

*Submerged lands - Includes
rebuttal of Roger St. Pierre*

United States Department of the Interior

DEPARTMENT OF THE INTERIOR
WASHINGTON, D.C. 20240

MISC. COMM. NO. 1-174
(HOUSE OF REP.)

AUG 3 1978

Mr. Oscar Rasa
Speaker
Northern Marianas Commonwealth
Legislature
P.O. Box 129
Saipan, Mariana Islands 96950

Dear Speaker Rasa:

I am writing in further reference to my letter to you of July 7, 1978, which responded to your June 9, 1978, letter concerning a legal opinion on the status of submerged lands in the Northern Mariana Islands.

As you probably know, the Micronesian News Service dated a story July 25, 1978, with the caption "Undersea Lands Ownership Questioned" that reported on the Assistant Solicitor's opinion which I forwarded with my July 7, 1978 letter to you. The article also reported Roger St. Pierre, Legal Consultant to the Legislature, as stating that this opinion "is not relevant to the situation in the Northern Marianas". Enclosed is a copy of the July 25, 1978 article.

I have received a memorandum from the Assistant Solicitor dated July 31, 1978, with respect to this news article that I wanted to share with you. Enclosed is a copy of this memorandum that further explicates the legal status of these submerged lands in the Northern Marianas.

I hope this information is helpful to you.

Sincerely yours,

Ruth G. Van Cleve

Mrs. Ruth G. Van Cleve
Director
Office of Territorial Affairs

Enclosures

MISC. COMM. NO. 1-174
(HOUSE OF REP.)

DEPARTMENT OF THE INTERIOR
OFFICE OF TERRITORIAL AFFAIRS
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 memoranda 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 these 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

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TO DIRECTOR
TO ASSISTANT SECRETARY
TO THE COMMISSION
TO THE SECRETARY OF THE INTERIOR
TO THE SECRETARY OF THE ARMY
TO THE SECRETARY OF THE NAVY
TO THE SECRETARY OF THE DEPARTMENT OF JUSTICE
TO THE SECRETARY OF THE DEPARTMENT OF AGRICULTURE
TO THE SECRETARY OF THE DEPARTMENT OF COMMERCE
TO THE SECRETARY OF THE DEPARTMENT OF EDUCATION
TO THE SECRETARY OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES
TO THE SECRETARY OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
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GOND1 COGAFD WASHINGTON DC
FOUHA-LCA IERLAND AFB NM
FNEHB CAHERRA ACT AS
FHENRY /AMEMB TOKYO JA
FHEHD PORT MORESBY PAPUA NEW GUINEA
FHEHD SUVA FIJI ISLANDS
FHEHD WASHINGTON NZ
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FONGGARD HANSEI GUAM
FOY KHI SAIPAN
FOA WASHINGTON DC
FOAPO ALEXANDRIA VA

UNCLAS
SECSTATE PASS TO DEPT INT/SEC INTERIOR/DOIA GMSH
SECSTATE P/SS TO HOUSE INTERIOR COMMITTEE
AMEMBAGSY CAHERRA FOR PAC. ISL. MONTHLY
MOLTER DISCUSSES U.S. STATUS PROPOSAL
KOLONIA, PONAPE, JULY 25 (CONGRESS OF MICRONESIA

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RELEASED---"THE U.S. AND MICRONESIAN DRAFT WORKING PAPERS
APPEAR TO BE VERY FAR APART," CONGRESS OF MICRONESIA SENATOR
BRILEY 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 PONAPE. 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 HILO," OLTER STATED.
"WE HOPE THE U.S. REALIZES HOW FAR APART THE TWO DRAFTS
ARE, AND THAT THEY WILL START MAKING CHANGES EVEN BEFORE
THE NEXT ROUND OF NEGOTIATIONS.
"SOME OF THE PROPOSALS IN THE U.S. DRAFT WOULD INTERFERE
WITH MICRONESIA'S AUTHORITY IN FOREIGN AFFAIRS, AND EVEN IN
OUR INTERNAL AFFAIRS. WE HAVE NOT AGREED TO THEM," OLTER SAID.

PAGE 04 RUMGSA6751 UNCLAS
THAT MICRONESIA'S CONSTITUTION AND A 1977 U.S. DRAFT
"U.S. CHIEF NEGOTIATOR ROSENBLATT AND THE COMMISSION
HAVE NOT RELEASED THE U.S. DRAFT TO THE PUBLIC FOR THE
WINTER SESSION BUT IT IS A WORKING PAPER AND DOES NOT
CONSTITUTE AN AGREEMENT IN ANY WAY," CHAIRMAN OLTER
ELUCIDATED.

THE COMMISSION ON FUTURE POLITICAL STATUS AND TRANSITION
HAD EARLIER SUBMITTED ITS OWN DRAFT CONSTITUTION FOR
ASSOCIATION TO THE U.S. IN EARLY MAY OF THIS YEAR. THE
COMMISSION'S DRAFT HAS ALSO NOT BEEN RELEASED. FUTURE
ROUNDS OF NEGOTIATIONS ARE EXPECTED TO CONSIDER BOTH DRAFTS
ON A CO-EQUAL BASIS.

THE NEGOTIATIONS ARE EXPECTED TO RESUME IN LATE
SEPTEMBER OR SOON.

UNCLAS (LAND OWNERSHIP QUESTIONED)

SAIPAN, JULY 25 (UPI)--THE CONTROVERSY OVER OWNERSHIP
OF SUBMERGED LANDS IN THE NORTHERN MARIANAS IS CONTINUING AT
PACIFIC ISLANDS UNTIL 1981 WHEN THE NORTHERN MARIANAS EXPECTS TO
BECOME A FULL-BLEDGED COMMONWEALTH.

AT THE REQUEST OF COMMONWEALTH SPEAKER OSCAR RASA, THE

OFFICE OF SOLICITOR FOR TERRITORIES, DEPARTMENT OF INTERIOR,
RECEIVED THE QUESTION AND SAID THE NORTHERN MARIANAS
"PROBABLY" OWNS THE LAND AND HAS EXCLUSIVE JURISDICTION.
HOWEVER, HE SAID, IN 1951, THE COMMONWEALTH WILL HAVE TO CONVEY
THESE LANDS TO THE FEDERAL GOVERNMENT.

BUT ROGER ST. PIERRE, LEGAL CONSULTANT TO THE LEGISLATURE,
SAID THE SOLICITOR'S OPINION IS NOT RELEVANT TO THE SITUATION
IN THE NORTHERN MARIANAS. HE SAID 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.

"BY VIRTUE OF ITS APPROVAL IN ITS ENTIRETY OF THE
CONSTITUTION OF THE NORTHERN MARIANAS," ST. PIERRE EXPLAINED,
"THE UNITED STATES HAS WAIVED ALL POSSIBLE INTEREST IN OR
JURISDICTION OVER THE SUBMERGED LANDS OFF ANY COAST OF THE
COMMONWEALTH."

SPEAKER RASA REQUESTED THE DEFINITION OF OWNERSHIP TO
PREVENT POSSIBLE CONTRACT DIFFICULTIES IF OIL COMPANIES ARE
TO BEGIN SEARCHING FOR MINERALS AROUND THE ISLANDS.

RASA SAID THAT "IN THE ABSENCE OF WELL ESTABLISHED

PAGE 06 RUMGSA6751 UNCLAS
POLICIES, WE MAY FIND OURSELVES IN A SITUATION IN THE NEAR
FUTURE NOT KNOWING WHAT TO DO NEXT."
MIAMI HAD: UNDER THE ANTICIPATED

SAIPAN, JULY 25 (UPI)--THE ANCIENT RUINS OF NAN MADOL IN
MADOLENIMAN MUNICIPALITY, PONAPE DISTRICT, ARE REPORTED TO BE
LARGER THAN HAD PREVIOUSLY BEEN THOUGHT BOTH AS A RESIDENTIAL
AND ADMINISTRATIVE CENTER.

DR. ARTHUR Saxe OF OHIO UNIVERSITY WHO IS IN CHARGE OF
A RE-STUDY OF THE FAMOUS SITE, MADE THE REVELATIONS IN A
REPORT HE IS PRESENTLY PREPARING ON HIS FINDINGS.

DR. Saxe's work, CONDUCTED IN COOPERATION WITH THE
PONAPE DISTRICT HISTORIC PRESERVATION COMMITTEE, INCLUDED BOTH
ON-LAND AND UNDERWATER SURVEYS AROUND THE SITE AT THE MOUTH
OF MADOLENIMAN HARBOR, AS WELL AS EXTENSIVE INTERVIEWS WITH
KNOWLEDGEABLE LOCAL HISTORIANS.

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... AND HIS PARTY ALSO HELPED THE ...
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... ACTIVITIES.

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MEMORANDUM FOR THE SECRETARY

JUNE 23, 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 105 of the Covenant provides that the laws 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 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 TRC § 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 Marianas Political Status Commission to explain the Covenant to the Marianas 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 ...
... amendments to the Territorial Submerged Lands Act in 1974
... problem. That Act grants all right, title, and interest of
the United States in the submerged lands to the respective
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 incident of U.S. sovereignty when the Northern
Mariana 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.

C. Brewster Chapman, Jr.