SCOMM
77:1

SENATE EXXON COMMITTEE MEETING -- APRIL 16, 1991

TELL MEMBERS New documents should be in committee binders:

1. Written comment submitted to committee from the public

2. Draft legislation for the committee to discuss:
   The two bills aimed at addressing constitutional concerns (discussed last week)

   Two draft resolutions that would approve settlement

INFORM MEMBERS IF COMMITTEE'S TIME FRAME

* Must make its recommendation to Senate by April 23 (one week from today- but that's Tues., may want recommendation in Journal on Mon.?)
* 10 days after that (May 3) is deadline for Governor to sign off or terminate settlement.
* Tommorrow 8 a.m. meeting in Butrovich with attorneys for NOAA and Justice Dept. and Charlie Cole
  Committee members should be prepared to ask questions of feds and AG
* Thurs. 8 a.m. in Butrovich - committee work session
  May be joint with House Committee for executive session with AG to discuss damage assessments.
  (Cole may bring Asst. AG Barbara Hermann)

COMMITTEE DISCUSSION TODAY

Ask committee:
- Who else do they want to meet with?
- What other info needed?
- What meeting schedule after Thurs.?

Discussion on direction and options for committee action
- Tam Cook and Pam Finley - LAA Legal Services Attorneys
- (Committee may go into executive session if needed by invoking attorney/client privilege as it regards pending litigation)

Agenda for this meeting:

Discuss with committee where they want to go from here:

Who else do they want to hear from?

What questions to they need answered or research done?

What schedule for next week?

NOTE: After Sat. teleconference, committee has only 8 or 9 days to complete its work and make its recommendations to the Senate.

Alaska State Legislature

SENATOR RICHARD I. ELIASON
President of the Senate

P.O. Box V
Juneau, Alaska 99811
(907) 465-3755

Senator _____

Room _____

Attached is additional information which has been distributed to the Senate Special Committee on the Exxon Settlement.

Alaska State Legislature

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M E M O R A N D U M

TO: Members of the Senate Special Committee on the Exxon Settlement

FROM: Senator Dick Eliason, Chairman

DATE: April 11, 1991

RE: Committee meeting schedule for the week of April 15

The following Senate Exxon Settlement meetings are scheduled for the coming week:

Tuesday, April 16 - Beltz Room 8:00 - 10:00

Committee Work Session

Wednesday, April 17 - Beltz Room 8:00 - 10:00

To meet with committee:
Thomas Campbell, General Counsel for NOAA
George VanCleve, Deputy Assistant Attorney General,
Land and Resources, U.S. Department of Justice
Charles Cole, State Attorney General

Thursday, April 18 - Butrovich Room 8:00 - 10:00

Committee Work Session

Alaska State Legislature

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TO: ALL SENATORS

FROM: SENATOR DICK ELIASON, CHAIRMAN
SENATE SPECIAL COMMITTEE ON THE EXXON SETTLEMENT

DATE: APRIL 9, 1991

RE: DISTRIBUTION OF NEW INFORMATION REGARDING THE EXXON SETTLEMENT

ATTACHED FOR YOUR INFORMATION ARE TWO NEW DOCUMENTS REGARDING THE EXXON SETTLEMENT.

THEY ARE BOTH DOCUMENTS WHICH HAVE BEEN SUBMITTED TO THE FEDERAL COURT FOR CONSIDERATION BY JUDGE HOLLAND DURING HIS DELIBERATIONS ON THE EXXON CRIMINAL PLEA AGREEMENT.

THE FIRST IS A SUMMARY OF SCIENTIFIC STUDIES REGARDING THE NATURAL RESOURCE DAMAGES RESULTING FROM THE EXXON VALDEZ OIL SPILL, WHICH WAS SUBMITTED TO THE COURT BY THE U.S. FISH AND WILDLIFE SERVICE AND THE FEDERAL TRUSTEES ON APRIL 9, 1991.

THE SECOND IS A COPY OF A LETTER AND ATTACHMENTS SENT TO THE FEDERAL COURT BY U.S. REP. GEORGE MILLER REGARDING ALYESKA.

As of 4/8/91

SENATE SPECIAL COMMITTEE ON THE EXXON SETTLEMENT

DOCUMENTS IN COMMITTEE MEMBERS FOLDERS

(Also Distributed to Full Senate)

Date	Documents Distributed
3/20	Consent Decree
3/20	MOA
3/20	Plea Agreement of Criminal Case
3/20	State's Case Against Exxon - Motion to Permit Filing by FAX
3/20	Overview: Consent Decree
3/20	Overview: Criminal Case
3/20	Overview: MOA
3/20	Overview: State Case
3/20	Sectional Analysis: Consent Decree thru Paragraph 12
3/20	Chart of Cases Settled by Decree & MOA
3/25	Legislative Research Agency Present Value of Settlement
3/25	Alaska Permanent Fund Corp Present Value of Settlement
3/25	Sectional Analysis: MOA
3/25	Sectional Analysis: Plea Agreement
3/26	Sectional Analysis: Consent Decree, Parag. 13 thru end
3/27	List of Questions for 1st Meeting with the Atty. General
3/29	List of Questions for 2nd Meeting with the Atty. General
4/03	Authorization of Governor/Atty General to Enter Agreement
4/08	Legal Services' Memo on Constitutionality

Alaska State Legislature

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President of the Senate

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M E M O R A N D U M

TO: Members of the Senate Special Committee on the Exxon Settlement

FROM: Senator Dick Eliason, Chairman

DATE: April 5, 1991

RE: Committee meeting schedule for week of April 8

The meeting schedule of the Senate Special Committee on the Exxon Settlement for the next week will be as follows:

Tuesday, April 9 -- 8 to 10 a.m. Beltz Room

Review of the legal opinions regarding the constitutionality of the Exxon settlement. Committee will discuss opinions from Attorney General and Legislative Legal Services.

Thursday, April 11 -- 8 to 10 a.m. Butrovich Room

Committee will meet with Attorney General Charles Cole to continue discussion of questions submitted to him on March 29.

Saturday, April 13 -- 10 a.m. to 4 p.m. Senate Finance Committee Room

Statewide teleconference to continue public testimony.

Alaska State Legislature

SENATOR RICHARD I. ELIASON

President of the Senate

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MEMORANDUM

TO: All Senators

FROM: Senator Dick Eliason, Chairman
Senate Special Committee on the Exxon Settlement

DATE: April 4, 1991

RE: INVITATION TO PARTICIPATE IN STATEWIDE TELECONFERENCE REGARDING THE EXXON SETTLEMENT

The Senate Special Committee on the Exxon Settlement will be holding a statewide teleconference on Saturday, April 6 from 10 a.m. to 4 p.m. in the Senate Finance Committee Room.

The purpose of this teleconference is twofold. First, this is an opportunity for Alaskans throughout the state to testify before the Legislature to express their views on the proposed settlement between the State, the federal government, and Exxon. And secondly, Attorney General Charles Cole, who negotiated the settlement on behalf of the state, will be in attendence at the meeting and will be available to respond to questions from the public regarding the settlement.

The members of the House Special Committee on the Exxon Settlement and all other interested legislators are invited to attend and participate.

cc sent to Bruenberg

Alaska State Legislature

SENATOR RICHARD I. ELIASON

President of the Senate

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(907) 465-3755

MEMORANDUM

TO: MEMBERS OF THE SENATE SPECIAL COMMITTEE ON THE EXXON SETTLEMENT

FROM: SENATOR DICK ELIASON, CHAIRMAN

DATE: MARCH 29, 1991

RE: SECOND SET OF QUESTIONS FOR THE ATTORNEY GENERAL

ATTACHED IS A COPY OF THE COVER LETTER AND LIST OF QUESTIONS WHICH I HAVE SUBMITTED TO ATTORNEY GENERAL CHARLIE COLE ON BEHALF OF THE SENATE SPECIAL COMMITTEE ON THE EXXON SETTLEMENT TODAY.

PLEASE REVIEW THESE QUESTIONS AND BE PREPARED TO DISCUSS THESE, AND ANY OTHERS THAT YOU WOULD LIKE TO BRING UP, AT OUR NEXT MEETING ON THURSDAY, MARCH 4, AT 8 A.M. IN THE BUTROVICH ROOM.

PLEASE ADD THIS LIST OF QUESTIONS TO YOUR COMMITTEE BINDER AND BRING IT WITH YOU TO THURSDAY'S MEETING.

Alaska State Legislature

SENATOR RICHARD I. ELIASON

President of the Senate

P.O. Box V
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(907) 465-3755

March 29, 1991

Honorable Charles Cole
P.O. Box K
Juneau, AK 99811

Dear Attorney General Cole:

Thank you for meeting with the Senate Special Committee on the Exxon Settlement yesterday. We appreciate the time you are spending with the Committee to explain the settlement and answer questions.

Enclosed is a second list of questions which the Committee would like to have you answer, beginning at the meeting we have scheduled with you next Thursday morning, April 4, at 8:00 in the Butrovich Room.

As you go through the questions, please identify any that you feel should not be answered in a full public hearing. The Committee may want to go into executive session to give you the opportunity to respond to those. Perhaps we can set aside all of the questions which you believe require executive session and take them up all at once.

I hope that your legal analysis of the constitutionality of the settlement will be completed and available to the Committee by Thursday's meeting as well.

We look forward to meeting with you again on Thursday.

Sincerely,

Dick

Senator Dick Eliason, Chairman
Senate Special Committee on the Exxon Settlement

SENATE SPECIAL COMMITTEE ON THE EXXON SETTLEMENT

SECOND LIST OF QUESTIONS FOR THE ATTORNEY GENERAL
(Submitted March 29, 1991)

General Settlement Questions:

1. What were dollar amounts of settlement based on? Please provide the figures you used for the State expenditures for which the $72 million is reimbursement. How was the value of the natural resource damages figured? Was actual present day value figured in when it was decided to spread it over 10 years?

2. The $50 million to the State under the plea agreement must be spent on restoration. Does the $50 million which comes to the federal government under the plea agreement have to be spent on restoration too?

3. Does approval of the Decree constitute approval of the MOA? What would happen if the Legislature approved of the Decree but not the MOA? Could approval of the Decree be made contingent upon changes in the MOA?

4. Can the State exercise appropriation power over joint funds? Does the State "own" other property jointly (e.g., AHFC jointly-owned mortgages)? Does an agreement that the recovery will be joint necessarily require that the funds be expended without legislative authority?

5. Could the legislature, within the framework of the MOA, require that the State's interest in the joint funds be annually appropriated after the trust has submitted a proposed budget to the legislature and that budget has been approved?

6. If the court does not accept the agreement, can it go forward anyway as an "agreement" rather than as a decree?

7. The State gives up its right in the settlement to ever go after Exxon for the State's lost revenue from lost oil and gas taxes and royalties, corporate taxes, State's portion of salmon enhancement taxes, etc. How much did the State figure those to be worth (as it had already sued for all of those under the State suit it now gives up), and what were our chances of proving and recovering those? Will these particular claims be pursued against Alyeska?

8. What was the State's potential recovery/claim under the "dollars per gallon" state law (AS 46.03.758-759)? Please provide a copy of the letter from the State to Exxon, dated approximately April of 1989, requesting early settlement of that claim.

9. Please provide a copy of the reimbursement contract signed by Exxon with the State after the spill.

10. What will the Department of Law be seeking in appropriations to defend against third party lawsuits for FY 92 through FY 95? Please estimate and compare legal fees that will have to be paid by the State with and without the settlement.

11. What are <u>specific examples</u> of types of things that might be eligible for funding under the re-opener clause? How likely is it that anything would ever trigger the receipt of that money?

12. You have stated that you plan to keep scientific data regarding the spill confidential due to the pending claims against the State. If and when those claims are resolved, will you release <u>all</u> data to the public? Do you believe that it is legal to keep that information confidential? Is it likely that this data will be made public anyway through the normal "discovery" process during the third parties' litigation proceedings, making the question of the legality of keeping the information confidential moot.

<u>Questions regarding third party lawsuits:</u>

13. What third party suits have been filed? (Please provide list of them). What is the total estimated dollar amount of the third party claims against the State resulting from the oil spill and clean-up? Are any of the plaintiffs seeking punitive damages?

14. Since the $72 million is recovered under the CWA it can only be reimbursement for funds already expended, and the $50 million must be spent for restoration. With the remainder of the settlement money going to the Trust, there is no money to help the State pay for any third party liability or legal fees. Won't there ultimately be a net loss of millions of dollars to the State treasury?

15. Paragraphs 29 and 30 on page 23 of the Decree, do not appear to be specifically limited to lawsuits related to the oil spill. Was this a drafting error? If not changed, how likely is a court to interpret these paragraphs as applying only to lawsuits related to this spill?

16. How are third party suits affected by this settlement? Does the State have a responsibility to protect interests of groups of Alaskan citizens? If third parties need the State's help wouldn't they be affected by the Decree, even though the Decree says it does not affect third parties?

17. The MOA also prevents any of the three parties involved from ever challenging the authority of the others to enter into this agreement. If the Legislature disapproved of the Decree, and the Governor chose to go ahead with it anyway, would the Legislature as a part of "the State" be precluded from ever challenging the authority of the parties to enter into the agreement? Are the claims of municipalities, which are political subdivisions of the State, barred by the State's release of its claims?

Questions regarding Clean Water Act:

18. Since CWA requires money to go into state or federal treasuries, do we know for sure whether this settlement is even legal under the CWA?

19. Is filing under the CWA an "election of remedies?" Does it necessarily preclude the State from pursuing the case in State court if the settlement is terminated?

Questions about the Trustees and Joint funds:

20. The Trustees named in the settlement were evidently already designated as trustees before this settlement. When was this particular group of Trustees established and under what authority?

21. If there is a lack of consensus among the trustees and the court is left to make decisions about expenditures from the Trust Fund, what would the court use for standards to make its decisions?

Indemnification questions:

22. The non-indemnification language evidently puts Exxon and the federal government and the State together defending themselves against the Alaskan citizens and other groups of third party litigants. Under the terms of the settlement is there a way the State can avoid being put in that position?

23. Section VII. B. on page 14 of the MOA states that the governments will not sue each other or take other legal action with respect to determining the scope or proportionate share of either government's ownership, rights, etc. over natural resources. It appears that this falls under the language of the opening phrase, "Solely for purposes of the Oil Spill Litigation... and related proceedings." Please confirm whether the opening phrase binds the whole paragraph, so that the agreement to not argue over state and federal land and resource ownership does not go beyond the scope of this settlement.

Questions about how money can be spent:

TRUST FUND PORTION:

24. Please provide a list of specific examples of of expenditures that would be possible and like the use of the Trust Fund.

25. Could federal employees already working in Alaska (or elsewhere) and currently being paid out of the regular federal budget, end up being paid instead out of this fund?

26. What are "natural resource services"? (one of the things that fund money can be spent on). Please give specific examples of things that would qualify.

27. If assets are purchased or built with trust fund money, who will own them? How would those properties or facilities be administered, etc.?

28. Will all operating costs, travel, staff, per diem, etc. of the Trustees and the Trust come out of the Trust?

29. What mechanism will ensure public accountability? There appears to be no required budget review, annual oversight by elected officials, appropriation process, or audits of the trustees' expenditures.

30. Is there a limit on how much can be spent to reimburse Exxon for whatever clean-up work they do between the effective date of the Consent Decree and the date of final approval of the Consent Decree?

$72 MILLION PORTION:

31 If the $72 million to be paid to the State is over a five-year period, when does that start? Will the five payments be of equal amounts? Any interest charged on payments to bring the total up to a real level of $72 million in today's dollars?
Is there any requirement that the 470 Fund specifically be reimbursed?

Alaska State Legislature

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M E M O R A N D U M

TO: All Senators

FROM: Senator Dick Eliason, Chairman
Senate Special Committee on the Exxon Settlement

DATE: March 25, 1991

RE: Distribution of further information regarding the Exxon settlement

Attached for your information are several more documents regarding the Exxon settlement.

A reminder to those of you who are members of [illegible] committee, please make sure this information [illegible] your committee folder, and please bring that fold[illegible] o our next meeting which is scheduled for Tuesday, [illegible] 2:30 in the Butrovich Room.

Alaska State Legislature

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MEETING SCHEDULE FOR THE SENATE SPECIAL COMMITTEE ON THE EXXON VALDEZ OIL SPILL CLAIMS SETTLEMENT

Tuesday, March 26 — 2:30-4:30 p.m. in Butrovich Room 205

Continue discussion with Pamela Findley, Legislative Legal Services Division Attorney

Thursday, March 28 — 8:00-10:00 a.m. in Butrovich Room 205

Meet with Attorney General Charles Cole
(Part of meeting may be in executive session)

Thursday, April 4 — 8:00-10:00 a.m. in Butrovich Room 205

Continue review of settlement

Saturday, April 6 — 10:00 a.m.-4:00 p.m. in Senate Finance Committee Room - 518

Statewide Teleconference for Public Testimony

Tentative:
Saturday, April 13 — 10:00 a.m.-4:00 p.m. in Senate Finance Committee Room - 518

Statewide teleconference for continuation of public testimony

NOTE: Additional committee meetings will be scheduled as necessary.
Senate floor action regarding approval or disapproval of the Exxon Settlement is tentatively planned for April 23 or 24.

For further information please call the office of Senator Dick Eliason, Chairman of the Senate Special Committee on the Exxon Settlement, at 465-4916.

ALASKA STATE LEGISLATURE SENATE

SENATOR RICHARD I. ELIASON

PRESIDENT OF THE SENATE
LABOR & COMMERCE COMMITTEE
RESOURCES COMMITTEE
RULES COMMITTEE
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M E M O R A N D U M

TO: All Senators who are not members of the Senate Special Committee on the Exxon Settlement

FROM: Senator Eliason, Chairman
Senate Special Committee on the Exxon Settlement

DATE: March 21, 1991

RE: Information regarding the settlement

There is considerable interest on the part of all Senators in studying and understanding the Exxon settlement, and it is very important that the entire Senate be as well-informed as possible on this subject. Therefore I plan to send copies of the background materials which are being reviewed by the Special Committee to the offices of all members of the Senate.

Attached is the material that is currently in the Committee folders including copies of the lawsuits involved in the settlement, the settlement decree and the memorandum of agreement, and copies of the overview information which has been provided to date by the Legislative Legal Services Division.