

SCOMM

77:74

HOUSE CONCURRENT RESOLUTION NO. 38
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE STATE AFFAIRS COMMITTEE

Introduced: 5/19/91

Referred: Rules

A RESOLUTION

1 Relating to negotiations on an Exxon Valdez oil spill claims settlement.

2 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

3 WHEREAS the Exxon Valdez oil spill of March 1989 had a tremendous impact on the State of
4 Alaska, on the people of Alaska, and on the natural resources of Alaska; and

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

7 WHEREAS the Governor and the Attorney General have expressed a willingness to again
8 negotiate with Exxon Corporation over the terms of a settlement; and

9 WHEREAS negotiations relating to the Exxon Valdez oil spill have been established between
10 the state, Exxon Corporation, and the federal government; and

11 WHEREAS the Alaska State Legislature recognizes that negotiations involve a series of
12 exchanges and counteroffers between the affected parties; and

13 WHEREAS the Alaska State Legislature recognizes that it is in the best interests of the people
14 of Alaska and the State of Alaska that a settlement between the Exxon Corporation, the state, and the
15 federal government be resolved through negotiation and not in a lengthy judicial process; and

16 WHEREAS the Alaska State Legislature recognizes the significant work and effort put forth by
17 Governor Walter J. Hickel and Attorney General Charles E. Cole in negotiating on behalf of the state

1 and the people of Alaska with the Exxon Corporation;

2 **BE IT RESOLVED** that the Alaska State Legislature respectfully requests Governor Walter J.
3 Hickel to resume negotiations with the Exxon Corporation and the United States for the settlement of
4 the claims of the State of Alaska on the terms and conditions that are in the best interests of the State
5 of Alaska; and be it

6 **FURTHER RESOLVED** that the Alaska State Legislature respectfully requests that the
7 Governor in the negotiations address the views and concerns expressed by state citizens and the
8 legislature regarding the March 12, 1991, settlement agreement.

WALTER J. HICKEL
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

May 17, 1991

*The Honorable Richard Eliason
Senate President
Alaska State Legislature
P. O. Box V
Juneau, AK 99811*

Dear President Eliason:

On Thursday, May 16, EXXON filed a lawsuit in federal court asking the court to rule on who has the right to sue for resource damages resulting from the Prince William Sound oil spill.

The potential loss to Alaska troubles me deeply.

From the very bottom of my heart, I ask that the Senate consider, and vote in favor of the EXXON settlement agreement, as is.

Once passed, I commit to you to do everything within my power to convince EXXON to again accept our earlier settlement agreement.

Sometimes politics seem so trivial. This is one of those times.

Respectfully yours,

A large, stylized handwritten signature of Walter J. Hickel in black ink.

Walter J. Hickel
Governor

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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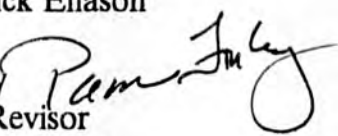
Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

May 18, 1991

SUBJECT: Exxon Valdez Interpleader Action Filed May 16, 1991 by Exxon
(Work Order No. 7-LS1053)

TO: Senator Dick Eliason

FROM: Pam Finley 
Assistant Revisor

In regard to the Complaint in Interpleader and for Declaratory Judgment filed by Exxon Shipping and Exxon Corp. in federal district court in Anchorage on May 16, 1991, you have asked the following questions:

- (1) What effect does the lawsuit have on (A) the state; (B) native corporations and native villages; (C) other third-party litigants;
- (2) Does the lawsuit change the factors considered by the legislature in regard to the proposed settlement (which the House of Representatives disapproved and from which Exxon withdrew in early May); and
- (3) If the parties agreed at this time to accept the previous settlement, how would that affect the interpleader action?

I. Effect of Interpleader Action. The main effect of the interpleader action is to ask the court to decide legal issues that have existed in the state, federal, and third-party lawsuits from the beginning. In the time allowed, I cannot give an opinion on the likelihood that the court will grant the relief Exxon has requested. Assuming that it does so, the court's decision concerning the legal rights of the parties should be the same whether they are determined in the interpleader action or another lawsuit. However, the interpleader may affect the tactical position of the parties.

A. The State. The state has been aware (1) that the federal government would maintain that it was the sole trustee of the damaged natural resources; and (2) that, in a case in which the federal government was not a party, Exxon would argue that the natural resources belonged to the federal government, not the state. The state

hoped to avoid these problems by (1) settling the case jointly with the federal government, and jointly administering the recovery; or (2) suing Exxon jointly with the federal government, stipulating that the fact-finder should simply determine the total amount of the natural resource damages (without deciding who owned which resources), and leaving the division of the recovery for later litigation or settlement. In the interpleader action, the two governments may still argue that they will join in one lawsuit, and that therefore the ownership and management dispute between them does not need to be settled at this time. However, if they do not do so, or if the court nevertheless does decide which government has a right to recover for what, then the ownership and management question may be settled (probably after lengthy appeals) before recovery against Exxon, rather than after recovery. In short, the interpleader action forces an issue that the state probably would have preferred to have addressed after recovery against Exxon, or not at all.

B. Native Corporations and Villages. The interpleader action will probably determine the rights of the Native groups to sue as trustees under the Clean Water Act and under state law. Unless the Native groups, the state, and the federal government all agreed to sue Exxon jointly and reserve their ownership and management disputes for later (which to my knowledge has not been suggested), it is not obvious to me that the interpleader action will substantially change the Native groups' position. Before the interpleader was filed, the Native groups were going to have to establish their legal rights to recover from Exxon, and the interpleader does not change that. However, because it is likely that the state and federal governments will argue against the Native groups' rights, the interpleader may make their case more difficult because they will have more adversaries.

C. Third-Party Litigants. In the interpleader complaint, Exxon requests that the state be ordered to join all persons the state knows "to have a claim to recovery on account of natural resources damaged by the Spill." If this request covers people who have a claim that is not for "natural resource damage," but is nevertheless based on the damage to the resource (e.g., economic losses by fishermen), and if the court grants the request, then the third-party plaintiffs could be pulled into federal court with the governments and Native groups. This could hurt the third-party litigants in some ways since state law would be more favorable to them concerning such things as attorney fee awards, and since it is possible that the governments and Exxon may argue jointly that only the governments are entitled to recover any damages resulting from the loss of natural resources. On the other hand, the third-party litigants would have the benefit of the governments' evidence against Exxon if they were all in the same case.

II. Change of Conditions from time Settlement was Considered. The interpleader action does not raise any issues that were not raised when the proposed settlement was considered. At that time, the Attorney General made it very clear that a major problem in the litigation was deciding which government (state or federal) has the

right to recover for which natural resource. The claims of Native groups were also known, as were their fears that the proposed settlement would injure their position. The Attorney General also pointed out that the state would be adverse to third parties who sued the state, whether the state settled with Exxon or not.

However, the interpleader action does exemplify certain problems the state faces without a settlement, including (1) the conflicting claims of the two governments, as well as the Native groups; (2) the uncertainty of the course of litigation and attendant litigation costs; and (3) the ability of Exxon to delay determination of the damage caused.

III. Effect on Interpleader of Accepting Settlement. If the state and federal governments and Exxon settled on terms identical or similar to those in the former proposed civil settlement, Exxon should dismiss the interpleader action against the state and federal governments, although it might continue to try to force the Native groups to join other third parties.

PF:lmb
91-194.lmb

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

EXXON SHIPPING COMPANY, a
Delaware corporation, and
EXXON CORPORATION, a New
Jersey corporation,
Plaintiffs,

vs.

MANUEL LUJAN, JR. as Secretary
of the Interior, EDWARD MADIGAN,
as Secretary of Agriculture,
JOHN A. KNAUSS, as
Undersecretary of Commerce
for Oceans and Atmosphere,
CHARLES COLE, as Attorney
General of Alaska, CARL ROSIER,
as Commissioner, Alaska
Department of Fish & Game,
JOHN SANDOR, as Commissioner,

CASE NO.

COMPLAINT IN INTERPLEADER
AND FOR DECLARATORY
JUDGMENT

ACE 1287582

Alaska Department of Environ-)
 mental Conservation, THE NATIVE)
 VILLAGE OF CHENEGA BAY, THE)
 NATIVE VILLAGE OF PORT GRAHAM,)
 THE NATIVE VILLAGE OF ENGLISH)
 BAY, THE NATIVE VILLAGE OF)
 LARSEN BAY, THE NATIVE VILLAGE)
 OF KARLUK, PORT GRAHAM)
 CORPORATION, ENGLISH BAY)
 CORPORATION, and CHENEGA)
 CORPORATION,)

Defendants.)

First Claim for Relief -- Interpleader

1. This action is brought pursuant to Rule 22 F.R.Civ.P. and 28 U.S.C. §2201. The Court has jurisdiction of this action pursuant to 28 U.S.C. §§1331, 1333, 1343, 1346, and 1361. Venue is proper in this district under 28 U.S.C. §1391(c) and (e) because most defendants reside in this district, and because the acts, transactions and occurrences giving rise to the multiple, conflicting and overlapping claims asserted by defendants occurred in this district.

2. Plaintiff Exxon Shipping Company ("Shipping") is a Delaware corporation authorized to do, and doing, business in the State of Alaska. Among other things, Shipping is engaged in the business of transporting crude oil from the marine terminal of the Trans-Alaska Pipeline in Valdez to ports in the Lower 48 (for convenience, the "TAPS trade").

1 3. On and prior to March 24, 1989, Shipping owned and
2 operated the tank vessel EXXON VALDEZ, and operated that vessel
3 in the TAPS trade.
4

5 4. On or about March 24, 1989, the EXXON VALDEZ ran
6 aground on Bligh Reef in Prince William Sound resulting in the
7 discharge of approximately 258,000 barrels of crude oil (the
8 "Spill").
9

10 5. Exxon Corporation ("Exxon") is a New Jersey
11 corporation with its principal place of business at 225 East
12 John W. Carpenter Freeway, Irving, Texas. Exxon's principal
13 business is energy, involving exploration for, and production of,
14 crude oil and natural gas, and refining and marketing of
15 petroleum products. Exxon owns all of the issued and outstanding
16 stock of Shipping.
17

18 6. Prior to March 23, 1989, Exxon contracted with
19 Shipping for the transportation to ports in the United States of
20 crude oil produced on the Alaska North Slope and owned by Exxon.
21 Pursuant to that contract, approximately 1,263,000 barrels of
22 crude oil owned by Exxon were loaded aboard the EXXON VALDEZ on
23 March 23, 1989 destined to refineries in the State of California.
24 The EXXON VALDEZ ran aground on the morning of March 24, 1989,
25 releasing approximately 258,000 barrels of such oil.
26

7. Oil released from the EXXON VALDEZ was carried by winds, tides and currents onto various portions of the islands, beaches, and shoreline of Prince William Sound and the Gulf of Alaska. An unknown quantity of birds and animals were killed as a result of contact with oil. Following the Spill, plaintiffs expended in excess of \$2 billion to clean up areas impacted by the Spill. As a result of plaintiffs' efforts and of natural recovery, the lands and waters affected by the Spill have essentially recovered, and fish and wildlife populations have recovered, or will soon recover, to their pre-Spill levels. Nevertheless, officials of the United States Government and of the State of Alaska have asserted that the Spill has caused serious and continuing injury to natural resources, including lands, water, birds, animals, fish, invertebrates, and other biota.

8. Section 311(f)(5) of the Clean Water Act ("CWA"), 33 U.S.C. §1321(f)(5), authorizes the President of the United States or the authorized representative of any State to act as trustee on behalf of the public to recover the costs of restoring or replacing natural resources damaged by an oil spill. Section 107(f)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §9607(f)(2), authorizes and requires the President and the Governor of any State to designate individuals to act as trustees under §311(f)(5) of CWA. Pursuant to the provisions of §105(a) of CERCLA, 42 U.S.C. §9605(a), the President is required to

1 revise and republish the national contingency plan (NCP) to carry
2 out his duties under CWA §311, 33 U.S.C. §1321. By §1(b)(1) of
3 Executive Order No. 12580, the President delegated to the
4 Administrator of the Environmental Protection Agency the
5 President's responsibility for revising the NCP. 52 Fed.Reg.
6 2923 (Jan. 23, 1987). By §1(c) of that Executive Order, the
7 President named the Secretary of Defense, the Secretary of the
8 Interior, the Secretary of Agriculture, the Secretary of Commerce
9 and the Secretary of Energy to be among those designated in the
10 NCP as federal trustees for natural resources in accord with
11 §311(f)(5) of CWA, 33 U.S.C. §1321(f)(5). Id.

12 9. Defendants Manual Lujan, Edward Madigan, and John
13 A. Knauss are respectively the Secretary of the Interior, the
14 Secretary of Agriculture, and the Undersecretary of Commerce for
15 Oceans and Atmosphere and Administrator of the National Oceanic
16 and Atmospheric Administration. Each is sued in his official
17 capacity. Defendants Lujan, Madigan, and Knauss have been
18 designated, pursuant to regulations promulgated by the
19 Administrator of the Environmental Protection Agency, to act as
20 trustees under CWA §311(f)(5) to recover the costs of restoring
21 or replacing natural resources damaged by the Spill. 40 C.F.R.
22 §300.600(b). Said defendants are hereinafter referred to as the
23 "federal trustees."

10. Defendants Charles Cole, Carl Rosier, and John Sandor are respectively the Attorney General of the State of Alaska, the Commissioner, Alaska Department of Fish & Game, and the Commissioner, Alaska Department of Environmental Conservation. Each is sued in his official capacity. Pursuant to 40 C.F.R. §300.605 and relevant Alaska law, defendants Cole, Rosier, and Sandor have been designated by the Governor of Alaska to act as trustees under CWA §311(f)(5) to recover the costs of restoring or replacing natural resources damaged by the Spill. Said defendants are hereinafter referred to as the "state trustees."

11. Defendants the Native Village of Chenega Bay, the Native Village of Port Graham, the Native Village of English Bay, the Native Village of Larsen Bay, the Native Village of Karluk, Port Graham Corporation, English Bay Corporation, and Chenega Corporation are native villages or native corporations. Each such defendant asserts the right to act as a trustee pursuant to §311(f)(5) of the Clean Water Act and to recover pursuant to said statute, on behalf of natives, native villages, native corporations, or native tribes, the costs of restoring or replacing natural resources damaged by the Spill. Said defendants are hereinafter referred to as the "native defendants." Plaintiffs deny that the native defendants have any right to act as trustees or to recover, pursuant to CWA §311(f)(5) or otherwise, any costs of restoring or replacing natural resources damaged by the Spill.

1 12. Each defendant claims that plaintiffs have
2 liability to him or it, pursuant to §311(f)(5) of the Clean Water
3 Act, for the cost of restoring or replacing natural resources
4 damaged by the Spill. In addition, the state trustees claim that
5 plaintiffs have liability to the State of Alaska for damages
6 arising from injury to natural resources with respect to which
7 the State claims to have proprietary, public trust, and/or
8 sovereign rights; the native defendants claim that plaintiffs
9 have liability to them for damages arising from injury to natural
10 resources with respect to which the native defendants claim to
11 have rights pursuant to the Alaska Native Claims Settlement Act,
12 the Alaska National Interest Lands Conservation Act, or
13 otherwise.
14

15 13. This Court is the most appropriate and convenient
16 forum in which all persons or entities claiming rights to recover
17 from plaintiffs on account of natural resources damaged by the
18 Spill may be joined in a single proceeding in which the liability
19 of plaintiffs, if any, may be determined.
20

21 14. Defendants assert that Shipping has strict civil
22 liability, without fault, for the cost of restoring or replacing
23 natural resources damaged by the Spill, as limited by the
24 provisions of §311(f)(1)-(3) of the Clean Water Act, 33 U.S.C.
25 §1321(f)(1)-(3). Shipping is uncertain whether it has such
26 strict liability to the defendants named in this action, and, if

such liability exists, the amount and nature of such liability. Shipping denies that damages on account of natural resources damaged by the Spill may be recovered by anyone other than to the extent a right to such recovery may be created by §311(f) of the Clean Water Act.

15. Shipping denies that it has any liability to defendants, or to any of them, on the basis of intentional, willful, wanton or reckless conduct, willful negligence, or willful misconduct.

16. Exxon denies that it has liability to any of the defendants in this action for the costs of replacing or restoring natural resources, or otherwise on account of damage or injury to natural resources.

17. Plaintiffs, and each of them, are exposed to double or multiple liability because the several defendants in this action claim separate and duplicate rights to compensation for the same alleged losses, in that, without limitation of the foregoing:

17.1. The federal trustees claim the exclusive right to act as trustee of all natural resources damaged by the Spill, to the exclusion of the state trustees and the native defendants;

17.2. The state trustees claim the exclusive right to act as trustee of natural resources damaged by the Spill and located within the State of Alaska, to the exclusion of the federal trustees and the native defendants;

17.3. The native defendants claim the exclusive right to act as trustee of natural resources appertaining to native villages, to the exclusion of the federal trustees and the state trustees;

17.4. The state trustees and the native defendants assert rights, purportedly deriving from sources other than the Clean Water Act, to recover damages on account of natural resources injured by the spill of which the federal trustees claim to be exclusive trustee;

17.5. The federal trustees claim the right to recover for loss of use of natural resources damaged or injured by the Spill on behalf of all residents of the United States, including residents of Alaska and Alaska natives on whose behalf the state trustees and the native defendants respectively also claim the right to recover;

17.6. The state trustees claim the right to recover for loss of use of natural resources damaged or injured by the Spill not only on behalf of residents of Alaska, but also on behalf of non-residents of Alaska on whose behalf the federal trustees also claim the right to recover.

18. Plaintiffs, and each of them, are also subjected to the risk of inconsistent liability on account of natural resources damaged by the Spill because the several defendants' claims are based upon inconsistent theories. Scientific and economic studies carried out by the federal trustees are being conducted separate and apart from scientific and economic studies carried out by the state trustees. Work which the state trustees claim is necessary to restore natural resources is claimed by the federal trustees to be harmful to the natural environment. The factual and theoretical premises of the claims of the state trustees are different from the factual and theoretical premises of the claims of the federal trustees in situations where the state trustees and the federal trustees cannot both be correct, and where the inconsistency serves to increase the claims of both the state and the federal trustees.

19. Plaintiffs, and each of them, have no plain, speedy or adequate remedy at law by which to be relieved of the above-alleged risk of double, multiple and inconsistent liability except to interplead all defendants in this proceeding, and to

1 require such defendants, and each of them, to assert their
2 respective claims in one proceeding binding on all defendants as
3 well as all plaintiffs.
4

5 Second Claim for Relief -- Declaratory Relief
6

7 20. Plaintiffs reallege and incorporate herein by
8 reference each and every allegation contained in paragraphs 1
9 through 19 hereof, as if set out in full.
10

11 21. There are now existing between the plaintiffs, and
12 each of them, and defendants, and each of them, actual, existing
13 and justiciable controversies concerning who is liable on account
14 of natural resources damaged by the spill, what damages are
15 recoverable, and what persons are entitled to recover such
16 damages as are recoverable. By way of illustration, and not by
17 way of limitation, plaintiffs are informed and believe, and
18 therefore allege, that such controversies include the following:
19

20 21.1. Shipping contends that if human error
21 contributed to the grounding, such error, if any, was
22 made by seagoing personnel and that such accidental
23 mistakes were not within the privity or knowledge of
24 Shipping's shoreside management, whereas defendants,
25
26

1 or some of them, contend that the grounding was
2 attributable to negligence within the privity and
3 knowledge of Shipping's shoreside management;

4 21.2. Shipping contends that the grounding and
5 Spill were not the result of willful negligence or
6 willful misconduct within the privity and knowledge of
7 Shipping, whereas defendants, or some of them, contend
8 to the contrary;

9
10 21.3. Plaintiffs contend that any recovery on
11 account of natural resources may be allowed only under
12 the terms of §311(f) of the Clean Water Act, whereas
13 defendants, or some of them, contend that such
14 liability may be imposed otherwise than under the terms
15 of §311(f) of the Clean Water Act;

16
17 21.4. Plaintiffs contend that only the federal
18 or state trustees have rights to recover on account of
19 natural resources damaged by the Spill, whereas the
20 native defendants, or some of them, contend that
21 private persons or Alaskan Native organizations may
22 obtain such recoveries;

23
24 21.5. Plaintiffs contend that various means
25 of calculating damages or injury to natural resources,
26 and, in particular, contingent valuation, are so

arbitrary, speculative and uncertain that a judgment
calculated on the basis of such means would be an
unconstitutional denial of due process of law, and
would constitute an unreasonable and excessive fine,
whereas defendants, or some of them, contend the
contrary;

21.6. Plaintiffs contend that, as a matter of
due process of law, defendants, and each of them, must
join all other persons seeking to recover on account
of natural resources damaged by the Spill, so that
plaintiffs are not subjected to the risk of double,
multiple or inconsistent liability, whereas defendants,
or some of them, contend that this Court is powerless
to protect plaintiffs from such risk.

22. There are at this time eleven actions pending in
three different courts which involve parts of the foregoing
controversies, but there is no action pending, and no other court
or tribunal in which an action can be brought, in which the
entire controversy alleged herein can be resolved in a single
binding judgment.

23. Plaintiffs, and each of them, are entitled to a
declaratory judgment establishing their rights and liabilities
in the premises.

1 WHEREFORE, plaintiffs pray for judgment as follows:

2
3 1. For an order directing all defendants to submit
4 their claims against plaintiffs, or any of them, for resolution
5 in this interpleader action;

6
7 2. For an order directing joinder in this action of
8 all persons known to defendants herein to have a claim to
9 recovery on account of natural resources damaged by the spill;

10
11 3. For judgment as the interests of the parties shall
12 appear, based on the evidence;

13
14 4. For judgment in favor of Exxon Shipping Company
15 and Exxon Corporation against all defendants herein;

16
17 5. For declaratory judgment in accordance with
18 plaintiffs' contentions as set out herein;

19
20 6. For costs of suit incurred herein, including a
21 reasonable attorneys' fee; and

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I (a) PLAINTIFFS

Exxon Shipping Company
Exxon Corporation

DEFENDANTS

See Attachment A

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Harris, TX
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT District of Columbia
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

See Attachment B

ATTORNEYS (IF KNOWN)

See Attachment B

II. BASIS OF JURISDICTION

(PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
☒ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated or Principal Place of Business in This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated and Principal Place of Business in Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND MAKE A BRIEF STATEMENT OF CAUSE.)

DO NOT CITE JURISDICTIONAL STATUTES (UNLESS DIVERSITY)

Action for interpleader and declaratory judgment under the Clean Water Act, 33 U.S.C. 1321(f).

V. NATURE OF SUIT

(PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
☐ 110 Insurance ☐ 120 Marine ☐ 130 Motor Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 160 Maritime Act ☐ 170 Recovery of Outrighted Sums (Excl. Veterans) ☐ 180 Recovery of Overpayment or Veterans's Benefits ☐ 190 Stockholders' Suits ☐ 200 Other Contract ☐ 210 Contract Product Liability	PERSONAL INJURY ☐ 310 Assault ☐ 316 Airplane/Products Liability ☐ 320 Assault, Libel & Slander ☐ 330 Federal Employees Liability ☐ 340 Marine ☐ 346 Marine Products Liability ☐ 350 Motor Vehicle ☐ 356 Motor Vehicle Products Liability ☐ 360 Other Personal Injury	☐ 610 Agriculture ☐ 620 Fair & Obedient ☐ 630 Labor Union ☐ 640 R.A. & Trust ☐ 650 Airline Rights ☐ 660 Consumer Safety/Health ☐ 680 Other	☐ 422 Assets ☐ 423 28 USC 158 ☐ 423 Withdrawal ☐ 423 28 USC 157 PROPERTY RIGHTS ☐ 430 Copyright ☐ 435 Patent ☐ 440 Trademark SOCIAL SECURITY ☐ 451 SSA (1309B) ☐ 452 Social Security (1309) ☐ 453 OWB (1309B) ☐ 454 OWB (1309B) ☐ 455 OWB (1309B) ☐ 456 FRA (1309B) FEDERAL TAX SUITS ☐ 470 Taxes A.J.S. Plaintiff or Defendant ☐ 471 IRS - Third Party ☐ 472 28 USC 7402	☐ 400 State ☐ 410 Antitrust ☐ 420 Bank and Banking ☐ 430 Consumer Credit Rates/Int. ☐ 440 Copyright ☐ 450 Federal Reserve and ☐ 460 Foreign Exchange ☐ 470 International Trade ☐ 480 Labor Relations ☐ 490 Securities ☐ 500 Securities Exchange ☐ 510 Securities ☐ 520 Securities ☐ 530 Securities ☐ 540 Securities ☐ 550 Securities ☐ 560 Securities ☐ 570 Securities ☐ 580 Securities ☐ 590 Securities ☐ 600 Securities ☐ 610 Securities ☐ 620 Securities ☐ 630 Securities ☐ 640 Securities ☐ 650 Securities ☐ 660 Securities ☐ 670 Securities ☐ 680 Securities ☐ 690 Securities ☐ 700 Securities ☐ 710 Securities ☐ 720 Securities ☐ 730 Securities ☐ 740 Securities ☐ 750 Securities ☐ 760 Securities ☐ 770 Securities ☐ 780 Securities ☐ 790 Securities ☐ 800 Securities ☐ 810 Securities ☐ 820 Securities ☐ 830 Securities ☐ 840 Securities ☐ 850 Securities ☐ 860 Securities ☐ 870 Securities ☐ 880 Securities ☐ 890 Securities ☐ 900 Securities ☐ 910 Securities ☐ 920 Securities ☐ 930 Securities ☐ 940 Securities ☐ 950 Securities ☐ 960 Securities ☐ 970 Securities ☐ 980 Securities ☐ 990 Securities
REAL PROPERTY ☐ 210 Land Condemnation ☐ 220 Foreclosure ☐ 230 Rent Lease & Ejectment ☐ 240 Torts to Land ☐ 246 Tort Product Liability ☐ 250 All Other Real Property	CIVIL RIGHTS ☐ 441 Voting ☐ 442 Employment ☐ 443 Housing/ ☐ 444 Accommodations ☐ 445 Voting ☐ 446 Other Civil Rights	PRISONER PETITIONS ☐ 610 Motion to Vacate Sentence ☐ 620 Habeas Corpus ☐ 630 Habeas Corpus ☐ 640 Habeas Corpus ☐ 650 Habeas Corpus ☐ 660 Habeas Corpus ☐ 670 Habeas Corpus ☐ 680 Habeas Corpus ☐ 690 Habeas Corpus ☐ 700 Habeas Corpus ☐ 710 Habeas Corpus ☐ 720 Habeas Corpus ☐ 730 Habeas Corpus ☐ 740 Habeas Corpus ☐ 750 Habeas Corpus ☐ 760 Habeas Corpus ☐ 770 Habeas Corpus ☐ 780 Habeas Corpus ☐ 790 Habeas Corpus ☐ 800 Habeas Corpus ☐ 810 Habeas Corpus ☐ 820 Habeas Corpus ☐ 830 Habeas Corpus ☐ 840 Habeas Corpus ☐ 850 Habeas Corpus ☐ 860 Habeas Corpus ☐ 870 Habeas Corpus ☐ 880 Habeas Corpus ☐ 890 Habeas Corpus ☐ 900 Habeas Corpus ☐ 910 Habeas Corpus ☐ 920 Habeas Corpus ☐ 930 Habeas Corpus ☐ 940 Habeas Corpus ☐ 950 Habeas Corpus ☐ 960 Habeas Corpus ☐ 970 Habeas Corpus ☐ 980 Habeas Corpus ☐ 990 Habeas Corpus		

VI. ORIGIN

(PLACE AN X IN ONE BOX ONLY)

- ☒ Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Resealed
☐ 5 Transferred from another district (specify)
☐ 6 Miscellaneous Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
☐ UNDER F.R.C.P. 23

DEMAND \$ N/A

Check YES only if demanded in complaint
 JURY DEMAND: ☐ YES ☒ NO

VIII. RELATED CASE(S) IF ANY

(See instructions):

A89-095, A91-081, A91-082, A91-083

Holland

DOCKET NUMBER

DATE

5/16/91

SIGNATURE OF ATTORNEY OF RECORD

Douglas H. Hildebrand

ACE 1287575

ATTACHMENT A

DEPARTMENT OF THE INTERIOR
Manuel Lujan, Jr.
Secretary of the Interior

DEPARTMENT OF AGRICULTURE
Edward Madigan
Secretary of Agriculture

DEPARTMENT OF COMMERCE
John A. Knauss
Undersecretary for Oceans and Atmosphere and Administrator

ATTORNEY GENERAL'S OFFICE
Charles Cole
Attorney General of Alaska

ALASKA DEPARTMENT OF FISH & GAME
Carl Rosier
Commissioner

ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION
John Sandor
Commissioner

THE NATIVE VILLAGE OF CHENEGA BAY
THE NATIVE VILLAGE OF PORT GRAHAM
THE NATIVE VILLAGE OF ENGLISH BAY
THE NATIVE VILLAGE OF LARSON BAY
THE NATIVE VILLAGE OF KARLUK
PORT GRAHAM CORPORATION
ENGLISH BAY CORPORATION
CHENEGA CORPORATION

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NEWS RELEASE

STATE OF ALASKA

OFFICE OF THE GOVERNOR
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JUNEAU, ALASKA 99811

WALTER J. HICKEL
GOVERNOR



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FOR RELEASE: May 21, 1991
No. 91-109

HICKEL THANKS LEGISLATURE FOR EXXON VALDEZ TURNABOUT

JUNEAU--Governor Walter J. Hickel today thanked state legislators for giving him their endorsement to go back to the bargaining table to obtain a new Exxon Valdez settlement.

The legislature unanimously passed a resolution, HCR 38, that gives the green light to the administration to renegotiate another settlement "on the terms and conditions that are in the best interests of the State of Alaska."

"In the cold light of day, they had the opportunity to reconsider their decision," Hickel said. "When the house turned down the settlement, I was disappointed, but I didn't have a bad feeling about it. I felt inside that the settlement could be revisited this session. I could not turn my back on the settlement, because it was right for Alaska. I think Alaskans are united on this issue."

The Governor suggested that the settlement was viewed as unfinished business by the legislature. "They didn't want to adjourn with unfinished business still on their plate," he said.

-more-

Hickel lauded the legislators for helping to bring forth a new atmosphere of cooperation with his administration. "I hope this new attitude lasts, and that we can build on it during the interim," he said. "By the time the legislature reconvenes in January, we should fully understand one another."

Hickel thanked Senators Rick Halford, Dick Eliason, Jay Kerttula and Pat Rodey, and Representatives Mike Navarre, Ben Grussendorf, Robin Taylor, Cliff Davidson and Gene Kubina for helping put the resolution together and shepherd it through the house and senate. He especially commended the house Republican minority members for their full support of the settlement.

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NEWS RELEASE

STATE OF ALASKA

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

WALTER J. HICKEL
GOVERNOR



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FOR RELEASE: May 17, 1991
No. 91-106

HICKEL SAYS EXXON LAWSUIT COULD HAVE BEEN AVOIDED

JUNEAU--With the filing of a lawsuit by Exxon on Thursday, Exxon Valdez spill-related litigation has now expanded. It is one lawsuit that could have been avoided if the legislature had accepted the negotiated settlement, according to Governor Walter J. Hickel.

"This is exactly the type of litigation we wanted to avoid. We were disappointed the Alaska House of Representatives disapproved the settlement," Hickel said. "Now, we will spend general fund dollars to respond to this lawsuit, rather than enhancing and rehabilitating Prince William Sound, Kodiak and other areas impacted by the spill."

The State of Alaska was named as a defendant in a complaint filed by Exxon and its shipping company and which was served on the state yesterday. It asks the court to sort out the various and overlapping resource damage claims and issue a declaratory judgment identifying the owners of the resources damaged by the oil spill.

"There is a lot at stake in this lawsuit," Hickel said. "The court could find, for example, that the state doesn't own the natural resources--that we have no claim. If that happens, we won't get anywhere near a billion dollars, if we get anything. This is just the type of nightmare the settlement would have allowed us to avoid."

Named as defendants are trustees of the federal and state governments, five Native villages and three Native corporations.

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CAPITOL COUNTDOWN: Hickel victory

Continued from Page B-1
measure. And although the governor didn't take a strong stand to bust it out of the Resources Committee, Hickel aides felt Coghill was overstepping his authority.

While waiting for the elevator outside the governor's office, Coghill was stopped by Hickel's special assistant for special projects, James Hockwell. Rockwell told Coghill the governor supported the bill.

Coghill said the administration would not support spending \$22 million to buy trees. Rockwell grabbed the lieutenant governor's arm and told him the governor did support it.

Hickel press secretary Eric Rehmann said he had heard rumors of Coghill's trying to kill the Kachemak deal.

"If the lieutenant governor is doing this, he does not understand the governor's position," Rehmann said.

House Speaker Ben Grussendorf talks to Sen. Lloyd Jones in the House as Rep. Max Gruenberg and Rep. Loren Leman listen.

BOB HALLINEN / Anchorage Daily News

Hickel and the Little Man taste victory

5.22.91



By DAVID POSTMAN
Daily News reporter

JUNEAU — The Little Man declared a little victory on the final day of the legislative session when lawmakers approved a resolution asking Gov. Wally Hickel — in whose body the little guy lives — to negotiate a new Exxon Valdez settlement.

"The Little Man says, 'Keep going,'" Hickel said at a news conference shortly after the Senate unanimously approved the resolution. The House had approved it, also unanimously, Monday night.

The first settlement negotiated among the state, the federal

government and Exxon fell apart early this month when the state House rejected the pact and Exxon exercised its option to pull out.

"When they turned it down, something inside of me said, 'We're not going to quit,'" said Hickel, who calls that inner voice the Little Man.

Hickel said the resolution gives him carte blanche to cut a new deal with Exxon, and he said he would not bring it back for legislative approval. He also said he would not consult with lawmakers during negotiations.

But Rep. Gene Kubina, D-Valdez, author of the resolution,

said the resolution should not be seen as a sign that the House has changed its mind about the previous settlement. He said the legislature only wanted to give Hickel a push to reopen negotiations.

Lt. Gov. Jack Coghill got crossways with the official Hickel agenda on the last day of the session. Coghill had been trying to stop a bill — that finally died in the Senate — that would have spent \$22 million to buy up a large timber tract around Kachemak Bay.

But Hickel supported the

Please see Page B-2, CAPITOL

Spill deal may arise from ashes

Legislators lobby to revive
Hickel's Exxon settlement

By JAY CROFT
and DIRK MILLER

TIMES CAPITAL BUREAU

5-20-91

JUNEAU — Gov. Walter J. Hickel's \$1 billion Exxon Valdez oil spill settlement may not be dead yet, House and Senate leaders said Sunday.

At Hickel's urging, key legislators are working behind the scenes to revive the deal or have negotiators come up with a better one.

"I think we're going to get Exxon Valdez," Hickel said Sunday. "We're pushing real hard."

House Speaker Ben Grassendorf and Senate President Dick Eliason are drafting a resolution asking Hickel and Attorney General Charles Cole to go back to the bargaining table, where state, federal and Exxon officials struck the first deal in March.

The measure could come up Hickel for votes today. The Legislature faces a midnight Tuesday adjournment deadline.

The House earlier this month rejected the settlement of state and federal civil claims against Exxon after a U.S. District Court judge threw out the accompanying \$100 million criminal fine.

Exxon and its shipping subsidiary have until Friday to withdraw four guilty pleas to environmental charges stemming from the March 24, 1989, oil spill of about 11 million gallons in Prince William Sound.

Hickel earlier said he would honor lawmakers' vote on the settlement, but he and Exxon pulled out of the deal the day after the House rejected it 27-13 along party coalition lines. All sides said they would focus on the coming trial, but Cole said he remained hopeful about reaching another deal.

Last week, Exxon sued the state, federal government and Native groups, seeking a court ruling



Exxon

Continued from page A1

on who could sue the oil giant for civil claims.

"It sort of brought it back into focus," said Eliason, R-Sitka. "A lot of senators thought there was a chance to salvage an agreement."

Eliason and majority leader Rick Halford, R-Chugiak, two of Hickel's closest allies, are the prime Senate forces behind the new effort. They met Sunday with Grassendorf, D-Sitka, outside a committee room to talk about another attempt on the settlement.

The House and Senate will come up with a broadly worded joint measure asking Hickel and Cole to negotiate another deal "on as good or better terms" as the first one, Eliason said.

Grassendorf, a key player in the settlement's demise, agreed.

"I believe the senator may be right," he said. "We will get it. Exxon Two is like a phoenix rolling out of the ashes."

But first, Grassendorf and Eliason said, some deals are being made to ensure enough votes to win legislative approval.

That may include listing House members' objections to the settlement as suggestions in the resolution, Eliason said.

Rep. Gene Kubina, a Democrat who represents Prince William Sound, said, "I think there'll be a resolution asking the governor to continue negotiations. Not a revival of what was."

"What we want is to go forward with negotiations," he said. "Nobody ever said we wanted to litigate."

The settlement had called for Exxon to pay the state \$900 million over 11 years, to be administered by a state and federal trust for Sound restoration.

House Democrats had said



Times photo by RUSS KENDALL

Attorney General Charles Cole listens to testimony during a meeting of the Finance Committee.

they did not like the extended payment period or lack of legislative control in spending the money. They also urged a higher criminal fine, a lower civil penalty and clarification and protection of third-party claims.

In addition, they wanted access to some state scientific studies, which Cole said he has kept secret to protect the state's case, and to drop the so-called "re-opener" clause, which they called too narrow. The settlement would have allowed the state to seek another \$100 million if additional environmental damage is found in later years.

Grassendorf would not say who else was pushing the efforts in the House.

Rep. Mike Navarre, D-Kenai and co-chairman of the House Finance Committee, said he and Hickel discussed the settlement in an argument they had in the governor's office Friday. Navarre voted against the deal.

"He made a reference to it," Navarre said about the House vote. "He made mention of it and obviously it was a disappointment to them."

Navarre said James Rockwell, Hickel's special assistant, and Don Tanner, Hickel's boards chief, later came to Navarre's office to discuss various issues. Navarre said he and Hickel had another "friendly" discussion.

Rockwell and Tanner would not discuss any administration efforts to lobby swing votes.

Cole also declined to comment Sunday. Last week he said Exxon's suit would not help negotiation efforts.

Exxon spokesman Bill Smith in Irving, Texas, said Sunday night, "Our comment is no comment."

A U.S. Justice Department spokeswoman in Washington, D.C., did not return phone calls Sunday.

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28 (WASHINGTON) - A FEDERAL JUDGE IN WASHINGTON SAID TODAY (MONDAY) HE WAS CONCERNED THAT EXXON'S SETTLEMENT WITH THE GOVERNMENT OVER THE VALDEZ OIL SPILL COULD INTERFERE WITH THE RIGHTS OF ALASKA NATIVES TO PURSUE THEIR OWN DAMAGES.

A HEARING TODAY BEFORE U-S DISTRICT JUDGE STANLEY SPORKIN CAME LESS THAN A WEEK AFTER FEDERAL JUDGE RUSSEL HOLLAND THREW OUT THE CRIMINAL PORTION OF THE EXXON SETTLEMENT. HOLLAND SAID THE 100 (M) MILLION DOLLAR FINE WAS TOO LENIENT -- AND HIS RULING LEFT IN DOUBT THE FUTURE OF THE SETTLEMENT.

THE JUDGE DID NOT RULE ON A GOVERNMENT MOTION TO TRANSFER THE ALASKA NATIVES' LAWSUITS TO HOLLAND'S COURT.

SPORKIN HAD ISSUED A RULING BEFORE THE EXXON SETTLEMENT WAS ANNOUNCED IN MID-MARCH, SAYING IT SHOULD NOT INTERFERE WITH THE RIGHTS OF FIVE NATIVE VILLAGES TO SEEK THEIR OWN PAYMENT FOR .. DAMAGE.

TODAY -- VILLAGES' ATTORNEY MICHAEL HAUSFELD TOLD THE JUDGE THE AGREEMENT GIVES EXXON THE RIGHT TO ARGUE THE NATIVES HAVE NO RIGHTS TO SUE FOR PAYMENT FOR DAMAGES TO NATURAL RESOURCES.

SPORKIN TOLD HAUSFELD TO SEEK A STATEMENT FROM EXXON OFFICIALS ON WHETHER THEY BELIEVE THE SETTLEMENT AFFECTS THE NATIVES' CLAIMS. HAUSFELD TOLD REPORTERS HE WOULD DO SO NEXT WEEK.

GOVERNMENT ATTORNEY LETITIA GRISHAW -- MEANWHILE -- CONTENDED THAT THE SETTLEMENT DOCUMENT IS NEUTRAL.

GRISHAW ARGUED AGAINST ANY NEW COURT ORDER BARRING ANY GOVERNMENT ACTION THAT WOULD AFFECT THE VILLAGES' RIGHTS AND ALSO SAID SPORKIN DID NOT HAVE THE RIGHT TO ORDER REVISIONS IN THE SETTLEMENT.

JUDGE SPORKIN EXPRESSED FRUSTRATION -- SAYING HE IS VERY CONCERNED THAT PEOPLE'S RIGHTS ... MAY WELL BE INTERFERED WITH IN THE SETTLEMENT.

GOVERNMENT ATTORNEY DAVID CARSON NOTED THAT EXXON HAS UNTIL THE END OF THE WEEK TO DECIDE WHETHER TO BACK OUT OF THE AGREEMENT ON THE CIVIL CLAIMS. IF IT DOES, THE ISSUE IS MOOT.

AP-NP-04-29-91 1048PDT<-

Exxon sues to settle claimants' rights

By SCOTT REEVES

TIMES WRITER

The state and federal governments as well as Alaska Natives have filed conflicting and contradictory claims resulting from the Exxon Valdez spill, attorneys for the oil company charged Thursday.

In a lawsuit filed in U.S. District Court in Anchorage, attorneys for Exxon asked a judge to narrow the scope of the claims filed against the oil company and to determine which laws apply in the case.

Exxon's lawsuit also asks the court to decide who is entitled to file for any damages sustained from the oil spill. It sharply questions the right of the state and federal governments as well as Native groups to be paid pursuant to the federal Clean Water Act.

In Juneau, Alaska Attorney General Charles Cole said Exxon's lawsuit came as a "total surprise."

"Exxon wants to know which entity has the right to recover natural resource damages," Cole said.

Cole said he believed the issues raised by Exxon had been resolved when the state and federal governments joined their claims.

"That's one of the reasons we fashioned the settlement agreement in the manner in which we did," Cole said. "This would not have happened if the settlement had been accepted."

The proposed \$1 billion settlement with Exxon died after the Alaska House rejected it earlier this month. The action followed Anchorage federal Judge H. Russell Holland's rejection of a criminal plea bargain intended to be

part of the settlement. The out-of-court agreement would have settled state civil and federal criminal claims stemming from the spill.

Lloyd Miller, an attorney representing Native corporations and villages, called the lawsuit an attack against the Natives.

"Exxon in trying to get a clarification from the court sooner rather than later on its liabilities," he said.

Named as defendants in Exxon's lawsuit are state and federal officials in their governmental capacity as well as the Native villages Chenega Bay, Port Graham, English Bay, Larsen Bay, and Karluk. The Port Graham, English Bay and Chenega corporations are also named as defendants.

Exxon is forced to respond to "inconsistent theories" in civil claims stemming from the

March 24, 1989, spill of nearly 11 million gallons of crude oil in Prince William Sound when the Exxon Valdez ran aground on Bligh Reef, the lawsuit said.

"Scientific and economic studies carried out by the federal trustees are being conducted separate and apart from scientific and economic studies carried out by the state trustees," the lawsuit said. "Work which the state trustees claim is necessary to restore natural resources is claimed by the federal trustees to be harmful to the natural environment."

The alleged inconsistency "serves to increase the claims of both the state and federal trustees," the lawsuit charged.

Times writer Jay Croft contributed to this report.

5.17.91

Exxon asks judge to rule on who can sue

By DAVID POSTMAN
Daily News reporter

Exxon Corp. went to federal court Thursday to ask a judge to rule on who has the right to sue the giant oil company for damages caused by the wreck of the Exxon Valdez.

In the complaint, filed in U.S. District Court, Exxon argues that the federal government, the state and Native villages have all filed lawsuits against the company offering contradictory

theories. There are 11 suits in three different courts, the complaint says, and one court needs to sort out the various legal arguments.

For example, "work which the state trustees claim is necessary to restore natural resources is claimed by the federal trustees to be harmful to the natural environment," according to Exxon.

Federal agencies, the state and the Natives each claim to have exclusive rights to

act as trustees of the natural resources damaged in the massive 1989 oil spill, the complaint says. That exposes Exxon to "double or multiple liability."

Exxon argues that only the federal government or the state has the right to sue for natural resources damaged by the spill, not the Natives.

Attorney General Charlie Cole, who said he got the lawsuit late Thursday, said it could force an answer to

the question about who owns the fish and wildlife damaged by the 1989 spill.

"The state and federal governments avoided this problem," Cole said, because their claims against Exxon were joined together.

But now that a proposed settlement of Exxon Valdez litigation has disintegrated, Exxon wants a ruling to determine who can sue for the damage done to Prince William Sound.

Cole said he didn't know

how significant the suit was but it certainly would hurt chances to settle the state's suit against the oil giant.

"Further litigation, in my view, never makes settlement easier," he said.

If the settlement had been approved by the legislature, Exxon would have been prohibited from suing the state and federal governments.

□ Daily News reporter Marilee Sage contributed to this story

Toxic pollution list includes six Alaska companies

By T.A. BADGER

ASSOCIATED PRESS

Nationwide pollution data shows six companies in Alaska released nearly 25 million pounds of toxic materials into the atmosphere in 1989, the Environmental Protection Agency reported Thursday.

The report was made public as part of the EPA's Toxic Release Inventory, which measures

more than 300 chemicals. The inventory's release is required under federal right-to-know laws.

The report said 22,650 industrial sites across the nation emitted 6.7 billion pounds of toxic chemicals into the environment that year.

About 2.4 billion pounds was released into the air, 1.5 billion pounds transferred to treatment or disposal facilities, 1.2 billion

injected into underground wells, 445 million pounds went into landfills and about 190 million pounds was dumped into water.

Alaska accounted for a little less than half a percent of the national total, the EPA said.

The vast majority of the state's toxic release was the 18.3 million pounds of ammonia that went into the air from Union Oil Co.'s chemicals plant in Kenai.

Another 240,000 pounds of ammonia went into bodies of water from the plant.

Ketchikan Pulp Co.'s plant in Ketchikan released about 4 million pounds of methanol, hydrochloric acid and other chemicals into bodies of water and another 989 million pounds of hydrochloric acid, sulfuric acid and chlorine into the air.

Alaska Pulp Corp.'s facility in

Sitka dumped about a million pounds of methanol, ammonia and other toxics into water and more than 100,000 pounds of various chemicals into the air.

Tesoro Alaska Petroleum Corp.'s operation in Kenai dumped about 100,000 pounds, and Chevron USA Inc.'s Kenai facility and Mapco Alaska Petroleum Inc.'s North Pole refinery each about 20,000 pounds.

Olds offers idea of moving villages to improve rural economy

ASSOCIATED PRESS

JUNEAU — Given that Alaska Natives have a nomadic past and rural economies are hurting, some villages could be moved to places where they make more economic sense, Commerce Commissioner Glenn Olds says.

Olds, who oversees several state programs aimed at boosting rural economies, said he discussed his idea during a Department of Commerce and Economic Development staff meeting last week.

He said he had hoped the radical proposal "wouldn't reach the press" because it "could be



Glenn Olds

badly misinterpreted."

"I just threw out a suggestion," he told the Juneau Empire. "I'm not now suggesting that we start moving villages. I'd be run out of town. I'm not talking about anything that could be shoved down people's throats."

He said his comments on the idea were aimed at "enhancing the human and economic viability of rural Alaska."

Alaska's rampant drug- and alcohol-abuse problems can be blamed in part on dismal rural economies, he said.

Most villages were settled for economic or subsistence reasons, but times have changed, Olds said. Now the state is pouring millions of dollars into villages that have no revenue-generating economy.

Moving villages would build on the Native heritage, he said.

"They had to be where the land and resources would sustain their lives. I think that's a good philosophy. There is hardly any culture in the world that has survived with such tenacity."

When that nomadic past and modern technology are combined, moving villages becomes more than just a wild notion, Olds said.

"You can think about new cities, new towns, new villages," he said.

Rep. Ivan M. Ivan, D-Akiak, agrees with some of Olds' premises, but not his conclusions. "What is he saying? Move them to Anchorage or Fairbanks?" Ivan said Wednesday.

He agreed that many villages are in dire economic shape. But he also said Native people were

forced by Western civilization to set up villages rather than continue the nomadic lifestyle.

Olds said the state should suggest places where new communities could be built around development projects.

Ivan agreed that people in impoverished villages would willingly relocate for good jobs. But he questioned the role of the state or a commissioner in determining who should move.

"He's not God," Ivan said of Olds. "He's looking at it from here, not from out there (in the village)."

"Out where I come from, villages are disenfranchised. They're saying to hell with the state."

Olds brought up his idea during a discussion of the state's Rural Economic Development Initiative, a program that uses state and federal money to assist in village economic development.

Thursday, May 18, 1991, The Anchorage Times 157

Don't quit settlement

A REFEREE is not supposed to be swayed by the roar of the crowd, nor a U.S. District Court judge by public opinion. But we hope Judge Russel Holland is paying attention to the reaction from all parties following the collapse of the proposed spill settlement between Exxon, the state and the federal government.

It remains in each party's best interest that the suits be settled short of a prolonged court proceeding.

Members of the State House responsible for the political opposition vote that derailed the settlement are now looking with apprehension at prospects that Exxon and the federal government may not come back to the negotiating table. The politicians know that their personal political ambitions go down the drain along with the settlement — if that should happen.

JUST MENTION Amoco Cadiz and you'll get a shudder from the lawmakers and others who advocated scuttling the proposal. Litigation over the Amoco Cadiz oil spill off the coast of France dragged on for more than 10 years. That spill was far greater than the Exxon Valdez, and the final court award for damage was a mere pittance of what Exxon was offering the state and federal government in an out-of-court settlement.

Exxon's legal staff reportedly is advocating that there be no more settlement talks. The lawyers believe they can win a much smaller fine and settlement than had been on the table. Company officials, on the other hand, realize that there is an advantage to the certainty of knowing now the extent of their liability, as well as there being a positive benefit for Exxon to make good on its commitment to Alaska to restore Prince William Sound.

IMMEDIATE restoration of the Sound is the principal reason why the state and federal government support a settlement similar to the one that was proposed. It would fund scientific research and programs to ensure environmental and economic recovery of the region.

Judge Holland, whose rejection of the criminal plea bargain provided the political cover for Rep. Max Gruenberg and his following to reject the civil claims settlement, now should act to put the proposal back together. A revised settlement package could accommodate the concerns of Natives seeking compensation for environmental losses. It should not, however, include the Legislature's desire to have access to a settlement fund's checkbook.

In fulfilling his obligation to enforce the law when he declared the proposed criminal fine insufficient, Judge Holland said the civil and criminal suits were not tied together. From a legal standpoint that may be the case, but the enormous consequence of that decision for the people of this state and for the nation should also be weighed. In that context it would be most appropriate for the judge to bring all parties together and facilitate a final resolution.

The Sound recovers

Tour underlines success of man, nature against oil spill

By DANIEL R. SADDLER
and BERT TARRANT

TIMES WRITERS

SMITH ISLAND — Everyone was there Wednesday for a three-island tour of beaches devastated in the 1989 Exxon Valdez oil spill — Exxon, state and federal personnel and the media — but oil was a virtual no-show.

As preparations continue for the third and final summer of cleanup, officials led reporters on a triumphant tour of sites where man and nature had combined successfully to scour crude from Prince William Sound.

"On any of the shorelines I've

been on, I don't see a potential for problems," said Andy Teal, an Exxon biologist. "Ninety-nine percent of the shorelines are clean. We're just taking care of isolated spots."

Ernie Piper, the state's on-scene spill coordinator, acknowledged success on the three sites, but added not all the oil is gone from the Sound's shores, and may never be.

"You can't generalize it as being all good, but you can't generalize it as being all bad, either," Piper said.

The tour visited Smith Island and LaTouche Island's Sleepy Bay, where winter waves helped

flush out oil six inches above, and 20 inches below the rocky surface, said Teal.

New growth of black mussels and barnacles, combined with abundant algae, showed nature was recovering from the spill, even on the sheltered bay at Eleanor Island, Teal said.

"Black mussels are used in lab tests for toxicity because they are very sensitive to oil in their environment," said John Wilkinson, Exxon's technical spill response coordinator. "They're coming back well, and they taste good, too."

How much cleanup work re-
See Cleanup, back page

Cleanup

Continued from page C1

main to be done on the 10.9 million gallon spill remains to be seen. Six 11-man crews are about halfway through a five-week spring assessment of 575 shore sites.

Based on their observations, a technical advisory group will recommend cleanup work this summer to Rear Admiral David Ciancaglini, federal on-scene coordinator, who will order work after consulting with land owners.

Workers may need to pick up

oil on about 100 beaches, while heavy equipment may be needed to dig up subsurface oil on about six sites, he said. Exxon has ordered about 30 drums of Inipol, a liquid fertilizer used as a final treatment to help bacteria eat oil, Wilkinson said.

Ciancaglini said more intrusive efforts would interrupt natural cleaning, and could cost too much compared to the slight benefit of releasing inert, trapped oil. He anticipated cleanup ending in mid-July, he said.

"The question we must ask in our assessment is whether further cleansing will aid or harm nature's work, as well as decide if the cost of cleanup is excessive

in view of the contribution it makes," he said.

"Can Exxon claim a success story?" asked Jim Gibeau, Alaska Department of Environmental Conservation geologist. "I think some of the success of winter storms in cleansing the shoreline has been overstated, but, yes, they can."

Ciancaglini and Teal performed the familiar ritual of digging a hole, then watching a tiny oil sheen formed on the surface of the water. The admiral said he doubted the oil was frightening wildlife, despite claims by Native residents of nearby Chenega Bay that even this subsurface oil was impeding their subsistence hunting and

fishing.

One site where heavy equipment would be necessary is Point Helen, which was heavily oiled by the spill. The state will continue cleanup of areas where there is significant subsistence, recreational or other use, he said.

"We've got the problem down to a size and complexity that if everyone went home tomorrow, the little old state of Alaska could take care of it," he said.

Exxon's Otto Harrison said he was glad the intense media attention of earlier summers was gone.

"We don't need to be in the spotlight to get the job done," he said.

Anchorage Daily News Tuesday, May 14, 1991

FORUM / LETTERS

Spill settlement lacks a key element: fairness

By REP. MAX GRUENBERG

When Gov. Hickel returned from Washington, D.C., in March, he announced that he had just negotiated with Exxon and the Justice Department the best civil-settlement deal Alaska could expect from the oil spill. Despite the governor's sincere attempt to negotiate a good deal for Alaska, this settlement was unfair to Alaska and here's why:

• Alaskans would have been excluded from decisions as to how much money should be spent on restoration and recovery in spill-hit areas. Instead, a board of federal and state bureaucrats would have unilaterally decided how the money should be allocated. There was no guarantee that the people directly affected by the spill would have had any say in the matter.

• It did not adequately protect the rights of Alaska Natives and other third-party groups. Unless loopholes in the settlement were closed, the rights of Alaska Natives to recover damages from Exxon for cultural and subsistence losses could have been restricted. Also, commercial fishermen could have lost their right to recover damages resulting from diminished fish stocks.

• All scientific and economic data could have remained secret without justification. This information should be published so the public can be sure that further damage is minimized, more safeguards can be prepared, and the total impact of the spill can

be fully assessed. This will also help prevent unfounded claims by the oil industry of recovery rates in spill areas and verify the toll on wildlife and natural resources.

The House set up a nine-member bipartisan committee which went over the proposal literally line by line during more than 100 hours of hearings over a period of six weeks. The committee also held hearings in Seward, Homer, Kodiak and Cordova to hear from people in areas most directly affected by the spill.

In total, 230 Alaskans from all over the state either wrote or testified about the settlement. Of those, 169 (67 percent) were strongly against the settlement proposal, 11 (5 percent) favored it and the remaining 51 (23 percent) were neutral.

Most committee members felt the settlement weighed too heavily in favor of Exxon by giving the oil giant 11 years to pay the \$900 million settlement. Over time that meant the settlement was really worth only between \$500 million and \$700 million. Meanwhile, Exxon would have continued to profit off money owed to the state.

The House wants a \$700 million payout (what Alaska Attorney General Charles Cole asserted is the real value of the original proposal) within 15 months of the date the judge approves the settlement. Exxon should pay that up front and be done with it.

Under the rejected proposal, the state of

Alaska would have subsidized Exxon through state corporate tax write-offs from the settlement worth at least \$5 million. House members thought it was unfair that Exxon should be awarded a \$5 million state tax break. Incidentally, under the agreement, Exxon would have been able to write off more than \$150 million in federal taxes. The House wanted the agreement modified to prevent Exxon from deducting the civil settlement from its state taxes.

The House also suggested changes so scientific and economic data would be published on a case-by-case basis unless a court ordered that the data be kept secret.

In addition, the House asked that the public be intimately involved in spending decisions and that the rights of Alaska Natives and other third parties to file claims against Exxon be fully protected.

Other recommended changes would assume that the settlement conforms to the Alaska Constitution by requiring legislative appropriation of monies and that two state legislators be nonvoting members of the trustee board, which will make final spending decisions.

The House suggested the criminal fine be increased to \$500 million, \$100 million going to the state and \$100 million going to the federal government. The rest would go into the civil settlement trust fund for restoration purposes. That would bring the total settlement to \$1.3 billion, a much higher

figure than the rejected settlement, but still equal to Gov. Hickel's goal.

Let's be very clear: the House still wants a fair settlement. The House's suggestions are a road map to making an equitable settlement happen. In rejecting the civil settlement, the House showed that Alaskans have the fortitude to withstand large offers that are really not fair in the long run. True, we took a risk that one of the parties might choose to litigate rather than renegotiate. My colleagues and I felt that was a small risk because litigation is in nobody's best interest.

The governor made the right decision in putting the settlement before the legislature. He now has a stronger hand to win concessions that protect Alaska's rights, provide fair and adequate compensation and have broad-based popular support. Legislators expect the governor to honor his word that he will give the public and the legislature opportunity to review and approve the settlement, even if it's a second version. With a little encouragement, Exxon, the Justice Department and the Hickel administration will emerge with a better proposal, one that we all can live with.

□ Rep. Max Gruenberg of Anchorage is the House Majority Leader.

Hickel disputes claim on Sound oil cleanup

The Associated Press

JUNEAU — Gov. Wally Hickel on Wednesday disputed an Exxon Corp. official's contention that the Exxon Valdez oil spill had no long-term effect on Prince William Sound.

Speaking at an oil-technology conference in Houston, Otto Harrison, the Exxon official who oversaw the spill cleanup, said fish were returning to the waterway in large numbers.

"The waters of Prince William Sound are sparkling and clean," he said. "Wildlife is abundant, diverse and healthy, and there is no impediment to normal activities as a result of the oil spill."

But Hickel said environmental damage remains.

"There is still a great deal of natural resource damage restoration to be completed," he said in a statement.

"That is why we were so eager to have the state's legislature favorably pass the Exxon Valdez settlement."

The Alaska House last week rejected the \$1 billion settlement. The state and Exxon formally withdrew from the agreement Friday.

Harrison said Exxon's expensive cleanup boosted the Alaska economy, which Hickel did not dispute.

"Anytime you put over \$2 billion into a state's economy, it is going to have a positive effect," the governor said.



Alaska charities fear effects as pull-tab sales ban nears

By MATT KOHLMAN

The Associated Press

JUNEAU — Alaska charities said Thursday that lawmakers will hammer the last nail in their fund-raising coffin if they don't pass legislation this session to ease the state's pull-tab lottery regulations.

"There are many non-profits that are hanging on by a prayer and a promise," said Roger Cunningham, co-chairman of the Coalition for Non-Profit Gaming.

The state in January began prohibiting the sale of pull-tab lottery tickets in unlicensed outlets. State law requires operators to have licenses, but the law had never been enforced.

The ban was later revised to allow bars, restaurants and other third-party vendors to sell pull-tabs as long they received no compensation. The provision is set to expire Wednesday.

The Hickel administration may adopt the regulation as permanent or amend it, but it, too, is looking to lawmakers for a solution.

"We've been waiting for the legislature to act responsibly," said John Hansen, gaming manager for the Division of Occupational Licensing. "Until there's a change in the law we can't recognize vendor sales."

That has meant a loss of millions of dollars for the state's nearly 1,150 non-profit groups holding gambling permits.

Pull-tabs were being sold by as many as 2,500 vendors when the state began enforcing the ban, Hansen said.

Now, "they've just virtually locked it up," said Cunningham, whose group represents about 30 Alaska charities.

The lack of pull-tab revenue has caused the Alaska Mental Health Association to drop suicide-prevention and low-income housing plans and concentrate on existing programs, said Dar Alexander, interim director for the group.

Don Brandon, executive director of the Easter Seal Society of Alaska, said his group has had to scale down its plans to hold a summer camp. The group would have received \$15,000 just from pull-tab games that were cut short by the ban, he said.

"That would have brought us in line with doing a camp ... that would look like a camp instead of a slumber party."

Two bills seek to resolve the issue, but both have been bottled up since early April in the judiciary committees.

Legislation sponsored by Sen. Fred Zharoff, D-Kodiak, would allow third-party vendors to sell pull-tabs under state regulation. It also would guarantee charities receive at least 70 percent of the money left over after paying prizes.

Senate bill 6 is supported by the Hickel administration, Hansen said. It is also acceptable to most non-profit groups.

House bill 168, introduced by Rep. Dave Choquette, R-Anchorage, is similar to the Senate bill.

Bill aims to boost bank-AIDEA activity

The Associated Press

JUNEAU — A measure aimed at increasing bank participation in the commercial loan program of the Alaska Industrial Development and Export Authority was endorsed by the House Tuesday.

The measure provides several incentives for bank participation in the program, including an increase in the loan cap from \$10 million to \$15 million. It also would allow AIDEA to increase its loan guarantee from 80 percent to 80 percent on loans under \$50,000.

AIDEA is a public corporation that finances and develops industrial, manufacturing and other business enterprises within the state. Its activities are funded through a \$535 million revolving fund.

House Bill 206 passed without opposition and was sent to

State sets figure for Fairbanks flooding

Times 5-10-91

ASSOCIATED PRESS

The state Division of Emergency Services has set a preliminary figure of \$1.5 million to \$2 million for the damage caused by flooding this week in Fairbanks North Star Borough.

Gen. Hugh Cox, emergency services commissioner, said Thursday that the figure was probably too low. He said more than 300 homes were damaged, as well as several roads and other public facilities. Some of the homes are still underwater.

"Until the water actually recedes, we're not going to know just what the actual damages are to individual homes," said Cox, who visited the borough Thursday.

Gov. Walter Hickel on Tuesday responded to the borough's flooding by declaring the flooded areas a disaster. His action qualifies homeowners and the borough for state money for flood repairs.

Cox said McGrath, which also sustained extensive damage when ice jams on the Kuskokwim River caused heavy flooding, has requested disaster status, which most likely will be granted. He said a state team has been sent to McGrath to assess damage.

The disaster declaration qualifies homeowners for up to \$5,000 in state money, Cox said.



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Notes:

Dear Mary -

Thanks for taking the time a few days ago to fill me in on the Senator's view of the Exxon Valdez settlement. As promised, I'm sending a copy of the May 4th New York Times article that quotes Senator Eliason.

Thanks again - Eric Buss

This transmittal consists of 2 pages (excluding cover sheet).

From: Eric Buss
Executive Editor
Global Oil Pollution
Bulletin

Date: 5/9/91

Time: 6:55 pm

EXXON AND ALASKA DROP SETTLEMENT IN VALDEZ OIL SPILL

COURT BATTLE IS PLANNED

Pact to Resolve Civil Lawsuits
Could Be Years Away —
Governor Shows Anger

By KEITH SCHNEIDER
Special to The New York Times

WASHINGTON, May 3 — The \$1 billion agreement to settle civil complaints against Exxon in the Exxon Valdez oil spill collapsed today, and state and Federal officials plan to go to court. The process is likely to take years.

The end of the seven-month-old agreement came this evening when G. V. Walker J. Michel of Alaska and J. Exxon Corporation formally withdrew. But the pact began to unravel last month under sharp criticism from Alaska residents, a Federal judge, lawmakers and environmental groups.

The Bush Administration expressed disappointment and said it was not likely to try to negotiate a new pact with Exxon or the State of Alaska.

'Getting Ready for Trial'

"Exxon's backing out and the Governor's backing out and we're getting ready for trial," said Thomas A. Campbell, general counsel of the National Oceanic and Atmospheric Administration, who was an influential negotiator in the agreement. "I think it is unlikely further negotiations are feasible. It's too complicated a problem to solve. Sometimes there are things that need to be resolved in court."

In addition to Federal court hearings over civil damages sought by the state and the Federal Government, Exxon and its shipping subsidiary the Exxon Shipping Company, face a trial over eight criminal charges filed after its tanker, the Exxon Valdez, struck a reef in Prince William Sound in southeastern Alaska on March 24, 1989, dumping nearly 11 million gallons of oil into the sound.

Last month a Federal judge rejected the criminal plea agreement that Exxon reached with the Government, saying that the \$100 million fine that was proposed was too small.

Governor Expresses Anger

At a news conference in Alaska, Governor Michel said he was angry about the collapse of the agreement.

"We will now have to spend millions each year on lawyers to litigate with Exxon," he said. "The people of Alaska should be outraged."

Asked what would happen now, the Governor replied, "We haven't any real big game plan."

Like the environmental damage caused by the oil spill, the collapse of the \$1 billion civil settlement means that the litigation stemming from the nation's worst oil spill is almost certain to last for years, Government lawyers said today.

Superior civil cases against Exxon have been filed by the state and the Federal Government, and if Exxon battles the claims vigorously they could

Continued on Page 2, Column 1

New York
Times
5-4-91

Settlement on Exxon Spill Collapses

2

Continued From Page 1

not reach the courts until 1994 or 1995. Trials would take months to complete, lawyers said, and appeals are likely no matter which side wins.

Charles E. Cole, Alaska's Attorney General, said that if Exxon eventually lost it might not be required to pay as much as the state and the Federal Government would have gained from the agreement.

Mr. Cole, along with officials in the Bush Administration, have noted that the political costs of the collapse could also be significant. The settlement agreement after 67 days of negotiations earlier this year by two Bush Cabinet members, the Administrator of the Environmental Protection Agency, Governor Hickel and Mr. Cole.

Aides in Alaska and deputies at several Federal agencies said the urgency of the negotiations was heightened by the interest of Mr. Bush and Mr. Hickel in opening the Arctic National Wildlife Refuge to oil exploration. The refuge's oil, if it is ever tapped, would flow to the West Coast of the United States through the Trans-Alaska Pipeline to Valdez, the southern terminus of the pipeline, and by oil tanker through Prince William Sound.

Quelling Public Anxiety

The Administration fears that the public links the Exxon Valdez disaster with the environmental hazards of new oil exploration in the 19-million-acre Arctic refuge. Penalizing Exxon and proving that the state and Federal governments are serious about restoring Prince William Sound would help quell public anxiety about exploring for oil in the Arctic, aides at several Federal agencies said.

When the \$1.1 billion civil and criminal settlement was signed on March 12, the Administration and Governor Hickel believed they had gained some tough concessions from Exxon, including the largest penalty ever proposed for environmental crimes, and that the public would readily support the pact.

So confident was the Administration of the pact's ultimate approval that Attorney General Dick Thornburgh, in a news conference on March 13, called it the "strongest message" ever sent by the Government to prosecute a polluter.

Fine Called Too Small

The settlement agreement was divided into criminal and civil portions. Exxon agreed in the criminal portion of the settlement to plead guilty to four environmental crimes and to pay a fine of \$100 million.

That agreement was rejected on April 24 by Federal District Judge H. Russel Holland in Anchorage, saying



Associated Press

Governor Walter J. Hickel of Alaska, who formally withdrew from a \$1 billion settlement with Exxon Corporation.

he considered the fine too small. Judge Holland gave Exxon until May 24 to decide if it wants to withdraw from the criminal plea agreement and prepare for a trial, or to allow the court to decide the fine.

A company spokesman said today that Exxon had not decided what it wants to do in the criminal case.

A spokeswoman for the Justice Department said the Government was preparing for a criminal trial.

The civil agreement called for Exxon to pay \$900 million over the next 10 years, most of it to be deposited into a fund managed by Federal and state agencies and to be used to complete environmental restoration work in Prince William Sound. In addition, the company could have been required to spend \$100 million more after the year 2001 if more damage was found.

The immediate cause of the collapse of the civil agreement came on Thurs-

day when the Alaska House of Representatives voted, 27 to 13, to reject the pact. The State Senate, which was scheduled to vote today, canceled plans to vote on the agreement because it considered the matter settled after the House vote.

"The State of Alaska lost an opportunity to put this issue behind us and to receive a considerable amount of money to enhance Prince William Sound," said Dick Eliason, the president of the State Senate. "Now it's going to cost us money. The Department of Law will need \$20 million to continue the case in court, and we need to keep paying \$500,000 a month to assess the damage in Prince William Sound. It's not a good day here."

Max Gruenberg, the majority leader of the Alaska House of Representatives, said House members believed they had no choice but to reject the proposed settlement. Mr. Gruenberg headed a special legislative panel that held public hearings around the state this year, and found that popular support for the agreement was weak in many regions.

He said Alaskans felt that Exxon was being required to pay too little for damage that would last years and cost billions to repair. Many Alaskans wanted a number of scientific and economic studies on the damage to Prince William Sound that were kept secret.

Alaskans also considered Exxon's response to the agreement irresponsible, Mr. Gruenberg said. Hours after the pact was signed, Lawrence G. Rawl, Exxon's chairman, told a news conference in Texas that the pact would have absolutely no effect on the company's profits and would not effect its business.

In Washington, William K. Reilly, the Administrator of the Environmental Protection Agency, issued a statement today saying: "The fine we had negotiated is the highest by several orders of magnitude ever imposed for an oil spill. Fines, while they serve an important service and inflict pain, do nothing directly for the environment. They are deposited into the Treasury. It's the funds in the settlement for restoration that concern me. Should Exxon proceed to trial, it may be years before the Alaskan environment benefits from those funds."

Prison for Ex-Detroit Aide

DETROIT, May 3 (AP) — A former deputy police chief and business partner of Mayor Coleman A. Young was sentenced Thursday to 10 years in prison for his role in a precious-metals pyramid investment scheme. The 45-year-old defendant, Kenneth Weiner, was indicted in February 1990 on fraud and other charges stemming from the scheme.

Dead deal 5.3.91

Collapse of settlement alters landscape

The oil-spill settlement with Exxon is dead, but there shouldn't be too many tears at the wake. State and federal negotiators should use the deal's demise to drive a harder bargain — either in another agreement, or in court.

The argument for seeking a new deal remains the same. The terms will just have to be better. A settlement could speed up money for restoring areas hit by the spill. And it would save tens of millions of dollars that would be spent in an unproductive, decade-long legal battle.

Going into round two, though, Alaska shouldn't get too greedy. Opponents of this deal suggested the state might win as much as \$5 or \$10 billion in a fight to the finish. But that figure is at best highly speculative. The underlying legal theories are untested before the U.S. Supreme Court, which is growing ever more conservative. The court is unlikely to take bold legal steps that expose U.S. business to brand-new multibillion dollar liabilities.

That said, Alaska can't roll over and play dead just because it would prefer to put the spill case to rest. Paying for lawyers is never pleasant, but sometimes it's unavoidable. If Exxon won't up the ante, the state should be prepared to fight to the last sentence of the last court appeal.

A better deal would include a number of improvements:

A tougher criminal penalty. Judge Holland has properly demanded a much stiffer criminal fine. The simplest course would be to drop any link between the state's suit and the criminal case. If a criminal plea is part of a new overall deal, the state should make sure a bigger fine doesn't cut the sum Alaska stands to collect.

Keep Alyeska on the hook. There's no way federal prosecutors should let Exxon's plea bargain include criminal immunity for Alyeska Pipeline. Alyeska should be required to answer for its conduct before and during the spill and pay the price if its behavior is deemed criminal.

Faster payments. Gov. Hickel tried to pitch this deal as a billion-dollar boon to the state. The billion-dollar figure is in the right ballpark, but Exxon should be made to pay it up front, instead of dragging it out over a decade.

More public oversight: The process for spending restoration money can be improved. The House was right on with its call to include two legislators as non-voting spill trustees and to open the process to public scrutiny.

But Gov. Hickel should resist the legislature's demand for more say in how restoration money is spent. The fiasco of the mental health land trust shows how dangerous it is to give legislators any power to steer money away from a legally mandated purpose. If they can, they will.

Lawmakers say they're only watching out for their constitutional prerogatives. But pushing their point will only provoke another wasteful round of legal battles.

Official touts spill's economic eff

By BERT TARRANT

TIMES BUSINESS WRITER

Exxon Co. USA's top official in Alaska said Wednesday Alaska received a major economic boost as a result of the Exxon Valdez oil spill cleanup.

In a speech to participants in the Off-shore Technology Conference in Houston, Otto R. Harrison, Exxon's director of Alaska operations, also said the 1989 disaster would not wreak long-term damage on the environment.

"The \$2.5 billion we have spent on the cleanup to date has been the largest single economic factor in the Alaskan econ-

omy for the past two years," Harrison said.

At a news conference earlier in the day, Harrison said people and industry in Alaska had profited from the spill and that "the state of Alaska has been impacted, but it's all been good," according to wire service reports.

An Exxon spokesman said Harrison was referring only to the economic repercussions of the spill, and that his remarks had been taken out of context.

Gov. Walter J. Hickel disagreed with the Exxon official, after hearing reports that Harrison said the spill had no long-

term effect on Prince William Sound.

"There is still a great deal of natural resource damage restoration to be completed," Hickel said in a statement. "That is why we were so eager to have the state's Legislature favorably pass the Exxon Valdez settlement."

The Alaska House last week rejected the \$1 billion settlement. The state and Exxon formally withdrew from the agreement on Friday.

Hickel did not dispute the economic boost to the state from the cleanup.

"Anytime you put over \$2 billion into a state's economy, it is going to have a

positive effect," the gov

In the speech, Harrison's opinion — more than two Exxon Valdez ran aground — indicates misconceptions about the spill.

He cited recent polls that more than 50 percent believe oil continues to percent believe wildlife killed and 80 percent thin dustry would recover all.

"These beliefs are

"The heart of that the waters sparkling and clear oil remains on 1 wildlife is diverse thriving, and then ment to normal a area as a result o Harrison said.

After an extenu of Exxon's 1989 c he described 1990 planned \$22 mill 1991.

facts," Harrison said. "My talk today is intended to help clear up the confusion over what is really occurring in Alaska."

He based his assessment on a summary of published studies performed by a number of scientists.

effect

5.9.91

ect," the governor said. In his speech, Harrison said public more than two years after the lez ran aground on Bligh Reef es misconceptions remain ill.

I recent polls which showed han 50 percent of respondents continues to wash ashore, 70 lieve wildlife still is being 0 percent think the fishing ind recover slowly, or not at

beliefs are far from the

The heart of my update is the waters of Alaska are dling and clean, very little remains on the shorelines, life is diverse, abundant and ing, and there is no impedt: to normal activities in the as a result of the oil spill," ison said.

ter an extensive discussion xxon's 1989 cleanup efforts, scribed 1990 efforts and the ed \$22 million effort for

ies face same dilemma

5.9.91

Friday decided to freeze the 20.93 per- executive Life portion of the SBS fund

state Legislature still must decide r or not to pay for any losses incurred sult of the Executive Life failure. The employees union maintains that the liable for the losses because the fund ministered negligently.

ility, whether moral or legal, also was is for corporate decisions made in the \$8.

glia-Pacific Corp. of Atlanta, which 1.4 million in Executive Life GICs, o buy back the investment contracts : losses to the general corporate fund. sically, we offered different levels for ployee fund and the employee selects they want to put their money," said Weidman, manager of corporate com- tions.

Holiday Inn Worldwide in Memphis also decided to protect the \$12.8 million in em- ployee funds invested with Executive Life by guaranteeing the principal amount of each employee's investment in their Stable In- come Fund if the insurer does not pay up.

However, until the value of Executive Life investments are determined, 14 percent of all investments have been frozen. That amount is proportionate to the amount of assets with the insurance company.

Xerox, of Stamford, Conn., has frozen the 7.5 percent Executive Life portion of its \$885 million GIC fund.

Marathon Oil, based in Findlay, Ohio, also decided to freeze \$20 million of their \$1 billion "cash with interest thrift plan."

Honeywell Corp. of Minneapolis, Minn., has 16 percent, or \$72 million, of its company savings plans with Executive Life, and has chosen to freeze that portion.

KUPARUK RIVER PIPELINE
day.

The Federal Energy Regula- tory Commission ruled recently that the Kuparuk Transportation Co. must cut in half the 61 cents per barrel rate it charges three oil producers to move crude from the Kuparuk River oil field to the trans-Alaska pipeline.

The FERC rate cut is retroac- tive to when Kuparuk Transpor- tation started operations in 1984.

Kuparuk Transportation is op- erated for ARCO Alaska Inc., BP (Exploration) Alaska Inc., and Unocal Inc., which produce oil at the Kuparuk River field.

The decision is a result of liti- gation brought by the state of Alaska in 1985, said John Manly, Gov. Walter J. Hickel's deputy press secretary.

The state claimed the compa- nies avoided paying \$28 million in taxes and royalties by over- charging themselves for oil transportation, Manly said.

The high oil transport rates were deducted from market prices, which determine well- head value. The state assesses about 20 percent in taxes and royalties based on the wellhead value.

The FERC decision repre- sents the first time the federal agency has ruled in a litigated Alaska oil pipeline case. The rul- ing will affect other North Slope pipelines, the state said.

Kuparuk Transportation is al- lowed to ask for reconsideration or a modification of the finding Paul B. Laird, a spokesman for under FERC rules. The oil com- BP Exploration

state said.

Susan Andrews, a spokes- woman for ARCO Alaska, and Paul B. Laird, a spokesman for BP Exploration

Natives offer spill deal, find no takers — so far

Plan suggests \$3 billion fund to pay all damages

By DAVID WHITNEY
Daily News reporter

WASHINGTON — Last week, as the Alaska Legislature moved toward rejecting a \$900 million civil settlement with Exxon Corp. over the 199 oil spill, New York attorneys for Natives presented the federal government with a proposal to salvage a deal.

It came in two parts.

Either Exxon could set up a \$3 billion "global fund" to pay off all those claiming damages from the massive spill and rid itself of any future litigation, or it could enter into a more limited agreement by paying \$1.5 billion to satisfy natural resource damage claims of the Natives, the state and the federal governments and leave other claimants to go it alone in court.

So far, the offer has been met with an unsettling silence.

"All we can say is that we put

forward alternatives that would lead to rational resolution of the litigation," said Mark Jaffe, one of the lawyers who offered up the proposal last week.

The old deal began collapsing when U.S. District Judge Russel Holland in Anchorage ruled last month that the \$100 million in fines and restitution Exxon agreed to pay was not enough to resolve the criminal charges against it.

Collapse of the entire civil and criminal package was inevitable when the Alaska House decided there was not enough money up front in the \$900 million civil claims settlement, to be stretched over 11 years.

After the House rejected the deal last week, Exxon and the state pulled out of the civil settlement. Exxon's criminal pleas are awaiting

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trust."

Jaffe said he hasn't had any response to the proposal from Exxon.

"It's up to all parties concerned to respond," Jaffe said.

But as Exxon moves toward the May 24 deadline on whether it will withdraw its guilty pleas to misdemeanor crimes, there is a slight indication a new deal could arise.

That indication comes from Exxon's willingness to allow its chairman, Lawrence Rawl, to give depositions to Natives trying to cut themselves into a deal.

U.S. District Judge Stanley Sporkin authorized the deposition in response to a Native lawsuit asking that their rights be fully protected in any settlement the state and federal government reach with the oil giant.

Exxon spokesman Bill Smith Tuesday the company will not resist the subpoenas compelling the deposition of Rawl and two other corporate executives.

But no one knows whether this means a new settlement is the works.

"We are preparing for trial," is all that Justice Department press aide Amy Casner was authorized to say Wednesday. She said no one has told her if there are any prospects for renewed negotiations.

Alaska Attorney General Charlie Cole said that while he said he knew nothing about the Native proposal, he also would not be surprised if negotiations were suddenly rekindled.

"I don't see any settlement talks on the near or distant horizon," Cole said. "But maybe I'll receive a call at 9 Friday evening and

a May 24 deadline for withdrawal.

The deal-track offer of the Native corporations recognizes that Exxon will have to pay more money to get Holland to go along with a criminal plea bargain. It assumes \$300 million might be enough.

If then proposes a "global" settlement in which Exxon pays \$3 billion into a fund, overseen by a court-appointed master, to resolve all civil damage claims. The first \$1 billion would be dedicated to environmental restoration of Prince William Sound, and the remainder would go to paying off claims.

Exxon would be out of the claims process. The master would rely on experts and other evidence in deciding what compensation was appropriate. The idea parallels a structured settlement process used in other big cases, like those involving Agent Orange claims by Vietnam war veterans or women alleging they were harmed by using the Dalkon Shield for birth control.

Exxon could make the payments over 10 years, with \$500 million paid immediately and the remainder paid in \$250 million installments over 10 years. Any money left over would go into an environmental trust fund.

An alternative plan would have Exxon paying \$1.5 billion — \$300 million now and \$120 million a year for the next decade — to resolve only the claims of the state and federal government and Alaska Natives. The first \$1 billion would again go to restoring the Sound. The balance would go toward

Comparing Exxon settlement proposals

DETAILED SETTLEMENT

TOTAL: \$1 billion

- Criminal fine: \$100 million
- Restoration fund: \$900 million

GLOBAL FUND PLAN

TOTAL: \$3.3 billion

- Criminal fine: \$300 million
- Restoration fund: \$1 billion
- Native and other damage claims: \$2 billion

LAND FUND PLAN

TOTAL: \$1.5 billion

- Criminal fine: Not addressed
- Restoration fund: \$1 billion
- Native damage claims: \$500 million

PAMELA DUNLAP-SHOHL / Anchorage Daily News

Go ahead, you try to come up with a better oil spill deal

P. 7

I defy anyone to come up with an oil spill settlement deal that will survive. I flatly defy any of the interests directly involved — or anyone else — to create a deal that will clear the minefield it's been assigned.

Not only that, I defy them to get a deal as far along the process as Gov. Walter J. Hickel did.

Which admittedly, wasn't very far. But at least he won the acceptance of the administration, the federal government and Exxon for a \$1 billion deal that would have settled both civil and criminal cases.

At least he stuck his neck out. At least he was willing to put something on the table and stand behind it.

I defy anyone to repeat that.

To all the legislators who voted against the settlement, to the federal judge who squashed the criminal deal, to all the environmental groups that nipped at the package from the



Terry Carr

TIMES
COLUMNIST

sidelines, to the chorus of criticism from the general public, I say this: Let's see you make the deal.

I'll help. I'll give you an idea of the people you'll have to satisfy. Here's a list of some of them:

- The Hickel administration. The only easy one involved. It has made its position clear. If you're working on a deal, you know from the start about what it will accept and what it won't.
- The federal government. It has criminal charges and civil claims hanging against Exxon. It has two

different agencies you'll have to satisfy, the Department of Justice and the Environmental Protection Agency. We're talking here about platoons of lawyers.

• Exxon. It's already spent more than \$2 billion because of the oil spill. It is willing to spend about \$300 million more (the portion of the \$1 billion settlement it would have actually paid). It's anybody's guess how much higher the company is willing to go.

• The Legislature. There's 60 people here. There's also politics. There's partisanship. There's jealousies. There's envy. There's meanness. There's ignorance. Good luck with this one.

• U.S. District Judge H. Russel Holland. He killed the \$100 million criminal part of the settlement, saying it didn't slam Exxon hard enough and wasn't enough of a deterrent to others. He said nothing about how much would

be enough. Federal judges can do things like that — kick you in the teeth and walk away. You'll be working blind here.

• Native interests. They are insisting on a say in the settlement. They've already sued once to get involved. If you can't give them a prominent part, they'll sue again. And they will probably want any settlement penalties to be very high.

• That portion of the general public that's paying attention. Hundreds of them have already commented, and they were nearly all opposed to Hickel's deal. They had some influence on Holland. And they had some influence on the Legislature. You have to take them into account.

There they are.

A lot of people. A lot of interests. A lot of egos. A lot of political ambitions.

Go ahead. Try and sort it out. Try and get them to agree on a deal.

Turn 5-7-91
Remember, many of them have already pook-pooked \$1 billion. That's a bunch of money. It would have done a lot for Prince William Sound.

Without a settlement, we move on to trial. The criminal case and the civil complaints will go into court.

The lawyers will do well. It will take years to bring things to a close, and it will be a gold mine for them. They can be thankful.

And who knows how Alaska will make out.

Hickel took his shot at avoiding the delays and uncertainties. His deal failed.

I defy anyone to do any better.

Terry Carr's column appears Tuesday, Friday and Sunday.

Hickel, EPA head to meet in Seattle

Dead Exxon deal
could graze talks

By JAY CROFT 5/6/91

TIMES WRITER

Gov. Walter J. Hickel planned Sunday to meet the federal environmental chief today in Seattle and discuss, among other things, the dead Exxon Valdez settlement, a spokesman said.



Most of Hickel's talks with Environmental Protection Agency chief William

Reilly will concern wetlands issues, deputy press secretary John Manly said.

"Every thing from where to go next on the Exxon Valdez to promoting of the AJ mine to joint enforcement of fishing violations in the North Pacific," Manly said.

John Sandoz, Environmental Conservation commissioner and a longtime advocate of re-opening Juneau's AJ gold mine, was set to travel with Hickel.

Manly said Hickel did not have a "big game plan" about settling or pursuing the state's civil claims against Exxon for

the March 24, 1989, oil spill in Prince William Sound. Exxon and the state pulled out of a \$1 billion settlement proposal last week after the state House rejected the deal.

"I wouldn't be surprised if it comes up," Manly said. "These are two people who put a lot into it."

The EPA was restoration coordinator for the state-federal board that would have administered the settlement, Manly said. The proposed settlement had included \$15 million for restoration out of the first, immediate payment; another \$25 million was to continue science programs.

"They might decide to not do any restoration this year," Manly said.

Hickel and Sandoz will discuss Alaska issues with Reilly. They will also meet with him and the governors of Washington, Oregon and Idaho to discuss President Bush's "no net loss" policy for federal wetlands.

Manly said Hickel received an encouraging letter from President Bush recently after Hickel urged the president to let Alaska retain more control of its wetlands than other states have.

Hickel was set to return to Juneau on Tuesday.

Senate scheduled to vote on state budget

TIMES CAPITAL BUREAU

JUNEAU — The Senate is scheduled to vote on its \$2.4 billion version of the state's operating budget when it meets today at 11 a.m.

The Senate spending plan is about \$100 million over Gov. Walter J. Hickel's budget and includes about \$50 million more for education funding than the governor's proposal. It is about \$2.7 million less than the House's spending plan.

The Senate's plan spends less

mental health programs and state-funded loan programs than the House's version, which was passed March 27. After its passage, if the House does not agree with the Senate's changes, the two bodies will try to come to a compromise on state spending in a joint conference committee.

Senators also will consider bills relating to child-care worker training, extending a pilot project of state training and employment programs and a worker's compensation mea-

5.6.91
The House will take up one element of legislative ethics reform when it meets today: a commission authorized to set salaries of those at the top of state government.

Ethics reform measures the past two years have contained salary increases for lawmakers. Last year's bill died, and one of the sticking points was the salary increase. This year a House ethics bill contained a pay raise for lawmakers, but it was sliced away early in the session.