A. Tobin /s/ Jack A. Tobin
District Anthropologist

Kondo Sandbergen /s/ Kondo Sandbergen
Manager, Kili Development Project

David Ebrean /s/ David Ebrean
Taro Expert

Agreement in Principle Regarding the Use of Bikini Atoll, executed
November 22, 1956, at Kili Island.

USE AND OCCUPANCY AGREEMENT FOR LAND
IN THE TRUST TERRITORY OF THE PACIFIC ISLANDS
UNDER THE ADMINISTRATIVE RESPONSIBILITY
OF THE DEPARTMENT OF THE INTERIOR

This agreement made as of the 15th day of April, 1946, by and between the Government of the Trust Territory of the Pacific Islands, hereinafter called "Grantor" and the United States of America:

WITNESSETH:

Whereas, Grantor is the owner of exclusive use and occupancy rights for an indefinite period of time including the right to make a conveyance thereof in and to certain parcels of land, said parcels being located in the Marshall Islands and described as follows:

All of the atoll of Bikini located in the Marshall Islands, between 11 degrees 29 minutes North latitude to 11 degrees 43 minutes North latitude, and 165 degrees 11 minutes East longitude to 165 degrees 34 minutes East longitude,

and as delineated on the attached map marked Exhibit "A" and made a part hereof; and

Whereas, Grantor is agreeable to conveying to the United States of America the exclusive right to the use and occupancy of the land described aforesaid for an indefinite period of time subject to certain conditions; and

Whereas, the United States of America desires to acquire the use and occupancy of the land described aforesaid; for an indefinite period of time.

NOW, THEREFORE, in consideration of the mutual agreements hereinafter set fourth and the mutual benefits to be derived therefrom, it is agreed as follows:

1. Use Granted. Grantor, for and in consideration of the sum of ten dollars (\$10.00) and other good and valuable consideration, does hereby grant, sell, convey, and assign unto the United States of America the exclusive right to use and occupy the land above described for an indefinite period of time to continue so long as the United States of America has a use for said land and in addition will save the United States of America harmless from any and all claims, demands, suits, and actions of whatsoever kind or nature arising directly or indirectly from such use or occupancy; provided, the same do not arise from any alleged act of negligence by the United States of America, its agents, servants or employees.

EXHIBIT H

2. Conditions of Use. (A) Use To Be Consistent With Trusteeship Agreement. The use to which the land is put by the United States of America shall be consistent with the provisions and purposes of the Trusteeship Agreement relating to the Administration of the Trust Territory of the Pacific Islands.

(B) Review of Need for Land Every Five Years. On or about June 30, 1961, and on a similar date each five-year period thereafter, the agency of the United States of America having the use and occupancy of said land or the Department of the Navy as the representative thereof and Grantor shall jointly review and determine the need for continuing the use and occupancy granted, sold, conveyed, and assigned hereby.

(C) Review by the President. In the event the review provided for in paragraph (b) does not result in agreement as to the need for continuing use and occupancy by the United States of America, the matter shall be presented to the President of the United States for final decision.

(D) Termination of Use and Occupancy. In the event of a decision pursuant to paragraphs (B) or (C) that a need for the continued use and occupancy of said does not exist, the use granted, sold, conveyed, and assigned hereby shall terminate thirty days from the date of such decision and all interest in said land shall revert to the Grantor. During said thirty-day period, the United States of America may, if it elects, remove any structures or improvements it has heretofore erected or may hereafter erect on the land; and if the structures or improvements cannot be moved during said thirty-day period, the United States of America shall be permitted such additional time as may be required.

3. Use of Land by Grantor. When not actively used by the United States of America, said lands and improvements will be made available to the Grantor on a license basis, for the use and benefit of the people of the Trust Territory of the Pacific Islands. The license shall be subject to the following conditions:

(A) The license may be revoked at any time by the United States of America so advising the Grantor in writing.

(B) The Grantor shall reimburse the United States of America for any utilities and services furnished.

(C) Grantor shall maintain and be responsible for any loss or damage to the real property and personal property owned by the United States of America, except for loss or damage caused by ordinary wear and tear and conditions beyond the control of the Grantor.

(D) Grantor shall be responsible for any damage or injury to others arising from the use by the Grantor or the people of the Trust Territory of the Pacific Islands of said land or any improvements or facilities located thereon.

(E) No permanent native dwellings or settlements shall be established on said land without the Grantor obtaining prior written approval from the United States of America.

In Witness Whereof; the parties hereto have executed this as of the day and year first above written.

Government of the Trust Territory
of the Pacific Islands

By /s/ K. H. NUCKER
NUCKER
High Commissioner

The United States of America

By /s/ J. F. Jelley
J.F. JELLEY, RADM, CEC, USN
DIRECTOR, PACIFIC DIVISION
BUREAU OF YARDS AND DOCKS

By direction of the Chief of the
Bureau of Yards and Docks, acting
under the direction of the
Secretary of the Navy

CERTIFIED TO BE A TRUE COPY

/s/ W. W. COMPTON
W. W. COMPTON
COMMANDER, CEC, USNR
By direction
AREA PUBLIC WORKS OFFICER

Marshall Islands District
Recorded Book 1. page 1, 2 & 3
June 20, 1957 9:00 a.m.
Raymond de Brum
Clerk of Courts

AGREEMENT ACKNOWLEDGING THE RETURN OF BIKINI ATOLL
TO THE TRUST TERRITORY OF THE PACIFIC ISLANDS
SUBJECT TO CERTAIN RETENTION AREAS AND RIGHTS OF
THE UNITED STATES OF AMERICA

This agreement made this 17th day of March,
1970, by and between the Government of the Trust Territory of
the Pacific Islands hereinafter referred to as "Trust
Territory" and the United States of America.

Whereas, the Trust Territory and the United States of
America entered into a Use and Occupancy Agreement for Bikini
Atoll as of April 15, 1946; and

Whereas, the United States of America wishes to terminate
its use and occupancy of said atoll subject to certain retained
areas and rights to be held under the terms of the April 15,
1946 agreement;

Now, therefore, in consideration of the mutual agreements
contained herein, the parties agree as follows:

1. Return of Bikini Atoll to the Trust Territory.

Except as specified herein, as of October 11, 1969, all rights,
title and interest of the United States of America in Bikini
Atoll are hereby terminated.

2. Retention Lands and Rights. There is hereby
retained by the United States of America, the following
described land which shall continue to be subject to the terms
of the April 15, 1946, agreement:

PARCEL A: A rectangular plot of land
260 feet by 160 feet (long dimension oriented east-
west) with center of rectangle located at a point

11 degrees 33 minutes 21 seconds north latitude,
165 degrees 14 minutes 00 seconds east longitude.
Said parcel of land being situated on Ourukaen Island.

PARCEL B: A rectangular plot of land 260
feet by 160 feet (long dimension oriented east-west)
with center of rectangle located at a point 11 degrees
29 minutes 45 seconds north latitude, 165 degrees
22 minutes 22 seconds east longitude. Said parcel of
land being situated on Eninman Island.

Together with the right of ingress to and egress from
said parcels over land of the Trust Territory from the boat
landings on Ourukaen and Eninman Islands.


Together with the right of the United States of America
to use the boat landings on said Ourukaen and Eninman Islands.

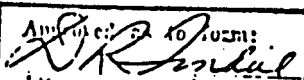
3. In addition to the land retained for use and
occupancy by the United States of America, it is agreed that
the United States of America shall have the right to use the
boat landings, pier and airstrip on Eneu (Enyu) Island which
right shall continue to be subject to the terms of the
April 15, 1946, agreement.

In Witness Whereof, the parties hereto have executed the
agreement as of the day and year first above written.

GOVERNMENT OF THE TRUST TERRITORY
OF THE PACIFIC ISLANDS

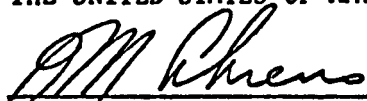
By


EDWARD E. JOHNSTON
High Commissioner

Approved: 
March 16, 1950

THE UNITED STATES OF AMERICA

By


By direction of the Commander, Naval Facilities
Engineering Command, acting under the direction
of the Secretary of the Navy

TRUST TERRITORY OF THE PACIFIC ISLANDS
SAIPAN, MARIANA ISLANDS

QUITCLAIM DEED

KNOW ALL MEN BY THESE PRESENTS, that I, Adrian P. Winkel, High Commissioner of the Trust Territory of the Pacific Islands, in compliance with the provisions and directive of Secretarial Order No. 3030, have conveyed and by these presents do hereby quitclaim and release all rights, title and interest of the Government of the Trust Territory of the Pacific Islands including use rights in and to the real property described below unto the People of Bikini, that is the Commoners, their heirs and assigns, represented by those Alabs who executed an "Agreement in Principle Regarding the Use of Bikini Atoll" on or about November 22, 1956, or their successors, to wit:

Juda	Killion
Jibaj(s)	Lebitikoj
Joseph	Aitab
Juokdru	Jattil
Hazkel	Elibo
Laijo	Pero
Lewoj	Barine
Lore	Samuel
Andru	Joaj
Josaia	

The atoll, islands and land parcels conveyed are all located in the Marshall Islands District, Trust Territory of the Pacific Islands, and are described as :

All of the islands located within Bikini Atoll;

Kill Island (also known as Hunter's Island), located at 5 degrees 38 minutes 45 seconds North latitude and 169 degrees 7 minutes East longitude;

EXHIBIT J
/...

Jebot (Devet) Island, Jaluit Atoll, located on the eastern side thereof at 6 degree 7 minutes 46 seconds North latitude and 169 degrees 33 minutes 43 seconds East longitude;

Jar (Djar) Island, Jaluit Atoll, located on the eastern side thereof at 6 degrees 7 minutes 36 seconds North latitude and 169 degrees 33 minutes 46 seconds East longitude;

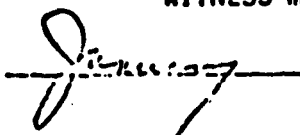
Sokalablab Island, Jaluit Atoll, located on the eastern side thereof at 6 degrees 6 minutes 50 seconds North latitude and 169 degrees 35 minutes 10 seconds East longitude;


and all of the land area on the southern end of Jehwar Island located on the eastern side of Jaluit Atoll known as Lojokar. All government lands south of Lojokar wato to the end of Lullol wato,

TO HAVE AND TO HOLD said real property and all improvements located thereon forever, PROVIDED, however, that until the Trust Territory Government is required and/or authorized to abandon them, this conveyance does not transfer any right, title or interest in or to the existing public health or educational facility located on Kili Island nor the real property upon which it is built, including side yards and recognized related use areas.

No warranty, general or special, express or implied, is contained herein, save and except that the Government of the Trust Territory of the Pacific Islands and its successors in interest, if any, are bound forever to the terms and conditions set forth above.

WITNESS my hand and seal of office on this the 24th day of

 1979.


Adrian P. Winkel
High Commissioner
Trust Territory of the Pacific
Islands

APPROVED AS TO FORM

By: *[Signature]*
Attorney General

Date: January 24, 1979

APPROVED FOR THE LANDS DIVISION

By: *[Signature]*
Chief, Lands Division

Date: January 24, 1979.

* * * * *

RECORDING OF QUITCLAIM DEED

Recorded this 15th day of April, 1979, in
Book 1-15, Page 5.

By: *[Signature]*
Clerk of Courts
Marshall Islands District

STATEMENT OF UNDERSTANDING
ON THE PART OF THE
GOVERNMENT OF THE UNITED STATES
AND THE GOVERNMENT OF THE TRUST TERRITORY OF THE PACIFIC ISLANDS
CONCERNING THE
MOVE OF THE PEOPLE OF BIKINI ISLAND, AUGUST, 1978

1. On August 11, 1978, the Undersecretary of the Department of the
2. Interior, James A. Joseph, the Deputy Undersecretary, Wallace Green, and
3. the Director of the Office of Territorial Affairs, Ruth G. Van Cleve,
4. journeyed to Bikini Island to meet with its current residents. The purpose
5. of their meeting was to convey information on the subject of the forthcoming
6. move by the people of Bikini Island to Kili Island, and to respond to ques-
7. tions and hear concerns put to them by the people of Bikini Island. They
8. had earlier, on August 7, held a similar meeting with former residents of
9. Bikini who now reside on Kili. The High Commissioner of the Trust Territory
10. of the Pacific Islands, Adrian P. Winkel, had been prevented by bad weather
11. in Saipan from joining in the visit to Bikini Island, but he had earlier met
12. with the people of Bikini, as well as with other Bikinians on Kili.

13.

14. In 1946, the people of Bikini were removed from their atoll by the
15. U. S. Navy in order to enable the United States to use the atoll for a
16. nuclear testing program which lasted until 1958. The islanders were moved
17. first to Rongerik, then to Kwajalein, and ultimately to Kili. In the late
18. 1960's, it appeared that levels of radiation on Bikini atoll were such that
19. the people could return to and use a number of the major islands of the atoll.
20. Beginning in 1969, a clean-up of the atoll and a rehabilitation program was
21. begun. In the early 1970's, some Bikini people were employed in the project
22. and the Bikini Island population increased to approximately 145 in 1978. In
23. 1977, the intake of radionuclides by the people living on Bikini Island had
24. increased to alarming proportions, and a major feeding program was insti-
25. tuted. April, 1978 surveys showed that the feeding program had not resulted

1. In decrease in the radionuclide body burden. The Department of the Interior
2. decided, in the light of the evidence presented by the Department
3. of Energy, that the people living on Bikini should be moved at the earliest
4. possible date. An aerial/radiological survey currently underway and other
5. radiological tests on Bikini being conducted by the Department of Energy
6. will determine whether Bikini atoll can, in the foreseeable future, be
7. considered as a home for the Bikini people.

8.

9. **Among the requests of the people of both Bikini and Kili was a**
10. **request for a statement in writing of the understandings that the repre-**
11. **sentatives of the United States conveyed during those meetings and of the**
12. **commitments that those representatives were willing to make. The follow-**
13. **ing are intended to respond to the principal concerns then and there**
14. **expressed.***

15.

16. **Mr. Joseph and Mrs. Van Cleve, on behalf of the Government of the**
17. **United States, and Mr. Winkel, on behalf of the Government of the Trust**
18. **Territory, offered the following assurances:**

19.

20. **I. The Government of the United States considers itself generally**
21. **responsible for the well being of the Bikini people and their descendents**
22. **and, following consultation with them, the Government of the United States**
23. **will seek to arrange their relocation, permanently, in the most satisfactory**
24. **manner possible. The Department of the Interior will undertake to obtain**
25. **such authority and such resources as may be required in order to meet and**

*On August 14, 1978, soon after the Bikini and Kili meetings, the four officers referred to above were involved in a major airplane accident off the coast of Guam. Although they were among the survivors, their notes taken at the meetings sunk with the airplane. This statement, drafted by Mrs. Van Cleve on August 15 at the Guam Naval Hospital is intended to be as full as recollections permit, but in the circumstances it may not be complete.

1. discharge this responsibility. The Department of the Interior will call upon
2. other agencies of the United States Government to assist it, particularly the
3. Department of Energy, so as to assure that, among other things, the medical
4. needs of the current residents of Bikini Island continue to be met.

5.

6. II. Because Kili Island has, until recent weeks, been regarded as
7. solely a temporary relocation site for the people of Bikini, the Governments
8. have never undertaken to construct permanent facilities there, nor to improve
9. significantly any of the existing Kili facilities. It is now known that
10. Bikini Island will not be fit for human habitation for decades to come, and
11. on the basis of the most recent scientific information, it appears that Eneu
12. Island, in the Bikini Atoll, will also be unavailable for settlement. In
13. the circumstances, the Governments understand that some of the Bikini people
14. will choose to remain on Kili indefinitely, and the Governments will accord-
15. ingly undertake a program for the permanent rehabilitation of Kili.

16.

17. III. It is not yet possible to develop a permanent relocation plan
18. for the people of Bikini. That plan must await completion of the aerial/
19. radiological survey that is now underway, and that is expected to be com-
20. pleted no later than the early weeks of 1979. When those survey results
21. are available and evaluated, and when any remaining scientific tests found
22. necessary are also completed, all of which developments are expected to
23. occur in the first months of 1979, it will be possible to identify safe
24. relocation sites. The Governments will then, following full consultation
25. with the people of Kili (including the current residents of Bikini Island
26. who will by then have relocated there), plan in detail for the relocation
27. of such Kili residents as choose to move elsewhere, affording to them a
28. choice among the possible relocation sites. Those who choose to remain on
29. Kili will be accommodated there.

30.

1. IV. The Governments understand that many, and possibly all, of the
2. current residents of Bikini Island would prefer, because they cannot remain
3. on Bikini, to live on Eneu Island in the Bikini Atoll. Although the best
4. current information suggests that that will not be possible, if later
5. tests should show Eneu can be safely inhabited, the Governments pledge that
6. all Bikinians who choose to do so may move to Eneu, to the full extent that
7. the size and resources of Eneu permit.

8.

9. V. In the meantime the Governments have constructed twenty-eight
10. temporary houses on Kili, one each for each family now residing on Bikini
11. Island. This construction is expected to be completed either by the day
12. on which the Bikini Island residents return to Kili, or within a few days
13. thereafter, depending upon weather conditions on Kili in the last half of
14. August, 1978. Because a visit to Kili reveals that certain necessary
15. community facilities there are either seriously inadequate or nonexistent,
16. the Governments will undertake forthwith the construction of certain temporary
17. facilities: a new dispensary, a new school, an addition to the church, and
18. an addition to the civic assembly building. These facilities, which are
19. expected to be completed by the fall of 1978, will be of temporary con-
20. struction because they can thereby be erected with great speed, and because
21. the need for them should not be left unmet during the several months during
22. which permanent facilities are planned and constructed. Such permanent
23. facilities will be provided as a part of the rehabilitation of Kili referred
24. to in assurance number II.

25.

26. VI. The Governments recognize the necessity of providing a dock at
27. Kili. They will commence immediately to cause the engineering feasibility
28. of such a dock to be explored, and assuming both engineering feasibility
29. and the availability of the necessary funds, neither of which is expected
30. to pose a problem, the construction of a dock at Kili is expected to begin

1. in the spring of 1979.

2.

3. VII. The Governments recognize that the island of Bikini and the
4. Bikini Atoll are places of unique importance to the people of Bikini and
5. their descendents, and that it is therefore important to them to be able
6. to view and visit Bikini, even if only briefly. The Government of the
7. Trust Territory will therefore arrange, when Trust Territory shipping
8. schedules permit, to transport Bikini Residents living on Kili (including
9. the current Bikini Island residents about to move there) for visits from
10. time to time to Bikini. Such visits will necessarily be brief, and it
11. will not be possible for the Bikini visitors to reside, even briefly, on
12. Bikini Island nor, probably, on Eneu Island. Such brief visits will,
13. however, occur from time to time, as shipping schedules reasonably permit
14. and as the wishes of the Bikinians indicate.

15.

16. VIII. The Governments recognize that the current residents of
17. Bikini Island will encounter personal hardships, as well as certain
18. expenses, attendant upon their forthcoming move. The Governments will
19. therefore, pay, as a lump sum relocation allowance, the sum of \$100.72
20. per person, to the head of each family on Bikini Island. That sum is
21. not intended to constitute compensation, in whole or in part, for any
22. damage the Bikini Island residents may be found to have sustained. It
23. is intended instead to be a one-time payment to facilitate their forth-
24. coming move to Kili Island. The Government of the United States has
25. arranged for the current Bikini Island residents to stop at Kwajalein,
26. while enroute to Kili, to make purchases there.

27.

28. The foregoing understanding and commitment are not intended to
29. be exhaustive. They are intended to respond to the major concerns ex-
30. pressed at the meeting on Bikini and Kili on August 11 and 7, 1978.

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James G. Joseph
Undersecretary of the Interior
JGJ

Paul S. Van Ness
Director, Office of Territorial Affairs
PVS

Admiral P. Hall
High Commissioner, Trust Territory of
the Pacific Islands

Dated: August 16, 1975
