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# HOUSE COMMITTEE REPORT

(7)

Date Referred: February 5, 1991

FURTHER REFERRALS:

Finance

Date of Committee Action: 3-7-91

The JUDICIARY Committee considered:

HB 109

HOUSE BILL NO. 109

APPROP: OIL SPILL LITIGATION

"An Act making an appropriation to the Department of Law to pursue litigation resulting from the Exxon Valdez oil spill losses; and providing for an effective date."

RECOMMENDATIONS: [ ] the same title  
 be replaced with \_\_\_\_\_ [ ] a new title

[ ] have attached amendments(s)

do pass

[ ] do not pass

[ ] no recommendations

[ ] individual recommendations

[ ] additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dep:)

APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal impact \_\_\_\_\_

[ ] fiscal note(s) \_\_\_\_\_

[ ] zero fiscal note \_\_\_\_\_

[ ] zero fiscal note(s) \_\_\_\_\_

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

	Check appropriate column:	Do Not	No Rec	Amend
		Pass		
<i>Dee Douley</i>				
<i>[Signature]</i>				
<i>[Signature]</i>				
	<i>Mark [Signature]</i>		<input checked="" type="checkbox"/>	
	<i>Terry Martin</i>		<input checked="" type="checkbox"/>	

*Dee Douley*  
 \_\_\_\_\_  
 Chairman's Signature

**DIVISION OF LEGAL SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA**

**COPY**

*P.O. Box Y, Juneau, Alaska 99811  
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*Deliveries to: 240 Main Street  
Court Plaza, Room 500  
Mail Stop 3101*

**MEMORANDUM**

February 15, 1991

**SUBJECT:** Settlement of claims related to the Exxon Valdez Oil Spill  
(Work Order 7-LS0777)

**TO:** Senator Sam Cotten

**FROM:** Pamela Finley  
Assistant Revisor of Statutes

**QUESTIONS PRESENTED.** In light of an impending settlement of the state's claims against Exxon and its subsidiaries arising from the Exxon Valdez oil spill, you have asked two questions:

(1) May the governor settle those claims with terms that require the defendants to give the state money dedicated to a particular purpose, or to provide services or property; and

(2) If the settlement contains such terms, what oversight authority does the legislature have?

**SHORT ANSWER.** Because the terms of a settlement have not been released, we cannot offer an opinion on the validity of particular provisions; this memo is confined to the general questions presented above. There are valid legal arguments to be made for and against the validity of a settlement with the terms described above. However, in my opinion a settlement that required money to be spent for a particular purpose or required the state to accept money or services would be beyond the constitutional power of the governor, although the legislature could ratify it by making an appropriation that carried out those terms. In addition, failure to deposit money recovered or received from Exxon in the general fund would violate AS 46.08.020(b). Your second question is difficult to answer until the specifics of the settlement are known, but I suspect that the discussion of the first question may address the real issue being raised by the second (i.e., the legislature's role). If you have more specific questions, or questions about a settlement once it is made public, please let me know.

## DISCUSSION.

I. Attorney General's Authority. The attorney general has the power to dispose of the state's litigation as he thinks best, and "the exercise of that discretion within constitutional bounds is not subject to the control or review of the courts." Public Defender Agency v. Superior Court, Third Judicial District, 534 P.2d 947, 950 (Alaska 1975)(dicta; emphasis added.) See Boyd v. U.S., 345 F. Supp. 790 (E.D. N.Y., 1972)(Attorney General's discretion does not prevent review based on allegations of bad faith, fraud, or illegality); People v. Santa Clara Lumber Co., 106 N.E. 927 (N.Y. Ct. App. 1914)(Settlement violating constitutional provision prohibiting cutting of timber on state land was void). The question then is whether a settlement of the type described above violates the constitution or statutory law.

II. Settlement Requiring Money to be Spent in Specified Way. A settlement that requires the money to be spent in a particular way would probably violate art. II, sec. 1 and art. IX, sec. 13 of the state constitution (vesting the legislative power in the legislature and requiring appropriations before money can be removed from the state treasury) and art. IX, sec. 7 of the state constitution (prohibiting dedicated funds).

A. The Power of Appropriation. Article II, sec. 1, Constitution of the State of Alaska, vests the legislative power in the legislature, and the power to appropriate is indisputably a legislative power. Article IX, sec. 13, Constitution of the State of Alaska, states that no money shall be withdrawn from the treasury except by appropriation. The Governor may argue that the latter section does not apply to a settlement if the money is not deposited in the state treasury, but that argument begs the real question, i.e., what money is subject to appropriation?

In Colorado General Assembly v. Lamm, 700 P.2d 508, 524 (Colo. 1985), the court held that the proceeds of a settlement between Chevron and the federal Department of Energy, which according to the settlement had to be used for specified purposes, were not subject to appropriation by the Colorado legislature. The court reasoned that the money was not subject to appropriation either because it was in trust from a private source, or because it was from a federal source, with restrictions placed on its use. While the Governor will no doubt advance the same arguments used by the court in Colorado General Assembly, there are some significant differences between that case and the situation at hand.

First, in the Colorado case there is no indication that the state was a party to the litigation. Therefore the state had no power to control the terms of the settlement, nor was the state trading the money for a legal claim the state had. Colorado really did have to accept the money, if at all, on the terms given, a fact that makes the money much more like a "gift" from a private party.

Second, under Colorado law the legislature does not have the power to appropriate most federal funds. Colorado General Assembly v. Lamm, 738 P.2d 1156 (Colo. 1987)(Except for federal funds subject to state match and portions that can be transferred to other block grants, executive has power to allocate money received from federal government); MacManus v. Love, 499 P.2d 609 (Colo. 1972)(Federal funds need not be appropriated). While Colorado is not the only state that does not require appropriation of federal trust funds, Opinion of the Justices to the Senate, 378 N.E.2d 433(Mass 1978), other states do require the legislature to appropriate federal funds, even though the federal funds are subject to restrictions on their use. Anderson v.Regan, 425 N.E.2d 792 (N.Y. Ct. App. 1981); Shapp v. Sloan, 391 A. 2d 595 (Pa. 1978), appeal dismissed sub nom Thornburgh v. Casey, 440 U.S. 942, 59 L.Ed.2d 630(1979). The Anderson case is especially important because the court's decision was based on a constitutional provision similar to art. IX, sec. 13 of Alaska's constitution.

Third, in Town of Manchester v. Dept. of Environmental Quality Engineering, 409 N.E.2d 176 (Mass. 1980), the court rejected the "constructive trust" theory . In this case the state had sued a municipality for violation of laws involving sanitary landfills. The parties agreed to the entry of an order, but the town failed to comply with it and the court assessed a \$30,000 fine and ordered that it be paid for a project that enhanced a natural resource, the specific project to be chosen from proposals submitted by political subdivisions and charitable organizations. The department argued that the money was not subject to deposit in the state treasury and to appropriation because the money was held by the state in trust, subject to certain conditions. The court recognized that money held by the state in trust was not subject to appropriation under Massachusetts law, but noted that this exception only applied when the money was held and to be disbursed "under legislatively prescribed conditions". Because the legislature had not established a program for the deposit and expenditure of such money, it had to be deposited in the state treasury and appropriated by the legislature.

Finally, Alaska's Supreme Court has held that the term "appropriation" as used in art. XI, sec. 7 (governing initiatives), involves "committing certain public assets to a particular purpose." McAlpine v. Univ. of Alaska, 762 P.2d 81,88 (Alaska 1988)(the transfer of property was an "appropriation" that could not be accomplished by initiative). While the court in McAlpine was construing a provision governing initiatives rather than the legislative power or removal of money from the state treasury, the court explained that the purpose of the initiative provision was "to ensure that the legislature and only the legislature, retains control of the allocation of state assets among competing needs." McAlpine, 762 P.2d 81 at 88 (emphasis in original). It is worth noting that a broad reading of the term "asset" includes a claim for damages. McNevin v. McNevin, 444 N.E.2d 320 (Ind. Ct. App. 1983)(divorce action). Therefore, while the executive branch has the authority to determine

whether litigation will settle, and how much will be received in settlement, it is up to the legislature to determine how the proceeds of that settlement will be allocated.

B. Dedicated Funds. Article IX, sec. 7, Constitution of the State of Alaska states that the "proceeds of any state tax or license shall not be dedicated to a special purpose," and excepts from this prohibition dedicated funds existing at the time the state constitution was ratified, the permanent fund, and dedications required by the federal government for state participation in federal programs. Alaska's Supreme Court has, based on the history of the constitutional convention, interpreted the prohibition to apply to "the dedication of any source of revenue". State v. Alex, 646 P.2d 203, 210 (Alaska 1982). The Governor may claim that the settlement proceeds are required to be dedicated for state participation in federal programs. If the state were suing under the Clean Water Act, this might be a legitimate argument since sums recovered under that Act must be used to restore, rehabilitate, or acquire the equivalent of the nature resources damaged. 33 U.S.C. 1321(f)(5). Even if that were the case, however, it should be the legislature that decides exactly what programs will fulfill those purposes and how the money is to be allocated among those purposes. However, it is our understanding that the state is not making claims under the Clean Water Act. It does not appear that the "federal program" exception applies here.

C. Statutory Provisions Under state law, money received for cleanup reimbursement must be deposited in the general fund and credited to the oil and hazardous substance release mitigation account. AS 46.04.010. It would then be subject to legislative appropriation. AS 46.08.020(a)(2) and (b) require that money recovered "or otherwise received" from persons responsible for the containment and cleanup of oil from a specific site shall be deposited in the general fund and credited to the oil and hazardous substance release mitigation account." The legislature may then appropriate the money to the release response fund. Failure to place money received from Exxon in the general fund would violate AS 46.08.020(b).

### III. Settlement Providing for Services or Property.

Because McAlpine construes the appropriation power to apply broadly to all "assets" of the state, and because the prohibition against dedicated funds applies to any "source of revenue," the above discussion should apply to services and property that might be given to the state in the settlement. Any property received would be the result of exchanging one state asset (the claim against Exxon) for another (the property). However, in applying the doctrine that the legislature alone has the power to allocate state assets, the question arises as to whether this means (1) the governor can agree to accept 10 bulldozers and the legislature has to allocate them to a particular program, or (2) the governor cannot agree to accept services or property in settling a state claim because that involves the allocation of resources. I have not been able to find any case law on this subject, but believe that interpretation (2) is more consistent with the separation of powers doctrine because the first

interpretation would allow the executive, without authority from the legislature, to determine how state resources are to be allocated.

It is possible that the court might uphold the donation of services or property to a department and for a specified purpose if the legislature has already authorized the department to accept services or property for that particular purpose. In this situation, the legislature would at least have authorized both the receipt of the property from private parties and its use for particular purposes. However, even this approach does not give the legislature the power to allocate a state asset (namely the proceeds of a legal claim) to competing programs and might therefore be unconstitutional. Examples of statutes authorizing the receipt of property from private persons are AS 16.05.050(2) (fish and game); AS 19.22.020(roads); AS 41.21.020(3) (recreation and park lands); and AS 42.40.250(7)(railroad).

If the settlement purports to accept property on behalf of the state and there is no statutory authority for the acceptance of that property for that purpose, the purported acceptance would be invalid because the state's power over its property is vested in the legislature. Wolverine Sign Works v. State Hwy. Com'n. 218 N.W.2d 863 (Mich. Ct. App. 1974)(Because statute did not authorize commission to acquire restrictive covenants, the covenants acquired were void); 81A C.J.S. States, sec. 145. AS 38.05.035(a)(12) makes the director of the division of lands the "certifying agent" for securing land available to the state, but I do not read this as granting the director the authority to accept all land for whatever purposes; rather it appears to give the director the authority to handle the mechanics of the transaction when the state's acceptance of land is otherwise provided for. See State v. Thomson, 449 P.2d 656 (N.M.1969)(Failure of governor to obtain deed did not nullify transfer of land to the state because the title vested by act of the legislature, and the governor's role was just to formalize the record of title).

Finally, even if a settlement purporting to give the state property or services to be used for a particular project were found to be constitutional (which I doubt), the state project would have to be authorized by the legislature and a project (state or private) would still be subject to regulatory restrictions (labor and environmental laws for instance). See South Carolina State Hwy. v. Butterfield, 58 S.E.2d 737 (S. Car. 1950)(Attorney General's statement that highway department would "take care" of septic tank in right of way did not bind highway department's actions.)

Aside from the considerations discussed above, if the settlement entered into is manifestly unfair to the interests of the state, the Governor may be found to have failed in his constitutional duty under Art. III, sec. 16 to "be responsible for the faithful execution of the laws."

# Alaska State Legislature



## House of Representatives

House Judiciary Committee  
Chairman Dave Donley

P. O. Box V  
State Capitol  
Juneau, Alaska 99811  
(907) 465-4990  
(907) 465-4712

February 19, 1991

The Honorable Charles E. Cole  
Attorney General  
P.O. Box K  
Juneau, Alaska 99811

Dear Attorney General Cole:

I am writing to confirm your appearance before the House Judiciary Committee on February 22, 1991 at 1:30 p.m., and at that time will provide the committee with a written opinion addressing the following questions:

1. May the governor settle the state's claims against Exxon and its subsidiaries arising from the Exxon Valdez oil spill under terms that require the defendants to give the state money dedicated to a particular purpose, or to provide specified services or property?

2. May the governor settle the state's claims against Exxon and its subsidiaries arising from the Exxon Valdez oil spill under terms that do not involve deposit of the money in the state general fund, and would such terms violate AS 46.08.020?

In addition, the committee would appreciate your comments on the attached work draft of legislation proposed by Representative Gruenberg. For your information, a copy of the draft legislation and a copy of a relevant legal opinion from our legislative counsel are attached.

Thank you very much for your cooperation.

Very truly yours,

A handwritten signature in cursive script that reads "Dave Donley".  
Dave Donley, Chair

DD:lho

# Alaska State Legislature



## House of Representatives

House Judiciary Committee

Chairman Dave Donley

February 21, 1991

P. O. Box V  
State Capitol  
Juneau, Alaska 99811  
(907) 465-4990  
(907) 465-4712

The Honorable Charles E. Cole  
Attorney General  
P.O. Box K  
Juneau, Alaska 99811

Dear Attorney General Cole:

At your request, and as a courtesy to you, the House Judiciary Committee has agreed to put off your appearance before the committee that was previously scheduled for February 22, 1991. Your appearance has been rescheduled to 1:30 p.m. on February 27, 1991. At that time, we look forward to receiving the information requested in my letter to you of February 19, 1991 (copy attached).

Thank you very much for your continuing cooperation.

Very truly yours,

A handwritten signature in cursive script that reads "Dave Donley".

Dave Donley, Chair

DD:lho

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS  
U.S. HOUSE OF REPRESENTATIVES  
WASHINGTON, DC 20515

February 20, 1991

The Honorable Walter Hickel  
Governor of the State of Alaska  
State Capitol  
P.O. Box A  
Juneau, Alaska 99811-0101

Dear Governor Hickel:

Last year Congress passed landmark oil spill legislation. With the President's signature on August 18, 1990, a 15-year deadlock over the issue of state law preemption was resolved, and comprehensive, badly needed reforms were enacted into law ("Oil Pollution Act of 1990," P.L. 101-380).

The catalyst for the oil spill legislation was the Exxon Valdez disaster in Alaska. Compounded by a woefully inadequate cleanup response by Alyeska, the Exxon Valdez spill cast serious doubt on the reliability of the Trans-Alaska Pipeline System ("TAPS") for transporting oil in a safe and environmentally sound manner.

In the Oil Pollution Act, Congress sought to assure increased government oversight and operational improvements in the delivery system for Alaska oil by establishing a Presidential Task Force on the Trans-Alaska Pipeline System. As set forth in Title VIII, the Task Force is to conduct a comprehensive audit and report to Congress on what structural and operational improvements are necessary to TAPS in order to prevent oil spills and other damage to the environment and public health.

In recognition of the important State role in regulating TAPS, the Presidential Task Force includes three members nominated by the Governor of Alaska.

As the principal congressional author of the Presidential Task Force on TAPS, I am dismayed that the Bush Administration and the State of Alaska have failed to carry out the mandate of the law.

The need for the Presidential Task Force on TAPS is clear. For example, in March 1990, the General Accounting Office testified at a hearing that I chaired on TAPS that:

"The pipeline has not received the systematic, comprehensive oversight needed to ensure compliance with operational safety, emergency response, and environmental problems."

At that same hearing, the State of Alaska cited serious pipeline corrosion problems and inadequate technology to control air (vapor recovery system) and water (ballast water treatment system) pollution. The Department of Environmental Conservation's testimony pointed out Alyeska's habit of spending money on lawyers to fight environmental enforcement rather than installing pollution control technology:

"Alyeska promised in the lease covenants to stay abreast of technology developments and to continually upgrade equipment. In our view, however, the difference between what was promised and what was delivered was substantial."

The most timely example of why a comprehensive audit of TAPS is critical is the acknowledgement by Exxon that wastes from its California operations have been transferred in tanker

The Honorable Walter Hickel  
February 20, 1991  
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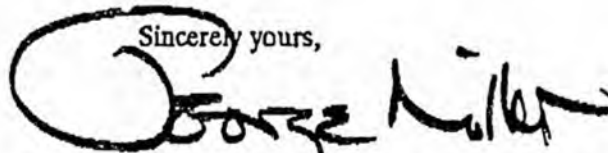
ballast water for disposal at the TAPS terminal facilities in Valdez. This practice raises serious concerns both about the extent of pollution in Prince William Sound caused by TAPS operations and about the oil industry's commitment to protect the Alaskan environment.

The oil industry assured Congress that the Trans-Alaska Pipeline System would be state-of-the-art and that the environmental impacts would be minimal when pipeline construction was authorized in 1973. Repeatedly, I have heard similar promises about the oil industry's plans for developing the coastal plain of the Arctic National Wildlife Refuge.

The State of Alaska has a vital role in assuring that the oil industry lives up to its promises. I led the fight in Congress to protect the rights of states to enact tougher oil spill laws than the Federal government. Yet recent reports that your Administration canceled oil spill regulations intended to implement state laws passed after Exxon Valdez--after giving Alyeska a "sneak preview"--are deeply troubling to me.

Governor, the integrity of the Trans-Alaska Pipeline System, and the State of Alaska's commitment to environmental protection, will be an important part of the congressional deliberations on ANWR and the other Alaska oil and gas development issues.

Sincerely yours,

A handwritten signature in black ink that reads "George Miller". The signature is written in a cursive style with a large, looping initial "G".

GEORGE MILLER  
Vice Chairman

cc: The Honorable Ben Grussendorf  
Speaker of the House

The Honorable Richard Eliason  
President of the Senate

MAR - 7 - 91 THU 10:01 UNION ASSOCIATES

P. 02

For Dave Donaldson  
FR: Sohanna

463-3944

For immediate release:

March 7, 1991

Contact: Sam Fortier (907) 277-4222

Alan Charney (212) 505-3566

**NATIVE PEOPLES DERAIL EXXON-GOVERNMENT SETTLEMENT TALKS  
-FEDERAL JUDGE GRANTS 10 DAY TEMPORARY RESTRAINING ORDER-**

Washington, DC -- Judge Stanley Sporkin of Federal District Court in Washington, DC today granted a 10 day Temporary Restraining Order blocking the completion of any settlement between Exxon, The State of Alaska and the Federal Government on claims arising from the 1989 spill of the Exxon Valdez.

This 10 day TRO is effective immediately pending the results of a hearing before Judge Sporkin to be held on Monday, March 11th at 10:00 am.

On Wednesday, March 6th, three Native Corporations and other parties from Prince William Sound and Lower Cook Inlet filed an injunction against state and federal officials involved in the Exxon settlement talks. The Native Corporations are seeking a permanent injunction that would halt further negotiations on or implementation of the settlement agreement.

--MORE--

MAR - T - 01 THU 10:02 UNION ASSOCIATES

P. 02

**NATIVES STOP SETTLEMENT**

"Today, we have taken the first step in assuring that Native interests will be protected in any settlement," said Charles Totemoff, President of Chenega Corporation. "Our intention is to be fully involved in these settlement talks because any settlement concerns the future of our land and livelihood." /

The Native Corporations are seeking three remedies through their legal action:

- (1) to restrain officials from signing or implementing a settlement agreement with respect to their "selected" lands and any proceeds from this land;
- (2) to segregate any payments for damages to these "selected" lands in an interest-bearing account;
- (3) to halt further negotiations until the Native Corporations are fully involved.

The Chenega, Port Graham and English Bay Corporations claim that the proposed settlement could weaken the Native claims for damages. This would violate federal laws and regulations because thousands of acres of federal lands, particularly in the Kenai Fjords and Chugach National Forest, has been "selected" for ownership by Native Corporations under the Alaska Native Claims Settlement Act (ANSCA).

--MORE--

**NATIVES STOP SETTLEMENT**

Under ANSCA, the federal government is required to obtain and consider the views of Native Corporations prior to making any contractual agreements on "selected" lands. "Selection" is the first step in taking ownership of lands by the Native Corporations.

Gail Evanoff, another Chenega leader, said that " the 10 day TRO is a real victory for our people. It puts Exxon and the government on notice that there can be no settlement without Native participation. Some of our land is still covered with oil two years after the spill. There are no seal, no otter. We can't hunt or fish as we used to. Exxon must treat us fairly. They can't hide behind a deal with the government.

\* \* \* \* \*

file:ua\al-pr.16

\*\*\*\*\*  
F A X T R A N S M I T T A L M E M O

TO: House Judiciary  
DEPT: \_\_\_\_\_ FAX #: \_\_\_\_\_  
FROM: Not-Such PHONE: 376-3704  
CO: \_\_\_\_\_ FAX #: 376-6180

NO. OF PAGES  
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Post-It<sup>®</sup> brand fax transmittal memo 7671

I make the following comments as a very concerned, troubled and angry Alaskan.

I wish to make my support known regarding funding for continued Oil Spill Litigation. I think it is imperative that we send a clear message to the Oil Companies that we are determined to do whatever we have to, and spend whatever we have to to secure a fair and just settlement for the damage they have done to our lands.

I must tell you however, my overriding concern at this point in time concerns the current negotiations for an out-of-court settlement being pursued by Mr. Hickle.

Make no mistake about it, the people of Alaska have a certifiable ego maniac governor who is playing a fast and loose game of monopoly with Exxon on a settlement. If he is not stopped now all Alaskans concerned with a fair and just settlement are going to find themselves not able to pass go or collect 200 dollars, and Exxon is going to own Boardwalk and Park Place. What we have here is another Haul Road fiasco in the making. I am convinced this governor is prepared to sell the state short for his own ego gratification at reaching a settlement. The legislature should act immediately to pass legislation that will require any out of court settlement be approved by the legislature. The Governors attitude of "I alone will make the determination of what is a fair settlement, and the people of Alaska and their legislative representatives will hear about it when it is a done deal" is insulting beyond belief.

In closing I would say this to you, and the rest of the legislature, you as a body are the only ones that can put a stop to this exercise in ego mania and secret agendas by our governor. You not only have the right, you have the duty and responsibility to protect the interests of Alaska and its people. I urge you to pass this legislation swiftly and decisively, because as you know, this secret deal is being made as we speak. Act and you will gain the respect and appreciation of the people of Alaska. Vacillate until it is too late and you will gain their contempt.

Laura M. Schaffer  
LAURA M. SCHAFER  
P.O. Box 877569  
WASILLA, AK 99687  
373-3195 Hm 376-2414 WK

# DRAFT

Honorable Dave Donley, Chairman  
House Judiciary Committee  
House of Representatives  
Alaska State Legislature

February 27, 1991

663-91-0339

465-3600

Deposit and accounting for  
Exxon Valdez oil spill  
settlement proceeds

James L. Baldwin  
Assistant Attorney General  
Governmental Affairs

This responds to your letter of February 19, 1991 in which you asked two questions concerning a possible settlement of claims arising out of the oil spill caused by the grounding of the Exxon Valdez. You also requested our comments on a draft bill that purports to require review and approval of an out-of-court settlement of the state's claim against the parties responsible for the oil spill.

Both of your questions concern the attorney general's power to settle a lawsuit. State law authorizes the attorney general to perform duties "which usually pertain to the office of attorney general in a state." AS 44.23.020(b)(7). The attorney general's settlement powers are a necessary element of his recognized common law power to control the disposition of cases. In Public Defender Agency v. Superior Court, 534 P.2d 947 the Alaska Supreme Court stated:

Under the common law, an attorney general is empowered to bring any action which he thinks necessary to protect the public interest, and he possesses the corollary power to make any disposition of the state's litigation which he

Honorable Dave Donley, Chairman  
House Judiciary Committee, House of Rep.  
AG file: 663-91-0339

February 27, 1991  
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thinks best.

534 P.2d at 950 (citation omitted) (emphasis added); accord Island-Gentry Joint Venture v. State, 554 P2d 761 (Haw. 1976).

The questions you asked appear to express a concern that AS 46.08.020 may abrogate, or limit, the attorney general's common law powers to settle oil spill claims. We believe that AS 46.08.020 does not limit the attorney general's settlement powers. The attorney general has the discretion to settle state claims using remedies available under the Federal Clean Water Act (33 U.S.C. 1321). His actions are reviewable by a court but would be subject to a deferential standard of review.

To briefly answer your questions, federal law requires recoveries to be dedicated for restoration and replacement of natural resources. We believe that a settlement agreement dedicating settlement proceeds can be made consistent with the dedicated fund prohibition contained in the Alaska Constitution. This can occur because the constitution allows federally required dedications to be implemented. Alaska Const. art. IX, sec. 7.

Our reasoning is set out in the following answers to your questions. We will respond to your questions in the order in which they were asked.

1) May the governor settle the state's claims against Exxon and its subsidiaries arising from the Exxon Valdez oil spill under terms that require the defendant's to give the state money dedicated to a particular purpose, or to provide specified services or property?

The state's claim was asserted to recover for natural resource damages, including the cost of the restoration and replacement of natural resources harmed by the Exxon Valdez oil spill. The federal government also asserts that it is the steward of resources harmed by the spill and is also entitled to a recovery. Depending on the damage theory asserted, the state and federal government each have an undivided interest in harmed resources. Federal law provides that the state and federal governments should act jointly in administering damages recovered by either sovereign for such resources. 40 CFR 300.615. Any recovery under this damage theory is being considered, for the purposes of this case, as money belonging jointly to the federal and state governments. As a consequence, the governments acting together intend to establish a joint trust under the Clean Water Act (33 U.S.C.1321) to prosecute and, if determined to be in the public interest, serve as a device for settlement of the claims.

The Clean Water Act provides for disposition by state and

Honorable Dave Donley, Chairman  
House Judiciary Committee, House of Rep.  
AG file: 663-91-0339

February 27, 1991  
Page 4

federal natural resource trustees of the proceeds of any settlement. The Act expressly provides:

"Sums recovered [by the trustees] shall be used .  
. . . [for restoration and resource acquisition] by  
the appropriate agencies of the federal government,  
or the state government."

33 U.S.C. 1321(f)(5). The Act is further implemented by federal regulations. These regulations authorize the deposit of recoveries in separate accounts within the state treasury or in interest bearing accounts established outside the state treasury. 43 C.F.R. 11.92. Based on this statutory and regulatory framework, we conclude, that the Clean Water Act requires the dedication of settlement proceeds as a condition of participation in a joint enforcement effort. We consider a joint enforcement effort effective and proper in this case.

The federal restrictions either take the form of a dedication imposed by federal law as a condition of exercising joint enforcement powers under the Clean Water Act or a public trust authorized under that Act. In both cases, the money may be received and expended under an exception to the dedicated fund restriction imposed by art. IX, sec. 7 of the Alaska Constitution. Section 7 provides in relevant part:

The proceeds of any [state revenue] shall not be

dedicated to any special purpose, except . . . when required by the federal government for state participation in federal programs.

After a thorough analysis of the history of the dedicated fund prohibition, this office opined that trust receipts are exempt from the dedication fund prohibition by implication. 1982 Op. Att'y Gen. No. 13 (November 30; A.G. file No. 366-649-80). A reading of the constitutional history also makes it quite likely that the framers did not intend to prohibit the dedication of certain non-tax or license related revenues, such as litigation proceeds.

Strong legal arguments can be made in support of the validity of a settlement agreement that purports to require the dedication of joint trust receipts for restoration and replacement of natural resources harmed by an oil spill.

**2) May the governor settle the state's claims against Exxon and its subsidiaries arising from the Exxon Valdez oil spill under terms that do not involve deposit of the money in the state general fund, and would such terms violate AS 46.08.020.?**

In our opinion, the provisions of AS 46.08.020 do not impair the governor's ability to settle claims under the Clean Water Act. As discussed above, the Clean Water Act requires that the proceeds be dedicated for the purpose of restoration. The

Honorable Dave Donley, Chairman  
House Judiciary Committee, House of Rep.  
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custodian holds them in trust. These federally imposed restrictions on use appear to conflict with AS 46.08.020(b) which provides:

Money received by the state . . . shall be deposited in the general fund and credited to a special account called the "oil and hazardous substance release mitigation account." The legislature may annually appropriate to the fund from this account a sum equal to the amount received . . . during the calendar year preceding the legislative session in which the appropriations are to be made.

(Emphasis added). The foregoing provision is a part of a chapter of statutes that provide for financing "the expenses incurred by the Department of Environmental Conservation in the protection of the environment of the state from the release of oil or hazardous substances." AS 46.08.005. The text of AS 46.08.020 plainly does not dedicate amounts for the purpose of restoration and replacement of natural resources. To the contrary, the legislature has the discretion whether to appropriate money for a federally required purpose. The implication is plainly present that the legislature could appropriate the settlement proceeds for another purpose. In the case of a true dedication, the legislature has no discretion concerning the assignment of purpose for an expenditure. The nature and effect of a dedicated fund is analyzed in a 1982 formal opinion of the attorney general. 1982 Op Att'y Gen No. 13 (November 30; A.G. file No. 366-649-80).

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There is additional evidence to explain why AS 46.08.020 does not apply to settlement proceeds under the Clean Water Act. The regulations implementing the Clean Water Act require the trustee to either deposit the proceeds in a separate account within the state treasury or in an interest bearing account if maintained outside the state treasury. 43 C.F.R. 11.92(a)(2). In both instances, the regulations contemplate a segregation and dedication for a specific purpose. Section 020(b) would require the governor to deposit the proceeds in the state general fund.

The general fund is not the equivalent of the state treasury. All public money and revenue coming into the state treasury, not specifically authorized by the constitution or by statute to be placed in a separate fund, and not given or paid over in trust for a particular purpose, constitute the general fund of the state. Navajo Tribe v. Arizona Dept. of Admin. 528 P.2d 623 (Ariz. 1975). State v. Bates, 18 S.E. 2d 346, 351 (S.C. 1941) Bd of Ed of Wyoming County v. Bd of Public Works, 109 S.E. 2d 551 (W. Va. 1959). However, a requirement to deposit dedicated receipts in the general fund does not cause them to lose their restricted status. Municipality of Metropolitan Seattle v. O'Brien, 544 P.2d 729 (Wash.1976).

We believe that it is reasonable to interpret section 020

so it does not conflict with federal law. In construing this section, we must presume that the legislature was aware of the remedies afforded by the Clean Water Act. Wik v. Wik, 681 P.2d 336 (Alaska 1984). The statutory directive to deposit recoveries set out in AS 46.08.020(b) can be interpreted to exclude proceeds that are dedicated or encumbered by trust obligations imposed by federal law.

By express reference, the deposit and accounting requirements apply only to amounts received under AS 46.08.020(a)(2) and (3). Section 020(a)(2) covers

money recovered or otherwise received from parties responsible for the containment and cleanup of oil or a hazardous substance at a specific site.

It refers only to money that is received directly from a responsible party, not from a joint trust entity.

Section 020(a)(3) covers "fines, penalties, or damages recovered under AS 46.08.005 - 46.08.080 or other law." Taken out of context, it appears to cover a broad spectrum of damages. However, a careful reading of AS 46.08 discloses that only recoveries to reimburse the state for previous expenditures are addressed. The right to claim established in AS 46.08.070 is described as the power to seek "reimbursement". We presume that

damages recovered under "other law" refers to reimbursement type damages as well. Such recoveries should be deposited in the general fund.

Amounts allocated by the joint trustees for state restoration projects would be from a source described in AS 46.08.020(a)(1). Section 020(a)(1) covers "money received from federal, state, other sources, or from a private donor." That provision describes money received from a source other than a responsible party and appears to include federal or other trust receipts that do not represent a reimbursement for past expenditures. The joint trust could be considered a grant of money to a state agency for restoration purposes. Amounts from this nonstate source are not expressly directed by section 020(b) to the general fund of the state for possible appropriation to the hazardous substance release response fund, nor are "joint" as opposed to "state" recoveries. This treatment is consistent with the status of trust receipts and dedicated funds discussed earlier in this memorandum.

In summary, we conclude that settlement recoveries are not required to be deposited in the general fund of the state. The provisions of AS 46.08.020 can be interpreted to allow for the receipt and expenditure of settlement proceeds held in trust under

the Clean Water Act.

We next turn to the validity of a separate trust fund that may be established to implement a settlement under the Clean Water Act. As mentioned above, the state and federal governments may agree to proceed under the Clean Water Act to create a joint trust to administer the proceeds of a settlement. The settlement agreement may prescribe the elements of this trust or there may be a separate trust agreement that describes in detail the powers and duties of the trustees. The joint trustees would be a federal natural resources management agency (43 C.F.R. 11.14 (rr)) and state officials designated by the governor (42 U.S.C. 9607(f)(2)(B)).

A difficult question concerns whether there is sufficient authority for the attorney general to take a part in the creation of a joint trust fund. Generally it is held that special funds must be established by law. State v. West, 145 P. 15 (Wash. 1914). However, we believe that the joint trust could be formed under authority expressly granted by the Alaska Constitution. Article XII, sec. 2 provides:

The state . . . may cooperate with the United States . . . on matters of common interest.

The attorney general could agree to form an intergovernmental trust

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entity to solve the common dilemma presented by the Exxon Valdez oil spill. Some may argue that the joint cooperation provision of the state constitution may only be implemented by law. However, it must be remembered that the constitution is to be construed as self-executing "whenever possible." Alaska Const. art. XII, sec. 9.

If the relationship between the state and federal government is to be truly "cooperative," it is reasonable to assume that neither the state legislature nor the Congress has absolute veto power over deposit in the joint trust or expenditure of settlement proceeds from the joint trust. The joint trust would hold the settlement proceeds as an asset of the trust. As jointly recovered trust receipts, the state or federal treasuries could not claim absolute title to them. Beyond these basic legal concepts it would be difficult to foretell the exact nature and effect of a joint trust created under the Clean Water Act. It is possible that private trust law will be used to construe the rights and obligations of the joint trustees and the beneficiaries. In Weiss v. State, 706 P.2d 681 (Alaska 1985), the Alaska Supreme court applied private trust law principles to resolve legal disputes concerning the operation of a public land trust.

In a memorandum attached to your February 19 letter,

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legislative counsel argues that a state agency cannot expend trust receipts without a valid appropriation. There are numerous cases from other states holding that no appropriation is needed to expend trust receipts. See, e.g. Colorado General Assembly v. Lamm, 700 P.2d 508 (Colo. 508); See also Navajo Tribe v. Ariz. Dept. of Administration 528 P2d 623 (Ariz. 1975); but see Sharpp V. Sloan, 391 A2d (Pa. 1978) (custodial funds must be appropriated or returned). The practice in Alaska for the past 14 years has been to appropriate the majority of federal, trust and other custodial funds.

However, there are notable exceptions to this practice. For example, refunds of overpayments of state income tax were not appropriated before disbursed. The Alaska Supreme Court has not interpreted art. IX, sec. 13 of the Alaska Constitution to determine how the appropriation requirement imposed there applies to expenditure of trust or custodial receipts. We believe that the result of a supreme court decision on this issue would be too close to predict. However, we believe that the legislature could not appropriate the settlement proceeds for a purpose other than restoration or replacement of natural resources damaged by the Exxon Valdez Oil Spill. Nor may the money be expended in a manner that is contrary to a restoration plan prepared by or at the direction of the joint trustees. 43 C.F.R. 11.92(c).

3. Comments concerning draft legislation purporting to regulate the attorney general's settlement powers.

We have reviewed a work draft for a bill relating to agreements, compromises, and settlements entered into by the state in the Exxon Valdez oil spill litigation. This bill would require the administration to submit to the legislature for review a settlement that arose out of the March 1989 grounding of the Exxon Valdez. The bill purports to give the legislature the power to prohibit the settlement before it takes effect.

We believe that this bill contains serious legal defects. Under our constitutional system there must be a separation of powers between the branches of government. The Alaska Supreme Court has held that the separation of powers doctrine, though not expressly set out in the Alaska Constitution, is clearly implied. Public Defender Agency v. Superior Court, 534 P.2d 947 (Alaska 1975). If the legislature has the power to prohibit a specific settlement, it may be improperly attempting to obtain executive or quasi-judicial power. The legislature would be supervising the decision making of executive officers. The ability to prohibit a settlement amounts to a veto power.

There are several ways to illustrate that such a retained

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veto power constitutes the exercise of an executive power. No one doubts that it would be unconstitutional for the legislature to require the governor to appoint a legislator to negotiate a settlement agreement. See, Stockman v. Leddy, 129 P. 220 (Colo. 1912) (legislative committee improperly given executive duties in the enforcement of statute). There is little difference between being the party doing the negotiating and having the power to cancel the resulting agreement. The attorney general becomes as much an agent of the legislature as does the legislator who is appointed to negotiate.

Assumption of the power to review and prohibit a settlement agreement frustrates the constitutional objective of making the executive branch accountable to the people for the execution of the law. Under the draft bill, accountability would be spread among the various legislators who vote one way or another on the question of prohibition of a settlement.

The draft bill would cause a serious blow to the ability of the attorney general to settle the case in point. The legislature must abide by its delegation of authority until that delegation is altered or revoked. INS v. Chadha, 462 U.S. 919, 955 (1983). The legislature may, as a general proposition, prescribe the standards under which the attorney general may settle cases.

However, by failing to adopt real criteria for the settlement of this case, there can be no certainty that a negotiated settlement will remain binding on the parties. Essentially, the only real criteria remaining is whether a motion to enact a prohibition of the settlement can command a majority vote in each house of the legislature. The legislature cannot delegate a power, while retaining significant control over how the power is exercised. That type of control is executive in nature and is inappropriate.

Another serious defect of this bill is the notion that the legislature could pass a bill prohibiting a specific settlement. We do not know what form a bill prohibiting a settlement will take. Certainly, it must focus on only a single settlement. By doing this, it becomes special legislation. The legislature cannot as a general rule enact a special act "if a general act can be made applicable." Alaska Const. art. II, sec. 19; Section 1 of the draft bill contains little more than conclusions to justify special treatment for the Exxon Valdez spill settlement. Persuasive justification for special treatment must be provided by the legislature. Abrams v. State, 534 P.2d 91 (Alaska 1975). (Enactment creating Eagle River Chugiak Borough invalidated because other communities were similarly situated). Settlement of the mental health land trust dispute is no less important for having "far reaching effects on the welfare of the people of the

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state, on disposition of state funds, and on the status of large areas of state land." Other equally important oil and gas taxation cases also come to mind.

A question involving a possible violation of the special legislation prohibition must be analyzed using the rational basis test applicable to nonsuspect classifications challenged under the equal protection doctrine. State v. Lewis, 559 P.2d 630 ( Alaska 1977). It is presumed that the same nondeferential, ends versus means test applied in Isakson v. Rickey, 550 P2d 359 (1976); will also apply in resolving a special legislation claim. To satisfy this test, the legislature must rigorously develop a detailed legislative history supporting the reasons why the Exxon Valdez settlement warrants special legislation. The findings and purpose clauses of the work draft do not contain sufficient material to satisfy the heightened scrutiny of the state equal protection test for validity. Further, we doubt that it is possible to make a convincing case for such special treatment.

We hope that the foregoing memorandum adequately responds to your questions and will assist the House Judiciary Committee in its deliberations concerning the work draft bill.

JLB:jr

ACE  
COPY  
Case No. 89-06252

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT

THE STATE OF ALASKA, on its own behalf, and as public trustee and as parens patriae for the citizens of the State,

Plaintiff,

vs.

EXXON CORPORATION, a New Jersey corporation; EXXON PIPELINE COMPANY, a Delaware corporation; EXXON SHIPPING COMPANY, a Delaware corporation; ALYESKA PIPELINE SERVICE COMPANY, a Delaware corporation; AMERADA HESS PIPELINE CORPORATION, a Delaware corporation; ARCO PIPE LINE COMPANY, a Delaware corporation; BP ALASKA PIPELINES, INC., a Delaware corporation; MOBIL ALASKA PIPELINE COMPANY, a Delaware corporation; PHILLIPS ALASKA PIPELINE CORPORATION, a Delaware Corporation; UNOCAL PIPELINE COMPANY, a California corporation,

Defendants.

COMPLAINT FOR COMPENSATORY AND PUNITIVE DAMAGES, CIVIL PENALTIES AND INJUNCTIVE RELIEF

**COPY**  
Original Received

AUG 15 1989

Clerk of the Trial Courts

The plaintiff, by and through its attorneys, State of Alaska Department of Law and Preston, Thorgrimson, Ellis & Holman, on behalf of itself and as public trustee and as parens patriae on behalf of all natural persons residing within the State of Alaska, brings this action and complains and alleges as follows:

JURISDICTION AND VENUE

1. This is a civil action for compensatory and punitive damages, civil penalties and injunctive relief for

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losses sustained by plaintiff arising out of, and resulting from, the unlawful and negligent discharges of crude oil and other hazardous substances into Prince William Sound by the T/V EXXON VALDEZ ("EXXON VALDEZ"), and from the intentional and negligent acts of defendants before or after the crude oil and other hazardous substances were discharged into Prince William Sound.

2. Subject matter jurisdiction is proper pursuant to Alaska statutory and common law including AS 22.10.020(a) and AS 09.05.015 and general maritime law.

3. Personal jurisdiction is proper because each defendant either transacts business in or has sufficient contacts with the State for purposes of personal jurisdiction.

4. Venue is properly laid in the Third Judicial District pursuant to AS 22.10.030 and Alaska Civil Rule 3(c) because the claims herein arose in the Third Judicial District and because defendants are present and doing business in this judicial district.

#### THE PARTIES

5. Plaintiff State of Alaska, (the "State") is a sovereign state of the United States. The State appears on its own behalf as the owner of lands, waters and resources of the State, on behalf of all administrative departments and agencies of the State, and as parens patriae and public trustee for the citizens of the State of all lands, waters and resources within the jurisdictional boundaries of the State. Under the common law and the common use clause of the Alaska

Constitution, Article VIII, Section 3, plaintiff is the public trustee of and possesses sovereign interests in State lands, waters and resources. Plaintiff may maintain an action as parens patriae on behalf of its citizens and to protect and defend its sovereign interests. The public trust includes, but is not limited to, State navigable waters, submerged lands, tidelands and beaches. The interests protected by the public trust include, but are not limited to, providing scenic beauty, open space, air quality, food and habitat for birds and marine life, recreational experiences, scientific studies, functioning ecological systems and the various activities and management options enabled thereby. Unless otherwise expressly indicated herein, the term "State" means the State of Alaska in all its above-described capacities.

6. Defendant Exxon Corporation is a corporation organized under the laws of the State of New Jersey, that maintains its principal place of business in New York, New York. Through its subsidiaries and divisions, Exxon Corporation engages, among other things, in all phases and aspects of petroleum exploration, development, transportation, refining and marketing. On information and belief, it is an owner and/or operator of the EXXON VALDEZ, and it owned or controlled the crude oil cargo carried on the EXXON VALDEZ at the time the vessel discharged a substantial volume of its crude oil cargo into Prince William Sound.

7. Defendant Exxon Pipeline Company, a Delaware corporation, is a wholly-owned subsidiary of Exxon

Corporation. It maintains its principal place of business at Houston, Texas. Defendant Exxon Pipeline Company is a party to the Right-of-Way Lease for the Trans-Alaska Pipeline System granted by the State on May 3, 1974 (the "State Right-of-Way Lease").

8. Defendant Exxon Shipping Company, a Delaware corporation, is a wholly-owned subsidiary of defendant Exxon Corporation. It maintains its principal place of business in Houston, Texas. Exxon Shipping Company is an owner and/or operator of the EXXON VALDEZ, and it owned or controlled the crude oil cargo carried on the EXXON VALDEZ at the time the vessel discharged a substantial volume of its crude oil cargo into Prince William Sound.

9. Upon information and belief, at all material times defendant Exxon Corporation so dominated Exxon Shipping Company and Exxon Pipeline Company as to render Exxon Corporation liable for the conduct of Exxon Shipping Company and Exxon Pipeline Company, more fully described below.

10. Defendant Alyeska Pipeline Service Company ("Alyeska") is a Delaware corporation and maintains its principal place of business in Alaska. Alyeska operates the Trans-Alaska Pipeline System ("TAPS") as an agent of the owners or assignees of the TAPS right-of-way lease granted by the State Right-of-Way Lease -- the Amerada Hess Pipeline Corporation, ARCO Pipe Line Company, Exxon Pipeline Company, Mobil Alaska Pipeline Company, Phillips Alaska Petroleum

Corporation, BP Alaska Pipelines, Inc. and Unocal Alaska Pipeline Company (collectively the "Owner Companies").

11. Defendant Amerada Hess Pipeline Corporation, a Delaware corporation, is a subsidiary of Amerada Hess Corporation. It maintains its principal place of business in New York, New York. Defendant Amerada Hess Pipeline Corporation is a party by assignment to the State Right-of-Way Lease for the Trans-Alaska Pipeline System.

12. Defendant ARCO Pipe Line Company, a Delaware corporation, is a wholly-owned subsidiary of Atlantic Richfield Company. It maintains its principal place of business at Independence, Kansas. Defendant ARCO Pipe Line Company is a party to the State Right-of-Way Lease for the Trans-Alaska Pipeline System.

13. Defendant Mobil Alaska Pipeline Company, a Delaware corporation, is a wholly-owned subsidiary of Mobil Corporation. It maintains its principal place of business at Dallas, Texas. Defendant Mobil Alaska Pipeline Company is a party to the State Right-of-Way Lease for the Trans-Alaska Pipeline System.

14. Defendant Phillips Alaska Pipeline Corporation, a Delaware corporation, is a subsidiary of Phillips Petroleum Corporation. It maintains its principal place of business at Bartlesville, Oklahoma. Defendant Phillips Alaska Pipeline Corporation is a party by assignment to the State Right-of-Way Lease for the Trans-Alaska Pipeline System.

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15. Defendant BP Alaska Pipelines, Inc., a Delaware corporation, is a subsidiary of British Petroleum Company, PLC. Defendant BP Alaska Pipelines, Inc. is a party by assignment to the State Right-of-Way Lease for the Trans-Alaska Pipeline System.

16. Defendant Unocal Pipeline Company, a California corporation, is a wholly-owned subsidiary of Union Oil Company of California. It maintains its principal place of business at Los Angeles, California. Defendant Unocal Pipeline Company is a party by assignment to the State Right-of-Way Lease for the Trans-Alaska Pipeline System.

#### DEFINITIONS

17. "ANS" means crude oil produced on Alaska's North Slope and transported through the Trans-Alaska Pipeline System pipeline to the marine terminal facilities at Valdez, Alaska.

18. A "barrel" of crude oil means 42 United States gallons of crude oil at 60° Fahrenheit.

19. "Economic damages" includes, but is not limited to, one or more of the following:

- a. Injury to the public or private economy of the State, including goodwill, whether or not said injury occurs within the boundaries of the State;
- b. Injury to private businesses, individuals, trade organizations, or any other commercial, scientific, educational,

charitable, cultural, subsistence, or other institution or activity generating direct or indirect economic benefits in the State.

c. Loss or uncertainty of government revenues, including, but not limited to, revenues from licenses, taxes, royalties, fees or other direct or indirect sources;

d. Increases or uncertainty in government expenses, including, but not limited to, internal operating, maintenance, overhead and capital costs, and external costs in the provision of services to other public or private individuals or entities.

20. "Environmental damages" includes, but is not limited to, one or more types of damages to use and enjoyment values derived from State lands, waters and resources:

- (1) Use values, including consumptive and nonconsumptive uses;
- (2) Nonuse values, including existence, intrinsic, option, bequest, temporal and quasi-option values;
- (3) Values derived from the existence of management options and the expertise and data to exercise and support same;

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- (4) Values associated with the necessity or desirability of restoration, replacement, assessment or monitoring;
- (5) Other ecosystem existence values.

21. The terms "Exxon," "defendant Exxon" and "Exxon defendants" refer collectively to defendants Exxon Corporation, Exxon Pipeline Company and Exxon Shipping Company.

22. The terms "grounding," "spill," and "accident" refer to the grounding and consequent rupture of the hull and oil tanks of the EXXON VALDEZ on March 24, 1989, the second rupture of the hull and the cumulative release of approximately 11 million gallons of crude oil into Prince William Sound. As more fully set forth below, plaintiff alleges that there were at least two separate incidents which caused the discharge of oil into Prince William Sound. Unless stated otherwise, both incidents are included within the meaning of the word "spill" or "accident."

23. "Owner Companies" means the Lessees of the State Right-of-Way Lease or the Assignees of a Lessee's interest in the State Right-Of-Way Lease.

24. The term "pipeline" refers to any pipeline in the Trans-Alaska Pipeline System.

25. The "State lands, waters, and resources" include, but are not limited to, any and all of the interests set forth in (a) below, controlled or influenced by the State

acting pursuant to law in one or more of the capacities set forth in (b) below.

(a) All real and personal property, together with fixtures and improvements thereon, and any other rights, uses, profits, values, authorities, or other interests or duties respecting any of the following land, resource and environmental components:

- (1) Coastal and inland waters and wetlands;
- (2) Tide and submerged lands;
- (3) Plants and animals, and their habitat, including artificially enhanced habitat;
- (4) The surface and subsurface of lands, including minerals and materials;
- (5) Air;
- (6) Aesthetics, scenic quality, and open space;
- (7) Historic, archaeological, cultural, scientific and recreational resources;
- (8) Ecological systems, together with the expertise and data necessary or desirable to control or influence same; or
- (9) Activities dependent upon or connected to any of (1) through (8).

(b) Capacities include any of the following exercised on behalf of public or private parties, whether or not residents of the State:

- (1) Sovereign;
- (2) Proprietor;
- (3) Trustee, including trustee for the public trust;
- (4) Representative, including parens patriae representative; or
- (5) Administrator.

26. "State Right-of-Way Lease" means the lease between the State of Alaska and the Owner Companies dated May 3, 1974, including all stipulations, amendments and other agreements incorporated into or made a part of the lease.

27. The term "terminal facilities" refers to those facilities of the Trans-Alaska Pipeline System, including specifically Port Valdez, at which oil is transferred from the pipeline to vessels or stored for future loading onto vessels.

28. The terms "Trans-Alaska Pipeline System" or "TAPS" refer to the pipeline and terminal facilities used to effect the transfer of ANS crude oil to markets and includes those facilities described in the State Right-Of-Way Lease between the Owner Companies and the State.

29. The term "vessel" or "tanker" refers specifically to the vessel known as the EXXON VALDEZ, which was being used to transport ANS crude oil from the terminal facility at Valdez, Alaska to Long Beach, California, and to other ports in the United States.

BACKGROUND

30. In 1968, the Prudhoe Bay oil field was discovered by Atlantic Richfield Company. It is the largest commercially developed oil field in North America. It is located on State lands and has been developed pursuant to oil and gas leases issued by the State.

31. In the early 1970s, the initial attempts to develop the Prudhoe Bay oil field were delayed, in part, because concerns were expressed about the potential adverse impact of this development on the sensitive terrestrial and marine environments that would be disturbed and through which the crude oil would be transported. The areas through which ANS oil is transported are considered to be among the last true wilderness areas in the United States, and are renowned for their beauty and natural resources. The defendants knew then and know now that many Alaskans, including commercial fishermen, subsistence users, tour operators, hunting and fishing guides, hoteliers, and many others, depend on these areas for their livelihood. Other Alaskans use, and have used, these areas for recreational activities including, among others, boating, sport fishing and sport hunting. Additionally, many Alaskans have long valued these areas for their scenic and pristine qualities and wilderness environments.

32. In order to persuade state and federal agencies to grant the permits, leases and other authorizations the Owner Companies needed to build and operate the TAPS, the

Owner Companies and Exxon defendants represented that they would take all action necessary to ensure that a major oil spill would not occur. They further represented that they would utilize the best available oil spill containment and clean up technology and that, if an oil spill did occur, they would be able to contain and clean up the oil spill.

33. Eventually, pursuant to federal and state legislation, implementing regulations and agreements between the United States, the State, and the Owner Companies, which agreements were entered into in reliance upon the representations of Owner Companies and one or more of the Exxon defendants, the construction and operation of TAPS was authorized.

34. TAPS was completed in 1977, and commercial crude oil production began from Prudhoe Bay in June of 1977.

35. Even after the commencement of TAPS operations, Alaska residents, including state officials and legislators, and others remained concerned about the potential adverse impact of an oil spill on the sensitive land, air and marine environments through which ANS crude oil was being transported. The oil industry (including the Exxon defendants, Alyeska and the Owner Companies) repeatedly assured the State and others that the Owner Companies and Alyeska would take all actions that would ensure an oil spill would not occur and, if it did, that they could and would promptly and completely contain and clean up all spilled oil.

36. Pursuant to state law, administrative regulations and the state and federal Right-of-Way Leases, Alyeska, the Exxon defendants (other than Exxon Shipping Company) and other Owner Companies were required to, and did, prepare and submit an oil spill contingency plan (the "Plan") to the State and federal officials. The Plan was periodically updated.

37. In the Plan, the defendants represented that they had developed, assembled and organized in advance the procedures, protocols, equipment, supplies, and personnel to respond immediately to a major oil spill. The Plan represented that the defendants' oil spill techniques and equipment were "state-of-the-art" and that they were prepared to and could initiate a rapid response to "contain" a spill and to "exclude" a spill from particularly sensitive areas such as hatcheries and spawning grounds. The Plan further represented that Alyeska had a 24-hour task force in Valdez, Alaska, that was fully trained to respond to an oil spill, and that Alyeska could have equipment and personnel on-scene adequate to respond to a major spill in the vicinity of Bligh Island within five hours.

38. Contrary to the representations made by defendants, defendants did not have the best available technology to contain and clean up the oil spill, did not have adequately trained personnel, equipment or supplies available to respond to an oil spill and could not and did not respond adequately to the oil spilled by the EXXON VALDEZ. Defendants

inability to respond to the oil spill was due in large part to defendants' conscious, deliberate, negligent and reckless decision to save money by reducing manpower, training, equipment and maintenance of equipment below those levels which defendants knew, or should have known, were necessary to respond to a major oil spill.

#### THE GROUNDING

39. On Thursday evening, March 23, 1989, the EXXON VALDEZ, a very large crude oil carrier ("VLCC") and one of Exxon's two largest oil tanker vessels, left the Port of Valdez, Alaska, bound for Long Beach, California.

40. On information and belief, Third Mate Gregory Cousins and other crew members did not have the amount of rest required by statute prior to the EXXON VALDEZ's departure from Port Valdez on the evening of March 23, 1989.

41. Prior to boarding the EXXON VALDEZ on March 23, 1989, Captain Joseph Hazelwood had been drinking alcoholic beverages in Valdez. On information and belief, at the time Captain Hazelwood boarded the vessel, he was intoxicated and in violation of United States Coast Guard ("Coast Guard") regulations and prudent practices concerning the use of alcohol and the physical and mental condition required of captains operating this type of vessel.

42. Under the command of a harbor pilot, the EXXON VALDEZ left the Valdez terminal at approximately 9:15 p.m., March 23, 1989, and passed through the Valdez Narrows. Except for a brief period at the start of the voyage, Captain

Hazelwood, who at all times relevant hereto was acting within the scope of his employment and as an agent and/or representative of defendant Exxon, was not present on the bridge of the EXXON VALDEZ when the harbor pilot was conning the vessel. In preparation for his departure, the harbor pilot requested, however, that Captain Hazelwood return to the bridge, which Captain Hazelwood did.

43. After the departure of the harbor pilot, Captain Hazelwood informed the Coast Guard that he was changing the vessel's course from the deep-water, normal outbound shipping lane. Captain Hazelwood also informed the Coast Guard that he would notify it when the vessel crossed the traffic separation zone. Captain Hazelwood did not inform the Coast Guard when the vessel crossed the traffic separation zone.

44. Captain Hazelwood directed Helmsman Harry Claar to come to a heading of 200°. Captain Hazelwood then told Helmsman Claar to come to a heading of 180° and put on the autopilot. Helmsman Claar carried out these instructions. In violation of Coast Guard regulations, the Coast Guard was not informed of the second course change, which took the EXXON VALDEZ entirely out of the traffic separation system.

45. Captain Hazelwood directed Third Mate Gregory Cousins to bring the vessel back into the shipping lanes by executing a turn at a point which he identified to Cousins on the navigational chart as a certain "38" (fathoms) notation on the chart. After giving this order, Captain Hazelwood

departed the bridge, leaving Mr. Cousins in control of the navigation of the vessel. Mr. Cousins did not have the pilotage endorsement required to pilot a VLCC through Prince William Sound. Cousins was unaware that the autopilot was on when he was left in control of the navigation of the vessel.

46. Following Captain Hazelwood's departure from the bridge, Helmsman Claar was relieved by Helmsman Robert Kagan. At all relevant times, Messrs. Cousins, Claar and Kagan were acting within the scope of their employment, and as agents and/or representatives of defendants Exxon.

47. The EXXON VALDEZ continued past the clearly-marked vessel traffic lanes into an area dangerous to vessels due to reefs and other obstructions, including the well-marked Bligh Reef. After traveling approximately three miles east of the inbound shipping lane, and ignoring until too late the buoy and flashing red light at Bligh Reef, the EXXON VALDEZ struck Bligh Reef shortly after midnight on Friday, March 24, 1989. The grounding punctured the single-hulled vessel and resulted in the rupture of several of the vessel's crude oil cargo tanks. When the EXXON VALDEZ went aground, Captain Hazelwood was not on the bridge of the vessel.

48. After the grounding, Captain Hazelwood and Exxon increased the quantity of the oil spilled into Prince William Sound by their attempts to extricate the vessel from Bligh Reef.

49. Exxon defendants have systematically reduced the crew size of tankers in the Valdez trade for the purpose

of saving money. The crew size of the EXXON VALDEZ was too small for the work responsibilities assigned to the crew. On information and belief, as a result, the crew of the EXXON VALDEZ was overworked, fatigued and not alert on the evening of March 23, 1989.

50. At the time the EXXON VALDEZ struck Bligh Reef, the vessel was incompetently manned within the privity and knowledge of the Exxon defendants, who knew, or had reason to know, that Captain Hazelwood would become intoxicated prior to the vessel's departure. The Exxon defendants had failed to institute adequate and prudent measures to preclude impairment of its officers and crews serving on VLCCs. On information and belief, the vessel was also incompetently manned within the privity and knowledge of the Exxon defendants, who knew, or had reason to know, that Third Mate Cousins would be left in charge of the vessel when he lacked the pilotage endorsement to operate the vessel in Prince William Sound. The Exxon defendants failed to take steps to insure that the EXXON VALDEZ complied with all applicable state and federal laws and regulations relating to the manning of VLCCs in Prince William Sound. On information and belief, the Exxon defendants intentionally or negligently authorized or permitted Captain Hazelwood and the crew of the EXXON VALDEZ to frequently and systematically violate Coast Guard regulations and Exxon policies concerning the manning or operation of the EXXON VALDEZ.

51. Eleven of the EXXON VALDEZ's tanks were ruptured by either the initial grounding or the subsequent efforts to dislodge the vessel from Bligh Reef, causing the largest oil spill in United States history. Approximately 11 million gallons of crude oil spilled into Prince William Sound from the EXXON VALDEZ.

RESPONSE OF DEFENDANTS TO THE OIL SPILL

52. All defendants are responsible for containment and cleanup of the oil spill from the EXXON VALDEZ. By statute, regulation, the provisions of the State Right-of-Way Lease and ordinary prudence, the defendants were required to be prepared to contain and clean up oil spilled by them and to implement the Plan in the event of an oil spill in Prince William Sound. Nonetheless, and contrary to the representations of the defendants, both in their Plan as updated and in other representations to the State and third parties, the defendants both failed to make, and delayed making, an appropriate response to the oil spill from the EXXON VALDEZ. The defendants failed to take prompt and adequate measures to contain the oil spill and to recover oil spilled from the EXXON VALDEZ.

53. Although the Plan does not disclose that Alyeska might surrender its responsibilities for containing and cleaning up an oil spill in Prince William Sound, Alyeska nonetheless withdrew from containing and cleaning up the spill. This withdrawal commenced as early as Friday evening (March 24, 1989) and withdrawal caused delay, uncertainty,

confusion and ineffective and inefficient use of containment and clean up equipment and manpower and contributed to the failure of defendants promptly to protect sensitive areas by booming as required by the Plan.

54. During the crucial first 48 hours after the oil spill, the weather conditions were well-suited to containing and recovering the spilled crude oil. Nonetheless, as a result of the inadequate equipment, insufficient and inadequately trained personnel, confusion over which defendants were responsible for what actions, virtually no oil was recovered in the first 48 hours. The ultimate assignment of containment and clean up responsibility went to Exxon Shipping Company, an entity which, on information and belief, had no substantial knowledge of the Plan.

55. When the spill occurred, the defendants did not provide the personnel, equipment or response they committed to in the Plan. The defendants did not have present at the oil spill site a trained task force capable of an adequate, sustained, state-of-the-art response. The dock and office workers who were part of the Alyeska oil spill response team had no substantial experience or training with oil spills of substantial size, and a full-time oil spill coordinator was no longer stationed in Valdez, Alaska.

56. During the first 24 hours after the oil spill, none of the defendants had the aircraft, spray equipment, fire booms, other equipment and personnel on-site to commence burning of the oil or full scale application of dispersants.

During this crucial time period, defendants only action was to start transporting equipment, supplies and personnel from locations as far as 2,000 miles from the oil spill site.

57. At the time of the oil spill, defendants' equipment and materials were not adequate, not state-of-the-art, not operational, not properly maintained and were not effective. The defendants lacked immediate access to adequate containment booms. Alyeska's containment boom deployment barge which was to be used for such emergencies was unloaded or not fully loaded and out of service. Modern self-inflating containment booms designed to contain oil slicks immediately after an oil spill were unavailable for prompt deployment.

58. The skimmer boats used by the defendants for the oil spill clean up were in poor condition and incapable of recovering the amount of oil represented in the Plan to be recoverable by skimming. A 218,000-gallon capacity tanker barge, designed to carry oil from spill sites, had been replaced by a much smaller, second-hand barge.

59. At the time of the spill, the defendants also lacked available or immediate access to equipment needed to exclude spilled oil from environmentally sensitive areas, as committed to in the Plan. Further, the defendants had no communications equipment capable of permitting effective and prompt deployment and coordination of spill response personnel and equipment.

60. Defendants Alyeska and Exxon's response effort to clean up the oil after the first 48 hours was, and

continues to be, even to the present, insufficient and inadequate. Among other things, defendants have deployed equipment and manpower ineffectively and wastefully. Defendants have failed to clean up and remove all the oil from State lands, waters and resources as required by law.

#### DAMAGES TO PLAINTIFF

61. As a result of the oil spill from the EXXON VALDEZ, over a thousand square miles of State lands, waters and resources have suffered severe environmental damage. A growing number of coastal and inland sounds and bays, beaches, tidelands, tidal pools, wetlands, estuaries and other sensitive elements of the ecosystems have been devastated; thousands of mammals, fowl and fish have been killed or injured; anadromous streams, near shore environments and other fish and wildlife critical habitats have been contaminated; aesthetics and scenic quality have been destroyed or impaired, together with attendant opportunities for recreational experiences; air quality has deteriorated through the escape of evaporating pollutants; commercial fisheries have been sharply curtailed, with adverse biological and economic consequences; the greater ecosystem in the spill area has been deprived of its pristine condition with attendant damage to the condition of, and interrelationship among, living creatures comprising the system; and the management opportunities available through the knowledge and data base generated from prior experience with the ecosystem have been compromised.

62. The State has incurred, and will continue to incur, economic damages in the form of extraordinary expenses directly related to the spill including, without limitation: (i) costs of response to the oil spill, investigation and monitoring of the oil spill; (ii) costs of clean up and removal; (iii) costs of damage assessment studies; (iv) increased direct and indirect costs of providing governmental services to persons or entities adversely effected by the oil spill; and (v) the losses due to ordinary government services curtailed or impaired as a result of diversion of State resources caused by State activities related to the spill.

63. The State has suffered, and will continue to suffer, economic damages in the form of extraordinary losses of revenue relating to the spill, including, without limitation: (i) loss of fish processing tax revenue; (ii) loss of salmon enhancement tax revenue; (iii) loss of oil and gas production tax revenue; (iv) loss of corporate income tax revenue; and (v) loss of oil production royalties.

64. On information and belief, the environmental and economic damages caused by the oil spill to property, trades and business, State revenues, fisheries, marine life, various categories of State lands, waters and resources and the enjoyment thereof within, among others, Prince William Sound, Cook Inlet, Kodiak Island and the Gulf of Alaska, will continue for many years.

65. On information and belief, defendants may curtail or abandon their efforts at cleaning up the beaches

and restoring them to their pre-spill condition. Such curtailment and/or abandonment of the clean up will cause plaintiff irreparable harm because money will not prevent the environmental and other damages which will occur to State lands, waters and resources as a result of defendants' termination of clean up work. On information and belief, defendants have not yet commenced restoration work and the State will incur costs of restoration and replacement of impacted State lands, waters and resources.

COUNT I

NEGLIGENT OR INTENTIONAL FAILURE TO CONTAIN  
AND CLEAN UP THE OIL SPILL  
ALL DEFENDANTS

66. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

67. The containment and removal of the discharged oil which damaged and threatens to further damage State lands, waters and resources and private property was the responsibility of all defendants. Defendants had a duty to plaintiff to have adequate resources available to contain and clean up immediately and effectively the oil spill.

68. Prior to the EXXON VALDEZ oil spill, the defendants had repeatedly represented to the State and others that they had the resources, technology and a plan by which major oil spills could be contained and excluded from environmentally sensitive areas within hours of the occurrence. In the period immediately after the grounding of the EXXON VALDEZ, nothing was done to promptly contain the oil

spill. Nearly an entire day passed after the oil spill before Alyeska and Exxon representatives even started to place booms or clean up the oil spill. More days would pass before defendants took any effective action to implement exclusionary booming of sensitive areas.

69. The delays in responding to the EXXON VALDEZ oil spill were due to the defendants' lack of preparedness in personnel, equipment and materials to engage in an effective clean up of the EXXON VALDEZ oil spill.

70. Defendants knew, or should have known, that they lacked adequate equipment and materials and trained personnel to contain effectively and to clean up a spill of the magnitude of the EXXON VALDEZ oil spill.

71. The defendants either intentionally or negligently failed to control, contain and clean up the oil spill by, among other things, (i) failing to provide adequately for the containment and clean up of any discharge of oil; (ii) inadequately planning the clean up effort stemming from the EXXON VALDEZ oil spill; (iii) possessing inadequate equipment, supplies and personnel for deployment in the ensuing clean up effort; (iv) unreasonably delaying the ensuing clean up effort; (v) failing to adequately carry out the ensuing clean up effort; and (vi) choosing inadequate tactics in the ensuing clean up effort. All these actions and omissions of defendants served to aggravate and compound the environmental and economic damages to plaintiff.

72. As a direct and proximate result of the foregoing and other failures by the defendants to exercise that degree of care expected of a reasonably prudent person acting under the same or similar circumstances, the defendants in their own right, as well as by and through their agents, servants and employees, caused plaintiff to suffer substantial and continuing environmental, economic and other damages to State lands, waters and resources, and other interests in amounts to be proven at trial.

COUNT II

NEGLIGENCE  
EXXON DEFENDANTS

73. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

74. Captain Hazelwood was not in control of the navigation of the EXXON VALDEZ when the vessel hit the well-marked Bligh Reef. Instead, Third Mate Cousins was in control of the navigation when the vessel ran aground, even though Third Mate Cousins lacked the proper pilotage endorsement and experience to pilot vessels such as the EXXON VALDEZ through the waters of the Prince William Sound.

75. The Exxon defendants and Captain Hazelwood and Third Mate Cousins knew, or should have known, that Cousins did not possess either the required pilotage endorsement or the requisite degree of competence to command the EXXON VALDEZ with reasonable prudence, skill or care. Acting within the scope of their employment, Captain Hazelwood and Third Mate

Cousins knew, or should have known, that it was unreasonably dangerous and also a violation of applicable Coast Guard rules and regulations for Hazelwood to leave the bridge and relinquish control of the navigation of the vessel to Cousins.

76. The Exxon defendants knew, or should have known, based on the service in which the EXXON VALDEZ was involved, that its single hull, high tensile steel construction was not sufficient to allow it to safely engage in the trade for which it was intended.

77. The negligence of the Exxon defendants, except Exxon Pipeline Company, in the operation of the EXXON VALDEZ specifically includes, but is not limited to, (i) failing to man the EXXON VALDEZ with sufficient and competent crew members so that the crew would not be overworked and fatigued; (ii) permitting Captain Hazelwood to command the EXXON VALDEZ despite his excessive use of alcohol; (iii) allowing the improper relinquishment of control of the navigation of the EXXON VALDEZ to Third Mate Cousins; (iv) using single hull, high tensile steel construction that was not sufficient to allow the tanker to safely engage in the trade for which it was intended; (v) failing to reduce speed when ice was encountered; and (vi) failing to establish proper monitoring and supervision of Captain Hazelwood in light of his known alcohol problem.

78. As a direct and proximate result of the foregoing failures by the Exxon defendants, except Exxon Pipeline Company, to exercise the degree of care expected of a

reasonably prudent person acting under the same or similar circumstances, the Exxon defendants in their own right as well as by and through their agents, servants and employees, caused plaintiff to suffer substantial environmental and economic damages in amounts to be proven at trial.

COUNT III

INTENTIONAL AND NEGLIGENT MISREPRESENTATION  
ALL DEFENDANTS

79. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

80. The defendants negligently or intentionally misrepresented to plaintiff and others that they had sufficient personnel, material, knowledge and techniques at their disposal to prevent a major oil spill or to prevent or minimize environmental or other damages if a major oil spill occurred.

81. Contrary to these representations, the defendants were aware, or were negligent or reckless in not being aware, that they lacked sufficient personnel, equipment, knowledge and techniques to prevent an oil spill or to respond adequately to an oil spill on Prince William Sound before it caused substantial environmental and economic damage. Defendants knew and intentionally disregarded, or were reckless in not knowing, that they were ill-equipped and unprepared to respond to an oil spill such as the EXXON VALDEZ spill. Nonetheless, defendants failed to warn state or federal authorities or the public of their unpreparedness and

the potential adverse impact of such unpreparedness should a substantial oil spill occur in Prince William Sound.

82. Due to these negligent, reckless or intentional misrepresentations or omissions of material facts, the true dangers posed to plaintiff, the citizens of Alaska and State lands, waters and resources were not disclosed.

83. The misrepresentations and omissions of material fact by the defendants were negligently, recklessly or intentionally made to induce plaintiff and others to refrain from taking action which would have required defendants to be prepared to prevent a major oil spill and, if an oil spill should occur, to contain and clean up the spilled oil.

84. The above-mentioned misrepresentations and omissions resulted in inadequate and ineffectual clean up efforts which aggravated and compounded the environmental and economic damages caused to plaintiff by the oil spill.

85. As a direct and proximate result of the misrepresentations and/or omissions of material facts by defendants, plaintiff has suffered substantial and continuing environmental and economic damages in amounts to be proven at trial.

COUNT IV

NEGLIGENCE PER SE  
EXXON DEFENDANTS

86. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

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420 L STREET  
ANCHORAGE, ALASKA 99501-0037  
(907) 726-1809

87. The acts and omissions of the defendants violated AS 08.62 and regulations enacted pursuant thereto and other state laws and regulations governing the operation of tanker vessels in Prince William Sound. In so violating these laws, defendants were negligent per se.

88. The defendants are liable to plaintiff for all environmental and economic damages resulting from the accident and discharge on account of the violations of the above-mentioned State law.

89. As a direct and proximate result of the defendants' negligent acts and omissions, the defendants have caused plaintiff to suffer substantial and continuing environmental and economic damages in an amount to be proven at trial.

COUNT V

STRICT LIABILITY FOR  
INHERENTLY DANGEROUS ACTIVITY  
EXXON DEFENDANTS

90. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

91. The oil transportation, loading and shipping activities engaged in by the Exxon defendants are so inherently dangerous and potentially devastating to the surrounding environment in the State of Alaska, as well as to its residents, citizens and businesses, that even when conducted under the best of circumstances and with utmost care, such activities constitute inherently and abnormally

dangerous activities for which the defendants are strictly liable.

92. The use of single-hulled vessels for transporting ANS crude oil through Prince William Sound constitutes an inherently and abnormally dangerous activity for which defendants are strictly liable.

93. The above-described inherently dangerous activities engaged in by the defendants directly and proximately caused substantial and continuing environmental and economic damages to plaintiff, in amounts to be proven at trial.

COUNT VI

MARITIME TORT  
EXXON DEFENDANTS

94. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

95. By virtue of the above, the Exxon defendants negligently allowed the vessel to sail in an unseaworthy condition and/or negligently allowed the vessel to be navigated in an unprudent manner, in violation of the general maritime law. The Exxon defendants' negligence resulted in the grounding of the vessel and was a direct and proximate cause of the environmental and economic damages suffered by plaintiff, in amounts to be proven at trial.

LAW OFFICES OF  
PRESTON, THORNTON, ERIS & HOLMAN  
4TH FLOOR  
420 L STREET  
ANCHORAGE, ALASKA 99501 1937  
(907) 276 1954

COUNT VIIBREACH OF RIGHT-OF-WAY LEASE AND INDEMNIFICATION  
OWNER COMPANIES AND ALYESKA

96. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

97. In May, 1974, the State and the defendant Owner Companies or their predecessors in interest entered into the State Right-of-Way Lease. The State Right-Of-Way Lease imposed upon the defendant Owner Companies responsibility for the avoidance of a discharge of oil into or upon the lands, waters and resources of the State, and for the protection of the public and environment from the damages and other effects of any possible oil spill. The Owner Companies' obligations included, without limitation: (i) employment of the best practicable technology available and use of all practicable means to preserve and protect the environment; (ii) prevention of any potential spill of oil or other hazardous substance into or upon the lands, waters and resources of the State; (iii) if such an oil spill occurs, immediate corrective action using the best practicable technology available to abate serious harm or environmental damage; and (iv) restoration of the resources affected by an oil spill.

98. In accordance with State Right-Of-Way Lease, the defendants submitted to the Alaska Department of Natural Resources contingency plans for the prevention, containment and clean up of oil spills, including contingency plans applicable to tanker spills in Prince William Sound.

99. The defendants have breached the State Right-of-Way Lease because they failed to comply with their obligation to use the best practicable technology and resources available to adequately prevent and to abate the serious harm and environmental damage threatened and caused to State lands, waters and resources as a result of the oil spill.

100. The defendants have breached the State Right-of-Way Lease because they failed to fulfill their obligations under the Lease to respond, contain and clean up the oil spill in conformity with the Plan for Prince William Sound.

101. Under Section 13 of the State Right-of-Way Lease, defendant Owner Companies must indemnify the State for liabilities, damages or injury incurred by the State caused by operation or maintenance of the TAPS.

102. Plaintiff has suffered damages and injury within the meaning of Section 13 of the State Right-of-Way Lease in an amount to be proven at trial.

COUNT VIII

PUBLIC NUISANCE  
ALL DEFENDANTS

103. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

104. The acts and omissions of the defendants created a public nuisance through unreasonable interference with the rights of plaintiff to State lands, waters and

resources that are free from pollution and contamination by crude oil and other hazardous substances.

105. The unreasonable interference with the rights of the State resulted in special and distinct harm to plaintiff, including, but not limited to, damages to the lands, waters and resources of the State and the revenues derived from the use by third parties of natural resources of the State.

106. The substantial interference with plaintiff's interests were caused by the actions and omissions of the defendants for which they are liable to plaintiff for environmental and economic damages sustained in amounts to be proven at trial.

107. The defendants threaten to continue the acts and omissions complained of herein, and unless permanently restrained and enjoined, will continue to do so, all to plaintiff's irreparable damage. Plaintiff's remedy at law for damages is not adequate to compensate them for the continuing injuries suffered by the State.

COUNT IX

PRIVATE NUISANCE UNDER AS 09.45.230  
ALL DEFENDANTS

108. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

109. The acts and omissions of the defendants created a private nuisance through substantial interference

with the use and enjoyment of plaintiff's interests in property.

110. The substantial interference with the use and enjoyment of plaintiff's interests in property includes, but is not limited to injury or loss to real and personal property, loss of income, loss of means of producing income and loss of economic benefits.

111. Substantial interference with plaintiff's interests was caused by the actions and omissions of the defendants for which they are liable to plaintiff for the damages sustained in amounts to be proven at trial.

112. The defendants threaten to continue the acts and omissions complained of herein, and unless restrained and enjoined, they will continue to do so, all to plaintiff's irreparable damage. Plaintiff's remedy at law for damages is not adequate to compensate them for the continuing injuries suffered by the State.

COUNT X

TRESPASS  
EXXON DEFENDANTS

113. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

114. Through the intentional or reckless grounding of the EXXON VALDEZ upon Bligh Reef and the improper transport of crude oil, an ultrahazardous activity for which the Exxon defendants are strictly liable, the Exxon defendants spilled approximately 11 million gallons of crude oil into and upon

the State's lands and properties. Such actions constitute an unauthorized and continuing trespass upon State lands, waters and resources.

115. As a direct and proximate result of the EXXON VALDEZ's trespass upon the lands, waters and resources of the State, and continuing trespass of the EXXON VALDEZ crude oil upon State lands, waters and resources, the State has suffered and will continue to suffer substantial and continuing environmental and economic damages for which the Exxon defendants are liable in such amounts as will be proven at trial.

COUNT XI

STRICT LIABILITY UNDER AS 46.03.022  
EXXON DEFENDANTS

116. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

117. Oil, including the approximately 11 million gallons of crude oil which was released as a result of the grounding and rupture of the EXXON VALDEZ's oil tanks, is a hazardous substance, as that term is defined in AS 46.03.826(4)(B) of the Alaska Environmental Conservation Act.

118. The Exxon defendants owned and/or had control over the oil which was released in and on the waters and subsurface lands of Prince William Sound and other areas of the State.

119. The release of oil from the EXXON VALDEZ caused the State to incur response costs.

120. Pursuant to AS 46.03.822, the Exxon defendants are jointly and severally strictly liable to plaintiff for all damages to plaintiff, including, but not limited to, injury or loss to real and personal property, loss of revenue, loss of means of producing income, loss of economic benefits, costs of responding, containing and removing the oil, including the cost of monitoring and overseeing the clean up, and all damages to State lands, waters and resources in amounts to be proven at trial.

COUNT XII

AS 46.03.780 LIABILITY FOR RESTORATION  
ALL DEFENDANTS

121. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

122. All defendants have violated provisions of AS 46.03, AS 46.04 or AS 46.09 and have failed to perform duties imposed by such statutes, which violations have caused, without limitation, injuries and death to fish, animals and vegetation, degradation and other environmental damages to the lands, waters and resources of the State.

123. Pursuant to AS 46.03.780, defendants are liable to plaintiff for an amount equal to the sum of money required to restock injured land and waters, to replenish damaged and degraded resources and to restore the environment to its condition before the injury.

COUNT XIIICIVIL DAMAGES UNDER  
AS 46.03.760(e)  
EXXON DEFENDANTS

124. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

125. The Exxon defendants permitted the discharge of crude oil from the EXXON VALDEZ in violation of AS 46.03.740.

126. Pursuant to AS 46.03.760(e), Exxon defendants are liable to the State for the full amount of damages suffered by the State, including, but not limited to, all direct and indirect costs associated with the abatement, containment and removal of the oil, restoration of the environment to its former condition and all administrative expenses in amounts to be proven at trial.

COUNT XIVCIVIL PENALTIES UNDER AS 46.03.758(b)(1) and (2)  
EXXON DEFENDANTS

127. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

128. Pursuant to AS 46.03.758, Exxon defendants are liable to plaintiff for the penalties in the amounts set forth therein due to the discharge of crude oil from the EXXON VALDEZ and the failure to contain and clean up the discharged oil.

129. The crude oil was discharged from the EXXON VALDEZ because of Exxon defendants' gross negligence. Pursuant to AS 46.03.758(b)(2), the Exxon defendants are

liable to the State for five times the civil penalty established by AS 46.03.758(b)(1) and 18 AAC 75.500 et seq.

130. Following the crude oil discharge from the EXXON VALDEZ, the Exxon defendants failed to take reasonable measures to contain and clean up the discharged oil from the EXXON VALDEZ. Pursuant to AS 46.03.758(b)(2), defendants are liable to the State for five times the civil penalty established by AS 46.03.758(b)(1) and 18 AAC 75.500 et seq.

COUNT XV

AS 46.03.760(a)  
ALL DEFENDANTS

131. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

132. Defendants have violated provisions of AS 46.03 (other than AS 46.03.250-46.03.314, AS 46.03.740 and AS 46.03.758 and provisions of AS 46.04 and AS 46.09 and regulations adopted pursuant to those statutes, including, without limitation, at least the following:

- a) AS 46.03.140
- b) AS 46.03.710
- c) AS 46.04.030
- d) AS 46.09.020

133. Pursuant to AS 46.03.760(a), defendants are liable to plaintiff for a civil assessment of not less than \$500, nor more than \$100,000, for each initial violation, plus not more than \$5,000 for each day thereafter for each violation, and for all other damages and costs incurred by plaintiff.

COUNT XVINEGLIGENT OR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS  
ALL DEFENDANTS

134. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

135. The actions of defendants in discharging crude oil into the waters of Prince William Sound and failing to take adequate measures to contain and clean up the crude oil caused substantial and abnormal environmental and economic damages to the State and its residents. On information and belief, as a result of the actions of the defendants, many state residents are suffering, and will continue to suffer, emotional distress from having witnessed the destruction of the environment in which they live and work and having their livelihoods threatened and their personal and family lives disrupted. As a result of the defendants' acts and omissions, the State has incurred, and will continue to incur, substantial costs in increased demand for social services, mental health treatment and other community services for the severe emotional distress suffered by the citizens of the State.

136. The severe emotional distress suffered by many state residents was a reasonably foreseeable consequence of the grounding of the EXXON VALDEZ and the failure to properly contain and clean up the spilled crude oil.

137. As a direct and proximate result of the defendants' conduct as described above, plaintiff has suffered

substantial and continuing economic and other damages, in an amount to be proven at trial.

COUNT XVII

PUNITIVE DAMAGES  
ALL DEFENDANTS

138. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

139. The acts and omissions of defendants alleged in Counts I, II, III, VI, VII, VIII and X were undertaken in deliberate disregard or with reckless indifference to the rights and interests of plaintiff and entitle plaintiff to punitive damages in an amount to be proven at trial.

RELIEF SOUGHT

WHEREFORE, plaintiff prays that this Court:

1. Award all statutorily authorized civil penalties, compensatory, incidental and punitive damages in amounts to be determined by the finder of fact;
2. Award all compensatory and punitive damages authorized under the common law, including, but not limited to, environmental and economic damages.
3. Award all compensatory and punitive damages authorized under the general maritime law.
4. Order that the defendants be permanently enjoined to remove all spilled oil and to restore the surface and subsurface lands, wildlife, waters, fisheries, shellfish and associated marine resources, air and other State lands,

waters and resources affected directly or indirectly by the spill;

5. Order immediate and continuing environmental monitoring and assessment of the conditions of the air, waters and subsurface and surface lands, fisheries, shellfish and the associated marine resources and other natural resources;

6. For a judgment against defendant Owner Companies for all environmental and economic damages suffered by the State of Alaska by reason of the defendants' breaches of the State Right-of-Way Lease, including, without limitation, the cost of monitoring the clean up of the oil spill, the environmental damages to State lands, waters and resources, damage to the State's economy and lost revenues;

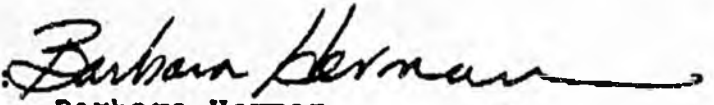
7. For a judgment that the defendant Owner Companies are obligated to reimburse and indemnify the State of Alaska for all environmental and economic damages suffered by the State of Alaska by reason of the defendants' breaches of the State Right-of-Way Lease, including, without limitation, the cost of monitoring the clean up of the oil spill, the environmental damages to State lands, waters and resources, the damage to the State's economy, lost revenues, the costs of all enforcement actions and the costs of all expert studies, consultancies and reports conducted or prepared by or for the State to assess the injury or damages caused by defendants' actions and inactions;

8. Award prejudgment interest, attorneys' fees and the costs of this action; and,

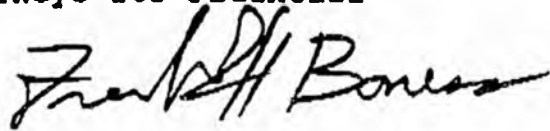
9. Award such other and further relief as this Court deems just and proper.

DATED this 15th day of August, 1989.

DOUGLAS B. BAILY  
ATTORNEY GENERAL

By:   
Barbara Herman  
Craig Tillery  
Assistant Attorneys General  
State of Alaska

PRESTON, THORGRIMSON,  
ELLIS & HOLMAN  
Attorneys for Plaintiff

By:   
Frederick H. Boness  
Joseph K. Donohue

An Act

To establish limitations on liability for damages resulting from oil pollution, to establish a fund for the payment of compensation for such damages, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Oil Pollution Act of 1990".

SEC. 2. TABLE OF CONTENTS.

The contents of this Act are as follows:

TITLE I—OIL POLLUTION LIABILITY AND COMPENSATION

- Sec. 1001. Definitions.
- Sec. 1002. Elements of liability.
- Sec. 1003. Defenses to liability.
- Sec. 1004. Limits on liability.
- Sec. 1005. Interest.
- Sec. 1006. Natural resources.
- Sec. 1007. Recovery by foreign claimants.
- Sec. 1008. Recovery by responsible party.
- Sec. 1009. Contribution.
- Sec. 1010. Indemnification agreements.
- Sec. 1011. Consultation on removal actions.
- Sec. 1012. Uses of the Fund.
- Sec. 1013. Claims procedure.
- Sec. 1014. Designation of source and advertisement.
- Sec. 1015. Subrogation.
- Sec. 1016. Financial responsibility.
- Sec. 1017. Litigation, jurisdiction, and venue.
- Sec. 1018. Relationship to other law.
- Sec. 1019. State financial responsibility.
- Sec. 1020. Application.

TITLE II—CONFORMING AMENDMENTS

- Sec. 2001. Intervention on the High Seas Act.
- Sec. 2002. Federal Water Pollution Control Act.
- Sec. 2003. Deepwater Port Act.
- Sec. 2004. Outer Continental Shelf Lands Act Amendments of 1978.

TITLE III—INTERNATIONAL OIL POLLUTION PREVENTION AND REMOVAL

- Sec. 3001. Sense of Congress regarding participation in international regime.
- Sec. 3002. United States-Canada Great Lakes oil spill cooperation.
- Sec. 3003. United States-Canada Lake Champlain oil spill cooperation.
- Sec. 3004. International inventory of removal equipment and personnel.
- Sec. 3005. Negotiations with Canada concerning tug escorts in Pugot Sound.

TITLE IV—PREVENTION AND REMOVAL

Subtitle A—Prevention

- Sec. 4101. Review of alcohol and drug abuse and other matters in issuing licenses, certificates of registry, and merchant mariners' documents.
- Sec. 4102. Term of licenses, certificates of registry, and merchant mariners' documents; criminal record reviews in renewals.
- Sec. 4103. Suspension and revocation of licenses, certificates of registry, and merchant mariners' documents for alcohol and drug abuse.

- Sec. 4104. Removal of number of individuals in charge.
- Sec. 4105. Access to National Driver Register.
- Sec. 4106. Manning standards for foreign tank vessels.
- Sec. 4107. Vessel traffic service systems.
- Sec. 4108. Great Lakes pilotage.
- Sec. 4109. Periodic gauging of plating thickness of commercial vessels.
- Sec. 4110. Overflow and tank level or pressure monitoring devices.
- Sec. 4111. Study on tanker navigation safety standards.
- Sec. 4112. Dredge modification study.
- Sec. 4113. Use of liners.
- Sec. 4114. Tank vessel manning.
- Sec. 4115. Establishment of double hull requirement for tank vessels.
- Sec. 4116. Pilotage.
- Sec. 4117. Maritime pollution prevention training program study.
- Sec. 4118. Vessel communication equipment regulations.

Subtitle B—Removal

- Sec. 4201. Federal removal authority.
- Sec. 4202. National planning and response system.
- Sec. 4203. Coast Guard vessel design.
- Sec. 4204. Determination of harmful quantities of oil and hazardous substances.
- Sec. 4205. Coastwise oil spill response endorsements.

Subtitle C—Penalties and Miscellaneous

- Sec. 4301. Federal Water Pollution Control Act penalties.
- Sec. 4302. Other penalties.
- Sec. 4303. Financial responsibility civil penalties.
- Sec. 4304. Deposit of certain penalties into oil spill liability trust fund.
- Sec. 4305. Inspection and entry.
- Sec. 4306. Civil enforcement under Federal Water Pollution Control Act.

TITLE V—PRINCE WILLIAM SOUND PROVISIONS

- Sec. 5001. Oil spill recovery institute.
- Sec. 5002. Terminal and tanker overnight and monitoring.
- Sec. 5003. Bligh Reef light.
- Sec. 5004. Vessel traffic service system.
- Sec. 5005. Equipment and personnel requirements under tank vessel and facility response plans.
- Sec. 5006. Funding.
- Sec. 5007. Limitation.

TITLE VI—MISCELLANEOUS

- Sec. 6001. Savings provisions.
- Sec. 6002. Annual appropriations.
- Sec. 6003. Outer Banks protection.
- Sec. 6004. Cooperative development of common hydrocarbon-bearing areas.

TITLE VII—OIL POLLUTION RESEARCH AND DEVELOPMENT PROGRAM

- Sec. 7001. Oil pollution research and development program.

TITLE VIII—TRANS-ALASKA PIPELINE SYSTEM

- Sec. 8001. Short title.

Subtitle A—Improvements to Trans-Alaska Pipeline System

- Sec. 8101. Liability within the State of Alaska and cleanup efforts.
- Sec. 8102. Trans-Alaska Pipeline Liability Fund.
- Sec. 8103. Presidential task force.

Subtitle B—Penalties

- Sec. 8201. Authority of the Secretary of the Interior to impose penalties on Outer Continental Shelf facilities.
- Sec. 8202. Trans-Alaska pipeline system civil penalties.

Subtitle C—Provisions Applicable to Alaska Natives

- Sec. 8301. Land conveyances.
- Sec. 8302. Impact of potential spills in the Arctic Ocean on Alaska Natives.

State due to injury, destruction, or loss of real property, personal property, or natural resources, or diminished economic activity due to a discharge of oil; and

"(B) the net cost of providing increased or additional public services during or after removal activities due to a discharge of oil, including protection from fire, safety, or health hazards, incurred by a State or political subdivision of a State.

"(14) Paragraphs (1) through (13) shall apply only to claims arising from incidents occurring before the date of enactment of the Trans-Alaska Pipeline System Reform Act of 1990. The Oil Pollution Act of 1990 shall apply to any incident, or any claims arising from an incident, occurring on or after the date of the enactment of that Act."

(d) PAYMENT OF CLAIMS BY FUND.—Section 204(c)(3) of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1653(c)(3)) is amended by adding at the end the following: "The Fund shall expeditiously pay claims under this subsection, including such \$14,000,000, if the owner or operator of a vessel has not paid any such claim within 90 days after such claim has been submitted to such owner or operator. Upon payment of any such claim, the Fund shall be subrogated under applicable State and Federal laws to all rights of any person entitled to recover under this subsection. In any action brought by the Fund against an owner or operator or an affiliate thereof to recover amounts under this paragraph, the Fund shall be entitled to recover prejudgment interest, costs, reasonable attorney's fees, and, in the discretion of the court, penalties."

(e) OFFICERS AND TRUSTEES.—Section 204(c)(4) of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1653(c)(4)) is amended—

(1) by inserting "(A)" after "(4)"; and

(2) by adding at the end the following:

"(B) No present or former officer or trustee of the Fund shall be subject to any liability incurred by the Fund or by the present or former officers or trustees of the Fund, other than liability for gross negligence or willful misconduct.

"(C)(i) Subject to clause (ii), each officer and each trustee of the Fund—

"(I) shall be indemnified against all claims and liabilities to which he or she has or shall become subject by reason of serving or having served as an officer or trustee, or by reason of any action taken, omitted, or neglected by him or her as an officer or trustee; and

"(II) shall be reimbursed for all attorney's fees reasonably incurred in connection with any claim or liability.

"(ii) No officer or trustee shall be indemnified against, or be reimbursed for, any expenses incurred in connection with, any claim or liability arising out of his or her gross negligence or willful misconduct."

#### SEC. 8103. PRESIDENTIAL TASK FORCE.

##### (a) ESTABLISHMENT OF TASK FORCE.—

(1) ESTABLISHMENT AND MEMBERS.—(A) There is hereby established a Presidential Task Force on the Trans-Alaska Pipeline System (hereinafter referred to as the "Task Force") composed of the following members appointed by the President:

(i) Three members, one of whom shall be nominated by the Secretary of the Interior, one by the Administrator of

the Environmental Protection Agency, Department of  
return of Transportation.

(ii) Three members nominated by the Governor of the State of Alaska, one of whom shall be an employee of the Alaska Department of Natural Resources and one of whom shall be an employee of the Alaska Department of Environmental Conservation.

(iii) One member nominated by the Office of Technology Assessment.

(B) Any member appointed to fill a vacancy occurring before the expiration of the term for which his or her predecessor was appointed shall be appointed only for the remainder of such term. A member may serve after the expiration of his or her term until a successor, if applicable, has taken office.

(2) COCHAIRMAN.—The President shall appoint a Federal cochairman from among the Federal members of the Task Force appointed pursuant to paragraph (1)(A) and the Governor shall designate a State cochairman from among the State members of the Task Force appointed pursuant to paragraph (1)(B).

(3) COMPENSATION.—Members shall, to the extent approved in appropriations Acts, receive the daily equivalent of the minimum annual rate of basic pay in effect for grade GS-15 of the General Schedule for each day (including travel time) during which they are engaged in the actual performance of duties vested in the Task Force, except that members who are State, Federal, or other governmental employees shall receive no compensation under this paragraph in addition to the salaries they receive as such employees.

(4) STAFF.—The cochairman of the Task Force shall appoint a Director to carry out administrative duties. The Director may hire such staff and incur such expenses on behalf of the Task Force for which funds are available.

(5) RULE.—Employees of the Task Force shall not, by reason of such employment, be considered to be employees of the Federal Government for any purpose.

(b) DUTIES OF THE TASK FORCE.—

(1) AUDIT.—The Task Force shall conduct an audit of the Trans-Alaska Pipeline System (hereinafter referred to as "TAPS") including the terminal at Valdez, Alaska, and other related onshore facilities, make recommendations to the President, the Congress, and the Governor of Alaska.

(2) COMPREHENSIVE REVIEW.—As part of such audit, the Task Force shall conduct a comprehensive review of the TAPS in order to specifically advise the President, the Congress, and the Governor of Alaska concerning whether—

(A) the holding of the Federal and State right-of-way is, and has been, in full compliance with applicable laws, regulations, and agreements;

(B) the laws, regulations, and agreements are sufficient to prevent the release of oil from TAPS and prevent other damage or degradation to the environment and public health;

(C) improvements are necessary to TAPS to prevent release of oil from TAPS and to prevent other damage or degradation to the environment and public health;

(D) improvements are necessary in the onshore oil spill response capabilities for the TAPS; and

(3) CONSULTANTS.—(A) The Task Force shall retain at least one independent consulting firm with technical expertise in engineering, transportation, safety, the environment, and other applicable areas to assist the Task Force in carrying out this subsection.

(B) Contracts with any such firm shall be entered into on a nationally competitive basis, and the Task Force shall not select any firm with respect to which there may be a conflict of interest in assisting the Task Force in carrying out the audit and review. All work performed by such firm shall be under the direct and immediate supervision of a registered engineer.

(4) PUBLIC COMMENT.—The Task Force shall provide an opportunity for public comment on its activities including at a minimum the following:

(A) Before it begins its audit and review, the Task Force shall review reports prepared by other Government entities conducting reviews of TAPS and shall consult with those Government entities that are conducting ongoing investigations including the General Accounting Office. It shall also hold at least 2 public hearings, at least 1 of which shall be held in a community affected by the Exxon Valdez oil spill. Members of the public shall be given an opportunity to present both oral and written testimony.

(B) The Task Force shall provide a mechanism for the confidential receipt of information concerning TAPS, which may include a designated telephone hotline.

(5) TASK FORCE REPORT.—The Task Force shall publish a draft report which it shall make available to the public. The public will have at least 30 days to provide comments on the draft report. Based on its draft report and the public comments thereon, the Task Force shall prepare a final report which shall include its findings, conclusions, and recommendations made as a result of carrying out such audit. The Task Force shall transmit (and make available to the public), no later than 2 years after the date on which funding is made available under paragraph (7), its final report to the President, the Congress, and the Governor of Alaska.

(6) PRESIDENTIAL REPORT.—The President shall, within 90 days after receiving the Task Force's report, transmit a report to the Congress and the Governor of Alaska outlining what measures have been taken or will be taken to implement the Task Force's recommendations. The President's report shall include recommended changes, if any, in Federal and State law to enhance the safety and operation of TAPS.

(7) EARMARK.—Of amounts in the Fund, \$5,000,000 shall be available, subject to appropriations, annually without fiscal year limitation to carry out the requirements of this section.

(c) GENERAL ADMINISTRATION AND POWERS OF THE TASK FORCE.—

(1) AUDIT ACCESS.—The Comptroller General of the United States, and any of his or her duly appointed representatives, shall have access, for purposes of audit and examination, to any books, documents, papers, and records of the Task Force that are pertinent to the funds received and expended by the Task Force.

Contracts.

Classified  
information

(2) **TERMINATION.**—The Task Force shall cease to exist on the date on which the final report is provided pursuant to subsection (b)(6).

(3) **FUNCTIONS LIMITATION.**—With respect to safety, operations, and other matters related to the pipeline facilities (as such term is defined in section 202(4) of the Hazardous Liquid Pipeline Safety Act of 1979) of the TAPS, the Task Force shall not perform any functions which are the responsibility of the Secretary of Transportation under the Hazardous Liquid Pipeline Safety Act of 1979, as amended. The Secretary may use the information gathered by and reports issued by the Task Force in carrying out the Secretary's responsibilities under that Act.

(4) **POWERS.**—The Task Force may, to the extent necessary to carry out its responsibilities, conduct investigations, make reports, issue subpoenas, require the production of relevant documents and records, take depositions, and conduct directly or, by contract, or otherwise, research, testing, and demonstration activities.

(5) **EXAMINATION OF RECORDS AND PROPERTIES.**—The Task Force, and the employees and agents it so designates, are authorized, upon presenting appropriate credentials to the person in charge, to enter upon, inspect, and examine, at reasonable times and in a reasonable manner, the records and properties of persons to the extent such records and properties are relevant to determining whether such persons have acted or are acting in compliance with applicable laws and agreements.

(6) **FOIA.**—The information gathered by the Task Force pursuant to subsection (b) shall not be subject to section 552 of title 5, United States Code (commonly referred to as the "Freedom of Information Act"), until its final report is issued pursuant to subsection (b)(6).

## Subtitle B—Penalties

### SEC. 8201. AUTHORITY OF THE SECRETARY OF THE INTERIOR TO IMPOSE PENALTIES ON OUTER CONTINENTAL SHELF FACILITIES.

Section 24(b) of the Outer Continental Shelf Lands Act (43 U.S.C. 1350(b)) is amended—

(1) by striking out "If any" and inserting in lieu thereof "(1) Except as provided in paragraph (2), if any";

(2) by striking out "\$10,000" and inserting in lieu thereof "\$20,000";

(3) by adding at the end of paragraph (1) the following new sentence: "The Secretary shall, by regulation at least every 3 years, adjust the penalty specified in this paragraph to reflect any increases in the Consumer Price Index (all items, United States city average) as prepared by the Department of Labor."; and

(4) by adding at the end the following new paragraph:

"(2) If a failure described in paragraph (1) constitutes or constituted a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), property, any mineral deposit, or the marine, coastal, or human environment, a civil penalty may be assessed without regard to the requirement of expiration of a period allowed for corrective action."

### SEC. 8202. TRANS-ALASKA PIPELINE SYSTEM CIVIL PENALTIES.

The Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1651 et seq.) is amended by adding at the end thereof the following new section:

#### "CIVIL PENALTIES

"SEC. 207. (a) **PENALTY.**—Except as provided in subsection (c)(4), the Secretary of the Interior may assess and collect a civil penalty under this section with respect to any discharge of oil—

"(1) in transit from fields or reservoirs supplying oil to the trans-Alaska pipeline; or

"(2) during transportation through the trans-Alaska pipeline or handling at the terminal facilities, that causes damage to, or threatens to damage, natural resources or public or private property.

"(b) **PERSONS LIABLE.**—In addition to the person causing or permitting the discharge, the owner or owners of the oil at the time the discharge occurs shall be jointly, severally, and strictly liable for the full amount of penalties assessed pursuant to this section, except that the United States and the several States, and political subdivisions thereof, shall not be liable under this section.

"(c) **AMOUNT.**—(1) The amount of the civil penalty shall not exceed \$1,000 per barrel of oil discharged.

"(2) In determining the amount of civil penalty under this section, the Secretary shall consider the seriousness of the damages from the discharge, the cause of the discharge, any history of prior violations of applicable rules and laws, and the degree of success of any efforts by the violator to minimize or mitigate the effects of such discharge.

"(3) The Secretary may reduce or waive the penalty imposed under this section if the discharge was solely caused by an act of war, act of God, or third party action beyond the control of the persons liable under this section.

"(4) No civil penalty assessed by the Secretary pursuant to this section shall be in addition to a penalty assessed pursuant to section 311(b) of the Federal Water Pollution Control Act (33 U.S.C. 1321(b)).

"(d) **PROCEDURES.**—A civil penalty may be assessed and collected under this section only after notice and opportunity for a hearing on the record in accordance with section 554 of title 5, United States Code. In any proceeding for the assessment of a civil penalty under this section, the Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents and may promulgate rules for discovery procedures. Any person who requested a hearing with respect to a civil penalty under this subsection and who is aggrieved by an order assessing the civil penalty may file a petition for judicial review of such order with the United States Court of Appeals for the District of Columbia circuit or for any other circuit in which such person resides or transacts business. Such a petition may only be filed within the 30-day period beginning on the date the order making such assessment was issued.

"(e) **STATE LAW.**—(1) Nothing in this section shall be construed or interpreted as preempting any State or political subdivision thereof from imposing any additional liability or requirements with respect to the discharge, or threat of discharge, of oil or other pollution by oil.

# Long-Term Damage Seen From Exxon Valdez Spill

## Recovery of Some Wildlife May Take Decades

By John Lancaster  
Washington Post Staff Writer

Nearly two years after the grounded tanker Exxon Valdez dumped 10.9 million gallons of crude oil into Alaska's Prince William Sound, scientific studies have found new evidence of long-term damage to certain varieties of seabirds, salmon, trout and other marine life.

Although in some respects the sound has proved surprisingly resilient, the available body of scientific evidence, including confidential government documents obtained by The Washington Post, challenges the increasingly widespread assumption that the oil spill was a

transitory event whose worst effects were cosmetic.

Federal scientists have concluded, for example, that some colonies of murrelets, diving birds common to the North Pacific, have suffered a "total failure" to reproduce as a consequence of the spill, amounting to a loss of "several hundred thousand" chicks, according to sources. Federal scientists estimate that some seabird colonies may require up to 70 years to recover.

Another study suggests that oil may have reduced the populations of rockfish, herring, shrimp, mussels and clams, among other marine organisms, presenting "a considerable risk that some of the species

See VALDEZ, A7, Col. 1

*Bush administration plans \$1 billion cleanup of toxic lead. Page A8*

may not respond to conventional management actions for decades."

The question of long-term damage to Prince William Sound has taken on renewed importance in light of recent discussions among Exxon and state and federal negotiators on a possible settlement of damage claims stemming from the spill.

Alaska's new governor, Walter J. Hickel (D), has expressed a desire to settle the case for about \$1.2 billion, money that would be placed in trust to help pay for further research and restoration programs in the sound. But environmentalists have raised questions about the proposal given the many unanswered questions about the spill's long-term effects.

"I think there's been a tendency in the public and in the media to think that Exxon Valdez is an old story and it was overblown, and the data suggests that is not really the case," said Erik Olson, an attorney for the National Wildlife Federation. "We are very concerned about the potential of the settlement to fail to account for long-term damage."

An Exxon spokesman declined to comment on the studies.

In general, federal and state agencies investigating the spill have refused to release their findings, saying that the data will be used as evidence against Exxon if the case goes to trial as scheduled in April. But some information has appeared in scientific journals and elsewhere. In addition, official summaries of some key studies were made available to The Post by an individual who asked not to be identified.

State and federal officials cautioned that the summaries—submitted by government scientists seeking funds for "restoration projects" in the sound—may overstate the extent of the damage, and that many of the data are preliminary. Moreover, several noted that some of the news is good, such as the apparent recovery of the sound's vibrant commercial salmon fishery.

"The worst nightmares in terms of salmon resources did not occur . . . and that's definitely good news," said Alex Wertheimer, a fisheries biologist for the National Marine Fisheries Service. "[But] that's different from saying there is no effect."

Government officials, speaking on condition that they not be iden-

# New Evidence Points to Long-Term Wildlife Damage From Exxon Valdez Spill

tified, said they were particularly concerned about the spill's effect on murre. While most of the birds escaped harm, about 150,000 perished as a direct result of the spill along a 400-mile stretch of the Gulf of Alaska, according to official estimates.

Even more troubling, sources said, was the apparent failure of murre colonies in the spill area to bear young in the years following the accident. "We've seen two years in a row of this total failure," said a source who asked not to be identified. "It's wrong to say we lost all the murre in Alaska (but) . . . certain areas are greatly impacted."

Scientists speculate that the murre, long-lived birds that produce only one egg per year, are not

bearing young because of a shortage of mature adults to help defend the colonies against predators. Sources estimated that if not for the spill, between 200,000 and 300,000 murre chicks would have been born over the last two years.

Scientists have tended to be more cautious in evaluating the spill's effects on fish, but studies indicate there is reason for concern. For example, according to a restoration proposal by marine scientists in the Alaska Department of Fish and Game, "several species of marine fin fish and shell fish may have been damaged by the Exxon Valdez oil spill."

Another restoration proposal by the state agency cited evidence that "populations of Dolly Varden [trout]

have demonstrated signs of exposure to oil. Certain populations in impacted areas may have been reduced by this exposure." A government official described the study of the trout, which are popular with sport fishermen, as "very understated."

But government officials cautioned against drawing too many conclusions from the documents. "What you've got are preliminary documents," one said. "They're doing the best they can on short deadlines with not enough time to do the analysis."

The official expressed concern, however, that possible "sublethal" effects—such as tumors, low body weight and reproductive difficulties—might escape detection

through conventional methods. "I'm not sure how we're going to pick that up in the monitoring," the official said.

In one of the few public disclosures stemming from their inquiries, federal scientists reported last spring that they had found hydrocarbon derivatives of oil in the gallbladders of pollock up to 600 miles from the site of the spill a year after it occurred. Although no fishing or eating restrictions were imposed as a result, scientists said the presence of the contaminants in a deep-water fish so far from the spill indicated that oil had entered the food chain.

Similarly, according to a document prepared by the fisheries service, researchers have discovered

enzymes in salmon associated with the ingestion of oil. "It means the oil got into their food . . . [which] suggests a different and perhaps longer-lasting mechanism of contamination," a government official said.

Another document prepared last September by the same agency cautions that "the record returns to the sound [of pink salmon] do not by any means preclude actual or documentable damage to the resource."

The memo said, however, that last year's large catch is "clear evidence that there was no catastrophic impact" and that "long-term effects will be localized to particular stream systems or littoral areas that were directly and severely impacted by the spill."

Att. Jay Nelson Hi 907-965-2487  
Rep. Cliff Davidson FAX: 907-965-98515

# Alaskans fear 'sellout' in oil spill settlement

By William P. Coughlin  
GLOBE STAFF

Opposition to Alaska's reported settlement with the Exxon Corp. for the Exxon Valdez oil spill continued yesterday, with a growing number of lawmakers and native Alaskans expressing fears that the deal may be what some called a "sellout."

Meanwhile, there were signs that the negotiations were not going entirely smoothly.

Gov. Walter Hickel is scheduled to join the state's key negotiator, Attorney General Charles Cole, tomorrow in Washington to sign the settlement, sources said. But, "things may have started to go sideways. Cole has been recalled to brief the governor . . . everyone is surprised Cole's being called back," a source said.

"The meeting where things started to go sour was with NOAA," the source said, referring to the National Oceanic and Atmospheric Administration. He indicated that the federal agency had unresolved environmental concerns about the deal.

UIA has been completing what is reported to be a \$1 billion settlement to be paid by Exxon in installments over 11 years, and from which the company can deduct millions in cleanup costs already spent. Sources say that the \$1 billion deal amounts to about \$550 million in real dollars over the years.

Hickel, a former Interior secretary, told The Alaska Daily News this week that "it's a

good settlement." However, he declined to reveal details "until after the signing."

The secrecy is worrying Alaskans, whose shores were fouled by the largest spill in American waters. It also has stirred the Legislature, whose members are angered by Hickel's lack of consultation with them.

Rep. Cliff Davidson of Kodiak, chairman of the House Resources Committee, whose native island 1,000 miles from the Valdez spill was damaged, said, "This is going down without the Legislature knowing anything."

"There was total cancellation of livelihoods on my island, and while some have been compensated, a lot of people have fallen through the cracks," he said.

Davidson also said that Alaskans "have not yet completed assessment of damages. . . I wouldn't say the governor is selling us short, but is he getting enough for those hurt and to restore the damage?"

Leaders at the Chenega, English Bay and Point Graham native villages said they will try to block the pact "if we are sold out."

Some village shores are still covered by oil "up to 9 feet thick," said Charles Totemoff of Chenega Corp. "This deal involves our lives and lands, but no one has talked to us. They can't do this deal without us."

Robert Kvasnickoff, chairman of English Bay Corp. at Kona Fjord National Park, said, "We were victims of Exxon's oil; we won't be victims of Exxon's secret deal; we won't be sold out by the government."

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# Anger greets reported pact on spill fund

## Critics: Plan easy on Exxon

By BRIAN S. AKRE  
The Associated Press

JUNEAU — Environmentalists, fishermen, lawmakers and other Alaskans reacted with outrage Thursday to published reports that the state may let Exxon Corp. take 10 years to pay a proposed \$1 billion settlement of the Exxon Valdez oil-spill litigation.

The Boston Globe, quoting unnamed sources, said the oil giant's settlement would be tax-deductible. Exxon initially would pay the state \$200 million, followed by payments of \$160 million the second year and \$80 million a year for eight years.

The money would go into a fund that would be used to restore Prince William Sound, the waterway polluted in the nation's largest oil spill.

Harry Gamble, a spokesman for Gov. Walter Hickel, declined to comment on the reports. Exxon and federal officials also declined to comment.

Critics say the installment plan, because of inflation, would net the state far less money in real terms than the \$1 billion reportedly being sought by Hickel.

"The installment plan to-



■ **NO DEAL:** Cook Inlet oil companies and a local citizens council failed Thursday to meet a congressional deadline for an agreement on oil-spill planning. E-2

tally shortchanges Alaskans," said Riki Ott, a commercial fisherman and leader of the Oil Reform Alliance, a group formed after the spill to lobby for changes in oil industry practices.

"In real terms it's about half of Hickel's proposed \$1 billion settlement. And we don't even know what we're settling on."

State Rep. Cliff Davidson, D-Kodiak, agreed.

"If you look at the bottom line for that company over this past year, it seems like they could afford a little more," he said.

The proposed tax deduction for Exxon was equally unpopular.

"Exxon was the polluter.

Please see Page E-3, SPILL.

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# SPILL: Anger greets pact

Continued from Page E-1

If they're allowed to deduct their expenses from their immense profits, it doesn't really come out of their hide," said Mike Wenig, an attorney for Trustees for Alaska, an environmental law firm.

Alaska Attorney General Charlie Cole left Washington on Thursday after negotiating with Exxon and federal officials. He was to arrive today in Juneau to brief Hickel and state lawmakers.

Hickel said Wednesday that he expected a settlement within a week. He said details will not be released until he signs the pact.

The governor last month proposed settling the lawsuits and the criminal case for about \$1.2 billion. Much of the money would be used to buy private timberlands that would be part of a marine conservation area in the sound.

The tanker Exxon Valdez spilled nearly 11 million gallons of North Slope crude oil into the sound when it ran aground on March 24, 1989.

The state sued Exxon for unspecified civil damages resulting from the spill. The federal government is prosecuting Exxon on criminal charges, with trial set for April 10 in Anchorage.

Most of the criticism of the settlement talks in Alas-

ka has focused on Hickel.

Ott accused Hickel of rushing to get the litigation settled so he can focus Alaska's attention on several major development projects, including proposed oil drilling in the Arctic National Wildlife Refuge and construction of an \$11 billion natural gas pipeline across the state.

State legislators complained that they were being kept in the dark about the negotiations.

Davidson said he is learning more about the talks from Eastern newspapers than he is from the governor's office.

"I just wonder, are we doing everything we can do to protect the people's interests here?"

Rep. Max Gruenberg, D-Anchorage and vice-chairman of the House Judiciary Committee, unveiled a bill Thursday that would require legislative approval of any spill settlement.

A group of Native leaders who represent villages affected by the spill issued a news release condemning the closed-door talks.

Robert Kvasnikoff, chairman of English Bay Corp., a Native village corporation, said the villages "were victims of Exxon's oil. We won't be victims of Exxon's secret deal. We won't be sold out by the government."

en get class-action voice in court

3 of 6

## Spill deal could keep damage figure secret

By DAVID POSTMAN  
Daily News reporter

JUNEAU — Federal and state studies putting a dollar value on damage from the Exxon Valdez oil spill would be kept secret under a proposed settlement of the state's lawsuit against Exxon. Environmentalists, fishermen and lawmakers said that would keep the public from finding out if the state got a good deal.

According to Attorney General Charles Cole's latest public briefing on the subject, the settlement proposal with Exxon would allow for the release of scientific data but not the in-depth studies of the economic damage from the 1989 spill.

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■ SPILL: State risks lawsuit if case settled. C-8

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Earlier this month, Cole told reporters "there would be no reason" to release the economic information once the case was dropped. He told the legislature's House Judiciary Committee that since the studies are incomplete, it would be misleading to make them public.

Nonetheless, Gov. Wally Hickel has used the studies to justify his proposed \$600 million settlement with Exxon, saying the studies put the damages at \$600 million.

Please see Back Page, SPILL

## SPILL: Settlement plan to withhold studies

Continued from Page A-1

Cole could not be reached Tuesday. He is expected to brief the legislature today on the month-old negotiations over settling the state's civil suit against Exxon.

The state and federal governments are spending millions of dollars to try to put a price on the damage done to Prince William Sound and the Gulf of Alaska. The information was to be used if the government lawsuits went to trial and a jury had to decide how much Exxon should pay for the spill.

The state and federal studies are separate and the two teams have not shared any information, according

to Norman Meade, chief economist with the National Oceanic and Atmospheric Administration's Damage Assessment and Restoration Center in Maryland.

"We don't have any hard numbers yet," said Meade. He would not comment further except to say the studies are not complete.

The economic damage is being figured through a new and controversial method called contingent valuation, which uses surveys to put a price on resource values that can't be bought or sold, such as the enjoyment of nature or the desire to pass it on to future generations. The surveys ask people how much the lost resources are worth to them, and their

answers are used to decide how much a polluter must pay for the damages.

The method, although embedded in federal law, has never been used in a trial like the one anticipated for the Exxon Valdez case.

The proposal to keep the economic data secret was criticized Tuesday as a way of stopping the public from finding out how good a deal the state made with Exxon.

"All we've been hearing is, 'Trust us.' 'Trust us' is the attitude that got us into this problem," said Riki Ott, a commercial fisherman and marine toxicologist. She is a founder of the Oil Reform Alliance, which pushes for stronger environmental laws.

## on Exxon oil damage draws criticism

"If they want us to trust them, they have to tell us all," she said.

Bob Adler, a senior attorney with the Washington-based Natural Resources Defense Council, said the studies should be considered public information. The group is one of many environmental organizations suing Exxon over the spill.

"It's a fundamental right-to-know issue," he said. "These studies were done with public dollars. Public resources were destroyed or damaged by the spill, and the public has a right to know the results of those studies."

Rep. Mike Navarre, D-Kanal, has introduced two resolutions in the House calling

on state and federal officials to make the information public.

"Maybe they have good reasons for keeping it secret, maybe it would do more harm than good, but they need to tell us why," Navarre said.

The lawyer coordinating the hundreds of civil suits against Exxon said the scientific data, which Cole said would be public, is most important for the private plaintiffs.

But, attorney Lloyd Miller said, the Native village residents he represents in a class-action suit could be hurt if the economic studies are kept secret because "their claims are very closely aligned with the natural

resource damage claims of the state and federal government."

University of Alaska biologist Rick Steiner, on leave while he works on spill-related issues, said the studies are likely to have a much larger dollar figure than the \$1.2 billion that Hickel wants from Exxon. But he said that doesn't mean the state is getting a bad deal.

"Everybody has to give up something in a settlement," he said from Cordova. "If we have to settle for a lesser amount of money than we might have gotten 10 years down the line if we had gone to trial, that does not necessarily mean that a \$1.2 billion settlement is a bad deal."

Date: Feb. 27 1991

## State faces lawsuits after spill deal

By DAVID POSTMAN  
Daily News reporter

**JUNEAU** — If Alaska settles its case against Exxon it would be breaking a deal with Debrazen and Native groups and find itself a target of a new set of lawsuits, according to an attorney representing clients suing Exxon.

Immediately after the March 24, 1989, oil spill, several lawsuits were filed naming both Exxon and the state, claiming the government's weak oversight of the industry was partly to blame for the wreck of the Exxon Valdez.

But when the state filed its civil suit against Exxon, then-Attorney General Doug



Bally convinced the parties to drop the state from their suits.

"The state approached those private plaintiffs and persuaded them that at that time it was wiser to withdraw the litigation against the state and join arms against Exxon," said Lloyd Miller, an Anchorage attorney representing a class action suit brought by Natives against Exxon. Miller is also the liaison council for the more than 300 private suits pending against Exxon in

state and federal court.

But if the state drops its suit it would no longer cooperate with the other plaintiffs on collecting evidence and other trial preparation. Miller said the private plaintiffs, and others, may then sue the state, "depending on their assessment of the settlement."

"There's no way of knowing to what extent the plaintiffs will elect to sue the state," he said.

Attorney General Charles Cole has said he is aware that the suits were dropped against the state but has refused to say if he thinks a settlement with Exxon will bring new lawsuits.

David Oesting, an attorney with clients suing

Exxon, said last week that the private plaintiffs withdrew their suits against the state after deciding "our common interest in sticking it to these defendants outweighs any benefit of suing the state."

But it is a "relatively unquiet truce that exists and I don't know any reason why we wouldn't reopen those claims against the state if I thought from a strategic point ... it would help get information we need."

But Oesting said he isn't sure anyone would sue the state because, for the hundreds of private plaintiffs, it would create "one more division of opposing troops."

SECTION

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WEDNESDAY

FEBRUARY 20, 1991 CCF

Los Angeles Times

MARKETS / MONEY / PERSONAL FINANCE

# BUSINESS

## Toxics Disposal Probe Targets Exxon, Arco, BP

By PATRICK LEE  
TIMES STAFF WRITER

Federal and state officials are investigating allegations that Exxon Corp. illegally shipped hazardous wastes in the ballast water of its oil tankers to a treatment plant in Alaska, stirring up a hornet's nest among legislators and imperiling talks to settle lawsuits arising from the 1989 Alaskan oil spill.

Exxon denies wrongdoing.

Meanwhile, Atlantic Richfield Co. and British Petroleum, which both have major tanker operations along the West Coast, confirmed that they have transferred oily ballast water and so-called tank washings from one tanker to another to be shipped for disposal through the plant into Valdez Harbor.

Spokesmen for Arco and BP both denied that the transhipped liquid contains anything other than water, crude oil and tiny amounts of cleaning solvents. They said it certainly does not contain large amounts of chemical or hazardous wastes whose disposal in Alaska would violate federal guidelines.

Please see PROBE, D14

D14 |

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# PROBE: Oil Firms Are Targeted in Toxics

Continued from D1

But, Environmental Protection Agency officials say a question remains whether shipments of such waste water violate the terms of a permit issued by the EPA to the Alyeska Pipeline Service Co. to operate the treatment plant.

Harold Geren, chief of water permits and compliance in the EPA's Seattle regional office, said he was trying to determine whether the Arco or BP transfers would violate the permit. He also said the agency was investigating the allegations that Exxon had illegally used the plant to dispose of hazardous wastes.

"I'm finding out a lot about practices that I didn't know about, and the first question that runs through my mind is: Why didn't we know about this when we granted this permit?" Geren said. "It's become very clear to us we need to find out what common practice is."

The Exxon allegations threaten to throw a monkey wrench into negotiations between Exxon and state and federal officials seeking to settle civil litigation arising from the March, 1989, oil spill from the Exxon Valdez, according to lawyers familiar with the talks. Such a settlement had been expected as soon as this week.

Alaska Atty. Gen. Charles E. Cole was en route to Washington on Tuesday to confer with Exxon attorneys on the proposed settlement, which reportedly could in-

clude a \$1.2-billion payment by Exxon. Gov. Walter J. Hickel was planning a visit to Washington to attend the unveiling of President Bush's new energy policy today. A spokesman would not say whether Hickel might take part in the Exxon talks as well.

Notwithstanding the new allegations, state officials remained optimistic that a settlement will be reached. "I am not aware of any effect this [news of the waste-water shipment] may have," Alaska Deputy Atty. Gen. Douglas L. Blankenship said. "It's an ongoing negotiation process."

In a letter sent last week to U.S. Atty. Gen. Richard L. Thornburgh and EPA Administrator William K. Reilly, former oil tanker broker Charles Hamel alleged that Exxon has accepted hazardous liquid wastes from barges or tankers in California, then shipped them in ballast water of empty oil tankers north to Alaska.

There, the ballast was run through Alyeska's Ballast Water Treatment plant. But because the plant is designed only to separate oil from water, much of the waste was dumped untreated into Valdez Harbor, a violation of federal regulations, Hamel alleged.

On Tuesday, EPA spokesman David Cohen said the letter has been received and turned over to EPA investigators. "It is being taken seriously and it is being looked into—as we look into any

allegation of this kind," he said.

A spokeswoman for Thornburgh said she was unaware of action to be taken by the Department of Justice on Hamel's accusations. Rep. George Miller (D-Martinez), acting chair of the House Interior Committee, also received a copy of Hamel's letter and expressed "deep concern" about the allegations, a spokesman said.

Meanwhile, in Alaska, several state legislators also were taking the allegations seriously. State

**'It's become very clear to us we need to find out what common practice is.'**

HAROLD GEREN  
EPA Water Permits Chief

Rep. Cliff Davidson, a Democrat from Kodiak, said he was considering calling hearings of his resources committee.

He said he was also concerned about Arco's practices, since Harold C. Heinze, a former Arco transportation executive, has been named commissioner of Alaska's Department of Natural Resources by Hickel, the Republican former U.S. interior secretary who took over the governor's office in January.

## Investigation

In his letter, Hamel—who is engaged in a series of legal disputes with Exxon—said that on Aug. 4, 1988, about 8,000 tons of toxic wastes were transferred in San Francisco Bay from the Exxon Galveston tanker to the Exxon Valdez. The wastes, he said, mixed with 21,203 tons of ballast water and were pumped through the Alyeska treatment plant later in the month.

Some sort of transfer appears to be corroborated by a page from the notes kept by the Exxon Valdez's second mate, which were obtained from Exxon during a deposition in a court case related to the Valdez spill, and released by attorneys representing the plaintiffs suing Exxon.

The handwritten page—a record of ship's activities that month passed from a mate going off shift to the mate relieving him—contains a notation that the Exxon Valdez would "lighter," or transfer, oil to the Exxon Galveston "after we take [50,000 barrels in] tank washings from them." That's roughly 6,000 tons.

If such hazardous wastes were indeed disposed of through the Alyeska treatment plant, it would be a violation of federal guidelines governing the plant's operations, according to EPA officials. The plant is not designed to treat such wastes.

Discharge of the wastes into Valdez Harbor could result in

"some very severe, acute toxic effects on the environment . . . and long-term, chronic effects as well," said Erik Olson, counsel with the National Wildlife Federation, one of several environmental groups suing Exxon over the 1989 spill.

The state of Alaska is investigating Hamel's allegations. Water samples from the hold of another Exxon tanker docked in Valdez, the Exxon North Slope, were taken before noon Tuesday, according to Commissioner John A. Sandor of the Alaska Dept. of Environmental Conservation.

On Tuesday, the Wall Street Journal quoted an Exxon spokesman admitting that the company shipped waste water to Alaska, but adding that such shipments were within federal guidelines. In an interview with The Times, Exxon spokesman Les Rogers read from a prepared statement disputing Hamel's charges and maintaining that all discharges of ballast water fell within federal guidelines.

Also on Tuesday, officials at both Arco and BP confirmed that those companies have transferred oily ballast water or tank washings from one tanker to another for shipment to Alaska.

John Andes, a spokesman for British Petroleum's American subsidiary, said that it is "common practice" to transfer tank washings from oil tankers cleaned out before going into dry dock, where tanker holds must be free of vapors and fumes.

Andes said that a tanker's giant tanks are flushed first with crude

oil and then with water, to clean out oil residues. The resulting washings—including sludge—are then transferred to an Alaska-bound tanker for disposal in Valdez, he said.

He said that the company normally did not use solvents or detergents in the cleaning process.

Andes added that BP believes the process does not violate federal guidelines. The tank washings are easily treatable by the Alyeska plant and fall within the purview of the plant's EPA permit, he said.

"This is kind of a tempest in a teapot," Andes said.

Jerry Aspland, president of Arco Marine Inc., Los Angeles-based Arco's shipping subsidiary, said the company had similarly transferred tank washings once from a dry dock-bound tanker to one headed for Alaska.

One other time, he said, a tanker transferred ballast water to another during a "lightering" operation. As oil was pumped from the first ship to the second, ballast water was pumped back from the second to the first to balance the two, Aspland explained.

He termed "misguided" perceptions that such waste water would constitute a hazard.

Heinze—who was Aspland's superior before he left Arco to join Hickel's administration—said he was not aware of Arco's practices. But, he added, "There was no reason why I would be."

Times staff writers Michael Parrish in Los Angeles and Rudy Abramson in Washington contributed to this story.

# Lawmakers fault Hickel's negotiating

## Exxon deal worth only half of sum sought, report claims

■ Fishermen, coastal towns grow wary as bigger players near settlements in Exxon oil spill fight **A9**

■ Coastal Native villages condemn Hickel spill negotiations, threaten to block deal **A9**

By **DAVID FUTCH**

TIMES WRITER

**JUNEAU** — Legislators, left out of negotiations to settle Exxon oil spill lawsuits, are heating up their criticism of the governor for not telling them the details of settlement talks.

The Boston Globe and Wall Street Journal quoted unnamed sources citing details of settlement terms this week that legislators have been unable to pry from Gov. Walter J. Hickel and state Attorney General Charles Cole.

Both officials have refused to discuss details of the talks.

"Frankly it makes me angry to see that we learn far more information from the Boston Globe and the Wall Street Journal than we have been able to learn in Alaska," said Sen. Arliss Sturgulewski, R-Anchorage.

Hickel originally proposed that Exxon pay \$1.2 billion to settle state and federal government lawsuits stemming from the March 1989 spill from the Exxon Valdez tanker in Prince William Sound.

But the Journal report published Thursday placed the value of the settlement at less than \$1 billion because Exxon would pay out the money over a period of time rather than in one lump sum.

The newspapers reported payments would span a decade with a \$200 million payment up front to set up a fund to restore the Sound.

The Globe said the payments would be tax deductible, with the initial payment followed by \$160 million the second year and \$80 million a year for eight years.

The \$160 million would cover costs incurred by the state and federal government because of the spill, the Journal story said.

Money would be allocated by three federal trustees and one state trustee, the Journal said. Exxon and federal officials would not comment on the reports.

Critics say the installment plan, because of inflation, would net the state far less money in real terms than the \$1 billion reportedly being sought by Hickel.

"In real terms it's about half of Hickel's proposed \$1 billion settlement. And we don't even

## Reports

Continued from page A1

mercial fisherman and leader of the Oil Reform Alliance, a group formed after the spill to lobby for changes in oil industry practices.

Hickel would not discuss specifics of the settlement Thursday, but denied legislators were being left out of talks taking place in Washington, D.C., where Cole is meeting with federal officials.

"They (legislators) are not being left in the dark," Hickel said. "We're doing the best thing we can. We're trying to solve a very difficult problem."

Hickel has proposed settling state civil and federal criminal lawsuits against Exxon for \$1.2 billion. Much of the money would buy private timber area in Prince William Sound and establish a conservation area and marine park there.

At least one lawmaker, Rep. Cliff Davidson, D-Kodiak, said he felt like "a legislative mushroom," in the dark without a clue about the latest direction of settlement talks.

"Nobody knows what's going on. None of us," Davidson said. "If the governor is feeling good about this settlement, I wish he would tell us why because we (legislators) have spent the last two years on this thing and here's a lot of pain."

"I've had my eyes open all along and I haven't seen a piece of information that I can go to the bank of my constituency and say we're being taken care of."

Rep. Max Gruenberg, D-Anchorage, made a move Thursday to bring the process into the open.

At a House Judiciary Committee meeting Thursday, Gruenberg offered a bill requiring any settlement proposal be given to

the Legislature for review.

The bill would allow lawmakers to prevent a settlement if they decide it is not in the public's best interest.

The bill gives the Legislature opportunity to review a proposed settlement for 60 days.

If necessary, a special session could be called to further study a settlement proposal. Details of a settlement would become public, the bill says.

"I don't want to comment on the settlement until I've seen it," Gruenberg said. "My mind is open."

Gruenberg and the House Judiciary Committee are scheduled to hold a meeting with the attorney general today to discuss the settlement.

Sen. Sturgulewski said Thursday that besides legislators, the people most affected by the spill, including residents and fishermen who live and work near the Sound, have been left out of negotiations.

Sen. Pat Pourchot, D-Anchorage, said there is an inherent danger involved with having only three or four people involved in the negotiations.

The result could be someone forgetting certain aspects that should be included in the final deal, Pourchot said.

"They are not going to bring a full range of views in and structure a deal trying to accommodate all these people," Pourchot said.

Hickel's acting press secretary Harry Gamble said the governor has offered to talk with key legislators at their convenience.

There is a caveat. Gamble said he has no idea how much detail Hickel can give to legislators.

"If we negotiate this in the press or bring in other groups we're likely to be in court for eight or 10 years," Gamble said.

*This report includes material from the Associated Press.*



Hickel



Sturgulewski

informed in the future.

April 10 in Anchorage.  
Most of the criticism of the settlement talks in Alas-

won't be victims of Exxon's secret deal. We won't be sold out by the government."

## LAWSUITS: Natives, fishermen get class-action voice in court

Continued from Page E-1

fore filing suits in federal court.

Holland has ruled that only people who can show actual physical damage from the 11 million-gallon spill by the tanker Exxon Valdez can sue the oil company. Shortell's decision allows anyone owning a business or proper-

ty affected by the March 1989 spill to sue.

The different approaches taken by the judges suggests that much of the spill litigation may be concentrated in state court.

Attorney Lloyd Miller, who represents the class of Alaska Natives hurt by the spill as well as serving as liaison counsel for all the

plaintiffs, said Shortell's decision also may promote settlement talks.

"It means Exxon and Alyeska and the other defendants must face the full impact of the oil spill by meeting in court all the injured parties, all the Alaska Natives, all the fishermen, not merely those who hire a lawyer and file a lawsuit,"

Miller said.

"It's a tremendous victory and should be a sobering decision (for Exxon)," he said.

"It should encourage, by all logic, settlement negotiations between the parties, because the defendants can be sure they are negotiating with everybody who was injured by the spill."

## DENALI NATIONAL PARK AND PRESERVE

A task force of top National Park Service managers will hold meetings next month to gather public opinion concerning access into the Kantishna area of Denali National Park and Preserve. The meetings will focus on three topics:

- The safety and adequacy of the existing park road.
- The current law regarding access rights along the road.
- The feasibility and desirability of alternative access to Kantishna, a large area of privately held mining claims at the west end of the park road.

Members of the task force include Jim Parham, NPS executive assistant to the director; Bob Barbee, superintendent, Yellowstone National Park; Don Castleberry, NPS Midwest regional director; Boyd Evison, NPS Alaska regional director; Paul Haerndel, NPS Alaska associate regional director for resource services; Jim Straughan, transportation engineer for the NPS Denver Service Center; and Russ Berry, superintendent of Denali.

The task force is an outgrowth of a fall, 1990, meeting between NPS Director James Fidenour and members of the Alaska Congressional delegation. The group will visit the park again this summer to see the operation of the road and review alternative access routes. By fall, the task force will report their findings to the director of the National Park Service.

After meeting with state of Alaska officials on February 19 in Juneau, the task force will hold the following public meetings:

- |             |           |        |                                     |
|-------------|-----------|--------|-------------------------------------|
| February 20 | Anchorage | 8 p.m. | Anchorage Museum of History and Art |
| February 21 | Fairbanks | 6 p.m. | Noel Wien Library auditorium        |
| February 22 | Healy     | 5 p.m. | Tri-Valley Community Center         |



## ATTENTION:

### Important Public Meeting!

### Public Input Needed on Education Questionnaire

A public meeting will be held for the WISE Project: "Winning With Stronger Education", etc.

**Friday, February 15th - 6:30 to 8:30 p.m.**  
at UAA Consortium Library Building, Room 118

The purpose of the meeting is to solicit public input on a questionnaire that will be mailed this month to 1,000 Anchorage families asking their opinion on a wide-range of education issues. Anyone interested in education is encouraged to attend and express their ideas about what kind of questions should be included in the questionnaire.

This is your chance to have a say on the education of your children. For further information, please call Craden & Associates at 278-3882. For information on the WISE Project, please call Robert Gustafson at 278-3557.

*We're getting smart about Education!*



# What's News—

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## Business and Finance

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Exxon appears close to settling civil litigation stemming from the Valdez oil spill. But environmental advocates want the talks halted.

(Story on Page A1)

CBS posted a big fourth-quarter loss and a...

WALL STREET JOURNAL

THE WALL STREET JOURNAL THURSDAY, FEBRUARY 14, 1991 A3

## Exxon Appears to Be Close to Settling Valdez Suits for Less Than \$1 Billion

By ALLANNA SULLIVAN  
And RICHARD B. SCIMITT

Staff Reporters of THE WALL STREET JOURNAL

Exxon Corp. appears close to settling civil litigation stemming from the Valdez oil spill, even as environmental advocates call for a slowdown in negotiations.

Alaska Attorney General Charles Cole, who has been negotiating with the company along with federal agencies involved in the case, went to Washington, D.C., to meet representatives of the federal agencies. Alaska Gov. Walter J. Hickel is expected to be in Washington by today. An agreement could be signed soon.

There is also strong pressure to settle federal criminal charges against Exxon, but neither the company nor the Justice Department has indicated that a plea bargain is imminent. There hasn't yet been any contacts between Exxon and the Justice Department, individuals familiar with the case said.

Individuals familiar with the talks say tentative terms of the settlement place the value at less than \$1 billion because Exxon will pay out the money over a period of time rather than in a lump sum. Payments are expected to span possibly 10 years, putting the present value of the settlement at no more than \$800 million by the most generous estimates. The settlement would be in addition to the \$2.5 billion Exxon spent on the cleanup.

### Breakdown of Payments

Of that amount \$35 million would be allocated to continue cleanup efforts this year. A \$200 million payment would be made up front to set up a restoration fund. Another \$160 million would be paid to cover costs incurred by the state and fed-

lems. CBS slashed its quarterly dividend to 25 cents a share from \$1.10 a share.

CBS had warned last November about the quarterly loss and the expected deficit at the network in 1991, though the size and extent of the problems weren't clear until yesterday's report. But Wall Street, buoyant on most stocks in recent days, took the bleak CBS numbers in stride. CBS shares closed at \$167.50, up 25 cents, in New York Stock Exchange composite trading yesterday. They had fallen to the \$153 range in the first week of February as the company completed its repurchase of 44% of all shares outstanding.

In the latest quarter, the baseball write-down included \$55 million for the first season of the contract and another \$115 million in expected losses for the next three years of the total \$1.06 billion package.

For the year, CBS profit plunged 63% to \$110.8 million, or \$4.30 a share, from \$296.3 million, or \$11.51 a share, in 1989. Revenue rose 10% to \$3.26 billion from \$2.96 billion. The largest part of the full-year earnings came from interest income, which provided \$152.2 million before taxes in 1990, down 16% from the interest earned in 1989. Now that CBS's nearly \$3 billion cash hoard has been reduced to \$800 million be-

eral government relative to the spill. Money would be allocated by three federal trustees and one state trustee.

Mr. Cole said in an interview late yesterday that no agreement had yet been reached on the amount or the terms of payment. "It's been very hard bargaining; don't think it's just a done deal," he said. "Negotiations could collapse on any of a number of issues. They're hanging by a spider's thread."

Exxon officials declined to comment on whether the company is in settlement talks.

Meanwhile, environmental groups are asking that talks be placed on hold until they can examine the data on which the settlement is based, according to Sarah Chasis, attorney for the Natural Resources Defense Council, which represents 11 environmental groups that have litigation pending concerning the spill.

Lloyd Miller, an Anchorage lawyer, figures spacing the payments out over 10 years gives the settlement an actual current value of only about \$650 million. Mr. Miller, a spokesman for lawyers who have filed scores of private civil suits against Exxon on behalf of fishermen and others, said Gov. Hickel disclosed the installment plan to a group of community leaders in Juneau Tuesday.

"It is our opinion that a \$650 million settlement is a severe undervaluation of the natural resources damage caused by the oil spill, and that if this deal goes through, the state and federal governments have been severely outdealed by Exxon," said Mr. Miller. He said it was also "irresponsible" for the government to settle the case now because the full extent of the damage from the spill isn't yet known.

On Friday, the Sierra Club Legal Defense Fund, along with the Natural Resources Defense Council and the National Wildlife Federation, wrote to Gov. Hickel of their "serious concern" of settlement terms as reported by the media.

### Exxon Role Criticized

Among the groups' concerns, according to Eric Jorgensen, an attorney for the Sierra Club fund in Juneau, is that the government might agree to allowing Exxon to have some say over how the settlement funds are disbursed.

In Washington, Justice Department officials publicly insisted that prosecutors are continuing to prepare for a criminal trial beginning April 10. Exxon in recent weeks hasn't formally approached the department about arranging a plea bargain to settle the criminal charges. Federal prosecutors weren't directly involved in yesterday's talks, although the Justice Department is monitoring those discussions.

Attorney General Dick Thornburgh, who bitterly resented criticism of the department's settlement talks with Exxon last year, now wants it to be clear that Exxon, not the agency, is seeking a plea bargain. Still, Mr. Thornburgh and his

THE WALL STREET JOURNAL THURSDAY, FEBRUARY 14, 1991

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## Exxon Appears Close to Settling Civil Litigation on Valdez Spill

*Continued From Page A3*

money deal to the risk of going to trial. It remains uncertain what terms the Justice Department would demand along with a guilty plea. One possible arrangement would be for Exxon to agree to classify some portion of its monetary settlement as a criminal fine, thereby conceding a degree of criminal culpability. It isn't known whether the fine would be added to the total civil settlement or would be drawn from that settlement.

Another sticking point in the settlement negotiations might be objections raised by Charles Hamel, a former oil tanker broker who has been fighting Exxon and other major oil companies with interests in Alaska. Their disputes focus on mutual business interests involving Mr. Hamel and the oil companies. In a letter to Mr. Thornburgh and Environmental Protection Agency chief William Reilly, Mr. Hamel

alleges that Exxon has been dumping hazardous wastes into Alaska's Prince William Sound. The letter says that the dumping occurred before and after the Exxon Valdez oil spill.

Mr. Hamel is calling for these allegations to be examined in conjunction with the settlement negotiations.

California Rep. George Miller, who received a copy of the letter, appears to agree on a need to slow down the talks. Regarding Mr. Hamel's allegations, Mr. Miller said, "I plan to investigate these serious charges and expect the Justice Department to do the same."

As acting chairman of the House Interior Committee, Mr. Miller has jurisdiction over Alaska lands, the Alaskan pipeline and offshore energy resources.

In his letter, Mr. Hamel specifically alleges that 50,000 barrels, or 8,000 tons, of hazardous waste was loaded into the ballast tanks of the supertanker Exxon Valdez on Aug. 4, 1988. The waste was taken to Alaska where it was unloaded into the ballast water treatment plant at Valdez. However, because the plant wasn't designed to handle such wastes, the treated water was still contaminated when it was ejected back into Valdez Harbor.

Mr. Hamel alleges that the Exxon Long Beach, sister ship to the now renamed Exxon Valdez, continued that practice at least through last year. He claims that he has gathered information on numerous violations from Exxon insiders who are irate about the practice.

A spokesman for Exxon said the oil giant had no immediate comment on Mr. Hamel's allegations.

"Until Mr. Hamel offers evidence supporting his waste dumping claim, we have nothing to work from," said a spokeswoman for Alyeska Pipeline Service Co. which is owned by seven oil companies, including Exxon.

*—Paul M. Barrett contributed to this article.*

# Exxon reportedly gets years to pay damages

By William P. Coughlin  
GLOBE STAFF

The \$1 billion Exxon Valdez oil spill settlement being completed by Exxon Corp., the federal government and Alaska calls for payment over a period of years and the payments will be tax deductible, sources said yesterday.

Because the payments to a Prince William Sound Restoration Fund will be spread out, the present dollar value of the \$1 billion is only \$550 million, the sources said.

The settlement reportedly will also let the oil company deduct costs of all future cleanup from the fund.

Some \$160 million will be deducted from the fund to reimburse federal and state agencies for cleanup costs already incurred.

It also was revealed that the agreement gives Exxon a voice on any panel set up to decide how and where its restoration funds will be spent in Prince William Sound.

In Congress, US Rep. George Miller, a California Democrat and vice chairman of the Interior Affairs Committee, has demanded a "full briefing" from Attorney General Dick Thornburgh, one of the negotiators, before any settlement is made public.

In Alaska, critics condemned the reported settlement, focusing on Gov. Walter Hickel.

Rick Ott, a toxicologist who heads Alaska's Oil Reform Alliance, said: "It's apparent this state did not elect a governor. We elected instead another lobbyist for the oil industry... People are not with him. A settlement like this sells Alaska short."

Michael Wenig of Trustees for Alaska, an environmental law firm, said: "If it is true that they can write this off, it is a total outrage. If the amount of money is such that after you pay for existing bills for damage assessment up to now, and whatever cleanup still needs to be done, and after all that, there is nothing left for restoration, then it is a total tragedy.

Wally Hickel deserves a lot of blame for this."

A spokesman for Hickel said the governor would not comment on the reported deal.

The Exxon payments to the fund would be made in installments: \$200 million the first year, \$160 million the second and \$80 million for the last eight years.

Because it will pay in installments, "Exxon gets to keep most of its money, on which it will accrue interest," one source said. "It's like a company paying a worker only \$10,000 of a \$30,000 salary, then promising X amount-per-year after that.

At Exxon USA headquarters in Texas, spokesman Les Rogers speaking for vice president C.M. Harrison who has been involved in negotiations, said: "Our instruction is we have no comment to anyone about anything."

In Washington, a Justice Department spokeswoman, Amy Casner, said: "Nothing has changed... We are pressing for an April 10 trial." Exxon was indicted on five criminal charges last winter. The trial is scheduled for April.

Asked if Attorney General Charles Cole of Alaska met yesterday with Thornburgh, Casner said: "I've no response to that."

Neither Cole nor Harrison returned telephone calls yesterday.

Rep. Miller said he is concerned that the Alaskan fishing industry and mayors "may have been excluded" from negotiations, and "the settlement may prejudice their ability to get fair compensation."

He also said his committee will probe charges that Exxon is dumping hazardous waste into the ballast water of ships.

These allegations were made in a letter delivered Tuesday to Thornburgh and William Reilly, administrator of the Environmental Protection Agency, by a shipping broker based in Alexandria, Va., Charles Hamel.

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