

SCOMM

77:68

Kerttula wants to bring in Gov -
What was his vision about what
money will be spent on

* Ask AG to discuss
what suits state is
pursuing aginst Alyeska

Invite Rosier, Heinze, Sandor
w/ Cole

If Settlement doesn't pass -
should authorize DEC to
use 470 Fund for purpose #7

* If it does pass, make sure budget has
language (as other recent yrs) that
whatever fed. \$ may come avail. is hereby
appropriated & subject to LB&A approval

Bill to hold Trustees to
mtg in public - must
bring spending decisions

In resol. —
Could spell out all
our concerns, ask
judge to look at
those (or if SCR ask
Gov. to inform the
Court of leg's concerns)

Concerns - trust and

Is it a state or fed. entity?

Subject to state or fed. laws

Open mtgs, etc?

State const. question (which may be
solvable by passage of leg. appropriate
any state assets of the settlement)

Lack of guaranteed input of ^{public & state officials} ~~corporate~~ ^{leg}

~~Letter~~ Senate Mtg w/AG
3-28-91

Not satisfactory answer re: why
need consensus vote & how often a
federal judge will have to rule

State does plan to pursue
muni. share of fish tax for them.

Halford question - compare legal
fees, ~~cost of litigation~~, with
& without settlement

?
Language for use of \$50 m
is slightly broader, more
flexible than the NOA
language.

Leg - ~~pass~~ bill recently
re: release of info?

Senate Mtg. 3-26-91

Invite Barbara Hermann

~~Yes~~ Is AG doing constitutional analysis
of settlement?

Ask AG - if decisions go from Trustees
to the Court - what would court
use for standards to make its
decisions?

Ask
AG Exxon "should not be liable for
its decisions to do clean-up"
What does that mean? What does
that immunize Exxon from?
Exclude third party claims?

Ask AG - section deducting
future clean up costs -
stands even if
settlement disappears?

Add P/so
Agreement
to Master
file

Add P 13 to Expt
to all files & list

13. Gining up of claims

Tell Leg. Research to look at
our gining up of any claims
again't Alaska under the
dollar-per-barrel - - -

* ASK AG (& Exxon on
the record):
PP 29 of Decree appears
to indemnify Exxon not just for
this spill but for everything.
Oversight?

* Leg. should "intervene in
? State case" to get some
protection from dangers of it later
being found unconstitutional

Ask AG - what if Court
doesn't accept agreement. Can it
go forward anyway as an
"agreement" rather than a Decree?

Ask Pam: P 10 & 11
"Set-off" for Exxon's clean-up costs
that goes on even if settlement
disapproved — Where does that
\$ come from if not settlement
\$?
?

Ask AG - CWA says \$ must
be deposited in Federal Treasury.
So is this agreement valid
under Federal law?

Ask AG - Has the
Complaint been filed
under the CWA yet?

Ask AG - clause re: what
the state & feds can't
sue each other for later -

Hofford's question re: deciding about damage
to state tidelands. Can we
ever argue about land ownership?
What is the reach of this clause?

Plea Agreement

Exxon only pleads guilty of
charges under Migratory Bird Act

Could ~~that be~~ \$ be spent
to purchase Kachemak Bay timber?

Cost of litigation
3rd party "
multiplying "
fish tax "
defense of ourselves "

Ask
AG

What would continuing
litigation cost vs. cost of
settlement plus of future
legal fees we'll pay anyway
to settle the rest of the
Suits

Effective date
Date of approval

900

- 72 for state

- 62 for feds

- 4 Exxon clean-up

- " " until certain date

\$ 750 approx to trust

3-21-91

Senate 1st Mtg

Why did Gov. say commat period
ends April 14?

Question of "Election of Remedies"

Did we have to settle under
Clean Water Act?

Are we now stopped from
pursuing all other avenues?

Find out how much has actually
been spent by state

What is actual pay out schedule?
Is \$72 M pt. over 5 yrs.
or up front?

The MOA requires the co-mingling of the
fed & state funds & keep it in Fed. regtry.
CWA wouldn't necessarily require that -
could have been split & sent to state & feds.

★ Ask AG why they chose CMT
& why the comingling of funds
& who's idea was the joint trustees?

Who earns the interest

What are "natural resource services"?

Danger that fed. employees already
working in AK could now be funding
from this settlement?

Could money be spent outside of AK?

Indemnifications in Decree

p. 21 II. 26

p. 22 II. 27

We've (state) given up our
right to go back after Exxon
or others after we lose cases
against us.

? Drafting Error about
forever giving up claims
against Exxon

Next mtg. Tues.

10. House + Senate Members

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811
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Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

March 14, 1991

SUBJECT: Disclosure of Exxon Valdez litigation documents
(W.O. 7LS0985)

TO: Representative Kay Brown

FROM: John B. Gaguine *JBG*
Legislative Counsel

You have asked whether the governor may agree, as part of an Exxon Valdez settlement, to keep certain documents confidential that would otherwise be public under state law, especially resource damage assessments. I believe that a recent Alaska Supreme Court decision would prohibit the governor from doing this.

In Anchorage School District v. Anchorage Daily News, 779 P.2d 1191 (Alaska 1989), the court ruled that a public agency may not circumvent the public records statutes (AS 09.25.110 - 09.25.125) by agreeing to keep the terms of a lawsuit settlement agreement confidential. Despite the importance of the issue, the court dealt with it quite briefly, thus indicating (in my opinion) that the court found the answer quite clear:

The school district argues that it should not be required to produce the settlement documents because the confidentiality agreement was material to the settlement. According to the district, public interest in promoting settlements, coupled with the need for efficiency in conducting government business, outweighs the public interest in disclosure.

Alaska's public records disclosure statutes apply to records maintained by municipalities. In general, they provide broad public access to municipal "books, records, papers, files, accounts, writings and transactions." AS 09.25.110. The question whether a municipality must disclose a particular document is resolved by balancing the fundamental public interest in disclosure against the municipal interest in confidentiality. In recognition of the fundamental nature of the public right to know, the municipality has the burden of proving that the

record should not be disclosed. Exceptions to the statutory disclosure requirements are narrowly construed. Doubtful cases are resolved by permitting public inspection.

We recognize the important public policy served by those measures which encourage settlement. We recognize also that some litigants are unwilling to settle unless the terms of settlement remain confidential, and that a municipality's inability to assure confidentiality may, therefore, adversely affect its ability to negotiate a settlement. Nevertheless, the specific statutory provisions upon which the Daily News relies reflect a policy determination favoring disclosure of public records over the general policy of encouraging settlement. The people of this state, through their elected representatives, have stated in the clearest of terms that it is more important that they have access to this type of information than that it remain confidential. Thus, we hold that a public agency may not circumvent the statutory disclosure requirements by agreeing to keep the terms of a settlement agreement confidential. Under Alaska law, a confidentiality provision such as the one in the case at bar is unenforceable because it violates the public records disclosure statutes.

Id. at 1192-93 (citations and footnotes omitted; emphasis in original).

I do not think that the "work product" exception to discovery has any relevance here, at least not after a settlement. That exception is intended to prevent a litigant from obtaining access during litigation to documents prepared by his or her adversary for the litigation. While it probably overrides the public records statutes as long as litigation is ongoing, the exception would seem to have no applicability once the litigation is over.

My thinking on the work product question is based in part on the legislature's enactment of AS 09.25.122 as part of the 1990 overhaul of the public records laws. That statute, which codifies the substance of 6 AAC 95.150 (a section of Governor Hammond's freedom-of-information regulations), provides:

Sec. 09.25.122. LITIGATION DISCLOSURE. A public record that is subject to disclosure and copying under AS 09.25.110 - 09.25.120 remains a public record subject to disclosure and copying even if the record is used for, included in, or relevant to litigation, including law enforcement proceedings, involving a public agency, except that with respect to a person involved in litigation, the records sought shall be disclosed in accordance with applicable court rules. In this section, "involved in litigation" means a party to litigation or representing a party to litigation, including obtaining public records for the party.

I read this statute as implying that when a person is not involved in litigation with the state, which is everyone after the litigation has been settled, the normal rules of disclosure, i.e., the public records laws, apply, and not the court rules. Since "work product" is a creature of the court rules, it would not apply after a settlement.

It also seems clear that the resource damage assessments would be subject to public disclosure under AS 09.25.110 - 09.25.125. The definition of public records in AS 09.25.220(6) is extremely broad:

(6) "public records" means books, papers, files, accounts, writings, including drafts and memorializations of conversations, and other items, regardless of format or physical characteristics, that are developed or received by a public agency, or by a private contractor for a public agency, and that are preserved for their informational value or as evidence of the organization or operation of the public agency; "public records" does not include proprietary software programs.

I do not see how resource damages assessments would not fall under this definition.

I understand that the attorney general is concerned that some of the litigation-related material, if released, might be used in subsequent litigation against the state. I do not think that this matters. There is nothing in the public records law that provides an exception for records that might be detrimental to the state's interests.^{1/} If the state is already in litigation as a defendant, it might be able to withhold information from a plaintiff under AS 09.25.122 (assuming that the court decided that the "work product" was prepared for all litigation, and not just that where the state was a plaintiff). But if no litigation has yet been brought, I do not think that the state can avail itself of this protection. (Of course, since it is almost two years since the Exxon Valdez grounding, the statute of limitations for tort suits against the state arising from the grounding will likely run soon.)

If I may be of further assistance, please advise.

JBG:pl
91-155.plm

^{1/} In Anchorage School District the court rejected an argument that the settlement could be sealed because the Open Meetings Act, AS 44.62.310 - 44.62.312, allowed executive session for matters which would clearly have an adverse effect upon a government unit's finances. 779 P.2d at 1193 n.5. The court observed, "The people have not delegated to their representatives the power to decide what the public may or may not know."

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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Court Plaza, Room 500
Mail Stop 3101*

MEMORANDUM

February 20, 1991

SUBJECT: Legal Services memo to Senator Cotten regarding settlement of claims related to the Exxon Valdez oil spill

TO: All Legislators

FROM: Lynn M. Barnes *LMB*
Special Assistant

Senator Cotten has asked Tam Cook that the Division of Legal Services release copies of **Pam Finley's memo to Senator Cotten regarding the Exxon Valdez oil spill settlement** to all members of the legislature.

Attached is a copy for your information.

DIVISION OF LEGAL SERVICES

**LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

COPY

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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 accept a settlement that requires 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 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."

FLOOR ANNOUNCEMENT :

Senate Special Committee on the Exxon Valdez Oil Spill
Settlement

Butrovich Room

8:00 to 10:00 Thursday morning

Committee will discuss sheduling of upcoming
meetings, and how it wants to approach its
review of the settlement, and

Will hear a legal overview of the settlement by the
Legislative Legal Services Division.

All Senators are welcome to attend.

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
Page 2

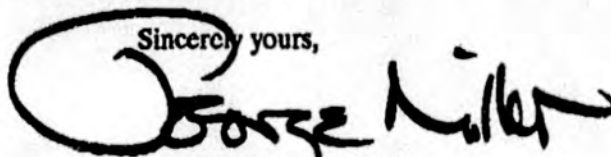
ballast water for disposal at the TAPS terminal facilities in Valdez. This practice raises serious concerns both about the extent of pollution in Prince William Sound caused by TAPS operations and about the oil industry's commitment to protect the Alaskan environment.

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,



GEORGE MILLER
Vice Chairman

cc: The Honorable Ben Grussendorf
Speaker of the House

The Honorable Richard Eliason
President of the Senate

MARCH 4, 1991

DICK ELIASON

TO: Gov Walter J. Hickel
c/o Capital Media Support Center
Juneau, Alaska

FROM: Tim Martin
7100 Lake Otis #37
Anchorage, Alaska 99507
Ph 349-3855

SUBJECT: Negotiations with Exxon

Gov Hickel

In view of your involvement with CSX, I'm the person who asked if had gained from the sale of EXXON stock for your participation as a key player in settlement negotiations with EXXON.

A year ago I placed an article in the Anchorage Daily News through Letters to the Editor, entitled, "More data needed about wreck", as follows.

Did you know that there were two impacts to the Exxon Valdez, and the first impact, on the starboard side caused the greatest damage, yet only one crew member has reported feeling it?

Robert Kagan, helmsman, called the first impact a "bumpy ride", (Daily News, March 30, 1989.), as related by William Woody, chief NTSB investigator, Kagan said that Hazelwood returned from his cabin to the bridge after the first impact to give Kagan "a series of orders", Woody said. Then the ship was aground.

Kagan was forgetful at Hazelwood's trial and was pinpointed as the man who failed to respond to orders. He had'n't been to sea since 1985 and has been described by several crew members as being incompetent, so why was he at the helm of the largest vessel ever built on the North American west coast?

Hazelwood's cabin was one flight of stairs below the bridge. Yet according to Hazelwood and several crew members, Hazelwood didn't come to the bridge until after the second impact. In view of damages from the first impact, why didn't the rest of the crew report feeling it? Where is the site of the first impact? This answer could prove that the second impact was not accidental.

I discussed this matter with Attorney General, Doug Baily some 6 months ago. He didn't have answers to these questions, then, nor did the Anchorage or Juneau offices return my calls and the divers from Underwater Construction, who made the initial survey aren't talking.

Alaska should make no agreements concerning liability

until the site of the first impact is determined and further surveyed.

Tim Martin

It's bad enough that these questions still haven't been answered, They haven't been asked. Where is the site of the first impact?

A three day preliminary underwater survey is needed before negotiations between the state and Exxon continue.

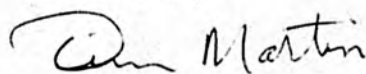
I'm a 19 year Alaskan and a 17 year member of the Alaska Piledriver's Union, the union for commercial divers and I've been commercially instructed as a diver. I also represent the best interests of Alaskans who want to know the Truth.

I offer an 80 foot commercially rigged diving vessel, owned and operated by a highly experienced and unbiased Alaskan, along with two divers with tender and photography equipment. The vessel and diver-tenders should be charged to the state through the owner of the vessel at the going rate. A small price, considering what is at stake.

I offer a fair approach and welcome the participation of Exxon's divers. If you take this offer lightly and continue with negotiations and it's found that you didn't act in the best interests of Alaskans, then certainly, your position as governor will be in serious jeopardy.

I await your response.

Sincerely,



Tim Martin

1 inclosure Alaska State Legislators
1 inclosure Anchorage Daily News

DRAFT

HOUSE RESOLUTION NO. ____

BY THE HOUSE RULES COMMITTEE

Establishing a House Special Committee on the Exxon Valdez Oil
Spill Claims Settlement

WHEREAS justice requires that Alaska be adequately compensated for the damage done to it as a result of the oil spilled from the T/V EXXON VALDEZ in March 1989; and

WHEREAS the Agreement and Consent Decree in United States v. Exxon. et al., and State of Alaska v. Exxon. et al., signed by the parties on March 12, 1991, allows the United States or the State of Alaska to withdraw its consent to the Agreement if the Alaska State Legislature fails to approve the agreement within forty-five days from the date that notice of the Agreement is published in the Federal Register;

BE IT RESOLVED by the House of Representatives that a House Special Committee on the Exxon Valdez Oil Spill Claims Settlement is established to study the proposed Agreement and related documents, and to report the House of Representatives the Committee's recommendation that the House approve or disapprove the proposed Agreement; and be it

FURTHER RESOLVED that the speaker of the House of Representatives shall determine the number of representatives to be members of the committee, and shall appoint the members and designate a member to chair the committee; and be it

FURTHER RESOLVED that the House Special Committee on the Exxon Valdez Oil Spill Claims Settlement shall hold, in addition to its own meetings, joint meetings with a like Senate committee for the purpose of receiving public testimony; and be it

FURTHER RESOLVED that the House Special Committee on the Exxon Valdez Oil Spill Claims Settlement shall report to the House the committee's recommendation of approval or disapproval of the Agreement no later than _____, 1991; and be it

FURTHER RESOLVED that the House Special Committee on the Exxon Valdez Oil Spill Claims Settlement is terminated on _____, 1991.

Exxon Settlement

FACT SHEET

Agreement has been reached between the United States, the State of Alaska, and Exxon Corporation, Exxon Shipping Company and Exxon Pipeline Company for settlement of claims arising from the Exxon Valdez oil spill in Prince William Sound on March 24, 1989.

The settlement, totalling \$1 billion, represents the largest environmental damage settlement in history. Exxon has previously spent more than an estimated \$2.2 billion on cleanup and damage payments.

Highlights

- o Exxon will pay \$190 million immediately. Of this amount, \$100 million consists of a criminal fine payable to the United States and restitution to the State of Alaska. Remaining funds will be used to continue the science program, and for restoration planning and to initiate restoration pilot projects. The balance will be used to begin to reimburse a portion of the past expenses of the trustees and the Coast Guard (the remainder of these past expenses to be reimbursed from the later payments).
- o Exxon will pay \$150 million on September 1, 1992 (less certain cleanup costs), but this amount will be usable by the governments beginning in October 1991. These funds will be used in restoration efforts aimed at returning Prince William Sound to its pre-spill condition.
- o Exxon will pay \$100 million on September 1, 1993.
- o Exxon will pay \$560 million over a period of years beginning in FY 1993.

If significant new injury arises after the 10-year restoration period, which is based on previously unknown information, the trustees may assert additional Exxon liability up to a cap of an additional \$100 million.

Trust Fund Administration

The agreement and the joint trust fund established will be administered by a group of six trustees comprising the Administrator of the National Oceanic and Atmospheric Administration (NOAA), the Secretaries of the Departments of the Interior and Agriculture; the Commissioner of the Alaska Department of Fish and Game, and the Commissioner of the Alaska Department of Environmental Conservation, and the State Attorney-General. The Environmental Protection Agency (EPA) has been

designated by the President to coordinate restoration activities for the U.S. The Coast Guard will continue to oversee cleanup activities for the United States.

Pursuant to a Memorandum of Agreement (MOA), the trustees will act jointly in the collection and joint use of all damage recoveries. Decisions on use of recovered funds for restoration will be made by unanimous agreement; the funds are to be held in a joint trust fund under the supervision of the U.S. District Court for Alaska.

Cooperative Restoration Efforts

The governments will continue to work cooperatively conducting scientific studies and restoration efforts approved by the trustees for the 1991 field season. Among those presently under consideration are:

- o Restoration of the Beach Wildrye Community, to stabilize sites where natural or cultural resources are at risk,
- o A public information and education program, to lessen the potential for further human disturbances,
- o Habitat restoration for pink and chum salmon, using proven fisheries enhancement techniques,
- o Protection of strategic fish and wildlife habitats and recreation sites.

Public Participation and Third Party Rights Protected

The Memorandum of Agreement (MOA) between Alaska and the U.S., and the settlement agreement between the governments and Exxon, will each be published separately in the Federal Register, and public comment will be sought on each of them for a period of 30 days. Broadly based public participation will be an integral part of the program. Both the MOA and the settlement with Exxon will be subject to judicial approval.

Both agreements will be filed with the U.S. District Court for Alaska. The public will have the right to comment on the agreements and the agreements must be approved by the court before becoming effective.

The agreement with Exxon states that it is not intended to affect rights and obligations of third parties with oil spill claims. Among the third parties whose rights are protected by these provisions are Alaska natives and their villages, and other private plaintiffs.

Each government has the right to withdraw its consent to the settlement agreement within 15 days after the close of the public comment period if the comments disclose facts indicating the agreement is not in the public interest or if the Alaska legislature does not approve the agreement.

Exxon-Valdez Settlement Largest Ever

Shell-Martinez

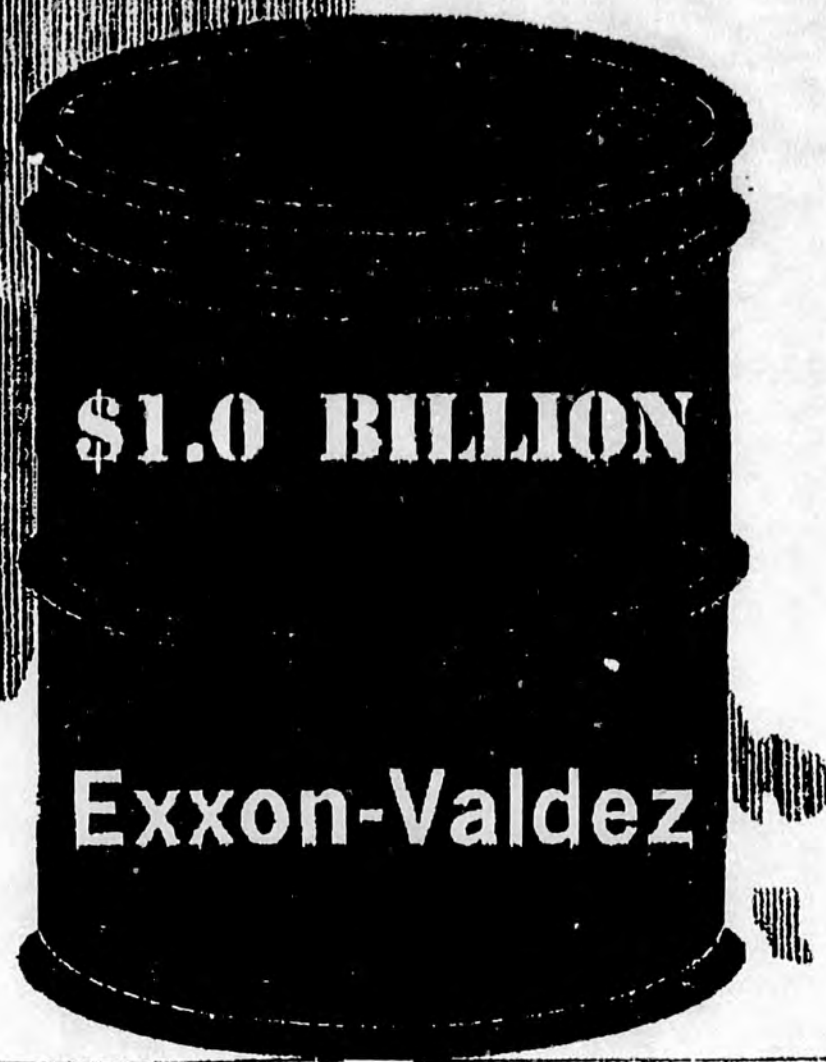
San Francisco Bay - 1988

\$19.7 MILLION



\$1.0 BILLION

Exxon-Valdez





Department of Justice

FOR IMMEDIATE RELEASE
WEDNESDAY, MARCH 13, 1991

AG
202-514-2007
TDD 202-514-1888

**EXXON TO PAY RECORD ONE BILLION DOLLARS IN CRIMINAL FINES AND
CIVIL DAMAGES IN CONNECTION WITH ALASKAN OIL SPILL**

WASHINGTON, D.C. -- Attorney General Dick Thornburgh and Alaska Governor Walter Hickel today announced that Exxon Corporation and Exxon Shipping Company have agreed to settle all federal and state civil claims resulting from the Exxon Valdez oil spill on March 24, 1989, by the payment of \$900 million in damages. The settlement also has a reopener clause stating that Exxon may incur an additional \$100 million for natural resource damages not currently foreseen.

The Attorney General also announced that the two corporate defendants have agreed to plead guilty to federal environmental criminal charges and to pay a criminal fine of \$100 million, of which \$50 million will be remitted; the State of Alaska will receive \$50 million of the \$100 million as restitution for restoration of the damaged natural resources. This is, by far, the largest single environmental criminal recovery ever exacted.

According to the plea agreement, which will be filed in the District of Alaska, Exxon Shipping Co. will plead guilty to violating the Clean Water Act, the Refuse Act, and the Migratory

(MORE)

- 2 -

Bird Treaty Act. Exxon Corporation will plead guilty to violating the Migratory Bird Treaty Act.

"The aggregate of one billion dollars in civil damages and criminal restitution is by far the largest single amount ever paid as a result of environmental violations. Through tough negotiations by the Department of Justice, the Environmental Protection Agency, the Department of Agriculture, the Department of Interior, the Department of Transportation, the National Oceanic and Atmospheric Administration (NOAA), the State of Alaska, and federal prosecutors, the federal and state interests surrounding the legal responsibilities of Exxon Shipping and Exxon Corporation have been vindicated," said Thornburgh.

Filed in the District of Alaska today is a civil complaint and accompanying consent decree alleging violations of the Clean Water Act. The decree states that Exxon Shipping and Exxon Corp. will pay a total of \$900 million in civil damages over the next ten years to federal and state trustees. The money will be used for additional cleanup and both short and long term restoration projects in Prince William Sound and the Gulf of Alaska, the areas damaged by the spill. Of the total, \$135 million is committed for past expenses such as cleanup and scientific research.

Both the Plea Agreement and the Consent Order will require court review and approval.

(MORE)

Governor Hickel, who initially proposed settlement in a personal one-on-one meeting in Juneau with Exxon's Chairman Lawrence Rawl on January 15, 1991, commends the outcome. Said Hickel, "When Mr. Rawl and I first met in Juneau, we made it clear that negotiations could only be successful if we kept the talks at the highest level. Today, we have a settlement which is the result of eight weeks of intensive negotiations. It's a good settlement and its use will benefit the environment directly.

"On behalf of the State of Alaska, I want to commend Attorney General Thornburgh for his legal leadership, Alaska Attorney General Charlie Cole for his aggressive yet patient commitment, Secretary of Interior Manuel Lujan for his tenacity, Secretary of Transportation Samuel Skinner, NOAA Administrator Dr. Knauss, and Environmental Protection Agency (EPA) Administrator Reilly. We have a winner -- environmentally, psychologically, and financially."

Reilly said, "I am pleased with the settlement being announced today. The one billion dollar settlement with Exxon -- plus a \$100 million reopener for damages currently unanticipated -- is the largest environmental assessment ever and the funds will be available years earlier than any recovery that could have been secured through full litigation.

"These funds assure that necessary activities will be carried out and monitored to restore Prince William Sound. It

(MORE)

- 4 -

also should send a clear signal to ship owners that they share responsibility for protecting waters and coastlines. The settlement closes a chapter on the nation's largest oil spill ever, and it allows us to turn our attention finally now to the tasks of restoration," said Raily.

John Knauss, NOAA Administrator and Commerce Undersecretary, called the settlement, "a good deal for the nation and one that resolves all of the governments' outstanding claims against Exxon. It will permit us to complete the critical cleanup and begin restoration of Prince William Sound now, while avoiding years of lengthy and costly litigation."

Interior Secretary Manuel Lujan said of the agreement, "This settlement serves notice to all that carelessness in transporting oil can have costly consequences. It also ensures adequate funding to complete the cleanup, continue appropriate studies and restore the fish, wildlife and other natural resources of Prince William Sound."

Secretary of Agriculture Edward Madigan said of today's settlement, "The funds from the settlement will enable the Department of Agriculture to restore the natural beauty of the portion of the Chugach National Forest that was impaired by the spill."

The Department of Justice and Alaska signed an agreement outlining how and under what authority money obtained in a

(MORE)

settlement with Exxon would be spent. Following the law, there are six trustee agencies which will administer the funds from the civil settlement: NOAA, the Department of Agriculture, the Department of Interior, the Alaska Department of Fish and Game, the Alaska Department of Environmental Conservation, and the Alaska Attorney General's Office.

Under this agreement, the trustees will collectively decide how the approximately \$750 million paid by Exxon in satisfaction of civil claims and remaining after past expenses such as those for scientific research and cleanup will be spent to restore Prince William Sound and the Gulf of Alaska.

Thornburgh praised Governor Hickel; Alaska Attorney General Charlie Cole; Administrator Reilly; Secretary Lujan; Secretary Skinner; NOAA Administrator Knauss and General Counsel Tom Campbell; General Counsel of the Department of Agriculture Alan Raul; Assistant Attorney General for the Environment and Natural Resources Division Richard B. Stewart; and Assistant Attorney General for the Civil Division Stuart Gerson, for their dedication and cooperative spirit throughout the thousands of hours of negotiations needed to reach this settlement.

Thornburgh pointed out that the United States and Alaska have asked the U.S. District Court in Alaska to allow a 30-day public comment period regarding the civil consent order. This public comment period is not required by law but is being

(MORE)

- 6 -

requested to allow any interested parties not a part of this settlement to express publicly their opinion regarding today's settlement.

More than 700 miles of Alaska shoreline were covered with crude oil spilling from the Exxon Valdez when it ran aground on Bligh Reef in Prince William Sound on March 24, 1989. Approximately 11 million gallons of crude oil spilled from the Valdez fouling the waters and shorelines of both National Wildlife Refuges and National Parks. As a result, more than 36,000 migratory birds, including at least 100 bald eagles along with numerous other varieties of wildlife, were killed.

Since the date of the spill, Exxon has spent approximately \$2.2 billion to clean up Prince William Sound and the Gulf of Alaska. Cleanup has included the containment of oil using booms, skimming oil from the surface of the water, mobilizing thousands of workers to conduct excavation of contaminated beaches, high pressure water washing of beaches, and rescuing and rehabilitating wildlife fouled by oil.

On February 27, 1990, Exxon Shipping Co. and Exxon Corp. were each indicted by a federal Grand Jury in Alaska. Both were charged with one misdemeanor violation of the Clean Water Act, one misdemeanor violation of the Refuse Act, one misdemeanor violation of the Migratory Bird Treaty Act, one felony violation of the Ports and Waterways Act, and one felony violation of the

(MORE)

Dangerous Cargo Act. According to the plea agreement, Exxon Shipping will plead guilty to three misdemeanors and Exxon Corporation will plead guilty to one misdemeanor.

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91-101

FACT SHEET

EXXON-VALDEZ OILSPILL SETTLEMENT

AGREEMENT HAS BEEN REACHED between Federal and state trustees and Exxon Corporation, Exxon Shipping Company and Exxon Pipeline Company for settlement of damages rising from the Exxon Valdez oilspill in Prince William Sound March 24, 1989.

The settlement, totalling \$1 billion, represents the largest environmental damage settlement in history—50 times the size of any other.

Highlights

- EXXON WILL PAY \$190 MILLION IMMEDIATELY, of which \$100 million is a criminal fine. Half of this fine will be remitted to the state of Alaska. Twenty-five million dollars of the first payment will be used to continue the science program, and \$15 million will go to restoration planning and to initiate restoration pilot projects. The balance will be used to begin to reimburse most of the trustees and the Coast Guard for past expenses.
- EXXON WILL PAY \$150 MILLION IN FISCAL YEAR 1992, but this amount and future amounts will be usable beginning in October 1991. The major part of these funds will be used in restoration efforts aimed at returning Prince William Sound to its pre-spill condition.
- EXXON WILL PAY \$660 MILLION OVER A PERIOD OF YEARS beginning in FY 1993.

If significant new injury arises after the 10-year restoration period, which is based on previously unknown information, the trustees may reopen the matter up to a cap of an additional \$100 million.

Interagency Administration

The agreement will be administered by a group of trustees comprising the Administrator of the National Oceanic and Atmospheric Administration (NOAA), the Secretaries of the Departments of the Interior and Agriculture; the Commissioner of the Alaska Department of Fish and Game, and the Commissioner of the Alaska Department of Environmental Conservation, and the State Attorney-General. The U.S. Environmental Protection Agency has been designated by the President to coordinate restoration activities for the U.S.

The trustees will act jointly in the collection and joint use of all damage recoveries. Decisions on use of recovered funds will be made by unanimous agreement; the funds are to be held in a joint trust fund under the supervision of the U.S. District Court for Alaska.

(more)



EXXON VALDEZ FACT SHEET

(cont.)

Cooperative Restoration Efforts

THE GOVERNMENTS WILL CONTINUE TO WORK COOPERATIVELY conducting scientific studies and restoration efforts approved by the trustees for the 1991 field season. Among those under consideration are:

- RESTORATION OF THE BEACH WILDRYE COMMUNITY, to stabilize sites where natural or cultural resources are at risk,
- A PUBLIC INFORMATION AND EDUCATION PROGRAM, to lessen the potential for further human disturbances,
- HABITAT RESTORATION FOR PINK AND CHUM SALMON, using proven fisheries enhancement techniques,
- PROTECTION OF STRATEGIC FISH AND WILDLIFE HABITATS AND RECREATION SITES.

Indian Tribes' Rights Protected

THE AGREEMENT WILL BE ENFORCED by the U.S. District Court for Alaska in conjunction with its supervisory powers over a consent decree entered in the litigation.

The agreement does not affect rights and obligations of third parties with interests in the situation, including those of Indian tribes to act as trustees for asserting claims, or those of any others who are or become successors to any federal or state interest, or holders of present or future rights in land or resources affected by the spill. Also unaffected are U.S. or state rights or obligations relating to Indian tribes.

The memorandum of agreement, and the settlement agreement, will be published in the Federal Register and public comment will be sought for a period of 30 days. Broadly based public participation will be an integral part of the program.

Each government has the right to withdraw its consent to the settlement agreement within 15 days after the close of the public comment period if the comments disclose facts indicating the agreement is not in the public interest.



BACKGROUNDER

EXXON-VALDEZ OILSPILL

ON MARCH 24, 1989, AT FOUR MINUTES PAST MIDNIGHT, the Exxon-Valdez ran aground on Bligh Reef in Prince William Sound, Alaska, ripping a gash in her hull and immediately spilling 11 million barrels of oil into the waters of the Sound. Following are some facts associated with the spill:

Prince William Sound, on Alaska's southern coast, encompasses about 10,000 square miles along its 3,000 miles of shoreline. The area is home to about 6,000 residents.

In addition to the oil pipeline terminal at Valdez, the Sound is important for its valuable commercial fisheries, especially salmon and herring. The dockside value of its fish catch in 1988 was \$71 million.

In 1988, some 2,000 tankers came in and out of Valdez, from which the Exxon-Valdez had departed March 23.

The Exxon-Valdez spilled some 11 million barrels into the Sound the following day. The bulk of its cargo, however, 47 million barrels of crude, was saved and offloaded by April 4. Although the accident created a spill of enormous magnitude, the largest tanker spill in U.S. history, it was not the largest tanker spill in the world. That dubious distinction belongs to the Amoco-Cadiz, which broke up off the French coast in 1978, dumping six times as much oil as Exxon-Valdez.

By April 13, the spill had spread out over 1,000 square miles. By that time about 35 percent of the original oil had evaporated, 40 percent had washed up on the Prince William Sound's shoreline and 25 percent had left the Sound.

By April 24, an estimated 1,000 men and women from state and federal agencies were in Alaska, assisting in cleanup, damage assessment, logistics and research.

Since the accident, the Exxon Corporation has spent an estimated \$2.5 billion on equipment, cleanup and other spill-related work. In 1989 alone, the U.S. Government spent an additional \$100 million in spill-related efforts.

The so-called "Trustee Agencies," those charged under federal law with protecting the country's natural resources, are the National Oceanic and Atmospheric Administration (NOAA), the Departments of the Interior and Agriculture; and the Alaska Departments of Fish and Game, Environmental Conservation, and Law.

(more)



EXXON VALDEZ BACKGROUNDER

(cont.)

The natural resources the trustees protect include:

- Surface waters
- Coastal habitats
- Benthic (i.e., bottom dwelling) marine communities
- Marine and anadromous fish (e.g. salmon and herring)
- Marine invertebrates (e.g., clams, crabs and shrimp)
- Marine mammals (e.g., seal, sea otters and whales)
- Birds (e.g., bald eagles and murre)
- Terrestrial wildlife (e.g., deer, bear and river otters).

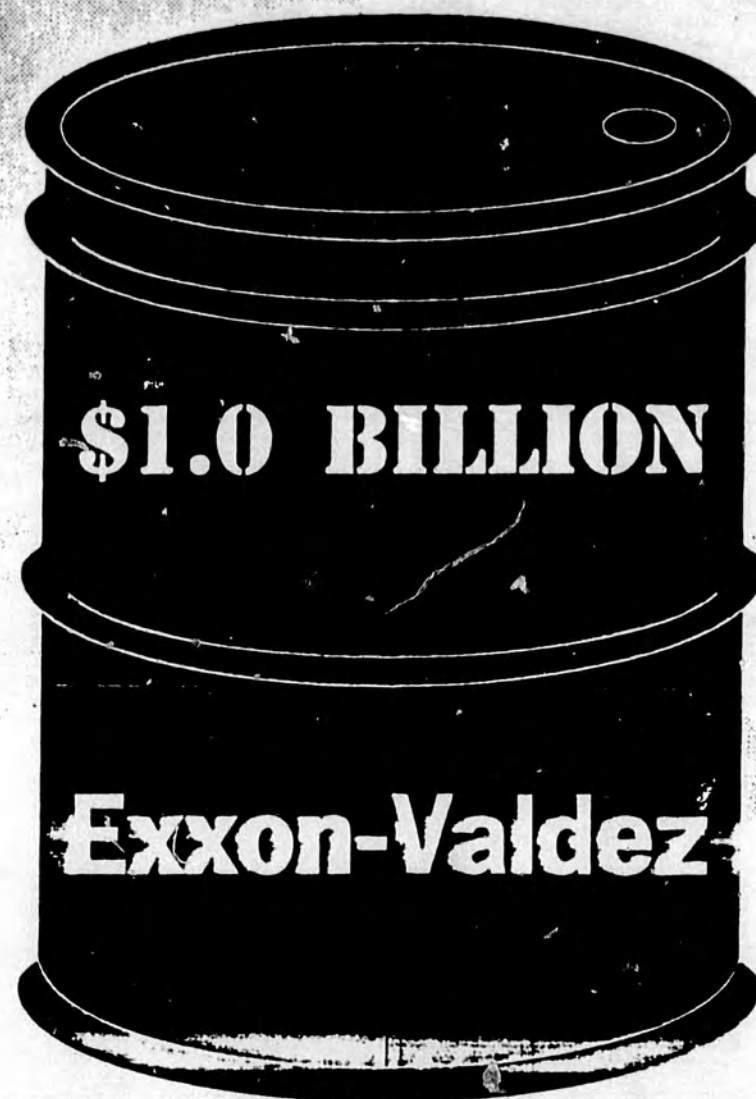
- 30 -



Exxon-Valdez Settlement Largest Ever

Shell-Martinez
San Francisco Bay • 1988

\$19.7 MILLION



Exxon-Valdez Chronology

- **March 23, 1989**—The Exxon-Valdez leaves Valdez, Alaska.
- **March 24**—The Exxon-Valdez runs aground on Bligh Reef, Alaska, ripping a gash in her hull and spilling 11 million gallons of oil into Prince William Sound.
- **April 4**—The balance of the Exxon-Valdez's cargo, 47 million barrels of oil, has been saved and offloaded.
- **April 13**—The spill has spread out over 1,000 square miles. Thirty five percent of the original oil has evaporated, 40 percent has washed up on the Sound's shore, and 25 percent has left the Sound.
- **April 24**—More than 1,000 state and federal employees have arrived in Alaska to assist in cleanup, damage assessment, logistics and research.
- **February 5, 1991**—High level negotiations begin on settlement.
- **March 13, 1991**—Settlement announced.





Department of Justice

FOR IMMEDIATE RELEASE
WEDNESDAY, MARCH 13, 1991

AG
202-514-2007
TDD 202-514-1888

EXXON TO PAY RECORD ONE BILLION DOLLARS IN CRIMINAL FINES AND
CIVIL DAMAGES IN CONNECTION WITH ALASKAN OIL SPILL

WASHINGTON, D.C. -- Attorney General Dick Thornburgh and Alaska Governor Walter Hickel today announced that Exxon Corporation and Exxon Shipping Company have agreed to settle all federal and state civil claims resulting from the Exxon Valdez oil spill on March 24, 1989, by the payment of \$900 million in damages. The settlement also has a reopener clause stating that Exxon may incur an additional \$100 million for natural resource damages not currently foreseen.

The Attorney General also announced that the two corporate defendants have agreed to plead guilty to federal environmental criminal charges and to pay a criminal fine of \$100 million, of which \$50 million will be remitted; the State of Alaska will receive \$50 million of the \$100 million as restitution for restoration of the damaged natural resources. This is, by far, the largest single environmental criminal recovery ever exacted.

According to the plea agreement, which will be filed in the District of Alaska, Exxon Shipping Co. will plead guilty to violating the Clean Water Act, the Refuse Act, and the Migratory

(MORE)

Bird Treaty Act. Exxon Corporation will plead guilty to violating the Migratory Bird Treaty Act.

"The aggregate of one billion dollars in civil damages and criminal restitution is by far the largest single amount ever paid as a result of environmental violations. Through tough negotiations by the Department of Justice, the Environmental Protection Agency, the Department of Agriculture, the Department of Interior, the Department of Transportation, the National Oceanic and Atmospheric Administration (NOAA), the State of Alaska, and federal prosecutors, the federal and state interests surrounding the legal responsibilities of Exxon Shipping and Exxon Corporation have been vindicated," said Thornburgh.

Filed in the District of Alaska today is a civil complaint and accompanying consent decree alleging violations of the Clean Water Act. The decree states that Exxon Shipping and Exxon Corp. will pay a total of \$900 million in civil damages over the next ten years to federal and state trustees. The money will be used for additional cleanup and both short and long term restoration projects in Prince William Sound and the Gulf of Alaska, the areas damaged by the spill. Of the total, \$135 million is committed for past expenses such as cleanup and scientific research.

Both the Plea Agreement and the Consent Order will require court review and approval.

(MORE)

Governor Hickel, who initially proposed settlement in a personal one-on-one meeting in Juneau with Exxon's Chairman Lawrence Rawl on January 15, 1991, commends the outcome. Said Hickel, "When Mr. Rawl and I first met in Juneau, we made it clear that negotiations could only be successful if we kept the talks at the highest level. Today, we have a settlement which is the result of eight weeks of intensive negotiations. It's a good settlement and its use will benefit the environment directly.

"On behalf of the State of Alaska, I want to commend Attorney General Thornburgh for his legal leadership, Alaska Attorney General Charlie Cole for his aggressive yet patient commitment, Secretary of Interior Manuel Lujan for his tenacity, Secretary of Transportation Samuel Skinner, NOAA Administrator Dr. Knauss, and Environmental Protection Agency (EPA) Administrator Reilly. We have a winner -- environmentally, psychologically, and financially."

Reilly said, "I am pleased with the settlement being announced today. The one billion dollar settlement with Exxon -- plus a \$100 million reopener for damages currently unanticipated -- is the largest environmental assessment ever and the funds will be available years earlier than any recovery that could have been secured through full litigation.

"These funds assure that necessary activities will be carried out and monitored to restore Prince William Sound. It

(MORE)

also should send a clear signal to ship owners that they share responsibility for protecting waters and coastlines. The settlement closes a chapter on the nation's largest oil spill ever, and it allows us to turn our attention finally now to the tasks of restoration," said Reilly.

John Knauss, NOAA Administrator and Commerce Undersecretary, called the settlement, "a good deal for the nation and one that resolves all of the governments' outstanding claims against Exxon. It will permit us to complete the critical cleanup and begin restoration of Prince William Sound now, while avoiding years of lengthy and costly litigation."

Interior Secretary Manuel Lujan said of the agreement, "This settlement serves notice to all that carelessness in transporting oil can have costly consequences. It also ensures adequate funding to complete the cleanup, continue appropriate studies and restore the fish, wildlife and other natural resources of Prince William Sound."

Secretary of Agriculture Edward Madigan said of today's settlement, "The funds from the settlement will enable the Department of Agriculture to restore the natural beauty of the portion of the Chugach National Forest that was impaired by the spill."

The Department of Justice and Alaska signed an agreement outlining how and under what authority money obtained in a

(MORE)

settlement with Exxon would be spent. Following the law, there are six trustee agencies which will administer the funds from the civil settlement: NOAA, the Department of Agriculture, the Department of Interior, the Alaska Department of Fish and Game, the Alaska Department of Environmental Conservation, and the Alaska Attorney General's Office.

Under this agreement, the trustees will collectively decide how the approximately \$750 million paid by Exxon in satisfaction of civil claims and remaining after past expenses such as those for scientific research and cleanup will be spent to restore Prince William Sound and the Gulf of Alaska.

Thornburgh praised Governor Hickel; Alaska Attorney General Charlie Cole; Administrator Reilly; Secretary Lujan; Secretary Skinner; NOAA Administrator Knauss and General Counsel Tom Campbell; General Counsel of the Department of Agriculture Alan Raul; Assistant Attorney General for the Environment and Natural Resources Division Richard B. Stewart; and Assistant Attorney General for the Civil Division Stuart Gerson, for their dedication and cooperative spirit throughout the thousands of hours of negotiations needed to reach this settlement.

Thornburgh pointed out that the United States and Alaska have asked the U.S. District Court in Alaska to allow a 30-day public comment period regarding the civil consent order. This public comment period is not required by law but is being

(MORE)

requested to allow any interested parties not a part of this settlement to express publicly their opinion regarding today's settlement.

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On February 27, 1990, Exxon Shipping Co. and Exxon Corp. were each indicted by a federal Grand Jury in Alaska. Both were charged with one misdemeanor violation of the Clean Water Act, one misdemeanor violation of the Refuse Act, one misdemeanor violation of the Migratory Bird Treaty Act, one felony violation of the Ports and Waterways Act, and one felony violation of the

(MORE)

Dangerous Cargo Act. According to the plea agreement, Exxon Shipping will plead guilty to three misdemeanors and Exxon Corporation will plead guilty to one misdemeanor.

#

91-101

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Order

THE NATIVE VILLAGE OF
CHENEGA BAY, et. al.,

Plaintiffs,

v.

MANUEL LUJAN, JR., et. al.,

Defendants.

Civil Action No. 91-483 SS

CHENEGA CORPORATION, et. al.,

Plaintiffs,

v.

MANUEL LUJAN, JR., et. al.,

Defendants.

Civil Action No. 91-484 SS

MEMORANDUM OPINION AND ORDER

These cases are before the Court on a continuation of the hearing commenced on March 7, 1991, on plaintiffs' motions for a temporary restraining order, and on the plaintiffs' motions for a preliminary injunction. The plaintiffs are Native Alaskan villages, the some 5,000 residents of these villages, and Native Village Corporations owned by these villagers. The defendants are officials of the United States Government and of the State of Alaska. Plaintiffs seek to enjoin the defendants from consummating settlement negotiations with Exxon Corporation, Exxon Shipping Co., [collectively, "Exxon"] and Alyeska Pipeline Service Co., relating to the discharge of oil by the M/V EXXON VALDEZ. The Court on March 7, 1991, issued a ten-day temporary restraining order

restraining a settlement. Plaintiffs now seek issuance of a preliminary injunction. Defendants seek dissolution of the temporary restraining order.

Plaintiffs contend that the defendants plan to enter into an agreement with Exxon and Alyeska settling civil claims against Exxon and Alyeska that the defendants may have as a result of the Valdez oil spill. The plaintiffs' claim, in essence, is that this planned agreement will compromise the plaintiffs' rights to seek relief themselves against Exxon and Alyeska. The plaintiffs' claims for damages against Exxon and Alyeska are currently being prosecuted in federal and state courts in Alaska.

In response to plaintiffs' motions, the defendants have represented to the Court that "resolution of [the United States'] natural resource damages should not impair rights or claims of third parties." Declaration of George W. Van Cleve at ¶ 4. The Court believes this representation to mean that after the settlement agreement has been executed, the plaintiffs will be able to prosecute fully the suits they have initiated against Exxon and Alyeska just as if no settlement agreement existed. The Court will further take the defendants' representation to mean that Exxon and Alyeska may be liable to the plaintiffs for damages to natural resources and/or lands they have an interest in, even if it is claimed the same natural resources and/or lands are covered by the settlement agreement among the defendants and Exxon and Alyeska.

The Court accepts the defendants' good-faith representations. On the basis of these representations, the Court believes that the

plaintiffs' rights are not affected by the planned settlement agreement. Accordingly, it is this _____ day of March 1991 hereby

ORDERED that the temporary restraining order issued by this Court on March 7, 1991, is DISSOLVED; and it is further

ORDERED that plaintiffs' motions for a preliminary injunction are DENIED; and it is further

ORDERED that the Court shall retain jurisdiction over this matter to ensure that the defendants' representations are carried out so that plaintiffs' rights are protected. The Court shall maintain this case on its docket so that the plaintiffs may on motion request such additional relief as they may be entitled to, and so that the defendants may make an appropriate motion to have this case transferred to the United States District Court for the District of Alaska, as the defendants have indicated in court they may desire to do.

Stanley Sporkin
United States District Court

Dear Friends,

July 4, 1990

Enclosed is a "Draft Proposal for a Comprehensive Settlement of Natural Resource Damages from the 'Exxon-Valdez' Oil Spill" and an attached discussion paper on the "Acquisition of Timber Harvesting Rights for Restoration".

This document was developed in response to requests from commercial fishermen, Alaska Natives, environmental groups, tour operators, recreationalists, and biologists that we now join together to formulate a constructive resolution to this disaster. It is intended to serve as a catalyst for settling natural resource damages in a fair and expeditious manner. As such, it is being circulated for review to the private and public plaintiffs and the defendants in the case.

It is hoped that a consensus will emerge among the parties involved to proceed in negotiating and finalizing such a settlement this year.

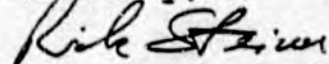
The Coastal Coalition is an informal network of concerned citizens that formed in response to the spill in order to provide a constructive focus for citizen input. Presently, our goal is to help formulate a comprehensive settlement for natural resource damages that is agreeable to all parties. Such a settlement would side-step years of costly litigation, provide for environmental restoration, and allow all of us to get on with life.

Our intent with this inquiry is to plant the seed and get some indication of your interest in having such settlement negotiations proceed. Please let us hear from you as soon as possible concerning any comments you might have on the enclosed document, and whether or not you agree to it in principle. Your thoughts are very important to this process. It is our intent that any final agreement should be molded to accomodate the most broadly based constituency possible.

We will be in touch with you regarding a meeting with other public and private plaintiff's representatives to discuss all of this, probably sometime in early August.

Let's join together to put this thing behind us.

Sincerely,



Rick Steiner, The Coastal Coalition

DRAFT PROPOSAL

for a

COMPREHENSIVE SETTLEMENT OF NATURAL RESOURCE DAMAGES FROM THE "EXXON-VALDEZ" OIL SPILL

TO: State/Federal Trustees for Natural Resources Damages
FROM: THE COASTAL COALITION
July 1990

It has become evident that all parties, both plaintiffs and defendants, involved in litigation for natural resource damages arising from the Exxon-Valdez oil spill would be best served by reaching a comprehensive settlement as soon as possible. This realization is predicated upon several considerations.

First, even after years of exhaustive impact assessment research, it would remain difficult to arrive at any consensus concerning how to quantify the extent of damage or how to value the damaged resources (i.e., how much to collect in damages).

Secondly, research should be driven by fundamental scientific interest in the behavior and response of this ecosystem to such a perturbation--not by the need to collect evidence for litigation.

Thirdly, restoration of the impacted environment can and should commence immediately. In addition to direct restoration efforts, there is an immediate opportunity to protect, through acquisition, threatened habitat within the region.

And, finally, expensive, drawn-out litigation would only prolong and exacerbate the degree of psychological, social, and political impact of the spill. A settlement will provide a sense of resolution and relief from an otherwise quite protracted and tense process.

In light of such considerations, it is proposed that the Natural Resource Trustees seek immediate settlement of all natural resource damages. Such settlement should extinguish all criminal liability (i.e., the Federal indictments) and all civil liability for natural resource damages. This settlement should be carefully structured so as not to influence the case for compensatory damages.

We respectfully suggest that a comprehensive disposition of this case should collect \$2 billion to endow an Alaska Restoration Fund.

The Alaska Restoration Fund should be managed by a non-profit corporation governed by a court-approved Board of Directors, so that people from the impacted region can be directly involved in the management of the Fund, and thus their own future.

The Fund should support the following principle elements:

1. Direct Restoration

The Fund should be used to support direct, on-site efforts to restore or replace damaged resources to their pre-spill condition. This would include such things as supplementing injured salmon runs, reinnoculating areas with herring, breeding and release programs for damaged bird populations, reestablishing plants in injured salt marshes, and improving or protecting the habitat of other spill-impacted species.

2. Acquisition of Equivalent Resources

The Fund should purchase or otherwise protect resources that are similar or related to the injured resource in terms of ecological value, functions, or services provided. Priority should be given to the acquisition of certain development rights (e.g., timber, minerals, oil, etc.) in order to protect threatened habitat. An example of such acquisitions is presented in more detail in the attached discussion paper.

3. Research

The Fund should support a broad array of scientific research projects that address critical resource issues and fundamental scientific pursuits within the region. A comprehensive program of baseline and monitoring studies should be initiated with which to more precisely understand the effects of future such events on this ecosystem.

4. Education

A variety of natural resource education initiatives should be supported by the Fund. Particularly, a scholarship Fund should be established to support the education of residents from the region in natural resource science, management, economics, and conservation.

5. Sustainable Economic Development

The final goal of the Fund should be to design and implement economic development projects within the region that are compatible with the natural and cultural environment, and that are sustainable over the long-term. Inherent in this is a larger economic theme--that Restoration should, in some sense, assist the region in attaining long-term economic stability through sustainability. An important component of this should be the establishment of an Alaska Native Employment Fund.

Valuing the Case

It will always be difficult to establish the value of natural resource damages with precision in cases such as this. We suggest that the amount of \$2 billion would represent a fair and equitable disposition of natural resource damages in this case for several reasons.

First, this amount represents a workable approximation of what damages would come to if calculated as the average of damages derived by three principle economic valuation methodologies--Contingent Valuation, value of charismatic species, and public use value.

Secondly, \$2 billion is approximately the amount of money that will be needed to accomplish the various objectives of the Fund. It is envisioned that of the total amount collected, a portion would be expended immediately for acquisitions. The remaining balance would be maintained as a permanent endowment whose inflation-proofed interest income would support the other elements of the Fund. Such an endowment, providing substantial annual interest dividends, would provide stable support in perpetuity for these other restoration, research, education, and sustainable economic development initiatives.

Thirdly, the severity of impact adds considerable support for a settlement of this magnitude. For instance, it is theoretically possible that this ecosystem will never return to its pre-spill condition. Even small perturbations in natural systems are known to produce large, unpredictable and long-lasting consequences. It is possible that the impacted system will stabilize at an entirely different equilibrium than that existing before the spill. Additionally, it is probable that the population structure of certain long-lived, less fecund species will take several decades to return to pre-spill conditions.

And lastly, this amount of money is entirely proportionate to the value that could be assigned to the permanent loss of the pristine quality of this ecosystem. That the area is an aesthetic resource of global significance is attested to by the extraordinary amount of public attention paid to this spill throughout the world. In the same way that a rape victim can not be "un-raped," the lost pristine character of this region is, unfortunately, irreplaceable.

Thus, this settlement will afford the impacted environment a sufficient amount of care and protection; it will give science a better understanding of ecosystem dynamics; and it will provide the impacted communities more economic and educational opportunity as well as a sense of certainty in looking toward the future. It is, quite simply, the right thing to do.

ACQUISITION OF TIMBER HARVESTING RIGHTS FOR RESTORATION

- A Prerequisite for Recovery -

- I. Introduction
- II. Biological Characteristics of the Forest within the Region
- III. Justifications for Acquisition
 - A. Biological
 - B. Economic
 - C. Psychological
 - D. Socio-Political
- IV. Timber Ownership
 - A. Prince William Sound
 - B. Lower Kenai Peninsula
- V. Additional Considerations

by
Rick Steiner

THE COASTAL COALITION

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I. INTRODUCTION

As the clean-up of the Exxon-Valdez oil spill progresses toward completion, we must now decide what more can be done to aid the recovery of the impacted environment.

In the context of the Clean Water Act and the more extensive damage provisions of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), commonly known as the Superfund, Federal law clearly directs that funds be collected from responsible parties to be used "to restore, replace, or acquire equivalent resources."

In the case of the Exxon-Valdez, in addition to what can be done in the way of direct restoration and replacement of damaged resources, the most practicable mechanism to compensate for natural resource damages is to offset this loss with a substantial "acquisition of equivalent resources." This entails purchasing or otherwise protecting resources that are similar or related to the injured resource in terms of ecological value, functions, or services provided.

The several hundred thousand acres of old growth forest along the coastline of the spill-impacted region, having been scheduled before the spill for logging, now represent an ideal opportunity to exercise this Restoration option. The following is an overview of the concept of acquisition and retirement of timber harvesting rights to protect the impacted ecosystem from any further deterioration. This discussion is meant to provide a basis for further development of the idea, and to serve as an example of how other such acquisitions might work.

Conceptually, before trying to treat anything that has been injured, we must first protect it from any further injury. In the spill-impacted zone, marine, freshwater, and terrestrial systems are tightly connected through biogeochemical cycles into a functionally interlocking ecosystem. Perturbations (i.e. injuries) in one component usually produce significant secondary effects in the others. What's more, compound injuries often operate synergistically--that is, their combined effect is much more than the sum of the two injuries occurring independently. And regardless of how carefully it is carried out, the planned removal of old-growth forests from several hundred thousand acres of the region's coastline cannot help but to have a profound effect on the ecosystem as a whole. The clearcutting proposed for the region would represent an ecological alteration unmatched since the glacial retreat at the end of the Pleistocene. It is widely felt that the scars from logging will be even more persistent than those of the oil spill. This sort of massive perturbation, superimposed upon the deleterious effects of the spill, is likely to produce significant biological, economic, psychological, and socio-political effects far beyond what either one might have caused alone. A consensus is now emerging among many fishermen, biologists, tour operators and other local residents that, while this ecosystem might have been able to recover from either one of these rather large impacts in isolation, their combination could so seriously weaken the health and integrity of the system that its ability to recover would be severely compromised.

CLEARLY, THE FIRST STEP TOWARD FULL RESTORATION AND RECOVERY IS TO PROTECT THE ENTIRE SYSTEM AS COMPLETELY AS POSSIBLE FROM ANY FURTHER SIGNIFICANT HUMAN-INDUCED DISTURBANCE. And, aside from the

threat of additional oil spills in the area, the most immediate threat to the integrity of this ecosystem appears to be the planned removal of over one billion board feet of old-growth timber throughout the coming decade. The acquisition of timber to protect undamaged but threatened wildlife habitat in the impacted region is considered by many to be the single highest priority for Restoration.

Biologically, timber acquisition would protect the terrestrial, freshwater, intertidal, and nearshore habitat of many populations impacted by the spill (e.g., sea otters, diving birds, salmon, herring, eagles, bear, deer, etc.). It would also prevent the diminution of the carbon metabolizing marine bacterial flora that depends upon natural hydrocarbons flowing into nearshore waters from coastal forests. Economically, timber acquisition would maximize profits and minimize risk for timber owners, protect existing commercial and subsistence economies, protect the future of tourism and recreation in the region, and preserve other in-absentia values of the region. The acquisitions would also go a long way toward relieving an overwhelming sense of despair in the region's residents, and would clearly help mitigate other socio-political impacts of the spill.

It should be emphasized that before the spill, timber development represented a legitimate economic opportunity for the region. However, we must now reassess all prior development plans in terms of what is in the best interest of the impacted ecosystem.

Restoration without full protection would be as futile as applying band-aids on a victim with one hand while continuing to inflict serious wounds with the other. And, in a larger sense, Prince William Sound has come to symbolize a violated relationship between humanity and nature. The only way to regain this relationship is to protect the area as completely as possible. This is the least, and perhaps the most that we can now do. Without such protection, full recovery--biological, economic, psychological, and socio-political--will be impossible.

II. BIOLOGICAL CHARACTERISTICS OF THE FORESTS WITHIN THE REGION

These old-growth forests are stable biological communities that have developed over several centuries essentially free from catastrophic (including human) disturbance. They support a rich diversity of highly specialized and adapted organisms such as cavity nesting birds, canopy-dwelling animals, understory saprophytic plants, and epiphytic lichens. These undisturbed forests support two or three generations of dominant tree species, forming a highly partitioned, broken, multi-layered canopy. They are highly retentive of nutrients, both in living and dead organic matter, giving rise to significant detritus-based food webs. For example, small to medium sized streams depend almost entirely upon decaying forest litter as an energy base.

In addition to live spruce and hemlock, these forests are characterized by standing dead snags, and fallen logs on land and in streams. As such, they form a rather unique habitat for a large number of bird, mammal, fish and invertebrate species. With so much production high in their canopy, they provide ideal habitat for flying and climbing consumers, such as foliage-consuming insects, and insectivorous birds. Large snags are valuable as habitat for a variety of vertebrates (e.g. bald eagles) and invertebrates. Logs and bark slabs on the forest floor are important for small mammals that disperse seeds and fungi, for nitrogen-fixing bacteria, and as seed beds for trees and shrubs.

Fallen logs are also critical to the maintenance of the physical and biological stability of headwater streams. Debris dams, for instance, create stepped stream profiles that effectively dissipate energy that would otherwise go into transporting sediment, downcutting of stream channels and washouts. The associated pools and gravel beds provide a range of habitat requirements--temperature, shade, cover, current velocity, and oxygen - for a wide array of aquatic organisms.

The forests in the spill-impacted region are generally confined by steep mountain slopes to a relatively narrow band along shorelines. Three primary forest plant associations are found in the region:

1. The Sitka spruce series--occupies beachfront terraces and alluvial bottomlands. Common understory plants are blueberry, devil's club, skunk cabbage, lady fern, oak fern, and shield fern. Alder are dominant along streams.
2. The mountain hemlock series--found on lowland rolling hills, raised knolls in muskeg, and steep side slopes. Principal understory species on lowland hills are blueberry and devil's club; on raised knolls are copperbush, crowberry, bog blueberry, and deer cabbage; and on steep sideslopes are marten's cassiope, luetkea, shield fern, lady fern.
3. The western hemlock series--occupies some beachfront terraces and lowland rolling hills. It's understory consists of blueberry, rusty menziesii, devil's club, bunchberry, five-leaf bramble, and twisted stalk.

It is important to remember that the coastal forests of south central Alaska are rich, complex systems that produce more than just wood. They are important habitat for about one hundred species of birds, over 30 species of mammals, and several hundred species of invertebrates and plants.

III. JUSTIFICATIONS FOR ACQUISITION

A. Biological

There are seven principle biological arguments for using Restoration funds to retire timber harvesting rights:

1. Protection of forest-dependent and several spill-impacted species

Several of the bird and mammal species that depend to some extent on the old-growth forests in the region are known to have been impacted by the oil spill; (e.g. eagles, loons, murrelets, deer, bear, etc.). Removal of large tracts of this habitat through logging will only make it more difficult for these species to recover. (See #3 below)

2. Hydrological characteristics of watersheds

Regardless of how well buffer requirements are adhered to, the clearcutting planned for many steep sideslopes in the area would seriously alter the erosion, runoff, and sedimentation characteristics of entire watersheds. Watersheds disturbed by logging have dramatically altered hydrological characteristics. The removal of such large amounts of plant biomass, and

compaction of soils causes a dramatic reduction in the water-holding capacity of the area. This can affect the size and even timing of peak flows in nearby streams. This is evident where recent logging in Two Moon Bay has increased the frequency and magnitude of flooding, mudslides, soil erosion, and sediment loading in nearshore waters. Again, regardless of adherence to buffer requirements, percolation can still increase storm flow in streams, and the loss of forest shading will accelerate both the magnitude and timing of spring meltwater runoff. High storm flow can have devastating effects on salmon eggs and fry in streambed gravel.

Increased sedimentation of the intertidal and nearshore environments can be expected if upland forests are clearcut. These nearshore areas are critical habitat for outmigrant salmon smolts, herring spawning, clam and mussel production, and sea otter and bird feeding--all of which were impacted by the spill. Increased sedimentation of this environment could seriously reduce its biological productivity and habitability. Herring eggs and larvae, for instance, are very susceptible to reduced oxygen availability caused by increased sedimentation. Likewise, salmon fry migration and feeding can be affected by increased turbidity of nearshore waters. Also, any reduction in clam, mussel, or other invertebrate populations due to increased sedimentation from logging could have significant negative consequences for the recovery of sea otters, especially weanlings, and diving birds from oil spill impacts.

3. Habitat fragmentation

Logging causes a significant reduction in the most accessible, highest density timber stands, and as such, increases the fragmentation of old-growth habitat. Such habitat fragmentation is known to be a significant cause of reduced genetic variability within individual species. The theory of island biogeography substantiates the concern for reduced biodiversity caused by such habitat fragmentation. Because of their isolation from each other and resultant interruption in gene flow, habitat islands have been found to decline both in number of species present and genetic diversity. A reduction in genetic variability within certain populations of mammals, bird, and plant species would reduce the stability of that particular population, and the ecosystem as a whole. This means that the system would be much less capable of recovering from other perturbations such as insect pests, disease, earthquakes, etc.

It's important to realize that habitat fragmentation is a much more significant threat to the ecological stability of old-growth forests in this particular region because here, these forests constitute a smaller, patchier component of the entire ecosystem than do the forests in the Tongass, British Columbia, and the Pacific Northwest. Additionally, the high noise levels generated by logging operations expand the edge of habitat impacts far beyond the boundaries of the clearcut. Many mammals and birds will attempt to avoid such acoustic disturbance, and in so doing, be pushed further away from their preferred ranges and confined to progressively smaller refugia. Several forest species, such as deer, find it difficult to cross clearcuts, particularly during periods of heavy snow.

4. Regeneration

Because these forests are at the northernmost edge of their range, regeneration of critical habitat structure, composition, and functions in second growth forests is extremely slow. Such slow regeneration rates are due to short growing seasons, low solar irradiance, and soils with low fertility and poor structure due to comparatively recent glaciation. Soil fertility is further reduced by leaching of nutrients after logging. And, although there are a few isolated examples of clearcuts in the Sound that have regrown relatively densely within 50 years or so, these dense second-growth stands have been found to provide unsuitable habitat for many of the original bird, mammal, and plant species that inhabited the area before logging. With no snags, fallen logs, large live trees, or canopy heterogeneity for habitat, these second-growth areas are generally poor in species diversity.

5. Global significance

The forests in this region are unique globally in that they constitute the highest latitude temperate rain forests anywhere in the world. Temperate rain forests worldwide are rare and severely threatened ecosystems. In their original extent, they were distributed in 10 regions in the world covering an area of approximately 70 million acres; only 2-3% of the area of tropical rain forests. Four of the original areas in which they existed historically-- western Scotland, Ireland, a small area in the French Alps, and the southwest coast of Norway have been eliminated entirely.

In addition to the forest system extending from Kodiak to central Oregon, the only other significant stands left are found along the coasts of southern Chile, southern Australia, Tasmania, New Zealand, and Japan. It has been estimated that 60-80% of temperate rainforests worldwide have been logged in recent history.

For this reason alone, the forest in the spill zone should be conserved as a precious representative of disappearing temperate rainforest ecosystems worldwide.

6. The forest/marine bacteria/oil-spill connection

Oceanographers now believe that the large populations of hydrocarbon metabolizing bacteria that have been so important in degrading oil from man-made sources in the region (e.g., the Exxon-Valdez spill and the effluent from the ballast water treatment facility at the Alyeska Terminal) flourish precisely because of the continuous input of biogenic hydrocarbons from the coastal forest. Measurements of the hydrocarbon terpene dissolved in the canopy drip from spruce trees and in nearshore waters suggests that this is the primary energy source for naturally occurring hydrocarbon-oxidizing marine bacteria in the region. In this sense, the coniferous forest actually "immunizes" or prepares this marine system for oil spills. Removal of large tracts of these forests would, theoretically, reduce terpene input and thus the bacterial populations depending upon this

input, causing the waters in the region to become less capable of self-cleansing or bioremediation.

7. Cumulative impact

And finally, all these biological effects need to be understood in the broader long-term ecosystem context. Many local residents and biologists have observed a gradual but continuous reduction of certain wildlife populations associated with increased human use of the region over the past 30 years. Superimposed upon this gradual deterioration in the environment of PWS, the Exxon-Valdez oil spill in 1989 threw the system into a profound state of disequilibrium. Shocking the system with yet one more massive human-induced perturbation--the destruction of vast areas of old-growth forest habitat--would likely produce such a destabilizing effect that the resiliency of the entire ecosystem will be depressed for many decades. Also, it must be remembered that despite how well we think we might understand a particular biological system, even small perturbations can have large and unpredictable consequences (i.e. Chaos Theory). Beyond any doubt, the vitality of this coastal ecosystem would be best served by keeping its existing flora and fauna intact, in full interaction.

The advantages of the acquisition of timber for Restoration purposes are quite straightforward:

1. Profit Maximization

The timber owners would simply make more money by selling their trees for Restoration purposes than by harvesting them. By having money from such a sale up front, the corporations and shareholders could enjoy perhaps 50% more profit over 10 years from reinvestment income. To begin realizing significant dividends from logging, they would probably have to wait several years. Such a windfall of profits would open up many other personal and corporate economic development options. Also, the owners would not incur the expense and risk of operation, and Native Corporations would not have to begin paying taxes on these tracts as developed lands.

2. Market risk minimization

Timber markets are extremely volatile. Though they are now relatively strong, they are subject to at least the same magnitude of reduction that they experienced in the mid 1980s. Purchasing this timber now will allow timber owners to avoid the substantial risk of softening markets in the future.

3. Protection of existing economy

Any potentially negative effect that logging might have on either commercial fisheries or on local subsistence economies would be avoided.

4. Recreation and tourism development

It is widely agreed that the development of recreational and tourism economic opportunities in this region would be seriously impeded by timber harvesting. The scenic/aesthetic value of the area would be reduced in proportion to the number of vistas containing at least one noticeable clearcut. And, because areas planned for logging are relatively steep, virtually all can be seen from afar. It is widely felt that, in addition to commercial fishing, the recreation and tourism industry offers the PWS/Kenai Peninsula area its best opportunity for sustainable economic development that is compatible with the local environment. What is already a multi-million dollar industry probably has, in the absence of timber development, the potential to triple in size over the next decade. Recreation and tourism would also provide more local jobs on a sustainable basis than would a short-lived timber industry.

5. Timber price support

Because this acquisition would take a substantial amount of timber off the market, it is reasonable to expect timber prices elsewhere in the State to be enhanced somewhat.

6. Noncommercial economic value

And lastly, in the context of current economic theory (i.e., "Contingent Valuation") the actual economic value of a resource like the old-growth forests in this region is much more extensive than just its immediate commercial value. In addition to the commercial value of on-site recreation and timber harvesting, these forests offer many off-site, or "in-absentia" user values, including option, existence, and bequest value. Option value is essentially what people would pay to insure the availability of the forest system for future recreational opportunities. Existence value is the benefit derived from simply knowing that the forest exists. And bequest value is the willingness to pay for the economic benefits of saving forest resources for future generations. Timber harvesting could conflict with all nontimber values of these forests --subsistence, sport fishing and hunting, commercial fisheries, recreation, tourism, option, bequest, and existence value. And because the Restoration process should satisfy timber owners financially, it is clear that from a strict economic standpoint, it is in the highest public interest to preserve these forests. This acquisition would ensure a maximum flow of benefits to the greatest number of people.

C. Psychological

The psychological impact of the oil spill, has been, and will continue to be enormous. The pristine natural environment of the region comprises a powerful aspect of local residents' sense of identity, place, and purpose. Most of the people who make the region their home live here just because of its natural bounty, beauty, and wilderness quality. Native culture evolved within the fabric of forest and marine biological systems in the region. The area is, for many people, a sacred place.

The oil spill caused this sense of identity in local residents to rapidly disintegrate. Initial studies have clearly documented widespread perceptions of uncertainty about the future, deteriorating family relations, and Post Traumatic Stress Disorders in impacted communities. Even now, residents still feel a great deal of anger, remorse, and loss for what the spill did to their home. We must now allow these wounds to heal.

The most we can probably do to restore the psychological sense of well-being among local residents is to afford the impacted area as much protection as possible from further human insult. The psychological impact of clearcutting, superimposed upon that of the oil spill, would be devastating.

Prince William Sound has, in a very real sense, come to epitomize the plight of the Global environment. The phenomenal worldwide media attention given the area during the spill attests to the high degree of sympathetic identification felt by people throughout the world for such a spectacular pristine natural area essentially "lost" through corporate and governmental ineptitude. Many people, locally and elsewhere, express a sense of disbelief, indignation and even outrage that now, after perhaps the single greatest environmental disaster in our nation's history, humanity seems poised to inflict yet more environmental damage to the very same area through timber extraction, almost as if nothing had ever happened.

It is important to acknowledge that these are very real emotions and as such they must be addressed by the Restoration process. It should be a priority of the Restoration program to minimize any activity that might detract from an already damaged sense of psychological well-being throughout the region and the world. Another compelling reason, then, to retire timber harvesting rights in the region is to help restore the sense of solace and well-being that is so essential to the quality of life.

This acquisition would allow people to look forward with certainty to the full recovery of the natural environment, rather than despair over its continued degradation. This acquisition is absolutely essential for psychological recovery--without it, full recovery will be impossible.

D. Socio-Political

The oil spill has caused an overwhelming loss of faith in the institutions that manage our society.

The socio-political fallout from the spill has been characterized by bitterness and divisiveness within and between communities, anger toward the oil industry in Alaska and elsewhere, lack of confidence in government, and skepticism regarding economic development in general.

The social challenge for Restoration then, is to restore the cohesiveness within and between communities. Peoples within the impacted region now need a sense of solidarity, of being on the same side of an issue and of belonging to a joint enterprise together. It is now imperative to protect residents in the region from other highly divisive issues, such as logging.

The political impacts of this spill will undoubtedly reverberate through the halls of Juneau and Washington D.C., oil company board rooms, and the minds of voters for quite some time. If something powerful and persuasive isn't done to make amends for this environmental disaster, its dark shadow will continue to loom over such major public policy issues as ANWR, offshore oil leasing, and other important development proposals.

The public wants a clear sign that industry and government will make every effort to "right-their-wrongs." A positive outcome with the acquisitions set forth in this proposal would send a loud and clear message to people everywhere that corporate and political institutions can and do act responsibly--that they do indeed care about the natural environment. The public relations value of such an initiative would benefit the timber industry, Native corporations, government, and the oil industry.

It is increasingly evident that these acquisitions would be enormously popular throughout the nation, and would renew public confidence in our governmental and corporate institutions. Underlying such sentiment is the growing body of public opinion that old-growth rainforests worldwide are a precious, highly-threatened resource that deserve protection, and a greater sensitivity toward the environment in general, (e.g., "Earth Day, 1990").

In a very real sense then, this acquisition for Restoration has, for many, become the "canary in the mine shaft" concerning mankind's commitment to the environment. It's really quite simple--either we do care, or we don't. This will be the legacy we leave for future generations and should be pursued accordingly.

IV. TIMBER OWNERSHIP

The primary land owners in the region are the Federal government, Alaska Native Corporations, and, to a lesser extent, the State of Alaska. All own valuable tracts of old-growth forest. A decision to not allow timber harvesting on these public lands can be obtained simply through an administrative decision on the part of the U.S. Forest Service and the State of Alaska Department of Natural Resources. At this time, the Forest Service has no plans to sell or harvest any of the timber within the Chugach National Forest. The ADNRS is considering classifying several of its isolated land parcels within the region for timber harvesting. The Trustees should seek a Memorandum of Understanding or other legally binding agreement from these two agencies that, in the interest of Restoration, they will not permit any timber harvest on their lands in and around the spill zone.

The more important challenge for Restoration will be to retire the timber harvesting rights on the several hundred thousand acres of lands owned by Alaska Native Corporations in the region. Timber on these private lands is considered to be a valuable financial asset and thus timber owners will have to be sufficiently compensated in exchange for an agreement to extinguish any and all harvesting rights. The approach here should be to make it financially advantageous for the timber owners/land owners to enter into such an agreement, by providing them as much money as they would have earned in profits by harvesting their timber. The two principle areas of concern for acquisition purposes are Prince William Sound and the lower Kenai Peninsula.

Prince William Sound

The Native Corporations with land holdings in Prince William Sound itself are as follows:

Eyak Corporation PO Box 340 Cordova AK 99574 Phone: 424-7161	64,000 acres (Note: acreages here are approximate)
Tatitlek Corporation PO Box 650 Cordova AK 99574 Phone: 424-3777	65,000 acres
Chenega Corporation General Delivery Cordova AK 99574 Phone: 573-5118	76,000 acres
Chugach Alaska Corporation 3000 A Street, Suite 400 Anchorage AK 99503 Phone: 563-8866	57,000 acres in S.W. PWS

Approximate total area proposed for timber acquisition
in Prince William Sound = 262,000 acres

Most of the timber on these lands has been sold, in connection with Net Operating Loss Sale provisions of federal tax laws, and is now owned by the following companies:

Sherstone, Inc. PO Box 828 Cordova AK 99574 Phone: (907) 424-5524	Owns timber on Eyak lands
Citifor, Inc. 7171 Columbia Center 701 Fifth Ave. Seattle WA 98104-7090 Phone: (206) 622-3770	Owns some of the timber on Tatitlek lands between Fidalgo & Gravina
Koncor Forest Products, Inc. 3501 Denali Anchorage AK 99503 Phone: (907) 562-3335	(Timber Trading Company) owns timber on Chugach Corp. lands on Montague & Knight Islands and on Chenega lands

Tatitlek Corporation still retains title to some of their timber, and Chugach Alaska Corporation has purchased timber on Tatitlek lands at Fish Bay in Pt. Fidalgo.

Lower Kenai Peninsula

Beyond PWS itself, three village corporations on the Kenai Peninsula have considerable land holdings with timber that should be considered for acquisition:

English Bay Corp.
PO Box 8058
English Bay via Homer
Homer AK 99603
Phone: (907) 281-2220

45,000 acres at southern
tip of Kenai Peninsula
and 22,000 acres within
the Kenai Fjords National
Park

Port Graham Corp.
PO Box PGM
Pt. Graham AK 99603
Phone: (907) 284-2227

66,000 acres at southern
tip of the Kenai and
55,000 acres also within
the Kenai Fjords National
Park

Seldovia Native Ass'n.
PO Box 185
Seldovia AK 99663
Phone: (907) 234-7625

23,000 acres within
Kachemak Bay State Park
across from Homer and
423 acres on Island Peninsula

Approximate total area proposed for timber acquisition on
Lower Kenai Peninsula = 221,000 acres

These corporations have sold much of their timber, as in Prince William Sound, to the following companies.

Koncor Forest Products, Inc.
3501 Denali
Anchorage AK 99503
Phone: (907) 562-3335

(Timber Trading
Company) owns the
timber on Seldovia
Native Ass'n. land
holdings within
Kachemak Bay State
Park

Chugach Alaska Corporation
3000 A Street, Ste. 400
Anchorage AK 99503
Phone: (907) 563-8866

owns the timber at
Windy Bay, on Pt.
Graham lands

Kolon California, Inc.
c/o Ceretech International
515-16th Ave., Ste. 155
Bellevue WA 98004
Phone: (206) 455-4850

owns the timber on
English Bay lands

6. Displaced jobs

A very legitimate concern exists over the jobs, particularly of Native shareholders, that would be displaced by this acquisition for Restoration. This concern is addressed by the Sustainable Economic Development section of the proposed comprehensive settlement. An "Alaska Native Employment Fund" should be established to provide on the order of \$5 million annually to be used to employ shareholders in jobs that, as determined by themselves, are sustainable and compatible with their cultural heritage and local environment.

7. Seward Sawmill

Withdrawing these forests from timber production will reduce the flow of raw logs to the newly constructed Chugach sawmill in Seward. Clearly, the Chugach Corporation deserves compensation for this loss. Either a genuine offer should be made for an outright purchase of the mill, or some other subsidy/settlement must be offered.

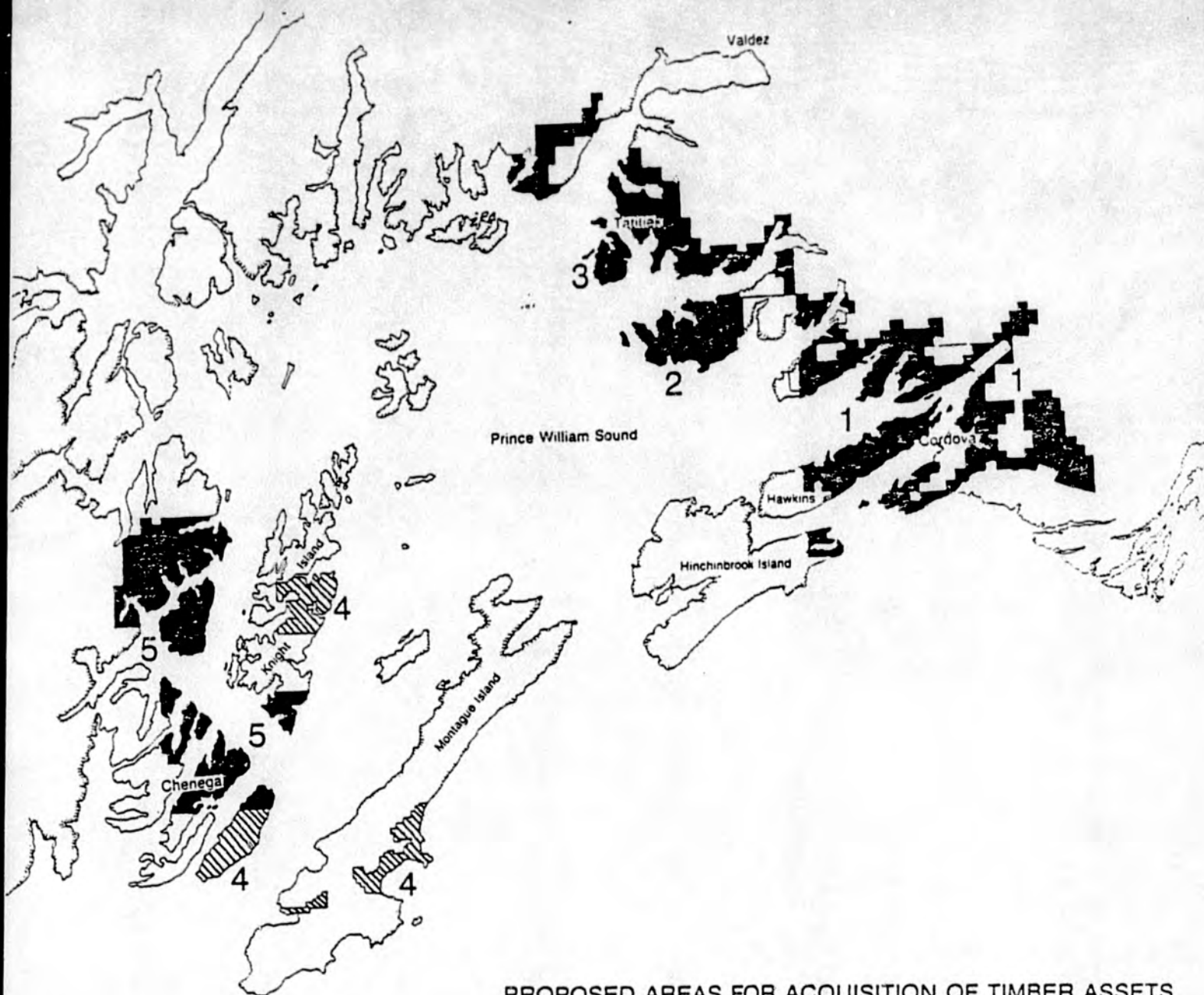
8. Protection of Native Sovereignty

One of the most important considerations for this initiative is to protect the right to self-determination of local Native people. As the principle private land owners in the region, they have the most at stake relative to this issue. It is essential that all the shareholders of each Native corporation in the region be fully informed concerning their options here, and that they come to some agreement among themselves as to what is in their own long-term interest. Presently, some shareholders support timber acquisition for Restoration, others oppose it.

It is incumbent upon the Restoration planning process to provide the corporations and their shareholders with an objective assessment of the implications of supporting or opposing such acquisitions.

IT IS ESSENTIAL THAT THE TRUSTEES REMAIN
SENSITIVE TO THE DESIRES OF NATIVE SHARE-
HOLDERS ON THIS ISSUE, AND PURSUE
ACQUISITIONS ONLY WITH THOSE CORPORATIONS
THAT SUPPORT THE CONCEPT.

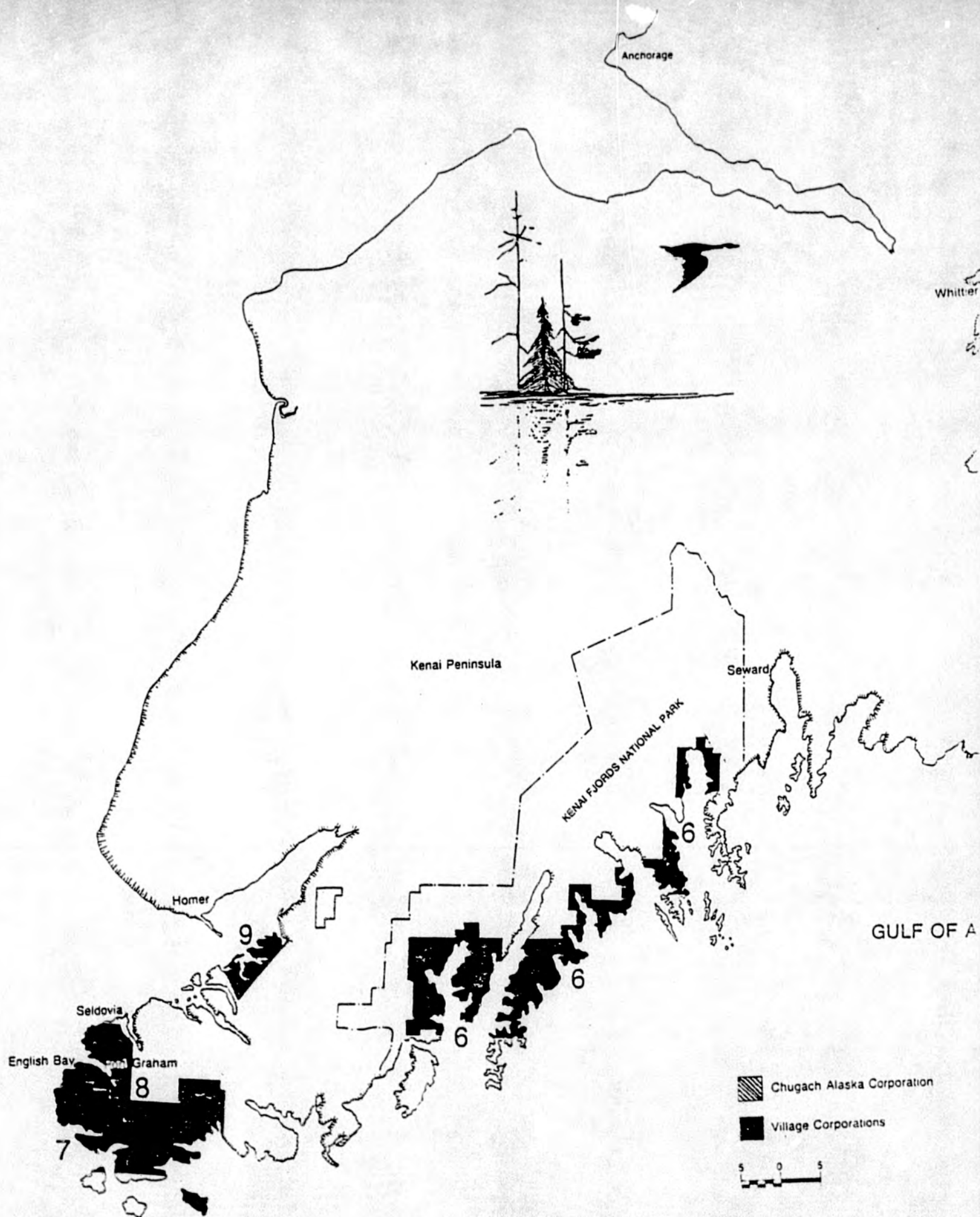
It should be recognized that, before the spill, timber development plans represented sincere and genuine commitment on the part of corporation managers to provide economic opportunity for their shareholders. Acquisitions for Restoration should be presented as a unique opportunity to redirect such development plans in light of the spill.



PROPOSED AREAS FOR ACQUISITION OF TIMBER ASSETS

1. EYAK/SHERSTONE
2. CITIFOR
3. TATITLEK
4. CHUGACH/KONCOR
5. CHENEGA/KONCOR
6. PORT GRAHAM/ENGLISH BAY SELECTIONS
7. ENGLISH BAY/KOLON CALIFORNIA
8. PORT GRAHAM/CHUGACH
9. SELDOVIA NATIVE ASSOCIATION/KONCOR

APPROXIMATE TOTAL AREA PROPOSED — 483,000 ACRES.



Proposed Appropriation Bill

*Sec. 1. (a) The sum of 40,000,000 is appropriated from the general fund to the restoration trust fund established for restoration of natural resources injuries sustained as a result of the Exxon Valdez oil spill.

(b) The sum of 40,000,000 is appropriated to the Department of Fish and Game for restoration of natural resource injuries sustained as a result of the Exxon Valdez oil spill. Expenditures under this appropriation shall be made in consultation with the Departments of Natural Resources and Environmental Conservation.

(c) The appropriation made in (a) of this section is effective upon the date the restoration trust fund is established.

(d) The unexpended and unobligated balance of the appropriation made in (b) of this section is reappropriated to the restoration trust fund on the date that the restoration trust fund is established.

(e) Expenditures made from the appropriations made in this section shall not exceed \$40,000,000.

- ☒ Mary ✓
- ☐ Sheila
- ☐ Laura
- ☐ Jo-Eve
- ☐ Sheri
- ☐ Brandie

 Staff Notes:

☒ Dick

Notes to Dick:
 Letter describes the specific concerns of conservation groups about the conditions of any deal to be struck between the State and Exxon

 Eliason's Instructions:

- ☐ File
- ☒ Back to Staffer Many for resources files

Instructions/Action to Be Taken:

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.

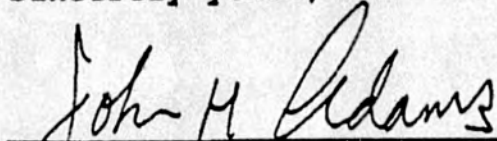
Sixth, in addition to the civil settlement, there should be a criminal guilty plea and a substantial criminal payment in restitution for the damage suffered. To have the appropriate deterrent effect, the amount should not only be significant, but the payment should be non-tax-deductible.

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.

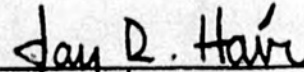
The Honorable Walter J. Hickel
February 8, 1991
Page 4

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

STATE OF ALASKA

ROUTE SLIP

TO: Mail Station 3100	Department Senate	Division
Attention Sen. Dick Eliason R111		
☐ Approval ☐ Signature ☐ Comment ☐ Contact Me ☐ Prepare Reply ☐ For Your File		
☐ Note & Return ☐ Initial & Return ☐ Return as Requested ☐ Return for Approval ☐ Necessary Action ☐ For Your Information		
Remarks: Here's some Federal mumbo-jumbo published today		
FROM: Mail Station 0300	Department Law	Division
By Charles Cole		Date 3/19

02-002 (REV 3-84)

Dick - The settlement
was published in the
federal register today
so now the 45 day
clock is ticking
(pls return to Mary
for file)

federal register

Tuesday
March 19, 1991

Dick Saw

Part III

Department of Commerce

National Oceanic and Atmospheric
Administration

Settlement Agreement Concerning Exxon
Valdez Oil Spill and Memorandum of
Agreement Between the United States
and the State of Alaska and Exxon
Corp., et al.; Notice of 30 Day Comment
Period

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Settlement Agreement Concerning the Exxon Valdez Oil Spill—Between the United States, the State of Alaska and the Exxon Corp., Exxon Shipping Co. and Exxon Pipeline Co.

ADDRESSES: National Oceanic and Atmospheric Administration, Department of Agriculture, Department of the Interior, Department of Justice, Department of Transportation, the Environmental Protection Agency and the Department of Law, State of Alaska.

ACTION: Notice of 30 day comment period.

SUMMARY: Notice is given that officials representing the State of Alaska and the United States reached agreement on March 12, 1991, with Exxon Corporation, Exxon Shipping Company and Exxon Pipeline Company (Exxon) on a settlement resolving all civil claims of the respective governments arising from the March 24, 1989 Exxon Valdez oil spill. Comment is sought concerning the proposed civil settlement, which is published together with this Notice. Comments must be received no later than April 18, 1991.

ADDRESSES: Written comments concerning the proposed Settlement Agreement are to be submitted to Thomas A. Campbell, General Counsel of NOAA, U.S. Department of Commerce, Room 5616, 14th Street and Constitution Avenue, NW., Washington, DC, 20230, who is receiving comments on behalf of the Administrator of NOAA, the Secretary of Agriculture, the Secretary of the Interior, the Secretary of Transportation, the Administrator of the Environmental Protection Agency and the United States Attorney General. A copy of the comments must also be sent to Barbara Herman, Attorney General's Office, State of Alaska, 1091 West 4th Avenue, suite 200, Anchorage, Alaska 99501, who is receiving the comments on behalf of the State of Alaska.

FOR FURTHER INFORMATION CONTACT: Daniel Addison, Office of General Counsel, NOAA, Department of Commerce, Washington, DC 20230, telephone (202) 377-1600.

SUPPLEMENTARY INFORMATION: The grounding on the night of March 23-24, 1989 of the tanker Exxon Valdez resulted in the discharge of approximately 11 million gallons of North Slope crude oil into Alaska's Prince William Sound. The Exxon Valdez Oil Spill affected the

environment and natural resources in the Sound and along the coasts of Kodiak Island, Lower Cook Inlet, the Kenai Peninsula and the Alaska Peninsula.

The State of Alaska has filed an action, *State of Alaska v. Exxon Corporation, et al.*, Civil No. 3AN-88-0881, and Exxon has asserted counterclaims against the State. The U.S. Government filed a civil claim against Exxon on March 12, 1991 and at the same time, together with the state, lodged an Agreement and Consent Decree resolving both the U.S. and Alaska civil claims. This agreement represents the largest natural resource damage settlement in U.S. history and is designed to provide for the restoration of the natural resources affected by the spill. The Agreement also addresses full recovery of past and necessary future costs incurred by the State of Alaska and the United States to complete the clean-up activities and to determine the breadth of injury, loss or destruction of natural resources. When completed, the restoration of areas affected by the spill will be the largest commitment of resources to restore the environment in U.S. history.

The Settlement Agreement provides that \$900 million will be paid to the United States and the State over an 11 year period. These funds will be used to design, implement and monitor restoration activities; to continue the necessary scientific studies deemed necessary to determine the full extent of natural resource injury, loss or destruction due to the spill; to conduct any further cleanup activities deemed necessary by the United States Coast Guard or by the State; and to recover past costs incurred during the natural resource damage assessment process. To address the possibility of currently unknown injuries to the environment, the Settlement Agreement also contains a reopening clause committing Exxon to pay up to an additional \$100 million for restoration projects for natural resources and habitats that are later discovered to be injured as a result of the spill.

A separate Memorandum of Agreement (MOA) between Alaska and the Federal Government was also executed at the same time. The MOA will govern the relationship between the governments in administering the fund created with this settlement. This MOA also provides that the public will be given meaningful opportunities to participate in the restoration process. This State/Federal MOA will be published in a separate Federal Register notice.

Comment is sought from the public concerning the proposed Settlement Agreement. The Agreement provides that the governments can withdraw from the Settlement Agreement within 15 days of the close of the comment period if the comments received disclose facts or considerations which show that the Agreement is inappropriate, improper or inadequate, or if, before the end of the 15th day following the close of the comment period, the Alaska State Legislature has not approved the Agreement as written.

Dated: March 14, 1991.

Onyiah R. Cook,

Special Counsel for Natural Resources,
Proposed Consent Decree and
Settlement Agreement

Richard B. Stewart, Assistant Attorney
General, Environment & Natural
Resources Division.

Stuart M. Gerson, Assistant Attorney
General, Civil Division, U.S.
Department of Justice, Washington,
DC 20530—Attorneys for Plaintiff,
United States of America.

Charles E. Cole, Attorney General, State
of Alaska, Pouch K, Juneau, Alaska
99801—Attorney for Plaintiff, State of
Alaska.

United States District Court, District of
Alaska

*United States of America, Plaintiff, v.
Exxon Corporation, Exxon Shipping
Company, and Exxon Pipeline Company, in
personam, and the T/V Exxon Valdez, in
rem, Defendants. Civil Action No.*

*The State of Alaska, Plaintiff, v. Exxon
Corporation, Exxon Shipping Company, and
Exxon Pipeline Company, in personam, and
the T/V Exxon Valdez, in rem, Defendants.
Civil Action No.*

Agreement and Consent Decree

This agreement and Consent Decree (the "Agreement") is made and entered into by the United States of America and the State of Alaska ("State") (collectively referred to as the "Governments"), Exxon Corporation and Exxon Shipping Company ("Exxon Shipping") (collectively referred to, together with the T/V Exxon Valdez, as "Exxon"), and Exxon Pipeline Company ("Exxon Pipeline").

Introduction

On the night of March 23-24, 1989, the T/V Exxon Valdez, owned by Exxon Shipping, went aground on Bligh Reef in Prince William Sound, Alaska. As a result of the grounding, several of the vessel's cargo tanks ruptured and approximately 11 million gallons of crude oil owned by Exxon Corporation

spilled into Prince William Sound (the "Oil Spill").

The State has filed an action in the Superior Court for the State of Alaska, Third Judicial District, arising from the Oil Spill, identified as *State of Alaska v. Exxon Corporation, et al.*, Civil No. JAN-88-0013 ("State Court Action"), and Exxon has asserted counterclaims against the State in that action.

On or before the lodging of this Agreement with the Court, the United States and the State will each have filed a complaint in this Court against Exxon and Exxon Pipeline, asserting civil claims relating to or arising from the Oil Spill ("Federal Court Complaints"). Exxon and Exxon Pipeline have asserted or will assert counterclaims against the United States and the State in their responses to the Federal Court Complaints. Exxon Corporation and Exxon Shipping Company have also filed administrative demands against the United States Coast Guard, with the U.S. Coast Guard, Coast Guard Maintenance & Logistics Command—Pacific at Alameda, California under date of September 21, 1990.

The United States and the State represent that it is their legal position that only officials of the United States designated by the President and state officials designated by the Governors of the respective states are entitled to act on behalf of the public as trustees of Natural Resources to recover damages for injury to Natural Resources arising from the Oil Spill under section 311(f) of the Clean Water Act, 33 U.S.C. 1231(f).

Exxon represents that, during the period from the Oil Spill through the end of 1990, it expended in excess of \$2 billion for clean-up activities and reimbursements to the Federal, State, and local governments for their expenses of response to the Oil Spill.

The Parties recognize that the payments called for in this Agreement are in addition to those described above, are compensatory and remedial in nature, and are made to the Governments in response to their pending or potential civil claims for damages or other civil relief against Exxon and Exxon Pipeline arising from the Oil Spill.

Now, Therefore, The Parties agree, and it is hereby Ordered, adjudged, and decreed As follows:

Jurisdiction

1. The Court has jurisdiction over the subject matter of the claims set forth in the Federal Court Complaints and over the parties to this Agreement pursuant to, among other authorities, 28 U.S.C. 1331, 1333 and 1345, and section 311(f) of the Clean Water Act, 33 U.S.C. 1231(f).

This Court also has personal jurisdiction over Exxon and Exxon Pipeline, which, solely for the purposes of this Agreement, waive all objections and defenses that they may have to the jurisdiction of the Court or to venue in this District.

Parties

2. "United States" means the United States of America, in all its capacities, including all departments, divisions, independent boards, administrations, natural resource trustees, and agencies of the federal government.

3. "State" means the State of Alaska, in all its capacities, including all departments, divisions, independent boards, administrations, natural resource trustees, and agencies of the state government.

4. "Exxon" means Exxon Corporation, a New Jersey corporation, Exxon Shipping Company, a Delaware corporation, and the T/V Exxon Valdez, Official Number 88888 (now the T/V Exxon Mediterranean).

5. "Exxon Pipeline" means Exxon Pipeline Company, a Delaware corporation.

Definitions

6. Whenever the following capitalized terms are used in this Agreement, they shall have the following meanings:

(a) *Alyeska* means Alyeska Pipeline Service Company, a Delaware corporation, its shareholders and owner companies, and its present and former shareholder representatives.

(b) *The TAPL Fund* means the Trans-Alaska Pipeline Liability Fund, a federally chartered corporation organized and existing under the laws of the State of Alaska.

(c) *Natural Resources* means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Magnuson Fishery Conservation and Management Act of 1976, 16 U.S.C. 1801 et seq.) and/or the State.

(d) *Natural Resource Damages* means compensatory and remedial relief recoverable by the Governments in their capacity as trustees of Natural Resources for injury to, destruction of, or loss of any and all Natural Resources resulting from the Oil Spill, whether under the Clean Water Act, 33 U.S.C. 1231, et seq., the Trans-Alaska Pipeline Authorization Act, 48 U.S.C. 1651, et seq., or any federal or state statute or maritime or common law relating to the

environment, including (1) costs of damage assessment; (2) compensation for loss, injury, impairment, damage or destruction of Natural Resources, whether temporary or permanent, or for loss of use value, non-use value, option value, amenity value, bequest value, existence value, consumer surplus, economic rent, or any similar value of Natural Resources; and (3) costs of restoration, rehabilitation or replacement of injured Natural Resources or the acquisition of equivalent resources.

(e) *Party or Parties* means Exxon, Exxon Pipeline, the United States, and the state, or any of them.

(f) *Trustees* means the Secretaries of the U.S. Departments of Agriculture and Interior, the Administrator of the National Oceanic and Atmospheric Administration, U.S. Department of Commerce, and the Alaska Attorney General.

(g) *The Oil Spill* means the occurrence described in the first paragraph of the Introduction above, and all consequences proximately caused by or arising from the Oil Spill, including, without limitation, response, cleanup, damage assessment and restoration activities.

(h) *Effective Date* shall mean the earliest date on which all Parties have signed this Agreement.

(i) *Final Approval* shall mean the earliest date on which all of the following have occurred: (1) the Agreement has been lodged with the Court and noticed in the Federal Register, and the period for submission of public comments has expired; (2) the period for withdrawal of consent by the Governments under Paragraph 27 has expired; (3) the Court has approved and entered the Agreement as a judgment, without modification and without interpreting a material term of the Agreement, prior to or at the time of approval, in a manner inconsistent with the Parties' intentions; and (4) the time for appeal from that judgment has expired without the filing of an appeal, or the judgment has been upheld on appeal and either the time for further appeal has expired without the filing of a further appeal or no further appeal is allowed.

Effect of Entry of Decree by Court

7. Upon approval and entry of this Agreement by the District Court, this Agreement and Consent Decree shall constitute a final judgment between the Governments and Exxon and Exxon Pipeline in accordance with its terms.

Payment Terms

8. Exxon shall pay to the Governments pursuant to this Agreement a total of \$600 million, discharged as follows:

- (a) Exxon shall pay, within 10 days after the Effective Date, \$80,000,000.
 (b) Exxon shall pay on September 1, 1982 the amount determined by the following formula:

amount payable = \$180,000,000 minus X, where "X" equals Exxon's expenditures for work done from January 1, 1981 to the Effective Date, in preparation for and conduct of clean-up of the Oil Spill in accordance with directions of the Federal On-Scene Coordinator, up to a maximum of \$4,000,000, plus expenditures made by Exxon for clean-up work after the Effective Date in accordance with Paragraph 11.

(c) Exxon shall pay each of the amounts specified in the following schedule by the dates set forth in that schedule:

September 1, 1980 \$100,000,000
 September 1, 1980 \$70,000,000
 September 1, 1980 \$70,000,000
 September 1, 1980 \$70,000,000
 September 1, 1980 \$70,000,000
 September 1, 1980 \$70,000,000
 September 1, 1980 \$70,000,000
 September 1, 1980 \$70,000,000
 September 1, 1980 \$70,000,000
 September 1, 1980 \$70,000,000

(d) The payments required by this paragraph shall be made as directed jointly in writing, not less than 8 business days before the due date, by the Assistant Attorney General, Environment & Natural Resources Division, United States Department of Justice, and the Attorney General, State of Alaska.

9. If Final Approval has not occurred by the date a payment required under Paragraph 8 is due, Exxon shall, on or before that date, deposit the amount of the payment into an interest-bearing trust account (the "Escrow") in a federally chartered bank ("Escrow Agent"). The Escrow agreement between Exxon and the Escrow Agent shall provide that the Escrow Agent shall submit to the jurisdiction and venue of the United States District Court for the District of Alaska in connection with any litigation arising out of that Escrow agreement. Exxon shall notify the Governments promptly in writing of any deposit of a payment due under this Agreement into the Escrow. Upon Final Approval and within five (5) business days of receipt of written instructions as to payment signed jointly by the Assistant Attorney General, Environment & Natural Resources Division, United States Department of Justice, and the Attorney General, State of Alaska, Exxon shall require that a sum be paid to the Governments equal

to all amounts required to be paid into the Escrow pursuant to this paragraph together with an amount calculated by applying to each deposit a rate equal to the average daily yield on three-month Treasury Bills in effect while the funds are on deposit. "The average daily yield on three-month Treasury Bills" means the arithmetic mean of the three-month Treasury Bill rates, as quoted in the H-15 (819) weekly releases published by the Board of Governors of the Federal Reserve System under the caption "U.S. Government Securities/Treasury Bills/Secondary Market," multiplied by the actual number of days of such deposit divided by 360. For the purposes of calculating such arithmetic mean, each Saturday, Sunday and holiday shall be deemed to have a rate equal to the rate for the immediately preceding business day. If the earnings accrued on the Escrow are insufficient to make the payment to Governments required by this paragraph and to pay the reasonable fees and expenses of the Escrow Agent, Exxon shall pay the difference so that such amounts will be paid in full. No amount shall be disbursed from the Escrow for any reason, except to make the payment required by this paragraph or to pay reasonable fees and expenses of the Escrow Agent and, after the foregoing payments, to close out the Escrow, unless one of the following events occurs: (1) The United States or the State withdraws its consent to entry of the Agreement pursuant to Paragraph 27; or (2) any Party terminates the Agreement pursuant to Paragraph 28. If one of these events occurs, all sums in the Escrow shall be returned to Exxon.

10. As agreed to between the Governments, without any consultation with or participation by Exxon or Exxon Pipeline, the amounts paid under Paragraphs 8 or 9 shall be applied by the Governments solely for the following purposes: (1) to reimburse the United States and the State for response and clean-up costs incurred by either of them on or before December 31, 1980 in connection with the Oil Spill; (2) to reimburse the United States and the State for natural resource damages assessment costs (including costs of injury studies, economic damages studies, and restoration planning) incurred by either of them prior to the Effective Date in connection with the Oil Spill; (3) to reimburse the State for attorneys' fees, experts' fees, and other costs (collectively, "Litigation Costs") incurred by it prior to the Effective Date in connection with litigation arising from the Oil Spill; (4) to reimburse the United States and the State for response and clean-up costs incurred by either of

them after December 31, 1980 in connection with the Oil Spill; and (5) after the Effective Date, to assess injury resulting from the Oil Spill and to plan, implement, and monitor the restoration, rehabilitation, or replacement of Natural Resources or natural resource services injured, lost, or destroyed as a result of the Oil Spill, or the acquisition of equivalent resources or services; provided, however, that the aggregate amount allocated for United States past response and clean-up costs and damage assessment costs (under items 1 and 2 above) shall not exceed \$65 million, and the aggregate amount allocated for State past response and clean-up costs, damage assessment costs, and Litigation Costs (under items 1-3 above) shall not exceed \$75 million. The Governments represent that the monies paid by Exxon to the Governments pursuant to this Agreement will be allocated, received, held, and used in accordance with the Memorandum of Agreement and Consent Decree between the United States and the State of Alaska ("MOA"), which the Governments have submitted or will submit to this Court to resolve claims of the Governments against one another with respect to their respective shares in recoveries for Natural Resource Damages resulting from the Oil Spill. This paragraph and the MOA do not create any rights in, or impose any obligations on, Exxon, Exxon Pipeline, Alyeska, or any other person or entity except the Governments.

Commitment by Exxon to Continue Clean-up

11. (a) Exxon shall continue clean-up work relating to the Oil Spill after the Effective Date, as directed by and in accordance with the directions of the Federal On-Scene Coordinator ("FOSC"), subject to prior approval by the FOSC of the costs of work directed by the FOSC. After the Effective Date, Exxon shall also perform any additional clean-up work directed by the State On-Scene Coordinator ("State OSC") that does not interfere or affirmatively conflict with work directed by the FOSC or with federal law, in accordance with the directions of, and subject to prior approval of costs by, the State OSC. If Exxon concludes that work directed by the State OSC would interfere or affirmatively conflict with work directed by the FOSC, or with federal law, it shall promptly notify the State OSC and the FOSC of the potential conflict and shall not be required to proceed with the work directed by the State OSC until the FOSC or the Court determines that there is no conflict or that any potential

conflict has been eliminated, and directs Exxon how to proceed. Exxon should have no liability to any person or entity, including the Governments, by reason of undertaking clean-up work performed in accordance with directions of the FOBC or the State OGC.

(b) Upon Final Approval, Exxon shall have no further obligations with respect to clean-up of the Oil Spill except as set forth in this Agreement and in addition Exxon shall be entitled to a credit, to be applied to the next payment due from Exxon to the Governments, as provided in subparagraph 8(b), for all Expenditures incurred by Exxon for clean-up work pursuant to directions of the FOBC or the State OGC in accordance with subparagraph 11(a). As used in this paragraph, and in subparagraph 8(b) and Paragraph 12, "Expenditures" shall include, without limitation, costs and obligations incurred for salary, wages, benefits, and expenses of Exxon employees, for contractors, for equipment purchase and rental, for office and warehouse space, and for insurance, accounting, and other professional services.

12. If this Agreement is terminated pursuant to Paragraphs 97 or 98 below, or if a final judicial determination is made that this Agreement will not be approved and entered, Exxon shall be entitled to set off against any liability it may have to either Government arising from the Oil Spill the amount of any Expenditures made by Exxon for clean-up work directed by the FOBC or the State OGC under Paragraph 11(a), if the work meets the following criteria:

(a) If total Expenditures incurred by Exxon for clean-up after the Effective Date are \$86 million or less, Expenditures for work shall be set-off if Exxon shows both—

(1) That based on the information available at the time to the FOBC or State OGC who directed the work, the anticipated cost of the work was grossly disproportionate to the net environmental benefits reasonably anticipated from the work, or the work could not reasonably have been expected to result in a net environmental benefit; and

(2) That a reasonable time before beginning to perform the work, Exxon submitted a written objection to the work to the FOBC or State OGC who directed the work, requesting reconsideration of the work directions on one of the grounds set forth in subparagraph 12(e)(1) above; or

(b) If total Expenditures by Exxon for clean-up after the Effective Date exceed \$86 million, Expenditures for work shall be set-off unless the Government or Governments against which Exxon is

seeking to assert the set-off provided by this paragraph show that, based on the information available at the time to the FOBC or State OGC who directed the work, the work was reasonably expected to result in a net environmental benefit, and the anticipated cost of the work was not substantially out of proportion to the net environmental benefit reasonably anticipated from the work.

Release and Covenants Not to Sue by the Governments

13. Effective upon Final Approval, the Governments release and covenant not to sue or to file any administrative claim against Exxon with respect to any and all civil claims, including claims for Natural Resource Damages, or other civil relief of a compensatory and remedial nature which have been or may be asserted by the Governments, including without limitation any and all civil claims under all federal or state statute and implementing regulations, common law or maritime law, that arise from, relate to, or are based on, or could in the future arise from, relate to, or be based on: (1) any of the civil claims alleged in the pending action against Exxon by the State in the State Court Action, (2) any of the civil claims asserted in the Federal Court Complaints, or (3) any other civil claims that could be asserted by either or both of the Governments against Exxon relating to or arising from the Oil Spill; provided, however, that nothing in this Agreement shall effect or impair the following:

(a) Claims by either Government to enforce this Agreement, including without limitation Exxon's agreement to make additional payments as set forth in Paragraphs 17-18;

(b) The rights and obligations, if any, of Alaska Native villages to act as trustees for the purposes of asserting and compromising claims for injury to, destruction of, or loss of natural resources, if any, belonging to, managed by, controlled by or appertaining to such villages;

(c) The rights and obligations, if any, of legal entities or persons other than the Governments who are holders of any present right, title, or interest in land or other property interest affected by the Oil Spill;

(d) Claims by the State for tax revenues which would have been or would be collected under existing AS 43.78 (Fisheries Business Tax) but for the Oil Spill, provided that, if the State obtains a judgment for such a claim against Exxon or Exxon Pipeline, the State will enforce against Exxon or Exxon Pipeline only that part of the

judgment that would be refunded to local governments under AS 43.78.130 had the amount recovered been paid as taxes under AS 43.73.

14. Effective upon Final Approval, except insofar as Exxon Pipeline is liable to the Governments, or either of them, for claims relating to or arising from the Oil Spill as a result of its ownership interest in, participation in, or responsibility for Alyeska, each of the Governments provides to Exxon Pipeline covenants not to sue identical to the covenants not to sue provided to Exxon in Paragraph 13. This paragraph shall not be construed as a release or covenant not to sue given by either Government to Alyeska.

15. Effective upon the Effective Date, each of the Governments covenants not to sue any present or former director, officer, or employee of Exxon or Exxon Pipeline with respect to any and all civil claims, including Natural Resource Damages, or other civil remedies of a compensatory or remedial nature which have been or may be asserted by the Governments, including without limitation any and all civil claims under all federal or state statute and implementing regulations, common law or maritime law, that arise from, relate to, or are based on, or could in the future arise from, relate to, or be based on the Oil Spill; provided, however, that if any such present or former director, officer, or employee brings any action against the Governments, or either of them, for any claim whatsoever arising from or relating to the Oil Spill (or if an action against the Governments is pending at the time of Final Approval, and the director, officer, or employee fails to dismiss the action within 15 days of Final Approval), this covenant not to sue shall be null and void with respect to the director, officer, or employee bringing such action. In the event either Government obtains a judgment against any present or former director, officer, or employee of Exxon or Exxon Pipeline for liability relating to or arising from the Oil Spill, the Governments shall enforce the judgment only to the extent that the individual or individuals against whom the judgment was obtained are able to satisfy the judgment, without indemnification by Exxon or Exxon Pipeline, personally or through insurance policies purchased by the individual or individuals.

16. Not later than 15 days after Final Approval, each of the claims asserted by the State against Exxon and Exxon Pipeline, except for the claim described in Paragraph 12(d) of this Agreement, and each of the claims asserted by Exxon or Exxon Pipeline against the

State, in the State Court Action will be dismissed with prejudice and without an award of costs or attorneys fees to any Party. Exxon, Exxon Pipeline, and the State shall enter into and execute all stipulations of Dismissal, with prejudice, necessary to implement this paragraph.

Response For Unknown Injury

17. Notwithstanding any other provision of this Agreement, between September 1, 2001, and September 1, 2004, Exxon shall pay to the Governments such additional sums as are required for the performance of restoration projects in Prince William Sound and other areas affected by the Oil Spill to restore one or more populations, habitats, or species which, as a result of the Oil Spill, have suffered a substantial loss or substantial decline in the areas affected by the Oil Spill; provided, however, that for a restoration project to qualify for payment under this paragraph the project must meet the following requirements:

(a) The cost of a restoration project must not be grossly disproportionate to the magnitude of the benefits anticipated from the remediation; and

(b) The injury to the affected population, habitat, or species could not reasonably have been known nor could it reasonably have been anticipated by any Trustee from any information in the possession of or reasonably available to any Trustee on the Effective Date.

18. The amount to be paid by Exxon for the restoration projects referred to in Paragraph 17 shall not exceed \$100,000,000.

19. The Governments shall file with Exxon, 90 days before demanding any payment pursuant to Paragraph 17, detailed plans for all such restoration projects, together with a statement of all amounts they claim should be paid under Paragraph 17 and all information upon which they relied in the preparation of the restoration plan and the accompanying cost statement.

Release and Covenants Not To Sue by Exxon and Exxon Pipeline

20. Effective upon Final Approval, Exxon and Exxon Pipeline release, and covenant not to sue or to file any administrative claim against, each of the Governments and their employees with respect to any and all claims, including without limitation claims for Natural Resource Damages and cleanup costs, under federal or state statutes and implementing regulations, common law, or maritime law, that arise from, relate to, or are based on or could in the future arise from, relate to, or be based on: (1) any of the civil claims asserted by either

of them against the State in the State Court Action, (2) any civil claims asserted by Exxon or Exxon Pipeline against either Government in their responses to the Federal Court Complaints, or (3) any other civil claims that have been or could be asserted by Exxon or Exxon Pipeline against either of the Governments relating to or arising from the Oil Spill, except that nothing in this Agreement shall affect or impair the rights of Exxon and Exxon Pipeline to enforce this Agreement. This paragraph shall not be construed as a release or covenant not to sue given by Alyeska (including its shareholders and owner companies other than Exxon Pipeline) to the Governments.

Trans-Alaska Pipeline Liability Fund

21. The release in Paragraph 20 shall not be construed to bar any claim by Exxon against the TAPL Fund relating to or arising from the Oil Spill. If the TAPL Fund asserts any claims against the Governments that are based upon subrogation rights arising from any monies paid to Exxon or Exxon Pipeline by the TAPL Fund, Exxon agrees to indemnify and hold the Governments harmless from any liability that they have to the TAPL Fund based on such claims. If the TAPL Fund asserts any claims against the Governments that are based upon subrogation rights arising from any monies paid to Alyeska by the TAPL Fund, Exxon agrees to indemnify the Governments for 30.34% of any such liability that either Government has to the TAPL Fund based on such claims.

Provisions Pertaining to Alyeska

22. Effective upon Final Approval, the Governments release and covenant not to sue Alyeska with respect to all claims for Natural Resource Damages and with respect to all other claims for damages for injury to Natural Resources, whether asserted or not, that either may have against Alyeska relating to or arising from the Oil Spill. If Alyeska asserts claims against the Governments, or either of them, that are based upon third party contribution or subrogation rights, or any other theory of recovery over against the Governments, or either of them, arising from any liability of or settlement payment by Alyeska to Exxon or Exxon Pipeline for any claims, including without limitation Natural Resource Damages and cleanup costs, relating to or arising from the Oil Spill, Exxon shall indemnify and hold the Governments harmless from any liability that the Governments have to Alyeska based on such claims.

23. In order to resolve as completely as practicable all civil claims of the Governments arising from the Oil Spill

against all Exxon Defendants, including Exxon Pipeline (which has a 30.34% participation in Alyeska), and in consideration of Exxon's obligations hereunder, the Governments agree that if either recovers any amount from Alyeska for any claim of any kind relating to or arising from the Oil Spill (such as asserted in the State Court Action against Alyeska), each Government so recovering shall instruct Alyeska to pay to Exxon, and shall take other reasonable steps to ensure that Exxon receives 30.34% of the amount due to that Government from Alyeska.

24. Exxon and Exxon Pipeline agree that, if Alyeska recovers any amount from the Governments for any claim of any kind relating to or arising from the Oil Spill, except for an amount indemnified by Exxon under Paragraph 21 or 22, Exxon and/or Exxon Pipeline shall promptly pay to the Government against which judgment is entered 30.34% of such amount.

25. If Alyeska successfully asserts claims, if any, against the Governments, or either of them, that are based upon Alyeska's own damages or losses, or upon third party contribution or subrogation rights, or other theories of recovery over, arising from Alyeska's liability to persons other than Exxon or Exxon Pipeline relating to the Oil Spill, Exxon shall indemnify the Governments for any sums paid by either of them to Alyeska based on such claims; provided that the Governments shall assert in good faith all defenses the Governments may have to such claims by Alyeska, and provided further that no indemnity shall be provided under this paragraph if the Governments refuse a good faith proposal for a monetary settlement of such claims agreed to by Exxon and Alyeska, under which Alyeska shall fully release the Governments in exchange for a payment by or other consideration from Exxon, on behalf of the Governments, to Alyeska.

Third Party Litigation

26. If any person or entity not a party to this Agreement ("Third Party") asserts a claim relating to or arising from the Oil Spill in any present or future litigation against Exxon or Exxon Pipeline and the Governments, or against Exxon or Exxon Pipeline and either the United States or the State, each of the sued Parties ("Sued Parties") shall be responsible for and will pay its share of liability, if any, as determined by the proportional allocation of liability contained in any final judgment in favor of such Third Party, and no Sued Party shall assert a right of contribution or indemnity against any other Sued Party.

However, notwithstanding any other provision of this Agreement, the Sued Parties may assert any claim or defense against each other necessary as a matter of law to obtain an allocation of liability among the Sued Parties in a case under this paragraph. Any such actions between the Sued Parties shall be solely for the purpose of allocating liability, if any. The Sued Parties shall not enforce any judgment against each other in such cases.

27. Neither Exxon nor Exxon Pipeline shall assert any right of contribution or indemnity against either Government in any action relating to or arising from the Oil Spill where that respective Government is not a party. Neither Government shall assert any right of contribution or indemnity against Exxon or Exxon Pipeline in any action relating to or arising from the Oil Spill where Exxon and Exxon Pipeline, respectively, are not parties, except that either Government may assert against Exxon the rights to indemnification as expressly provided in Paragraphs 21, 22, and 23.

28. Any liability which Exxon incurs as a result of a suit by a Third Party, as described in Paragraphs 26 or 27, shall not be attributable to or serve to reduce the payments required to be paid by Exxon pursuant to Paragraph 8 or any additional payment required under Paragraph 17.

29. The Parties agree that they will not tender each other to any Third Party as direct defendants in any action pursuant to Rule 14(c) of the Federal Rules of Civil Procedure.

30. If a Third Party, which has previously reached or thereafter reaches a settlement with Exxon, brings an action against the Governments, or either of them, the sued Government(s) shall undertake to apportion liability, if any, according to principles of comparative fault without the joinder of Exxon, and shall assert that joinder of Exxon is unnecessary to obtain the benefits of allocation of fault. Notwithstanding any other provision of this Agreement, if the court rejects the sued Government(s)' efforts to obtain a proportional allocation of fault without Exxon's joinder, the sued Government(s) may institute third-party actions against Exxon solely for the purpose of obtaining allocation of fault. The Governments in such third-party actions shall not enforce or judgment against Exxon.

Interest for Late Payments

31. If any payment required by Paragraphs 8 or 9 of this Agreement is not made by the date specified in those Paragraphs, Exxon shall be liable to the

Governments for interest on the overdue amount(s), from the time payment was due until full payment is made, at the rate established by the Department of the Treasury under 31 U.S.C. 3717(a) (1) & (2). Interest on an overdue payment shall be paid in the same manner as the payment on which it accrued.

Reservations of Rights

32. This Agreement does not constitute an admission of fact or law, or of any liability, by any Party to this Agreement. Except as expressly stated in this Agreement, each Party reserves against all persons or entities all rights, claims, or defenses available to it relating to or arising from the Oil Spill. Nothing in this Agreement, however, is intended to affect legally the claims, if any, of any person or entity not a Party to this Agreement.

33. Nothing in this Agreement creates, nor shall it be construed as creating, any claim in favor of any person not a Party to this Agreement.

34. Nothing in this Agreement shall prevent or impair the Governments from providing program assistance or funding to those not signatories to this Agreement under the programs of their agencies pursuant to legislative authorization or appropriation.

35. Nothing in this Agreement shall affect or impair any existing contract between Exxon or Exxon Pipeline and any entity of either Government, including without limitation the agreement between Exxon and the Environmental Protection Agency dated December 21, 1980, relating to joint conduct of bioremediation studies.

Notice and Submittals

36. Whenever, under the terms of this Consent Decree, written notice is required to be given by one Party to another, it shall be directed to the individuals and addresses specified below, unless those individuals or their successors give notice of changes to the other Parties in writing.

As to the United States:

Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. Attn: DOJ #80-5-1-1-3743.

Chief, Admiralty and Aviation Branch, Civil Division, U.S. Department of Justice, 801 D Street, NW., Washington, DC 20530.

General Counsel, National Oceanic and Atmospheric Administration, Department of Commerce, 14th & Constitution Avenue, NW., Washington, DC 20260.

As to the State of Alaska:

Attorney General, State of Alaska, Pouch K, Juneau, Alaska 99811. Supervising Attorney, Oil Spill Litigation Section, Department of Law, 1031 W. Fourth Street, Suite 800, Anchorage, Alaska 99501.

As to Exxon:

Office of the Secretary, Exxon Corporation, 225 E. John W. Carpenter Fwy., Irving, Texas 75063-2396. General Counsel, Exxon Corporation, 225 E. John W. Carpenter Fwy., Irving, Texas 75063-2396.

Mr. A. Himer, President, Exxon Shipping Company, P.O. Box 1512, Houston, Texas 77251-1512.

As to Exxon Pipeline:

Mr. D. G. Warner, President, Exxon Pipeline Company, P.O. Box 2230, Houston, Texas 77252-2230.

Process for Entry of Agreement

37. Notice of this Agreement shall be published in the Federal Register, and the Agreement shall be subject to public comment for a period of thirty (30) days after such publication. Each Government reserves the right to withdraw its consent to the Agreement, within fifteen (15) days following the close of the public comment period, if comments received disclose facts or considerations which show that the Agreement is inappropriate, improper or inadequate or if, before the end of that 15 day period, the Alaska State Legislature has not approved the Agreement as written. If the United States or the State withdraws its consent to the Agreement in accordance with this Paragraph, the Agreement shall be deemed terminated as of the date of the notice of withdrawal of consent.

38. Any Party may elect to terminate this Agreement if: (1) any court of competent jurisdiction disapproves or overturns any plea agreement entered into between the United States and Exxon in *United States v. Exxon Shipping Co.*, No. A80-015 CR (D. Alaska); (2) a final judicial determination is made by such court that this Agreement will not be approved and entered without modification; or (3) such court modifies this Agreement in a manner materially adverse to that Party, or interprets a material provision of this Agreement in a manner inconsistent with the Parties' intentions, prior to or contemporaneously with a final judicial determination approving the Agreement as modified. A Party electing to terminate this Agreement pursuant to this paragraph must do so within 10 days after an event specified in the

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preceding sentence, and shall immediately notify the other Parties of such election in writing by hand delivery, facsimile, or overnight mail. Termination of this Agreement by one Party shall effect termination as to all Parties. For purposes of this paragraph and Paragraph 37, "termination" and "terminates" shall mean the cessation, as of the date of notice of such termination, of any and all rights, obligations, releases, covenants, and indemnities under this Agreement, provided, that termination shall not affect or impair Exxon's rights to obtain return of any deposits made into the Escrow pursuant to the final sentence of Paragraph 8, and provided further, that the provisions of Paragraphs 11 and 12, relating to clean-up, shall continue in effect notwithstanding any termination.

Retention of Jurisdiction

38. The Court shall retain jurisdiction of this matter for the purpose of entering such further orders, direction, or relief as may be appropriate for the construction, implementation, or enforcement of this Agreement.

Miscellaneous

40. This Agreement can be modified only with the express written consent of the Parties to the Agreement and the approval of the Court.

41. Each undersigned representative of the Parties to this Agreement certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind such Party to this Agreement.

The foregoing Agreement and Consent Decree among plaintiffs the United States of America and the State of Alaska and defendants Exxon Corporation, Exxon Shipping Company, Exxon Pipeline Company, and the T/V EXXON VALDEZ, is hereby approved and entered this ____ day of _____, 1991.

Honorable H. Russell Holland,
United States District Judge, District of Alaska.
[FR Doc. 91-2814 Filed 3-15-91; 1:17 pm]
BILLING CODE 9730-10-01

DEPARTMENT OF COMMERCE

Memorandum of Agreement Between the United States and the State of Alaska Concerning the Exxon Valdez Oil Spill

Assistant National Oceanic and Atmospheric Administration,
Department of Agriculture, Department of the Interior, the Environmental

Protection Agency and the Department of Law, State of Alaska.

ACTION: Notice of 30 day comment period.

SUMMARY: Notice is given that officials representing the State of Alaska, the United States and Exxon Corporation have reached agreement on a settlement resolving all civil and criminal claims of the respective governments arising from the March 24, 1989 Exxon Valdez oil spill. In addition the United States and the State of Alaska have entered into a Memorandum of Agreement (MOA) implementing certain terms of the settlement agreement. Comment is sought concerning the MOA, which is published together with this Notice. Comments must be received no later than (April 18, 1991.)

ADDRESS: Written comments concerning the proposed Settlement Agreement are to be submitted to Thomas A. Campbell, General Counsel of NOAA, U.S. Department of Commerce, room 5618, 14th Street and Constitution Avenue, NW, Washington, DC 20503, who is receiving comments on behalf of the Administrator of NOAA, the Secretary of Agriculture, the Secretary of the Interior, the Secretary of Transportation, the Administrator of the Environmental Protection Agency and the United States Attorney General. A copy of the comments must also be sent to Barbara Hansen, Attorney General's Office, State of Alaska, 1001 West 4th Avenue, suite 200, Anchorage, Alaska 99501, who is receiving the comments on behalf of the State of Alaska.

FOR FURTHER INFORMATION CONTACT: Daniel Addison, Office of General Counsel, NOAA, Department of Commerce, Washington, DC 20503, telephone (202) 277-1400.

SUPPLEMENTARY INFORMATION: The March 24-25, 1989, grounding of the tanker Exxon Valdez resulted in the discharge of approximately 11 million gallons of North Slope crude oil into Alaska's Prince William Sound. The Exxon Valdez Oil Spill affected the environment and natural resources in the Sound and along the coasts of Kodiak, Kani Peninsula and the Alaska Peninsula.

As indicated in a separate FR notice, representatives of the State of Alaska, United States and Exxon Corporation have entered into a settlement agreement resolving all civil claims between the parties. The settlement provided for Exxon to provide funds to be used to conduct response actions, scientific studies and implement restoration activities for the restoration

of the environment. This proposed MOA resolves claims of the State of Alaska and the United States concerning natural resource recoveries regarding the oil spill and outlines how certain terms of the Settlement Agreement will be implemented by the State of Alaska and the United States. This MOA also provides that the public will be given meaningful opportunities to participate in the restoration process. Public comment is invited regarding the nature and extent of appropriate public involvement in the restoration process.

In summary, the MOA establishes that all monies received through the proposed Settlement Agreement and Consent Decree will be managed jointly by Federal and State natural resource trustees except for certain allowed expenses identified in the MOA. The Federal and State natural resource trustees shall act as co-trustees of the affected environment. As such, all decisions concerning the use of damage recoveries will be made by unanimous agreement of the State and Federal natural resource trustees.

The MOA is not intended to affect or impair the rights and obligations of persons or entities not parties to the MOA.

Dated March 14, 1991.

Guyana E. Cook

Proposed MOA Between State of Alaska and the United States

Richard E. Stewart, Assistant Attorney General, Environment & Natural Resources, Division.

Stuart M. Gerson, Assistant Attorney General, Civil Division, U.S. Department of Justice, Washington, DC 20503.

Attorneys for Plaintiff United States of America

Charles E. Cole, Attorney General, State of Alaska, P.O. Box 11, Juneau, Alaska 99801.

Attorney for Plaintiff State of Alaska

United States District Court District of Alaska

United States of America, Plaintiff v. State of Alaska, Defendant.

Civil Action No.

The State of Alaska, Plaintiff v. United States of America, Defendant.

Civil Action No.

Memorandum of Agreement and Consent Decree

This Memorandum of Agreement and Consent Decree (the MOA) is made and entered into by the United States of America (United States) and the State of

Alaska (State) (collectively referred to as the Governments).

Introduction

Whereas, Section 311 of the Clean Water Act, 33 U.S.C. 1321, establishes liability to the United States and to States for injury, loss or destruction to natural resources resulting from the discharge of oil or the release of hazardous substances or both;

Whereas, The United States and the State are trustees and/or co-trustees for natural resources injured, lost or destroyed as a result of the Exxon Valdez Oil Spill;

Whereas, Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9607, the National Contingency Plan, 40 CFR 300.81(h), and the Natural Resource Damage Assessment Regulations, 43 CFR 11.32(a)(1)(ii), provide a framework for and encourage the state and federal trustees to cooperate with each other in carrying out their responsibilities for natural resources;

Whereas, The Secretaries of the United States Departments of the Interior and Agriculture and the Administrator of the National Oceanic and Atmospheric Administration (NOAA), a bureau of the United States Department of Commerce, have been designated trustees for purposes of the Clean Water Act, 33 U.S.C. 1321, and CERCLA, 42 U.S.C. 9607, and otherwise have statutory responsibilities related to the natural resources injured, lost or destroyed as a result of the Oil Spill, and the United States Environmental Protection Agency (EPA) has been designated by the President of the United States to coordinate restoration activities on behalf of the United States;

Whereas, The Commissioners of the State Departments of Fish and Game and Environmental Conservation and the Attorney General of the State of Alaska have been designated trustees for purposes of the Clean Water Act, 33 U.S.C. 1321, and CERCLA, 42 U.S.C. 9607, and otherwise have statutory responsibilities relating to the natural resources injured, lost or destroyed as a result of the Oil Spill;

Whereas, The United States Coast Guard, an agency of the United States Department of Transportation, is the pre-designated Federal On-Scene Coordinator (FOSC) to direct response efforts and to coordinate all other efforts at the scene of the Oil Spill, pursuant to the Clean Water Act, 33 U.S.C. 1321, and the National Contingency Plan, 40 CFR 300, and is coordinating its efforts with the Federal Trustees in accordance with the National Contingency Plan;

Whereas, The State Department of Environmental Conservation is the State On-Scene Coordinator (SOSC) to direct containment and cleanup of discharged oil pursuant to AS 46.04.020;

Whereas, The United States Department of Justice (Justice) and the Department of Law for the State of Alaska (Law) have constitutional and statutory responsibilities for litigation management and specifically for prosecuting claims for damages for injury, loss or destruction to the natural resources affected by the Oil Spill;

Whereas, All of the above state and federal entities have determined that it is in furtherance of their statutory and trust responsibilities to assure that all injuries, loss or destruction to state and federal natural resources are fully compensated and to assure that such compensation is used in accordance with law;

Whereas, The United States and the State have entered into an Agreement and Consent Decree ("Agreement and Consent Decree") with Exxon Corporation, Exxon Shipping Company, and Exxon Pipeline Company (collectively referred to as Exxon) which provides for the recovery of compensation for damages resulting from the Oil Spill, including natural resource damages;

Whereas, The United States and the State have claims against one another with respect to their respective shares in recoveries from Exxon for compensation for damages resulting from the Oil Spill, including natural resource damages, and have determined that entering into this MOA is the most effective means of resolving those claims and will best allow them to fulfill their duties as Trustees;

Whereas, On or before the lodging of this MOA with the Court, the United States and the State will each have filed a complaint in this Court against the other Government asserting civil claims relating to their respective shares in recoveries from Exxon for compensation for damages arising from the Oil Spill (Governments' Complaints);

Whereas, All of these state and federal entities have determined that the procedures set forth in this Memorandum of Agreement (MOA) will best enable them to fulfill their duties as trustees to assess injuries and to restore, replace, rehabilitate, enhance or otherwise acquire the equivalent of the natural resources injured, lost or destroyed as a result of the Oil Spill;

Now Therefore, In consideration of their mutual promises, the United States, acting through the United States Departments of the Interior, Agriculture, Transportation, and Justice, NOAA, and

EPA, and the State of Alaska, acting through the State Departments of Fish and Game, Environmental Conservation, and Law (together "the Governments") have agreed to the following terms and conditions, which shall be binding on both Governments. It is hereby *Ordered, Adjudged, and Decreed* as follows:

I.—Jurisdiction

The Court has jurisdiction over the subject matter of the claims set forth in the Governments' Complaints and over the parties of this MOA pursuant to, among other authorities, 33 U.S.C. 1321, 1323 and 1324, and section 311(f) of the Clean Water Act, 33 U.S.C. 1321(f).

II.—Definitions

For purposes of this MOA,

A. *Allowed Expenses* means reasonable, unreimbursed costs obligated on or before the effective date of the Agreement and Consent Decree for the planning, conduct, evaluation and coordination of natural resource damage assessment and restoration pursued by the Governments with respect to the Oil Spill or by the State for experts and counsel in connection with the preparation of the Oil Spill Litigation and the unreimbursed response and cleanup costs incurred by the Governments on or before December 31, 1990.

B. *CERCLA* means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601 et seq. as amended.

C. *Clean Water Act* means Federal Water Pollution Control Act, 33 U.S.C. 1321-1378, as amended.

D. *Joint use* means use of natural resource damage recoveries by the Governments in such a manner as is agreed upon by the Governments in accordance with Article V of this MOA.

E. *National Contingency Plan* means the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR part 300.

F. *Natural resources* means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Magnuson Fishery Conservation and Management Act of 1976) and/or the State.

G. *Natural resource damage recovery* means those monies paid to the Governments by Exxon which are received in settlement of natural resource damage claims arising from the Oil Spill and consists of the settlement

monies not reimbursed to the Governments either as (1) allowed expenses or (2) in the case of response and cleanup costs, those unreimbursed costs incurred by either Government after December 31, 1990 and certified by the FOSC with respect to the FOSC directed costs and by the SOSC with respect to SOSC directed costs. The term includes all interest accrued on any such recoveries.

H. *Oil Spill* means the grounding of the T/V Exxon Valdez on Bligh Reef in Prince William Sound, Alaska on the night of March 23-24, 1989 and the resulting oil spill.

I. *Oil Spill Litigation* means any past, present or future civil judicial or administrative proceeding by the Governments against Exxon or by Exxon against the Governments relating to or arising out of the Oil Spill.

J. *Restore or Restoration* means any action, in addition to response and cleanup activities required or authorized by state or federal law, which endeavors to restore to their pre-spill condition any natural resources injured, lost, or destroyed as a result of the Oil Spill and the services provided by that resource or which replaces or substitutes for the injured, lost or destroyed resource and affected services. Restoration includes, injury assessment, restoration, replacement and enhancement of resources and acquisition of equivalent resources and services.

K. *Settlement monies* means all monies received from Exxon under the Agreement and Consent Decree between the Governments and Exxon in settlement of the Oil Spill Litigation, exclusive of amounts credited to Exxon for cleanup costs incurred after December 31, 1990.

L. *Trustees* means the officials now or hereafter designated by the President of the United States and the Governor of the State of Alaska to act as trustees, for purposes of CERCLA and the Clean Water Act, of natural resources injured, lost or destroyed as a result of the Oil Spill.

III.—Co-Trusteeship

A. The Governments shall act as co-trustees in the collection and joint use of all natural resource damage recoveries from Exxon for the benefit of natural resources injured, lost or destroyed as a result of the Oil Spill.

B. Nothing in this MOA shall be deemed an admission of law or fact by either Government concerning ownership, right, title, or interest in or management or control authority over natural resources or the right to recover for injury to such resources. Except in

matters concerning or relating to enforcement of this MOA and the settlement of the Oil Spill Litigation, the Governments agree that this MOA may not be used by one Government against the other for any reason.

C. Nothing in this MOA shall be construed to affect or impair in any manner the rights and obligations, if any, of any entities or persons not parties to this MOA, including without limitation:

1. The rights and obligations, if any, of Alaska Native villages to act as trustees for the purposes of asserting and compromising claims for injury to, destruction of, or loss of natural resources affected by the Oil Spill and expending any proceeds derived therefrom;

2. The rights and obligations, if any, of legal entities or persons other than the United States and the State who are holders of any present right, title, or interest in land or other property interest affected by the Oil Spill;

3. The rights and obligations, if any, of the United States or the State or both relating to such Alaska Native villages and the entities or persons referred to in subparagraph 2 above.

IV.—Organization

A. General Provisions

1. All decisions relating to injury assessment, restoration activities, or other use of the natural resource damage recoveries obtained by the Governments, including all decisions regarding the planning, evaluation, and allocation of available funds, the planning, evaluation, and conduct of injury assessments, the planning, evaluation and conduct of restoration activities, and the coordination thereof, shall be made by the unanimous agreement of the Trustees. Such decisions, on the part of the Federal Trustees, shall be made in consultation with EPA.

2. The Governments shall cooperate in good faith to establish a joint trust fund for purposes of receiving, depositing, holding, disbursing and managing all natural resource damage recoveries obtained or received by the Governments in connection with settlement of the Oil Spill Litigation in accordance with paragraph V.A. The joint trust fund shall be established in the Registry of the United States District Court for the District of Alaska or as otherwise determined by stipulation of the Governments and order of the court.

3. If the Trustees cannot reach unanimous agreement on a decision pursuant to paragraph A.1. of this Article, and either Government so

certifies, either Government may resort to litigation in the United States District Court for the District of Alaska with respect to any such matter or dispute. At any time, the Governments may, by mutual agreement, submit any such matter or dispute to non-binding mediation or other means of conflict resolution.

4. The Trustees shall establish procedures providing for meaningful public participation in the injury assessment and restoration process, which may include establishment of a public advisory group to advise the Trustees with respect to the matters described in paragraph IV.A.1.

5. The Trustees shall agree to an organizational structure for decisionmaking under this MOA within 90 days from the date the Agreement and Consent Decree has been approved and entered as a judgment of the Court.

B. Injury Assessment and Restoration Process

1. Nothing in this MOA limits or affects the right of each Government unilaterally to perform any natural resource injury assessment or restoration activity, in addition to the cooperative injury assessment and restoration process contemplated in this MOA, from funds other than natural resource damage recoveries as defined in paragraph G of Article II.

2. Nothing in this MOA constitutes an election on the part of either Government to adhere to or be bound by the Natural Resource Damage Assessment Regulations codified at 48 CFR Part 11.

3. Nothing in this MOA shall prevent the President of the United States or the Governor of the State of Alaska from designating, pursuant to applicable law, an official or officials to exercise any or all rights or obligations of their respective Governments under this MOA. Neither Government shall object to any designation of such officials, or to any transfer of Trustee status from one official to another, by the other Government provided that, in no event shall either Government designate more than three Trustees for the purposes of carrying out the provisions of this MOA. The designation of such officials or of successor Trustees by either Government shall not affect the enforceability of this MOA.

C. Role of the Environmental Protection Agency

The Governments acknowledge that the President has assigned to EPA the role of advising the Federal Trustees and coordinating, on behalf of the

Federal Government, the long-term restoration of natural resources injured, lost or destroyed as a result of the Oil Spill.

V.—Distribution of Settlement Monies

A. Joint Use of Natural Resource Damage Recoveries

The Governments shall jointly use all natural resource damage recoveries for purposes of restoring, replacing, enhancing, rehabilitating or otherwise acquiring the equivalent of natural resources injured as a result of the Oil Spill and the reduced or lost services provided by such resources. The Governments shall establish standards and procedures governing the joint use and administration of all such natural resource damage recoveries. All natural resource damage recoveries shall be placed in the joint trust fund for use in accordance with the terms and conditions of this MOA.

B. Reimbursement of Allowed Expenses and Response Costs

Up to 72 million dollars for the State and up to 63 million dollars for the United States shall be available from the settlement monies, at the election of each Government, for reimbursement of allowed expenses. In addition, all of the Governments' unreimbursed response and cleanup costs incurred after December 31, 1990 and certified by either the FOSC or SOBC shall be reimbursed out of the settlement monies. Reimbursements of allowed expenses described in this paragraph shall be paid directly to the Governments by Exxon over a period of 8 years.

C. Except as otherwise provided in this MOA, the Governments agree that all natural resource damage recoveries will be expended on restoration of natural resources in Alaska unless the Trustees determine, in accordance with Article IV, paragraph A.1. hereof, that spending funds outside of the State of Alaska is necessary for the effective restoration, replacement or acquisition of equivalent natural resources injured in Alaska and services provided by such resources.

D. Nothing in this MOA shall be construed as obligating the Governments to expend any monies except to the extent funds are appropriated or are otherwise lawfully available.

VI.—Scientific Studies

The Governments shall continue to work cooperatively to conduct all appropriate scientific studies relating to the Oil Spill, including specifically the

scientific studies approved by the Trustees for the 1991 field season.

VII.—Covenants Not To Sue

A. Each Government covenants not to sue or to take other legal action against the other Government with respect to the following matters:

1. The authority of either Government to enter into and comply with the terms of this MOA.

2. The respective rights of either Government to engage in cleanup, damage assessment or restoration activities with respect to the Oil Spill in accordance with this MOA.

3. Any and all civil claims (including, but not limited to, cross-claims, counter-claims, and third party-claims) it may have against the other Government arising from any activities, actions, or omissions by that other Government relating to or in response to the Oil Spill which occurred prior to the execution of this MOA, other than claims to enforce this MOA.

B. Solely for purposes of the Oil Spill Litigation and any other proceedings relating to the determination, recovery, or use of natural resource damages resulting from the Oil Spill, each Government shall be entitled to assert in any such proceeding, without contradiction by the other Government, that it is a co-Trustee with the other Government over any or all of the natural resources injured, lost or destroyed as a result of the Oil Spill, and each Government covenants not to sue the other with respect to, or to take any other legal action to determine, the scope or proportionate share of either Government's ownership, rights, title or interest in or management, control, or trusteeship authority over any of the natural resources injured, lost or destroyed as a result of the Oil Spill.

C. Notwithstanding anything in this Article, each Government reserves the right to intervene or otherwise to participate in any legal proceeding concerning the claims of a third party with respect to the scope of either Government's Trusteeship and waives any objection to such intervention or participation by the other Government.

D. If the Governments become adverse to each other in the course of the Oil Spill Litigation, this MOA shall remain in effect.

E. Notwithstanding the covenants contained in paragraph VII.A. and notwithstanding any provisions of the Agreement and Consent Decree between the Governments and Exxon, if both Governments are sued by a Third Party on a claim relating to or arising out of the Oil Spill, the Governments agree to cooperate fully in the defense of

such action, and to not assert cross-claims against each other or take positions adverse to each other. Each shall pay its percentage of liability, if any, as determined in a final judgment.

F. Notwithstanding the covenants contained in paragraph VII.A. and notwithstanding any provisions of the Agreement and Consent Decree between the Governments and Exxon, if one of the Governments is sued by a Third Party on a claim relating to or arising out of the Oil Spill, the Governments agree the non-sued Government shall cooperate fully in the defense of the sued Government, including intervening as a party defendant or consenting to its being impleaded, if necessary. If the non-sued Government thereby becomes a party to the action, the Governments agree not to assert cross-claims against each other, to cooperate fully in the defense of such action, and not to take positions adverse to each other. Each shall pay its percentage of liability, if any, as determined in a final judgment.

VIII.—Enforcement of Agreement and Governing Law and Venue

A. This MOA shall be enforceable by the United States District Court for the District of Alaska, which Court shall retain jurisdiction of this matter for the purpose of entering such further orders, directions, or relief as may be appropriate for the construction, implementation, or enforcement of this MOA.

B. If this MOA is subsequently and finally determined to be invalid, this MOA shall terminate and the disposition to the Governments of any remaining natural resource damage recoveries shall be determined by further agreement of the Governments or by an allocation of such recoveries by the United States District Court for the District of Alaska, subject to appellate review in accordance with applicable law.

IX.—Multiple Copies and Effective Date

This MOA may be executed in several counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. Except for the provisions contained in Article VI which shall be effective as of the date this MOA is signed by all the signatories hereto, this MOA shall be effective as of the date the Agreement and Consent Decree has been approved and entered as a judgment of the Court.

X.—Integration and Mergers

A. This MOA and the Agreement and Consent Decree between the

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Governments and Exxon constitute the entire agreement between the United States and the State as to the matters addressed herein, and there exists no other agreement of any kind which is inconsistent with this MOA with respect to the subjects addressed in this MOA; provided, that the agreement reached among the Trustees as to disbursements of the original \$15 million paid by Exxon in April, 1989 shall remain in full force and effect.

XI.—Termination

The obligations of the parties under this MOA shall terminate sixteen years from the effective date of this MOA, or upon termination of the Agreement and Consent Decree, unless otherwise agreed by the Parties.

XII.—Judicial Review

This MOA creates no rights of action on the part of any persons not signatory to this MOA and shall not, except as provided in Article VII, be subject to judicial review.

This MOA is executed at the time and on the dates set forth below.

XIII.—Miscellaneous

A. This MOA can be modified only

with the express written consent of the Parties to the MOA and the approval of the Court.

B. Each undersigned representative of the Parties to this MOA certifies that he or she is fully authorized to enter into the terms and conditions of this MOA and to execute and legally bind each Party to this MOA.

The foregoing Memorandum of Agreement and Consent Decree among the United States of America and the State of Alaska is hereby Approved and Entered this ____ day of _____, 1991.

Honorable H. Russell Holland,
United States District Judge, District of Alaska.

(Memorandum of Agreement and Consent Decree in *United States v. State of Alaska*. (D. Alaska))

For the United States of America

Date: _____

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530.

Stuart M. Gerson,

Assistant Attorney General, Civil Division,

U.S. Department of Justice, Washington, DC 20530.

Thomas L. Sansonetti,

Solicitor, U.S. Department of the Interior.

Alan Charles Raul,

General Counsel, U.S. Department of Agriculture.

Samuel K. Skinner,

Secretary, U.S. Department of Transportation.

John A. Knauss,

Under Secretary for Oceans and Administration, National Oceanic and Atmospheric Administration, United States Department of Commerce.

William K. Reilly,

Administrator, U.S. Environmental Protection Agency.

Date: _____

For the State of Alaska

Walter J. Hickel,

Governor, State of Alaska,

Charles E. Cole,

Attorney General, State of Alaska, Pouch K, Juneau, Alaska 99811.

Carl Reiser,

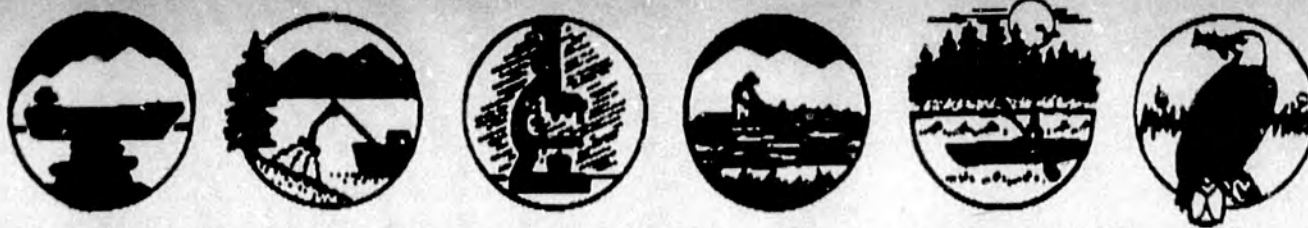
Commissioner, Department of Fish and Game.

John A. Sander,

Commissioner, Department of Environmental Conservation.

[FR Doc. 91-0815 Filed 3-15-91; 1:17 pm]

50106 0000 2010-12-11



OIL SPILL RESTORATION PLANNING OFFICE

437 E Street, Suite 301 Anchorage, Alaska 99501
(907) 271-2461 FAX: (907) 271-2467

March 7, 1991

Dear Concerned Citizen:

Based on your past interest in the planning of restoration following the Exxon Valdez Oil Spill, we are enclosing, for your information, a copy of this recent notice announcing a draft 1991 Restoration Work Plan. The Restoration Planning Work Group is interested in your continued input in this process and look forward to receiving your comments. On behalf of the Work Group, we appreciate your interest.

Sincerely,

Stanley E. Senner
Alaska Department of Fish & Game

Linda R. Comercl
U.S. Environmental Protection Agency

*Federal
Register*

United States Federal Register

Friday
March 1, 1991

Part VII

Environmental Protection Agency

Prince William Sound and Gulf of Alaska;
Draft 1991 Restoration Work Plan; Notice

ENVIRONMENTAL PROTECTION AGENCY

[WH-FRL-3910-0]

Prince William Sound and Gulf of Alaska Restoration

AGENCY: Environmental Protection Agency and the Alaska Department of Law.

ACTION: Notice.

SUMMARY

The U.S. Department of the Interior (DOI), the National Oceanic & Atmospheric Administration (NOAA), and the Alaska Department of Law (ADL) are jointly announcing that they have received a draft 1991 Restoration Work Plan from the Exxon Valdez oil spill Trust. The Trust is a consortium of the U.S. Government, the State of Alaska, and the private sector. The Trust is responsible for the restoration of the Prince William Sound, lower Cook Inlet, and the Gulf of Alaska from the Exxon Valdez oil spill. The Trust is currently conducting an assessment of the damage to the natural resources in the affected areas and is preparing a final Restoration Plan. The Trust is inviting the public to comment on the draft 1991 Restoration Work Plan. The public is invited to comment and to suggest other activities that should be considered by the Trustees in preparing this draft 1991 Restoration Work Plan. Notice of intent to take this action was published in the Federal Register in November (55 FR 48160, November 19, 1990).

DATES: The Federal and State of Alaska governments will accept comments through April 15, 1991.

ADDRESSES: Written comments should be submitted to: Secretary, Restoration Planning Work Group, Oil Spill Restoration Planning Office, 437 "E" Street, Suite 301, Anchorage, Alaska 99501, Phone (907) 271-2461.

FOR FURTHER INFORMATION CONTACT: Susan MacMullin at (202) 245-4373.

SUPPLEMENTARY INFORMATION:

I. Introduction

Purpose

The U.S. Departments of Agriculture (DOA) and the Interior (DOI), the National Oceanic & Atmospheric Administration (NOAA), and the Alaska Attorney General, the Alaska Departments of Fish and Game and Environmental Conservation, (hereafter referred to as "the Trustees") and the Environmental Protection Agency (EPA) desire to implement restoration

activities in the areas affected by the Exxon Valdez oil spill as soon as practicable. This Notice contains a draft 1991 Restoration Work Plan comprised of restoration planning and initial implementation activities under consideration by the Trustee Council, an Alaska-based intergovernmental group charged by the Trustees with managing the natural resources damage assessment and restoration program for 1991. Restoration activities in 1991 and subsequent years will be undertaken as appropriate, based on the Trustees' increasing understanding of resource injuries and other relevant considerations. Implementation activities in 1991 will not foreclose future restoration options and are not intended to be a complete or comprehensive restoration program. Implementation of all restoration activities will follow appropriate procedures for compliance with applicable State and Federal laws and regulations. The President of the United States has designated EPA to coordinate, on behalf of the Federal Trustees, the long-term restoration of Prince William Sound and other areas affected by the Exxon Valdez oil spill. Accordingly, the EPA Administrator is issuing this document as an action under the Clean Water Act and the Alaska Attorney General is working in concert with the EPA under State authority.

Although preparation of the draft 1991 Restoration Work Plan is not required under the Clean Water Act or the laws of Alaska, the Trustees and EPA have chosen to present this document to obtain public comment and to invite suggestions about other restoration activities that should be considered by the State and Federal governments. The public is also invited to comment on the overall process the governments intend to follow in enhancing environmental recovery in Prince William Sound, lower Cook Inlet, and the Gulf of Alaska and achieving restoration of affected resources and services after the Exxon Valdez oil spill.

The Trustees expect to complete the assessment of damages, determine liability, and collect funds from the responsible parties before they prepare a final Restoration Plan. Although the Trustees wish to resolve damage assessment and liability issues as promptly as possible, it is not possible to predict when this will occur. Considering this uncertainty, in cases where the nature of the resource injury, loss or destruction (hereinafter referred to as "injury") is reasonably clear, and where no alternatives would be foreclosed, it may be desirable to begin implementation of certain restoration

activities prior to a final Restoration Plan. As a result, the Trustees are considering implementation in 1991 of activities described in section III of this notice. Other activities related to restoration, such as feasibility studies, technical support projects, and monitoring (see sections 2 and 3), will be considered in the following months and will be presented to the public for review and comment. The Trustees also expect to publish a revised 1991 Restoration Work Plan in the Federal Register in Spring 1991. The Trustees also expect subsequently to publish notice of and to solicit public comment on detailed descriptions for each of the restoration projects selected for implementation in 1991.

Organization of this Notice

This notice has three main sections: I. Introduction, II. Restoration Planning, and III. Draft 1991 Restoration Work Plan. The Introduction presents a synopsis of the purpose of this notice and background information. Section II, Restoration Planning, describes the overall approach to restoration and reports on the planning activities conducted in 1990. In Section III, this notice provides information on restoration planning and initial implementation actions under consideration for 1991.

Further Information

Further information about the Exxon Valdez oil spill, the damage assessment studies, and restoration planning activities is contained in the documents referenced at the end of this notice and in the Federal Register published on November 19, 1990 (55 FR 48160). These documents and other information on restoration and damage assessment are available from the Oil Spill Public Information Center, 645 G Street, Anchorage, Alaska 99501.

II. Restoration Planning

A. The Planning Process

The Trustees' and EPA's restoration planning activities are designed to determine appropriate ways to restore natural resources and services injured by the Exxon Valdez oil spill. Restoration builds upon the spill response and damage assessment process by planning for, and then implementing, activities to restore the environment to its baseline condition.

The Natural Resource Damage Assessment (NRDA) regulations [43 CFR part 11], which implement certain provisions of CERCLA and CWA, define "restoration" or "rehabilitation" as "... actions undertaken [in addition

to response actions], to return an injured resource to its baseline condition as measured in terms of the injured resource's physical, chemical, or biological properties or the services it previously provided * * *. This definition of restoration from the NRDA regulations is provided here for informational purposes. The NRDA regulations are not mandatory but do provide a model for restoration planning.

The Trustees have determined that restoration after the *Exxon Valdez* oil spill should be subject to continuing review as information is developed about injuries and possible restoration opportunities. The Trustees expect that each year's work will build on the last, and that all information pertinent to the *Exxon Valdez* oil spill will be examined in the course of the restoration process.

1. Steps in the Planning Process

The restoration planning process is a dynamic and evolving process that will generally include the following steps:

a. Determining the Need for Restoration.

The need for restoration depends on the nature and extent of natural resources injured, lost, or destroyed and the adequacy of natural recovery. The primary information sources regarding resource injury, loss, or destruction are the studies conducted by State and Federal agencies as part of the natural resources damage assessment. These studies are described in the 1989 and 1990 *Exxon Valdez* damage assessment plans (see the documents referenced at the end of this notice). Other sources of information include public comments, data gathered as part of the oil spill response, and other studies conducted by government agencies outside of the damage assessment process.

b. *Identifying Potential Restoration Activities.* For any injury, there are three possible types of restoration which may be used singularly or in any combination:

Direct restoration refers to measures in addition to response actions, usually taken on site, to directly restore or rehabilitate an injured, lost, or destroyed resource or otherwise to promote or enhance the recovery of such resources;

Replacement refers to substituting one resource for an injured, lost, or destroyed resource of the same or similar type; and

Acquisition of equivalent resources means to compensate for an injured, lost, or destroyed resource by substituting another resource that provides the same or substantially similar services as the injured resource.

Determining the adequacy of natural recovery is fundamental to the choice of a restoration activity. In some cases the Trustees may determine that it is most appropriate to allow natural recovery to proceed without further intervention by man (i.e., no action alternative). The definition of direct restoration includes any administrative actions that may be taken by the Federal or State agencies, such as limiting certain activities in the affected areas, to promote recovery of injured resources.

c. *Evaluating Potential Restoration Alternatives.* Evaluation of potential restoration alternatives will consider such factors as:

- Nature and extent of injury;
- Adequacy of natural recovery;
- Technical feasibility;
- Net environmental benefit (including indirect impacts);
- Cost effectiveness;
- Reasonableness of cost of the restoration project in light of the value or ecological significance of the resource; and
- Results of actual or planned response actions.

Some restoration proposals may be readily evaluated. In other cases additional information, for example, biological, ecological, or resource assessment data, will be gathered to support the evaluation process. The goal of the Trustees and EPA is to conduct restoration planning for the recovery of the injured environment as a whole. In general, priority will be given to alternatives which benefit multiple rather than single species or resources. By necessity, however, individual elements of the restoration program may be species- or resource-specific.

d. *Recommending and Implementing Restoration Activities on a Continuing Basis.* As information about injuries, resources recovery, restoration methods or costs becomes available, certain activities may be recommended and carried out in advance of the receipt of funds for restoration from the parties responsible for the oil spill (see Section III, below).

e. *Presenting a Damage Claim to Parties Responsible for the Oil Spill and Receiving Funds for Restoration.* The damage assessment process initiated by the Trustees is designed to identify and quantify specific resource injuries and determine restoration costs and other corresponding monetary values. The Federal and State governments will present their claims for these amounts to the parties responsible for the oil spill as required by Federal and State law.

f. *Preparing and Implementing a Final Restoration Plan.* When the full amount

of restoration funds that will be recovered has been resolved, final determinations will be made concerning the nature and scope of the remaining phases of restoration.

g. *Evaluating the Effectiveness of Restoration Measures, and Recommending Additional Actions.* Implementation of restoration activities and the success of resource recovery will be monitored and evaluated based on standards appropriate to individual projects and resources to verify that restoration goals have been met. Long-term monitoring activities also may be implemented to verify that the affected area is recovering.

Restoration planning, as outlined above, is underway; the overall pace of restoration is dependent on the availability of information to determine injury and the resolution of a claim for damages. Implementation of restoration and monitoring activities may take a number of years. The Trustees and EPA intend to follow the restoration planning process as outlined above in order to accelerate the restoration of the Prince William Sound-Gulf of Alaska ecosystem and the affected natural resources and services.

2. Public Participation

The Trustees and EPA intend to encourage, provide for, and be responsive to public participation and review during the restoration planning process. Carrying out this intent, however, is complicated by the need for confidentiality with respect to damage assessment information due to pending or possible future litigation with the parties responsible for the *Exxon Valdez* oil spill. Notwithstanding these considerations, the Trustees intend to provide an opportunity for meaningful public review and comment on all restoration implementation activities.

In September of 1990, the Oil Spill Public Information Center was opened in Anchorage to provide the public with scientific data and other information related to the 1989 *Exxon Valdez* oil spill. The Trustees will continue to place information in the center as it becomes available.

3. Restoration Planning Activities in 1990

The Trustees and EPA began to solicit public opinion in March 1990 with a symposium on restoration in Anchorage, Alaska. In April and May of 1990, eight public scoping meetings were held throughout southcentral Alaska to ascertain the public's priorities for the restoration program. For a detailed description of these meetings, see the

documents referenced at the end of this notice. In addition to these public meetings, the governments have communicated individually with such constituencies as Native corporations and villages, fishing groups, and environmental organizations.

To gather specific scientific input for the restoration planning process, technical workshops were held in Anchorage in April 1990. Follow-up meetings were held in October and November 1990. Participants included members of the Restoration Planning Work Group (the Alaska Departments of Fish and Game, Environmental Conservation, and Natural Resources, and the U.S. Departments of Interior and Agriculture, the National Oceanic and Atmospheric Administration, and the U.S. Environmental Protection Agency) Federal and State resource managers, and scientists and technical experts under contract to the governments. Due to the necessary discussion of litigation-sensitive damage assessment information, these workshops were closed to the general public.

The Restoration Planning Work Group completed a preliminary literature search, which identified articles and other published material concerning techniques for ecological restoration following oil spills. Approximately 200 publications were acquired for detailed review and are listed in the August 1990 Progress Report.

The Trustees and EPA initiated several small-scale field studies to evaluate the feasibility of restoration techniques. Results from these studies will help determine the costs and effectiveness of full-scale restoration projects. Several technical support studies were also initiated to provide information needed to evaluate or carry out some potential restoration activities. These studies are described in the "State/Federal Natural Resources Damage Assessment and Restoration Plan for the Exxon Valdez Oil Spill," August 1990. The 1990 studies and preliminary results are summarized below.

B. 1990 Restoration Feasibility Studies

1. Reestablishment of *Fucus* in Rocky Intertidal Ecosystems

Agencies: U.S. Environmental Protection Agency, U.S. Forest Service.

Early observations indicated that *Fucus*, a marine plant (rockweed) found on rocky shorelines in the intertidal zone throughout the oil spill area, was extensively damaged by both the spilled oil and cleanup efforts. If the natural recovery of *Fucus* could be significantly accelerated or enhanced it would

benefit the recovery of associated flora and fauna on intertidal rocky shores.

Specific objectives of this study were to identify the causes of variation in *Fucus* recovery at and near Herring Bay, Knight Island in Prince William Sound; to document the effects of alternative cleaning methods on *Fucus*; and to test the feasibility of enhancing the reestablishment of *Fucus*. Although results are preliminary at this time, it appears that *Fucus* recovers most slowly at the sites that were intensively cleaned and that almost no recovery occurs where tar cover persists.

2. Reestablishment of Critical Fauna in Rocky Intertidal Ecosystems

Agencies: U.S. Forest Service, U.S. Environmental Protection Agency.

This feasibility study was designed to compare the rates of faunal recovery in rocky intertidal communities, and to demonstrate the feasibility of restoration of these communities by enhancing recolonization rates for such key species as limpets and starfish. Recolonization rates for these organisms and for the rockweed, *Fucus*, may limit the natural rates of recovery for the entire community.

Parameters examined included the presence or absence of common intertidal species on impacted and reference sites, population dynamics of several species of invertebrates, larval settlement on oiled versus non-oiled surfaces, and differences in algal grazing by limpets between oiled and referenced sites. Preliminary results indicate that heavy predation of several species of transplanted invertebrates was probably due to the lack of cover usually provided by *Fucus*.

3. Identification of Potential Sites for Stabilization and Restoration With Beach Wildrye

Lead Agency: Alaska Department of Natural Resources, United States Forest Service.

This study was designed to identify sites at which damage to beach wildrye grass has occurred and to recommend restoration measures. This species was affected by both spilled oil and subsequent cleanup activities. Beach wildrye grass is important in the prevention of erosion in the coastal environment and is a key component of supratidal habitats in locations throughout the oil spill area. Erosion resulting from loss of beach wildrye can lead to the destabilization and degradation of wildlife habitats and of cultural and recreational sites. Survey work in 1990 in Prince William Sound indicated injury to several beach rye communities. Following confirmation in the 1991 spring shoreline assessment,

restoration activities can be initiated (see Restoration Project 1 summary).

4. Identification of Upland Habitats Used by Wildlife Affected by the Oil Spill

Agencies: U.S. Fish and Wildlife Service, Alaska Department of Fish and Game.

A diversity of birds, mammals, and other animals were killed by the spill or injured by contamination of prey and habitats. Many of these species are dependent on aquatic or intertidal habitats for activities such as feeding and resting, but many also use upland habitats. Protection of upland habitats from further degradation may reduce cumulative effects on injured fish and wildlife populations, and thereby help them recover from the effects of the oil spill. This study focused specifically on marbled murrelets and harlequin ducks, two species known to have been affected by the spill and known to use upland habitats.

Based on surveys of 140 streams, preliminary results of the harlequin duck study indicate that this species nests along larger-than-average anadromous fish streams, with moderate gradients and clear waters. Preliminary results on murrelets suggest that murrelets use slopes facing north or west, and inland areas at the heads of bays as opposed to the outer peninsulas. Open bog meadows, especially at the heads of bays, appear to be used as flight corridors to upper wooded areas.

5. Land Status, Uses, and Management Plans in Relation to Natural Resources and Services

Agencies: Alaska Department of Natural Resources, U.S. Forest Service, U.S. National Park Service, Alaska Department of Fish and Game.

The objective of this study is to locate, categorize, evaluate, and determine the availability of maps, management plans, and other resource documents relevant to restoration planning throughout the oil-spill region. Resource materials identified will assist in planning for and implementing site-specific restoration activities, including direct restoration, replacement, and the acquisition of equivalent resources.

To date, a variety of documents, maps, and management plans have been identified and are being evaluated; other resource materials are being located. This preliminary project will be completed in Spring 1991. A second phase, directly supporting the proposed Restoration Project Number 4, Protection of Strategic Fish and Wildlife

Habitats and Recreation Sites, is under consideration.

C. 1990 Technical Support Projects

1. Peer Reviewer Process for Restoration Feasibility Studies

Agencies: Alaska Department of Fish and Game, Alaska Department of Environmental Conservation, Alaska Department of Natural Resources, U.S. Department of the Interior, U.S. Department of Agriculture, National Oceanic and Atmospheric Administration, U.S. Environmental Protection Agency.

This project provided funds to ensure that scientists with expertise on natural resource restoration were available to provide peer review of restoration feasibility projects and other restoration planning studies and activities.

2. Assessment of Beach Segment Survey Data

Agencies: Alaska Department of Natural Resources, Alaska Department of Environmental Conservation, Alaska Department of Fish and Game, U.S. Forest Service, U.S. Park Service, U.S. Environmental Protection Agency.

The objective of this project is to review and summarize beach survey information (obtained through oil spill response activities) to assist in planning for and implementing site-specific restoration activities, particularly in the area of direct restoration. This study was initiated late in 1990 and continues to date.

A master database is being created from that portion of the beach surveys relevant to restoration. The primary sources of this information are the Alaska Departments of Natural Resources and Environmental Conservation. Data from local and regional governments as well as non-governmental sources will also be reviewed and integrated into the system as appropriate. This preliminary project will be completed in Spring 1991.

3. Development of Potential Feasibility Studies for 1991 Agencies: Alaska Department of Fish and Game, U.S. Environmental Protection Agency, Alaska Department of Natural Resources, Alaska Department of Environmental Conservation, U.S. Forest Service, U.S. Department of Fish and Game, U.S. National Park Service, U.S. National Oceanic and Atmospheric Administration.

This project provided for the orderly development of additional feasibility studies including: (a) Monitoring "natural" recoveries; (b) pink salmon stock identification; (c) herring stock identification/spawning site inventory;

(d) artificial reefs for fish and shellfish; (e) alternative recreation sites and facilities; (f) historic sites and artifacts; and (g) availability of forage fish. Currently feasibility study proposals are under consideration for all of the above themes.

III. 1991 Restoration Work Plan

The Trustees are currently developing and evaluating restoration planning and implementation activities, which will be described in the 1991 Restoration Work Plan to be published in the Federal Register later in the Spring. Planning activities will include feasibility studies, technical support studies, and natural recovery monitoring which will be made available to the public for review and comment. Implementation activities that are now under consideration are presented in this section. The Trustees and EPA are asking, through this notice, for public comment on and additional suggestions for restoration planning and implementation activities for 1991. As noted previously, the Trustees and EPA anticipate publishing later this Spring a notice of the restoration projects identified for implementation in 1991. More detailed descriptions for 1991 restoration projects will be made available to the public for comment.

A. 1991 Restoration Planning Activities

The fundamental purpose of restoration planning is to identify and evaluate potential restoration implementation activities, in consultation with technical experts and the public. The integration of results from the damage assessment and other information into restoration planning is critical to the success of the oil spill program. As damage assessment results are reviewed and evaluated, the Trustees will identify potential restoration implementation activities and related feasibility and technical support projects. This process involves ongoing consultation with principal investigators for damage assessment studies, agency experts, and outside peer reviewers to review the nature and extent of oil spill injuries in relation to the biology and ecology of injured species, habitats, and ecosystems. A key goal is to identify life history requirements, limiting factors, and environmental processes that are especially sensitive or that may be enhanced.

Section II describes five feasibility studies carried out in 1990, some of which may continue in 1991. The Trustees and EPA are considering additional feasibility and technical support projects in 1991 and, following additional review, intend to discuss

them in the Spring 1991 Federal Register Notice. Studies now being considered concern a variety of resources, including pink salmon, tidal marshes, Pacific herring, bald eagles, recreation, and sea otters. Feasibility and technical support studies will be implemented as damage assessment data and funding become available.

The scientific literature and experience from oil spills other than the *Exxon Valdez* will provide background on restoration and information from other oil spills. In 1991, the Restoration Planning Work Group expects to review and evaluate previously identified literature on restoration (see Appendix B, August 1990 Progress Report) and to continue review and evaluation of literature on species and ecosystem recoveries following anthropogenic and natural environmental disturbances.

Information on the adequacy of natural recovery is central to determining whether to implement restoration actions or to allow injured resources to recover on their own. Direct measures of recovery, such as species distribution, abundance, diversity, growth, reproductive success, or other physiological and biochemical properties, may be appropriate monitoring objectives. In some cases, it is appropriate to indirectly determine the degree of recovery by measuring exposure (presence of oil residuals and/or metabolites) and by applying knowledge or toxicological effects derived from the oil spill literature. For these reasons, the recovery of injured resources can best be followed by implementing a balanced program of monitoring. The duration of recovery monitoring will depend on the time necessary to establish a trend for recovery, and this in turn will necessarily depend on the severity and duration of effects resulting from the oil spill.

Some recovery monitoring studies will be considered for implementation in 1991. As with feasibility and technical support projects, these will be discussed in the March 1991 Federal Register document.

Public participation will continue to be an important component of restoration planning in 1991. The Restoration Planning Work Group is interested in and will try to accommodate requests for meetings with individuals or groups. In addition, the Trustees will consider whether and what additional actions, such as publications and workshops, are appropriate and possible in 1991. Requests and suggestions from the public are invited.

B. 1991 Restoration Implementation Activities

Where the nature of the resource injury is reasonably clear, it may be desirable to begin restoration prior to receipt of funds from the parties responsible for the oil spill. There are several reasons why this may be so.

Failure to undertake timely restoration may allow damages initiated by the spill to continue or accelerate, as in the case of the loss of stabilizing vegetation on beaches. In other cases, protection of strategic habitats, subject to land-use changes, can reduce cumulative stresses on injured resources and maintain, in the near term, a full range of restoration options. Finally, the importance of a resource for subsistence, commercial, or recreational purposes may justify prompt restoration action.

The restoration activities being considered by the Trustees for implementation in 1991 are described below. Before making final decisions for the 1991 program, the Trustees are prepared to conduct public meetings in some of the oil spill communities, if requested to do so. Moreover, the Trustees expect to provide further opportunity for public comment on the 1991 restoration projects after detailed descriptions for each project are available. The projects now under consideration for the initial phase of the restoration process are:

1. Restoration of the Beach Wildrye Community

Lead Agencies: Alaska Department of Environmental Conservation, U.S. Forest Service

Need and Objectives:

The high intertidal-supratidal beach wildrye grasses (*Elymus arenarius* and *E. mollis*) communities show signs of localized injury as a result of the Exxon Valdez oil spill and the associated cleanup activities. Injury appears to have resulted from oiling and the stress of mechanical abrasion resulting from oil removal operations carried out by cleanup workers and equipment. Beach wildrye grasses are major contributors to natural beach stability. Injury to this important plant community may result in accelerated erosion of the beaches and adjacent upland plant communities. Also at risk from increased erosion are several nearshore archaeological sites.

Once the beach wildrye root masses are disturbed, natural recovery may be slow, taking several years. Wildrye recolonizes primarily by spreading outward from undamaged plants, and this process can be stopped altogether if the rate of erosion is too great. This may result in a significant loss of intertidal

and supratidal area. Restoration intervention may often stabilize a beach in one growing season.

The objective of this project is to stabilize injured sites where natural or cultural resources are at risk. Specific sites for restoration will be chosen following the 1991 Spring Shoreline Assessment. The Department of Environmental Conservation and the Forest Service are also exploring whether this project may more appropriately be carried out under the State/Federal response program.

Methods:

Replanting beach wildrye for stabilization is a proven technology. Nearby healthy stocks of beach wildrye grass will be used as a source of donor material. After replanting, fertilizer will be applied (20-20-10 fertilizer up to 800 pounds per acre) to help the transplanted beach wildrye grass recolonize. At some locations fertilizer alone may be sufficient to encourage existing injured plant communities to recover without transplanting new stock.

Estimated 1991 Cost: \$180,000

2. Public Information and Education for Recovery and Protection of Alaska's Marine and Coastal Resources

Lead Agencies: U.S. Fish and Wildlife Service, U.S. National Park Service, Alaska, Department of Environmental Conservation

Need and Objectives:

The Exxon Valdez oil spill caused direct and indirect injury to the marine birds and mammals of southcentral Alaska. The purpose of this project is to make users of the area aware of the changes to the ecosystem resulting from the oil spill and to lessen the potential for additional harmful human disturbances.

Methods:

The project's sponsors will publish and distribute information explaining the potential adverse impacts of human activities, and the importance of increased conservation and protection of marine birds and mammals in key habitats in the oil spill area. Print media such as posters, brochures, and possibly books and video tapes will be produced. Consideration will also be given to production of material for school curricula.

Print media will be distributed through traditional outlets including but not limited to refuge, park, and tourist information and visitor centers. Additional distribution will occur at airports, boat harbors, commercial tour operators, and to public agency and private industry training staffs.

Some species identification information will be included but the primary content of the media will emphasize strategies to allow public use and enjoyment of marine birds and mammals while preventing harmful disturbances to these species.

Estimated 1991 Cost: \$100,000

3. Salmonid Stocks and Habitat Restoration

Lead Agencies: Alaska Department of Fish and Game, U.S. Forest Service

Need and Objectives:

Spawning and nursery areas of wild stocks of pink and chum salmon which were impacted by the Exxon Valdez oil spill occur throughout Prince William Sound, lower Cook Inlet, and the Gulf of Alaska. Pink and chum salmon are major components of the ecosystem, serving as important food sources for other fish, birds, terrestrial and marine mammals. Pink and chum salmon are also harvested by man in subsistence, commercial, and sport fisheries. Since salmon return to the individual streams in which they were born, with little straying to other streams, genetically unique wild salmon stocks will be restored through site specific rehabilitation of salmon spawning and rearing habitats.

Methods:

This project consists of several proven fisheries enhancement techniques that may be applied immediately at specific sites. In addition to those sites and streams at which potential rehabilitation activities already have been identified, a survey of affected salmon spawning habitat within the oil spill area will be conducted in 1991 to determine additional restoration measures. The proposed techniques include fish passage through stream channelization or fish ladders to overcome physical and hydrological barriers and construction of spawning channels. All of these measures provide oil-free spawning areas to replace oil-impacted spawning areas. Additional wild salmon stock restoration measures include remote egg-taking and incubation at existing hatcheries for ultimate fry release in oil-impacted streams. Other measures may include optimal fry release programs that will enhance marine survival of juvenile salmonids.

Estimated 1991 Cost: \$1,300,000

4. Protection of Strategic Fish and Wildlife Habitats and Recreation Sites

Lead Agencies: Alaska Department of Fish and Game, Alaska Department of Natural Resources, U.S. Department of the Interior, U.S. Department of Agriculture

Need and Objectives:

The marine and intertidal habitats where most oil spill injuries occurred are ecologically linked to adjacent uplands. The water quality in streams and estuaries where salmon spawn depends on the adjacent uplands. Eagles nest and roost in large trees along the coasts and streams, and marbled murrelets nest in association with forested uplands. Harlequin ducks nest in riparian habitats and feed in the streams as well as in nearby intertidal and estuarine areas. Common and thick-billed murres and other seabirds nest on off-shore islands.

Tourism and recreation activities, such as sport fishing and camping, also depend on the quality and accessibility of shorelines and uplands. The diversity, productivity, and uses of intertidal and estuarine habitats, and of freshwater streams along the coast depend on the ecological integrity of the adjacent uplands. Continued productivity in the undamaged parts of the regional ecosystem, including strategic marine, intertidal, and estuarine habitats and adjacent uplands, may be necessary for the recovery of biological communities that were injured.

During the public scoping process the governments received many restoration suggestions that involved the protection and prime fish and wildlife habitats, recreation sites, and adjacent uplands. Suggested approaches to this protection included land acquisition and changes in management practices.

Land-use activities may occur in the oil spill area in 1991 or 1992. These activities may impact important habitats and recreation sites or slow the recovery of spill-injured resources.

The objective of this project is to identify and protect strategic wildlife and fisheries habitats and recreation sites and to prevent further potential environmental damages to resources injured by the *Exxon Valdez* oil spill. This project will be preceded by a technical support project to identify and evaluate potential properties which if publicly owned will contribute to this objective. Where acquisition of property

rights is determined to be appropriate, they will be acquired on a willing buyer/willing seller basis. Primary considerations in deciding which properties should be acquired during this project will include (1) the nature and immediacy of changes in use that may further affect resources injured by the oil spill and (2) the prospect that failure to act will foreclose restoration opportunities.

The Trustees have developed the following preliminary sequence of steps for use in identifying and protecting strategic fish and wildlife habitats and recreation sites:

1. Identification of key upland habitats that are linked to the recovery of injured resources or services by scientific data or other relevant information.

2. Characterization and evaluation of potential impacts from changed land use in relation to their effects on recovery of the ecosystem and its components; comparative evaluation of recovery strategies not involving acquisition of property rights (e.g., redesignation of land use classification), including an assessment of protection afforded by existing law, regulations, and other alternatives.

3. Evaluation of cost-effective strategies to achieve restoration objectives for key upland habitats, identified through steps one and two above. This would include evaluation of other restoration alternatives for these resource injuries.

4. Willing seller/buyer negotiations with private landowners for property rights.

5. Incorporation of acquired property rights into public management.

Habitat and recreation site acquisition proposals that meet the appropriate evaluation factors for restoration (see section 2) will be identified and assigned by priority for implementation in accordance with this preliminary five-step process and applicable State and Federal laws and regulations.

The geographic scope of the 1991 project will be the oil spill area. Subsequent to this initial effort, the

Trustees will continue to survey potential acquisitions, including acquisitions outside the spill area. Estimated Cost: To be determined

C. Funding for the 1991 Restoration Work Plan

Although it is expected that the responsible parties will pay for the costs of the damage assessment and restoration program, there is no certainty about the final amount and when such funds will be forthcoming. It is possible, therefore, that funds to carry out the 1991 Restoration Work Plan, including the proposed planning and implementation activities, will have to be advanced by the State and Federal governments. To date, those funds have not been committed or secured by either government.

D. References

The documents listed below provide additional information on damage assessment and restoration. They are available from the Oil Spill Public Information Center, The Simpson Building, 645 G Street, Anchorage, Alaska, 99501.

1. "The 1990 State/Federal Natural Resource Damage Assessment and Restoration Plan for the *Exxon Valdez* Oil Spill, Volume I Assessment and Restoration Plan Appendices A, B, C."
2. "State/Federal Natural Resource Damage Assessment Plan for the *Exxon Valdez* Oil Spill," August 1989.
3. "Restoration Planning following the *Exxon Valdez* Oil Spill: August 1990 Progress Report."
4. "Restoration following the *Exxon Valdez* Oil Spill: Proceedings of the Public Symposium," July 1990.

Dated: February 26, 1991.

LaJuana S. Wilcher,

Assistant Administrator, Office of Water, U.S. Environmental Protection Agency.

Dated: February 25, 1991.

Charles E. Cole,

Attorney General, State of Alaska.

[FR Doc. 91-5014 Filed 2-28-91; 3:45 am]

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ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION

OIL SPILL CHRONICLE

VOL 3, NO. 3

MARCH 19, 1991

ANCHORAGE, ALASKA

State and Federal Agencies Settle with Exxon

Anchorage — Governor Hickel and U.S. Attorney General Dick Thornburgh on March 13 announced that Exxon Corporation and Exxon Shipping company agreed to settle virtually all federal and state civil claims resulting from the Exxon Valdez oil spill.

With payment of \$900 million in damages and \$100 million in criminal fines, Exxon will provide compensation to the state and federal governments for losses incurred after the Exxon Valdez spilled almost 11 million gallons of crude oil on March 24, 1989, officials said.

The settlement also has a reopener clause stating that Exxon may incur an additional \$100 million ten years from now for natural resources damages not currently foreseen. According to the plea agreement, Exxon Shipping Co. will plead guilty to violating the Clean Water Act, the Refuse Act, and the Migratory Bird Treaty Act. Exxon Corporation will plead guilty to violating the Migratory Bird Treaty Act.

"This settlement was the result of a very thorough analysis of the issues," said John A. Sandor, Commissioner of the Alaska Department of Environmental Conservation. "Now we can go on with the business of long-term damage assessment and restoration of Prince William Sound and other coastal areas affected by the spill," he said.

Sandor noted that the settlement terms cover costs incurred to date by DEC as well as the cost of the cleanup activities planned this summer. The settlement also includes expected costs to further assess and restore damaged coastline along the more than 1,200 miles of the spill's path.

The agreement with Exxon states that it is not intended to affect rights and obligations of other parties with oil spill claims, including Alaska natives and other private plaintiffs.

The full settlement is published in today's Federal Register, and will be out for public comment until April 18, federal officials said. State or federal officials have the right to withdraw consent to the settlement agreement within 15 days after the close of the public comment period if it is clear that the agreement is not in the public interest, or if the Alaska legislature does not approve the agreement.

A copy of the settlement may be obtained from any library which subscribes to the Federal Register, or from the Oil Spill Public Information Center, 645 G Street, Anchorage, AK 99501, 907/278-8008.

Written comments on the settlement may be mailed to: Thomas A. Campbell, General Counsel of the National Oceanic and Atmospheric Administration, U.S. Department of Commerce, Room 5816, 14th Street and Constitution Avenue, NW, Washington D.C., 20250, or to Barbara Herman, Attorney General's Office, State of Alaska, 1031 W 4th Ave., Suite 200, Anchorage, AK 99501.

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State Approves Bioremediation for 1991 Cleanup Season

ANCHORAGE—State of Alaska officials have approved use of fertilizers in the 1991 cleanup season to assist microbial breakdown of oil remaining on beaches fouled by the Exxon Valdez oil spill of two years ago.

Based on recommendations from staff of the DEC office monitoring Exxon Valdez spill response work, John Sandor, Commissioner of the Alaska Department of Environmental Conservation, approved use of the fertilizers during the 1991 field season in a March 5 letter to RADM David E. Ciancaglini, the Federal On Scene Coordinator.

The state grants approval for use of the fertilizers Inipol EAP 22 and Customblen, contingent on the same application rates, delivery systems, and operational guidelines as during the 1990 season, Sandor said. State officials asked Admiral Ciancaglini to request updated operating guidelines from Exxon, allowing five working days for review and comment from state agencies, said Ernie Piper, the State On Scene Coordinator.

The decision followed technical meetings on Feb. 19-22, when researchers and government officials reviewed data on the use of fertilizers to remove oil remaining in Alaska shorelines.

Final approval for use of any

chemicals will come through the Regional Response Team, a federal and state interagency committee which by law must be involved in response to spills of any hazardous substance or application of chemicals in the environment, state officials said.

"Generally, my staff and other independent scientists agree that adding fertilizers to the beaches increases the numbers of microbes that degrade oil,"

Ernie Piper
ADEC.

The State of Alaska and the Environmental Protection Agency both hold veto rights on the RRT regarding use of chemicals in a spill response. The group has conferred on a number of decisions regarding treatment of shorelines oiled after the March 24, 1989 incident when the Exxon Valdez hit Bligh Reef in Prince William Sound and spilled 10.8 million gallons of crude oil.

"Generally, my staff and other independent scientists agree that adding fertilizers to the beaches increases the numbers of microbes that degrade oil," said Ernie Piper,

State On Scene Coordinator. However, Piper pointed out that there are enough gaps in the available data that "we should be cautious and judicious in our use of the chemicals."

The scientists at the conference were unable to come to a consensus about the rate at which bioremediation speeds up natural degradation of oil, but they did agree that fertilizers are speeding things up, Piper said.

"Bioremediation appears to be a useful addition to our cleanup toolbox, but I would caution members of the cleanup community and the public against becoming too giddy about the ability of the bugs to solve a problem of this size and complexity," Piper said in a memo to Commissioner Sandor.

There are too many questions left unanswered when scientists try to apply information gathered in carefully controlled laboratory experiments to what actually happens on a beach in Prince William Sound or the Gulf of Alaska, Piper said.

"We've got an open, dynamic marine system with a wide and changing set of ecological variables," which will not ever exactly equate with a laboratory setting, he said.



The OIL SPILL CHRONICLE is published monthly by the Alaska Department of Environmental Conservation. Comments or inquiries should be addressed to: ADEC, Exxon Valdez Oil Spill Response Center, Attn: L.J. Evans, 4241 B Street, Suite 304, Anchorage, AK 99503. FAX: 907/563-1789. Phone 907/563-1126.

State Experts Contribute to Oil Spill Conference

ANCHORAGE — Alaska Department of Environmental Conservation staff who worked on the Exxon Valdez oil spill cleanup presented papers and spoke on panels at sessions of a major international oil spill conference in San Diego March 4-7, state officials said.

Current and former DEC staff presenting papers or participating in panel discussions included John Bauer, Randy Bayliss, James Gibeaut, John Janssen, Al Kegler, Marshal Kendziorek, Dan Lawn, Gene Pavia, Ernie Piper, Steve Provant, and Clay Robinson. The biennial International Oil Spill Conference and Exposition is an important world symposium on oil spill cleanup technology and science.

The conference is jointly sponsored by the U.S. Coast Guard, Environmental Protection Agency, and the American Petroleum Institute.

"This conference is where the state of the art and the state of the science is discussed and shaped," said DEC Commissioner John A. Sandor.

The last conference took place a couple of weeks before the tanker Exxon Valdez grounded on Bligh Reef and spilled nearly 11 million gallons of crude oil in North America's biggest tanker spill. Of more than 130 sessions at this year's conference, at least 38 were directly related to the Exxon Valdez spill.

Copies of the entire Conference Proceedings may be purchased for \$65 by writing: 1991 International Oil Spill Conference, 655 15th St., NW, Suite 300, Washington, D.C. 20005.

To request copies of the papers presented by State of Alaska personnel, write ADEC Exxon Valdez Oil Spill Response Center, Public Information Office, 4241 B St., Suite 304, Anchorage, AK 99503.

Papers presented at the International Oil Spill Conference by State of Alaska staff:

"Response To the Exxon Valdez Oil Spill By The Alaska Department of Environmental Conservation," Erich R. Gundlach, John Bauer, Randy Bayliss, Steve Provant, and Marshal Kendziorek.

"Trends in Natural Removal of the Exxon Valdez Oil Spill in Prince William Sound From September 1989

to May 1990," Jacqueline Michel, Miles O. Hayes, Walter J. Sexton, James C. Gibeaut, and Charles Henry.

"Shoreline Surveys at the Exxon Valdez Oil Spill - The State of Alaska Response," Erich R. Gundlach, Eugene A. Pavia, Clay Robinson, and James C. Gibeaut.

"Initial State of Alaska Response to the Exxon Valdez Oil Spill" Randy Bayliss, Dan Lawn, Al Kegler, Marshal Kendziorek, and John Janssen.



Operations Steering Committee Public Meeting

The Exxon Valdez oil spill Operations Steering Committee will meet on April 23 at 5:00 p.m. at the Anchorage Alaska Legislative Information Office. The meeting will be sponsored by Representative Cliff Davidson of Kodiak, is open to the public and will be available by teleconference to communities requesting to participate.

The Operations Steering Committee is chaired by RADM David E. Ciancaglini of the U.S. Coast Guard, the Federal On Scene Coordinator and Ernie Piper, State on Scene Coordinator.

The meeting is scheduled for the first floor meeting room of the Anchorage LIO, 3111 C St. To arrange to be included in the teleconference, call the LIO teleconference coordinator at 561-7007.

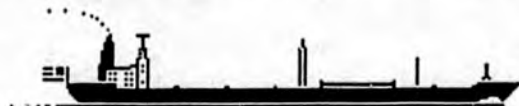
The agenda for the April meeting is not set at this time, but will include topics regarding the 1991 spring shoreline assessment and cleanup plans for the 1991 field season.

New Reports:

NOAA Technical Memorandum NMFS F/NWC-191: Survey of Subsistence Fish and Shelfish for Exposure to Oil Spilled from the Exxon Valdez; First Year: 1989, Usha Varanasi, et al., National Oceanic and Atmospheric Administration/National Marine Fisheries Service, December 1990. This document is available through the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

Valdez Oil Spill Technology: 1989 Operations, Exxon Production Research Company, 1990. Copies are available from Exxon Public Relations, Attn: Karsten Rodvik, P.O. Box 240409, Anchorage, AK 99524-0409.

The 1989 Exxon Valdez Cultural Resource Program, Charles M. Mobley, et. al., Exxon Shipping Company and Exxon Company, USA., 1990. Copies are available from Exxon Public Relations, Attn: Karsten Rodvik, P.O. Box 240409, Anchorage, AK 99524-0409.



Water Quality in Prince William Sound and the Gulf of Alaska, Jeff M. Neff, Arthur D. Little, March 1991. Copies can be obtained by writing Arthur D. Little, 20 Acorn Park, Cambridge, MA 02140-2390.

Lessons of the Exxon Valdez, Rick Steiner, et. al., Alaska Sea Grant College Program, University of Alaska Fairbanks, 1990. Copies available for \$4 from Alaska Sea Grant College Program, UAF, 138 Irving II, Fairbanks, AK 99775-5040.

Oil In the Ocean: The Short- and Long-Term Impacts of a Spill, James E. Mielke, Congressional Research Service, July 24, 1990, CRS Report #90-356. Copies may be obtained from the Federal Oil Spill Public Information Center, 645 G. Street, Anchorage, AK 99501, 907/278-8008, or from Senator Ted Stevens office, 222 W 7th Ave., #2, Anchorage, AK 99513.

Proceedings: 1991 International Oil Spill Conference, sponsored by the U.S. Coast Guard, American Petroleum Institute, and the U.S. Environmental Protection Agency. Copies of the entire Conference Proceedings may be purchased for \$65 by writing: 1991 International Oil Spill Conference, 655 15th St., NW, Suite 300, Washington, D.C. 20005.

OIL SPILL CHRONICLE

State of Alaska

Department of Environmental Conservation

Exxon Valdez Oil Spill Response Center

4241 B Street, Suite 304

Anchorage, AK 99503



Senator Dick Eliason

P.O. Box V

Juneau, AK 99811

PUBLIC OPINION MESSAGE

DEAR: SENATOR ELIASON

NAME: LEO LAND
TITLE:
ADDRESS: BOX 122
CITY: HAINES, AK
PHONE: 766-2466
BILL NO:

ZIP: 99827

4 parts

SUBJECT: ALASKA OIL SPILL SETTLEMENT PT.1
MESSAGE: ALASKA NATIVES LEFT OUT OF FEDERAL AND STATE DECISIONS DELIBERATELY.
THIS STATE IS NOTORIOUS FOR THIS, UNLESS NATIVES GET TOGETHER AND USE THEIR
POLITICAL MUSCLE. I'M SPEAKING OF RESOURCES THAT ARE WORTH MONEY. I HAVE A
REPORT DONE BY ALASKA DEPARTMENT OF COMMERCE AND ECONOMIC DEV. 6/80

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DATE: 91/03/15
TIME: 09:41:12
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COPIES: REPRESENTATIVES REPRESENTATIVES SENATORS

BAKER	BARNES	ADAMS
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BRUCKMAN	CARNEY	COTTEN
CHOQUETTE	DAVIDSON	DUNCAN
B.DAVIS	C.DAVIS	FAHRENKAMP
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FINKELSTEIN	FOSTER	FRANK
GONZALES	GRUENBERG	HALFORD
GRUSSENDORF	HANLEY	HOFFMAN
HUDSON	IVAN	JONES
JACKO	KOPONEN	KERTTULA
KUBINA	LARSON	MENARD
LEMAN	LINCOLN	PEARCE
MACKIE	MACLEAN	POURCHOT
MARTIN	M.A.MILLER	RODEY
M.W.MILLER	MOYER	SHULTZ
NAVARRE	PARNELL	STURGULEWSKI
G.PHILLIPS	R.PHILLIPS	UEHLING
SHARP	TAYLOR	ZHAROFF
ULMER	ZAWACKI	

PUBLIC OPINION MESSAGE

DEAR: SENATOR ELIASON

NAME: LEO LAND

TITLE:

ADDRESS: BOX 122

CITY: HAINES, AK

ZIP: 99827

PHONE: 766-2466

BILL NO:

SUBJECT: ALASKA OIL SPILL SETTLEMENT PT. 2

MESSAGE: THIS IS QUOTES "ALL QUESTIONS REGARDING LAND OWNERSHIP BY THE NAT
PEOPLES WERE LEFT UNSETTLED BY THE 1867 TREATY OF CESSION UNDER WHICH THE
RUSSIANS SURRENDERED GOVERNMENTAL AUTHORITY IN ALASKA TO THE U.S. ALTHOUGH
TREATY VERY CAREFULLY SPECIFIED THAT LAND OWNERSHIP BY PRIVATE CITIZENS WOU
BE UNAFFECTED BY THE TREATY, THE NATIVE RESIDENTS WERE NOT COVERED BY THIS
PROTECTION. (CONT. PART 3)

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GONZALES	GRUENBERG	HALFORD
GRUSSENDORF	HANLEY	HOFFMAN
HUDSON	IVAN	JONES
JACKO	KOPONEN	KERTTULA
KUBINA	LARSON	MENARD
LEMAN	LINCOLN	PEARCE
MACKIE	MACLEAN	POURCHOT
MARTIN	M.A.MILLER	RODEY
M.W.MILLER	MOYER	SHULTZ
NAVARRE	PARNELL	STURGULEWSKI
G.PHILLIPS	R.PHILLIPS	UEHLING
SHARP	TAYLOR	ZHAROFF
ULMER	ZAWACKI	

PUBLIC OPINION MESSAGE

DEAR: SENATOR ELIASON

NAME: LEG LAND

TITLE:

ADDRESS: BOX 122

CITY: HAINES, AK

PHONE: 766-2466

ZIP: 99827

BILL NO:

SUBJECT: ALASKA OIL SPILL SETTLEMENT (PT-2)

MESSAGE: THE TREATY STATES THE INHABITANTS OF THE CEDED TERRITORY WITH THE EXCEPTION OF THE UNCIVILIZED NATIVE TRIBES SHALL BE MAINTAINED AND PROTECTED IN THE FREE ENJOYMENT OF THEIR PROPERTY THE UNCIVILIZED TRIBES WILL BE SUBJECT TO SUCH LAWS AND REGULATIONS AS THE UNITED STATES MAY ADOPT.

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DATE: 91/03/15

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B.DAVIS	C.DAVIS	FAHRENKAMP
DONLEY	ELLIS	FISCHER
FINKELSTEIN	FOSTER	FRANK
GONZALES	GRUENBERG	HALFORD
GRUSSENDORF	HANLEY	HOFFMAN
HUDSON	IVAN	JONES
JACKO	KOPONEN	KERTTULA
KUBIMA	LARSON	MENARD
LEMAN	LINCOLN	PEARCE
MACKIE	MACLEAN	POURCHOT
MARTIN	M.A.MILLER	RODEY
M.W.MILLER	MOYER	SHULTZ
NAVARRE	PARNELL	STURGULEWSKI
G.PHILLIPS	R.PHILLIPS	UEHLING
SHARP	TAYLOR	ZHAROFF
ULMER	ZAWACKI	

PUBLIC OPINION MESSAGE

DEAR: SENATOR ELIASON

NAME: LEO LAND
 TITLE:
 ADDRESS: BOX 122
 CITY: HAINES, AK
 PHONE: 766-2466

ZIP: 99827

BILL NO:

SUBJECT: ALASKA OIL SPILL SETTLEMENT PT 4

MESSAGE: THE UNRESOLVED ISSUE OF LAND OWNERSHIP BY NATIVE ALASKANS, WHICH RUSSIANS PASTED ON TO THE UNITED STATES REMAINED UNSETTLED FOR MORE THAN 10 YEARS AFTER THE TREATY OF CESSION. NON-NATIVES GRABBED EVERYTHING THEY WANTED OF VALUE THE NATIVE LAW SUITES WERE FINALLY SOLVED BY THE ALASKA NATIVE CLAIM SETTLEMENT ACT OF 1971. SINCE THE PIPELINE WAS BUILT THE NATIVES ARE FIGHT AGAIN FOR THEIR RIGHTS UNDER THE OIL SPILL SETTLEMENT.

POMID: 12100014
 DATE: 91/03/15
 TIME: 10:00:14
 LIONAME: SITKA LIO

COPIES: REPRESENTATIVES REPRESENTATIVES SENATORS

BAKER	BARNES	ADAMS
BOYER	BROWN	COLLINS
BRUCKMAN	CARNEY	COTTEN
CHOQUETTE	DAVIDSON	DUNCAN
B.DAVIS	C.DAVIS	FAHRENKAMP
DONLEY	ELLIS	FISCHER
FINKELSTEIN	FOSTER	FRANK
GONZALES	GRUENBERG	HALFORD
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KUBINA	LARSON	MENARD
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M.W.MILLER	MOYER	SHULTZ
NAVARRE	PARNELL	STURGULEWSKI
G.PHILLIPS	R.PHILLIPS	UEHLING
SHARP	TAYLOR	ZHAROFF
ULMER	ZAWACKI	

PUBLIC OPINION MESSAGE

DEAR: SENATOR ELIASON

NAME: JIM WEIDNER
TITLE:
ADDRESS: 5479 CHENA HOT SPRINGS RD
CITY: FAIRBANKS
PHONE: 488-6366

ZIP: 99712

BILL NO:
SUBJECT: EXXON VALDEZ SETTLEMENT
MESSAGE: THIS IS PROBABLY THE BEST POSSIBLE DEAL FOR EXXON THAT THE HIGHEST PRICED LAWYERS IN THE UNITED STATES COULD MAKE. FROM ALASKA'S POINT OF VIEW, IS IT THE BEST POSSIBLE DEAL FOR US? BE SURE AND READ THE FINE PRINT....ONE COMPANY CAN DO US IN. BE SURE AND TAKE PLENTY OF TIME IN MAKING YOUR DECISION.

EOM-FZ

POMID: 07133103
DATE: 91/03/15
TIME: 13:31:03
LIONAME: FAIRBANKS LIO

COPIES: REPRESENTATIVES REPRESENTATIVES SENATORS

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NAVARRE	PARNELL	STURGULEWSKI
G.PHILLIPS	R.PHILLIPS	UEHLING
SHARP	TAYLOR	ZHAROFF
ULMER	ZAWACKI	

PUBLIC OPINION MESSAGE

DEAR: SENATOR ELIASON

NAME: PEG MENTELE

TITLE:

ADDRESS: 324 E. COOK AVE

CITY: ANCHORAGE

ZIP: 99501

PHONE: 274-9907

BILL NO:

SUBJECT: EXXON SETTLEMENT

MESSAGE: I URGE YOU TO APPROVE THE EXXON SETTLEMENT. EVEN AN IMPERFECT
SETTLEMENT IS BETTER THAN YEARS OF DIVISIVE LITIGATION AND MILLIONS PAID IN
LEGAL FEES (TO OUTSIDE LAW FIRMS). /BN

POMID: 03080032

DATE: 91/03/15

TIME: 08:00:32

LIONAME: ANCHORAGE LIO

COPIES: REPRESENTATIVES REPRESENTATIVES SENATORS

BAKER

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CHOQUETTE

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DONLEY

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GRUSSENDORF

HUDSON

JACKO

KUBINA

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M.W.MILLER

NAVARRE

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MOYER

PARNELL

R.PHILLIPS

TAYLOR

ZAWACKI

ADAMS

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FISCHER

FRANK

HALFORD

HOFFMAN

JONES

KERTTULA

MENARD

PEARCE

POURCHOT

RODEY

SHULTZ

STURGULEWSKI

UEHLING

ZHAROFF

PUBLIC OPINION MESSAGE

DEAR: SENATOR ELIASON

NAME: ALLEN HOWE
 TITLE:
 ADDRESS: 8869 BOOM CIR.
 CITY: ANC ZIP: 99502
 PHONE: 267-2387
 BILL NO:
 SUBJECT: EXXON VALDEZ SETTLEMENT
 MESSAGE: REJECT THE EXXON VALDEZ SETTLEMENT UNLESS AT LEAST \$1 BILLION IS P/
 BY EXXON IN A LUMP SUM. THE 10 YEAR PAY OUT SELLS ALASKA TOO SHORT. /LD

POMID: 03082316
 DATE: 91/03/15
 TIME: 08:23:16
 LIONAME: ANCHORAGE LIO

COPIES: REPRESENTATIVES REPRESENTATIVES SENATORS

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KUBINA	LARSON	MENARD
LEMAN	LINCOLN	PEARCE
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M.W.MILLER	MOYER	SHULTZ
NAVARRE	PARNELL	STURGULEWSKI
G.PHILLIPS	R.PHILLIPS	UEHLING
SHARP	TAYLOR	ZHAROFF
ULMER	ZAWACKI	

PUBLIC OPINION MESSAGE

DEAR: SENATOR ELIASON

NAME: MR. ROY WICHERS
 TITLE:
 ADDRESS: P.O BOX 670834
 CITY: CHUGIAK
 PHONE: 688-3855
 BILL NO:
 SUBJECT: EXXON SETTLEMENT
 MESSAGE: INCLUDE THE NATIVES IN THE SETTLEMENT AND INDIVIDUAL SUITS AND LEAV
 OPEN FOR LONG TERM DAMAGE. /CMR

ZIP: 99567

POMID: 03121839
 DATE: 91/03/15
 TIME: 12:18:39
 LIONAME: ANCHORAGE LIO

COPIES: REPRESENTATIVES REPRESENTATIVES SENATORS

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NAVARRE	PARNELI	STURGULEWSKI
G.PHILLIPS	R.PHILLIPS	UEHLING
SHARP	TAYLOR	ZHAROFF
ULMER	ZAWACKI	

PUBLIC OPINION MESSAGE

DEAR: SENATOR ELIASON

NAME: MR. ERIC TASKER

TITLE:

ADDRESS: 7724 ARLENE STREET

CITY: ANCHORAGE

ZIP: 99502

PHONE: 243-7245

BILL NO:

SUBJECT: EXON SETTLEMENT

MESSAGE: GOVERNMENT SECRECY IS SUBVERSIVE TO DEMOCRATIC PRINCIPLE PROCEDURE
SOCIETY AND IS ALWAYS ABUSED. I FOR ONE WANT THE STATE CONSTITUTION CHANGED S
AS TO TOTALLY PROHIBIT SECRET STATE NEGOTIATIONS IN ANYWAY AND TOTALLY
PROHIBIT THE STATE FROM MAINTAINING ANY CONFIDENTIAL STATE INFORMATION FOR AN
REASON. /CMR

POMID: 03101410

DATE: 91/03/15

TIME: 10:14:10

LIONAME: ANCHORAGE LIO

COPIES: REPRESENTATIVES REPRESENTATIVES SENATORS

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NAVARRE	PARNELL	STURGULEWSKI
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ULMER	ZAWACKI	

NEWS RELEASE

STATE OF ALASKA

OFFICE OF THE GOVERNOR
P.O. BOX A
JUNEAU, ALASKA 99811

WALTER J. HICKEL
GOVERNOR



FOR INFORMATION CONTACT:

ERIC REHMANN
ACTING PRESS SECRETARY

DEPUTY PRESS SECRETARY

(907) 465-3500

FOR IMMEDIATE RELEASE

March 20, 1991

91-54

30 DAY COMMENT PERIOD ANNOUNCED ON EXXON VALDEZ SETTLEMENT AGREEMENT

JUNEAU--Notice of a 30-day comment period was announced Tuesday in the Federal Register concerning the settlement agreement of the Exxon Valdez oil spill. Alaskans, and ~~others~~ wishing to comment on the agreement, must do so no later than April 14, 1991.

Written comments must be submitted to Thomas A. Campbell, General Counsel of NOAA, U.S. Department of Commerce, 16th and Constitution Ave. NW, Washington, DC 20230. A copy of the comments must also be sent to Barbara Herman, Attorney General's Office, State of Alaska, 1031 West 4th Ave., Suite 200, Anchorage, Alaska 99501.

For further information, contact Daniel Addison, Office of General Counsel, NOAA, Department of Commerce, Washington, DC 20230, telephone 202-377-1400.

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Worth a try 2.5.91

Exxon settlement demands care

Gov. Wally Hickel has spent a lot of his time lately trying to get the feds and Exxon to settle legal disputes stemming from the firm's Alaska oil spill.

For the state, the feds and Exxon, settling the cases soon has definite appeal. All three parties could save millions of dollars that would be wasted on lawyers. And the faster the state gets its damage money, the faster it can protect the rest of Prince William Sound from logging. Gov. Hickel wants to use some of the proceeds to buy out private timber rights.

But whether Gov. Hickel can strike a good deal depends on what Exxon offers. Usually a large corporation facing expensive lawsuits and criminal fines is willing to fight a legal war of attrition. A settlement has to offer Exxon some advantage or it will keep on fighting.

It's imperative that the public has a chance to see any deal before it becomes final. The level of public concern, and the financial stakes, are just too high for Gov. Hickel to hand Alaskans a fait accompli.

There are two things any settlement shouldn't do. First, it shouldn't allow scientific studies of the spill to be kept secret. That information is too valuable to scientists around the world, and to private parties still pursuing their own suits against Exxon.

Second, a settlement shouldn't let Exxon dodge federal criminal charges altogether. Although no one stands to go to jail, criminal fines could total \$600 million or more. A criminal conviction will send an important message that environmental crimes will be severely punished.

Gov. Hickel is unlikely to cut a sweetheart deal. He's always believed in standing up to those he thinks have done Alaska wrong. But he and his negotiators will have to make sure their eagerness to settle doesn't sell the state's interests short.

Exxon deal hangs on Native rights

3.12.91

Judge ties agreement to ability to litigate

By E. MICHAEL MYERS

TIMES WASHINGTON BUREAU

WASHINGTON — Alaska and the federal government can settle their oil spill claims against Exxon Corp. if the deal does not restrict Natives' right to sue the oil giant, a federal judge ruled Monday.

And the deal will be signed, Alaska Gov. Walter J. Hickel said, after the dispute with five Native villages and three Native corporations is settled.

That could be as early as today, Hickel said. "I think it will be worked out soon."

However, not all parties were so confident. Contending attorneys could not agree even on a time or place to meet to settle their differences, possibly delaying indefinitely Hickel's efforts to wrap up an estimated \$1.2 billion Exxon Valdez oil spill settlement.

U.S. District Judge Stanley Sporkin last week issued a temporary restraining order preventing Exxon, Alaska and the federal government from completing the out-of-court settlement. Hickel initiated secret negotiations with the federal government and Exxon on Jan. 28.

Sporkin said Monday he would lift the order and allow the deal to be closed if the attorneys can agree on language saying the Natives' legal rights are not harmed.

"Say precisely 'No third-party rights will be affected,'" Sporkin told Justice Department attorney Letitia Grishaw.

Hickel and Alaska Attorney General Charles Cole were also there.

Exxon

Continued from page A1

Natives present for the hearing claimed it a victory but said they were distressed that attorneys for the government did not respond to their efforts to work out the phrasing Sporkin ordered.

"I thought Judge Sporkin made an excellent recommendation that we come together," said Gail Evanoff of Chenega Bay.

Don Emmal, also in Washington representing English Bay Corp., said the judge's ruling was fair.

But the Natives' attorneys said the government did not cooperate.

"The state refuses to meet with us," Anchorage attorney Lloyd Miller said Monday. "The state was unusually hostile this morning."

And the state's continued efforts to shut them out of talks left the Natives insulted, they said.

"I was disappointed to hear our attorney general treat citizens of Alaska, us, in that manner," Evanoff said.

Elenore McMullen, tribal chief of the Port Graham Village Council, said she was pleased with the judge's order but was still confused. "I feel bad as a Native person and as an Alaskan person."

The Natives' chief attorney, Michael Hausfeld, said Natives should be at the bargaining table to ensure their natural resources, damaged by the 11 million-gallon spill in Prince William Sound in 1989, will be restored.

"What you want to do is participate in the negotiations," Sporkin said. "It seems to me that is not the right way to do it. I know what the government has to do. You can't negotiate with 50 people around a table."

Sporkin initially brushed aside Hausfeld's appeal for him to intervene, saying the Natives' complaints could be protected in U.S. District Court in Anchorage where the state suit is filed.

affect the rights of third parties?" Sporkin asked.

"If you agree it is necessary, order us not to impair the rights or claims of Native villages or corporations in the agreement," Grishaw said.

"You people must be Philadelphia lawyers," Sporkin said. "I cannot figure out what you are telling me. I am a very plain guy."

Hausfeld proposed tough language for the judge's order.

He said the proposed Exxon agreement should "not compromise, release or settle any subsistence natural resource injury claims resulting from the Exxon Valdez oil spill" on behalf of Alaska Natives.

But Sporkin denied Hausfeld's request for immediate and continual access to all studies dealing with the impact of the spill. He agreed to Hausfeld's request to retain jurisdiction in the matter and review the agreement to see if it indeed protected the Natives' rights.

Hickel also was present and said the remaining hangup to an Exxon settlement "is right here" in court.

"I think the judge has made it clear. The attorney general has made it clear," Hickel said. "Third parties will be protected."

Sporkin's restraining order was in direct response to a move by five Native villages: Chenega, Port Graham, English Bay, Larsen Bay and Kariak.

Three Native village corporations — Chenega Bay Corp., Port Graham Corp., and English Bay Corp. — filed a similar motion last week.

Hickel later sent Cole to resume negotiations with Exxon and prepared for his appearance before the Senate Energy and Natural Resources Committee today to support a bill allowing oil development on the coastal plain of the Arctic National Wildlife Refuge.

In Juneau, Rep. Max Baucus, D-Anchorage and head of a special committee monitoring the settlement talks, said Cole was to brief the group this morning via telephone.

(on next page)

— THE

Exxon

(2)

But Hausfeld said the principal parties — the state, federal government and Exxon — are negotiating in Washington, D.C., with no direct role for the Natives and only general assurances their concerns will be addressed.

Cole and Grishaw told Sporkin all is well, but the judge wanted more than assurances, too.

"Nothing in this agreement is intended to affect the legal rights of third parties not party to the agreement," Cole said.

Sporkin thanked Cole for his clarity but was dissatisfied with Grishaw's vagueness.

"You are telling me without ambiguity the settlement will not

Diane Sheridan, Gruenberg's administrative assistant, said Cole seemed tired and said he had a headache when he called Monday to set an appointment.

Senate President Dick Eliason, R-Sitka, said he talked with Cole over the weekend. "He said they've reached a point where they either have to fish or cut bait," Eliason said.

House Speaker Ben Grunsundert, D-Sitka, said lawmakers were concerned about details that have not been disclosed yet. He also said the 30-day public comment period the government has promised would precede a deal is not enough.

Spill settlement talks back on track

By DAVID POSTMAN
Daily News reporter

JUNEAU — The state's on-again off-again settlement talks with Exxon were on again Tuesday after the oil giant asked Attorney General Charlie Cole to return to the bargaining table in Washington, D.C.

Since serious negotiations began three weeks ago, charting Cole's frequent-flier miles has been as good an indication as any of how the talks are going. When Cole has been in Washington,

Gov. Walter Hickel has been optimistic and claimed a settlement is close. When Cole returned from his last trip, he said there was no substantive agreement on any issue with Exxon.

But administration officials wouldn't say Tuesday what significance, if any, should be put on Cole's third trip to Washington in as many weeks.

"We'll leave the speculation up to you," said Harry Gamble, Hickel's acting press secretary.

Clearly, though, the resumption of talks was a surprise to Cole.

As late as Monday afternoon, he said he had no plans to return to Washington and there was no set date for negotiations to resume. Last week, he said Exxon and the state were far from agreement and said the company had yet to make a serious counteroffer to the \$1.2 billion Hickel wants to settle lawsuits over the Exxon Valdez oil spill.

But late Monday after-

noon, Cole got a call from an Exxon official who asked if the attorney general could come to Washington immediately, according to Gamble. Cole said yes and was on the next jet out of Juneau.

"I think the correct spin on this is that this is the continuation of ongoing negotiations," said Deputy Attorney General Doug Blankenship.

Hickel is also in Washington, although for today's an-

Please see Page B-3, EXXON

EXXON: Talks back on track

Continued from Page B-1

nouncement by President Bush of a national energy policy. Hickel and his spe-

cial assistant, James Rockwell, left Juneau earlier Monday and he is not expected to take part in any settlement talks, according to Gamble.

The Washington Post

DATE: 3/13/91

PAGE: A1

Exxon Settles Spill For \$1.1 Billion

\$100 Million in Pact for Criminal Fine

By Michael Weiskopf
Washington Post Staff Writer

Exxon Corp. agreed early today to acknowledge criminal responsibility and pay a \$100 million fine as part of a \$1.1 billion agreement with the federal and Alaskan governments to settle civil and criminal charges stemming from the nation's worst oil tanker spill, according to informed sources.

The settlement, by far the largest for environmental damage in the United States, apparently dealt with one of five federal criminal charges filed against the company and its shipping subsidiary, the sources said. Exxon faced two felony and three misdemeanor charges related to the spill.

Trial on the criminal charges was to begin April 10 in U.S. District Court in Anchorage.

Half of the criminal fine and most of the \$1 billion in civil damages to be paid over 10 years would be used to restore the fragile Alaskan shoreline after the ecological havoc caused when the tanker Exxon Valdez ran aground on a marked reef March 24, 1989. Nearly 11 million gallons of crude oil gushed into Prince William Sound, eventually spreading for miles.

Under the settlement signed here, Exxon is obligated to pay another \$100 million if significant environmental problems can be traced to the spill after the 10-year payment period.

Negotiators reached basic terms of the settlement days ago, but U.S. District Court Judge Stanley Sporkin barred final agreement until he heard arguments here Monday by five native Alaskan villages seeking to protect their rights to pursue damages separate from the government agreement.

Yesterday, Sporkin lifted his ban after warning government lawyers not to trample on the villagers' legal rights.

The settlement was signed shortly after midnight at the Justice Department, and details of the agreement are expected to be released at a news conference here today. Spokesmen for the Justice Department and Exxon declined to comment.

Walter J. Hickel (I), who took office as Alaska's governor last December and has been representing the state in negotiations here, said the settlement terms are "in the best interests" of Alaskans.

But environmentalists and some Alaskans criticized the agreement for failing to provide enough money and specifically target its use for environmental restoration. Actual distribution of Exxon's payment would be decided by a board of trustees that is to include representatives of the federal and state governments.

"The worry is that the state of Alaska is going to stretch the definition of restoration and spend the money for marinas and roads," said Doug Wolf, counsel for Alaskan issues at the National Wildlife Federation.

Michael Hausfeld, an attorney who represented the native Alaskan villages in the hearing before Sporkin, said the two governments should have held out for an "open-ended" settlement in which Exxon agreed to pay whatever is necessary to restore ecological damage related to the spill.

Exxon has spent \$2 billion on the cleanup, leaving shorelines almost free of oil. The huge Alaskan fishing industry, badly dislocated by the spill, gradually is returning to normal.

But authorities have barely begun to calculate damage to wildlife as scientific studies continue to find new evidence of long-term damage to certain varieties of sea birds, salmon, trout and other marine life.

According to confidential documents, federal scientists have concluded that some colonies of diving birds have suffered "total failure" to reproduce as result of the spill, while some species of marine life were so affected that they "may not respond" to revival efforts for decades.

Known as the greatest man-made wildlife disaster in the nation's history, the spill resulted in the deaths of more than 36,000 waterfowl, at least 1,016 sea otters and 144 bald eagles along with many other animals.

A federal grand jury in Anchorage indicted Exxon and its subsidiary, Exxon Shipping Co., a year ago after the corporation rejected a plea bargain proposed by the Justice Department. The two felony counts accused Exxon of failing to man its ships with a competent captain and physically and mentally capable crew members.

Joseph J. Hazelwood, the Exxon Valdez captain who witnesses said was drinking ashore before the early morning grounding, left the ship's bridge shortly before it hit the reef and left in command a third mate who lacked Coast Guard certification.

Hazelwood was acquitted last March on state charges of criminal

mischief, reckless endangerment and piloting a vessel while intoxicated. He was convicted of negligent discharge of oil and sentenced to perform 1,000 hours of community service and pay \$50,000 in partial restitution for spill damage.

Under terms of the agreement, Exxon is to pay \$190 million, including the fine, immediately. Of the first installment, \$40 million is slated for continued evaluation of environmental damage and planning for restoration.

And, \$150 million to be released by October is intended to be used to return Prince William Sound to its pristine state before the spill.

Exxon also agreed to pay \$100 million in fiscal 1993 and \$660 million over the next eight years. It was not immediately known if that is earmarked for a specific purpose.

Cont'd

Although the agreement frees Exxon of further obligations to the state and federal governments, the company faces more than 300 lawsuits by Alaskan residents and business executives claiming large losses caused by the spill.

The Alaskan villages that filed suit here said they feared that the government was bartering away their right to pursue spill-related claims later.

But Sporkin assured lawyers for the villages that "the government, I think, understands that they cannot play fast and loose with your rights." If the settlement later compromises those rights, he said, "Hell hath no fury like a judge scorned. . . . It's not fair, it's not right and it's not American."

The New York Times

DATE: 3/13/91

PAGE: A1

\$1.1 Billion Settlement by Exxon Is Said to Include Criminal Fine

Payments Would End Big Claims in Valdez Spill

By KEITH SCHNEIDER

Special to The New York Times

WASHINGTON, March 12 — The Exxon Corporation is prepared to pay a \$100 million criminal penalty as part of a \$1.1 billion payment over the next 10 years to settle civil and criminal cases arising from North America's largest oil spill, Alaskan and Federal authorities said today.

Federal and state officials have agreed to the arrangement. Although a Federal District Court judge at first seemed to raise another hurdle today when he said he would review the settlement to insure that the rights of 5,000 Alaskan villagers were protected, a state official said early this evening that the final obstacles to a settlement appeared to have been overcome.

Effects Would be Studied

Under the proposed agreement, Exxon would pay \$100 million immediately to settle criminal charges brought by the Department of Justice. That would be one of the largest, if not the largest, criminal fine ever paid for pollution. A trial on the charges had been scheduled for April 10 in District Court in Alaska.

The villagers had filed suit last week, asserting that they had been locked out of negotiations between Exxon, the State of Alaska and the Federal Government. The villagers said they feared that a settlement would prevent them from recovering financial damages caused by the Exxon Valdez oil spill on March 24, 1989.

The proposed settlement, which has

been under negotiations for months, would not end Exxon's legal troubles in Alaska. At last count, 330 separate suits were pending against the company. But the settlement would end the major suits, brought by the State of Alaska and the United States.

In addition, the company would pay \$90 million this year into a fund administered by three Federal agencies and three state agencies. The money would be used for scientific studies of the Prince William Sound region, which suffered great damage, and for projects to continue scrubbing the shoreline of oil left when nearly 11 million gallons spilled from the hull of the

Exxon Valdez after the tanker ran aground in the sound. The tanker's skipper, Capt. Joseph J. Hazelwood, was convicted in April 1990 of the relatively minor charge of negligently discharging oil but acquitted of piloting the vessel while drunk and other charges.

The agreement also called for payments into the fund of \$150 million in September 1992, \$100 million in September 1993, and \$70 million annually from 1994 until 2001. The proposed settlement also calls for Exxon to contribute \$100 million more to the fund if additional damage from the oil spill is discovered.

Economists noted that Exxon would be able to claim tax deductions for every payment except for the \$100 mil-

lion criminal penalty, to be paid this year.

The agreement would not affect some 300 other lawsuits filed by environmentalists, fishermen and Aleuts asking Exxon to pay for damages these groups say they suffered after the spill.

The proposed settlement was applauded by Gov. Walter J. Hickel of Alaska but strongly criticized by environmental groups and some state officials who said, essentially, that Exxon would be paying too cheap a price in settling the case.

Bottom of the Pockets?

"It seems like a good deal for Exxon," said Eric Jorgenson, a lawyer for the Sierra Club Legal Defense Fund in Juneau, which has a separate suit pending against the company in the aftermath of the spill.

But Governor Hickel said: "I am very happy with the settlement. It allows us to get to the bottom of Exxon's pockets."

Lance Lambertson, a spokesman for Exxon in Irving, Tex., declined today to say whether Exxon would sign the agreement and said the company would make no comment about the situation for the time being.

"If and when things break and we have come together for a proposal to be signed, there will be extensive notification," said Mr. Lambertson.

The settlement contains provisions to make public a wealth of scientific studies conducted after the spill by the Department of the Interior, the Environmental Protection Agency and other Federal agencies. But studies sponsored by the State of Alaska and the United States Coast Guard are to remain private pending the outcome of court cases brought against the state and the Coast Guard.

"Keeping the data secret is a major problem," said Mr. Jorgenson. "All of the data available from the spill should be released. The public paid for it. It's public information."

Although the terms would make the settlement the most expensive ever for damages caused by an environmental disaster, the pact is certain to raise a stir in Alaska and in Washington. The negotiators will open the pact to public comment for 30 days after it is signed. Officials with the state and two Federal agencies said the pact could be altered as a result.

Economists who have studied the spill for the state and Federal governments said today that the \$1.1 billion settlement represents only a portion of the actual value of the damage to fisheries, water, wildlife and land. The economists said the Exxon Valdez disaster will have caused \$2.5 billion to \$5 billion in damages from the time of the



The New York Times

The spill near Valdez fouled much of the Gulf of Alaska.

To some, an offer
to end the Exxon
Valdez affair is
too low.

spill before midnight on March 24, 1989, through 1994.

3

Cont'd

Several state officials who asked not to be identified today said they had hoped that Exxon would be required to pay \$1 billion in a one-time payment that could generate permanent income through annual interest payments. Thus, the annual payments, spread out over 10 years, are much less valuable to the state's efforts to clean up and study the effects of the spill.

Senator Frank Murkowski, a Republican from Alaska, said today that Alaska was fortunate to have gained a settlement. The alternative was years

of litigation that would have cost Alaska millions of dollars in legal fees without any assurances of success.

"I think this agreement, if it is resolved, is going to have to stand the light of day by the Legislature, the Governor and Exxon shareholders," said Senator Murkowski. "The alternative is litigation. I certainly am inclined to think a bird in the hand is worth two in the bush. The cost of litigation would be very substantial."

The settlement also calls for an advisory group made up of members of the public to help oversee how money from the settlement is spent. The Department of Justice scheduled a news conference for Wednesday to explain provisions in the settlement.

The last obstacles to the settlement were crossed this afternoon when Judge Stanley Sporkin lifted an order here that prevented the pact from being signed, and a District Judge from Alaska, H. Russell Holland, approved the agreement. Judge Holland was to have presided over the criminal trial next month.

Last week, Judge Sporkin blocked the settlement from being signed until the state and Federal Government assured more than 5,000 Alaskan native villagers that their right to gain financial damages from Exxon would not be harmed by the pact.

Today, Judge Sporkin said he was satisfied that the rights of the native villagers to fully prosecute their suits had not been harmed by any settlement between Exxon, Alaska and the Federal Government and lifted his injunction. But in an order he signed this afternoon, Judge Sporkin said he would review the settlement after it is signed to make sure the rights of the villages are ensured.

"The court shall retain jurisdiction over this matter to ensure that the defendants' representations are carried out so the plaintiffs' rights are protected," Judge Sporkin wrote in the order.

Native groups rebuff Hickel's Exxon settlement plan

By JOHN TEIPON

THESE WRITER

Three Native village corporations Thursday condemned Gov. Walter J. Hickel's plan to settle Alaska's estimated \$1 billion claim against Exxon Corp. for the massive March 1989 Valdez oil spill.

Leaders for Chenequa Bay Corp., English Bay Corp., and Port Graham Corp., said in a prepared statement they would block any attempt by Hickel to strike a deal that excluded them. Representatives for the three said they feared Hickel was making his deal in secret by not including them in ongoing settle-

ment talks.

The group said it is contacting Hickel, U.S. Attorney Richard Thornburgh, House Interior Committee Chairman George Miller and Exxon Corp.'s board chairman Lawrence Rawls to demand a full disclosure of the terms of the deal.

"The (state's) deal with Exxon involves our lives and our lands, but no one has talked to us. They can't do the deal without us," Charles Totemoff, president of Chenequa Corp., said in the statement.

Don Emmal, president of the English Bay Corp., said Thursday his village corporation has

damage claims in excess of \$80 million.

"The claims are for direct oiling on English Bay lands, oil on the beaches and adjacent lands," he said.

Sam Fortier of Anchorage, an attorney for Port Graham and Chenequa, said Thursday both villages are seeking more than \$80 million each for oil damage to their lands and beaches.

Chenequa is located on Eyran Island and got direct hits of North Slope crude after nearly 11 million gallons spilled from the Exxon Valdez tanker, Fortier said.

Port Graham and English Bay

are located across Kachemak Bay near Homer.

Hickel spokesman James Rockwell said Thursday the proposed settlement should not affect damage claims or litigation of any other party.

"It's my understanding the governor is not attempting to settle any private claims or in any way injure any private claims," he said.

The Exxon Valdez rammed Bligh Reef on March 24, 1989, and caused the nation's largest oil spill. Crude washed up on more than 1,000 miles of beach and drifted as far south as Kodiak Island.

Subsistence users get special claim status

Alaska Natives and commercial fishermen with oil spill damage claims against Exxon Corp. may sue as groups to win compensation, a state judge ruled Thursday.

Anchorage Superior Court Judge Brian Shortell said Natives and groups relying on subsistence constitute a special class in their claims spurred by the Exxon Valdez oil spill.

The Exxon Valdez spilled nearly 11 million gallons of crude oil into Prince William Sound when it struck Bligh Reef on March 24, 1989.

Shortell granted a special class status to more than 20 villages around the Sound, including the Kenai Peninsula Borough, the Kodiak Island Borough and the Aleutians East Borough.

Shortell also said fishermen and the Sound's business and property owners affected by the spill have special class status to sue Exxon as a group.

Shortell denied the special status to municipal governments around the Sound and sports or recreation users who may have claims against Exxon.

Compiled from Times staff and Associated Press reports.

Oil spill proposal limits Exxon role in future cleanup

By DAVID POSTMAN
Daily News reporter

JUNEAU — Exxon would no longer have to pay for cleaning up Prince William Sound under the legal settlement being pushed by Gov. Walter Hickel.

Hickel told a group of lawmakers

Monday that any future cleanup would be paid for out of a trust fund he wants Exxon to create as part of the deal for the state and federal governments to drop their lawsuits against the oil company.

It was the first indication that future cleanup would not be paid for directly by Exxon.

Hickel also said that the

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federal government's scientific studies into the Exxon Valdez spill put damages at about \$500 million. He said the state is "well covered" by the \$1.2 billion he wants Exxon to pay.

Hickel briefed lawmakers on his trip last week to Washington, D.C., where he met with federal officials to discuss a long list of issues, including settling the government lawsuits over the Exxon Valdez spill.

Rep. Cliff Davidson, D-Kodiak, asked Hickel what would happen if there is cleanup needed in the future, which the state has said is likely.

Hickel, using tar balls in Homer as an example, said cleanup funds would come out of the Exxon trust — a trust that the governor said should be used for



Davidson

SPILL: Oil fund

Continued from Page B-1

ly to make Prince William Sound a world-class recreation area.

Davidson said later he doesn't think it's a good idea to have the trust fund pay for cleanup. An environmentalist agreed.

"I think Exxon ought to be held to the mark," said Eric Jorgensen, managing attorney for the Sierra Club Legal Defense Fund. "If there remains work to be done, Exxon ought to do it."

Please see Page B 5, 6 . . .

Did - Were you notified about this mtg?

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 murres, 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

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VALDEZ, Page A1

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-

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

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 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."

State plans to release spill data

By JAY MATHEWS
The Washington Post

Gov. Walter J. Hickel said Thursday that negotiations to settle the Exxon Valdez oil-spill case are near completion, and he promised to release all scientific data buttressing state and federal claims against Exxon Corp.

In an interview, Hickel responded to environmentalists' concerns about the secret negotiations by saying the state has detailed scientific information about costs of the spill in March 1989 and will not allow Exxon to decide how funds might be distributed under the settlement.

Hickel said negotiations with Exxon and federal officials are "going fast" and that he expected a conclusion "in two or three weeks. It can't go much longer."

Hickel has proposed that Exxon pay about \$1.2 billion to settle state and federal damage claims and

that the money be put in trust to create a marine conservation area in Prince William Sound. There, hundreds of miles of beaches were fouled, fishing was disrupted and tens of thousands of animals were killed after nearly 11 million gallons of oil were spilled when the Exxon tanker ran aground.

Hickel said funds from the settlement would be distributed by a trustee, not Exxon.

The plan also would provide money for more research on the impact of the spill and to purchase private timber rights in the thickly forested area to prevent further environmental damage from logging.

Studies funded under the proposal, Hickel said, would allow the state to "tell what basically happened at the spill, and if they have spills in other places in the world we can give them ... information

on how to handle it, what happened, what the long-term effect (is), if any, and make it something of a science center."

Scientists have expressed frustration at orders from government and company attorneys not to share research while settlement negotiations are under way, but Hickel said all information would become public.

"The kind of settlement we're talking about should take care of all the problems," he said. "We're not giving anything away."

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 know what we're settling on," said Rikd Ott, a con-

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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 there'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

Judge: Criminal counts tied into spill deal

By DAVID WHITNEY

Daily News reporter.

WASHINGTON — A federal judge in Washington Monday disclosed for the first time that criminal charges against Exxon Corp. arising from the 1989 oil spill in Prince William Sound are wrapped into an impending settlement of civil damage claims.

The federal government, U.S. District Judge Stanley Sporkin said, is "resolving certain criminal claims" in conjunction with the damage settlement.

Sporkin's remarks came at a

hearing where federal attorneys tried to persuade him to lift a temporary ban preventing Alaska and the federal government from settling the civil damages with Exxon.

Sporkin, who put the ban into effect last week, is considering an order giving himself the authority to decide whether a civil settlement with Exxon would violate the rights of Alaska Native groups who have sued to stop it. Five Native villages and three Native village corporations contend a settlement would compromise their

case for monetary damages to restore lands upon which they depend for subsistence.

Alaska Attorney General Charles Cole, who has been involved in the settlement negotiations and in the past has said the criminal case was not part of it, refused comment on Sporkin's disclosure Monday that the criminal charges are part of the settlement.

"I heard what you heard," he said.

Justice Department spokeswoman Amy Casper could not be reached for comment.

With Exxon's criminal trial scheduled to start April 10 in Anchorage, there may not be enough time to first run a proposed settlement through the legal hoops Sporkin is considering.

The Justice Department said last Friday that it would submit the settlement as a consent decree to an Alaska federal court if Sporkin would lift his ban on the settlement signing. That commitment called for a 30-day review period during which interested parties could present their objections. If the review period had

begun Friday, it would have ended just three days before the scheduled start of the trial.

But the review period hasn't begun yet, because Sporkin didn't lift the signing ban. Instead, on Monday he directed attorneys for the Justice Department and the Native villages to present him with an order, to which both sides agreed, under which he would keep jurisdiction over the case to make sure Native interests were protected.

Please see Back Page, JUDGE

JUDGE: Impending spill deal resolves 'certain criminal claims'

Continued from Page A-1

That could mean that the settlement would not be implemented until well after the Exxon criminal trial is scheduled to begin, even if Sporkin found that Native interests were protected.

Without the certainty that a favorable damage settlement would be sustained by a court, the incentive for Exxon to admit to criminal conduct and pay a fine for causing the spill could evaporate.

The Justice Department presented Sporkin with the proposed orders late Monday. One would dismiss the Natives' case, as the government wants, while the other would prohibit federal attorneys from entering into a settlement

that would impair the rights of third-party plaintiffs, including the Native villages.

But Lloyd Miller, an attorney for the Native villages who sued in Sporkin's court, said his clients aren't satisfied even with the second proposed order, because the state of Alaska is not included in it, the language is too narrow and there is no requirement that the state and federal governments make public any of the scientific studies and damage assessments done since the spill.

Gaining access to that data is a key goal of the alternative order the Natives will ask Sporkin to sign today, he said.

"If this is submitted as a consent decree, the judge will be faced

with the difficult decision of whether this settlement is fair," Miller said. "It seems the only possible means of making the assessment is for the court to have at its disposal the information compiled by the state and federal government."

Assistant Attorney General Richard B. Stewart, in a submission to the court late Monday, made clear that the Justice Department felt Sporkin was overstepping his judicial powers. He cited judicial interference in not only the civil damage settlement but also the prosecution of the criminal case.

"The United States maintains its position that the court lacks jurisdiction to supervise the prose-

cutorial and settlement authorities of the Attorney General," Stewart wrote.

"In light of this jurisdictional position, the government cannot consent to any order of this court other than an order which dismisses the case," Stewart said.

Dismissal of the case is exactly what Sporkin was not inclined to do. He indicated Monday that the Natives' lawsuit would remain before him until he was satisfied that the settlement did not violate their interests.

In his filing to Sporkin Monday afternoon, Stewart disclosed that a proceeding is scheduled for today before Anchorage U.S. District Judge H. Russel Holland, who is in Arizona this week attending a ju-

dicial conference.

Miller said Holland's office assured him the criminal case would not be settled in the closed-door Tucson conference, regardless of Sporkin's ruling.

"It's not surprising to me that given the events of the last few days, the parties to the criminal case would meet with Judge Holland and give him a sense of what is happening," Miller said. "With the 30-day comment period, a settlement would be back up against a clock to sign."

C Daily News reporter George Frost contributed to this story.

How were several criminal claims wrapped into the civil damage claims settlement? which ones & why?

Is the expense tax-deductible ("yes, can deduct \$900 m cleanup payments but not the \$100m fine")
How was \$1 billion figure arrived at?
How much is it in taxpayer dollars after 10 yr. payment plan?

How will money be spent?
Reimburse state expenses to state?
Reimburse 470 funds?

Feds. have some studies to release
Separate from State's?
Will feds release theirs?

How does settlement affect other pending suits?
Indian villages
Bzharmen
etc.

Who all has suits pending?
Raw 332 tax part of settlement
States portion? Dropped claims?
Municipalities free to pursue it on their own
Reopeners clause - what would it take?

state Dropped suit against Alyeska Pipeline Service Co. for environ. damage when signed two settlements - why?

Spill deal OK'd

Claims settled for \$1 billion

By DAVID POSTMAN 3.13.91
Daily News reporter

JUNEAU — Government criminal and civil claims against Exxon were settled early today, a deal that calls for the giant oil company to pay \$1 billion in installments stretching into the next century.

"Yes, we signed it and, yes, this is a very, very good thing for the people of the state of Alaska," Gov. Wally Hickel said from Washington, D.C., after he, federal officials and Exxon executives signed the agreement at a midnight meeting at the U.S. Justice Department.

Hickel would not discuss the settlement except to say, "It's the very best we could do after 60 days of intense negotiations. I'm happy with it."

The money would be used to pay for spill cleanup, restoration of the Sound, scientific studies and reimbursement of government spill costs. A hundred million dollars would be for a criminal penalty to be split between the state of Alaska and the federal government, according to a National Oceanic and Atmospheric Administration "fact sheet" on the settlement obtained by the Daily News. The rest of the money will be administered by a group of state and federal officials.

Even though it's signed, the deal is far from final. The agreement calls for a 30-day public comment period and, according to the NOAA document, "Each government has the right to withdraw its consent to the settlement agreement within 15 days after the close of the public comment period if the comments disclose facts indicating the agreement is not in the public interest."

During the past three months, the settlement has gone from nothing more than an idea of Hickel's, through weeks of intense negotiations, and into what

Please see Back Page, SPILL



Trustees
of Acct:

Reps. from NOAA - lead trustee
EPA - Dept.
Interior
Ag.
ADF & G
ADEC
AK AG

State gets \$90 M up front
plus 1/2 of \$100 M fine so \$140 M now
\$150 M more at beginning of next fiscal year
then \$100 M: same time next year (Oct. 1)
remaining \$50 M to be pd. over next 7 yrs.
(\$135 M is to cover past expenses including clean-up and scientific research)
2

Exxon

Continued from page A1

for weeks. He had said the settlement would be for about \$1.2 billion.

"The governor and I are both pleased with the results of the meeting tonight," Cole said this morning.

The final deal reportedly is for \$1 billion in settlement, with a clause to reopen suits for up to \$100 million on damage the spill caused that is not yet known, for a total of \$1.1 billion.

The state and federal government will evenly split the \$100 million fine, and the state will also get \$90 million up front, for a total of \$140 million immediately, officials said.

According to sources close to the settlement, the next payment will be \$150 million due at the beginning of the next fiscal year, Oct. 1. Then, the next payment will be \$100 million at the same time next year, with the remaining \$500 million to be paid out

over seven years.

Those details were confirmed by several high-level sources who did not want to be identified.

The money will be administered "under some kind of joint restoration fund" for Prince William Sound, said Hickel deputy press secretary Eric Rehmann.

Hickel wants to spend the money on restoration and a marine theme park in the Sound, heavily damaged when the Exxon Valdez dumped 11 million gallons of crude oil at Elkh Reef almost two years ago.

Trustees of the account will include representatives from the federal National Oceanic and Atmospheric Administration, the Environmental Protection Agency, and the Departments of Interior and Agriculture, as well as the state Department of Fish and Game, the Department of Environmental Conservation and attorney general's office, sources said.

EPA will be the lead trustee, they said.

About 30 people, mostly lawyers, reportedly attended the closed meeting. They included

Hickel, Cole, Hickel aides James Rockwell and Rehmann, and officials from Exxon, NOAA, EPA, Justice and Transportation Secretary Samuel Skinner.

Exxon Corp. chairman Lawrence Rawl was also there.

Hickel said he and Rawl were congenial and cooperative. Hickel said Rawl told him, "I didn't think it could be done."

The meeting was held so late to accommodate a deal Hickel and Rawl made at the beginning of talks in January.

"The governor and chairman Rawl had made a deal that neither of them would do anything without the other," Rehmann said. Rawl was called Tuesday and flew in for the late-night meeting.

Earlier Tuesday, a U.S. District Court judge allowed a settlement to be signed by lifting a restraining order he placed last week. In its place, Judge Stanley Sporkin issued an order stating an agreement must provide that Alaska Natives can "prosecute fully the suits they have initiated against Exxon and Alyeska (Pipeline Co.) just as if no settle-

ment existed."

Three Native village corporations and five Native villages sued last week to prevent a deal from being signed. They said their rights to sue Exxon might be bargained away in the deal.

Sporkin told Justice Department attorneys that Exxon cannot escape meeting its obligations to the Natives. State and Exxon representatives were not at Sporkin's hearing.

"It is not a situation where anybody can get out cheap," Sporkin said. "If anybody believes that, they are making a terrible mistake."

Sporkin told the Justice Department to live up to its pledge not to infringe on Native rights.

"Eell haah no fury like a judge scorned," he warned.

Natives were happy. "The judge is very serious in his concerns and I'm pleased with his order," said Don Emmal of English Bay Corp.

However, Natives failed to win assurances they would be entitled to see government studies on how the spill affected lands they have chosen under a federal

lands act.

Details of the clause protecting Natives were not available Tuesday night.

"Obviously it was resolved to the acceptance of every party," Rehmann said.

Exxon earlier Tuesday reportedly balked at signing, unhappy with Sporkin's order.

Exxon defense attorneys and federal prosecutors talked via telephone with Anchorage federal judge Russel Holland, who was in Arizona, Natives attorney Sam Fortier said.

Holland was set to oversee the criminal case against Exxon next month in Anchorage. Exxon had been charged with five criminal counts.

Cole had said repeatedly throughout negotiations the criminal case was not related to the civil settlement talks.

Sporkin said in court Monday the federal government, though, was "resolving certain criminal claims" in conjunction with the civil settlement.

Hickel and Cole were set to leave Washington today and arrive Thursday in Juneau, when

they were to address a joint session of the Legislature, Rehmann said.

Rumors of an imminent settlement circulated throughout Juneau early Tuesday afternoon. Before knowing the deal was final, lawmakers reacted to word of a possible deal.

Rep. Max Gruenberg, D-Anchorage and chairman of a special committee to monitor spill talks, said legislation is in place that would give lawmakers power to approve or deny a settlement.

House Speaker Ben Grussen-dorf, D-Sitka, commended Hickel for his hard work in pursuing a deal but stopped short of calling for legislative approval.

"If we feel that Alaskans out there who have potential litigation are accommodated and we're not dragged into court, it may be the settlement isn't so bad," Grussen-dorf said.

Times writers E. Michael Myers in Washington and Dirk Miller in Juneau contributed to this report.

The Washington Post

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The Exxon Valdez Settlement

FISH ARE back in great numbers in Alaska's Prince William Sound, and last summer's catch was large. The sea otters appear to be flourishing again. It's been two years since the Exxon Valdez ran aground on a reef in the sound and lost a quarter of a million barrels of crude oil into the water. The damage has not been entirely repaired. There are, for example, carpets of tar buried under some of the beaches, and no one knows precisely what effect they will have on the ecology. But two years' experience with cleaning up the mess has given federal and Alaska state authorities a fairly clear idea of the size of the job that remains. That has enabled them to negotiate this week's settlement of damages with some assurance that the money will cover the decade of work ahead.

Exxon has spent more than \$2 billion on the cleanup so far. In this settlement it has committed itself to a further \$900 million in damages, to be spent by a committee of federal and state officials. At the end of that time, Exxon will be liable for another \$100 million if restoration requires work not now anticipated. In addition, the company has pleaded guilty to a series of criminal charges and will pay a fine of \$100 million, of which half will go to Alaska as restitution.

The alternative to this settlement was litigation.

The trial was scheduled to have begun next month. The state and federal governments were clearly right to have chosen negotiation instead. It means that both sides will save enormous legal costs—money that might better go into ecological protection. It means that there will be a dependable flow of funds for restoration, beginning immediately. If the question were left to a long quarrel in the courts, no one would know how much might eventually be paid, or when. The Amoco Cadiz spilled a much larger amount of oil into the Atlantic off the French coast in 1978, and damages from that wreck are only now beginning to be paid.

Many questions about the impact of the Valdez spill are still unanswered. State and federal authorities hope to establish a scientific institute in Prince William Sound that, in the course of answering them, will make itself a major contributor to marine research. The cleanup money will do more than scrub tar off rocks.

This settlement sets sound and healthy precedents for responsibility in a kind of disaster in which, until recently, there would have been little recognition of any damage to the public and little chance of compensation. Perhaps, in the political sense, it will also set a useful precedent for the current case—larger and legally much more complex—of the oil spill in the Persian Gulf.

AP Associated Press

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^AP-Exxon-Who Won^

^All Sides Seen Victorious in Exxon Settlement^

^An AP Analysis^

^By LAURIE ASSEO-

^Associated Press Writer=

WASHINGTON (AP) - Exxon Corp. isn't getting off lightly in paying a \$1 billion settlement over the 1989 Exxon Valdez oil spill. But it is getting a chance to begin closing the books on a costly public relations nightmare.

For its part, the Justice Department won a significant victory by persuading Exxon to plead guilty to criminal charges while avoiding years of litigation and the inherent risk of losing.

"I don't think there are any losers here," said Warren M. Shimmerlik, a New York investor relations adviser for several oil companies, not including Exxon. "I think this is an issue that really needed to be put to rest."

Some environmentalists complained that the \$900 million Exxon agreed to pay Wednesday may not provide enough money to fully clean and restore plant and animal life in Alaska's Prince William Sound.

But, said Eric Jorgensen, an attorney for the Sierra Club Legal Defense Fund in Juneau, "There is a great benefit to settling. The money is in hand and it can be used now for the environment."

Exxon agreed to plead guilty to four misdemeanor charges and pay a record \$100 million criminal fine plus \$900 million to complete the cleanup - the largest amount ever paid for environmental damage.

The settlement amount is higher than the \$700 million figure that was being discussed last year when talks broke down.

In exchange for the misdemeanor pleas, the Justice Department agreed to dismiss two felony counts that charged Exxon with "willfully and knowingly" failing to make sure the Exxon Valdez was manned by mentally and physically competent pilots.

Exxon Chairman L.G. Rawl told reporters his company had been ready to contest the case, but decided "a long and costly legal confrontation would benefit no one." The company already has spent \$2.5 billion to remove oil from the sound and its shores.

Rawl said Exxon could deduct the \$900 million cleanup payments from its income taxes, but not the fine.

The settlement could begin resolving much of Exxon's image problem related to the oil spill, said Simon Trimble, an international oil analyst for the Lehman Brothers brokerage firm in New York.

"In the short term it would seem that the Justice Department has won a very large settlement," Trimble said. "In the longer term Exxon may have won by removing the large part of the litigation that would have drawn public comment over a number of years."

"Exxon has been made to pay a full price for the damage that was done. That is a very positive point for the American public," which might have wound up paying more for the cleanup if a smaller company had created the spill, Trimble said.

By settling now, Exxon also saves "the drain on creative efforts in a corporation, which are the things that create profits," said Sheila Hollis, a Washington attorney and chairwoman of the American Bar Association's coordinating group on energy law.

And prosecuting the felony counts may have presented difficulties, said Assistant Attorney General Richard B. Stewart, head of the environment division.

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The government would have had to prove that Exxon Corp., as the parent of Exxon Shipping, was criminally liable for intentionally allowing the Valdez to sail with an incompetent crew. The issue of parent corporate liability has not been tested such in criminal cases, Stewart said.

Exxon still faces private civil suits from environmentalists and others who want Prince William Sound restored to its original state.

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The Dallas Morning News

DATE: 3-14-91

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Exxon settles spill case \$1 billion deal to cover fine, Alaska cleanup

By Maria Halkias

Staff Writer of The Dallas Morning News

Exxon Corp. settled criminal and civil claims arising from the nation's largest oil spill by agreeing to pay record-setting restitution for environmental violations, officials said Wednesday.

A \$1 billion settlement with the federal government and the state of Alaska was signed about midnight Tuesday in Washington by Lawrence G. Rawl, Exxon chairman and chief executive officer.

The fine — to be paid over 10 years — is in addition to more than \$2 billion that Exxon has spent to clean up Alaska waters and coastlines after the Exxon Valdez supertanker spilled more than 10 million gallons of oil into Prince William Sound on March 24, 1989.

The nation's largest oil company agreed to plead guilty to four misdemeanors and to pay a criminal fine of \$100 million plus \$900 million to restore environmental damage.

Exxon was prepared to defend itself, Mr. Rawl told reporters at the company's Irving headquarters Wednesday. "However, we have agreed to the settlements because they are in the best interests of Exxon shareholders and employees."

The plea bargain prohibits the Justice Department from bringing additional criminal charges against Exxon or any of its officers.

The government also gave up the right to prosecute Alyeska Pipeline Service Co. for allegedly failing to meet government requirements that it have an emergency oil spill cleanup plan.

Alyeska, owned by a consortium of oil companies operating on Alaska's North Slope, had piped the crude oil to the Exxon Valdez at the port of Valdez shortly before the accident.

Although not required by law, the civil settlement will undergo a 30-day public comment period in Alaska. A federal court must also approve the settlement.

In Washington, Attorney General Dick Thornburgh said the deal "represents a clear and unmistakable signal to those engaged in environmental crime that their activities are not going to go unnoticed and unprosecuted."

At the same news conference, Environmental Protection Agency Director William Reilly said he was pleased with the settlement.

"America has never seen an oil spill so large and destructive and in such a beautiful pristine environment," Mr. Reilly said.

The funds provided by Exxon "assure that necessary activities will be carried out and monitored to restore Prince William Sound," he said.

Similarly, said Jay D. Hair, president of the National Wildlife Federation: "The large settlement and criminal plea will send a strong message

to polluters. However, no one can claim victory over a disaster which will impact people and the environment for decades to come."

Of the \$100 million criminal fine that Exxon and its Exxon Shipping unit agreed to pay, the U.S. Treasury will receive \$50 million and Alaska the other \$50 million as restitution for environmental damage.

The \$100 million penalty "is by far the largest single environmental criminal recovery ever exacted," Mr. Thornburgh said. And the aggregate \$1 billion payment "is by far the largest single amount ever paid as a result of environmental violations."

The settlement has a reopener clause under which Exxon may have to pay an additional \$100 million for natural resource damages not currently foreseen.

The \$900 million civil settlement will be paid over a 10-year period. It will go toward an environmental restoration program administered by a joint federal-state trustee council, as well as for reimbursement for past and continuing federal and state cleanup and research efforts.

Any future cleanup costs that Exxon incurs will be credited against its annual restitution, which begins with a \$90 million payment into the trust fund.

All costs associated with the Exxon Valdez spill, except the \$100

million criminal fees, are viewed as tax-deductible operating expenses, Mr. Rawl said — leaving taxpayers to indirectly shoulder some costs.

The settlement "will not have a noticeable effect" on the company's financial results because reserves for the payments had been set aside for the last two years, Mr. Rawl said.

"I've been disappointed and angry since March 24, 1989. I was angry that this happened to us," he said. "It has distracted us from doing more productive work. . . . We took the responsibility and we did the job."

Twice in the last two years, the federal government attempted to negotiate a settlement with Exxon after the U.S. Justice Department's indictment on Feb. 27, 1990, of Exxon and its shipping subsidiary.

Negotiations reopened in January after Alaska Gov. Walter J. Hickel called Mr. Rawl and invited him to the first of several meetings.

Mr. Hickel called the agreement "a good settlement" for his state, the federal government, Exxon and the environment.

"I'm glad this is behind us," Mr. Hickel said in Washington.

U.S. District Judge Stanley Sporkin of Washington on Tuesday afternoon set aside an earlier order temporarily blocking completion of a settlement.

The judge had halted negotiations between Exxon, the federal government and Alaska to review claims by five native Alaskan villages that they were improperly locked out of the negotiations.

The villagers had filed suit this month, asserting that a settlement could prevent them from recovering financial damages caused by the Exxon Valdez spill.

The accord will not end Exxon's legal troubles in Alaska; about 200 separate suits are pending against the company. But the agreement settles major suits brought by the federal government and Alaska.

The company said those suits aren't expected to be as material as those just concluded.

Exxon agreed to plead guilty to a misdemeanor violation for the death of migratory birds killed by the oil spill.

Newsday

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Exxon's Bill for Spill

\$1B in damages and fines in Valdez oil accident

By Stephanie Saul
WASHINGTON BUREAU

Washington — Exxon Corporation yesterday agreed to pay \$1 billion in civil damages and criminal fines for the March, 1989, Valdez accident, in which the tanker struck a reef and spilled more than 11 million gallons of crude oil into Alaska's Prince William Sound, spoiling 700 miles of shoreline and killing thousands of birds, fish and mammals.

Attorney General Dick Thornburgh said yesterday that the agreement was the largest environmental settlement in history.

The \$1 billion settlement includes \$100 million in criminal fines. By pleading guilty to a total of four misdemeanors, Exxon and its subsidiary, Exxon Shipping Co., avoided a possible conviction on two felony charges included in the February, 1990, federal indictment against them.

The companies had been scheduled to go to trial April 10 in Anchorage.

"The extraordinary size of the fine and the fact that this resulted in guilty pleas is significant," Thornburgh said, because it sends a message that "answering for environmental spoilage cannot be done by simply paying damages."

The \$900 million in civil damages will be paid during 10 years under the agreement. Exxon also could be responsible for up to \$100 million in additional damages if unforeseen environmental problems occur, under a "reopener" clause in the agreement.

Thornburgh said the money will be spent for additional cleanup and both short- and long-term restoration projects in Prince William Sound and the Gulf of Alaska, the areas damaged by the spill. Of the total, \$135 million is committed for past expenses, such as cleanup and scientific research.

Last year, the Justice Department had been willing to agree to a \$700 million settlement, but the State of Alaska said it was inadequate and blocked the deal.

Exxon Chairman Lawrence G. Rawl said the company had agreed to the settlement because it was in the best interest of Exxon shareholders and other involved parties. "A long and costly legal confrontation would benefit no one," Rawl said yesterday.

Rawl said other than \$100 million in criminal fines, all other costs will be tax deductible. And he said the agreement will have no noticeable effect on the company's

financial results because reserves have already been established to pay the penalties.

Exxon says it already has spent \$2.5 billion for cleaning up and reimbursing state, federal and local governments for their cleanup efforts.

The company has said the amounts previously paid out already exceed its insurance coverage.

Oil industry consultant Scott Jones of Philadelphia's AUS Consultants said the settlement avoids legal fees in the tens of millions of dollars.

"I think, certainly within Exxon and certainly within the oil community of Alaska, in general, to get this thing settled and behind the industry is a strong positive step," Jones said.

Environmentalists generally reacted positively to the settlement but expressed several reservations.

"The large settlement and criminal plea will send a strong message to polluters," said National Wildlife Federation President Jay D. Hair. But Hair said his group could not fully embrace the deal, partly because it did not require the public release of scientific data on the spill, collected both by Exxon and the government. EPA Administrator William K. Reilly said, however, that his agency's data would be available.

Exxon still faces a number of private civil suits in connection with the oil spill, as does

the Valdez' captain, Joseph J. Hazelwood of Huntington.

Witnesses said Hazelwood was drinking on shore the day the Valdez left port. But he was acquitted by an Alaska jury last year of criminal mischief, reckless endangerment and operating a vessel while intoxicated. The jury convicted him of a less serious charge of negligent discharge of oil. He was sentenced to 1,000 hours of community work in Alaska and a \$50,000 fine. Hazelwood has appealed.

Of the original criminal charges against Exxon and Exxon Shipping, the parent company agreed to plead guilty to one misdemeanor, admitting that it killed migratory birds in violation of federal law.

Exxon Shipping agreed to plead guilty to three misdemeanors, admitting that it negligently discharged pollutants without a permit; that it negligently discharged refuse matter and that it killed migratory birds.

Of the \$100 million in fines, \$50 million will go into the federal treasury and \$50 million will go to Alaska coffers.

The civil settlement must be approved by a federal judge after a 30-day public comment period. Within 10 days after the approval, Exxon will pay the government its first installment of \$90 million on the civil fine.

On Sept. 1, 1992, Exxon will pay another \$150 million. It will pay \$100 million on Sept. 1, 1993, and \$70 million a year until the final payment on Sept. 1, 2001.

The Hartford Courant

 DATE: 3-14-91
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Exxon agrees to pay record fine in spill

 By JAMES ROWLEY
 Associated Press

WASHINGTON — Exxon Corp. settled government claims arising from the nation's worst oil spill by agreeing Wednesday to pay a record \$100 million fine for four environmental crimes and to spend \$900 million to clean up Alaska's coast.

The largest settlement of an environmental damage case in U.S. history was reached after Exxon already spent \$2.5 billion on the cleanup. The fine is 20 times the previous record of \$5 million paid by Allied Chemical in 1976 for dumping Kepone into the James River in Virginia, officials said.

The civil settlement and guilty pleas to the four misdemeanors will avert lengthy court fights over the grounding March 24, 1989, of the tanker Exxon Valdez, which spilled more than 10 million gallons of oil into Prince William Sound.

Attorney General Richard L. Thornburgh said the deal with the federal government and the state of Alaska "represents a clear and unmistakable signal to those engaged in environmental crime that their activities are not going to go unnoticed and unprosecuted."

The record criminal fine, involving one misdemeanor charged against Exxon and three charged against its Exxon Shipping Co. subsidiary, shows that "answering for environmental spoilage cannot be done simply by paying damages," the attorney general said.

Proceeds from the fine will be split 50-50 with the state of Alaska to help finance the cleanup. By law, the federal share goes into the general treasury.

"I think it's a good settlement for the state of Alaska, it's a good settlement for the federal government... it's a good settlement for the environment," said Alaska Gov. Walter Hickel, who was governor 23 years ago Wednesday when the discovery of Alaska oil was announced.

Exxon's sales totaled more than \$107 billion last year and it reported earnings of more than \$5.1 billion.

Under the proposed consent decree, which needs court approval after a 30-day public comment period, Exxon would pay \$900 million over the next 10 years to a trust fund administered by federal and state officials.

The fund would be used to pay for costs of the continued cleanup by Exxon.

After 10 years the trustees could seek \$100 million more for any remaining environmental damage from the oil spill, which killed countless birds, fish and mammals.

By settling instead of going to court, the Bush administration and Alaska get cleanup money now and avoid "spending the next decade feathering the nests of corporate and government lawyers," said Thomas L. Sansonetti, the Interior Department solicitor.

The settlement means that more cleanup money "will be available years earlier than any recovery that

could have been secured through full litigation," said William K. Reilly, head of the Environmental Protection Agency.

The settlement "allows us to turn our full attention, finally, to the tasks of restoration," he said.

The deal settles all civil claims against Exxon by the state of Alaska and any that the federal government might have filed. It does not end the private lawsuits filed by property owners, fisherman and businesses.

The settlement was reached late Tuesday after a federal judge in Washington lifted an order halting discussions until he was assured that claims of five native Alaskan villages would not be compromised.

Environmental groups had mixed reactions.

"They did well on the criminal side. That's a very hefty criminal figure. Our concern is with the civil



RICHARD L. THORNBURGH
 A signal to pollsters

fine," said Sarah Chasis, a senior lawyer for the Natural Resources Defense Council.

Chasis expressed disappointment that \$135 million of what Exxon will pay covers past cleanup expenses.

"You're really diminishing the pot for long-term research and restoration," she said. "We want to make sure the environment is made whole. We have serious questions as to whether this agreement would accomplish that goal."

Others said it was hard to evaluate the settlement because scientific data on the extent of the damage has not been made public.

"On the one hand it's the largest settlement of its kind ever," said Douglas Wolf, a lawyer for the National Wildlife Federation. "The downside is that we don't know if that was an appropriate amount for this spill because it was the largest one ever."

Rep. George Miller, D-Calif., said the House Interior water and power subcommittee has scheduled a hearing April 8 because "the Congress and the public will have many questions about the Exxon settlement."

Exxon and its shipping subsidiary had faced a criminal trial April 10 in federal court in Anchorage on two felony and three misdemeanor counts arising from the oil spill.

Exxon Chairman L. G. Rawl, who signed the deal at the Justice Department, said in a statement that the company had been ready to contest the civil and criminal charges.

"However, we have agreed to the settlements because they are in the best interests of Exxon shareholders and all other involved parties," he said. "A long and costly legal confrontation would benefit no one."

Rawl said Exxon could deduct the

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\$900 million cleanup payments from its income taxes, but not the fine.

The two felony counts that will be dismissed accused Exxon of "willfully and knowingly" failing to make sure that the Exxon Valdez was manned by mentally and physically competent pilots.

Joseph Hazelwood, the ship's captain, was accused of drinking before the tanker left the port of Valdez, but he was acquitted of state charges that he operated the ship while intoxicated.

Exxon agreed to plead guilty to a misdemeanor violation for the death of migratory birds killed.

Exxon Shipping also agreed to plead guilty to the Migratory Bird Treaty Act violation. The Exxon subsidiary also will plead guilty to violating the Clean Water Act and the Refuse Act by negligently dumping oil into Prince William Sound.

Los Angeles Times

DATE: 3/14/91

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Exxon Agrees to Pay \$1-Billion for Alaska Spill

By RONALD J. OSTROW
TIMES STAFF WRITER

WASHINGTON—Exxon Corp. agreed Wednesday to pay \$900 million in damages and a \$100-million criminal fine for the Exxon Valdez oil spill in Alaska two years ago in a settlement hailed by Atty. Gen. Dick Thornburgh as "by far the largest single amount ever paid as a result of environmental violation."

The settlement with the state of Alaska and the federal government includes a reopener clause under which Exxon may incur up to \$100 million in additional damages for natural resource effects not now foreseen.

The agreement, spelled out in a consent decree filed in federal court Wednesday, remains subject to the approval of a federal court in Alaska.

By agreeing to plead guilty to misdemeanor crimes, Exxon and its subsidiary, Exxon Shipping Co., will avoid going to trial next month on felony as well as misdemeanor charges. The trial would have further tarred the oil giant's reputation for the unprecedented damage the oil spill caused to Prince William Sound.

The Exxon Valdez tanker ran aground on a reef in the sound on March 24, 1989, spilling some 11 million gallons of crude oil and fouling more than 700 miles of Alaska's shoreline, national wildlife refuges and national parks. More than 36,000 migratory birds, including 100 or more bald eagles, and many other species of wildlife died as a result of the spill.

The settlement, announced here by Thornburgh and Alaska Gov. Walter J. Hickel, was praised by government and corporate officials for averting what promised to be a protracted court fight and channeling hundreds of millions of dollars into clean-up and restoration operations.

"We have a winner—environmentally, psychologically and financially," Hickel said.

Interior Department solicitor Thomas L. Sansonetti said that officials faced a choice of either settling now so that funds could be applied to clean-up and restoration or "spend the next decade feathering the nest of corporate and government lawyers."

Environmental groups, while praising some parts of the settlement, expressed concern about other aspects of the deal, such as its failure to require release of scientific and economic data that would help measure the true cost of the spill.

Under terms of the proposed agreement, Exxon's \$100-million criminal fine will be divided evenly by the federal government and Alaska, with the state's \$50 million to be applied to the cost of restoring damaged natural resources.

The \$900 million in civil damages is to be paid over the next 10 years to federal and state trustees. Of the total, \$135 million will cover past expenses, including clean-up and scientific research.

Exxon Chairman Lawrence G. Rawl noted that the company will be able to deduct the \$900 million in civil damages in calculating its corporate income taxes, although the \$100-million criminal fine is not deductible.

Since the spill, Exxon estimates that it has spent \$2.2 billion on cleaning up Prince William Sound and the Gulf of Alaska. The \$1-billion settlement would be over and above that amount.

Les Rogers, an Exxon spokesman, declined to disclose the after-tax cost of the settlement or its present value, which would take into account the fact that the money will be paid in increments through 2001.

Rogers described that information as "proprietary," adding: "We have elected not to make it available." The agreement provides that six government agencies—three federal and three state—will decide how to allocate settlement funds to restore Prince William Sound and the Gulf of Alaska. Those decisions will affect \$765 million in damage funds remaining after past expenses are deducted.

Thornburgh noted that the federal government and Alaska are asking the federal court to allow a 30-day public comment period on the settlement—an opportunity for public reaction not required by law.

Jay D. Hair, president of the National Wildlife Federation, said that the \$1-billion settlement and criminal plea "will send a strong

message to polluters," but added: "No one can claim victory over a disaster which will impact people and the environment for decades to come."

John Adams, executive director of the Natural Resources Defense Council, criticized the failure to require release of scientific information. "Because much of the scientific and economic data will not be released, we cannot know whether the amount of the settlement fully vindicates the right of the public and the environment," he said.

William K. Reilly, administrator of the Environmental Protection Agency, said that the federal trustees who will help decide how to spend the settlement funds plan to release their data "forthwith."

Rep. George Miller (D-Martinez), acting chairman of the House Interior and Insular Affairs Committee, said that Congress and the public will raise many questions about the settlement.

Miller said that he plans a hearing April 8 to examine such questions as whether the rights of Alaska natives and other injured parties are protected, whether Exxon should be required to release all scientific data and whether settlement funds will be used to acquire timber rights and other natural resources as part of the restoration effort.

A Justice Department attempt to settle the case in February, 1990, before Exxon and its shipping subsidiary were indicted on the felony and misdemeanor charges fell through when top Alaska officials refused to endorse the settlement.

Thornburgh noted that the earlier settlement proposal fell \$400 million short of the amount contained in the final deal.

Exxon and Exxon Shipping were indicted Feb. 27, 1990, and charged with felony violations of the Ports and Waterways Act and the Dangerous Cargo Act, along with misdemeanor violations of the Clean Water Act, the Refuse Act and the Migratory Bird Treaty Act.

Under the plea agreement, Exxon will plead guilty to the Migratory Bird Treaty Act misdemeanor, while Exxon Shipping will plead guilty to all three misdemeanors.

Settlement helps Hickel woo support

Democrats wary; governor claims victory over Exxon

By DAVID POSTMAN
Daily News reporter

JUNEAU — Gov. Wally Hickel Thursday tried to turn his success in getting a proposed settlement of the Exxon Valdez lawsuits into legislative and popular support for his other programs.

In a rare mid-session speech to a joint session of the legislature, Hickel reported on the Exxon settlement announced Wednesday and said he was now ready to "resolve many other of Alaska's great challenges."

He said nothing new about the settlement in the 15-minute televised speech. He used the forum to ask the legislature to support his proposed solution to the subsistence crisis and the mental-health trust lands controversy. Recapping his State of the State Address, he also talked about opening the Arctic National Wildlife Refuge to oil drilling, said the operating budget needs to be cut and asked for support for his public works bill.

"Let's face it, the governor was not addressing the legislative body tonight," said House Speaker Ben Grossendorf, D-Sitka. "The governor was using it as a forum to talk to the Alaska public ... and trying to pull the public to support other issues."

When asked if he thought he was on a roll from the Exxon settlement, Hickel said, "I've been on a roll since I was born."

Grossendorf and other lawmakers praised Hickel and Attorney General Charlie Cole

Please see Page E-3, HICKEL.

HICKEL: Governor claims victory on spill

Continued from Page E-1

for their hard work in getting a settlement. But some questioned whether it was a good deal and they were split on whether the accomplishment would do Hickel any good on his legislative agenda.

"I think it will help," Sen. President Dick Eliason, R-Sitka, said. "There's no question about it, he is a leader. He is the most optimistic man in Juneau. As Ronald Reagan used to say, he can dig through a pile of manure and find a pony in there somewhere."

Senate Majority Leader Rick Halford agreed, saying, "Governor Hickel is a big-picture governor. This is exactly the kind of issue he can shine in, and if he can do that with some of these other big issues, he will be doing very well."

Rep. Terry Martin, R-Anchorage, one of the governor's biggest boosters, said Hickel has set an example.

"It puts a good, positive picture on everything," he said. "People realize we can get things done."

Democrats were less sure. "I don't think there is linkage with any of those things," Rep. Johnny Ellis, D-Anchorage, said. "His perceived victory with Exxon is somewhat mixed, and I don't think he should expect it to help him on other issues."

Rep. Mike Navarre, D-Ketchikan, said the public may now perceive Hickel as a "can-do governor" but that won't help in the legislature.

"The easy thing to do right now is jump on the bandwagon and say, 'Hah, we settled the Exxon Valdez case.' But it's incumbent on this legislature to fully examine this settlement."

Natives' battle against Exxon will continue, leaders assert

By T.A. BADGER
The Associated Press

Alaska Native groups whose lands and livelihoods were affected by the Exxon Valdez oil spill said Thursday they will find a way to make the oil giant pay for the damage.

Chugach Native leaders meeting in Anchorage said they have not given up on their efforts to compel Exxon Corp. to pay off claims from the spill that dumped 11 million gallons of oil into Prince William Sound in 1989.

"We were impacted economically and socially, as well as the effect on our subsistence lifestyle," said Karen Schwartz of the Mount Marathon Native Corp. "The spill ruined something so beautiful, so much a part of our lives."

They also said they feel betrayed by the state and federal governments because they were left out of negotiations with Exxon that resulted in a proposed \$1 billion settlement of criminal and civil claims reached this week.

"They had an opportunity to include us and get our claims taken care of, but this

wasn't done," said Pat Norman, president of the Port Graham Village Corp. "Regardless of what has happened, Exxon has to pay for what they have done."

Exxon spokesman Karsten Rodvik said Thursday the company would not comment on the Native claims.

Five Native villages and three Native corporations sought to block the settlement in federal court in Washington last week, contending their rights could be negotiated away without their participation.

U.S. District Judge Stanley Sporkin allowed the settlement as long as Native rights were protected.

Natives have a variety of state and federal lawsuits pending against Exxon and the Alyeska Pipeline Service Co., which operates the trans-Alaska pipeline.

Lloyd Miller, a lawyer representing Alaska Natives in class-action lawsuits, said that, because the settlement won't take effect until it is signed by a federal judge, it is not too late to take into consideration the right of Natives to participate.

the best interest of this state."

In the first critical comments about the settlement from a legislative leader, Grossendorf said it does not appear to be a good deal for the state. He said while the settlement was announced as a \$1 billion deal, it is really much less because Exxon has 10 years to pay it.

"From a dollars and cents point of view, it doesn't make sense," he said. "I feel the Exxon negotiators probably put themselves in a better position than the state of Alaska."

But Grossendorf said there are other considerations than just how much

said there is a value to "putting this behind us" as long as the hundreds of private plaintiffs suing Exxon are not hurt by the deal.

Rep. Tom Noyes, D-Fairbanks, a member of the House Resources Committee, said he thinks the settlement will probably be approved, but he was disturbed to hear Exxon Chairman Lawrence Rawl say the settlement payment would be of little consequence to the oil giant.

"It's just another day at the office for Exxon," he said. "If it doesn't hurt the polluter, what does it do to send a signal? They are on the easy-payment plan here."

become final until after a 10-day public comment period and a 15-day period during which either the state or federal governments could pull out of the deal. Eliason and Grossendorf said they will create committees to hold joint hearings on the proposal.

In his speech, Hickel said the settlement "is a victory for Alaska, environmentally, financially and psychologically." He asked the legislature to quickly approve it.

"Together, let's send a signal to the federal government and to the nation that we as a people are ready to put this tragedy behind us."

TV or not TV?

Legislature's television plan bad news

The Legislative Council has a bad idea, and legislators might shell out almost half a million dollars for it.

The council, which manages the legislature's internal affairs, approved a proposal Tuesday to spend \$458,000 to provide Alaskans with two hours of daily coverage of the legislature. The program would be available to 20 Alaska cable TV systems. A half-hour version also would be broadcast over the Rural Alaska Television Network.

The legislature would buy the equipment necessary for the show for about \$171,000. The rest of the appropriation would pay for the staff to put the show on the air. The council believes the legislature could be broadcasting by late April.

The Alaska Legislature is remote from most Alaskans, and Alaskans should have much better information about their government's activities. But this expensive show won't help them very much.

The coverage apparently will follow C-Span's much-praised live television coverage of floor action in Congress. But C-Span, (which isn't owned by the government) supplements its floor coverage with coverage of committee hearings, interviews with lawmakers, call-in shows, and a variety of interpretive discussions with journalists, lawmakers and scholars.

If, as Sen. Fred Zbaroff says, Alaska legislators don't want "any journalistic play-by-play coverage," then all Alaskans will get from television is live floor sessions in which talking heads plow through the daily introduction of guests, the disposition of new bills, messages from the governor, and committee meeting announcements, occasionally punctuating these routine activities with one floor activity that does matter — voting.

The Senate hasn't had a significant open debate on the floor in years. In the Senate, issues are decided in committee meetings and in private. The House — it's true — has spirited discussions from time to time, but Alaskans will have to fight their way through hours of legislative tedium before discovering nuggets of interesting debate.

Clearly the legislature is in a bind when it spends money on media coverage of itself. It's impossible to keep 60 lawmakers happy and still provide Alaskans with news. Under the guidance of the legislature, television coverage becomes either propaganda or drivel.

State-paid television coverage of the legislature can't be a priority when the governor is busy cutting almost every other budget. Lawmakers will be tempted mightily to vote yes when the legislative Council's TV bill comes to the floor. But let's hope they take a look at what's wrong with the bill and vote no.

News
3-15-91

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State plans to reduce Kenai River guide numbers with bid system

By JOE HUNT

TIMES WRITER

The state plans to cut the number of Kenai River guides over the next five years by requiring competitive bids for a reduced number of guiding permits, state officials say.

The plan, spurred on by the Hickel Administration, is expected to be introduced Thursday at a meeting of the Kenai River Special Management Area Advisory Board in Kenai. The details have been kept secret, though state park officials have acknowledged por-

tions of the plan.

The number of salmon-fishing guides on the Kenai River has nearly doubled from 1985 to 1990, with 310 permits issued last year. Another 20 permits were issued to non-fishing raft guides.

State parks director Neil Johannsen would not say what the new guide limit will be, but he confirmed it will allow more than the 171 guides who fished the river five years ago.

Special competitive bid rules will give experienced guides an advantage over newcomers, Johannsen said. "It will be very heavily weighted on experi-

ence vs. money," he said. "We want to avoid a situation in which the deep pocket can buy a permit."

The bid plan reportedly places 50 percent of the weight on experience, 25 percent on qualifications and 25 percent on bid price. "I wouldn't go so far as to say we'll grandfather existing guides, but those with the most experience guiding on the river will be in a position to win bids for the permits," Johannsen said.

Guiding permits will be good for five years as compared to the yearly fee structure currently used. A minimum bid will be set.

The state plan relies heavily on attrition over the five-year period to achieve the reduction goal. It also discourages weekend guides and non-resident guides, Johannsen said.

Reducing the number of guides has been a goal of the guiding industry as well. But that group has not been able to reach agreement on how it should be done. "Everyone in the fishing community is seeing there are just too many people out there," said Jeff King, president of Cook Inlet Professional Sport-fishing Association.

The guiding group recently endorsed

a plan to reduce their numbers through attrition.

Guides say they are nervous about the plan. "Can some guy bid enough money to make his 25 percent more valuable than my experience?" King asked.

There are many problems the parks division is not considering, said Rod Bergt, a longtime Seldovia guide. Lowering the number of river permits will likely lead to more black market guides, he said. Those people either ac-

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Guides

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cept guiding fees on the side or they work around the law to provide guiding services without calling themselves guides, he said.

Large operators which hire several guides to work for them will be at a disadvantage. Each guide has to bid for his own permit and if an experienced guide leaves one business to work for himself, the operator will have a

hard time replacing him, the guides said.

"If they're trying to bring in a new guide, they'd be out of luck," Johannsen said.

Concern over the Kenai River's capacity for fish has renewed the call for limiting guides. The Kenai River advisory board debated the issue last summer and voted to start a two-year study to determine the natural limits and the more subjective human tolerance level on the river.

Gov. Walter J. Hickel took a personal interest in the issue and

called for an immediate limit to the guides. The plan will have a 45-day comment period and will not become effective until the 1993 fishing season.

That is too soon for some guides and members of the advisory board. "I think this is a knee-jerk reaction to politics and what I think it needs is a real comprehensive plan that takes into account all the users," King said.

Limiting guides will only solve part of the problem, said Daniel Doshier, president of the advisory board. It will not solve the

crowded conditions on the river, he said. For every guide boat removed from the river, a new boat will be added carrying non-guided anglers, he said.

Doshier said he agreed with the advisory board's decision to study the social carrying capacity.

Board member Loretta Breeden said she is glad the administration is moving ahead with some plan. "Studies are a bureaucratic way of putting things on the shelves," she said. "We have a governor who is listening to the people."

Exxon deal takes Alyeska off hook for some claims

By CHARLES WOHLFORTH
Daily News reporter

The state dropped its case against Alyeska Pipeline Service Co. for damaging the environment in the Exxon Valdez oil spill when it settled its case this week against Exxon.

Attorney General Charlie Cole said the state will still pursue its case against Alyeska for other kinds of damages related to the spill. But claims other than damage to natural resources are unlikely to cost Alyeska nearly as much.

Alyeska spokeswoman Mamie Isaacs said the com-

pany is not sure what issues remain in the suit and seemed surprised that Cole still planned to push the case. She said Alyeska has not engaged in settlement talks, but, "I would anticipate that shortly we will be approaching the state."

The state sued Alyeska and its seven owner companies — including Exxon — in August 1989, after Alyeska's halting, ineffective early cleanup of the March 24, 1989, spill.

The tanker Exxon Valdez spilled nearly 11 million gal-

Please see Page F-2, ALYESKA

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lons of oil in Prince William Sound, the nation's worst tanker spill. Alyeska's failed cleanup didn't live up to promises the company had made in its state-filed oil spill contingency plan and other documents.

The state and federal government settled suits against Exxon for the spill Tuesday. In the settlement, which must be approved by the courts and the legislature, the state and federal governments promised to drop all civil claims against Exxon for the spill in exchange for \$900 million, payable over the next 10 years. Exxon settled also federal criminal charges for \$100 million. The two deals were a package.

To wipe out claims against Exxon, the state also agreed to drop all natural

resource claims against Alyeska and to rebate Exxon part of any money it may later win from Alyeska in court for anything else related to the spill. Exxon owns 20 percent of Alyeska and will receive 20 percent of any judgment Alyeska has to pay to the state.

Cole said Exxon lawyers insisted on those terms in negotiations because they expected that if the state were to win natural resource claims against Alyeska, Alyeska would in turn sue Exxon to get the money back.

"Exxon said, 'We don't want to pay twice for resource damage claims,'" Cole said. "We want to pay once, and that's here and now."

"We didn't think our chances looked good of re-



Non, so therefore we thought that it made good sense," Cole said.

Most of the suit against Alyeska deals with natural resource damages, but Barbara Herman, assistant attorney general, said the state can still fight for its unreimbursed cleanup costs and for punitive damages.

The Exxon settlement is already paying the state up to \$72 million in reimbursement for its costs in the cleanup, scientific damage assessment and litigation. The federal government will get \$62 million for those costs, for a total of \$132 million.

Herman said some unreimbursed costs will remain but would not say how much.

According to a state Department of Fish and Game memo last fall, the two governments expected to spend \$100 million total on the litigation and damage assessment by now. And the Department of Environmental Conservation is owed \$11 million for all of the state's spill response work not already paid for by Exxon.

Local governments are also seeking a few million dollars in lost raw fish tax from Exxon because its oil spill closed salmon fishing seasons in their areas. Herman said the local governments are free to pursue that money on their own in court, but the state, which collects the tax on their behalf, dropped its part of the claim.

The state's suit against Alyeska also claims damages for harm to the state's economy by the spill and for the emotional distress of residents. It demands payment of social and mental health workers to compensate for the emotional distress. And it mentions statutory penalties for the spill, but those would come to thousands of dollars.

3-15-91

ALYESKA: State drops environment-damage claim

SPILL SETTLEMENT: State, federal government, Exxon agree

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government officials are calling the largest environmental damage settlement in history.

It was Hickey's personal diplomacy and public prodding that got the talks started. It was, according to state Attorney General Charlie Cole, Hickey's "personal knowledge of Prince William Sound" and "subjective sense about an acceptable settlement" that came up with an original settlement proposal of \$1.2 billion — not reliance on any of the myriad of scientific and economic studies being done on spill damage.

The \$100 million criminal fine against Exxon is much less than the federal government had said it expected to win in court.

When Exxon was indicted one year ago, U.S. Attorney General Richard Thornburgh said at a press conference that the government was throwing "the environmental book at Exxon" and that fines could reach more than \$600 million under a federal law that allows the government to collect twice the amount of money it spent on costs associated with the cleanup and claims paid by the defendants.

Environmentalists and attorneys representing clients with cases against Exxon criticized the settlement as too low.

"It seems like we're not going to have a big enough pot of money to do any realistic restoration so it will be interesting to see where the money winds up going to and whose projects get funded," said Riki Ott, a commercial fisherman and founder of the Oil Reform Alliance, which pushes for stronger oil spill laws.

"It sounds horrendously low to me," said Dave Oesting, a coordinating counsel for private plaintiffs suing Exxon.

But Oesting said that, without access to the scientific studies and economic damage models used to arrive at the \$1 billion figure, "which the state has assiduously refused to provide, one can only speculate."

"My perception is it was a just a dart

HOW THE EXXON-VALDEZ OIL SPILL SETTLEMENT WILL BE DISTRIBUTED

To be paid immediately \$190 million

\$100 million criminal fine, \$50 million will be given to the state as restitution.

\$25 million to continue science programs.

\$15 million for restoration projects.

\$50 million to be paid to trustees and Coast Guard for past cleanup expenses.

FY 1992

\$150 million to be used to return Prince William Sound to its pre-spill condition.

FY 1993 and beyond

\$660 million to be paid over a period of years beginning in FY 1993

Total: \$1 billion

throw by Governor Hickey," Oesting said.

Eric Jorgenson, managing attorney for the Sierra Club Legal Defense Fund, agreed it's hard to judge the settlement without seeing the confidential studies, but said, "Obviously, Exxon did some very hard bargaining."

Rep. Cliff Davidson, D-Kodiak, said he thought settling with Exxon was "better than a pile of attorneys' bills" and that he was glad the public will have a chance to comment.

"But I'd like to know if all America will pay for this, because if it's all tax-deductible, where is the penalty?"

The settlement with its long payout also seemed low to John Loomis, an associate professor of environmental studies and agricultural economics at the University of California at Davis and an expert in assessing environmental damage.

"It's like an interest-free loan to Exxon," Loomis said.

The Exxon Valdez ran aground on Bligh Reef in Prince William Sound on March 24, 1989, shortly after its captain, Joseph Hazelwood, left the bridge to do paperwork in his cabin. The National Transportation Board has said Hazelwood was drunk at the time, but in court he was convicted only of negligent discharge of oil.

Wildlife by the tens of thousands were killed by the thick oil that gushed from the tanker into the Sound. Much of that oil seeped deeply into the rocky beaches of the once-pristine waterway where the state claims it remains today.

Under the settlement plan, Exxon would immediately deposit \$190 million into an interest-bearing account, according to a draft press release prepared by NOAA, one of the federal agencies involved in the settlement talks.

Of that first installment, \$100 million would be a criminal fine paid in exchange for the federal government's dropping its criminal charges against Exxon Corp. and its subsidiary, Exxon Shipping Co. The companies were indicted last year on five criminal counts from the spill.

Half the fine would go to the state as restitution for the nearly 11 million-gallon spill that coated hundreds of miles of shoreline in oil. The agreement also calls for \$25 million of the first year's payment to be spent on continuing scientific studies into the spill and \$15 million for restoration projects.

The remaining \$50 million of the first installment, according to the NOAA docu-

ment, would be used to reimburse the state and federal governments for past spill-related costs. That falls far short of the \$190 million that Cole has said the state and federal governments are owed. The two governments have also spent more than \$100 million on studies and legal fees.

Exxon would pay another settlement installment of \$150 million by October of this year to be used "in restitution efforts aimed at returning Prince William Sound to its pre-spill condition."

In fiscal year 1993, Exxon would begin paying off the remaining \$660 million. The NOAA fact sheet does not specify the exact payment schedule, but says it will take nine years.

The agreement includes a clause that would allow the governments to reopen the case after a 10-year restoration period if new damage is discovered. The additional claims could not exceed \$100 million.

The way was cleared for the settlement Tuesday afternoon when U.S. District Judge Stanley Sporkin lifted a temporary restraining order sought by Alaska Natives who contended that the federal government was settling their rights to recover damage to lands and wildlife which upon which they depend for subsistence.

Sporkin's ruling was hailed by the Natives as a victory because the judge's order precluded the settlement from jeopardizing any of their rights to compensation even if it meant that Exxon would have to pay twice for some damages — once in the settlement and again to the Natives.

In a stern warning to government attorneys, Sporkin said that if a settlement did wind up harming the villages' right to sue Exxon, "Hell hath no fury like a judge scorned. ... It's not fair, it's not right and it's not American."

Daily News reporters George Frost and David Whitley contributed to this story.

It's a deal: \$1.1 billion

State, Exxon sign spill settlement

By JAY CROFT
and DAVID FUTCH 3/13/91
TIMES WRITERS

The state and federal government signed a \$1.1 billion oil spill settlement with Exxon officials at a secret midnight Tuesday meeting in Washington, D.C.

"The deal was signed tonight," Alaska Gov. Walter J. Hickel said early this morning from Washington.

Officials for all three parties gathered at the U.S. Justice Department at 11:30 p.m. EST. The deal was signed at "11:45-ish," Hickel said.

About 15 minutes later, Justice Department and Exxon attorneys signed a deal regarding the five criminal counts against Exxon, a source close to negotia-

tions said. That involved a \$100 million fine, sources said.

Details of the criminal case deal were to be announced at a news conference this morning at the Justice Department, officials said.

"This is a very good deal for the state of Alaska, the federal government and the environment of Prince William Sound," Hickel said today about 12:30 a.m. EST.

"I'm pleased with the results of the talks. Exxon should be commended. The federal government should be commended. And I know Charlie Cole should be commended."

Cole, Alaska's attorney general, has been in Washington negotiating a settlement off and on.

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Exxon critic to head panel on spill pact

TIMES WASHINGTON BUREAU

WASHINGTON — A major Exxon critic in the U.S. House of Representatives said Thursday he will hold a hearing next month on the company's \$1 billion out-of-court Prince William Sound oil spill settlement with Alaska and the federal government.

Rep. George Miller, D-Calif., vice chairman of the Interior and Insular Affairs Committee, planned the oversight hearing on April 8. Rep. Don Young, of Alaska, is the senior Republican on the committee.

"The Congress and the public will have many questions about the Exxon settlement," Miller said.

Miller has criticized Exxon's general record in cleaning the waters and miles of shoreline damaged when the Exxon Valdez hit Bligh Reef, spilling nearly 11 million gallons of crude March 24, 1989.

Miller's criticisms include Exxon's resistance to releasing all scientific data involving oil damage assessments. Director William Reilly of the Environmental Protection Agency said Wednesday, however, that such information will be released to the public soon.

EPA spokesman Robin Woods said the information is not expected to be released for "several weeks."

Alaska Attorney General Charles Cole, the chief state negotiator, says the state will withhold release of its data, definitely because of other suits involving the oil spill.

Miller said he also will examine "whether the rights of Alaska Natives and other injured parties are protected" by the agreement signed Tuesday night by Gov. Walter J. Hickel, Attorney General Dick Thornburgh and other federal officials, and Exxon Chairman Lawrence G. Rawl.

Five Native villages and three Native corporations sought to be included in the talks because of concern the three parties would negotiate away their private claims.

Hickel said all private groups may sue for separate damages, but a U.S. District judge issued an order Tuesday stating that the Natives' legal ability to sue Exxon could not be compromised.

Miller gave no indication of whom he will call as witnesses, but Hickel and Rawl could well be among them. They met four times on the agreement, which was largely negotiated by Cole and representatives of Exxon and the Justice Department.

state to
withhold
scientific data

Welfare post 3.18.91 goes to Hickel team player

Governor's press aide says appointment not unusual

By DIK MILLER

TIMES CAPITAL BUREAU

JUNEAU — A panel of Gov. Walter J. Hickel's supporters that was reviewing applicants for a top welfare reform job ultimately chose one of its own for the position.

Health and Social Services Commissioner Ted Mala and Jan Hansen, who directs the welfare reform coordinator, say there was no pressure exerted in the hiring of Sandy Armstrong. Armstrong started the \$54,288-a-year job about two weeks ago.

"My feeling at this time is she got the job because the division was comfortable and felt she could do it," Mala said. "I was prepared to not take the recommendation if they were not comfortable."

Hansen said she interviewed Armstrong and decided to hire her.

"I made the selection, and I didn't do it with any pressure," Hansen said. "There were times, frankly, that I was concerned because there was the recommendation."

The volunteer transition team was reviewing applicants for positions within the department, Armstrong said.

Armstrong said she did not participate in the meeting where her qualifications were discussed.

"I feel very comfortable there is no conflict," Armstrong said.

The department transition team, which Mala called an advisory group, was recommended by Hickel and Lt. Gov. Jack Coghill. Advisory teams were formed for nearly every department.

Mala said he did not sit in on interviews but was aware the group was questioning candi-



"My feeling at this time is she got the job because the division was comfortable and felt she could do it."

Ted Mala

in child support laws. Her most recent job was at the Juneau Recovery Unit, the city's chemical and alcohol dependency treatment center.

She is on the steering committee for the National Council for Children's Rights and also served with Hansen on the Family Support Task Force, created by the Legislature in 1988.

Armstrong said that at a transition panel meeting she was asked to explain to members the duties and responsibilities of the welfare coordinator.

Soon after, Armstrong was notified that the team had unanimously recommended her for the job. Armstrong, 45, is a founding member of the Alaska Dads and Moms, which advocates changes

Coghill wrote a letter recommending Armstrong be placed on a transition team.

"I have known Sandy for the last three years since she has served as the volunteer citizen lobbyist for Alaska Dads and Moms, and I am impressed about her knowledge of the federal and state laws concerning child support enforcement," Coghill wrote in the Jan. 2 letter.

dated... of Hickel

Armstrong said she did not participate in the meeting where her qualifications were discussed.

"I heard and felt a deep concern for families," Armstrong said.

Harry Gamble, Hickel's acting press secretary, said it has not been uncommon for the governor or the Cabinet to hire transition team members.

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Welfare

Continued from page B1

"They are people he trusts, respects and has a great deal of confidence in," Gamble said. "In that particular department, I suppose that philosophy would carry over in health and social services."

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TECH EDITION

TUESDAY, FEBRUARY 19, 1991

WHITE OAK, MARYLAND

Exxon Confirms Waste Water Charges; Move May Impede a Valdez Settlement

By ALLANNA SULLIVAN

Staff Reporter of THE WALL STREET JOURNAL

Exxon Corp. acknowledged that it has shipped tanker waste water to Alaska.

While the company said the shipments and subsequent tanker-to-tanker transfers of so-called tank washings were within federal guidelines, such a disclosure could further entangle attempts to settle litigation stemming from the Exxon Valdez oil spill two years ago. Exxon, Alaska and the federal government have been engaged in talks for several weeks in efforts that could settle the state's civil case and possibly the federal government's criminal case. The allegations, which have drawn Environmental Protection Agency scrutiny, raise "the possibility of further complicating the settlement," said Jay Kertula, chairman of Alaska's Senate Finance Committee.

The parties were on the verge of settlement late last week, but pressure from some state officials and environmentalists unhappy with the terms of the possible settlement may be slowing the process. Indeed, some Alaskan lawmakers are considering legislation that would preclude a settlement until state legislators scrutinize the agreement. Gov. Walter J. Hickel had proposed that Exxon pay \$1.2 billion to settle; it appears the company has asked to provide payments over a period of years that would devalue the amount.

Allegations regarding waste water specifically focus on the transfer of so-called tank washings from the Exxon Galveston, a lightering tanker, to the supertanker Exxon Valdez on Aug. 4, 1988. The washings were then transported up to Valdez, Alaska, where they were treated in the ballast water-treatment plant owned by Alyeska Pipeline Services Co.

The charges were contained in a letter sent last week by former oil-tanker broker Charles Hamel to EPA head William Reilly and U.S. Attorney General Richard Thornburgh. In the letter, Mr. Hamel says that before any settlement is concluded, Exxon should be asked to stop such shipping practices. Mr. Hamel, who is engaged in a dispute over mutual business arrangements he has with Exxon and other oil companies, claims that Exxon insiders told

him of the wrongdoing.

Beyond hearsay, however, a document turned up by Alaskan attorneys in preparation for the state's civil case against Exxon makes reference to the transfer. The handwritten document is a set of instructions from the second mate to another second mate who was boarding the vessel to relieve him. It says specifically that the Exxon Valdez will unload its crude oil to the Exxon Galveston but not until "after we take 50,000 barrels of tank washings from [the Exxon Galveston]."

Pressed for a response to the charges, Jim Pitts, a spokesman for Exxon, said that "yes, there was a transfer . . . all wash water returned to the Exxon Valdez as ballast and returned for treatment to the ballast water treatment plant in Alaska were in compliance with permits from EPA."

Exxon declined to identify what type of cleaning agent was being used to clean the oil storage tanks of the vessels other than to say that the tanks were cleaned with hot water and a very small amount of detergent. The oil company also declined to say what materials were contained in the tank washings following the cleaning.

But the company did say that the practice of transferring tank washings to tankers en route to Alaska "wasn't uncommon" and that all such transfers involved washings of ships handling Alaskan crude oil. Indeed, individuals familiar with the transport of crude oil said that other oil companies engage in the same practice and that it's still continuing.

But EPA officials said such moves are violations of federal law.

The EPA permit that authorizes operation of Alyeska's ballast water treatment plant in Valdez allows small amounts of cleaning agents to be present in the ballast water injected into the plant by arriving supertankers. But EPA officials presumed that such tank washings would be the result of cleanings of the supertankers themselves, which en route to Alaska aren't permitted to eject the waste water.

"But deliberately stopping a supertanker and putting the washings into its ballast; there's no way the permit authorizes that kind of discharge," says Harold Geren, chief of water permits for EPA in Seattle, which has jurisdiction over the Alyeska plant.

Exxon said it has shipped tanker waste water to Alaska. The disclosure could further entangle attempts to settle litigation stemming from the Exxon Valdez oil spill in 1989.
(Story on Page A-6)

Mr. Geren says that EPA has already started to look into what is contained in those cleaning wastes. Mr. Geren says that Alyeska has volunteered to scan the ballast water at the treatment plant for toxic pollutants. "We need to know what is in the waste water," he said, adding that tank washings can contain toxic wastes, such as heavy metals.

Experts say that any damage to the port of Valdez depends on the amount and constituency of the chemicals going into the water. The ballast water treatment plant was designed to separate oil from water and then eject the treated water back into Valdez Harbor. Individuals familiar with the design of the plant say that any unanticipated substances, such as certain heavy metals, could travel through the plant and into Valdez Harbor undetected.

Riki Ott, a sediment toxicologist who is also heading up a coalition of Alaskans seeking reform of oil industry practices, said that the Port of Valdez was recently declared environmentally "impaired." Its degeneration is from long-term abuse unrelated to the Exxon Valdez spill that never fouled the harbor's waters, she says. To be sure, Valdez is in better shape than many commercial harbors in the U.S., but "we've had the first warning sign that something has gone wrong," she says.