

DRAFT: January 25, 1975

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MEMORANDUM FOR THE FILE

SUBJECT: January 25 Joint Working Draft of the  
Technical Agreement

1. With respect to the MDC lease the alternative approach would be to grant the United States termination and regulatory rights; to split the rental payments; and to insert a sentence which obligates the United States to terminate the MDC lease upon a request from the Government of the Northern Marianas. Smith said that the U.S. version contemplated that the United States would terminate upon a request, but that point is not explicitly made.

2. I have not brought up Jim White's suggestion that the United States pay a minimum of \$19,520,600 regardless of changes in the Guam Consumer Price Index. I did bring up with Smith as well as with Rice the question of interest on the \$19,000,000 until it is paid, in recognition of the fact that the land cannot profitably be used for those five years. Both were adamantly opposed to any such provision.

3. White had suggested that Jones may want to trade acreage in the southern one-third for land in the northern one-third to consolidate his grazing area. How this might affect what we do here it is not clear. Another question raised by the MDC lease is whether the paragraph is sufficiently clear that if the entering into of this transaction itself is considered a breach of the lease by the United States or the trust territory government, that

this is considered to have resulted from United States initiative so that the United States will pay the costs. The problem is particularly difficult because by the time that the lease to the United States is entered into the Government of the Northern Marianas will presumably hold title to the land, and will therefore be Jones' landlord.

4. White believes that the restrictions contained on the leasebacks is too broad with respect to the area south of West Field. The United States refuses to budge on this question. (White also points out that there is a serious problem with respect to the requirement of prior U.S. approval of harbor-related construction on the 44 acres to be leased back at Tanapag Harbor. The United States refuses to budge on this issue as well.)

5. I did not bring up with Smith the suggestion White made that the leasebacks be for one dollar per acre rather than for one dollar per acre per year. It just did not seem that there was a sufficient amount of money involved and it certainly did look like we were pressing for every penny.

6. With respect to the grazing areas within the military maneuver area, White suggested that this land should be leased back to the Marianas. The United States prefers to lease the land only back to those who are presently using it, which has the unfortunate effect of limiting the persons who are eligible to receive it. The United States' argument is that the persons presently using it are more closely attached to the land than others would be. But this could be resolved by requiring the

Government of the Northern Marianas or the legal entity to give such persons first priority. The present wording is ambiguous, but proposed wording would make this clear. White also said that most of these grazing leases have in fact expired -- and this makes the U.S. proposed sentence limiting their obligation to "valid existing leases" more important than it would otherwise be. White also raised the question as to why grazing would be the only permitted use. Smith said that the reason is that this would be the only use which would be compatible with the use of the area as a maneuver area. I did not press this point. Smith also said that there was a concern that the Marianas might make a profit from the sub-lease of such land. This is also taken care of in the proposed new language.

7. With respect to present private owners in the military maneuver area White also suggested that these lands be leased back through the Government of the Northern Marianas or the legal entity. However, a review of the Ambassador's statement in Saipan in December shows clearly, particularly with respect to the homesteaded areas, but also with respect to the grazing leases, that the United States' proposal was that it lease directly back to the former owners.

8. With respect to the civilian aviation terminal at West Field on Tinian, I think that all of White's points were taken care of except that I did not press his suggestion that the United States pay for aprons, roads and aircraft and automobile parking areas near any new civilian air terminal which may have to be built.

9. I am mildly concerned by the insistence of the United States that the trust fund be perpetual, and last beyond the 100 years of the potential lease. We are clearly going to lose White's suggestion that the leasebacks at Tanapag Harbor (44 acres) now be subject to the same restrictions as the Tinian leasebacks, particularly with respect to the requirement of prior U.S. approval of even harbor-related construction. I have also not pressed Jim's point that the United States if it uses the park should bear the cost of putting it back into its prior condition. This is, after all, what the United States is paying \$2,000,000.00 for.

10. I did not press White's point about fees for the use of San Jose Harbor since all that the Joint Committee Report said was that another committee would be set up to determine how fees would be divided. The Technical Agreement is therefore silent on this question.

11. I did not press White's point about "adequate and capable" private commercial enterprises performing fuel and oil service on Tinian because Smith was reluctant to get involved in it and because arguably if the service is not adequate and capable it is not being performed.

12. I did not press White's point about the sign-up problem and the possible bad faith of a military commander in restricting access to beaches on Tinian. Nor did I press his point about joint development of recreational facilities,

though I did press the point about joint development of utilities.

MSH