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TESTIMONY

OF

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BEFORE THE SPECIAL COMMITTEE ON THE
EXXON VALDEZ OIL SPILL CLAIMS SETTLEMENT

OF

SENATE
STATE OF ALASKA

CONCERNING

PROPOSED SETTLEMENT OF CIVIL AND CRIMINAL LIABILITY
ARISING FROM THE EXXON VALDEZ OIL SPILL

APRIL 17, 1991

Mr. Chairman and Members of the Subcommittees:

Good afternoon. I am Richard B. Stewart, the Assistant Attorney General in charge of the Justice Department's Environment and Natural Resources Division. I am pleased to have this opportunity to appear on behalf of the Department to discuss the proposed settlement of the federal government's claims of civil and criminal liability arising from the Exxon Valdez oil spill.

Background to the Litigation

Mr. Chairman, I am sure that it is unnecessary before this body to recite the events that gave rise to the claims against the Exxon Corporation and the settlement that now is pending. As you know, the tanker vessel Exxon Valdez was outbound from Port Valdez, Alaska on the night of March 23-24, 1989, carrying 50 million gallons of Alaska North Slope crude oil. The tanker, which was owned by an Exxon subsidiary and commanded by Joseph Hazelwood, left the sound's designated shipping lanes and went hard aground on Bligh Reef, a well-known and well-marked navigational hazard.

The grounding pierced the ship's hull, and best estimates are that 11 million gallons of oil spilled into the pristine waters of Prince William Sound and the Gulf of Alaska. The oil fouled those waters and much of the 1100 miles of adjacent shoreline. In the weeks and months following the spill, Exxon began an extensive campaign to clean up the oiled beaches,

which continued through the fall of 1989. In response to public pressure, Exxon resumed cleanup work in the Spring of 1990, and is expected to undertake further cleanup this spring. Exxon reports that so far it has spent more than \$2 billion in cleanup activities.

Both the federal government and the State of Alaska have asserted claims against Exxon. Initially, the Justice Department successfully sought the criminal indictment both of Exxon Shipping, the owner of the Exxon Valdez, and the parent Exxon Corporation. We regard the spill as a classic example of culpable corporate management failure. A ten-count indictment was returned in February 1990, including felony charges for knowing violations of the Ports and Waterways Safety Act and the Dangerous Cargoes Act, and misdemeanor counts under the Clean Water Act, the Refuse Act and the Migratory Bird Treaty Act. The criminal charges were scheduled for trial this month.

The federal government also has a number of civil claims, particularly on behalf of those federal agencies that serve as trustees for natural resource damages under the Clean Water Act and other federal statutes and common law. These claims have been asserted in a complaint that was filed along with the proposed settlement documents last month. The State of Alaska has had civil claims pending since August 1989, when the state filed a complaint in Alaska Superior Court seeking damages under state law.

In support of both the civil and criminal claims, the federal and state governments together have undertaken extensive scientific studies to assess the impact of the spill and the probable damage to natural resources. By June, the two governments will have spent a total of more than \$80 million in such studies. This investigation was necessary because the damage issues lie at the frontiers of scientific knowledge concerning the effect of oil spills on marine and coastal resources.

While the spill presents factual issues that lie on the scientific frontier, the case also presents many issues on what can only be described as a legal frontier. Many if not most of the legal issues that would be litigated against Exxon are issues of first impression in the federal courts. By way of example, the Exxon defendants' exposure to criminal fines could range from \$600 million to a meager \$3 million, depending on whether and how the court were to apply the Alternative Fines Act in this case.

Settlement Objectives

Because of these daunting uncertainties, both the Justice Department and the State of Alaska recognized the desirability of resolving their respective claims that would eliminate the uncertainty and expense of protracted litigation and permit early funding of restoration work for the Sound, but only if Exxon would come to the table ready to recognize its

responsibility for the spill and the magnitude of the damage to natural resources in and around Prince William Sound.

Accordingly, the Justice Department and the federal trustees, together with EPA, concluded from the outset that no settlement would be acceptable without three elements: first, there would have to be sufficient recovery of damages for the trustees to undertake a prompt and thorough restoration program for the Sound; second, any settlement would have to be made public and include an appropriate opportunity for public comment; and third, Exxon would have to acknowledge its criminal conduct and pay a substantial criminal penalty that reflects the seriousness of the offenses that led to the spill.

I am happy to report to the committee that all three of these elements have been met by the proposed civil settlement and the criminal plea. A vital impetus for this favorable settlement was the Justice Department's aggressive prosecution of the criminal charges, and early favorable rulings by the court in the criminal case. These established the seriousness with which the government has regarded Exxon's criminal responsibility for the spill as a binding principle for settlement.

On the civil side of the case, considerable credit must go to Alaska Governor Hickel's initiative, this past January, for talks between the corporation and the state and federal governments. These talks began with direct bargaining among the principals, involving Exxon Chairman Lawrence Rawl, Governor Hickel and Alaska Attorney General Cole, and the heads of the

federal agencies concerned -- the Departments of Agriculture, Interior, and Transportation, the Environmental Protection Agency, and the National Oceanic and Atmospheric Administration. NOAA General Counsel Tom Campbell, on behalf of the natural resource trustees, provided crucial leadership in ensuring that these early negotiations forged a suitable framework for an agreement in principle.

Eight weeks of hard bargaining with Exxon resulted, finally, in the settlement proposed last month. Those negotiations were marked by extraordinary cooperation among Governor Hickel and Attorney General Cole of Alaska, Interior Secretary Lujan, NOAA Administrator Knauss and General Counsel Campbell, EPA Administrator Reilly, Transportation Secretary Skinner, and Agriculture General Counsel Raul. Their collective leadership helped shape a settlement that should be regarded as an unprecedented win for the environment.

Settlement Terms

Under the settlement, Exxon will pay \$900 million over ten years to satisfy the state and federal governments' civil damage claims. Exxon also may be liable for an additional \$100 million if the future discloses currently unforeseen damage that was not discovered by the extensive damage survey the two governments have undertaken to date. These amounts will be used both to reimburse the state and the federal government for past expenses and restoration costs, and to fund a thorough program to

restore Prince William Sound's natural resources. These funds also may be used to fund additional cleanup work by Exxon in 1991. The schedule of payments under the settlement agreement is expected generally to coincide with the future funding needs for restoration work now being planned by the federal trustees.

The settlement also includes a number of releases and covenants by the parties not to bring certain claims. Exxon has agreed not to sue the United States for any claims arising from the spill. The United States and Alaska have agreed not to sue Alyeska Pipeline Service Company for natural resource damages, because the settlement satisfies all of those claims and because Alyeska could seek to recover any liability to the United States for such damage from Exxon. This covenant reasonably protects Exxon from having to pay twice, in effect, for the same claims. In turn, Exxon has agreed to indemnify Alaska and the United States for any claims Alyeska might assert against the two governments. The United States has preserved all other claims against Alyeska, (including potential claims for civil penalties,) that do not involve natural resource damages.

Apart from the civil settlement, the two corporate defendants -- and here I mean Exxon Corporation and Exxon Shipping -- have agreed to plead guilty to four serious criminal charges arising from the spill. Exxon shipping will plead guilty to three counts under the Clean Water Act, the Refuse Act, and the Migratory Bird Treaty Act, and Exxon Corporation will plead guilty to one count under the Migratory Bird Treaty Act. Exxon

will pay a \$100 million fine, half of which will be remitted, and Exxon will pay of \$50 million as restitution to the State of Alaska for restoration of damaged natural resources.

These sums -- totalling a billion dollars -- represent the largest environmental liability settlements in history. Based on the survey of damage to natural resources undertaken by the natural resource trustees, this recovery should provide sufficient funds to undertake and complete the needed restoration program for the Sound. And Exxon will have to pay up to \$100 million more if future exposure discloses additional damage that cannot be discovered now. More importantly, these funds will be available to the trustees far sooner than would have been possible through protracted and complex litigation that would have taken years. More than seven years of intensive litigation have been necessary to recover for natural resource damage to New Bedford Harbor from PCB contamination. Restoration there is only now getting substantially underway; this case exemplifies the protected nature of litigating large natural resource damage cases.

Standing alone, the criminal fine against Exxon will be the largest ever paid for an environmental crime. This meets our objective of securing a fine that is commensurate with the seriousness of the underlying offenses. When Exxon's past cleanup costs are taken into account, the spill will have cost Exxon considerably more than \$3 billion.

Finally, the committee should know that the agreement with Exxon fully meets our objective of having this be a public settlement, one that affords an opportunity for public comment and participation. For the federal government, public participation has been a paramount concern throughout the process of litigation and restoration planning. The civil settlement is conditioned on court approval following a public comment period. Let me emphasize that this step was not required by law; the concerned federal agencies and the State of Alaska have insisted that the settlement be incorporated into a consent decree that will be subject to a thirty day public comment period in federal court. Judge Holland, who oversees our criminal case against Exxon, is following a similar procedure with respect to the plea agreement. The court has set April 24th as the date it will render its judgment on whether to accept the plea agreement. If the court accepts the plea, sentencing will proceed on the 24th.

The United States and the State will have the right to withdraw from the agreement if the public comment period shows that the settlement is inappropriate or inadequate. The State of Alaska also may withdraw if the Alaska legislature disapproves of the agreement. Exxon does not have a comparable right of withdrawal based on public comment or other information, but may withdraw if the court modifies the agreement.

We have provided the court, the legislature, and the Congressional Subcommittees overseeing the settlement with information concerning natural resource damage and restoration

costs that should remove any doubt that the settlement meets the objectives that I previously set forth. But there remains the possibility that both the state and federal governments might return to full-scale criminal and civil prosecution of their claims against Exxon if the settlement ultimately is rejected by the court or one of the parties. Both the Justice Department and the trustees, therefore, are constrained not to present any information that might tip the government's hand concerning specific evidence it has against Exxon. After the decree is finalized and scientific studies have undergone peer review, disclosure of most of the resulting information will, of course, be possible.

Finally, I think it important for the committee to understand that despite the federal and state governments' success in meeting the federal government's objectives in this settlement, that success has not been achieved at the expense of any of the many other parties who may have lawsuits pending against Exxon. As the committee is aware, the spill has spawned an immense amount of litigation. Private plaintiffs ranging from environmental and Native American groups to commercial fishermen and cannery workers have filed suits for damages and/or injunctive relief.

To ensure that the settlement would not prejudice those claims, the settlement specifically provides that it is not intended to affect legally the claims of third parties against Exxon. Paragraph 13 of the proposed consent decree has even more

explicit protection for Alaska Native villages to recover natural resource damages, as well as protection for those who hold any property interest affected by the spill.

Administering Settlement Monies

The objectives of thorough natural resource restoration and public participation have been protected not only by the Agreement with Exxon but also in the Agreement between the federal government and the State of Alaska that will govern use of the settlement monies. Under the Agreement, expenditures for restoration must be approved unanimously, and must be for natural resource restoration and enhancement. The Agreement specifically provides that its governance structure, which will be further developed by the trustees, must incorporate procedures for meaningful public participation. Of course the trustees already have been true to this spirit of public involvement by submitting their initial restoration plan for public comment; the plan was published in the Federal Register on March 1, 1991. The trustees remain committed to sustaining public participation in the restoration planning process.

I would be happy to answer any questions you may have.