

Exxon...Oil
Spill: State

Damage

Assessment

2-6-91

February 8, 1991

The Honorable Walter J. Hickel
Governor of Alaska
State of Alaska
P.O. Box A
Juneau, AK 99811

Dear Governor Hickel:

We are writing on behalf of the Prince William Sound Conservation Alliance, Alaska Center for the Environment, Defenders of Wildlife, Greenpeace, USA, National Audubon Society, National Wildlife Federation, Natural Resources Defense Council, Northern Alaska Environmental Center, Sierra Club, Trustees for Alaska and Wildlife Federation of Alaska to express our serious concern about the terms of settlement in the Exxon Valdez litigation recently reported in the press.

On behalf of over six million U.S. citizens whom we represent, we wanted to share with you our views on the appropriate provisions of any settlement of this important case. A deal should not be struck hastily behind closed doors. On a matter of such public importance, it is imperative that there be opportunity for public consultation and input. The groups on behalf of whom this letter is sent all have outstanding claims against Exxon in state or federal court and therefore have a direct and immediate interest in the negotiations. We therefore ask that we be immediately and directly involved in any settlement discussions. The following are our major concerns about the settlement.

First, it is difficult to evaluate the adequacy of the \$1.2 billion settlement figure. The studies of the environmental damage caused by the spill conducted by the federal and state trustees (as well as those conducted by Exxon) remain secret. Without information on the damage assessment, it is impossible for the public or elected officials to judge whether \$1.2 billion will adequately compensate for the tremendous harm that the oil spill has caused and continues to cause. We also understand that a significant portion of the \$1.2 billion--perhaps hundreds of millions of dollars--may be used to pay for lost tax revenues and to reimburse state and federal government expenses. This simply would not leave sufficient funds for restoration and acquisition of resources equivalent to those harmed by the spill.

Second, the settlement should include no confidentiality agreements. The settlement should require that all scientific and economic studies conducted by the State and federal governments and Exxon be disclosed immediately to ensure that the

public is informed of the actual environmental and socio-economic damage resulting from the spill. Public disclosure also should be required for all future studies. The governments' studies should be disclosed so the public that has financed them will be informed as to the studies' results. Moreover, all of the studies should be disclosed to advance scientific understanding of the fate and effect of oil spills worldwide, and to encourage enlightened public policymaking based on a comprehensive understanding of the impacts of oil spills.

Third, the settlement should require ongoing scientific research to assess the long-term ecological impacts of the oil spill. Oil spills and other disasters generally have received inadequate study over the long-term because of a lack of public funding and commitment. It would be a tragedy if that were to happen once again with respect to this critically-important spill.

Fourth, it is critical that the money obtained from Exxon be used in accordance with the following principles. The money should be used to study the short- and long-term impacts of the Exxon Valdez spill and to pay for restoration, replacement and acquisition of natural resources equivalent to resources injured or destroyed as a result of the spill. It is crucial that the money not be used for development projects that would degrade the environment, nor should it be used to fund ongoing industry or government programs. Acquisition of timber rights to protect lands adjacent to Prince William Sound and other affected areas, and acquisition of pupping areas, staging areas and other critical habitat for species adversely affected by the spill should be a high priority. The money should also be used to promote protection of Alaska's ecosystems and natural resources from future environmental insults that may adversely affect the recovery or health of Alaskan species and ecosystems, with special emphasis on those affected by the Exxon Valdez spill.

Fifth, it is centrally important who decides how the money is to be spent. We strongly urge that the settlement establish an independent not-for-profit foundation with a board made up of eminent and respected scientists, conservationists, community leaders, natives, and others whose function would be to administer the money received from Exxon in accordance with the principles enumerated above. This model has worked well in the settlement of other major litigation: namely, the Kepone case in the James River which led to the creation of the Virginia Environmental Endowment; in the Hudson River Power Plant case, settlement of which led to the creation of the Hudson River Foundation; and in the Platte River whooping crane case, in which

a trust fund was established to protect whooping cranes. Such a model has the advantage of insulating the fund from political pressures and ensuring that the public has the highest confidence in the expertise and credentials of the individuals administering the fund.

Regardless of the mechanism for disbursement of funds, there should be a significant role in the governance of the fund provided to environmental and other interests. Conservation, native and fishing organizations all have been very active in the clean up, damage assessment and litigation against Exxon. They have a real stake in ensuring that the money is spent wisely and well. These interests can provide important expertise and credibility to the process. They should be given a vote in how the money is spent, not simply an advisory role.

Exxon should be given no role, formal or informal, in decisions about how the money should be spent. To allow a criminal defendant to help oversee how a criminal fine or payment is spent would set an unconscionable precedent. Moreover, Exxon has a definite and continuing interest in minimizing the public's perception of the damage resulting from the spill -- for public relations reasons and because of other pending litigation. To give Exxon a role would be to create an inherent conflict of interest in the decisionmaking body. Rather than providing Exxon with a role in spending the money, the settlement should require Exxon to take specific steps to prevent and to improve their response to future oil spills.

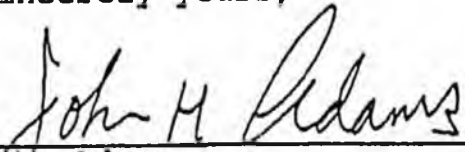
Sixth, in addition to the civil settlement, there should be a criminal guilty plea and a substantial criminal payment in restitution for the damage suffered. To have the appropriate deterrent effect, the amount should not only be significant, but the payment should be non-tax-deductible.

Finally, there should be a reopener provision in the settlement to ensure that if unknown conditions arise at some future time, the settlement may be reopened. Because it is too early to predict the long-term impacts of the spill, such a provision is crucial in order to fully protect the public interest.

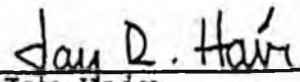
The Honorable Walter J. Hickel
February 8, 1991
Page 4

We appreciate your attention to our concerns. We would like the opportunity to meet with you as soon as possible to discuss this extremely important matter.


Sincerely yours,



John Adams
Executive Director
Natural Resources Defense Council



Jay Hair
President
National Wildlife Federation



Frederic Sutherland
President
Sierra Club Legal Defense Fund

Alaska State Legislature



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Senate

MEMORANDUM

February 11, 1991

TO: Representative Cliff Davidson, Chair
House Resources Committee

FROM: Senator Arliss Sturgulewski 
Senate District F

RE: Exxon Valdez Settlement

It is my understanding that you have asked the Attorney General, Mr. Charles Cole, to make a presentation to your committee about the proposed settlement resulting from the Exxon Valdez incident. As I discussed with you on Saturday, I feel it is important to the legislature to have the answers to the questions listed below. In the final analysis, we must be able to assure our various constituencies that the settlement was done in the best interest of the people of the state of Alaska.

Question one: How was the figure of \$1.2 billion reached? Do we have enough information available to make a settlement proposal?

Question two: What is the relationship between the State of Alaska and the United States Government as to sharing of the proposed settlement, and what basis was utilized for making any such determination?

Question three: Will there be a paper trail of the various elements of the settlement process (i.e.: the amount, the disposition, repayment of claims, etc.)? In other words will we be able to justify to the public that, in fact, this was a settlement in the best interest of the people of Prince William Sound, affected communities, and the people of the State of Alaska?

February 11, 1991

Page 2

Question four: How will the proceeds be utilized? Will this determination be made as terms of the settlement agreement and outside of legislative purview? Will the dollars go into a trust fund to be managed by the legislature, the administration, the Federal government, or an outside independent authority?

Question five: There has been reference made to creation of a land sanctuary for Prince William Sound. Who will be responsible for management of this area? The Federal government, the State government, a private third party or a combination? Whose rules and regulations will apply? How will sanctuary policy be established and by whom? What access will affected communities have to policy development?

Question six: What State agencies have been involved in reaching the proposed settlement agreement? Who are the individuals involved in the decision making process?

Question seven: What is the response from communities affected by the spill, regional native corporations with their major holdings of forest and recreation lands, and others that might be directly affected by terms of the settlement?

cc: Senator Sam Cotten
Senator Lloyd Jones
Representative Bill Hudson

EXXON

SOUND PROGRESS

Scientists report that those areas of Prince William Sound and the Gulf of Alaska affected by the 1989 oil spill are healing rapidly, following two full seasons of cleanup efforts coupled with last year's strong winter storms. Among the findings:

- *Bird and wildlife populations are abundant.*
- *The water is pure.*
- *Shoreline life is thriving in previously-oiled water and sediments.*
- *Commercial fishing in the area has returned to normal. In fact, this year's catches are setting impressive records.*
- *The Sound and the Gulf have retained all of their great natural beauty.*



Cleanup crews have made every effort to bring shorelines to a condition from which natural forces can complete the recovery process. While small amounts of weathered and subsurface oil persist at a few sites, scientific studies indicate that this remaining oil is not an environmental threat. In most cases, there is greater risk of environmental damage from removing the oil mechanically than from allowing it to degrade naturally.

The 1990 cleanup effort concluded September 15. While scientists expect another winter of storms will help complete the natural cleaning process, Exxon will return May 1, 1991 to participate with federal and state agencies in a joint survey of shorelines to determine if any additional work is needed.



EXXON

committee shall specify the date or conditions of termination of the committee. A standing committee may meet between sessions. A special or joint committee may meet during the session or between sessions, or both, as authorized by the resolution which establishes the committee. A standing, special, or joint committee which acts between legislative sessions may consider any legislative matter which is consistent with the jurisdiction of the committee. A standing, special, or joint committee which acts between legislative sessions constitutes a subcommittee of the Legislative Council for administrative purposes. A special or joint committee may expend money only in accordance with an appropriation made for the work of the committee.

(d) A committee may not be established unless authorized by law or by the Uniform Rules.

OPEN AND EXECUTIVE SESSIONS

RULE 22. OPEN AND EXECUTIVE SESSIONS. (a) All meetings of a legislative body are open to all legislators, whether or not they are members of the particular legislative body that is meeting, and to the general public except as provided in (b) of this rule.

(b) A legislative body may call an executive session at which members of the general public may be excluded for the following reasons:

(1) discussion of matters, the immediate knowledge of which would adversely affect the finances of a government unit;

(2) discussion of subjects that tend to prejudice the reputation and character of a person;

(3) discussion of a matter that may, by law, be required to be confidential.

(c) When a legislative body desires to call an executive session in accordance with (b) of this rule, the body shall first convene as a public meeting and the question of holding an executive session shall be determined by a majority vote of the members present.

(d) The provisions of this rule may not be interpreted as permitting the exclusion of a legislator from an executive session, whether or not the legislator is a member of the body that is meeting. A legislator not a member of the body holding an executive session shall, however, be subject to the same rules of confidentiality and decorum as pertain to regular members of the body.

COMMITTEE MEETINGS

RULE 23. COMMITTEE MEETINGS. (a) Written notice of the time, place and subject matter of all meetings of standing, special, and joint committees during a week shall be provided by the person who chairs the committee to the chief clerk or secretary by 4:00 p.m. on the preceding Thursday. The person who chairs the committee to which a bill or resolution is first referred shall provide to the chief clerk or secretary written notice of the time and place of the first

Article 6. Open Meetings of Governmental Bodies.**Section**

310. Government meetings public

312. State policy regarding meetings

Sec. 44.62.310. Government meetings public. (a) All meetings of a legislative body, of a board of regents, or of an administrative body, board, commission, committee, subcommittee, authority, council, agency, or other organization, including subordinate units of the above groups, of the state or any of its political subdivisions, including but not limited to municipalities, boroughs, school boards, and all other boards, agencies, assemblies, councils, departments, divisions, bureaus, commissions or organizations, advisory or otherwise, of the state or local government supported in whole or in part by public money or authorized to spend public money, are open to the public except as otherwise provided by this section. Except for meetings of a house of the legislature, attendance and participation at meetings by members of the public or by members of a body may be by teleconferencing. Agency materials that are to be considered at the meeting shall be made available at teleconference locations. Except when voice votes are authorized, the vote shall be conducted in such a manner that the public may know the vote of each person entitled to vote. The vote at a meeting held by teleconference shall be taken by roll call. This section does not apply to any votes required to be taken to organize a public body described in this subsection.

(b) If excepted subjects are to be discussed at a meeting, the meeting must first be convened as a public meeting and the question of holding an executive session to discuss matters that come within the exceptions contained in (c) of this section shall be determined by a majority vote of the body. Subjects may not be considered at the executive session except those mentioned in the motion calling for the executive session unless auxiliary to the main question. Action may not be taken at the executive session.

(c) The following excepted subjects may be discussed in an executive session:

(1) ~~matters, the immediate knowledge of which would clearly have an adverse effect upon the finances of the government unit;~~

(2) subjects that tend to prejudice the reputation and character of any person, provided the person may request a public discussion;

(3) matters which by law, municipal charter, or ordinance are required to be confidential.

(d) This section does not apply to

(1) judicial or quasi-judicial bodies when holding a meeting solely to make a decision in an adjudicatory proceeding;

(2) juries;