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^Federal Judge Rejects Criminal Plea Agreement: 'Fines Not Adequate<

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^By JOHN ENDERS=

^Associated Press Writer=

ANCHORAGE, Alaska -- A federal judge today (Wednesday) rejected a criminal plea agreement that was part of a billion dollar deal between Exxon, the state and federal governments, saying the fines simply were not adequate.

Speaking before a packed courtroom, Judge H. Russel Holland said there was no question that the Exxon Valdez oil spill was "off the chart" as far as American environmental disasters go.

The tanker Exxon Valdez spilled nearly 11 million gallons of North Slope crude oil on March 24, 1989, when it slammed into a charted reef, creating the nation's worst oil spill.

Exxon did not immediately withdraw its guilty pleas on criminal pollution charges. Holland gave the company 30 days to consider what actions it may take.

Under the plea agreement negotiated by the state of Alaska, the U.S. Dept. of Justice and Exxon, the giant oil company was to have paid a \$100 million criminal fine and another \$900 million to settle state and federal civil claims for natural resource damages.

Short-term effects of the spill were the deaths of thousands of waterfowl, bald eagles, otters, seals and fish.

The long-term effects still are being studied, but lawyers for approximately 90 law firms around the country involved in civil litigation have worked hard to keep the results under wraps after any future court battle. The \$900 million was to have been paid over 11 years and would be used for restoring Prince William Sound. Holland had said last month that the criminal and civil agreements were legally separate.

State Attorney General Charles E. Cole said after the sentencing hearing that the state intends to pursue settlement of the civil litigation against Exxon.

That includes the proposed \$900 million in restitution for the clean up, which is being reviewed by both houses of the Alaska Legislature.

Cole said he still thinks a civil settlement is in the best interests of the state.

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# Judge rejects

## Holland breaks with past

By CHARLES WOHLFORTH  
Daily News reporter

U.S. District Court Judge Russel Holland stepped far out of character in the minds of lawyers who know him when he declared Exxon's \$100 million plea bargain not punishment enough for its 1989 oil spill Wednesday.

Holland has made a series of pro-Exxon rulings in other spill litigation, is known as a cautious, conservative jurist, and, before his appointment to the bench by President Ronald Reagan in 1984, had a 12-year history as an oil industry insider. He owns stock in three oil production companies.

"Generally, plea agreements are viewed as a done deal," said National Wildlife Federation attorney Erik Olson. "He has a reputation of being a fairly solid, conservative jurist. He was a Reagan appointee. It was certainly not something people were expecting he'd reject."

Holland's style has always been cautious competence, said Jack Roderick, who once was his law partner. Roderick said Holland wasn't the type to make brush decisions.

"The penalty, he's saying, is not justified, and he's right," Roderick said. "But I just wouldn't expect it of Russ."

Holland's ties with the oil industry run deep and are social as well as financial.

As recently as 1982 he placed Alyeska Pipeline Service Co. at the top of a list of clients of his three-member law firm. Exxon owns 20 percent of Alyeska. Holland represented oil companies developing the North Slope oil fields from as early as 1973, and one retired Alaska Public Utilities Commission staffer said Holland represented Exxon itself in an early 1970s regulatory case.

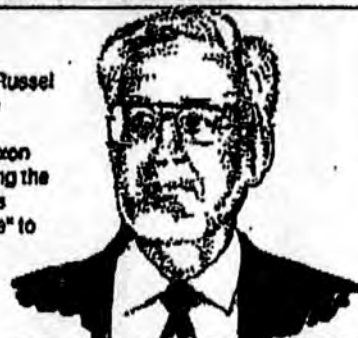
Holland is currently a member of the Petroleum Club in Anchorage, a posh dinner club for important members of the oil industry.

Please see Back Page.  
HOLLAND



### WHAT HAPPENED

U.S. District Judge Russel Holland rejected the proposed criminal settlement of the Exxon Valdez oil spill, saying the \$100 million fine was "simply not adequate" to deter future spills.



### WHAT'S GONE

Agreement hammered out among Exxon, the state of Alaska and the federal government for Exxon to pay \$50 million to the state and \$50 million to the federal government.

### WHAT'S LEFT

The \$900 million settlement of civil claims, though that may now be in jeopardy. Holland's rejection of the criminal fines allows Exxon to withdraw from the civil settlement if it wishes.

### WHAT'S AHEAD

Exxon has 30 days to decide whether it will withdraw its guilty pleas to four misdemeanor pollution charges that were part of the criminal settlement. It has until May 4 to decide if it will withdraw from the \$900 million civil settlement. The state and federal governments have until May 3 to decide if they want to pull out.

### KEY PLAYERS



Charlie Gots  
Alaska attorney general  
"I'd like to have seen the state receive the \$50 million."



James Neel  
Lead attorney for  
Exxon Shipping Co.  
"We thought it was a good plea agreement."



Wally Hickel  
Alaska governor  
"If \$100 million isn't right, what is?"

(2)

## HOLLAND: Judge breaks with past on ruling

Continued from Page A-1

Club manager Shannon Trumbull said Holland has been in only a couple of times in the last three months, and she asked him about his absence the last time.

"He said he'd be in more now that things are slowing down," Trumbull said.

Holland does not talk to reporters.

Holland, 54, was born in Michigan and received his law degree there before coming to Alaska in 1961. He began practicing law in 1963 as an assistant U.S. attorney, then went into private practice in 1965. His law partner in the late 1960s was Ted Stevens, whom Gov. Wally Hickel appointed to a vacant seat in the U.S. Senate in 1969.

Roderick took Republican Stevens' place in the firm, working with Holland about a year before moving on to a business project.

"He was a workmanlike lawyer, a good day-to-day lawyer, and he was not the kind of guy who would turn out to be a judge," Roderick said. "He was very careful. Politically, he was conserva-

tive. He was a Stevens type of guy."

Attorney John Hedland said Holland represented Mobil Corp. or another of his industry clients when they were opposing the formation of the North Slope Borough in 1972 before the Local Boundary Commission. Hedland was chairman.

"Mobil was kind of his flagship client at that time," Hedland said.

Eighteen years later, Holland presided over some of the trials in the huge federal prosecution of contracting officials who milked the borough for millions of dollars in graft. He blasted a sentencing agreement U.S. attorneys reached with three engineers convicted in those cases, calling it "a travesty" that was "far too lenient for what those men were involved in."

Retired APUC staffer Bob Lindblom said Holland represented Exxon before the utilities commission. Lindblom couldn't remember the date of the case, but said it was before Standard Oil of New Jersey changed its name to Exxon in 1972. In the case, Exxon persuaded the commission to allow it to set up its own, unregu-

lated phone system on the North Slope, Lindblom said.

Documents supporting Lindblom's claim could not be retrieved from APUC archives before this story was written.

Holland also represented Mobil in concert with attorneys for the seven other original pipeline owners — including Exxon — when they sought APUC approval for the rates they wanted to charge for shipping oil through the line.

He owns stock in three companies involved in oil and gas production, according to a financial disclosure report he filed last May. The value of the holdings in CMS Energy, Rowan Companies, and Texas Utilities totals between \$11,000 and \$35,000. The report does not include exact figures.

Holland has also been an active trader of real estate, including deals made with Stevens up to 1978, according to property records. With a handful of other partners, Holland in 1982 borrowed more than \$3 million from the now-failed Alaska Mutual Bank, a loan secured by a lot near the bank's west Anchorage office. On his current disclosure form he lists

the partnership as worth less than \$1,000.

Also in 1982, two years before his appointment, Holland listed his firm's main clients in the Martindale-Hubbell Law Directory as Alyeska, Mobil, Atlantic Richfield, Cook Inlet Pipeline Co., the Alaska Oil and Gas Association, ERA Helicopters, Fuller O'Brien Corp. and Dagnet Fisheries.

On the bench, Holland's rulings have often favored the oil industry. Last year he issued an unprecedented order blocking enforcement of environmental regulations against Alyeska. The company said the order was impossible to abide by and threatened to shut down the pipeline.

When Holland threw out the plea agreement, attorneys stopped questioning his objectivity, but they began wondering about how to reconcile the decision with his past.

"He's a lawyer's lawyer. He liked the practice of law," Roderick said. "He's objective. He doesn't let his political leanings enter into things. And that goes back to the fact that he likes the law."

JSE, ALASKA, THURSDAY, APRIL 25, 1991

# cts Exxon deal

## Criminal fine called too low; entire settlement in jeopardy

By MARLEE ENGE and DAVID POSTMAN  
Daily News reporters

A federal judge on Wednesday rejected the criminal fine Exxon had agreed to pay for its huge 1989 oil spill, throwing a carefully negotiated settlement package into disarray.

U.S. District Court Judge Russel Holland said the proposed \$100 million fine was insufficient to punish the giant oil company for the damage caused when the tanker Exxon Valdez ran aground and spilled nearly 11 million gallons of crude oil into Prince William Sound.

"I'm afraid these fines send the wrong message and suggest that spills are a cost of business that can be absorbed," he said.

"I feel very comfortable saying the fines that were proposed to me are simply not adequate."

"There is no question the Exxon Valdez oil spill was off the chart compared to other environmental disasters in this country," he said. "The damage was very great."

Last month, the state of Alaska, the U.S. Justice Department and Exxon agreed the company would plead guilty to four misdemeanor environmental crimes, pay \$100 million in criminal penalties and \$900 million in civil damages — a package deal that may now unravel.

"The court's action today ... threatens the ... civil settlement to which Exxon has

**LOCAL THOUGHTS:** Alaskans are split over the court's rejection of the \$100 million fine. A-12

separately agreed," the Justice Department said in a prepared statement.

Under the terms of the proposed settlement package, Holland's ruling frees Exxon to pull out of the civil settlement. The company has until May 4 to withdraw. The state and federal governments have until May 3 to pull out.

Holland told Exxon's lawyers that they are also now entitled to withdraw their guilty pleas in the criminal case and gave them until May 24 to decide.

Gov. Wally Hickel has said he will withdraw the state's support for the civil settlement if it is not approved by the legislature, something that becomes more likely with Holland's ruling.

But in a surprise about-face, Hickel said Wednesday he is not committed to that. He said the state might still agree to the civil settlement even if the legislature votes it down.

Hickel, who made the settlement a priority and claims it as a personal victory, said Wednesday he still thinks it's a good deal and the best that could be negotiated. The agreement calls for most of the Exxon

Please see Back Page, SETTLEMENT

## Exxon rejects guidelines

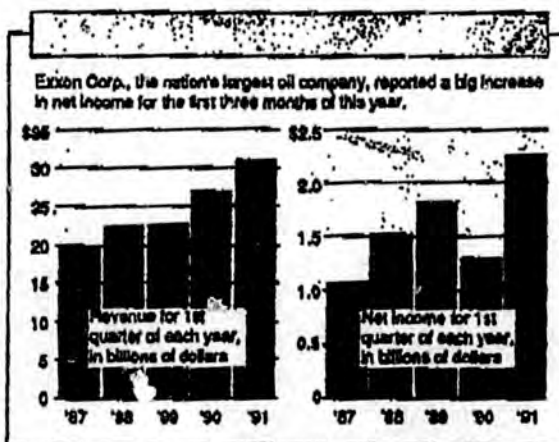
The Associated Press

ORLANDO, Fla. — A set of principles written as an environmental guide for corporations in response to the Exxon Valdez oil spill was rejected overwhelmingly Wednesday by Exxon Corp. shareholders.

Exxon considered the so-called Valdez principles at its annual meeting hours before a federal judge in Alaska rejected part of a \$1 billion settlement for the Exxon Valdez grounding more than two years ago.

The resolution on the Valdez principles, introduced by the New York City Employees Retirement System and supported by the Interfaith Coalition for Corporate Responsibility, lost by 94 percent to 6 percent.

The principles, among other things, call for the



disclosure of environmental, health and safety hazards and commitments to environmental restoration, compensation for environmental damage, energy efficiency and conservation.

"You say you are already doing these things," said Kathryn Andersen of Alaskan Native Communities of Prince William Sound. "Then why not reaffirm what you say you are al-

ready doing?"

Exxon Chairman Lawrence Rawl said company officials think the principles would impose excessive reporting requirements and don't recognize the need to balance environmental protection with energy needs and economics.

Exxon, based in Irving,

Please see Back Page, SHAREHOLDERS



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1. Associated Press

# SETTLEMENT: U.S. judge rejects Exxon's \$100 million fine

Continued from Page A-1

money to be spent cleaning up and restoring Prince William Sound.

Exxon had no comment on the judge's ruling.

Legislative critics of the settlement and environmentalists were thrilled by Holland's decision.

"If I had fireworks I'd let them off," said Rep. Dave Donley, D-Anchorage. "Nobody who loved Alaska and the land could have liked that unconscionable plea agreement."

Donley and other lawmakers said the Holland ruling makes it more likely the legislature will reject the civil settlement.

Said Rep. Cliff Davidson, "I believe the judge acted in the best interest of the environment, the American people and the residents of Alaska."

"I think it goes a long way toward killing the whole thing," said Riki Ott, an environmentalist who since the wreck of the Exxon Valdez has pushed for tougher spill laws.

"I'm hoping that what the judge did will give the legislature an adrenaline shot and they will do the same thing — say no."

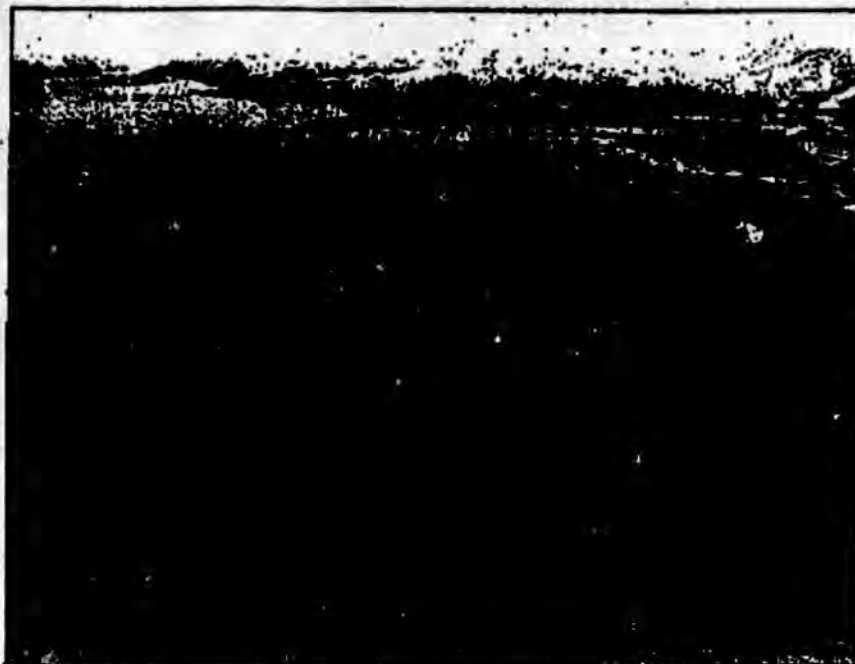
Lawmakers saw a clear link between the \$90 million civil settlement and Holland's decision that the \$100 million federal criminal penalty was not enough.

"I think that tells us that the civil settlement isn't enough either," said Rep. Fran Ulmer, D-Juneau. Ulmer, Donley and Davidson are members of the House Special Committee on the Exxon Valdez Settlement.

Ulmer said the legislature may not even have to make up its mind about the settlement.

"There is a lot of speculation that Exxon will pull out," she said.

Some of that speculation is fueled by testimony given by top federal lawyers last week who said Exxon was



An oil slick spreads south from the Exxon Valdez, which grounded itself on Bligh Reef in Prince William Sound in March 1989.

most interested in settling the criminal, not civil, case.

"The criminal case was the major motivation driving Exxon to the table," Thomas Campbell, general counsel of the National Oceanic and Atmospheric Administration, told senators last week.

Senate Majority Leader Rick Halford, R-Chugiak, said the state should not even consider approving the civil settlement unless there is some indication that Exxon wants to stay in the deal.

Halford and House Majority Leader Max Grusenber, D-Anchorage, said Exxon should make its intentions known as soon as possible and not make the legislature wait 30 days to find out what will happen.

Senate President Dick Eliason, who has been supportive of the settlement,

should not be approved unless it is renegotiated to include the \$50 million the state would have gotten from the criminal plea bargain.

"If that \$50 million isn't in there, it's a new ball game," he said.

Several lawmakers said they hoped the deal could now be renegotiated to address legislative concerns about the amount of the settlement, the disposition of secret scientific and economic studies and the legislature's authority to appropriate settlement money.

Hickel said that's not likely.

"You accept it or reject it," Hickel said. "That's the way we took it, and that's the way we passed it on to the legislature."

Alaska Attorney General Charlie Cole said the civil settlement should still be

"I feel every reason which led to the agreement is as valid this afternoon as it was when we signed the agreement on March 12," he said. If it is rejected, "We'll go back to the legal trench warfare."

The criminal case began last year when U.S. Attorney General Dick Thornburgh announced he was indicting Exxon and said the government was "throwing the environmental book" at the giant oil company and would seek fines of more than \$600 million.

Wednesday the Justice Department defended its decision to let Exxon settle the criminal case for \$100 million.

"The Department continues to believe that the plea and the fine provided for represent a just and reasonable settlement of the criminal case," the statement said.

## EXXON SETTLEMENT TIMELINE

**MARCH 24, 1990:** The Exxon Valdez runs aground on Bligh Reef, spilling nearly 11 million gallons of North Slope crude into Prince William Sound.

**MARCH 12, 1991:** Exxon, the U.S. Justice Department and the state of Alaska reach an agreement calling for Exxon to plead guilty to four criminal misdemeanors and pay \$100 million in criminal penalties. Exxon is to pay another \$900 million, over 10 years, to settle state and federal civil lawsuits against the company.

**APRIL 24:** U.S. District Court Judge Russell Holland rejects the proposed \$100 million criminal fine, saying it does not adequately punish Exxon.

**MAY 2:** Last day for state and federal governments to withdraw from settlement if they feel it is "not in the public interest."

**MAY 4:** Deadline for Exxon to pull out of the civil settlement because the criminal plea bargain was rejected.

**MAY 24:** Deadline for Exxon to tell Holland if it will withdraw its guilty plea to criminal charges. Holland on Wednesday allowed Exxon 30 days to decide when he rejected \$100 million fine as inadequate.

Erik Olson, an attorney with the National Wildlife Federation, said Holland's decision showed that the Justice Department was wrong.

"It sends a strong message to Exxon that punishment of \$100 million didn't come close to fitting the crime and that the damage they did wouldn't be solved by Exxon's pocket change."

The first court test of the civil agreement will come Monday in U.S. District Court in Washington, D.C., where Judge Stanley Sporkin will hear complaints by Alaska Native villages that the deal undercuts their ability to collect from Exxon for ruining their traditional subsistence lifestyle.

One of the Natives' lawyers, Michael Hausfeld, said he thinks the settlement will fall apart because of Holland's ruling.

"What Judge Holland focused on was the sweetheart deal for Exxon," Hausfeld said. "He said it was not in the public interest. What we've been saying all along is that it clearly is contrary to Native interests."

Since the settlement was announced, Hickel and Cole have consistently said that if the legislature rejected the proposal, the state would pull out of the deal.

At an April 3 meeting, Cole told a special House committee reviewing the settlement that "the governor has clearly announced that if the legislature does not approve the consent decree, the state will not proceed, and will withdraw from the settlement," according to minutes of the meeting.

Wednesday, though, Hickel steered away from that commitment.

"I'm not going to comment on that until it's over," Hickel said.

Hadn't the administration said over and over again that it would?

"No, we might. We might," he said.

"I'm not going back on anything," said Hickel, who then refused to answer any more questions and ended the telephone press conference from Los Angeles. "That's enough. Got to go. See you when I get back."

Lawmakers were perplexed by Hickel's statement.

"I don't know what the governor means by what he says," said Rep. Cliff Davidson, D-Kodiak.

□ Daily News reporters Kim Farace and David Whitney contributed to this story.

## SHAREHOLDERS: Exxon rejects environmental plan

Continued from Page A-1

Texas, has spent \$2.5 billion to clean up the spill, which fouled Prince William Sound on March 24, 1989, after the tanker Exxon Valdez ripped its hull open on a reef.

The company also offered to pay a \$100 million criminal fine plus \$900 million to settle state and federal civil damage claims, but the judge reviewing the settlement Wednesday concluded the criminal fine was inadequate.

Exxon set up a cleanup fund shortly after the spill. Hawn told the 1,000 shareholders that the spill should have no effect on future earnings.

But Andersen took the company to task for the condition of Alaskan coastal waterways and the spill's effect on the fishing industry.

"I am sorry to report that the oil is there. I don't know what else to say. The job is not completed," she said. "There has been much damage and little payback. Our people have been living in fear for the last two years."

*"I am sorry to report that the oil is there. I don't know what else to say. The job is not completed. There has been much damage and little payback."*

— Kathryn Andersen  
of Alaskan Native Communities  
of Prince William Sound

Brent Blackwelder, policy vice president for Friends of the Earth, said his organization isn't extremist and doesn't oppose Exxon's making a profit, but it wants the corporation to act responsibly to protect the environment.

Other resolutions calling on Exxon to reduce toxic chemical waste and carbon dioxide emissions lost on similar votes.

Exxon on Wednesday reported \$2.24 billion in profits for the first quarter, up 75 percent from \$1.28 billion in the same quarter last year. Profits last year totaled \$5 billion.

A12 Anchorage Daily News Thursday, April 25, 1991

## THE BACK PAGE

## Alaskans split on whether Exxon should pay more

By GAIL RANDALL  
Daily News reporter

At Paul's Barber Shop in Palmer, a radio blared the news of a federal judge's ruling Wednesday that the criminal settlement agreement with Exxon Corp. hadn't hurt the oil giant enough.

"Personally, I think the judge should have accepted it, if only to put it behind us," owner Paul Nichols said. "Now it's going to drag on forever. A lot of mistakes were made, but I'd like for it to be over and let us get on with life."

Others, however, cheered the news. To approve the proposed settlement would have been "like letting someone off with a traffic fine after they've run through an

apartment building and killed 10 people," Palmer resident Don Boley said.

Opinions of Southcentral residents remained split like that all day after the announcement that U.S. District Court Judge Russel Holland rejected a \$300 million criminal fine agreed to in a plea bargain between Exxon and government lawyers. Just as government and business leaders were trying to find meaning in the decision and evaluate what comes next, so were average folks.

Helen Tucker, co-owner of the Willow Trading Post, wished the settlement had been accepted. "Even if we have to bite the bullet, I'd be happy just to be away from it."

"It was a terrible catastrophe, but everything has a silver lining,

and in this case it was that \$3 billion was dumped on this tiny state (the amount Exxon has spent on cleanup). Every one of my friends who worked on the spill saved their houses and jobs (former Exxon Valdez captain Joseph Hazelwood.)"

Others felt the \$100 million fine was no more than a giant slap. Exxon should pay even more cash.

"I think it's the best thing that's happened since the spill," said Gail Parsons, a Homer artist who works on the Oil Refrain Alliance. "It shows that somebody out there is listening, that all companies can't get away with a crime just because they're oil companies."

Anchorage resident Dick Morgan agreed with Holland's action, too.

"First off, I didn't consider what Exxon did a misdemeanor; I considered it a felony."

"We don't know what the long-term effects will be. If it results in the destruction of the fishing or tourism industries, (the settlement) is basically absolving Exxon of any further responsibility. And let's face it, tourists come to see the wildlife. That's what they want. If that was gone, they'd never come to see the moose, bald eagle, but they won't come again."

A larger fine might also send a signal to other oil companies that will "deter them from ignoring spill contingency plans," added Palmer nurse Joan Fairfield, out-catching a quick bite with his daughters at the Pioneer Square food court and watching CNN

Headline News on the large-screen television.

"I'm quite happy about the decision," Fairfield said. "I think Exxon should have to pay a significant amount."

Frank Naruck, shopping in the Sears Mall in Anchorage, agreed. "It didn't sound like \$100 million was going to mean anything to (Exxon)," Naruck said. "Sounded like it wasn't a big matter. With the kind of dollars oil makes, a fine like that isn't going to be a deterrent. It's just not big enough to be significant to them."

□ Daily News reporters Larry Campbell and Tom Kizile contributed to this story.

## ALL NOW IN EXXON'S COURT

## Holland's bombshell

U.S. DISTRICT Judge Russel Holland caught many people by surprise with Wednesday's rejection of the \$100 million criminal fine, plea bargain between Exxon and the U.S. Attorney General's office. In the judge's opinion the amount of the fine insufficient punishment for causing the nation's worst spill.

Within the next 30 days, Exxon will have to decide whether to continue to pursue a settlement of the criminal charge and pay a larger fine — one that will meet the judge's approval — or proceed to a trial. A more immediate decision will be required on settlement of the civil claims with the state of Alaska. The company has 10 days decide if it now wants to pull out of the \$900 million settlement of civil claims, which would compensate the state for environmental damage to Prince William Sound and a Gulf.

Both criminal and civil settlements were combined in a billion-dollar agreement negotiated in March between a federal government, the state and the oil company. If the two agreements are not linked, and in fact the state had no part in the negotiation of the criminal fine, the state, however, would have received half of it, \$50 million, under the agreement denied by Judge Holland. The objectives of the two suits are distinctly different. The purpose of a criminal charge is to punish for an offense, and the purpose of civil litigation is to obtain compensation for damages. Judge Holland's opinion that the criminal fine is inadequate does not diminish the value of a civil suit settlement.

The \$900 million payment into a restoration trust fund means a solid resolution for Alaska. It means that the restoration, scientific study and protection of marine resources can begin immediately. It means the state can begin enhancing the valuable resources of the Sound rather than spending millions of dollars a year over the next decade in legal fees. And if there's one lesson to be learned about the surprise of Judge Holland's decision, it's that there is no way to predict what a final court decision will be.

While we understand the responsibility of Exxon's management to its shareholders and the concern about an unresolved criminal fine, we hope the company will see fit to take good on its offer to the people of Alaska to fund the year restoration of the sound — without requiring the state to engage in lengthy litigation.

**TWO FINAL** thoughts. Exxon demonstrated its intent to fulfill an obligation to the people of Alaska by spending over the \$2 billion in the cleanup effort, and offering to spend an additional \$1 billion for the long-term restoration of the sound. The danger of a judgment that disregards the level of commitment is that if, God forbid, another environmental disaster should occur, the company involved may look at Exxon's experience this time and decide from the beginning to let the lawyers work it out over years or more, as has happened elsewhere.

The second point is that over the past few weeks, there have been some people criticizing Attorney General Charles Cole for not making public all the findings that the state had prepared for its suit against Exxon.

Now, with the possibility that the state actually may be required to take its case to court, the wisdom of our attorney general should be better understood and accepted.

# Judge spurns Exxon deal but doesn't offer magic figure

Today's Terry Carr column is in addition to his regular Tuesday, Friday and Sunday columns.

How much is enough?

That's the question U.S. District Judge H. Russel Holland left unanswered Wednesday as he torpedoed the Exxon oil spill settlement deal.

It's clear the record \$100 million Exxon had agreed to pay in the deal done with criminal charges stemming from 1989's Exxon Valdez tanker spill wasn't the magic figure he was looking for.

He wants more. How much more, he didn't say.

The \$100 million was more than three times the amount of money the government collected last year for all environmental crimes.

Almost everybody figured he would OK the deal. Not that everybody wanted the agreement approved, mind you. But I know few who, before Holland reached a decision, thought he would reject it.



Terry Carr

TIMES COLUMNIST

He surprised them.

In stuffing the criminal deal, he may also have destroyed the \$600 million civil settlement with the state. Exxon could well withdraw from that deal.

What we have here now is a veritable feast for lawyers. They'll get to jet across country to talk to one another. They'll start sending out the invoices. And they'll be putting more money in the bank.

It's nothing new, I suppose. Lawyers already have taken away a healthy sum from the oil spill.

Holland's decision just gives them another angle to make some more. Judges' decisions sometimes do that —

set the stage for lawyers to do more work and, thus, make more money.

Nevertheless, I wouldn't say the judge had nothing but lawyers and their well-being in mind when he decided. No, I'll accept at face value the reasons he outlined in court for what he did.

Those were that the \$100 million was not sufficient punishment and was not a sufficient deterrent to others. The amount did not make up for oil spill damage that was "off the chart" as he saw it.

OK.

But he could have given the world a little idea about how much is enough to satisfy him. He didn't even give a hint. He just said \$100 million isn't the magic number and left it at that.

"The judge declines to be interviewed."

That's what a woman in the judge's office told me once, twice, then three times when I asked to talk to Holland. I wanted badly to ask him the big question.

And while I had him on the phone, I would have asked the judge why. If \$100 million isn't enough, he couldn't suggest how to get to the right amount. I mean, couldn't he have provided some guidelines or criteria on how government and Exxon lawyers might come to an acceptable deal?

Couldn't he have pointed the way toward something he will deign to pass on?

But federal judges "decline to be interviewed" almost as routinely as they make work for lawyers. They answer to virtually no one.

I'm not saying it would be easy to determine the right amount. I tried to get it from others who, before Holland's decision, had criticized the plea bargain as not getting enough from Exxon.

Exxon wasn't saying much Wednesday. "No comment" was about the extent of it.

But Constance Quinby, of Anchorage, said \$100 million won't make a dent in the oil giant's profits. "I want it to

hurt," she said.

How much would hurt?

"I don't know. I'll have to give it more thought."

Mary Grisco, Alaska regional director of the National Parks and Conservation Association, said "good question" when asked how much is enough. She said the difficulty in determining damage stems from the lack of public information on the spill's precise effects.

"We don't know the damage," she said.

I yield to these uncertainties. I grant the difficulties of arriving at an amount adequate to the situation.

But I suggest that if Holland knew enough to reject \$100 million, he knows enough to have an idea what amount he would accept. I suggest he must have some inclination what a fair and just settlement would be.

And I suggest he would do everybody a favor by sharing it.

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



'As Exxon moves away, then we have recourse in the courts. Let's see what happens. If Exxon walks away, we don't have any other choice' than to sue.

— Gov. Walter J. Hickel



By DIK MILLER  
and SCOTT REEVES

TIMES WRITERS

The rejection of Exxon's plea agreement for the Prince William Sound oil spill surprised legislators Wednesday and left many wondering about the state's part of the deal.

Federal Judge H. Russel Holland's decision triggers a clause allowing Exxon to withdraw the \$300 million civil settlement it had negotiated with the state. Exxon had also agreed to pay a \$200 million criminal penalty.

"I was surprised. I thought this was a done deal," said Rep. Gene Kubina, D-Valdez. Kubina's region includes most Prince William Sound communities affected by the March 24, 1989, oil spill.

Kubina and others said the Legislature should continue reviewing the \$1 billion settlement and decide whether to approve or reject the civil portion of it by the May 3 deadline.

Most lawmakers said the judge's action makes their decision a little easier.

"It makes me feel justified in the position I'd taken that the settlement wasn't satisfactory," said Rep. David Finkelstein, D-Anchorage.

Sen. Sam Cotten, D-Eagle River, said he talked to state Attorney General Charles Cole about the decision on Wednesday. Cole has continually told legislators, reporters and others the state was not a player in the criminal plea agreement.

Cotten said Cole maintained that the criminal and civil parts of the settlement were separate, though the plea agreement contains a clause allowing Exxon to withdraw if it was rejected in court.

Sen. Pat Rodey, D-Anchorage, said lawmakers generally have considered the civil and criminal parts of the settlement to be linked.

He said the rejection does not let Exxon off the hook.

"It's not as though they can walk off in the sunset," Rodey said. "They have the same legal problems as they did before."

Rep. Dave Donley, D-Anchorage, sided with those who said \$300 million was too little to pay for the thousands of animals

## No deal?

### IN THE BEGINNING

March 24, 1989:

The Exxon Valdez hits Bligh Reef, spilling almost 11 million gallons of oil into Prince William Sound. Three days later Exxon Shipping Co. announces it has \$400 million in insurance to cover cleanup costs.

### THE STATE TAKES ACTION

August 14, 1989:

Five months after the oil spill, the state of Alaska sees the Alyeska Pipeline Service Co. and Exxon.

### EXXON RESPONDS

October 24, 1989:

Exxon files a counter-suit, saying the state hindered cleanup of Prince William Sound by blocking use of chemicals to disperse the oil. The next day Alyeska Pipeline Service Co. also files a counter-suit saying the state contributed to spill damage.

### SETTLEMENT TALKS

January 15, 1991:

Newly elected Gov. Walter J. Hickel meets in Juneau with Exxon Corp. Chairman Lawrence Rawl. Hickel says publicly he wants to settle the lawsuit for about \$1 billion, saying the money will be used to make Prince William Sound a "world-class recreation area."

### SECRET SESSIONS

February 25, 1991:

Negotiations reportedly center around a \$1 billion settlement paid over 11 years.

### DEAL NEAR

February 27, 1991:

Alaska Attorney General Charles Cole says "broad framework" in place for agreement with Exxon.

### THE SIGNING

March 12, 1991:

The state and federal government sign a \$1 billion settlement with Exxon officials at a secret Washington, D.C. meeting.

### THE COST

March 13, 1991:

Exxon says it plans to deduct \$300 million in civil penalties as tax write-offs. Exxon chairman Lawrence Rawl says the cost of the agreement will be passed to the customer. Analysts say the company, which has annual revenues exceeding \$100 billion, will not be hurt.

### IN COURT

March 22, 1991:

Exxon and its shipping subsidiary plead guilty to four misdemeanor counts of violating U.S. environmental law.

### JUDGE SAYS NO

April 24, 1991:

U.S. District Court Judge H. Russel Holland says the \$300 million fine reached under the plea agreement is insufficient punishment.

plea cleanup efforts or to purchase additional park land in the region.

Hickel said he has not talked with Exxon officials about Holland's ruling, and does not expect to. "I don't know if it torpedoes the whole thing or not," he said. "You'd have to ask Exxon that."

Meanwhile, in the nation's capitol, Republican Rep. Don Young said Holland's rejection could create years of litigation that would put restoration plans on hold for a generation.

Young said the possible delay could harm efforts to restore the area.

"If (Exxon) backs out altogether, which they can, you won't see a settlement for 35 years."

But Rep. George Miller, D-Calif., vice chairman of the House Interior and Insular Affairs Committee, praised the judge's action. He said the proposed \$100 million fine "did not reflect the magnitude of the ecological crime" and was not "in the public interest."

"Judge Holland obviously agreed that the proposed settlement was nothing more than checkbook justice," Miller said. "The purpose of federal penalties is to deter further crimes and irresponsible behavior. A \$100 million fine for a corporation that made more than \$2 billion in profit the last quarter is not a deterrent."

Allen Smith, director of Alaska Programs for the Wilderness Society, said he was pleased with the judge's decision.

"The original settlement was inadequate," he said.

Rick Steiner, coordinator of the Coastal Coalition and a resident of Cordova, said the judge's decision could mean more money to clean up Prince William Sound and to purchase additional land for parks.

"It's a real opportunity to do more," he said. "I think there is an opportunity to get more money. The figure I hear barred around is \$400 million."

However, rejection of the proposed agreement will further delay getting money to state and federal agencies charged with the cleanup. But the delay is offset by the prospect of a more extensive restoration project, he said.

— A staff writer in Anchorage

The suggested \$1(X) million fine sends the wrong message that 'spills are a cost of doing business.'

— H. Russel Holland  
U.S. district judge



Exxon off the hook.  
"It's not as though they can walk off in the sunset," Rodey said. "They have the same legal problems as they did before."  
Rep. Dave Dondley, D-Anchorage, sided with those who said \$100 million was too little to pay for the thousands of animals killed and hundreds of beaches fouled by the spill.  
"Nobody who loved the land or people of Alaska could have been happy with the critical agreement," Dondley said. "The agreement was clearly not enough to deter future actions. Now we can address what's wrong with the agreement."



'I think the civil settlement is in the best interest of the state and oil spill communities.'

— Charles Cole  
attorney general

U.S. environmental law.  
**JUDGE SAYS NO**  
April 24, 1991:  
U.S. District Court Judge H. Russel Holland says the \$100 million fine reached under the plea agreement is insufficient punishment.

day. The House's settlement review committee found a letter to Exxon, Cole and the U.S. Department of Justice asking what their next move would be.  
"Right now, the ball's in Exxon's court," Cotton said. "If they say no, it's

said she thought Exxon would withdraw after Holland's ruling.  
Environmentalists praised Holland's decision. Many who had opposed the \$100 million fine said it would not deter the oil conglomerate or other oil companies from irresponsible behavior in the future. Nor

money to state and federal agencies charged with the cleanup. But the delay is offset by the prospect of a more extensive restoration project, he said.  
"It's a clear message to polluters — they will have to pay for their criminal negligence," Stedler said. "We have sent a clear message that the system does work. A hundred million dollars for a corporation the size of Exxon is simply not enough."  
Eric Jorgensen, attorney for the Sierra Club Legal Defense Fund, said preliminary studies show that damage at Prince William Sound could total billions.

15

## EXXON DEAL ON THE ROCKS

# Governor claims Exxon deal decision will be his to make

By DIRK MILLER

TIMES CAPITAL BUREAU

JUNEAU — Gov. Walter J. Hickel on Wednesday said if the state needs a decision on the Exxon Valdez spill settlement, he would make it — not the Legislature.

Hickel made his comments in a hastily arranged press conference called several hours after a federal judge rejected a criminal plea bargain with Exxon. The Legislature is now reviewing a proposed settlement of state civil claims against the oil company.

Hickel and state Attorney General Charles Cole have said on several occasions they would abide by the Legislature's recommendation on whether to reject or accept the settlement.

But when asked Wednesday if Hickel would abide by the Legislature's choice, he said, "Well, I'll make that decision."

"We made our first decision, that was that this was a settlement. Now they'll make their decision, we'll take a look."

Lawmakers have spent the past five weeks reviewing the agreement, in some cases line by line. The agreement does give the Legislature a say in its approval. Hickel said it would be a consideration when the state decides whether to accept the settlement.

"We might. We might if they vote it down, we might just say you'll have to negotiate it," said Hickel, in California Wednesday to talk about his proposed water pipeline to the drought-stricken state.

"I'm not going back on anything," Hickel said.

After his joint address March 14 to the Legislature explaining the settlement, Hickel told reporters in a press conference, "If they don't approve, we'll just toss it back."

## Ignore mismanagement allegation, Fisher tells pan

By DAVE PATRICK

TIMES CAPITAL BUREAU

JUNEAU — Revenue Commissioner Lee Fisher said a lawsuit claiming he mismanaged assets of the now defunct Alaska Mutual Bank should not affect his appointment as the state's top financial officer.

"I have not had my day in court," Fisher told the Senate Finance Committee at his confirmation hearing Wednesday. Federal Deposit Insurance Corporation lawsuits name Fisher and two other officials of Gov. Walter J. Hickel's administration.

They are among 33 former directors and officers blamed by the federal regulatory agency for the failure of Alaska Mutual and United Bank of Alaska. As revenue commissioner, Fisher is responsible for tax collection and sits as board member on various state entities including the Alaska Permanent Fund Corporation.

"Would you hire an investing officer who is currently the subject of a lawsuit by the FDIC?" Sen. Al Adams asked Fisher at the committee hearing.

"We intend to defend very strongly

against that," Fisher replied. "I have for 25 years on that (Alaska Mutual with honor and distinction. And yes, bottom line, I would hire me."

Committee members said Fisher's demeanor was more deferential than in previous committee appearances.

Fisher earlier objected to a provision in the bill that would charge compound on interest already accrued and as provision an "immoral business practice." The legislation was sponsored by Rep. Nillo Koponen.

## Panel to consider abortion legislation

TIMES CAPITAL BUREAU

JUNEAU — A Senate and House panel will consider jointly today legislation protecting the rights of women to undergo abortions without governmental interference.

The Senate and House health, education and social services committees were to meet at 8 a.m. to consider the bills, sponsored by Fairbanks Democrats Sen. Bettye Fahrenkamp and

Rep. Nillo Koponen.

Meanwhile this afternoon, the House's Community and Regional Affairs Committee was scheduled to hold a confirmation hearing on Edgar Blatchford, Gov. Walter Hickel's nominee as commissioner of the Department of Community and Regional Affairs.

There are no floor sessions scheduled for either body of the legislature.

Thursday, April 25, 1991, The Anchorage Times

# Hickel shows support for Kachemak buyout

/ DAVID FUTCH

AEE WRITER

Gov. Walter J. Hickel said in a letter sent to constituents concerned about timber cutting in Kachemak Bay State Park that he will sign a bill to spend \$22 million to buy those lands.

That is of course if the Senate House passes a bill authorizing the land deal.

Rep. Mike Navarre, D-Soldotna, said he is pleased Hickel supports his bill and a companion bill in the Senate both calling for the state to buy 24,000 acres of the bay from the Horner

However, Navarre said he is wary of Hickel's motives.

"He's using it to influence his agenda which is to cut the operating budget," Navarre said. "About \$7 million for the Kachemak Bay buyout would be from the general fund and balance from the Bradley



Rep. Mike Navarre

Lake Hydroelectric Project at the head of Kachemak Bay, he said.

The plant is under budget and the state may save up to \$20 mil-

lion on the project, Navarre said. Navarre's bill is before the House Rules Committee after successfully passing out of the House Finance Committee on Monday.

Last year a similar bill failed 20-20. Navarre believes it has a better chance this year because not all of the money will come from the general fund.

The land is owned by the Seldovia Native Association, Cook Inlet Region Inc., a Native corporation, and Timber Trading Co., according to Seldovia Native Association president Frank Elvassas.

Hickel deputy press secretary John Manly said the governor sent the 5-inch-by-8-inch cards with blue lettering and gold-embossed state seal to people who contacted Hickel's office.

Most of those who called or wrote Hickel said they were afraid there would be clear cutting in the park unless the state

bought the land.

"What the governor is saying is that he supports the bills will approve one if it crosses my desk," Manly said. "Of course it's on the legislators' desks; they are the ones who do the appropriating. Where the money is going to come from is a question."

Shelby Stastny, Office of Management and Budget director, said the governor and his fiscal officers are expecting budget surplus this year. He expects most of the money the buyout to come from the surplus because Hickel considers the land "a good buy," Stastny said.

Sen. Pat Pourchot, D-Anchorage, said like Navarre he received one of the cards from Hickel. He immediately fired a letter to CMB asking if the wording of the card represented a budget amendment to the governor's capital budget.

## Spill deal shift leaves lawmakers quibbling

By DAVE PATRICK

TIMES CAPITAL BUREAU

JUNEAU — State lawmakers disagreed Wednesday about whether Gov. Walter J. Hickel's political momentum will be slowed by the failure of the criminal plea bargain in the Exxon Valdez oil spill.

"I don't think Hickel's stature in that regard is diminished at all. It wasn't his fault," said Sen. Sam Cotten, D-Eagle River.

Sen. Rick Halford, R-Chugiak, agreed. "This action isn't an affront to the Hickel administration, it's an affront to the Department of Justice," he said.

But Rep. Dave Donley, D-Anchorage, said the derailed settlement shows complex problems are not solved by quick fixes. "The governor's always been perceived as a dynamic leader who's moved quickly on these issues," Donley said.

Hickel said Wednesday that failure of the Exxon Valdez settlement would not hamstring his agenda to reshape state government.

"It didn't give us any momentum or take any away. It's just the way we do it. It doesn't deter (us)," Hickel said.

Legislators disagree with the accuracy of the poll ordered by Hickel, and say that public comment at legislative hearings has been overwhelmingly opposed to

# Dear Judge: Riled writers pen sound, fury over deal

By SCOTT REEVES

TIMES WRITER

"Dear Judge Holland," the Anchorage resident wrote, "it seems the amount Exxon needs to pay should be larger."

Citizens from throughout Alaska sat down with pen and paper after Federal Judge H. Russel Holland asked for public comment on the proposed settlement with Exxon stemming from the 1989 oil spill in Prince William Sound.

"A billion dollars can't be enough money to assure quality restoration of Prince William Sound," Jan Straley of Anchorage said in a handwritten note to the judge. "In addition, there should be money enough for baseline (environmental) studies along Alaska's coast. There just isn't enough scientific information to adequately make sound judgments."

Holland received nearly 120 letters from Alaskans and people throughout the United States. All became part of the court file in the case and a matter of public record. On Wednesday Holland rejected Exxon's plea agreement with the federal government and the state, saying the fine imposed was not enough considering the seriousness of the Exxon Valdez oil spill.

Most of the people responding opposed the proposed settlement because it did not offer enough money. Others said further study of the potential environmental damage was needed before a rational decision on the settlement could be reached. Many called for tougher penalties and said a large amount of money was needed to punish Exxon and to assure that other oil companies took adequate precautions to avoid a similar spill in the future.

But a handful of people urged the judge to accept the settle-



ment, arguing that a prolonged court battle would harm the state's economy.

"I feel that the current settlement proposed by Gov. Walter J. Hickel is the first positive step anyone in Alaskan state government has taken to resolve this matter and allow the citizens of this state to move forward," Anchorage resident Thomas W. McKay wrote.

McKay complained of "continued media harassment" surrounding the spill and said the oil industry was a vital part of the state's economy. He said that a punitive settlement against Exxon would drive jobs from the state and force many educated people out. The effect would be a prolonged downturn in the economy and diminish the future prospects of the younger generation, he wrote.

"There has been a great deal of anguish and distress expressed by the coastal communities affected by the spill," he wrote. "I believe part of this can be substantiated, but I believe more often than not, much of this 'noise' is politically motivated grandstanding."

Scott Sindelar of Anchorage said Exxon should not be punished harshly for the spill.

"The charges against Exxon are absurd and make no sense

whatsoever," he wrote. "If anyone believes that Exxon intentionally grounded a multimillion-dollar vessel to intentionally lose a multimillion-dollar cargo, they should have their head examined."

The Alaska Attorney General's office also urged acceptance of the settlement.

"It provides the Alaska State Legislature immediate access to significant funds to commence the restoration of Prince William Sound," Craig J. Tillery wrote for the attorney general.

Jennifer Nelson of Anchorage said the judge should not be swayed by Exxon's public relations campaign.

"I have yet to see any evidence on (Exxon's) part of genuine concern for what they destroyed through their ignorance, incompetence and general disregard for the unique environmental treasure chest of the state," Nelson wrote. "The oil spill has forever destroyed the delicate balance of this environment. Exxon's proposed punishment for this travesty is so minute it is unbelievable."

Martina Strand, who described herself as "a concerned Alaskan," called the proposed settlement a "rip-off."

"Exxon will get off 'scott-free' if this 'bargain' is struck," she wrote. "Exxon is a multibillion-dollar profit-making company (that) has a lot of power and strength because of (its) wealth. Someone so strong could potentially have the power to replenish the now-ruined environment."

Jack Kimm, an Anchorage travel agent, said the perception of widespread environmental devastation from the oil spill in Japan caused many tourists to cancel their planned trips to Alaska. "(Exxon) must make restitution, fully," he wrote.

# Prince William Sound agrees: It's not enough

4.25-9

By BEN ELLIS

TIMES KENAI BUREAU

Linden O'Toole, like many residents in the Prince William Sound area, is feeling a little better today.

"I'm real encouraged," said the 34-year-old Cordova salmon seiner after learning a federal judge in Anchorage rejected a criminal plea agreement among Exxon Corp., the state and the federal government regarding the Exxon Valdez oil spill.

O'Toole said she feels Exxon should not be allowed a settlement that covers criminal and civil charges unless her community is assured the Sound is restored. As a salmon seiner and a mother of two, she said the spill has cost her financially. As a Sound resident, she worries about possible lingering biological effects.

"I just think that it is their moral obligation to make us whole as they promised and not just settle with the government and think everything is fine," O'Toole said of Exxon.

## Sound

Continued from page A1

ing an average catch may have difficulty even paying expenses."

"So then what are you going to do in the fall? You have the rest of the winter looking at you in a remote community in Prince William Sound where there is not a lot of work in the winter, and you have to feed your family."

Under the criminal plea agreement negotiated by the state, the Department of Justice and Exxon, the oil company would have paid \$50 million to the state and \$50 million to the federal government. A separate proposed settlement of civil claims before the state Legislature includes \$600 million in restitution to clean up Alaska waters and shoreline.

Gail Evanoff, vice president for corporate affairs of the Chenega Corp. and village oil-spill coordinator, applauded Holland's decision.

"He's absolutely correct," Evanoff said. "We've been facing a myriad of concerns and issues as a private landholder down here and high subsistence user. Nothing in the settlement covered our concerns because

O'Toole, her husband, Kevin, and a business partner purchased a salmon-seining permit two months before the Exxon Valdez tanker spilled about 11 million gallons of crude oil into Prince William Sound in March 1989.

"Permits were selling for \$340,000 before the spill," she said. "They now are selling for \$170,000. So, we have already lost \$170,000 in equity."

"We don't even know about the biological impact yet. That will start to show up as the years go by."

"What we do know is that our market is collapsing due to various factors, many of which are related to the spill."

The closing of canneries after the spill reduced competitive prices for salmon and hit seiners hard, she said.

O'Toole said salmon seiners were getting 85 cents a pound for their catch the year before the spill. That dropped to about 35 cents in 1989.

"Now, we are down to 15 cents," she said. "At 15 cents a pound, a seiner catch-

Sound resident  
Linden O'Toole said  
salmon-seining  
permits are selling  
for \$170,000, down  
from \$340,000  
before the spill.

we were not consulted or involved."

Evanoff also criticized the state for withholding studies on the spill's environmental impact. The state has contended that releasing the information would fuel lawsuits against the state. Chenega Corp. and five other Native corporations have sued Exxon for more than \$400 million.

"Not releasing that information borders on criminal treatment," Evanoff said. "To turn from total subsistence to cash reliance now has created a tremendous hardship on Chenega. We are dealing with it, and those studies would help us as a people."

"There was money set aside for restoration in the settlement — and restoration is an issue that we have always identified — but

we're not ready to restore have had and are still experiencing vast amounts of recontamination. Things are still dying out here."

Riki Ott, a leader of the Oil Reform Alliance, said Holland's ruling is an affirmation of what environmental groups and fisherman associations have been advocating all along.

With Holland's decision, state lawmakers considering the civil settlement will no longer have to be the first to "stick their necks out" and decide the compensation is too low, she said.

"I hope it's going to give (lawmakers) a good shot of adrenaline to get them through the next nine days," Ott said.

The Legislature has until May 3 to ratify the proposed civil settlement or go to court.

Kenai Borough Mayor Don Gilman, one of about 15 members of an ad-hoc group formed after the spill called the Oiled Mayors, agreed with Ott.

"My guess is the Legislature will really harden up now on the civil settlement and reject it," Gilman said. "They are going to take the clue from Holland and say, 'Well, if the feds want to go to trial on a criminal charge, we can't do anything less in a civil arena.'"

4:25 PM



ASSOCIATED PRESS

Gov. Walter J. Hickel said Wednesday at Los Angeles International Airport that he hopes the Exxon decision will not derail civil settlement.

# Seattle media nabs Hickel off guard

## Judge's rejection of deal shocks governor

By JAY CROFT

TIMES WRITER

LOS ANGELES — They were waiting for him at Seattle-Tacoma International Airport, reporters wanting comments about news he had not yet heard.

And Gov. Walter J. Hickel was just a bit flustered.

He had been tipped off before leaving Juneau on Wednesday morning that U.S. District Judge H. Russel Holland might reject a deal that called for Exxon to pay \$100 million stemming from criminal charges in the Exxon Valdez oil spill.

But Hickel was 30,000 feet in the air when Holland did so and did not know for sure until television reporters showed him a brief wire service story.

"I didn't expect it," Hickel said, clearly taken aback by the decision and the glare of television lights.

Hickel initially said the ruling would not affect the state-civil settlement with Exxon. Later, though, he admitted it could.

Hickel also said he had not decided what he would do if the Legislature rejects the \$900 million civil settlement. Previously, he had said he would "toes it back." And if Exxon backs out now, the state will have no choice but to sue the oil giant.

Holland ruled Wednesday in Anchorage the \$100 million in criminal fines Exxon agreed to pay was not enough for oil spill damage he called ~~"off the~~

See Hickel, page A9

# Hickel

Continued from page A1

scale."

"What is off the scale?" Hickel asked.

"Off the roof is the same kind of thing. Off the scale of what? Tell him what's on the scale."

"That's the judge's opinion. It has nothing to do with our civil settlement."

In a civil settlement with the state and federal governments, Exxon also agreed to pay \$800 million, which Hickel has said he would like to spend on Sound restoration.

Hickel stuck by the deal Wednesday, calling it "an awful, awful good settlement."

He also said, "I am absolutely satisfied."

A reporter asked if the governor agreed with Holland that \$100 million was too low a fine.

Hickel responded, "Well, do you think it's enough? You're asking me, I'm asking you."

After one brief television interview, Hickel asked another reporter if he had not already answered all the questions and said he did not like being confronted with something unprepared.

Under the hot lights, Hickel wiped sweat from his brow with a handkerchief.

"He was a little nervous," Hickel press secretary Eric Rehmann said later.

"We got caught a little off-guard in Seattle."

After the TV crews left, Hickel stopped to pose for a snapshot with a traveling Alaskan.

Hickel and his entourage, which includes two Cabinet members, then got back on a plane to Los Angeles.

AN HOUR AFTER THE LIGHT, Hickel acknowledged. Holland's ruling might jeopardize the settlement. Exxon could pull out, and Alaska lawmakers might view the deal as shaky and reject it, he said.

"They might," he said. "A lot of people are critical of it."

"If Exxon moves away, then we have the recourses in the courts. Let's see what happens. If Exxon walks away, we don't have any other choice. I hope they don't, but if they do, that's the way the ball bounces."

Hickel said he plans no immediate action, no calls to Exxon or federal officials while here. Hickel said he will talk to Attorney General Charles Cole when he returns to Juneau tonight.

Some lawmakers have criticized the deal. Many said Wednesday they had thought the \$100 million criminal penalty was

not enough money to punish Exxon for negligence.

Hickel has said he would go by lawmakers' votes and back out if they said so. But on the plane Wednesday, Hickel indicated his decision about how to respond was unformed.

"If they say no, I don't know what recourse we'd have," he said. "I haven't given it a thought. I'll have to think about what to do if the Legislature turns it around."

By the time the Delta 727

## EXXON DEAL ON THE ROCKS

landed at Los Angeles International Airport, Hickel was ready for reporters he knew would be waiting. There were a handful from Cable News Network, The Associated Press, and local radio stations.

Hickel stood still and calmly, tossing out a joke and answering reporters' questions.

One woman said Justice Department officials in Washington, D.C., had said Holland's move endangers the entire deal.

"I don't think it throws the

civil settlement into jeopardy, but it could," Hickel said.

Hickel would not say if he would renegotiate. "That's not my call," he said. "That's up to them (Justice)."

At his Century City hotel, Hickel then met a Los Angeles Times reporter who asked repeatedly about Hickel's fated "Ice Road" to Prudhoe Bay and the lingering scar from that failed big dream.

"The angle he came up with was, 'Maybe your big ideas are

out of touch,'" Rehmann said. "And the governor laughed and told him, 'If my ideas are out of touch, civilization's dead!'"

Hickel then went for a walk and planned to meet actor Edie Albert, an old friend, later in the evening.

Today he is scheduled to meet Los Angeles County Supervisor Kenneth Hahn to talk about another big idea: building an underwater pipeline to send fresh Alaska water here.

Unlike other Hickel big plans,

he is not stumping hard for this one. "Hey, we just tossed it out there," Hickel said. "We're not pressing it unless they're interested in the idea we'll work with them."

If a pipeline were ever built and functioning, it could bring millions of dollars to the state, Hickel said.

"It could, yup — you're talking about a lot of water," he said.

"That's what I do a lot of times: think about big problems."

Thursday, April 25, 1991, The Anchorage Times A9

# Exxon deal on the rocks

4,25.91



Times photo by DOUGLAS VAN REETH  
Alaska Attorney General Charles Cole answers reporters' questions in the Federal Building after Wednesday's decision by U.S. District Judge H. Russel Holland rejecting Exxon's plea deal.

## Judge throws out spill fine as too little, 'wrong message'

By DESIREE HUMPHREY

TIMES WRITER

A federal judge Wednesday rejected a deal calling for Exxon Corp. to pay a record \$100 million to settle criminal charges stemming from the nation's worst oil spill.

U.S. District Judge H. Russel Holland said the \$100 million in fines and restitution for the 1989 Exxon Valdez oil spill would be inadequate.

"I'm afraid these fines send the wrong message, which suggest spills are a cost of business which can be absorbed," Holland told a courtroom packed with lawyers and reporters.

Holland's action threatens a \$1 billion settlement involving the federal government, the state and Exxon, U.S. Department of Justice officials said.

Gov. Walter J. Hickel, who was on his way to Los Angeles for a two-day "promote Alaska" blitz, said he was "a little astonished by his (the judge's) decision."

"I don't think it throws the civil settlement into jeopardy, but it could," Hickel said.

Attorney General Charles



### No plea agreement

■ **Pleas have no price**  
Judge Holland has almost 120 letters commenting on the settlement — most urging him to reject it A6

■ **Swearing Walley's thunder**  
Gov. Hickel takes a lot of pride in — and credit for — the Exxon settlement A10

■ **Magic number eludes**  
Terry Carr's column asks for clues on what is 'enough' money B1

■ **Oil profits leap**  
Exxon announces a 75 percent increase in first-quarter profits C1

Cole, who attended the hearing, said the court's ruling was "disappointing" but said he was hopeful it would not affect the overall settlement.

"I think the civil settlement is in the best interest of the state and oil spill communities," Cole

said after the hearing. He urged the Legislature to approve the remainder of the billion-dollar settlement he and Hickel had hammered out in Washington, D.C., on March 12.

But in Juneau, Holland's ruling left lawmakers wondering whether the Legislature had a deal to consider.

In a letter to Exxon, the state and federal governments, Rep. Max Gruenberg, D-Anchorage, chairman of the House oil spill settlement review committee, asked the parties to notify the committee today of any plan to withdraw from the settlement.

There was no immediate reaction from Exxon.

Exxon Corp. Chairman Lawrence Rawl and Exxon Shipping Co. President Augustus Elmer did not return calls placed to their Texas headquarters. Exxon employees in Texas said Rawl and Elmer were at a shareholders meeting in Orlando, Fla., and were expected to fly back to Texas late Wednesday.

Exxon and its shipping subsidiary pleaded guilty March 22 to four criminal violations of U.S.

See Reject, back page

# Reject

Continued from page A1

environmental law as part of a plea agreement.

Under the settlement, Exxon would pay \$900 million during an 11-year period. But a clause allowed Exxon or the state and federal governments to pull out of the deal if Holland did not accept the plea agreement.

The plea agreement said the companies would pay a \$100 million fine, half of which would be dropped, and \$50 million to the state for natural resources restoration in Prince William Sound.

Holland said the four charges "adequately reflect the seriousness of the underlying conduct." However, said Holland, \$100 million is not enough punishment for a spill that was "off the chart" compared to other U.S. oil spills.

Holland also said the amount was not enough to serve as a deterrent to prevent other potential oil spills.

He said the suggested \$100 million sends the wrong message that "spills are a cost of doing business." Exxon's Rawl has said customers will cover spill costs at the pump.

Exxon on Wednesday reported \$1.24 billion in profits for the first quarter, up 75 percent from \$1.28 billion in the same quarter last year. Profits in 1990 totaled \$5 billion.

In his ruling, Holland also had a message for Congress. He said he did not understand why a company faces criminal charges for accidental environmental spills that kill animals while others do not face charges for accidental plane crashes that kill people.

"We're affording greater protection to birds and sea otters," Holland said. He said Congress needs to correct disparities in federal laws.

Holland did not say what would be an appropriate sentence for Exxon.

Several environmental groups, citing a Washington Post article, told the Legislature last week that natural resource dam-



Times photo by DOUGLAS VAN REETH

Jim Neal, attorney for Exxon Shipping Co., says he cannot predict what happens next.

ages may be \$3 billion to \$10 billion.

Jim Neal, attorney for Exxon Shipping Co. in the criminal case, said after the hearing he thought the plea agreement was fair. Neal said he could not predict what Exxon would do as a result of Holland's ruling or whether the oil giant would pull out of the settlement pact.

Exxon has 10 days to decide whether to cancel the \$900 million civil settlement. Holland gave Exxon until May 24 to decide if it wants to withdraw its plea agreement in the criminal case.

Exxon has several options, according to lawyers involved in Exxon litigation.

The nation's largest oil company can decide to reject the plea agreement and go to trial before a jury or a judge. It can accept the plea and allow Holland to decide on the appropriate punishment. Or the government and Exxon can work out another plea agreement and submit it to Holland.

The Justice Department said it was disappointed with Holland's decision but is prepared to try the case against Exxon.

"I don't think they want to take this before an Alaska jury," said Jeff Parker, a lawyer representing about 90,000 plaintiffs in-

voiced in civil lawsuits against Exxon in state and federal court. "I think they're going to look seriously at renegotiating the whole thing."

Harold Spaeth, a U.S. Supreme Court expert and political science professor at Michigan State University, said Exxon ultimately may escape criminal punishment if the company chooses to go to trial and an unbiased jury cannot be found.

Despite Holland's ruling Wednesday, Exxon's agreement to plead guilty to criminal charges has been widely publicized, Spaeth said.

"That's going to make matters even more complicated," he said. "They can say, 'Hey, we can't get a fair trial in Alaska... arguably there's no place in the United States.'"

Exxon Corp. had agreed to plead guilty to one count each of violating the Clean Water Act, the Refuse Act and the Migratory Bird Treaty Act. Exxon Shipping Co. had agreed to plead guilty to one count of violating the Migratory Bird Treaty Act. There was no probation requirement in the proposed plea agreement.

Besides any plea agreement, Holland must also approve the \$900 million civil settlement before it becomes final. Hickel has said he will pull the state out of the deal if the Legislature does not approve it.

The Legislature has a May 3 deadline.

"This settlement has been under attack since the ink dried on the paper," said Lloyd Miller, an Anchorage lawyer representing thousands of Native villagers. "If the settlement is fair to all sides, the proof will be in its substantial support of victims of the spill and legislators and other interested parties."

Miller, who was at the hearing, said the government and Exxon probably see Holland's ruling in the criminal case as a defeat.

"It is my hope that all the parties have the courage to try to return to the bargaining table and negotiate a joint and global settlement," Miller said.

## Exxon's plea <sup>4.26.91</sup>

### *The punishment didn't fit the crime*

In rejecting Exxon's \$100 million criminal plea bargain, federal judge Russel Holland was right on all counts.

Among environmental crimes, Exxon's Alaska oil spill was, as the judge said, off the charts.

To a firm with \$100 billion a year in revenues, paying a \$100 million fine is, as the judge said, not much of a punishment. It amounts to less than one half day's worth of Exxon's revenues.

As a message to potential corporate lawbreakers, the \$100 million fine is, as the judge said, not enough of a deterrent. Exxon's profits for the first quarter of this year were \$2.24 billion. At that rate, Exxon's profits could cover the fine in just four days.

As the judge said, a fine of that magnitude sends the wrong message. It suggests that breaking the law is just another cost of doing business.

In spurning the plea bargain, Judge Holland delivered an unusual rebuke to President George Bush's Department of Justice. The federal government was willing to let the environmental criminal of the century off too easily.

Whatever the fine Judge Holland eventually imposes, though, it's a weak tool for influencing the behavior of a \$100 billion-a-year corporation. The business decisions that led to the Exxon oil spill were made by specific human beings, but the law offers no way to hold them personally responsible. To get really tough with corporations that commit environmental crimes, Congress and the state need to put the fear of jail into the people who run the law-breaking businesses.

## **...the other deal**

### *And if Exxon decides to bail out?*

For Alaskans, Judge Holland's ruling has a powerful side effect. Under Exxon's deal with Gov. Hickel, the firm can drop its offer to pay \$800 million over 10 years to restore the areas damaged by the spill. Exxon might like to pay the state less because it will have to pay the feds more than it expected.

If Exxon wants to try that trick, let it. Alaska's not getting such a great deal that we should beg and plead with Exxon to stand by its original offer.

Under federal laws, the criminal fine Exxon must pay has absolutely no bearing on how much it must pay to restore oiled areas. If Exxon wants Alaska to settle for less, the state should be prepared to fight for every possible penny in damages.

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# Exxon, Native squabble lands in D.C. courtroom

By DESIREE HUMPHREY

TIMES WRITER

A federal judge in Washington, D.C., is scheduled Monday to hear arguments from Alaska Native corporations seeking to block an already shaky \$900 million civil settlement of the Exxon Valdez oil spill.

The corporations representing Chenega, Port Graham and English Bay claim Native interests were not considered when the Exxon Corp., and state and federal officials hammered out the deal.

The Natives want implementation of the agreement signed March 12 delayed for 90 days. They have asked U.S. District Judge Stanley Sporkin to order the parties back to the bargaining table. Lloyd Miller, an Anchorage lawyer, said Thursday. Miller is one of the lawyers representing the Native groups in lawsuits pending in Sporkin's court and in federal court in Anchorage.

The convoluted legal wrangles now involve two federal judges and at least one Alaska Superior Court judge.

Sporkin is hearing the Natives' two lawsuits in Washington. U.S. District Judge H. Russel Holland in Anchorage is presiding over criminal charges against Exxon and its shipping subsidiary, Exxon Shipping Co., and a host of

civil cases, mostly involving damage claims from the spill.

Judge Brian Shortell in Anchorage is presiding over lawsuits in state court claiming damages from the spill.

Miller said there is no conflict between the federal judges because they are considering different issues. The Natives' lawsuits in Sporkin's court ask that Native land and subsistence rights be protected in the \$900 million settlement of state and federal lawsuits against Exxon, he said.

Holland's cases involve damages from the spill and the Exxon criminal case, although he must sign off on the civil settlement before it can take effect.

Miller said the Native corporations have asked Sporkin to give them control of money earmarked in the agreement for restoration of natural resources in subsistence-use areas affected by the March 24, 1989, spill.

At the least, there needs to be changes in the proposed deal to protect Native interests, he said.

Monday's hearing is just another mine field for the civil settlement, which may be in trouble.

A federal judge in Anchorage on

Wednesday scrapped a plea agreement from Exxon Corp. and its shipping subsidiary, the Exxon Shipping Co.

The companies had agreed to plead guilty to four counts of violating U.S. environmental laws in the spill and pay \$100 million in fines and restitution. It would have been a record amount for environmental violations, but U.S. District Judge H. Russel Holland said the amount was not enough.

Holland, who must also approve the civil settlement, gave Exxon until May 24 to decide whether it would withdraw from the plea agreement.

Because the criminal case and the \$900 million civil settlement are tightly linked, the civil settlement is up in the air. The proposed settlement allows any of the parties — the state, Exxon or the federal government — to pull out if the criminal plea agreement were rejected.

Exxon in a news release Thursday said it believed the civil agreement and criminal penalties had been appropriate. "While we are carefully considering the implications of the judge's decision, we are continuing our preparation for trial," it said.

State and federal officials said they have no intention of abandoning the civil

deal. They said they are waiting to see what Exxon does.

"I don't see any conflict at all," Miller said. "No one has asked him (Sporkin) to approve the settlement."

The proposed billion-dollar settlement must be signed by Holland to become official and asks that only Holland make any changes. That is a wish, Miller said, and Sporkin is not bound by the request because the settlement is still pending.

Sporkin on Monday also is expected to consider transferring the Natives' lawsuits from his court to Holland, who is in charge of about 180 federal lawsuits against Exxon, in addition to the criminal case against the oil giant.

And he is scheduled to review the Natives' request to compel Interior Secretary Manuel Lujan to give a sworn statement.

The Alyeska Pipeline Service Co., a consortium of seven oil companies, had no comment about Holland's ruling. The plea bargain had shielded the operator of the trans-Alaska oil pipeline from criminal prosecution by the federal government.

Exxon owns about 20 percent of Alyeska.

Holland on Wednesday said he had received letters from the public protest-

ing Alyeska's immunity in the proposed plea bargain. The most notable came from California Rep. George Miller, vice chairman of the House Committee on Interior and Insular Affairs.

Miller said in an April 8 letter to Holland and Sporkin that Alyeska secretly had agreed to ignore part of an oil spill contingency plan implemented a year before the Exxon Valdez ran aground on Bligh Reef.

Alyeska said Miller was wrong and that the company had reacted according to its contingency plans, which said it would take months to clean up a major spill.

"A certain congressman has written me on the subject," Holland said in an apparent reference to Miller. The judge said he received the letter a day and a half after he read about it in the newspaper.

"And it appears to me that he was more interested in getting some publicity than he was in informing me," Holland said. "Be that as it may, I do not have any role in the decision of whether Alyeska should or should not be prosecuted for anything."

A decision to prosecute Alyeska would be the option of the U.S. Justice Department, part of the executive branch, he said.

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URGENT FOR ALASKA

(ANCHORAGE) \_ A federal judge in Anchorage today (Wednesday) rejected a criminal plea agreement that's part of a (b) billion dollar deal between Exxon, the state and federal governments.

Judge H. Russel Holland says the fines which were proposed to him simply are not (not) adequate. The judge says there is no (no) question that the Exxon Valdez oil spill was \_ as he put it \_ "off the chart" as far as American environmental disasters go.

Exxon did not (not) immediately withdraw its guilty pleas on criminal pollution charges. Holland gave the company 30 days to consider what actions it may take.

Under the plea agreement, Exxon was to pay a 1-hundred (m) million-dollar criminal fine and another 9-hundred (m) million dollars to settle state and federal civil claims for natural resource damages in the Prince William Sound area.

The tanker Exxon Valdez spilled nearly 11 (m) million gallons of North Slope crude oil on March 24th, 1989, when it slammed into a charted reef.

P. 27  
II. 38 of Decree  
10 days after the event  
May 4 deadline for  
~~Exxon~~ State, feds  
agreement to pull out of  
disapproval due to judges'  
(May 3 is deadline for  
State & feds to pull  
out based on Leg.  
disapproval of Plea Agreement)

# Lawmakers...

Continued from Page 1

The waterway was polluted with nearly 11 million gallons of crude oil when the tanker Exxon Valdez ran aground in March 1989.

Lawmakers disagreed over the effect of the judge's decision.

Rodey said the Legislature, which faces a May 3 deadline to approve or reject the settlement, likely will halt its review.

"It's a moot point," he said. "Should we really spend any more time looking at an agreement that's not going to be approved?"

But House Speaker Ben Grussendorf, D-Sitka, said it depends on whether Exxon decides to keep the settlement of the state and federal civil claims on the table.

If Exxon wants to reopen negotiations, the Legislature would have to approve any new settlement in a special session next summer or fall, or wait until its next regular session in January, he said.

The Legislature must end its 1991 session by May 21.

Senate President Dick Eliason, R-Sitka and chairman of the Senate settlement committee, said the state can still deal with Exxon on the civil claims to avoid years of expensive litigation.

"You'd have to renegotiate, certainly," Eliason said. "The state is going to be the loser. We'll find out down the road that this is the best deal we could have made."

Rep. Max Gruenberg, D-Anchorage and chairman of the House settlement committee, said he would ask the panel this afternoon to approve a letter asking the Hickel administration, federal government and Exxon what their plans are. The letter will ask for a response by 2 p.m. Thursday, he said.

The letter will ask if the parties want the Legislature to continue consideration of the civil settlement and if the May 3 deadline for a decision should remain in effect.

Gruenberg said he would like to see the deadline renegotiated.

"This may, in a very strange way, help the process considerably," he said. "It may take some of the pressure off. The deadline has created a lot of artificial pressure."

Gov. Walter J. Hickel was on a jet to Los Angeles and could not be reached for comment.

Hickel spokesman John Manly said the administration hopes the civil settlement can still be approved even if the criminal case remains unresolved.

"We don't think that they're so linked that it's going to affect the civil side of it," Manly said. "The only

problem is if Exxon doesn't want to go through with it.

"Nothing's done until it's done. We believe that Exxon feels like they're getting a reasonable deal in this settlement, as the state of Alaska feels it's getting a reasonable deal."

Manly added, however, that the judge's ruling "probably sends a signal that we don't really want sent."

Grussendorf, who said he was leaning toward rejecting the settlement, praised the judge's ruling.

"Judge Holland's lived up to his reputation for being a jurist who's known for his deliberation of the cases before him."

Environmental activist Riki Ott of Cordova also cheered the ruling.

"It's about time somebody called the shots like they really are," said Ott, a leader of the Oil Reform Alliance, an oil industry watchdog group formed after the spill.

The rejection should force the Legislature to look closer at the civil settlement, she said.

"I'm hoping that Judge Holland's decision gives the Legislature an adrenalin shot that carries them through the next nine days to just say 'no.'"

Ott said she would like to see an agreement that makes Exxon pay more and forces the parties to release spill-damage studies.

# Judge...

Continued from Page 1

draw its guilty pleas following today's ruling. The judge gave the company until May 24 to decide.

The Exxon Valdez spilled nearly 11 million gallons of North Slope crude oil into Prince William Sound and the Gulf of Alaska after it ran aground at Bligh Reef. Hundreds of thousands of waterfowl and fish, and hundreds of seals, sea otters and bald eagles were killed. Fishing and tourism were interrupted, and the subsistence lifestyle of Native Alaskan villages was disrupted.

The proposed criminal settlement was connected with a proposed settlement of state civil cases against Exxon that includes payment of \$900 million by Exxon to a state trust fund. The money was to be used to restore Prince William Sound.

An analysis done for The Associated Press in March showed the total cost to Exxon of the \$1 billion settlement could have been as little as \$486.3 million if the company had purchased an annuity to make the payments.

Exxon spokesman Joe Tucker in Anchorage said the company had no immediate comment on the ruling.

"It was one of the options the

court had," said James Neal, lead attorney for Exxon Shipping Co. and former counsel for the Watergate special prosecutor. He appeared surprised by the decision.

"We thought it was a good plea agreement," Neal said.

Holland said he rejected the settlement because it sent the wrong message to industry and the American public.

"The fines do not adequately achieve deterrence. They send the wrong message - that spills are a cost of business to be absorbed," he said.

Exxon Chairman Lawrence Rawl said after the plea agreement was announced March 12 that the \$1 billion agreement would not affect the company's profits. Ironically, Holland's ruling came the same day Exxon announced its first-quarter profits had jumped 75 percent.

Holland last month said the criminal and civil agreements were legally separate. It was not immediately clear what effect today's decision would have on the \$900 million civil settlement now pending before the Alaska Legislature.

Alaska Attorney General Charles Cole said today he hoped the rejection of the criminal plea would not derail the civil settlement. Under terms of that agreement, Exxon has

10 days to withdraw from the civil settlement, Cole said.

"The settlement remains fair and reasonable and in the best interests of the state," he said.

Lloyd Miller, an attorney representing five Native Alaska villages that sued in federal court in Washington, D.C., to halt the settlement until Native Alaskans' claims are included, said he was pleased with the ruling.

"Rejecting a \$100 million sentence comports with the Native villagers' view of the gravity of the damage to the environment," Miller said.

In a statement issued in Washington, Justice Department officials said they were disappointed with the court's ruling and believe the pleas and fine are a "just and reasonable" settlement of the criminal case.

The Justice Department said Holland's decision "threatens the \$1 billion civil settlement to which Exxon has separately agreed."

The statement added, "the government is prepared for the trial of the criminal charges as soon as a date is set by the court. It is regrettable that a trial of either the civil or criminal case promises to delay for a long period of time the availability of much needed resources to compensate for the harm done."