

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20540

July 31, 1978

Memorandum

To: Director, Office of Territorial Affairs

From: Assistant Solicitor, Territories

Subject: Submerged Lands - Northern Mariana Islands

The attached news release has been sent to me. Apparently, Roger St. Pierre does not agree with my June 29, 1978, memorandum to you on the above subject (copy attached).

In the first place, I would like to correct a misstatement in the release. I did not say that "in 1981, the Commonwealth will have to convey these [submerged] lands to the Federal Government."

It is my position that these submerged lands will become the property of the United States by operation of law when the Northern Marianas become a Commonwealth of the United States, see Solicitor's Opinion M-36449 cited in my earlier memorandum to you, unless the Congress passes an act, as I am sure it will, conveying these lands to the government of the Northern Mariana Islands.

Mr. St. Pierre is quoted as saying "that since the Marianas Constitution gives ownership of the land to the Commonwealth and since the United States approved the Constitution, the Federal Government has no jurisdiction over them."

Had Mr. St. Pierre added the words "at this time" at the end of his quote, he would have said nothing materially different from what I said in my June 29 memorandum to you. I continue to believe, however, that the source of the Northern Marianas' current title to its submerged lands stems from the Trust Territory Code and Section 505 of the Covenant and not from Section 2 of Article XI of their Constitution. That section provides:


The management and disposition of submerged lands of the Coast of the Commonwealth shall be as provided by law.

This is hardly a transfer of title in those lands to the Commonwealth. It merely gives the legislature the authority to manage and dispose of the lands if, when, and to the extent that title does attach.

As I pointed out in my earlier memorandum to you, I am persuaded that the Government of the Northern Mariana Islands probably has ownership and exclusive jurisdiction over these submerged lands, at least at this time. However, when the Northern Marianas become a Commonwealth and a territory of the United States the submerged lands will belong to the United States by operation of law, and thereafter it will take an act of Congress pursuant to its plenary authority under Article IV, Section 3, Clause 2, of the Constitution to convey title in them to the local government. It is a well settled rule that the United States cannot be divested of its title to property except by an act of Congress.

There is nothing in the Covenant that conveys to the Northern Marianas title to the surrounding submerged lands, and indeed there could not be, because, at this time, the United States does not have title in those lands. Nor could approval of the Constitution have accomplished this result even assuming Section 2 of Article XI could be read as Mr. St. Pierre reads it. The approval was not by an act or joint resolution of Congress. It occurred as a result of the passage of time in accordance with Section 202 of the Covenant; and as we have noted it would take an act of Congress to divest the United States of title to its property. Moreover, such an interpretation as Mr. St. Pierre suggests, would be inconsistent with the Constitution and laws of the United States that either now are or will become applicable to the Northern Marianas. Yet Section 202 of the Covenant requires that the local constitution be consistent with the Covenant, the Constitution, treaties and laws of the United States applicable to the Northern Mariana Islands.

For the above reasons I disagree with Mr. St. Pierre's reported statement concerning ownership of the submerged lands around the Northern Mariana Islands.


C. Brewster Chapman, Jr.

Enclosures

INFO: 01 08 12 00 02 00 03 04 05 06 07 08 09 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100

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THE U.S. AND MICRONESIAN DRAFT WORKING PAPERS
APPEAR TO BE VERY FAR APART. CONGRESS OF MICRONESIA SENATOR
DAILY OLTER SAID TODAY (JULY 25). SENATOR OLTER IS
CHAIRMAN OF THE STATUS COMMITTEE WHICH REPRESENTS MICRONESIA
IN ITS NEGOTIATIONS WITH THE U.S.
THE NEWEST U.S. DRAFT, DATED JULY 13, WAS PRESENTED BY
U.S. AMBASSADOR PETER R. ROSENBLATT TO OLTER ON JULY 19
AT POUAPEI. AT AN INFORMAL MEETING THERE, ROSENBLATT OUTLINED
THE U.S. PROPOSAL, BUT NO NEGOTIATIONS WERE HELD.
"OUR PRELIMINARY READING OF THE U.S. DRAFT INDICATED
THAT IT DEPARTS IN IMPORTANT WAYS FROM OUR UNDERSTANDINGS
REACHED AT NUKU. OLTER STATED.
"WE HOPE THE U.S. REALIZES HOW FAR APART THE TWO DRAFTS
ARE, AND THAT THEY WILL START MAKING CHANGES EVEN BEFORE
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"SOME OF THE PROPOSALS IN THE U.S. DRAFT WOULD INTERFERE
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OLTER DISCUSSES U.S. STATUS PROPOSAL
KOLONIA, POUAPEI, JULY 25 (CONGRESS OF MICRONESIA)

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WAS HARDER TO ANTICIPATE.
SAIPAN, JULY 25 (UPI)--THE ANCIENT RUINS OF NAN-MAGAU IN
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Department of State

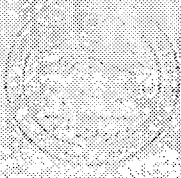
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DR. SAIZ STATED THAT IN ADDITION TO THE WELL KNOWN
MUSEUMS AND MONUMENTS OF BAHIA, THERE
ARE A NUMBER OF OTHER MONUMENTS AND SITES
WORTH VISITING, INCLUDING AROUND THE BAY OF BAHIA.

PAGE BY BONGALOSTI UNDER
THE MONUMENTS ARE ON THE EDGE OF THE GULF OF BAHIA.
ADJACENT TO THE CANAL OF SAN JUAN, ONE OF THE
LARGEST OF SAN JUAN'S ARTIFICIAL ISLANDS, WAS AN INTRICATE
COMPLEX OF STANDING SIGNS. THEY ARE HEAVILY ENCLOSED WITH
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DR. SAIZ AND HIS PARTY ALSO KEPT THE FOLLOWS HISTORIC
PRESCRIPTIONS COMPLETE WITH SURVEYS OF ARCO SIGNS-OF-WAYS,
A QUADRANTIC, AND OTHER AREAS SUBJECT TO DISTURBANCE BY
FUTURE CONSTRUCTION ACTIVITIES.

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United States Department of the Interior

WASHINGTON, D.C. 20500

IN REPLY REFER TO:

June 22, 1978

Memorandum

To: Director, Office of Territorial Affairs

From: Assistant Solicitor, Territories

Subject: Submerged Lands - Northern Mariana Islands

This responds to your June 22, 1978 memorandum on the above subject in which you ask for my comments on three questions posed to you by the Speaker of the House of Representatives of the Northern Mariana Islands. The questions and my answers are as follows:

1. What is the definition of submerged lands i.e., what are the boundaries of submerged lands?

Answer - For the purposes of the Northern Mariana Islands, the description contained in the 1974 amendments to the Territorial Submerged Lands Act, 48 USC (Supp. V, 1975) § 1705, is probably the best guide for defining the boundaries of their submerged lands. It is as follows:

1. [L]ands permanently or periodically covered by tidal waters up to but not above the line of mean high tide and seaward to a line three geographical miles distant from the coastlines of the territories...as heretofore or hereafter modified by accretion, erosion and reliction and...artificially made, filled in, or reclaimed lands which were formerly permanently or periodically covered by tidal waters...

2. Is jurisdiction over submerged lands vested exclusively in the Commonwealth?

Answer - The answer to this question is not altogether clear. Section 502(a)(2) of the Covenant does not make the 1974 amendments to the Territorial Submerged Lands Act which conveyed title to the submerged lands to Guam, American Samoa and the Virgin Islands, applicable to the Northern Mariana Islands, because that act is not "of general application to the several States."

On the other hand, Section 803 of the Covenant provides that the law of the Trust Territory, not inconsistent with the Covenant or with those provisions of the Constitution, treaties or laws of the United States applicable to the Northern Mariana Islands will remain in force and effect until and unless altered by the Government of the Northern Mariana Islands.

A law of the Trust Territory (67 T.O. 1 2) provides:

That portion of the law established during the Japanese Administration of the area which is now the Trust Territory, that all marine areas below the ordinary high water mark belong to the government, is hereby confirmed as a part of the law of the Trust Territory...

Based upon these provisions it can be argued that, subject to the limitations contained in Section 2, the submerged lands in question now belong to the Government of Northern Mariana. It has been suggested, however, that the submerged lands cannot belong to the Northern Mariana Islands until they are actually transferred pursuant to Section 801 of the Covenant. But a reading of the Section-by-Section Analysis of the Covenant prepared by the Mariana Political Status Commission to explain the Covenant to the Mariana District Legislature and to the electorate of the Northern Mariana Islands strongly indicates that the real property referred to in Section 801 were fast lands as well as the improvements thereon and not the submerged lands.

Under the circumstances, I am persuaded that the Government of the Northern Mariana probably has ownership of and exclusive jurisdiction over these submerged lands, at least at this time. But this is only a temporary title and jurisdiction. When the Northern Mariana Islands are proclaimed a Commonwealth and territory of the United States, the laws of the United States applicable to its territories will come into force and effect in the Northern Mariana. One of the rules that will become applicable is that the submerged lands around an island territory belong to the federal - not to the local - Government. Solicitor's Opinion M-36449 "Rights of Abutting Upland Property Owners to Claim Title to Reclaimed Land Produced by Filling on Tidelands and Submerged Lands Adjacent to the Territory of Guam," 65 I.D. 193 (1958).

By the 1974 amendments to the Territorial Submerged Lands Act, *supra*, the Congress has clearly indicated its intent that, subject to the limitations contained in that Act, title to the submerged lands surrounding our territories should be in the respective local governments, and there is absolutely no reason to believe that the Northern Mariana Islands will not eventually be included under the

of the 1974 amendments to the Territorial Submerged Lands Act now set
for one problem. That Act conveys all right, title and interest of
the United States in those submerged lands to the respective named
territories. The United States does not now have any right, title or
interest in the submerged lands of the Northern Mariana Islands and,
therefore, has nothing to convey. Such right, title or interest will
only attach as an incidence of U.S. sovereignty upon the Northern
Marianas become a territory of the United States. At that time, then,
the grant can be made.

3. What limitations, if any, are imposed upon the Commonwealth
in managing and disposing of submerged lands?

Answer - In view of what has been said above, it would be prudent
for the Government of the Northern Mariana Islands to accept the
applicable limitations and exceptions contained in the 1974 amendments
to the Territorial Submerged Lands Act, 48 USC (Supp V, 1975) § 1705,
et seq., which are not inconsistent with its current legal status, in
managing and disposing of its submerged lands and their resources.

Please let me know if I can be of further assistance.



C. Brewster Chapman, Jr.