



STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

BOISE 83720

JIM JONES  
ATTORNEY GENERAL

September 24, 1990

Blaine Beaderstadt, Sergeant of Arms  
United Plant Guard Workers of America  
11785 S. 1st E.  
Idaho Falls, Idaho 83404

Re: Request for Information

Dear Mr. Beaderstadt:

This letter is in response to your letter dated August 10, 1988 that asked six questions concerning the relative jurisdiction of the state and federal government at the Idaho National Engineering Laboratory (INEL).

The answers to your questions are as follows:

QUESTION 1: Is the INEL property, both real and personal, owned by the federal Government? If yes, has the real property always been in the ownership of the U.S. government? If it was deeded by Idaho, when?

ANSWER: The real property within the INEL is owned by the United States. The United States acquired the land at the INEL by discovery, exploration, settlement, and cession of foreign sovereigns. See generally, B. Hermann, *The Louisiana Purchase*, 48-52 (1898).

Small amounts of the land within the present boundaries of the INEL had passed into private or state ownership by about 1940. However, the United States reacquired the inholdings of land by condemnation. See *United States v. 18,217.58 Acres of Land*, Civil Case No. 1227 (D. Idaho 1945); *United States v. 15,357.16 Acres of Land*, Civil Case No. 1624 (D. Idaho 1951); *United States v. 8617.87 Acres of Land*, Civil Case No. 2160 (D. Idaho 1959).

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The United States withdrew some of the land within the present boundaries of the INEL and reserved it initially for a Naval Proving range beginning in 1946. See Public Land Orders 318, dated May 13, 1946 (156,832.75 acres of public and nonpublic lands) and 545, dated January 7, 1949 (640 acres). Later, the Navy transferred the land withdrawn and reserved by Public Land Orders 318 and 545 to the Atomic Energy Commission. See Public Land Order 691, dated December 8, 1950. Finally, the United States withdrew further land for the INEL in 1950 and 1958. See Public Land Orders 637, dated April 7, 1950 (259,549.8 acres of public and nonpublic lands) and 1770, dated December 19, 1958 (123,648 acres).

This office understands that the United States has granted easements for various purposes across the INEL. Since the office has not reviewed the documents for such easements, the office cannot describe the nature of the interests granted by these documents.

This office has no specific information on the ownership of personal property present at the INEL site.

QUESTION 2: Can we verify that INEL or DOE pays no property or sales tax?

ANSWER: Idaho Code § 63-3622BB provides the following tax exemption for the INEL:

There is exempted from the taxes imposed by this chapter, the sale or use of that property primarily or directly or consumed in connection with research, development, experimental and testing activities, when exclusively financed by the United States in connection with the Idaho national engineering laboratory.

Obviously neither the contractors at the INEL nor the United States would pay any property tax to the extent their activities are exempt under Idaho Code § 63-3622BB (1989).

QUESTION 3: Do state and/or local law enforcement officials come on the INEL site and premises?

ANSWER: The Idaho Department of Law Enforcement has never attempted to regulate activities at the INEL site, except for activities on the State highways. The Division of Environmental Quality, however, does regulate activities at the INEL site.

QUESTION 4: What is the basis and scope of federal law enforcement authority on the site?

ANSWER: The United States Congress under the Property Clause, U.S. Const. art. 4, § 3, clause 2, has the power to "make all needful rules and regulations respecting the territory or other property belonging to the United States . . . ." <sup>1</sup> The U.S. Supreme Court has described the authority of Congress under the Property Clause as "plenary." *United States v. New Mexico*, 426 U.S. 529, 539 (1976). Accordingly, Congress has virtually unlimited power to enact civil and criminal laws with respect to its property.

The existence of this unlimited authority does not mean that Congress in any specific instance intended to exercise fully its authority under the U.S. Constitution. In the past, substantial disputes in other jurisdictions and under other circumstances have occurred between the United States and a particular state because of the lack of clarity in federal legislation over the scope of state authority on a particular federal reservation. Your letter did not provide sufficient information about your concerns for this office to provide any guidance on the relative authority of the State of Idaho and the United States in this particular case.

QUESTION 5: Is the site regulated and inspected by state health and safety officials?

ANSWER: The federal Occupational Safety and Health Administration (OSHA) laws and regulations do not currently apply to DOE and do not include a specific waiver of federal sovereign immunity authorizing the application of state laws and regulations. District Health Departments conduct some inspections of food-related services at the INEL at the request of DOE even though state laws and regulations are not applicable to activities at the INEL. See also the answer to Question 6 below.

QUESTION 6: Is there any state regulation of INEL? If so, please provide details.

ANSWER: The Department of Energy and its contractors operating at the INEL must comply with state environmental laws and regulations in accordance with the waiver of sovereign immunity provisions provided in most federal environmental laws including the Clean Air Act, the Clean Water Act, the Safe Drinking Water Act, the Resource

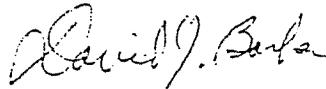
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<sup>1</sup> Other powers of the Congress under the U.S. Constitution also may authorize Congress to legislate concerning the INEL.

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Conservation and Recovery Act (hazardous waste management) and the Comprehensive Environmental Response, Compensation and Liability Act (Superfund). State officials, including health officials, conduct inspections at the INEL under the authority of parallel state environmental laws, which include the Idaho Environmental Protection and Health Act and the Idaho Hazardous Waste Management Act, among others.

Sincerely,



DAVID J. BARBER  
Deputy Attorney General

DJB/mkf