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U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

January 25, 2022

Ambassador Daniel Kritenbrink
Assistant Secretary of State for East Asian and Pacific Affairs
United States Department of State
2201 C Street NW
Washington, DC 20520

Dear Assistant Secretary Kritenbrink:

The Committee on Natural Resources (Committee) is examining the nuclear waste storage facility at Runit Dome, the legacy of U.S. nuclear weapons testing in the Marshall Islands, and their implications for the continuation of the Compact of Free Association (COFA) between the United States and the Republic of the Marshall Islands.

From 1946 to 1958, the U.S. conducted 67 nuclear weapons tests in the Marshall Islands, with an explosive yield equivalent to 1.6 Hiroshima-sized bombs every day for 12 years. At the time, the U.S. administered the Marshall Islands in a United Nations Trust, with responsibility for the health and welfare of the Marshallese people. Nonetheless, the Marshallese suffered horrifying consequences from U.S. tests, most notably the so-called Bravo Shot. Miscalculations by U.S. personnel made this bomb significantly more powerful than expected, and fallout contaminated populated islands more than 100 miles away.[1] Although the U.S. military forecast the direction of the fallout from Bravo six hours in advance, it was more than two days before it evacuated Marshallese living in the affected areas.[2] In some places, Marshallese ate and played in radioactive powder, thinking it was snow.[3] Mothers later birthed "jellyfish babies" that emerged from the womb with transparent skin and no bones.[4] Fallout from the Bravo Shot test contaminated numerous islands and made the Rongelap Atoll "by far the most contaminated place on Earth" according to an American official in 1956.[5]

The Department of Energy's (DOE) Marshall Islands Program was established in 1977 and "is the U.S. response to the legacy of nuclear testing in the Marshall Islands," per DOE's Office of Environment,

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[1] Defense Nuclear Agency, *Castle Series: 1954* (1982) (available at: https://www.osti.gov/opennet/servlets/purl/16380885-g1vuWf/16380885.pdf)
[2] *Fifty-First Anniversary of Detonation of the World's First Thermonuclear Device at Enewetak Atoll in the Marshall Islands*, Congressional Record 155 (October, 2003) (available at: https://www.govinfo.gov/content/pkg/CREC-2003-10-30/html/CREC-2003-10-30-pt1-PgE2171-3.htm)
[3] Los Angeles Times, *How the U.S. Betrayed the Marshall Islands, Kindling the Next Nuclear Disaster* (Nov. 2019) (online at: https://www.latimes.com/projects/marshall-islands-nuclear-testing-sea-level-rise/)
[4] Dibblin, J., *Day of Two Suns: US Nuclear Testing and the Pacific Islanders (1990)*, New York: New Amsterdam.
[5] U.S. Atomic Energy Commission, *Advisory Committee on Biology and Medicine,* p. 232 (1956) (available at: http://data.nuclearsecrecy.com/mindd/PDF/0410495.pdf)

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Health, Safety & Security.[6] The office has a statutory "mandate to provide annual medical surveillance and care, environmental monitoring and characterization, and dose assessment for the peoples of the nuclear affected atolls."[7] The statutory mandates include Public Law 112-149, section 2, which says that "the Secretary of Energy shall, as a part of the Marshall Islands program… periodically (but not less frequently than every 4 years) conduct—a radiochemical analysis of the ground-water surrounding and in the Cactus Crater containment structure on Runit Island."[8] This containment structure, commonly referred to as the Runit Dome, contains over 100,000 cubic yards of radioactively contaminated soil and debris from U.S. tests and is leaking into the nearby lagoon.[9] Though the groundwater monitoring mandate was enacted in 2012, the office has failed to complete the required testing.

In the course of oversight of the DOE and environmental monitoring of Runit Dome, the Department of State has blocked DOE document production without justification and made misleading statements to Congress and been unresponsive to questions. These issues are described in further detail below.

On October 21, 2021 the Oversight & Investigations Subcommittee of the House Committee on Natural Resources held a hearing during which a DOE official promised to provide documents to the Committee by November 1. The Committee did not receive the documents. After several unsuccessful informal follow-up requests, the Committee sent a formal document request on November 19. The Committee subsequently learned that the State Department was preventing document production by refusing to approve the release of the documents, over the objections of DOE. On December 14, State Department staff briefed the Committee, but failed to provide a legal justification for withholding the documents and a privilege log detailing the documents being withheld and the reasons for withholding them.

During the December 14 briefing, State Department officials made a number of misleading statements to the Committee. State Department officials asserted that the U.S. is proposing to maintain its current level of economic aid to the Marshall Islands under a new COFA, when in fact the U.S. plans to discontinue postal services and allow education programs to lapse.[10] The State Department also asserted that the security provisions of COFA continue "in perpetuity" even if economic provisions expire, a statement directly contradicted by Title IV of COFA itself.[11] In response to questions about the U.S. nuclear legacy, State Department officials noted that the U.S. has provided more than $1 billion for resettlement and other activities in the RMI, but neglected to mention that this figure includes military spending and factors in roughly 70 years of inflation.[12]

During the course of its investigation, the Committee has asked each of the relevant agencies where in COFA "full responsibility for maintaining and monitoring the [Runit] dome" is transferred to the RMI,

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[6] U.S. Department of Energy, Office of Environment, Health, Safety & Security, *International Health Studies and Activities* (available at: https://www.energy.gov/ehss/international-health-studies-and-activities)

[7] Ibid.

[8] *Insular Areas Act of 2011,* P.L. 112-149 (2011).

[9] Testimony of Matthew B. Moury, U.S. Department of Energy, before the Committee on Natural Resources Subcommittee on Oversight and Investigations (October 21, 2021) (available at: https://docs.house.gov/meetings/II/II15/20211021/114132/HHRG-117-II15-Wstate-MouryM-20211021-U1.pdf)

[10] Honolulu Civil Beat, *After COFA Talks Stalled Under Trump, A 2023 Deadline Looms For Biden* (July 2021) (online at: https://www.civilbeat.org/2021/07/after-cofa-talks-stalled-under-trump-a-2023-deadline-looms-for-biden/

[11] Compact of Free Association Act of 1985, P.L. 99-239, Title IV (1986).

[12] U.S. Department of State, *Report Evaluating the Request of the Government of the Republic of the Marshall Islands Presented to the Congress of the United States of America,* Appendix B (January 4, 2005) (online at: https://2001-2009.state.gov/p/eap/rls/rpt/40422.htm)

which the Committee understands to be the current U.S government position. During the October 21 hearing, the Department of Interior (DOI) disagreed with this position, and in response to questions for the record, DOE referred the Committee to the State Department.[13] However, the State Department did not bring staff to the December 14 briefing capable of answering this question. The State Department finally provided a response on January 13, 2022. State claimed that because certain monitoring programs under COFA subsidiary agreements have lapsed, the U.S. no longer bears any responsibility for Runit Dome, neglecting to address concurrent responsibilities under other U.S. laws. Additionally, the Committee has learned that the State Department refuses to consult with the RMI on extension of these lapsed monitoring programs, as required by our bilateral agreements and U.S. law.

The correspondence received by the Committee from the State Department on January 13 raises additional oversight questions. The DOE documents the committee has requested relate to a May 2021 letter from DOE to the Foreign Minister of the Marshall Islands, drafted with the advice and encouragement of the State Department. The letter concerns environmental monitoring programs set forth in Public Law 112-149, which are funded and overseen by the DOI. Although the State Department claims it "consults subject matter experts from other agencies when those agencies are involved in or have relevant input on a particular matter in congressional correspondence," it also states "DOI had no role in that letter." Meanwhile, the State Department still has not provided a legal justification for blocking production of DOE documents or a privilege log detailing the documents being withheld and the reasons for withholding them. This appears to be one of several cases of the State Department overriding co-equal officials at DOI and is among a number of concerns raised by the January 13 correspondence.

According to House rule X(1)(m)(9), the Committee on Natural Resources has jurisdiction over issues relating to U.S. Insular Areas, including the Republic of the Marshall Islands. To assist the Committee's oversight, please provide the following documents no later than February 25, 2022:

1) All documents and communications received, sent, or prepared by Ambassador Karen Stewart, Meghan Kleinsteiber, or Julianna Bentes related to the May 14, 2021 letter from Deputy Associate Under Secretary of Energy for Environment, Health and Safety Todd Lapointe, to Ministers Nemra and Note of the Republic of the Marshall Islands;

2) All documents and communications received, sent, or prepared by Ambassador Karen Stewart, Meghan Kleinsteiber, or Julianna Bentes since March 1, 2020 that relate to the termination of COFA or any of its provisions under Title IV of the Compact;

3) All documents and communications received, sent, or prepared by Ambassador Karen Stewart, Meghan Kleinsteiber, or Julianna Bentes since March 1, 2020 that relate to Pell Grants, Supplemental Education Grants (SEG), or Individuals with Disabilities Education Act (IDEA) Grants in the RMI;

[13] Los Angeles Times, *Rep. Katie Porter presses Biden team on Marshall Islands nuclear waste, gets few answers* (Oct. 2021) (online at: https://www.latimes.com/environment/story/2021-10-22/marshall-islands-nuclear-waste-congressional-hearing-compact)

4) All documents and communications received, sent, or prepared by Ambassador Karen Stewart, Meghan Kleinsteiber, or Julianna Bentes since March 1, 2020 related to U.S. obligations under Public Law 112-149, section 2; and

5) Declassified versions of any current Circular-175 related to the U.S. nuclear legacy in the Marshall Islands.

As Secretary Blinken recently noted, COFA "has been a cornerstone of the strong relationship between the Marshall Islands and the United States for more than three decades."[14] Secretary Blinken went on to "reaffirm the importance of our special and historic relationship, which will continue to support security, stability, freedom, and prosperity in the Indo-Pacific for years to come."[15] The Committee looks forward to a response that is in keeping with these statements.

Sincerely,

Katie Porter
Chair
Subcommittee on Oversight and Investigations

Raúl Grijalva
Chair
Committee on Natural Resources

[14] U.S. Department of State, *Anniversary of the Compact of Free Association with the Republic of the Marshall Islands* (October 20, 2021) (online at: https://www.state.gov/anniversary-of-the-compact-of-free-association-with-the-republic-of-the-marshall-islands/)
[15] Ibid.

Responding to Committee Document Requests

In responding to document requests from the Committee on Natural Resources, please apply the instructions and definitions set forth below:

Instructions

1. In complying with the request, you should produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy, or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data, or information should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.

2. In the event that any entity, organization, or individual denoted in this request has been, or is currently, known by any other name than that herein denoted, the request should be read also to include them under that alternative identification.

3. Documents must be provided in electronic form (i.e., memory stick, thumb drive, or internet-based). Documents produced should also be organized, identified, and indexed electronically. Documents should be produced in their native file format. For example, emails from Microsoft Outlook should have a ".pst" file extension, Excel files should have an ".xls_" or similar extension, and Microsoft Word documents should have a ".doc_" extension. Consult with the Committee to determine the appropriate format in which to produce the information.

4. Each document produced should be produced in a form that renders the document capable of being copied.

5. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, or folder transmitted through the internet is produced, each should contain an index describing its contents.

6. Documents produced in response to this request should be produced together with copies of file labels, dividers or identifying markers with which they were associated when this request was issued. To the extent that documents were not stored with file labels, dividers, or identifying markers, they should be organized into separate folders by subject matter prior to production.

7. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.

8. It shall not be a basis for refusal to produce documents that any other person or entity also possesses a non-identical or identical copy of the same documents.

9. If compliance with the request cannot be made in full, compliance should be made to the extent possible and should include an explanation of why full compliance is not possible.

10. In the event that any document or part of a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document or part of a document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.

11. If any document responsive to this request was, but no longer is, in your possession, custody, or control, you should identify the document (stating its date, author, subject and recipients) and explain the circumstances by which the document ceased to be in your possession, custody, or control.

12. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.

13. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data, or information not produced because it has not been located or discovered by the return date should be produced immediately upon location or discovery subsequent thereto.

14. All documents should be Bates-stamped sequentially and produced sequentially.

15. Documents produced to the Committee in response to this request should be delivered to majority staff in Room 1324 of the Longworth House Office Building or directly through the internet.

Definitions

1. The term **"document"** means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone calls, text messages, MMS or SMS messages, other mobile-to-mobile messages, instant messages or online chat messages, meetings or other communications, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind

(including without limitation, photographs, charts, graphs, voice mails, microfiche, microfilm, videotape, recordings and motion pictures), and electronic and mechanical records or representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, memory sticks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term **"documents in your possession, custody, or control"** means (a) documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, or representatives acting on your behalf; (b) documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) documents that you have placed in the temporary possession, custody, or control of any third party.

3. The term **"communication"** means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, facsimile, mail, e-mail (desktop or mobile device), text message, MMS or SMS message, other mobile-to-mobile message, instant message or online chat, telexes, releases, personal delivery, or otherwise.

4. The terms **"and"** and **"or"** shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.

5. The terms **"person"** or **"persons"** means natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.

6. The term **"identify,"** when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.

7. The terms **"referring or relating,"** with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is in any manner whatsoever pertinent to that subject.

8. The term **"employee"** means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.