

From:

WILMER, CUTLER & PICKERING
1686 K STREET, N. W.
WASHINGTON, D. C. 20006


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October 23, 1974

Dear Jim:

If you have any questions
or can help, please give Howard
or me a call.

Sincerely,


Michael S. Helfer

Same note sent to:
Tom Dunmire, Staff Consultant
House Committee on Interior
and Insular Affairs
Suite 1329
Longworth House Office Bldg.

Adrian P. Winkel
Office of Congressman
Phillip Burton
Suite 2454
Rayburn House Office Bldg.

Jack M. Weiss, Esq.
Legislative Assistant to
Senator J. Bennett Johnston
Suite 432
New Senate Office Bldg.

James Beirne, Esq.
Special Counsel
Senate Committee on Interior
and Insular Affairs
Suite 3106
New Senate Office Building

11624

October 23, 1974

Congressman Phillip Burton
Suite 2454
Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Burton:

This firm serves as counsel to the Marianas Political Status Commission in its negotiations with the United States concerning the future political status of the Northern Mariana Islands. The Northern Marianas are presently part of the Trust Territory of the Pacific Islands, which is administered by the United States under a United Nations Trusteeship Agreement.

During the last two years, four sessions of negotiations have been held, and considerable progress has been made. A status agreement which will be submitted for approval to the local legislature and to the people of the Northern Marianas, and to the United States Congress, is now being drafted. The status agreement will provide that the Northern Mariana Islands will become a self-governing Commonwealth under the sovereignty of the United States after termination of the Trusteeship. It will also provide that about 18,000 acres of land in the Northern Marianas -- almost one-quarter of the entire land area of the islands -- will be made available to the United States for military purposes.

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One of the critical issues remaining to be resolved concerns the just compensation which the United States will pay for this 18,000 acres of land. The parties' efforts to agree on just compensation have been stymied by the insistence of the United States that it has permanent use rights -- rights which extend beyond termination of the Trusteeship -- in about half of this land, including some of the most valuable parcels. With respect to this portion of the land, the United States claims that it need only pay about two percent of the land's fair market value. The Commission has rejected the contention that the United States has permanent use rights, and insists that fair market value be paid.

As is demonstrated in detail in the enclosed memorandum, the United States' position is wholly unwarranted. The "Use and Occupancy Agreements" on which the United States bases its position, were made "as of" 1944 but actually executed in 1956. They grant from the Trust Territory Government to the United States the right to use certain public land in the Northern Marianas for an "indefinite" period in return for a payment of \$40 an acre. They require that the use of the land by the United States be consistent with the Trusteeship Agreement. Taken in context, the Use and Occupancy Agreements are most sensibly read to grant use rights only until termination of the Trusteeship. If this is not so, then the Use and Occupancy Agreements violate the Trusteeship Agreement itself, and are therefore invalid. For the Use and Occupancy Agreements reflect the plainest sort of self-dealing by the United States. They were signed by one Rear Admiral on behalf of the Trust Territory and by another Rear Admiral on behalf of the United States, both acting under the direction of the Secretary of the Navy. This self-dealing, at least insofar as land use rights after termination are concerned, violates several specific provisions of the Trusteeship Agreement. Even more fundamentally, it violates the basic obligation of the United States as Trustee -- the duty to refrain from benefiting by its own acts to the detriment of the peoples of the Trust Territory.

Even if the legal issue were a closer one, the position now being taken by the United States is a great discredit to our Government. The land covered by the Use and Occupancy Agreements is worth ten to hundreds of times as much as the United States paid. The United States has had the use of the land for many years. In effect, the United States is seeking to use its position as Trustee to avoid paying the fair market value of the right to use land in the Northern Mariana Islands after termination of the Trusteeship. Land is the Islands' most precious resource. If the present position of the United States should become widely known in the Northern Mariana Islands or at the United Nations, the most serious adverse consequences could be expected, impairing the chances for the successful conclusion of the new political status agreement, and creating considerable embarrassment for the United States.

We urgently request your assistance in securing a review of the present United States' position at the highest levels of the Executive Branch. The Commission is convinced of the soundness of its position. At the very least it, and the people of the Northern Marianas, are entitled to a written statement explaining the United States' position. We have tried without success to obtain such a statement.

We hope that you will examine the enclosed memorandum and use your good office to persuade the United States to alter its current position and to deal fairly with the Marianas Political Status Commission on this issue. We are, of course, available at any time to provide you with assistance or further information.

Sincerely,

Howard P. Willens

Enclosure

cc: Adrian P. Winkel, Office of Congressman Phillip
Burton

October 23, 1974

Senator J. Bennett Johnston
Suite 432
Old Senate Office Building
Washington, D.C. 20510

Dear Senator Johnston:

This firm serves as counsel to the Marianas Political Status Commission in its negotiations with the United States concerning the future political status of the Northern Mariana Islands. The Northern Marianas are presently part of the Trust Territory of the Pacific Islands, which is administered by the United States under a United Nations Trusteeship Agreement.

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One of the critical issues remaining to be resolved concerns the just compensation which the United States will pay for this 18,000 acres of land. The parties' efforts to agree on just compensation have been stymied by the insistence of the United States that it has permanent use rights -- rights which extend beyond termination of the Trusteeship -- in about half of this land, including some of the most valuable parcels. With respect to this portion of the land, the United States claims that it need only pay about two percent of the land's fair market value. The Commission has rejected the contention that the United States has permanent use rights, and insists that fair market value be paid.

As is demonstrated in detail in the enclosed memorandum, the United States' position is wholly unwarranted. The "Use and Occupancy Agreements" on which the United States bases its position, were made "as of" 1944 but actually executed in 1956. They grant from the Trust Territory Government to the United States the right to use certain public land in the Northern Marianas for an "indefinite" period in return for a payment of \$40 an acre. They require that the use of the land by the United States be consistent with the Trusteeship Agreement. Taken in context, the Use and Occupancy Agreements are most sensibly read to grant use rights only until termination of the Trusteeship. If this is not so, then the Use and Occupancy Agreements violate the Trusteeship Agreement itself, and are therefore invalid. For the Use and Occupancy Agreements reflect the plainest sort of self-dealing by the United States. They were signed by one Rear Admiral on behalf of the Trust Territory and by another Rear Admiral on behalf of the United States, both acting under the direction of the Secretary of the Navy. This self-dealing, at least insofar as land use rights after termination are concerned, violates several specific provisions of the Trusteeship Agreement. Even more fundamentally, it violates the basic obligation of the United States as Trustee -- the duty to refrain from benefiting by its own acts to the detriment of the peoples of the Trust Territory.

Even if the legal issue were a closer one, the position now being taken by the United States is a great discredit to our Government. The land covered by the Use and Occupancy Agreements is worth ten to hundreds of times as much as the United States paid. The United States has had the use of the land for many years. In effect, the United States is seeking to use its position as Trustee to avoid paying the fair market value of the right to use land in the Northern Mariana Islands after termination of the Trusteeship. Land is the Islands' most precious resource. If the present position of the United States should become widely known in the Northern Mariana Islands or at the United Nations, the most serious adverse consequences could be expected, impairing the chances for the successful conclusion of the new political status agreement, and creating considerable embarrassment for the United States.

We urgently request your assistance in securing a review of the present United States' position at the highest levels of the Executive Branch. The Commission is convinced of the soundness of its position. At the very least it, and the people of the Northern Marianas, are entitled to a written statement explaining the United States' position. We have tried without success to obtain such a statement.

We hope that you will examine the enclosed memorandum and use your good office to persuade the United States to alter its current position and to deal fairly with the Marianas Political Status Commission on this issue. We are, of course, available at any time to provide you with assistance or further information.

Sincerely,

Howard P. Willens

Enclosure

cc: Jack M. Weiss, Esq., Legislative Assistant
to Senator J. Johnston

October 23, 1974

Senator Henry M. Jackson
Suite 137
Old Senate Office Building
Washington, D.C. 20510

Dear Senator Jackson:

This firm serves as counsel to the Marianas Political Status Commission in its negotiations with the United States concerning the future political status of the Northern Mariana Islands. The Northern Marianas are presently part of the Trust Territory of the Pacific Islands, which is administered by the United States under a United Nations Trusteeship Agreement.

During the last two years, four sessions of negotiations have been held, and considerable progress has been made. A status agreement which will be submitted for approval to the local legislature and to the people of the Northern Marianas, and to the United States Congress, is now being drafted. The status agreement will provide that the Northern Mariana Islands will become a self-governing Commonwealth under the sovereignty of the United States after termination of the Trusteeship. It will also provide that about 18,000 acres of land in the Northern Marianas -- almost one-quarter of the entire land area of the islands -- will be made available to the United States for military purposes.

One of the critical issues remaining to be resolved concerns the just compensation which the United States will pay for this 18,000 acres of land. The parties' efforts to agree on just compensation have been stymied by the insistence of the United States that it has permanent use rights -- rights which extend beyond termination of the Trusteeship -- in about half of this land, including some of the most valuable parcels. With respect to this portion of the land, the United States claims that it need only pay about two percent of the land's fair market value. The Commission has rejected the contention that the United States has permanent use rights, and insists that fair market value be paid.

As is demonstrated in detail in the enclosed memorandum, the United States' position is wholly unwarranted. The "Use and Occupancy Agreements" on which the United States bases its position, were made "as of" 1944 but actually executed in 1956. They grant from the Trust Territory Government to the United States the right to use certain public land in the Northern Marianas for an "indefinite" period in return for a payment of \$40 an acre. They require that the use of the land by the United States be consistent with the Trusteeship Agreement. Taken in context, the Use and Occupancy Agreements are most sensibly read to grant use rights only until termination of the Trusteeship. If this is not so, then the Use and Occupancy Agreements violate the Trusteeship Agreement itself, and are therefore invalid. For the Use and Occupancy Agreements reflect the plainest sort of self-dealing by the United States. They were signed by one Rear Admiral on behalf of the Trust Territory and by another Rear Admiral on behalf of the United States, both acting under the direction of the Secretary of the Navy. This self-dealing, at least insofar as land use rights after termination are concerned, violates several specific provisions of the Trusteeship Agreement. Even more fundamentally, it violates the basic obligation of the United States as Trustee -- the duty to refrain from benefiting by its own acts to the detriment of the peoples of the Trust Territory.

Even if the legal issue were a closer one, the position now being taken by the United States is a great discredit to our Government. The land covered by the Use and Occupancy Agreements is worth ten to hundreds of times as much as the United States paid. The United States has had the use of the land for many years. In effect, the United States is seeking to use its position as Trustee to avoid paying the fair market value of the right to use land in the Northern Mariana Islands after termination of the Trusteeship. Land is the Islands' most precious resource. If the present position of the United States should become widely known in the Northern Mariana Islands or at the United Nations, the most serious adverse consequences could be expected, impairing the chances for the successful conclusion of the new political status agreement, and creating considerable embarrassment for the United States.

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We hope that you will examine the enclosed memorandum and use your good office to persuade the United States to alter its current position and to deal fairly with the Marianas Political Status Commission on this issue. We are, of course, available at any time to provide you with assistance or further information.

Sincerely,

Howard P. Willens

Enclosure

cc: Jerry T. Verkler, Staff Director, Senate
Committee on Interior and Insular Affairs

James Beirne, Esq., Special Counsel, Senate
Committee on Interior and Insular Affairs, 

October 23, 1974

Senator Paul J. Fannin
Suite 131
New Senate Office Building
Washington, D.C. 20510

Dear Senator Fannin:

This firm serves as counsel to the Marianas Political Status Commission in its negotiations with the United States concerning the future political status of the Northern Mariana Islands. The Northern Marianas are presently part of the Trust Territory of the Pacific Islands, which is administered by the United States under a United Nations Trusteeship Agreement.

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One of the critical issues remaining to be resolved concerns the just compensation which the United States will pay for this 19,000 acres of land. The parties' efforts to agree on just compensation have been stymied by the insistence of the United States that it has permanent use rights -- rights which extend beyond termination of the Trusteeship -- in about half of this land, including some of the most valuable parcels. With respect to this portion of the land, the United States claims that it need only pay about two percent of the land's fair market value. The Commission has rejected the contention that the United States has permanent use rights, and insists that fair market value be paid.

As is demonstrated in detail in the enclosed memorandum, the United States' position is wholly unwarranted. The "Use and Occupancy Agreements" on which the United States bases its position, were made "as of" 1944 but actually executed in 1956. They grant from the Trust Territory Government to the United States the right to use certain public land in the Northern Marianas for an "indefinite" period in return for a payment of \$40 an acre. They require that the use of the land by the United States be consistent with the Trusteeship Agreement. Taken in context, the Use and Occupancy Agreements are most sensibly read to grant use rights only until termination of the Trusteeship. If this is not so, then the Use and Occupancy Agreements violate the Trusteeship Agreement itself, and are therefore invalid. For the Use and Occupancy Agreements reflect the plainest sort of self-dealing by the United States. They were signed by one Rear Admiral on behalf of the Trust Territory and by another Rear Admiral on behalf of the United States, both acting under the direction of the Secretary of the Navy. This self-dealing, at least insofar as land use rights after termination are concerned, violates several specific provisions of the Trusteeship Agreement. Even more fundamentally, it violates the basic obligation of the United States as Trustee -- the duty to refrain from benefiting by its own acts to the detriment of the peoples of the Trust Territory.

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Sincerely,

Howard P. Willens

Enclosure

cc: Harrison Loesch, Minority Counsel, Senate
Committee on Interior and Insular Affairs, ~~supra~~

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GARY D. WILSON
WALTER T. WINSLOW, JR.

October 23, 1974

Congressman Don H. Clausen
Suite 2433
Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Clausen:

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Enclosure

cc: Tom Dunmire
Staff Consultant
House Committee on Interior and Insular Affairs
Suite 1329 Longworth House Office Building
Washington, D. C. 20515