

STATEMENT  
OF  
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DEPARTMENT OF THE INTERIOR

BEFORE THE  
U.S. SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

REGARDING  
S. 2182  
TO PROVIDE FOR THE SETTLEMENT AND RELOCATION OF THE  
PEOPLE OF BIKINI

FEBRUARY 6, 2018

Chairman Murkowski, Ranking Member Cantwell, and Members of the Committee, I am Doug Domenech, Assistant Secretary for Insular Areas at the Department of the Interior (Department). Thank you for the opportunity to testify regarding S. 2182, the Bikini Resettlement and Relocation Act.

**Provisions of S. 2182**

The Bikini Resettlement Trust Fund (Trust Fund) was established pursuant to P.L. 97-257, in order to aid in the relocation and resettlement of the Bikini people living on Kili and Ejit Islands. S. 2182 would amend P.L. 97-257 to limit the distribution of expenditures from the Trust Fund to no more than 5 percent of the principal of the Trust Fund. Under S. 2182, the Secretary of the Interior (Secretary) would retain the right to disapprove of the distribution of expenditures from the Trust Fund, subject to the 5 percent limitation, until such time as the Secretary submits a resettlement plan to Congress. The Secretary would be required to coordinate with the Bikini Atoll leadership in the development of the resettlement plan.

## **Visit to the Marshall Islands**

Before I discuss the Department's views on S. 2182, I wanted to share with you my recent experience in the Republic of the Marshall Islands. In my first official visit to the Marshall Islands two weeks ago, I had an opportunity to visit the people and places of these enchanting islands. I met with the Honorable President Hilda Heine and her Cabinet ministers, Members of the *Nitijela* (the Marshall Islands' parliament), students and teachers at the Rita Elementary School, the President of the College of the Marshall Islands, the hospitals in Majuro and Ebeye, and had briefings in Kwajalein Atoll and at the Ronald Reagan Ballistic Missile Defense Test Site. I also had the opportunity to meet with the Mayor of Bikini Atoll and the members of the Kili-Bikini-Ejit ("KBE") Local Government Council, where we discussed in detail their plans to provide for their people's future. The topic of this hearing was a part of our discussions, which I will detail further below.

### **Background**

Between June 30, 1946, and August 18, 1958, the United States conducted a series of nuclear tests in the Marshall Islands, which included the detonation of atomic and hydrogen bombs in and around Bikini Atoll. These tests necessitated the removal and relocation of Bikini Atoll inhabitants to Rongerik Atoll and Kwajalein Atoll at first, and eventually Kili Island, Ejit Island and Majuro Atoll. Following an attempt to return the Bikinians to Bikini Atoll in the 1970s after a radiological survey found that Bikini Atoll was not safe for human habitation, Bikini Atoll has remained uninhabited since 1978.

The Trust Fund was funded initially by an appropriation of \$24,957,000 (P.L. 97-257). On January 14, 1986, the President signed legislation (P.L. 99-239) that approved the Compact of Free Association with the Republic of the Marshall Islands (the Compact). Section 177 of the Compact provided a procedure for the disposition of claims that resulted from the United States' Nuclear Testing Program. A separate agreement between the United States and the Republic of the Marshall Islands (RMI) authorized the settlement of all such claims, which went into effect simultaneously with the Compact. On October 10, 1986, the United States and RMI agreed that the effective date of the Compact would be October 21, 1986. On September 27, 1988, P.L. 100-46 was signed into law that satisfied the U.S. obligation to provide funds to

assist in the resettlement and rehabilitation of Bikini Atoll for the People of Bikini. P.L. 100-46, pursuant to the Compact, added an additional \$90 million into the Trust Fund. The Trust Fund was amended effective October 26, 1988 in order to comply with P.L. 100-446 (the Agreement).

### **Recent History**

On August 18, 2017, the Marshall Islands KBE Local Government Council passed a Rescript resolution (Rescript) to amend the Agreement stating that the Department's practice of exercising a right of veto over the Council's budget was not statutorily based.

On November 16, 2017, the Department responded to the Mayor of Bikini Atoll informing him that the Department had completed its review of the Council's Rescript. The letter further informed the Mayor and the Council that the Department was giving notice of the Department's acceptance of the Rescript as a valid amendment to the Agreement and that the Department would proceed in accordance with the terms of the Agreement as amended by the Rescript.

Although the Rescript serves to revise Section 10.1 of the Agreement, the Rescript does not and cannot affect any statutory provision concerning the Department's actions respecting the Trust Fund. Two such provisions remain extant. First, with the enactment of P.L. 100-446, Congress gave the Secretary discretion to approve expenditures not to exceed \$2,000,000 in any year from Trust Fund income for projects on Kili or Ejit. Second, P.L. 100-446 further provides that one year prior to the completion of the rehabilitation and resettlement program, the Secretary shall report to the Congress on future funding needs in Bikini Atoll.

P.L. 110-446 refers to the Secretary's reserved right to ask the KBE Local Government in any year for information on whether the KBE Local Government expects to expend an amount not exceeding \$2,000,000, specifically for projects on Kili and Ejit. The exercise of this statutory discretion does not relate to the KBE Local Government's total, annual budget, which also concerns projects in Majuro Atoll, Bikini Atoll and Arkansas, and it does not appertain to the KBE Local Government's request of its trustee bank to withdraw funds from the Trust Fund. They are free to

do that. Rather, this exercise of discretion is part of the statutorily mandated relationship between the KBE Local Government and the Department, separate and apart from the trustee bank.

On December 1, 2017, Chairman Murkowski wrote the Secretary of the Interior a letter to express her concern with the November 16 letter to the Mayor of Bikini Atoll. Included with the December 1 letter was a copy of S. 2182, which was introduced also on December 1 and which was referred the same day to this committee. The Chairman indicated that S. 2182 was intended to provide the “Department with the authority to disapprove withdrawals from the Resettlement Trust Fund for the People of Bikini” and to “limit those withdrawals each year to five per cent of the Fund’s *corpus*, based on the Fund’s average market value for the previous five fiscal years.”

S. 2182 intends to provide the Department with the means to achieve the bill’s purpose, namely, a *right of veto* by the Department over withdrawals from the Trust Fund. For more than three decades the Department exercised such a *right of veto* during eight U.S. Administrations. The exercise of this *right of veto*, however, was accomplished only with the request and acquiescence of the successive, elected leaders of the KBE Local Government. This arrangement came to end in August, when, while in no way criticizing the work that the Department had carried out on KBE affairs, the present Mayor of Bikini Atoll and fifteen of the eighteen elected members of the KBE Local Government Council expressed their clear intent to deal with their trustee bank exclusively and without any Federal oversight. This change was reflected in the Rescript passed by the Council in August and the Department’s acceptance of the Rescript as an amendment to the Agreement.

Therefore, if the Congress enacts S. 2182 in its current form, it is unclear what mechanism the Department would utilize to disapprove withdrawals from the trustee bank or how the Department would limit withdrawals each year to five per cent of the Fund’s *corpus* given the Council’s resolution on the matter, based on the Fund’s average market value for the previous five fiscal years.

In addition, it is the Department’s understanding that the monies that the United States placed in the Trust Fund decades ago lost their character as *Federal funds* once the Trust Fund acquired them. The Trust Fund is neither Federal in nature nor itself the subject of any existing Federal oversight. The Trust Fund is not part of the sector grants under the Compact, with the Marshall Islands, which appear for regular review and oversight by the U.S.-

Marshall Islands Joint Economic Management and Financial Accountability Committee, whose chairman is the Director of Interior's Office of Insular Affairs. There is no legal means for the Department to compel the KBE Local Government to provide the Department with a copy of the KBE Local Government's proposed fiscal year budget or even the name of the trustee bank. It is the Department's opinion that it cannot legally enforce any limitation on withdrawals.

In addition, the Department notes that, when the Congressional Budget Office analyzed P.L. 106-188, the Bikini Resettlement and Relocation Act of 1999, in referring to the Trust Fund, CBO stated that "the funds belong to the people of Bikini and thus are nonfederal." Consequently, it is unclear how S. 2182 could serve to impose withdrawal restrictions retroactively on these non-Federal funds.

Finally, it is important to note that during my visit to the Marshall Islands, President Heine indicated her support for the Department's decision to restore decision-making to the KBE Local Government Council. In addition, the Department has received letters of appreciation and support from Kessai Note, the former President of the Marshall Islands and present Senator from Jabat Island; Peterson Jibas, the Bikini Atoll delegate to the Marshall Islands Constitutional Convention; and Senator Eldon Note of Bikini Atoll.

### **Administration Position**

Secretary Zinke has made clear that he supports restoring the trust and sovereignty to the local communities with which Interior deals. It is the Department's position that the people of Bikini, through their elected leaders, have the right to amend the Agreement in order to restore their local control over the funds provided to them as restitution for the U.S. Government's nuclear testing on Bikini Atoll. Further, the Department believes that it does not have the right to veto the use of non-Federal funds that are not under our purview or jurisdiction. Absent any Federal law otherwise, the Department supports the empowerment of local governments.

Therefore the Administration would not be able to support S.2182 as currently written.

Thank you for allowing the Department to express its view on S. 2182.