

Exxon

Settlement

1 of 2

Bill Woodward

House Fish & Wildlife -

FAX	202	225	1629	-
office	202 -	226 -	3536	

Alaska State Legislature

SENATOR RICHARD I. ELIASON

President of the Senate

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

M E M O R A N D U M

TO: All Senators

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

DATE: March 25, 1991

RE: Distribution of further information regarding the
Exxon settlement

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

A reminder to those of you who are members of the special committee, please make sure this information is added to your committee folder, and please bring that folder with you to our next meeting which is scheduled for Tuesday, March 26 at 2:30 in the Butrovich Room.

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

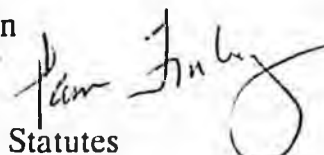
Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

March 25, 1991

SUBJECT: Exxon Settlement; Sectional Analysis of Plea Agreement
(Work Order No. 7LS-1053)

TO: Senator Dick Eliason

FROM: Pamela Finley 
Assistant Revisor of Statutes

SECTIONAL ANALYSIS OF PLEA AGREEMENT

I. INTRODUCTION. This section sets out the crimes in the indictment against Exxon and Exxon Shipping that Exxon and Exxon Shipping will be pleading guilty to.

Exxon Shipping is pleading guilty to

- (1) negligent discharge of pollutants (oil) into Prince William Sound without a permit (a violation of the Clean Water Act, carrying a fine of \$2500-\$25,000 per day);
- (2) discharge of refuse (oil) into Prince William Sound (a violation of the Refuse Act carrying a fine of \$500-2500), and
- (3) killing migratory birds (a violation of the Migratory Bird Act, carrying a fine of \$500.)

Exxon is pleading guilty to

- (1) killing migratory birds (a violation of the Migratory Bird Act, carrying a fine of \$500.) The basis for Exxon's liability is that Exxon owned the oil that Exxon Shipping discharged that killed migratory birds.

II. DEFENDANTS' AGREEMENT AND UNDERSTANDING. This lists the attorneys representing the defendants and sets forth the facts that the government would have to prove for conviction of the counts to which the defendants are pleading guilty. It also sets forth the defendant's agreements that there is a legal basis for the fines and restitution. This statement is made for the purpose of the plea

agreement only. The defendants also recognize that by pleading guilty they are admitting the essential elements of the charges in the counts (i.e., the essential facts.)

Finally, the U.S. agrees to ask the court to dismiss (once the court has accepted the plea agreement) other counts against Exxon Shipping and Exxon, namely the ones to which they are not pleading guilty.

Question.

1. What counts will be dismissed?

III. AGREEMENTS REGARDING IMPOSITION OF SENTENCE. First, the U.S. agrees not to make additional criminal charges or seek civil or administrative penalties for various acts relating to the oil spill against

- (1) Exxon, its present or former officers, directors, or employees;
- (2) any of Exxon's wholly-owned subsidiaries or their present or former officers, directors or employees; or
- (3) Alyeska Pipeline Service Company or any of its shareholders or owner companies or present or former shareholder representatives.

The government reserves the right to take civil or administrative action (other than for penalties or under criminal laws) against the above persons and entities. (This reserves the federal government's rights to take action relating to suspension, debarment, or listing.)

This section also lists the fines. Exxon Shipping is to pay \$75 million, half of which is remitted (not paid). Exxon agrees to pay \$25 million, half of which is remitted (not paid). The remission is based on the defendants' recognizing their responsibility, cooperating with the federal government, and making past payments for cleanup (\$2 billion) and for injuries to claimants (in excess of \$300 million.)

Question.

1. Who are Exxon's wholly owned subsidiaries?
2. Why is Alyeska Pipeline Service Company included in the entities against whom criminal charges will not be brought and from whom civil or administrative penalties will not be sought?

IV. AGREEMENTS REGARDING RESTITUTION. Exxon and Exxon Shipping agree to pay the State of Alaska \$50 million in restitution within 30 days after the court accepts the plea agreement. The payments are to be used by the State

Senator Dick Eliason

Page 3

March 25, 1991

exclusively for restoration projects relating to the oil spill. The state is to control the use of the money, and upon payment the money shall be available for use by the state for restoration projects without objection, challenge, or judicial or administrative review.

Restoration (for which the money may be spent), includes (1) restoration, replacement, and enhancement of resources affected by the oil spill; (2) acquisition of equivalent resources and services; and (3) long-term environmental monitoring and research programs directed to prevention, containment, cleanup, and amelioration of oil spills.

V. GENERAL PROVISIONS. Exxon guarantees the payments Exxon Shipping is to make.

If the court rejects the plea agreement or does not dismiss the charges the U.S. has said it will move to dismiss, each defendant will be permitted to withdraw its guilty plea.

PF:mi

91-062.mai

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

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

MEMORANDUM

March 22, 1991

SUBJECT: Exxon Settlement; Sectional Analysis of Memorandum of Agreement (MOA) (Work Order No. 7LS1053)

TO: Senator Dick Eliason

FROM: Pamela Finley *Pam Finley*
Assistant Revisor of Statutes

SECTIONAL ANALYSIS OF MOA.

INTRODUCTION (Pages 2-5). This contains background and certain information. The Clean Water Act (CWA) is referenced. The current federal trustees are identified as the secretaries of the interior and agriculture and the administrator of NOAA, and the state trustees are identified as the commissioners of fish and game and environmental conservation and the state Attorney General. The U.S. Coast Guard is identified as the federal on-scene coordinator (FOOSC) and the state DEC is identified as the state on-scene coordinator (SOSC). "Exxon" in the MOA includes Exxon Corp., Exxon Shipping Co., and Exxon Pipeline Co.

The introduction also identifies laws on which the parties rely in setting up the joint trusteeship, i.e., 42 U.S.C. 9607 (that section of CERCLA authorizing the regulations at 43 CFR 11), 40 CFR 300.615(a), and 43 CFR 11.32(a)(1)(ii). The committee should note that while 40 CFR 300.615(a) encourages cooperation among trustees, it does not specifically authorize a co-trusteeship nor the commingling of funds. 43 CFR 11.32(a)(1)(ii) concerns damage assessments, not disposition of recovered funds. 43 CFR 11.92 and 11.93, which do concern disposition of recovered funds are not referenced. The introduction also states that the state and federal entities have determined that the procedures in the MOA "will best enable them to fulfill their duties as trustees...."

JURISDICTION (Page 5). The jurisdiction of the court is the same here as it is in the consent decree, including jurisdiction under the CWA.

DEFINITIONS (Pages 6-8). The definitions should be read, but certain points can be summarized here.

First, "allowed expenses" are the past unreimbursed expenses of the state and federal government for response, assessment, and cleanup, as well as the past litigation expenses of the state. These parallel the provisions in the consent decree.

"Natural resource damage recovery" is the amount to be paid under the consent decree, less the "allowed expenses" and less unreimbursed cleanup and response costs of the state or federal government incurred after December 31, 1990; the "natural resource damage recovery" is the amount to be managed by the six trustees. In this memo, I will refer to this as "the trust fund money."

The "trustees" under this agreement are the current trustees, or any replacements designated by the President or the Governor hereafter.

"Restore" or "restoration" are important terms because the definition is about the only limit on what the trustees may use the trust fund money for. It means any action which endeavors to restore a natural resource (or services provided by that resource) that was injured, lost, or destroyed by the oil spill to its pre-spill condition. It also includes actions which replace or substitute something for those resources or services. It also includes acquisition of "equivalent resources and services." It is a very broadly defined term, especially when it includes "services provided by the resource." This is discussed more fully under paragraph V below.

CO-TRUSTEESHIP (Pages 8-9). This states that the trustees shall act as co-trustees in collecting and using the natural resource damage recoveries from Exxon. To avoid the claim that this "co-trusteeship" gives one government ownership of or authority over natural resources of the other government, the parties state that nothing in the MOA shall be deemed an admission of law or fact by either government concerning that ownership or authority. Neither government may use the MOA against the other except in matters concerning the enforcement of the MOA or the settlement of the oil spill litigation. This section also states that the MOA does not affect rights or obligations of third parties (including Alaska Native villages and persons with an interest in property injured by the oil spill) or the rights and obligations of the U.S. or the State to the Native villages or private parties.

ORGANIZATION; Paragraph IVA (Pages 9-11). First, all decisions relating to the use of the trust fund money shall be made by unanimous agreement of the six trustees. In addition, the federal trustees must consult with the EPA. If the trustees cannot agree, either government may resort to federal district court in Alaska to settle the dispute. The trustees may also submit the matter to non-binding mediation or "other means of conflict resolution."

The trustees agree to cooperate in establishing a joint trust fund in the registry of the federal district court in Alaska, or as otherwise determined by agreement of the governments and order of the court.

The trustees agree to establish procedures for meaningful public participation, which may include a public advisory group.

The trustees shall agree to an organizational structure for decisionmaking under the MOA within 90 days after the consent decree (in the U.S. and State v. Exxon case) has been approved and entered as a judgment of the court.

Questions.

1. Why did the state and federal governments not separate the money recovered by the federal government from the money recovered by the state government?

2. Is the establishment of a joint trust fund contrary to 33 U.S.C. 1321(k), also known as "the 311(k) fund," which requires funds received by the United States under 33 U.S.C. 1321 to be deposited in a revolving fund in the federal Treasury?

3. Is the establishment of a joint trust fund contrary to 43 CFR 11.92(a)(1), which also requires the federal trustee to retain federal damage recoveries under the CWA in a separate account in the treasury? Is it contrary to 43 CFR 11.92(a)(2), which requires the state trustee to put the state's recovery in a separate account in the state treasury or in an interest bearing account payable in trust to the state agency acting as trustee? Do 11.92 and 11.93 apply (see below)?

4. Is the commingling of trust assets a violation of the trustees' common law trust responsibilities?

5. Will a trust fund in the court registry bear interest?

6. What standards would a court use in deciding disputes among the trustees?

7. Could the trustees agree to binding arbitration, so that an arbitrator would decide the use of the money?

RETENTION OF RIGHTS RE INJURY ASSESSMENT AND RESTORATION:
PARAGRAPHS IVB and C (Pages 11-12). This states that the MOA does not prevent either government from undertaking injury assessment or restoration activity in addition to that paid for by the trust fund.

It also allows each government to change the trustees, without objection by the other, so long as neither government designates more than three trustees. (It appears that a government could designate fewer than three trustees if it wanted to.)

It also acknowledges that the President has given the EPA the task of coordinating, on behalf of the federal government, the restoration of the injured natural resources.

Finally, it provides that the MOA does not constitute an election on the part of either government to be bound by the Natural Resource Damage Assessment Regulations codified at 43 CFR 11. This is an interesting provision, especially given the parties' reference of 43 CFR 11.32 in the introduction. Although Part 11 is entitled "Natural Resource Damage Assessments," and the vast majority of 43 CFR 11 deals with methods of damage assessments, 43 CFR 11.92 and 11.93 address the establishment of a restoration account and a restoration plan. 43 CFR 11.10 states that the "assessment procedures set forth in this part are not mandatory," but 43 CFR 11.14(aa) defines "assessment" to mean the process of determining damages for injuries to natural resources. Therefore it is not clear whether the parties to the MOA are saying that they are not bound by any part of 43 CFR 11, or whether they are saying they are not bound by that part of 43 CFR 11 that relates to damage assessments.

Question.

1. Do 43 CFR 11.92 and 11.93 apply to all recoveries under the CWA, or are they optional? Did the parties believe those regulations apply.

USE OF NATURAL RESOURCE DAMAGE RECOVERIES: PARAGRAPH VA (Page 12). The trustees jointly use the trust fund money to restore, replace, enhance, rehabilitate or otherwise acquire the equivalent of natural resources injured as a result of the oil spill and the reduced or lost services provided by such resources. The CWA, 33 U.S.C. 1321(a)(8) defines "removal" to include actions necessary to minimize or mitigate damage, but does not otherwise provide guidance as to the meaning of these terms. It is likely, although not certain, that the trustees will use the definitions at 43 CFR 11.14. 43 CFR 11.14(a) defines "acquisition of the equivalent" or "replacement" to mean the substitution for an injured resource with a resource that provides the same or substantially similar services (this is in addition to substitutions as part of response actions). "Services" under 43 CFR 11.14(nn) means the physical and biological functions performed by the resource, including the human uses of those functions; I interpret it as including use of natural resources for food or water, and perhaps such things as recreation. "Restoration" or "rehabilitation" means actions undertaken to return the injured resource to its baseline condition. 43 CFR 11.14(ll).

Under this paragraph the governments are also to establish standards and procedures for administering the trust fund money.

Finally, this paragraph requires that all natural resource damage recoveries be placed in the joint trust fund.

Questions.

1. How will the trustees know how much of the trust fund should be spent on damage to state resources and how much should be spent on damage to federal resources?
2. Can this money be substituted as the funding source for services the federal government would provide in any event out of other federal funds?
3. What are the limits on the acquisition of "equivalent resources" in practical terms? (To compensate for lost beachcombing opportunities, could the trustees build camping sites? Ski lodges? Roads to ski lodges?)
4. Will the trust pay its own administrative expenses?
5. Who, if anyone, will perform audits of the trustees' expenditures?
6. If the trustees buy land, who will own it? If they develop land, who will administer whatever facility is developed?

REIMBURSEMENT TO GOVERNMENTS: PARAGRAPH VB. (Pages 12-13).
Up to \$72 million shall be available to the state for reimbursement of its past expenses. Up to \$62 million shall be available to the federal government to reimburse its past expenses. This reimbursement money shall be paid directly to the governments by Exxon over five years. The agreement does not state which five years, or whether the installments must be equal.

Also, all of the governments' unreimbursed response and cleanup costs incurred after December 31, 1990, and certified by either the FOOSC or the SOOSC, shall be reimbursed to the appropriate government. (The trust fund will get whatever is left when these items are deducted from the settlement proceeds.)

For questions relevant to this paragraph, see the sectional of the consent decree.

OUT-OF-STATE EXPENDITURES: PARAGRAPH VC. (Page 13). "Except as otherwise provided" in the MOA, the trustees agree that the trust money will be expended on the restoration of natural resources in Alaska unless the trustees agree that "spending funds outside of Alaska is necessary for the effective restoration, replacement, or acquisition of equivalent natural resources injured in Alaska and services provided by such resources."

Questions.

1. Is there some other provision that allows the trustees to spend the money on projects outside Alaska? (Why is the "except as otherwise provided" language there?)

2. Could the trustees create a recreational site in another state to compensate for the loss of a recreational site in Alaska? Could fish hatcheries be built in Washington and paid for out of the trust funds under this provision? Could scientific studies be done out of state and paid for with trust fund money?

NO STATE OBLIGATION TO SPEND MONEY: PARAGRAPH VD (Page 13).
The MOA states that it does not obligate the governments to expend money except to the extent funds are appropriated or are otherwise lawfully available.

Question.

1. Is this an indication that trust money that the trustees decide to use to pay for work of state agencies will have to be appropriated by the legislature? Or is just a "safety" clause to assure the state that it does not have to pay money under the MOA?

SCIENCE STUDIES (Page 13). The state and federal governments are to continue to cooperate in appropriate scientific studies relating to the oil spill, including those approved for the 1991 field season.

COVENANTS NOT TO SUE: PARAGRAPHS VIIA A,E. and F (Pages 14-16).
The governments agree not to sue each other with respect to:

(1) the authority of either government to enter into and comply with the MOA;

(2) the right of either government to engage in cleanup, damage assessment, or restoration activities under the MOA;

(3) all civil claims one government may have against another arising out of acts or omissions that occurred before the execution of the MOA and related to the oil spill.

In "E" on page 15, the governments agree that if they are both sued by a third party for a claim arising out of the oil spill, the governments will cooperate in their defense and not assert claims against each other. In "F" the parties agree that they will cooperate in each other's defense if one, but not the other, is sued by a third party for a claim relating to the oil spill. In both cases, the governments agree to pay their liability as determined in final judgment, and not to assert claims against each other.

Questions.

1. If the trustees disagree, can the state trustees take the issue to court if the issue is whether a federal agency should be involved in a particular project, or does #2 above preclude that?

2. Does this put the state in the position of cooperating with the federal government against an Alaskan resident who asserts an oil spill claim against the federal government?

CO-TRUSTEESHIP AS TO NATURAL RESOURCES: PARAGRAPHS VIIB AND C (Pages 14-15). For the purposes of oil spill litigation related to Exxon and other proceedings relating to the determination, recovery, or use of natural resource damages resulting from the oil spill, each government is entitled to assert that it is a co-trustee of all of the natural resources injured, lost, or destroyed as a result of the oil spill.

Each government also agrees not to sue the other one to determine the share of either government's ownership or rights or management authority over natural resources injured, lost, or destroyed as a result of the oil spill.

Question.

1. Does the last clause preclude, at least for the next 16 years, the U.S. and the State from suing each other to determine ownership of resources, or rights to control resources, if those resources were hurt by the oil spill? Would this affect disputes that had nothing to do with the MOA or the oil spill?

EFFECTIVENESS OF MOA: PARAGRAPH VIID (Page 15). If the governments become adverse to each other in the oil spill litigation (with Exxon), the MOA shall remain in effect.

Question.

1. How does this provision interact with the termination provision on page 17 that says the MOA terminates if the consent decree terminates, unless otherwise agreed by the parties?

ENFORCEMENT, VENUE, AND INVALIDITY (Page 16). The MOA is enforceable in federal district court in Alaska, which retains jurisdiction.

If the MOA is determined to be invalid, the use of the remaining money will be determined by further agreement of the governments or by an allocation of the recoveries by the federal district court in Alaska, subject to appellate review.

Question.

1. The heading of this paragraph includes "governing law," but the text doesn't mention it. Did the agreement have a governing law provision at one time?

EFFECTIVE DATE (Page 17). The MOA is effective on the date the consent decree is signed and entered by the court, except for the provision covering continuation of joint science studies, which is effective on the date all parties sign the MOA.

INTEGRATION AND MERGER (Page 17). The MOA and the consent decree constitute the entire agreement between the state and federal governments as to matters mentioned in them. The parties note that the agreement reached among the trustees as to disbursements of the \$15 million paid by Exxon in April 1989 remains in effect.

Question.

1. What was the agreement of April, 1989?

TERMINATION (Page 17). The MOA terminates 16 years from the effective date, or upon termination of the consent decree, unless otherwise agreed by the parties.

Question.

1. How does this relate to paragraph VIID on p.15?

JUDICIAL REVIEW (Page 18). The MOA creates no rights in a person who is not a party to it. It is not subject to judicial review except as provided in article VII.

Question.

1. Since this is a court decree, do the parties have the power to prevent judicial review?

2. What does the reference to article VII refer to?

3. Does this prevent a third party from challenging a decision of the trustees on the grounds that the decision is inconsistent with the MOA or applicable law?

MODIFICATION AND REPRESENTATION (Page 18). This MOA can only be modified with the written consent of the parties and the approval of the court. The representatives certify that they are authorized to enter into the MOA and bind the governments.

Question.

1. The heading of this paragraph includes "governing law," but the text doesn't mention it. Did the agreement have a governing law provision at one time?

EFFECTIVE DATE (Page 17). The MOA is effective on the date the consent decree is signed and entered by the court, except for the provision covering continuation of joint science studies, which is effective on the date all parties sign the MOA.

INTEGRATION AND MERGER (Page 17). The MOA and the consent decree constitute the entire agreement between the state and federal governments as to matters mentioned in them. The parties note that the agreement reached among the trustees as to disbursements of the \$15 million paid by Exxon in April 1989 remains in effect.

Question.

1. What was the agreement of April, 1989?

TERMINATION (Page 17). The MOA terminates 16 years from the effective date, or upon termination of the consent decree, unless otherwise agreed by the parties.

Question.

1. How does this relate to paragraph VIID on p.15?

JUDICIAL REVIEW (Page 18). The MOA creates no rights in a person who is not a party to it. It is not subject to judicial review except as provided in article VII.

Question.

1. Since this is a court decree, do the parties have the power to prevent judicial review?

2. What does the reference to article VII refer to?

3. Does this prevent a third party from challenging a decision of the trustees on the grounds that the decision is inconsistent with the MOA or applicable law?

MODIFICATION AND REPRESENTATION (Page 18). This MOA can only be modified with the written consent of the parties and the approval of the court. The representatives certify that they are authorized to enter into the MOA and bind the governments.

DIVISION OF LEGAL SERVICES

**LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

COPY

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

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

MEMORANDUM

March 21, 1991

SUBJECT: Sectional Analysis of Consent Decree - Paragraph 13 to end.
(Work Order 17LS-1053)

TO: Senator Dick Eliason

FROM: Pamela Finley
Assistant Revisor of Statutes

SECTIONAL ANALYSIS OF CONSENT DECREE
PARAGRAPH 13 TO END.

RELEASE OF CLAIMS BY GOVERNMENTS: PARAGRAPH 13 (Pages 14-15).

The state and federal governments give up all civil and administrative claims they have against Exxon arising out of the oil spill. This includes all the claims the State has made in state court under state law, except for #4 below. This paragraph explicitly states that the consent decree does not impair:

- (1) the right of the state or federal government to enforce the consent decree, including the reopener clause;
- (2) the rights of Alaska Native villages to act as trustees for the purposes of asserting or compromising their claims for damage to natural resources belonging to, managed by, controlled by, or appertaining to the villages;
- (3) the rights of other parties who own or have an interest in property affected by the oil spill; or
- (4) claims by the State for tax revenues that would have been, or would be collected under existing AS 43.75. *Raw Fish -*

However, if the state recovers a judgment for lost AS 43.75 taxes, the state agrees to enforce that judgment only to the amount that would have been refunded to local governments. (See AS 43.75.130). In other words, the state can go ahead and sue for the full amount of lost taxes under AS 43.75, but if Exxon decides not to pay the full

*3-21-91
B. A. C.
1.6.10.10
6.11.
10.12.
10.12.*

amount, the state can only force payment of the amount (roughly one-half) that is given to local governments.

Questions.

1. In the state case, the state asserted claims for lost revenue from the salmon enhancement tax, loss of oil and gas production tax revenue, loss of corporate income tax revenue, and loss of oil production royalties. These claims will be given up as to Exxon. Would the state have been able to prove this claimed loss of revenue, and if so, how much did the state believe it could prove? Does the state intend to continue litigating against other defendants in the state case, and if so, does it expect to be successful?

2. Number 2 of the exceptions refers to Alaska Native "villages". Are there any other Native groups (corporations?) whose claims would be affected by this settlement?

3. Although the consent decree states that it does not affect third party claims related to the oil spill, will settlement between the state and Exxon have any practical effect on the ability of third parties to litigate their claims?

RELEASE OF CLAIMS BY GOVERNMENTS: PARAGRAPHS 14-15 (Pages 15-17). In paragraph 14, the governments give up civil and administrative claims against Exxon Pipeline (except to the extent that Exxon Pipeline is liable because of its interest in Alyeska) to the same extent they gave up claims against Exxon in paragraph 13.

In paragraph 15, the governments agree not to make civil claims against Exxon's or Exxon Pipeline's employees, directors, and officers that relate to the oil spill. However, this provision is void if the employee, director, or officer brings an action against the governments, or either of them, relating to the oil spill.

If the state or federal government obtains a judgment against an officer, employee, or director of Exxon or Exxon Pipeline for liability relating to the oil spill, the government will collect on the judgment only to the extent the judgment is covered by insurance policies purchased by the individuals.

Question.

1. From the way paragraph 15 is structured, it appears that there may be a civil case pending against an employee, director, or officer of Exxon or Exxon Pipeline. Is this true?

is liable for the rest up to \$100 million. The fund may proceed against the owner and operator of the vessel and third parties if the negligence of any of these caused the damage.

The consent decree provides that Exxon's release of the governments does not bar a claim Exxon may have against the TAPL fund. It also provides that if the TAPL fund asserts claims against the governments based on money the fund pays to Exxon or Exxon Pipeline, Exxon will repay the governments for any liability they may have to the TAPL fund. Also, if the TAPL fund asserts claims against the governments based on money the fund pays to Alyeska, Exxon will repay 20.34% of the government's liability. (Exxon Pipeline owns 20.34% interest in Alyeska.)

Questions.

1. Has the TAPL fund paid any money to Exxon or Exxon Pipeline? Is it likely to do so?
2. Has the TAPL fund paid any money to Alyeska, or is it likely to do so?
3. How likely is it that the TAPL fund will assert claims against the state for money (if any) the fund pays to Alyeska?

PROVISIONS PERTAINING TO ALYESKA (Pages 20-21). In paragraph 22, the governments give up all claims they may have against Alyeska related to the oil spill for "~~Natural Resource Damages~~" and "~~damages for injury to Natural Resources~~". In addition, if Alyeska pays Exxon for claims relating to the oil spill, and Alyeska then recovers from the state or federal governments all or part of what Alyeska paid Exxon, Exxon will repay the governments that amount.

In paragraph 23, the governments agree that if either recovers any amount from Alyeska related to the oil spill, it will instruct Alyeska to pay 20.34% of that amount to Exxon.

In paragraph 24 Exxon and Exxon Pipeline agree to repay the governments 20.34% of any amount Alyeska recovers from the governments related to the oil spill (except for recoveries described in paragraphs 22 or 25).

Paragraph 25 covers situations where Alyeska sues the state or federal governments for its own damages related to the oil spill or because of Alyeska's liability to third parties (other than Exxon) related to the oil spill. In this situation, Exxon will pay the governments the amounts the governments paid Alyeska, if the government asserts in good faith all defenses it has and doesn't refuse a good faith proposal for settlement with Alyeska.

Questions.

1. Are there third party suits against Exxon and the state, or are there likely to be? (Under paragraph 26, the state could not recover against Exxon for its losses in such cases.)

2. Are there third party suits against the state, or are there likely to be such, in which Exxon or Exxon Pipeline is not a defendant? (Under paragraph 27, the state could not recover against Exxon for its losses in such cases.)

3. Paragraphs 29 and 30 are not limited to lawsuits related to the oil spill. I suspect this was an oversight. How likely is a court to interpret these paragraphs as applying only to spill-related lawsuits?

4. Can the state and federal governments recover against each other for judgments they have to pay to third parties?

INTEREST FOR LATE PAYMENTS (Pages 23-24). If Exxon fails to make a payment when due under paragraph 8 ((\$900 million) or paragraph 9 (the escrow account), Exxon must pay interest on the overdue amount. The interest rate is the amount the federal government charges on amounts owed it. It is tied to the investment rate for the Treasury tax and loan accounts. 31 U.S.C. 3717 (a)(1) and (2).

RESERVATION OF RIGHTS (Pages 24-25). Paragraphs 32-35 contain fairly standard provisions. Paragraph 32 states that the agreement does not constitute an admission of fact, law, or liability. Paragraph 33 states that the agreement does not create any rights in a person who is not a party to it. Paragraph 34 states that the agreement does not prevent the governments from providing assistance or funding to those who are not a party to the agreement. Paragraph 35 states that the agreement does not impair an existing contract between Exxon or Exxon Pipeline and any entity of either Government, including a bioremediation studies agreement between Exxon and the EPA.

NOTICES AND SUBMITTALS (Pages 25-26). This section gives the addresses of the parties for the purposes of any written notices required by the agreement.

ENTRY OF AGREEMENT: WITHDRAWAL OF CONSENT (Page 26). Notice of the consent decree is to be published in the Federal Register, and public comments received for 30 days. At the end of the 30-day period, either the state or the federal government can withdraw from the agreement if comments show that it is inappropriate, improper, or inadequate, or if, before the end of the 15-day period the state legislature has not approved the agreement "as written". If either

government withdraws, the agreement terminates as of the date of notice of withdrawal.

Question.

1. It appears that the governments could keep the agreement in effect even if the state legislature does not approve it. If the legislature does not approve it and the state or federal government does not withdraw, could the legislature intervene in the federal case to prevent approval by the court? Could it intervene in the state court to prevent dismissal of claims?

TERMINATION OF AGREEMENT. Any party, including Exxon and Exxon Pipeline, can terminate the agreement if

(1) a court of competent jurisdiction disapproves or overturns a plea agreement in the federal criminal case against Exxon;

(2) a court of competent jurisdiction makes a final decision that the agreement will not be approved and entered by the court without modification; or

(3) a court of competent jurisdiction modifies the agreement in a manner materially adverse to any party, or interprets a material provision in a manner inconsistent with the parties' intentions, before or at the time of approving the agreement.

To terminate the agreement, the party must give written notice to the other parties within 10 days after the event occurs that justifies termination. If one party terminates, the agreement terminates as to all parties. The provisions for termination do not appear to involve approval of the termination by the court, although the court may get involved if the parties disagree about whether a modification was "material".

After termination under this paragraph (or termination after withdrawal under the previous paragraph), the agreement ceases to be valid, except that (1) Exxon may recover its money from the escrow account, and (2) the provisions of paragraphs 11 and 12, relating to cleanup, continue notwithstanding the termination.

Paragraph 12 gives Exxon a setoff under certain circumstances (the circumstances being different depending on whether the setoff amount exceeds \$35 million or not) for its future cleanup work against any amount that it may owe either government for the oil spill. It appears that this setoff is now cast in stone, whether the agreement is terminated or not.

Paragraph 11's relationship to termination is a bit more complex because it states that Exxon has no further obligations with respect to cleanup (except as set forth in

① under
① plan
② if doesn't approve
③ Exxon
④

② 10 days
③

Exxon
setoff
cleanup

④ Exxon
has duty
to cleanup
1987
plus other
work
1987

the agreement) after "final approval". Given the definition of "final approval" on pages 6-7, the agreement will not extinguish Exxon's cleanup duty if either of the governments withdraws from it, or if any of the parties terminates it for any reason except the rejection of the plea agreement in the criminal case. The difficulty would arise if the governments do not withdraw, the court approves the agreement without changing it or indicating that it interprets it differently from the parties, the court's decision becomes final without an appeal (at which point "final approval" occurs and Exxon's cleanup duty ends under paragraph 11) and thereafter, a court rejects the plea agreement, thereby allowing Exxon to terminate the agreement, but still arguably to claim the benefit of paragraph 11(b). This may not be very likely, but it is theoretically possible.

Questions.

1. What did the state receive in exchange for the setoff in paragraph 12, assuming the agreement is terminated?
2. Can the setoff be applied against amounts owed the state if the work was approved by the FOSC, but not the SOSC?

RETENTION OF JURISDICTION (Page 28). The court retains jurisdiction to enforce the consent decree.

MODIFICATION AND ASSERTION OF AUTHORITY (Page 28). Any modifications of the agreement can be made only with the written consent of all the parties and the approval of the court.

Also, the representatives of the parties certify that they have authority to enter into the agreement and legally bind the parties to the agreement.

Question.

1. Does the assertion by the Governor and the A.G. that they have authority to enter into the agreement and bind the state, prevent the legislature or a private party from challenging the agreement as beyond the power of the executive (e.g., if one of its provisions violates the state constitution)?

Alaska State Legislature

Legislative Research Agency




P.O. Box Y
Juneau, AK 99811-3100
Phone: (907) 165-3991
Fax: (907) 163-3351

March 20, 1991

MEMORANDUM

TO: Senator Dick Eliason

FROM: Tom Chester 
Legislative Analyst

RE: Present Value of Proposed Exxon Settlement

You asked for a calculation of the present value of the proposed Exxon oil spill settlement.

The present value of a series of future payments depends upon the inflation rate and the discount rate used in the calculation. We have used two sets of assumptions in the calculations shown in the attached table: an inflation rate of 6 percent and a real discount rate of 3 percent, and an inflation rate of 5 percent and a real discount rate of 4.5 percent. Under the first set of assumptions the present value of the negotiated settlement is \$722,321,863; under the second set of assumptions it is \$710,849,765.

Present Value

A payment received in the future has less value than a payment of the same amount received at the present time. This is because the money received now will generate interest; and because the money received now will have more purchasing power than the money received later due to inflation that occurs during the intervening period. Therefore, to convert future payments to their present value, one must make an assumption about the rate of inflation that will prevail during the future period, and the real rate of interest that the money could earn (i.e., the interest rate without an inflationary component). The real rate of interest is referred to as the real discount rate.

The higher the inflation and discount rates, the lower the present value of a future payment; the lower these rates, the greater the present value. The more distant the payment, the less its present value; the sooner the payment, the greater its present value.

A person is theoretically indifferent to receiving the present value of a future payment or the future payment. Thus, in the case of the proposed settlement of the Exxon Valdez oil spill, Alaskans should be indifferent

Senator Eliason
March 20, 1991
Page 2

between receiving the proposed stream of payments and a one-time lump sum payment now of \$722,321,863 (or whatever the number is, depending on the inflation and discount rates used in the calculation).

The analysis presented in the attached table assumes the payments presented in the column labeled "Settlement Amount" occur. This may not be so; however, determination of exactly what the payments will be is beyond the scope of this request.

Calculation of Present Value

The calculation of the present values of the Exxon settlement shown in the accompanying table uses two sets of assumptions, as discussed above. Column 2 in each case is the schedule of payments in nominal dollars. Column 3 converts the payments to constant (1991) dollars. Column 4 computes the present value of the modified payment schedule from column 3 with a real discount rate. The present value of the entire series of payments is the last entry in column 4.

We hope this information has been of value. Please call if we can provide you with further information.

Attachments

Proposed Exxon Settlement Payments in Present Value

Case a

Year[1]	Settlement Amount[2] (Nominal Dollars)	1991 Dollars[3]	Present Value (1991 Dollars) [4]	Cumulative Payment (Nominal Dollars)
1991	\$190,000,000	\$190,000,000	\$190,000,000	\$190,000,000
1992	\$150,000,000	\$139,462,976	\$134,404,063	\$340,000,000
1993	\$100,000,000	\$87,712,563	\$82,068,793	\$440,000,000
1994	\$70,000,000	\$57,923,391	\$52,617,838	\$510,000,000
1995	\$70,000,000	\$54,644,708	\$48,193,660	\$580,000,000
1996	\$70,000,000	\$51,551,612	\$44,141,473	\$650,000,000
1997	\$70,000,000	\$48,633,596	\$40,429,999	\$720,000,000
1998	\$70,000,000	\$45,880,751	\$37,030,591	\$790,000,000
1999	\$70,000,000	\$43,283,727	\$33,917,009	\$860,000,000
2000	\$70,000,000	\$40,833,705	\$31,065,222	\$930,000,000
2001	\$70,000,000	\$38,522,363	\$28,453,216	\$1,000,000,000
Cumulative Sum	\$1,000,000,000	\$798,449,392	\$722,321,863	

Assumptions

- 6.00% Inflation Rate
- 3.00% Real Discount Rate

Case b

Year[1]	Settlement Amount[2] (Nominal Dollars)	1991 Dollars[3]	Present Value (1991 Dollars) [4]	Cumulative Payment (Nominal Dollars)
1991	\$190,000,000	\$190,000,000	\$190,000,000	\$190,000,000
1992	\$150,000,000	\$141,125,221	\$133,570,106	\$340,000,000
1993	\$100,000,000	\$89,603,315	\$81,154,466	\$440,000,000
1994	\$70,000,000	\$59,735,543	\$51,773,184	\$510,000,000
1995	\$70,000,000	\$56,890,994	\$47,184,492	\$580,000,000
1996	\$70,000,000	\$54,181,899	\$43,002,499	\$650,000,000
1997	\$70,000,000	\$51,601,808	\$39,191,159	\$720,000,000
1998	\$70,000,000	\$49,144,579	\$35,717,620	\$790,000,000
1999	\$70,000,000	\$46,804,361	\$32,551,944	\$860,000,000
2000	\$70,000,000	\$44,575,582	\$29,666,843	\$930,000,000
2001	\$70,000,000	\$42,452,935	\$27,037,451	\$1,000,000,000
Cumulative Sum	\$1,000,000,000	\$826,116,238	\$710,849,765	

Assumptions

- 5.00% Inflation Rate
- 4.50% Real Discount Rate

Notes:

- [1] 1991 payment made in June 1991. All other payments occur on September 1 of specified year.
- [2] Proposed Payment Schedule, United States of America v. Exxon Corp., Exxon Shipping, and Exxon Pipeline Co.
- [3] Payments adjusted for inflation.
- [4] Payments adjusted for inflation are discounted back to 1991 using real discount rate.

RICHARD B. STEWART
Assistant Attorney General
Environment & Natural Resources
Division

STUART M. GERSON
Assistant Attorney General
Civil Division
U.S. Department of Justice
Washington, D.C. 20530

Attorneys for Plaintiff United States of America

CHARLES E. COLE
Attorney General
State of Alaska
Pouch K
Juneau, Alaska 99811

Attorney for Plaintiff State of Alaska

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

UNITED STATES OF AMERICA,
Plaintiff,

v.

EXXON CORPORATION, EXXON SHIPPING
COMPANY, and EXXON PIPELINE COMPANY,
in personam, and the T/V
EXXON VALDEZ, in rem,
Defendants.

Civil Action No.

The STATE OF ALASKA,
Plaintiff,

v.

EXXON CORPORATION, EXXON SHIPPING
COMPANY, and EXXON PIPELINE COMPANY,
in personam, and the T/V
EXXON VALDEZ, in rem,
Defendants.

Civil Action No.

AGREEMENT AND
CONSENT DECREE

time of approval, in a manner inconsistent with the Parties' intentions; and (4) the time for appeal from that judgment has expired without the filing of an appeal, or the judgment has been upheld on appeal and either the time for further appeal has expired without the filing of a further appeal or no further appeal is allowed.

Effect of Entry of Decree by Court

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

Payment Terms

8. Exxon shall pay to the Governments pursuant to this Agreement a total of \$900 million, discharged as follows:

(a) Exxon shall pay, within 10 days after the Effective Date, \$90,000,000.

(b) Exxon shall pay on September 1, 1992 the amount determined by the following formula:

amount payable = \$150,000,000 minus X, where
"X" equals Exxon's expenditures for work done from
January 1, 1991 to the Effective Date, in
preparation for and conduct of clean-up of the Oil
Spill in accordance with directions of the Federal
On-Scene Coordinator, up to a maximum of \$4,000,000,
plus Expenditures made by Exxon for clean-up work

after the Effective Date in accordance with Paragraph 11.

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

September 1, 1993	\$100,000,000
September 1, 1994	\$ 70,000,000
September 1, 1995	\$ 70,000,000
September 1, 1996	\$ 70,000,000
September 1, 1997	\$ 70,000,000
September 1, 1998	\$ 70,000,000
September 1, 1999	\$ 70,000,000
September 1, 2000	\$ 70,000,000
September 1, 2001	\$ 70,000,000

(d) The payments required by this paragraph shall be made as directed jointly in writing, not less than 5 business days before the due date, by the Assistant Attorney General, Environment & Natural Resources Division, United States Department of Justice, and the Attorney General, State of Alaska.

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

as to payment signed jointly by the Assistant Attorney General, Environment & Natural Resources Division, United States Department of Justice, and the Attorney General, State of Alaska, Exxon shall require that a sum be paid to the Governments equal to all amounts required to be paid into the Escrow pursuant to this paragraph together with an amount calculated by applying to each deposit a rate equal to the average daily yield on three-month Treasury Bills in effect while the funds are on deposit. "The average daily yield on three-month Treasury Bills" means the arithmetic mean of the three-month Treasury Bill rates, as quoted in the H.15 (519) weekly release published by the Board of Governors of the Federal Reserve System under the caption "U.S. Government Securities/Treasury Bills/Secondary Market," multiplied by the actual number of days of such deposit divided by 360. For the purposes of calculating such arithmetic mean, each Saturday, Sunday and holiday shall be deemed to have a rate equal to the rate for the immediately preceding business day. If the earnings accrued on the Escrow are insufficient to make the payment to Governments required by this paragraph and to pay the reasonable fees and expenses of the Escrow Agent, Exxon shall pay the difference so that such amounts will be paid in full. No amount shall be disbursed from the Escrow for any reason, except to make the payment required by this paragraph or to pay reasonable fees and expenses of the Escrow Agent and, after the foregoing payments, to close out the Escrow, unless one of the following events occurs: (1) the United States or the State

withdraws its consent to entry of the Agreement pursuant to Paragraph 37; or (2) any Party terminates the Agreement pursuant to Paragraph 38. If one of these events occurs, all sums in the Escrow shall be returned to Exxon.

10. As agreed to between the Governments, without any consultation with or participation by Exxon or Exxon Pipeline, the amounts paid under Paragraphs 8 or 9 shall be applied by the Governments solely for the following purposes: (1) to reimburse the United States and the State for response and clean-up costs incurred by either of them on or before December 31, 1990 in connection with the Oil Spill; (2) to reimburse the United States and the State for natural resource damages assessment costs (including costs of injury studies, economic damages studies, and restoration planning) incurred by either of them prior to the Effective Date in connection with the Oil Spill; (3) to reimburse the State for attorneys fees, experts' fees, and other costs (collectively, "Litigation Costs") incurred by it prior to the Effective Date in connection with litigation arising from the Oil Spill; (4) to reimburse the United States and the State for response and clean-up costs incurred by either of them after December 31, 1990 in connection with the Oil Spill; and (5) after the Effective Date, to assess injury resulting from the Oil Spill and to plan, implement, and monitor the restoration, rehabilitation, or replacement of Natural Resources or natural resource services injured, lost, or destroyed as a result of the Oil Spill, or the acquisition of equivalent resources or

services; provided, however, that the aggregate amount allocated for United States past response and clean-up costs and damage assessment costs (under items 1 and 2 above) shall not exceed \$62 million, and the aggregate amount allocated for State past response and clean-up costs, damage assessment costs, and Litigation Costs (under items 1-3 above) shall not exceed \$72 million. The Governments represent that the monies paid by Exxon to the Governments pursuant to this Agreement will be allocated, received, held, and used in accordance with the Memorandum of Agreement and Consent Decree between the United States and the State of Alaska ("MOA"), which the Governments have submitted or will submit to this Court to resolve claims of the Governments against one another with respect to their respective shares in recoveries for Natural Resource Damages resulting from the Oil Spill. This paragraph and the MOA do not create any rights in, or impose any obligations on, Exxon, Exxon Pipeline, Alyeska, or any other person or entity except the Governments.

Commitment by Exxon to Continue Clean-up

11. (a) Exxon shall continue clean-up work relating to the Oil Spill after the Effective Date, as directed by and in accordance with the directions of the Federal On-Scene Coordinator ("FOSC"), subject to prior approval by the FOSC of the costs of work directed by the FOSC. After the Effective Date, Exxon shall also perform any additional clean-up work directed by the State On-Scene Coordinator ("State OSC") that does not interfere or affirmatively conflict with work directed



Alaska Permanent Fund Corporation

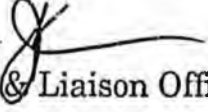
P.O. Box 4-1000 Juneau, Alaska 99802-4100

(907) 465-2047

MEMORANDUM

DATE: March 19, 1991

TO: Senate Special Committee on the Exxon Settlement

FROM: Jim Kelly 
Research & Liaison Officer

SUBJECT: **Present Value of the Proposed Exxon Settlement**

Per your request, attached is a table which provides a rough approximation of the present value to the State of Alaska of the proposed Exxon settlement. These numbers are not exact because this analysis assumes the payments are received on December 31 of each year, not September 1. Notwithstanding this difference, the numbers as attached are in the ball park — if the assumptions made here about future inflation rates and the future value of money turn out to be correct.

This analysis assumes a 6 percent per year rate of inflation for each of the next 10 years, and the opportunity during that same period of time to earn a compound rate of return on dollars invested of 9 percent. For the long term, the Alaska Permanent Fund Corporation makes the same inflation and rate of return assumptions.

There are undoubtedly a number of other issues involved in analyzing the financial aspects of the settlement, such as whether or not the State will actually control disbursement or investment of all of the settlement monies, etc. I would suggest that you contact Tom Chester of the Legislative Research Agency for a more detailed analysis.

cc: Tom Chester, Legislative Research Agency

	Amts of Exxon Payments	Real 1991 \$ (Inflation @ 6%)	Present Value (Return @ 9%)	FV of Payments In 2001 @ 9% Return
1991	140,000,000	140,000,000	140,000,000	331,380,000
1992	150,000,000	141,510,000	137,610,000	325,650,000
1993	100,000,000	89,000,000	84,170,000	199,200,000
1994	70,000,000	58,772,000	54,054,000	127,960,000
1995	70,000,000	55,447,000	49,588,000	117,390,000
1996	70,000,000	52,311,000	45,493,000	107,660,000
1997	70,000,000	49,350,000	41,741,000	98,770,000
1998	70,000,000	46,557,000	38,290,000	90,650,000
1999	70,000,000	43,918,000	35,133,000	83,160,000
2000	70,000,000	41,433,000	32,228,000	76,300,000
2001	70,000,000	39,088,000	29,568,000	70,000,000
	\$950,000,000	\$757,386,000	\$687,875,000	\$1,628,120,000

DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

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

MEMORANDUM

March 19, 1991

SUBJECT: Exxon Settlement; Overview of Memorandum of Agreement and Consent Decree (MOA) and Preliminary Questions Related to It (Work Order No. 7LS1053)

TO: Senator Dick Eliason

FROM: Pamela Finley *Pam Finley*
Assistant Revisor of Statutes

OVERVIEW: MOA

The "Memorandum of Agreement and Consent Decree" (MOA) settles a lawsuit that has recently been filed, or will soon be filed, in federal District Court in Alaska. In this lawsuit the federal and state governments are suing each other. The MOA concerns how the money recovered jointly by the U.S. and the State in the Exxon case is to be spent. Exxon is not a party to this lawsuit or the MOA.

Legal Basis. The Clean Water Act (CWA) says that the state is to recover for injuries to natural resources "on behalf of the public as trustee," 33 U.S.C. 1321(f)(5), but does not address the mechanics of the "trust". However, federal regulations adopted under the CWA (or under CERCLA, but applicable to the CWA, 42 U.S.C. 9651(c)), do address the mechanics of spending money recovered under the CWA. The state trustee is appointed by the Governor, 42 U.S.C. 9607(f)(2)(B), and recovers on behalf of the public for damage to state resources. 40 CFR 300.605. The trustee then devises a plan for the restoration, rehabilitation, replacement, or acquisition of equivalent natural resources. 40 CFR 300.615(c)(4); and 43 CFR 11.93. The money is then to be spent in accordance with this plan. 43 CFR 11.92(c).

Types of Damages. The MOA deals with three types of damages. First there are "allowed expenses". These are the unreimbursed past expenses incurred by the state or federal governments for assessment and restoration (response and cleanup) and the state's litigation expenses. Second there are unreimbursed costs of future response and cleanup incurred by the state or federal government. Finally, there is "natural resource damage recovery," which is intended to compensate for the damage done state and federal natural resources. MOA IIA and G, pp.6-7.

Senator Dick Eliason
March 19, 1991
Page 2

Allowed Expenses. The state can recover up to \$72 million for its "allowed expenses". This money would be paid directly by Exxon to the state treasury "over a period of five years." MOA VB. The MOA does not say what 5 years, or whether the installments are to be equal. Although the MOA is not entirely clear on this point, it appears that this money would have no restrictions on its use since it simply replaces money the state has already spent on items allowed under the CWA. If this is so, the legislature could then appropriate the money for any purpose.

The federal government would also be reimbursed, directly by Exxon, for its past restoration and assessment expenses, up to \$62 million.

Future Response Costs. If the state or federal governments perform response work after December 31, 1990, and the work is certified by the federal on-scene coordinator (FOSC) or the state on-scene coordinator (SOSC), reimbursement for those expenses shall also be paid by Exxon directly to the appropriate government. MOA VB, p.13. It appears that any such reimbursements to the state would go to the state treasury and be available for appropriation without limitation as to any specific purpose.

Natural Resource Damage Recovery. Whatever is left of the \$900 million after Exxon's cleanup costs after December 31, 1990 have been deducted, allowed expenses have been paid to the state (up to \$72 million) and federal (up to \$62 million) governments, and future response costs have been paid, will be deposited in a trust fund in the court registry. Interestingly enough, the federal regulations require that money recovered by the state trustee under the CWA be deposited either in a special account in the state treasury, or in an interest bearing account payable to the state agency acting as trustee. 43 CFR 11.92(a)(2). However, the MOA does not allocate this money between the federal and state governments nor does it appear to require that such an allocation be made in the future. While the regulations encourage trustees to cooperate, they do not explicitly authorize such a joint trust. 40 CFR 300.615.

Under the MOA, six trustees (3 federal officials and 3 state officials) will decide how to spend the money in the trust fund. MOA IVA 1 and 2, pp 9-10. If all six trustees cannot agree as to how the money shall be spent, the federal district court judge will decide; the trustees may also submit a dispute to non-binding mediation or "other means of conflict resolution." MOA IVA 3. The MOA requires the trustees to establish procedures for "meaningful public participation" (including an advisory group) in formulating an injury assessment and restoration plan. MOA IVA 4. Once the plan is established, it appears that the trustees would spend the money to implement it. MOA IVA 1, pp. 9-10. I have found nothing in the MOA that requires the trustees to use federal or state agencies in spending the money, nor anything that would prevent them from doing so. However, if some of the money is

to be used by a state agency, it would probably have to be appropriated. See MOA VD, p. 13.

Other. The MOA terminates 16 years from its effective date. The MOA does not require legislative approval, or even provide for it, but the MOA is referenced in the consent decree.

PRELIMINARY QUESTIONS RELATED TO THE MOA

1. Since some of the natural resource recovery is received in exchange for damages done to state resources, does the money have to be appropriated in order to comply with the state constitution vesting the appropriation power in the legislature? If so, how would that appropriation be accomplished, especially if the money is to be spent (out of the court registry) on something other than activities of a state agency?

2. Is the dedication of funds to a specific purpose contrary to the state constitution prohibiting such dedication. (See question #1 re consent decree.)

3. Would expenditures from the trust be subject to AS 36.30, the state procurement code?

4. Who, if anyone, will perform audits of the trustees' expenditures?

5. What rules apply to deposits in the court registry? Are deposits in the court registry interest bearing? May they be invested?

6. The MOA (as well as the consent decree) refers to "natural resource services" MOA p. 8 (top) and paragraph 13C's last sentence. What are these?

7. How will the trustees know how much of the trust fund should be spent on damage to state resources and how much should be spent on damage to federal resources?

8. Will the federal government be able to pay for some of its existing regular staff out of the trust fund on the theory that the federal employees are working on assessment and restoration related to the oil spill? In short, can this money simply be substituted as the funding source for services the federal government would provide anyway out of other federal funding?

9. Is the existence of the trust fund in the court registry and the commingling of state and federal damages allowed under applicable federal regulations?

Senator Dick Eliason

March 19, 1991

Page 4

10. The MOA, paragraph VC on p. 13, states that the money will be spent on restoration of natural resources in Alaska unless the trustees decide that spending funds outside of Alaska is necessary for the effective restoration, replacement or acquisition of equivalent natural resources (or services) injured in Alaska. What does this mean? Would it allow the money to be used to establish parks, institutes, centers, etc. in other states?

11. The MOA notes that the A.G. and the commissioners of fish and game and environmental conservation are the state trustees. (The trustees can be changed, MOA IIL, p.8.) Will the commissioners have the time to establish the restoration plan and implement it, in addition to their other duties? Will additional staff be required in the state budget to allow them to do so? Who will pay for administrative expenses of the trust? The trust? Will this eat up the trust?

12. For the purposes of the oil spill litigation and use of money recovered, the federal government will be able to assert that it is a co-trustee over all natural resources injured by the oil spill. The state can assert the same as to federal resources. MOA VII B, p. 14. What are the implications of this paragraph?

13. If the legislature approves the consent decree, will it be prevented from challenging the MOA?

14. Could the legislature, by enacting legislation, retain greater control over the trust proceeds than allowed by the MOA (but still be within the limits of the CWA and applicable regulations)?

15. Will reimbursements for past allowed expenses and future clean up costs go to the general fund without any restrictions on its use?

16. Does the A.G. believe it is bound by 43 CFR 11.92 and 11.93 (the way money must be spent)?

17. If the trustees buy and develop real estate, who will own it? Who will be responsible for it when the MOA terminates?

PF:pl
91-182.plm

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY

STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

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

MEMORANDUM

March 19, 1991

SUBJECT: Overview of Consent Decree and Preliminary Questions related to it (Work Order No. 7LS1053)

TO: Senator Dick Eliason

FROM: Pamela Finley *Pam Finley*
Assistant Revisor of Statutes

OVERVIEW: CONSENT DECREE.

This settles the case between the State and Exxon and the U.S. and Exxon for civil damages against Exxon arising out of the Exxon Valdez oil spill. The case has recently been, or will soon be, filed in federal District Court in Alaska. It is based on the federal Clean Water Act (CWA), 33 U.S.C. 1321(f). The state has the choice of suing in state court under state law, or federal court under the Clean Water Act. In re Allied Towing Corp., 478 F. Supp. 398 (E.D. Va. 1979). If it chooses to pursue its federal remedies (by agreeing to the consent decree), it will give up all but one of its state claims. (The one involves fisheries business taxes.) It will also be bound by certain restrictions in the CWA and related regulations.

Legal Basis. Jurisdiction is based on the federal Clean Water Act (CWA), 33 U.S.C. 1321(f). The state and the federal government each have the right to recover for their own damages under the CWA. In re Allied Towing Corp., supra. There does not appear to be any requirement that the damages to the state and the damages to the federal government be combined, although the consent decree does combine them. However, if the state chooses to sue under the CWA, it must abide by the limitations of that Act as to (1) the types of damages that can be recovered, (2) the things for which money recovered can be spent, and (3) the use of a trustee in developing a plan for spending the money recovered. The state's damages under the CWA are recovered through a trustee appointed by the Governor. 42 U.S.C. 9607(f)(2)(B).

Types of Damages. Under the CWA, the state can recover for the costs of "replacing or restoring" the damaged natural resources.

Amount to be Paid. The consent decree requires Exxon to pay \$900 million less (1) Exxon's clean up costs from 1/1/91 to the date the consent decree is signed (up to \$4 million), and (2) Exxon's clean up costs from the date the consent decree is signed through the date the consent decree is approved (including any appeals from it). See CD 8(a), p.7 and CD 11, pp. 11-12. The rest is to be paid in installments from 1991 through 2001. CD 8, pp.7-8. There is no interest accruing on the unpaid amounts before they are due, but interest does accrue on overdue payments. CD31, p. 23. The \$900 million (less Exxon's clean up costs from 1/1/91) is the total that is owed to both the state and federal governments. The consent decree does not say how much of this is the federal government's money and how much is the state's money.

To Whom Paid. The trustees (three federal appointed by the President and three state officials appointed by the Governor) tell Exxon to whom the money is to be paid. CD8(d), p. 8.

Restrictions on Use. In the consent decree the U.S. and the State agree that the money will be used as follows:

1. To reimburse the U.S. and the State for response and cleanup costs incurred by them before 1/1/91.
2. To reimburse the U.S. and the State for damage assessments done before the date the consent decree is signed.
3. To reimburse the State for litigation costs incurred before the date the consent decree is signed.
4. To reimburse the U.S. or the State or both for cleanup costs incurred by either of them after 12/31/90 and to plan, implement, and monitor the restoration, rehabilitation, or replacement of natural resources or natural resource services injured, lost or destroyed by the oil spill, or to acquire equivalent natural resources or natural resource services.

The amount that can be returned to the state for past response and cleanup costs, past damage assessments, and litigation fees, is limited to \$72 million. The amount that can be returned to the federal government for past response, cleanup, and assessment is \$62 million. The remainder is to be used by the trustees for things in #4.

Who Decides How the Money is Used. The MOA, rather than the consent decree, is the document that primarily deals with the use of the money. However, in the consent decree the governments "represent" that the money will be disbursed in accordance with the MOA. CD10, p.11. Also, the consent decree does contain the restrictions discussed above as to how the money can be used. Moreover, even if there were no MOA, the CWA restricts the use of the money to restoring, rehabilitating, or acquiring the equivalent of the natural resources that were damaged. 33 U.S.C. 1321(f)(5) The regulations under the CWA also require the state trustee

to adopt a plan, and the money to be spent in accordance with that plan. 43 C.F.R. 11.92 and 11.93. However, the "up to \$72 million" that is to be reimbursed to the state for past cleanup, response, assessment, and litigation costs, and any money reimbursed to the state for future clean up should go into the general fund and be available for any use. (The consent decree and MOA are not clear on this, but it would make sense since, with the possible exception of litigation costs, this is "reimbursement" for money already spent for the required uses.)

?
Other. The consent decree also addresses releases, reopener for damage that could not have been anticipated at the time of the settlement, provisions covering the TAPL fund, Alyeska, and third parties. Note that if the court approves the settlement, the state gives up all its civil claims relating to the oil spill, including those currently pending in state court, except the amount that would have been refunded to local governments under AS 43.75.130 (fisheries business tax). CD 13, pp. 14-15.

The consent decree also allows the State or the U.S. to withdraw from it within 45 days after the publication of the proposed consent decree in the Federal Register if comments received on it show it is inappropriate, improper, or inadequate, or if Alaska's legislature does not approve it by that time. CD 37, p. 26 Any of the parties may withdraw for certain other reasons as well, including failure of the court to accept the plea agreement in the criminal case. See CD 38, p. 27.

PRELIMINARY QUESTIONS RELATED TO THE CONSENT DECREE

1. Art. IX, sec. 7 of Alaska's Constitution prohibits dedicated funds. Money recovered under the CWA, must be dedicated. Can the A.G. chose to settle a case under a law that requires a dedicated fund, especially when the state could recover under state law, which does not require dedication? Is recovery under the CWA participation in a "federal program" such that the prohibition against dedicated funds would not apply?

2. Alaska's constitution vests the appropriation power in the legislature alone. Federal laws and regulations applicable to the CWA require the Governor to appoint a trustee who will decide how money recovered under the CWA is to be spent. Is the scheme under the CWA contrary to Alaska's constitution, and if so, does the A.G. have the power to enter into an agreement under the CWA?

3. What guarantee is there that Exxon will pay the required amounts? Is this a debt dischargeable in bankruptcy?

4. Are the amounts Exxon will pay deductible under federal tax laws? Under state tax laws?

Senator Dick Eliason
March 19, 1991
Page 4

5. If the legislature does not approve the settlement, can the state still agree to it? (It appears the answer is yes). Should/can the legislature intervene in the federal case if it does not approve the settlement, but the Governor decides to go ahead with the settlement?

6. How much has the state spent for response, cleanup, damage assessment, and litigation costs? (This question includes supplementals tied to the oil spill and regular department budgets related to it.) How much has Exxon reimbursed for these activities to date? How does the remainder owing compare to the \$72 million maximum that the state could get back as reimbursement under the consent decree?

7. To what extent would the legislature's approval of the consent decree constitute an approval of the MOA?

8. At the bottom of page 10 and top of page 11, the consent decree refers to "natural resources or natural resource services" that were injured, lost, or destroyed and the acquisition of equivalent "resources or services". What is a "natural resource service"?

PF:pl
91-183.plm

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

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

MEMORANDUM

March 19, 1991

SUBJECT: Sectional Analysis of Consent Decree (W.O. 17LS-1053)

TO: Senator Dick Eliason

FROM: Pamela Finley *Pam Finley*
Assistant Revisor of Statutes

SECTIONAL ANALYSIS OF CONSENT DECREE THROUGH PARAGRAPH 12

INTRODUCTION. Pages 2-3. This sets out the background of the federal case. The important points are (1) an assertion that only the trustees are entitled to act on behalf of the public as trustees to recover damages to the natural resources arising from the oil spill; (2) the payments by Exxon are in addition to the \$2 billion that Exxon alleges it has spent for past cleanup and reimbursements to the federal, state, and local governments; and (3) the payments are made in response to " pending or potential civil claims for damages or other civil relief."

Questions.

1. Could the state still sue Exxon for violation of state criminal laws? Does it intend to do so?
2. Does the fact that the money is exchanged for the extinguishment of claims under state law affect the applicability of the CWA and regulations under it?

JURISDICTION. (Page 4). This sets out the basis of the federal district court's jurisdiction---federal question; maritime and admiralty; U.S. as a plaintiff; and the Clean Water Act.

Question.

1. Why did the parties want to have a consent decree as well as an agreement extinguishing claims? (To have a remedy available to enforce agreement? Other?)

Senator Dick Eliason
March 19, 1991
Page 2

PARTIES.(Page 4). This sets out the parties to the agreement. Note that "Exxon" includes the T/V EXXON VALDEZ, but does not include Exxon Pipeline.

DEFINITIONS.(Pages 5-7). This section defines terms used in the consent decree. "Governments" is defined earlier (page 1) to mean the U.S. and the State of Alaska.

Note that "natural resources" includes those belonging to the federal government, the state, or both.

For the purposes of the consent decree, the only state trustee is the attorney general.

The "effective date" is the date all parties have signed the agreement, while "final approval" does not occur until 45 days after the agreement has been published in the Federal Register, and the court has approved the agreement and the time for appeal from that decision has elapsed without appeal, or the decision has been upheld on appeal.

Special attention should be paid to the definition of "natural resource damages." It includes damages to natural resources arising under state as well as federal law. It also includes "economic rent".

Questions.

1. Why are the natural resource damages of the state not separated from the natural resource damages of the federal government?
2. If the court signs the consent decree, when does the time for appealing that decision expire?
3. Does the reference to claims under state law mean that this recovery is not entirely under the CWA?
4. What do the terms in the first three lines of page 6 mean? Does "natural resource damage" include economic loss to the state e.g. lost taxes?
5. When was the last date that all parties signed? (My copy does not show Exxon's signature.)

EFFECT OF ENTRY OF DECREE (Page 7). Once the decree is signed and entered by the court, it is a final judgment between the state and federal governments and Exxon and Exxon Pipeline.

PAYMENT TERMS; PARAGRAPH 8 (Pages 7-8). Exxon is to pay to both governments jointly, a total of \$900 million. The first payment of \$90 million is due

10 days after the effective date. The second payment is due September 1, 1992. The amount of the second payment is \$150 million, less (1) Exxon's cleanup costs from January 1, 1991 to the effective date (up to \$4 million); and (2) Exxon's cleanup costs from the effective date to the date of final approval. On September 1, 1993, Exxon is to pay \$100 million. On September 1 of each year from 1994 through 2001, Exxon is to pay \$70 million. The payments shall be made as directed jointly in writing by the state attorney general and the federal assistant attorney general in charge of environment and natural resources.

Questions.

1. What is the present value of the amounts to be paid by Exxon?
2. Has Exxon paid the first \$90 million?
3. What guarantee is there that Exxon will pay the required amounts? Is this a debt dischargeable in bankruptcy?
4. Are the amounts Exxon will pay deductible under federal tax law? Under state tax laws?

ESCROW; PARAGRAPH 9 (Pages 8-10). If final approval of the consent decree has not occurred when a payment is due (which will almost certainly be the case with the first payment), Exxon is to deposit the payment in an escrow account and notify the state and federal governments. The escrow agent must submit to the court's jurisdiction. After final approval, and 5 days after notification by the state and federal attorneys general, the money shall be paid to the "governments", plus interest. The interest is based on the average daily yield on three-month treasury bills. If the amount in the escrow account is not sufficient to pay that amount of interest and the escrow expenses, Exxon must make up the difference. If either government withdraws its consent under paragraph 37, or any party terminates the agreement under paragraph 38, the money in the escrow account shall be returned to Exxon.

USE OF MONEY; PARAGRAPH 10 (Pages 10-11). In this paragraph the governments agree between themselves how the money is to be spent. The consent decree states that neither Exxon, Exxon Pipeline, Alyeska, nor anyone except the governments obtains a right or obligation as a result of this paragraph.

The U.S. and the State "agree" that the money will be spent only as follows:

- (1) to reimburse the state and federal governments for response and cleanup costs incurred before January 1, 1991;

(2) to reimburse the state and federal governments for damage assessment costs incurred before the effective date;

(3) to reimburse the state for litigation costs incurred before the effective date;

(4) to reimburse the state and federal governments for cleanup and response costs incurred by either of them after December 31, 1990; and

(5) to assess injury and plan, implement, and monitor the restoration, rehabilitation, or replacement of natural resources (or natural resource services) injured, lost, or destroyed as a result of the oil spill, or acquire the equivalent of those resources or services.

The maximum amount that the state can receive as reimbursement for past response, cleanup, assessment, and litigation expenses is \$72 million. The maximum amount that the federal government can receive as reimbursement for past response, cleanup, and assessment is \$62 million. The federal and state governments also "represent" that the amount recovered from Exxon will be spent in accordance with the MOA.

Questions.

1. Art. IX, sec. 7 of Alaska's Constitution prohibits dedicated funds. Money recovered under the CWA must be dedicated, as this paragraph reflects. Can the A.G. chose to settle a case under a law that requires a dedicated fund, especially when the state could recover under state law, which does not require dedication? Is recovery under the CWA participation in a "federal program" such that the prohibition against dedicated funds would not apply?

2. Alaska's constitution vests the appropriation power in the legislature alone. Federal laws and regulations applicable to the CWA require the Governor to appoint a trustee who will decide how money recovered under the CWA is to be spent. Is the scheme under the CWA contrary to Alaska's constitution, and if so, does the attorney general have the power to enter into an agreement under the CWA?

3. How much has the state spent for response, cleanup, damage assessment, and litigation costs? (This question includes supplementals tied to the oil spill and regular department budgets related to it.) How much has Exxon reimbursed for these activities to date? How does the remainder owing compare to the \$72 million maximum that the state could get back as reimbursement under the consent decree?

4. To what extent would the legislature's approval of the consent decree constitute an approval of the MOA?

5. This paragraph refers to "natural resource services." What is a "natural resource service"?

6. It appears that the reimbursements to the state (up to \$72 million) are not restricted as to use. Is this true?

7. Despite the statement to the contrary, will a private party have a right to enforce the restrictions in use set forth in this paragraph?

EXXON'S CONTINUED CLEANUP: PARAGRAPH 11 (Page 11). Paragraph 11(a) requires Exxon to continue cleanup work after the effective date, as directed by the federal on-scene coordinator (FOSC), subject to prior approval of costs by the FOSC. In addition Exxon shall perform cleanup work as directed by the state on-scene coordinator, to the extent it does not conflict with the directions of the FOSC or federal law, subject to prior approval of costs. This paragraph also states that "Exxon should have no liability to any person or entity, including the Governments, by reason of undertaking clean-up work performed in accordance with directions of the FOSC for the State OSC." Under paragraph 11(b), Exxon's obligation for cleanup ends upon final approval of the settlement "except as set forth in this Agreement". In addition, Exxon gets a credit for its expenditures for cleanup under this paragraph. "Expenditures" includes salaries, wages, benefits, expenses for Exxon employees, for contractors, for equipment purchase and rental, for office and warehouse space, and for insurance, accounting, and other professional services.

Questions.

1. If the State OSC or the FOSC disagree with Exxon's proposed costs, does Exxon still have to do the work? (What does "subject to prior approval" mean?) In the event of a dispute about the costs, who makes the final decision?

2. The first sentence of 11(b) provides that Exxon has no cleanup obligations after final approval of the consent decree "except as set forth in this Agreement." Does another paragraph of the agreement impose cleanup obligations after final approval?

3. What does the last sentence of 11(a)---concerning immunity of Exxon from liability "by reason of undertaking clean-up work" in accordance with directions of the FOSC or State OSC--- mean? Is it intended to immunize Exxon from liability for acts connected with cleanup work Exxon does under direction of the FOSC or State OSC? Can it be read as an agreement by the state and federal governments to indemnify Exxon if a third party recovers against Exxon based on acts related to this cleanup? Does it apply to past work? Does it apply to workers compensation? Contract claims?

Senator Dick Eliason

March 19, 1991

Page 6

EXXON'S CONTINUED CLEANUP: PARAGRAPH 12 (Pages 13-14). If the agreement is terminated, or the court does not approve it, Exxon can setoff expenditures made by Exxon under paragraph 11 against any liability Exxon may have to either government as follows:

(1) If the post-effective date expenditures are \$35 million or less, the setoff does not apply unless Exxon shows both

(a) that based on information available to the FOSC or State OSC the anticipated cost was grossly disproportionate to the net environmental benefits anticipated, or the work could not reasonably have been expected to result in a net environmental benefit; and

(b) that Exxon submitted a written objection to the work a reasonable time before beginning it, explaining its objections.

(2) If the post-effective date expenditures are above \$35 million, Exxon gets the setoff unless the government or governments show that based on the information available to the FOSC or State OSC, the work was reasonably expected to result in a net environmental benefit and the anticipated cost was not substantially out of proportion to the net environmental benefit reasonably anticipated from the work.

Question.

1. Can Exxon setoff amounts approved by the FOSC against amounts owed the State? Can Exxon setoff amounts approved by the State OSC against amounts owed the federal government?

PF:lmb:pl
91-187.plm

RICHARD B. STEWART
Assistant Attorney General
Environment & Natural Resources
Division

STUART M. GERSON
Assistant Attorney General
Civil Division
U.S. Department of Justice
Washington, D.C. 20530

Attorneys for Plaintiff United States of America

CHARLES E. COLE
Attorney General
State of Alaska
Pouch K
Juneau, Alaska 99811

Attorney for Plaintiff State of Alaska

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

UNITED STATES OF AMERICA,
Plaintiff,

v.

EXXON CORPORATION, EXXON SHIPPING
COMPANY, and EXXON PIPELINE COMPANY,
in personam, and the T/V
EXXON VALDEZ, in rem,

Defendants.

Civil Action No.

The STATE OF ALASKA,
Plaintiff,

v.

EXXON CORPORATION, EXXON SHIPPING
COMPANY, and EXXON PIPELINE COMPANY,
in personam, and the T/V
EXXON VALDEZ, in rem,

Defendants.

Civil Action No.

AGREEMENT AND
CONSENT DECREE

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

Introduction

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

The State has filed an action in the Superior Court for the State of Alaska, Third Judicial District, arising from the Oil Spill, identified as State of Alaska v. Exxon Corporation, et al., Civil No. JAN-89-6852 ("State Court Action"), and Exxon has asserted counterclaims against the State in that action.

On or before the lodging of this Agreement with the Court, the United States and the State will each have filed a complaint in this Court against Exxon and Exxon Pipeline, asserting civil claims relating to or arising from the Oil Spill ("Federal Court Complaints"). Exxon and Exxon Pipeline have asserted or will assert counterclaims against the United States and the State in their responses to the Federal Court Complaints.

Exxon Corporation and Exxon Shipping Company have also filed administrative demands against the United States Coast Guard, with the U.S. Coast Guard, Coast Guard Maintenance & Logistics Command-Pacific at Alameda, California under date of September 21, 1990.

The United States and the State represent that it is their legal position that only officials of the United States designated by the President and state officials designated by the Governors of the respective states are entitled to act on behalf of the public as trustees of Natural Resources to recover damages for injury to Natural Resources arising from the Oil Spill under Section 311(f) of the Clean Water Act, 33 U.S.C. § 1321(f).

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

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

NOW, THEREFORE, the Parties agree, and it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

- 4 -

Jurisdiction

1. The Court has jurisdiction over the subject matter of the claims set forth in the Federal Court Complaints and over the parties to this Agreement pursuant to, among other authorities, 28 U.S.C. §§ 1331, 1333 and 1345, and section 311(f) of the Clean Water Act, 33 U.S.C. § 1321(f). This Court also has personal jurisdiction over Exxon and Exxon Pipeline, which, solely for the purposes of this Agreement, waive all objections and defenses that they may have to the jurisdiction of the Court or to venue in this District.

Parties

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

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

4. "Exxon" means Exxon Corporation, a New Jersey corporation, Exxon Shipping Company, a Delaware corporation, and the T/V EXXON VALDEZ, Official Number 692966 (now the T/V EXXON MEDITERRANEAN).

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

- 5 -

Definitions

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

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

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

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

(d) "Natural Resource Damages" means compensatory and remedial relief recoverable by the Governments in their capacity as trustees of Natural Resources for injury to, destruction of, or loss of any and all Natural Resources resulting from the Oil Spill, whether under the Clean Water Act, 33 U.S.C. §§ 1251, et seq., the Trans-Alaska Pipeline Authorization Act, 43 U.S.C. §§ 1651, et seq., or any federal or state statute or maritime or common law relating to the environment, including (1) costs of damage assessment, (2) compensation for loss, injury, impairment, damage or destruction of Natural Resources, whether temporary or

- 6 -

permanent, or for loss of use value, non-use value, option value, amenity value, bequest value, existence value, consumer surplus, economic rent, or any similar value of Natural Resources, and (3) costs of restoration, rehabilitation or replacement of injured Natural Resources or the acquisition of equivalent resources.

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

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

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

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

(i) "Final Approval" shall mean the earliest date on which all of the following have occurred: (1) the Agreement has been lodged with the Court and noticed in the Federal Register, and the period for submission of public comments has expired; (2) the period for withdrawal of consent by the Governments under Paragraph 37 has expired; (3) the Court has approved and entered the Agreement as a judgment, without modification and without interpreting a material term of the Agreement, prior to or at the

time of approval, in a manner inconsistent with the Parties' intentions; and (4) the time for appeal from that judgment has expired without the filing of an appeal, or the judgment has been upheld on appeal and either the time for further appeal has expired without the filing of a further appeal or no further appeal is allowed.

Effect of Entry of Decree by Court

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

Payment Terms

8. Exxon shall pay to the Governments pursuant to this Agreement a total of \$900 million, discharged as follows:

(a) Exxon shall pay, within 10 days after the Effective Date, \$90,000,000.

(b) Exxon shall pay on September 1, 1992 the amount determined by the following formula:

amount payable = \$150,000,000 minus X, where
"X" equals Exxon's expenditures for work done from
January 1, 1991 to the Effective Date, in
preparation for and conduct of clean-up of the Oil
Spill in accordance with directions of the Federal
On-Scene Coordinator, up to a maximum of \$4,000,000,
plus Expenditures made by Exxon for clean-up work

after the Effective Date in accordance with Paragraph 11.

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

September 1, 1993	\$100,000,000
September 1, 1994	\$ 70,000,000
September 1, 1995	\$ 70,000,000
September 1, 1996	\$ 70,000,000
September 1, 1997	\$ 70,000,000
September 1, 1998	\$ 70,000,000
September 1, 1999	\$ 70,000,000
September 1, 2000	\$ 70,000,000
September 1, 2001	\$ 70,000,000

(d) The payments required by this paragraph shall be made as directed jointly in writing, not less than 5 business days before the due date, by the Assistant Attorney General, Environment & Natural Resources Division, United States Department of Justice, and the Attorney General, State of Alaska.

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

- 9 -

as to payment signed jointly by the Assistant Attorney General, Environment & Natural Resources Division, United States Department of Justice, and the Attorney General, State of Alaska, Exxon shall require that a sum be paid to the Governments equal to all amounts required to be paid into the Escrow pursuant to this paragraph together with an amount calculated by applying to each deposit a rate equal to the average daily yield on three-month Treasury Bills in effect while the funds are on deposit. "The average daily yield on three-month Treasury Bills" means the arithmetic mean of the three-month Treasury Bill rates, as quoted in the H.15 (519) weekly release published by the Board of Governors of the Federal Reserve System under the caption "U.S. Government Securities/Treasury Bills/Secondary Market," multiplied by the actual number of days of such deposit divided by 360. For the purposes of calculating such arithmetic mean, each Saturday, Sunday and holiday shall be deemed to have a rate equal to the rate for the immediately preceding business day. If the earnings accrued on the Escrow are insufficient to make the payment to Governments required by this paragraph and to pay the reasonable fees and expenses of the Escrow Agent, Exxon shall pay the difference so that such amounts will be paid in full. No amount shall be disbursed from the Escrow for any reason, except to make the payment required by this paragraph or to pay reasonable fees and expenses of the Escrow Agent and, after the foregoing payments, to close out the Escrow, unless one of the following events occurs: (1) the United States or the State

- 10 -

withdraws its consent to entry of the Agreement pursuant to Paragraph 37; or (2) any Party terminates the Agreement pursuant to Paragraph 38. If one of these events occurs, all sums in the Escrow shall be returned to Exxon.

10. As agreed to between the Governments, without any consultation with or participation by Exxon or Exxon Pipeline, the amounts paid under Paragraphs 8 or 9 shall be applied by the Governments solely for the following purposes: (1) to reimburse the United States and the State for response and clean-up costs incurred by either of them on or before December 31, 1990 in connection with the Oil Spill; (2) to reimburse the United States and the State for natural resource damages assessment costs (including costs of injury studies, economic damages studies, and restoration planning) incurred by either of them prior to the Effective Date in connection with the Oil Spill; (3) to reimburse the State for attorneys fees, experts' fees, and other costs (collectively, "Litigation Costs") incurred by it prior to the Effective Date in connection with litigation arising from the Oil Spill; (4) to reimburse the United States and the State for response and clean-up costs incurred by either of them after December 31, 1990 in connection with the Oil Spill; and (5) after the Effective Date, to assess injury resulting from the Oil Spill and to plan, implement, and monitor the restoration, rehabilitation, or replacement of Natural Resources or natural resource services injured, lost, or destroyed as a result of the Oil Spill, or the acquisition of equivalent resources or

- 11 -

services; provided, however, that the aggregate amount allocated for United States past response and clean-up costs and damage assessment costs (under items 1 and 2 above) shall not exceed \$62 million, and the aggregate amount allocated for State past response and clean-up costs, damage assessment costs, and Litigation Costs (under items 1-3 above) shall not exceed \$72 million. The Governments represent that the monies paid by Exxon to the Governments pursuant to this Agreement will be allocated, received, held, and used in accordance with the Memorandum of Agreement and Consent Decree between the United States and the State of Alaska ("MOA"), which the Governments have submitted or will submit to this Court to resolve claims of the Governments against one another with respect to their respective shares in recoveries for Natural Resource Damages resulting from the Oil Spill. This paragraph and the MOA do not create any rights in, or impose any obligations on, Exxon, Exxon Pipeline, Alyeska, or any other person or entity except the Governments.

Commitment by Exxon to Continue Clean-up

11. (a) Exxon shall continue clean-up work relating to the Oil Spill after the Effective Date, as directed by and in accordance with the directions of the Federal On-Scene Coordinator ("FOSC"), subject to prior approval by the FOSC of the costs of work directed by the FOSC. After the Effective Date, Exxon shall also perform any additional clean-up work directed by the State On-Scene Coordinator ("State OSC") that does not interfere or affirmatively conflict with work directed

- 12 -

by the FOSC or with federal law, in accordance with the directions of, and subject to prior approval of costs by, the State OSC. If Exxon concludes that work directed by the State OSC would interfere or affirmatively conflict with work directed by the FOSC, or with federal law, it shall promptly notify the State OSC and the FOSC of the potential conflict and shall not be required to proceed with the work directed by the State OSC until the FOSC or the Court determines that there is no conflict or that any potential conflict has been eliminated, and directs Exxon how to proceed. Exxon should have no liability to any person or entity, including the Governments, by reason of undertaking clean-up work performed in accordance with directions of the FOSC or the State OSC.

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

- 13 -

warehouse space, and for insurance, accounting, and other professional services.

12. If this Agreement is terminated pursuant to Paragraphs 37 or 38 below, or if a final judicial determination is made that this Agreement will not be approved and entered, Exxon shall be entitled to set off against any liability it may have to either Government arising from the Oil Spill the amount of any Expenditures made by Exxon for clean-up work directed by the FOSC or the State OSC under Paragraph 11(a), if the work meets the following criteria:

(a) if total Expenditures incurred by Exxon for clean-up after the Effective Date are \$35 million or less, Expenditures for work shall be set-off if Exxon shows both --

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

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

- 14 -

(b) if total Expenditures by Exxon for clean-up after the Effective Date exceed \$35 million, Expenditures for work shall be set-off unless the Government or Governments against which Exxon is seeking to assert the set-off provided by this paragraph show that, based on the information available at the time to the FOSC or State OSC who directed the work, the work was reasonably expected to result in a net environmental benefit, and the anticipated cost of the work was not substantially out of proportion to the net environmental benefit reasonably anticipated from the work.

Releases and Covenants Not to Sue by the Governments

13. Effective upon Final Approval, the Governments release and covenant not to sue or to file any administrative claim against Exxon with respect to any and all civil claims, including claims for Natural Resource Damages, or other civil relief of a compensatory and remedial nature which have been or may be asserted by the Governments, including without limitation any and all civil claims under all federal or state statutes and implementing regulations, common law or maritime law, that arise from, relate to, or are based on, or could in the future arise from, relate to, or be based on: (1) any of the civil claims alleged in the pending action against Exxon by the State in the State Court Action, (2) any of the civil claims asserted in the Federal Court Complaints, or (3) any other civil claims that could be asserted by either or both of the Governments against Exxon relating to or arising from the Oil Spill; provided,

- 15 -

however, that nothing in this Agreement shall affect or impair the following:

(a) claims by either Government to enforce this Agreement, including without limitation Exxon's agreement to make additional payments as set forth in Paragraphs 17-19;

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

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

(d) claims by the State for tax revenues which would have been or would be collected under existing AS 43.75 (Fisheries Business Tax) but for the Oil Spill, provided that, if the State obtains a judgment for such a claim against Exxon or Exxon Pipeline, the State will enforce against Exxon or Exxon Pipeline only that part of the judgment that would be refunded to local governments under AS 43.75.130 had the amount recovered been paid as taxes under AS 43.75.

14. Effective upon Final Approval, except insofar as Exxon Pipeline is liable to the Governments, or either of them, for claims relating to or arising from the Oil Spill as a result of its ownership interest in, participation in, or responsibility

- 16 -

for Alyeska, each of the Governments provides to Exxon Pipeline covenants not to sue identical to the covenants not to sue provided to Exxon in Paragraph 13. This paragraph shall not be construed as a release or covenant not to sue given by either Government to Alyeska.

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

- 17 -

arising from the Oil Spill, the Governments shall enforce the judgment only to the extent that the individual or individuals against whom the judgment was obtained are able to satisfy the judgment, without indemnification by Exxon or Exxon Pipeline, personally or through insurance policies purchased by the individual or individuals.

16. Not later than 15 days after Final Approval, each of the claims asserted by the State against Exxon and Exxon Pipeline, except for the claim described in Paragraph 13(d) of this Agreement, and each of the claims asserted by Exxon or Exxon Pipeline against the State, in the State Court Action will be dismissed with prejudice and without an award of costs or attorneys fees to any Party. Exxon, Exxon Pipeline, and the State shall enter into and execute all Stipulations of Dismissal, with prejudice, necessary to implement this paragraph.

Reopener For Unknown Injury

17. Notwithstanding any other provision of this Agreement, between September 1, 2002, and September 1, 2006, Exxon shall pay to the Governments such additional sums as are required for the performance of restoration projects in Prince William Sound and other areas affected by the Oil Spill to restore one or more populations, habitats, or species which, as a result of the Oil Spill, have suffered a substantial loss or substantial decline in the areas affected by the Oil Spill; provided, however, that for a restoration project to qualify for payment under this paragraph the project must meet the following requirements:

- 18 -

- (a) the cost of a restoration project must not be grossly disproportionate to the magnitude of the benefits anticipated from the remediation; and
- (b) the injury to the affected population, habitat, or species could not reasonably have been known nor could it reasonably have been anticipated by any Trustee from any information in the possession of or reasonably available to any Trustee on the Effective Date.

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

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

Releases and Covenants Not To Sue by Exxon and Exxon Pipeline

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

- 19 -

or could in the future arise from, relate to, or be based on: (1) any of the civil claims asserted by either of them against the State in the State Court Action, (2) any civil claims asserted by Exxon or Exxon Pipeline against either Government in their responses to the Federal Court Complaints, or (3) any other civil claims that have been or could be asserted by Exxon or Exxon Pipeline against either of the Governments relating to or arising from the Oil Spill, except that nothing in this Agreement shall affect or impair the rights of Exxon and Exxon Pipeline to enforce this Agreement. This paragraph shall not be construed as a release or covenant not to sue given by Alyeska (including its shareholders and owner companies other than Exxon Pipeline) to the Governments.

Trans-Alaska Pipeline Liability Fund

21. The release in Paragraph 20 shall not be construed to bar any claim by Exxon against the TAPL Fund relating to or arising from the Oil Spill. If the TAPL Fund asserts any claims against the Governments that are based upon subrogation rights arising from any monies paid to Exxon or Exxon Pipeline by the TAPL Fund, Exxon agrees to indemnify and hold the Governments harmless from any liability that they have to the TAPL Fund based on such claims. If the TAPL Fund asserts any claims against the Governments that are based upon subrogation rights arising from any monies paid to Alyeska by the TAPL Fund, Exxon agrees to indemnify the Governments for 20.34% of any such liability that either Government has to the TAPL Fund based on such claims.

- 20 -

Provisions Pertaining to Alyeska

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

23. In order to resolve as completely as practicable all civil claims of the Governments arising from the Oil Spill against all Exxon Defendants, including Exxon Pipeline (which has a 20.34% participation in Alyeska), and in consideration of Exxon's obligations hereunder, the Governments agree that if either recovers any amount from Alyeska for any claim of any kind relating to or arising from the Oil Spill (such as asserted in the State Court Action against Alyeska), each Government so recovering shall instruct Alyeska to pay to Exxon, and shall take

- 21 -

other reasonable steps to ensure that Exxon receives, 20.34% of the amount due to that Government from Alyeska.

24. Exxon and Exxon Pipeline agree that, if Alyeska receives any amount from the Governments for any claim of any kind relating to or arising from the Oil Spill, except for an amount indemnified by Exxon under Paragraph 22 or 25, Exxon and/or Exxon Pipeline shall promptly pay to the Government against which judgment is entered 20.34% of such amount.

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

Third Party Litigation

26. If any person or entity not a party to this Agreement ("Third Party") asserts a claim relating to or arising from the

- 22 -

Oil Spill in any present or future litigation against Exxon or Exxon Pipeline and the Governments, or against Exxon or Exxon Pipeline and either the United States or the State, each of the sued Parties ("Sued Parties") shall be responsible for and will pay its share of liability, if any, as determined by the proportional allocation of liability contained in any final judgment in favor of such Third Party, and no Sued Party shall assert a right of contribution or indemnity against any other Sued Party. However, notwithstanding any other provision of this Agreement, the Sued Parties may assert any claim or defense against each other necessary as a matter of law to obtain an allocation of liability among the Sued Parties in a case under this paragraph. Any such actions between the Sued Parties shall be solely for the purpose of allocating liability, if any. The Sued Parties shall not enforce any judgment against each other in such cases.

27. Neither Exxon nor Exxon Pipeline shall assert any right of contribution or indemnity against either Government in any action relating to or arising from the Oil Spill where that respective Government is not a party. Neither Government shall assert any right of contribution or indemnity against Exxon or Exxon Pipeline in any action relating to or arising from the Oil Spill where Exxon and Exxon Pipeline, respectively, are not parties, except that either Government may assert against Exxon the rights to indemnification as expressly provided in Paragraphs 21, 22, and 25.

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

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

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

Interest for Late Payments

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

- 24 -

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

Reservations of Rights

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

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

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

35. Nothing in this Agreement shall affect or impair any existing contract between Exxon or Exxon Pipeline and any entity of either Government, including without limitation the agreement between Exxon and the Environmental Protection Agency dated

- 25 -

December 21, 1990, relating to joint conduct of bioremediation studies.

Notices and Submittals

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

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
10th and Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Attn. DOJ #90-5-1-1-3343

Chief, Admiralty and Aviation Branch
Civil Division
U.S. Department of Justice
601 D Street, N.W.
Washington, D.C. 20530

General Counsel
National Oceanic and Atmospheric Administration
Department of Commerce
14th & Constitution Avenue, N.W.
Washington, D.C. 20230

As to the State of Alaska:

Attorney General
State of Alaska
Pouch K
Juneau, Alaska 99811

Supervising Attorney
Oil Spill Litigation Section
Department of Law
1031 W. Fourth Street, Suite 200
Anchorage, Alaska 99501

- 26 -

As to Exxon:

Office of the Secretary
Exxon Corporation
225 E. John W. Carpenter Fwy.
Irving, Texas 75062-2298

General Counsel
Exxon Corporation
225 E. John W. Carpenter Fwy.
Irving, Texas 75062-2298

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

As to Exxon Pipeline:

Mr. D. G. Warner
President
Exxon Pipeline Company
P.O. Box 2220
Houston, Texas 77252-2220

Process for Entry of Agreement

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

- 27 -

38. Any Party may elect to terminate this Agreement if:

(1) any court of competent jurisdiction disapproves or overturns any plea agreement entered into between the United States and Exxon in United States v. Exxon Shipping Co., No. A90-015 CR (D. Alaska); (2) a final judicial determination is made by such court that this Agreement will not be approved and entered without modification; or (3) such court modifies this Agreement in a manner materially adverse to that Party, or interprets a material provision of this Agreement in a manner inconsistent with the Parties' intentions, prior to or contemporaneously with a final judicial determination approving the Agreement as modified. A Party electing to terminate this Agreement pursuant to this paragraph must do so within 10 days after an event specified in the preceding sentence, and shall immediately notify the other Parties of such election in writing by hand delivery, facsimile, or overnight mail. Termination of this Agreement by one Party shall effect termination as to all Parties. For purposes of this paragraph and Paragraph 37, "termination" and "terminate" shall mean the cessation, as of the date of notice of such termination, of any and all rights, obligations, releases, covenants, and indemnities under this Agreement, provided, that termination shall not affect or impair Exxon's rights to obtain return of any deposits made into the Escrow pursuant to the final sentence of Paragraph 9, and provided further, that the provisions of Paragraphs 11 and 12, relating to clean-up, shall continue in effect notwithstanding any termination.

- 28 -

Retention of Jurisdiction

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

Miscellaneous

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

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

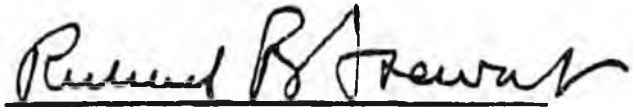
THE FOREGOING Agreement and Consent Decree among plaintiffs the United States of America and the State of Alaska and defendants Exxon Corporation, Exxon Shipping Company, Exxon Pipeline Company, and the T/V EXXON VALDEZ, is hereby APPROVED AND ENTERED THIS ____ DAY OF _____, 1991.

Honorable H. Russel Holland
United States District Judge
District of Alaska

[Agreement and Consent Decree in United States v. Exxon Corporation, et al. (D. Alaska)]

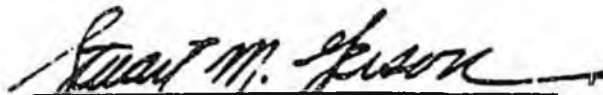
FOR THE UNITED STATES OF AMERICA

Date: 3.12.91



RICHARD B. STEWART
Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

Date: March 12, 1991

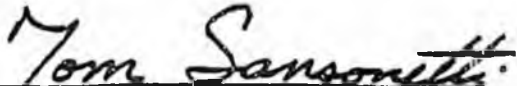


STUART M. GERSON
Assistant Attorney General
Civil Division
U.S. Department of Justice
Washington, D.C. 20530


- 30 -

[Agreement and Consent Decree in United States v. Exxon Corporation, et al. (D. Alaska)]

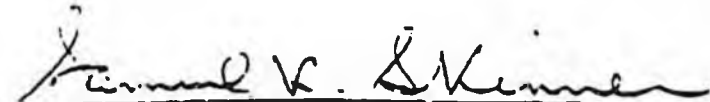
Date: 3.12.91


THOMAS L. SANSONETTI, Solicitor
U.S. Department of the Interior


Date: 12 March 91


ALAN CHARLES RAUL, General Counsel
U.S. Department of Agriculture

Date: March 12, 1991


SAMUEL K. SKINNER, Secretary
U.S. Department of Transportation

Date: March 12, 1991


JOHN A. KNAUSS, Under Secretary for
Oceans and Administrator,
National Oceanic and Atmospheric
Administration
U.S. Department of Commerce

Date: _____

WILLIAM K. REILLY, Administrator
U.S. Environmental Protection
Agency

- 30a -

[Agreement and Consent Decree in United States v. Exxon Corporation, et al. (D. Alaska)]

Date: 3.12.91

Tom Sansonetti

THOMAS L. SANSONETTI, Solicitor
U.S. Department of the Interior

Date: _____

ALAN CHARLES RAUL, General Counsel
U.S. Department of Agriculture

Date: March 12, 1991

Samuel K. Skinner

SAMUEL K. SKINNER, Secretary
U.S. Department of Transportation

Date: _____

JOHN A. KNAUSS, UnderSecretary for
Oceans and Administrator,
National Oceanic and Atmospheric
Administration

U.S. Department of Commerce

Date: March 12 1991

William K. Reilly

WILLIAM K. REILLY, Administrator
U.S. Environmental Protection
Agency

[Agreement and Consent Decree in United States v. Exxon Corporation, et al. (D. Alaska)]

FOR THE STATE OF ALASKA

Date: 3-12-91

Walter J. Hickel
WALTER J. HICKEL
Governor
State of Alaska

Date: 3-12-91


Charles E. Cole
CHARLES E. COLE
Attorney General and Lead State
Trustee
State of Alaska
Pouch K
Juneau, Alaska 99811

- 32 -

[Agreement and Consent Decree in United States v. Exxon Corporation, et al. (D. Alaska)]

FOR EXXON CORPORATION

Date: Mar. 12, 1991


L. G. RAWL, Chairman
Exxon Corporation

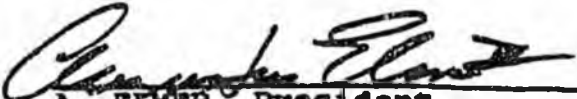
FOR EXXON PIPELINE COMPANY

Date: Mar 12, 1991


D. G. WARNER, President
Exxon Pipeline Company

FOR EXXON SHIPPING COMPANY and T/V EXXON VALDEZ

Date: Mar 12, 1991


A. EXMER, President
Exxon Shipping Company

RICHARD B. STEWART
 Assistant Attorney General
 Environment & Natural Resources
 Division

STUART M. GERSON
 Assistant Attorney General
 Civil Division
 U.S. Department of Justice
 Washington, D.C. 20530

Attorneys for Plaintiff United States of America

CHARLES E. COLE
 Attorney General
 State of Alaska
 Pouch K, State Capitol
 Juneau, Alaska 99811

Attorney for Plaintiff State of Alaska

UNITED STATES DISTRICT COURT
 DISTRICT OF ALASKA

UNITED STATES OF AMERICA,

 Plaintiff,

 v.

 STATE OF ALASKA,

 Defendant.

Civil Action No.

The STATE OF ALASKA,

 Plaintiff,

 v.

Civil Action No.

UNITED STATES OF AMERICA

 Defendant,

MEMORANDUM OF
 AGREEMENT
 AND
 CONSENT DECREE

This Memorandum of Agreement and Consent Decree (MOA) is made and entered into by the United States of America (United States) and the State of Alaska (State) (collectively referred to as the "Governments").

INTRODUCTION

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

WHEREAS, the United States and the State are trustees and/or co-trustees for natural resources injured, lost or destroyed as a result of the EXXON VALDEZ Oil Spill;

WHEREAS, Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9607, the National Contingency Plan, 40 C.F.R. § 300.615(a), and the Natural Resource Damage Assessment Regulations, 43 C.F.R. § 11.32(a)(1)(ii), provide a framework for and encourage the state and federal trustees to cooperate with each other in carrying out their responsibilities for natural resources;

WHEREAS, the Secretaries of the United States Departments of the Interior and Agriculture and the Administrator of the National Oceanic and Atmospheric Administration (NOAA), a bureau of the United States Department of Commerce, have been designated

- 3 -

trustees for purposes of the Clean Water Act, 33 U.S.C. § 1321, and CERCLA, 42 U.S.C. § 9607, and otherwise have statutory responsibilities related to the natural resources injured, lost or destroyed as a result of the Oil Spill, and the United States Environmental Protection Agency (EPA) has been designated by the President of the United States to coordinate restoration activities on behalf of the United States;

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

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

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

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

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

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

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

WHEREAS, on or before the lodging of this MOA with the Court, the United States and the State will each have filed a complaint

- 5 -

in this Court against the other Government asserting civil claims relating to their respective shares in recoveries from Exxon for compensation for damages arising from the Oil Spill (Governments' Complaints);

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

NOW THEREFORE, in consideration of their mutual promises, the United States, acting through the United States Departments of the Interior, Agriculture, Transportation, and Justice, NOAA, and EPA, and the State of Alaska, acting through the State Departments of Fish and Game, Environmental Conservation, and Law (together "the Governments") have agreed to the following terms and conditions, which shall be binding on both Governments, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

I.

JURISDICTION

The Court has jurisdiction over the subject matter of the claims set forth in the Governments' Complaints and over the parties to this MOA pursuant to, among other authorities, 28 U.S.C. §§ 1331, 1333 and 1345, and section 311(f) of the Clean Water Act, 33 U.S.C. § 1321(f).

II.

DEFINITIONS

For purposes of this MOA,

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

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

C. "Clean Water Act" means Federal Water Pollution Control Act, 33 U.S.C. §§ 1251-1376, as amended.

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

E. "National Contingency Plan" means the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300.

F. "Natural resources" means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such

resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Magnuson Fishery Conservation and Management Act of 1976) and/or the State.

G. "Natural resource damage recovery" means those monies paid to the Governments by Exxon which are received in settlement of natural resource damage claims arising from the Oil Spill and consists of the settlement monies not reimbursed to the Governments either as 1) allowed expenses or 2) in the case of response and cleanup costs, those unreimbursed costs incurred by either Government after December 31, 1990 and certified by the FOSC with respect to the FOSC directed costs and by the SOSC with respect to SOSC directed costs. The term includes all interest accrued on any such recoveries.

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

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

J. "Restore" or "Restoration" means any action, in addition to response and cleanup activities required or authorized by state or federal law, which endeavors to restore to their pre-spill condition any natural resource injured, lost, or destroyed

as a result of the Oil Spill and the services provided by that resource or which replaces or substitutes for the injured, lost or destroyed resource and affected services. Restoration includes, injury assessment, restoration, replacement and enhancement of resources and acquisition of equivalent resources and services.

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

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

III.

CO-TRUSTEESHIP

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

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

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

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

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

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

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

IV.

ORGANIZATION

A. General Provisions

1. All decisions relating to injury assessment, restoration activities, or other use of the natural resource

- 10 -

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

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

3. If the Trustees cannot reach unanimous agreement on a decision pursuant to paragraph A.1. of this Article, and either Government so certifies, either Government may resort to litigation in the United States District Court for the District of Alaska with respect to any such matter or dispute. At any time, the Governments may, by mutual agreement, submit any such matter or dispute to non-binding mediation or other means of conflict resolution.

4. The Trustees shall establish procedures providing for meaningful public participation in the injury assessment and

- 11 -

restoration process, which may include establishment of a public advisory group to advise the Trustees with respect to the matters described in paragraph IV.A.1.

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

B. Injury Assessment and Restoration Process

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

2. Nothing in this MOA constitutes an election on the part of either Government to adhere to or be bound by the Natural Resource Damage Assessment Regulations codified at 43 C.F.R. Part 11.

3. Nothing in this MOA shall prevent the President of the United States or the Governor of the State of Alaska from designating, pursuant to applicable law, an official or officials to exercise any or all rights or obligations of their respective Governments under this MOA. Neither Government shall object to any designation of such officials, or to any transfer of Trustee status from one official to another, by the other Government; provided that, in no event shall either Government designate more

- 12 -

than three Trustees for the purposes of carrying out the provisions of this MOA. The designation of such officials or of successor Trustees by either Government shall not affect the enforceability of this MOA.

C. Role of the Environmental Protection Agency

The Governments acknowledge that the President has assigned to EPA the role of advising the Federal Trustees and coordinating, on behalf of the Federal Government, the long-term restoration of natural resources injured, lost or destroyed as a result of the Oil Spill.

V.

DISTRIBUTION OF SETTLEMENT MONIES

A. Joint Use of Natural Resource Damage Recoveries

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

B. Reimbursement of Allowed Expenses and Response Costs

Up to 72 million dollars for the State and up to 62 million dollars for the United States shall be available from the

- 13 -

settlement monies, at the election of each Government, for reimbursement of allowed expenses. In addition, all of the Governments' unreimbursed response and cleanup costs incurred after December 31, 1990 and certified by either the FOSC or SOSC shall be reimbursed out of the settlement monies. Reimbursements of allowed expenses described in this paragraph shall be paid directly to the Governments by Exxon over a period of 5 years.

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

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

VI.

SCIENCE STUDIES

The Governments shall continue to work cooperatively to conduct all appropriate scientific studies relating to the Oil Spill, including specifically the scientific studies approved by the Trustees for the 1991 field season.

- 14 -

VII.

COVENANTS NOT TO SUE

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

1. The authority of either Government to enter into and comply with the terms of this MOA.
2. The respective rights of either Government to engage in cleanup, damage assessment or restoration activities with respect to the Oil Spill in accordance with this MOA.
3. Any and all civil claims (including, but not limited to, cross-claims, counter-claims, and third party-claims) it may have against the other Government arising from any activities, actions, or omissions by that other Government relating to or in response to the Oil Spill which occurred prior to the execution of this MOA, other than claims to enforce this MOA.

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

- 15 -

scope or proportionate share of either Government's ownership, rights, title or interest in or management, control, or trusteeship authority over any of the natural resources injured, lost or destroyed as a result of the Oil Spill.

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

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

E. Notwithstanding the covenants contained in paragraph VII.A. and notwithstanding any provisions of the Agreement and Consent Decree between the Governments and Exxon, if both Governments are sued by a Third Party on a claim relating to or arising out of the Oil Spill, the Governments agree to cooperate fully in the defense of such action, and to not assert cross-claims against each other or take positions adverse to each other. Each shall pay its percentage of liability, if any, as determined in a final judgment.

F. Notwithstanding the covenants contained in paragraph VII.A. and notwithstanding any provisions of the Agreement and Consent Decree between the Governments and Exxon, if one of the Governments is sued by a Third Party on a claim relating to or

- 16 -

arising out of the Oil Spill, the Governments agree the non-sued Government shall cooperate fully in the defense of the sued Government, including intervening as a party defendant or consenting to its being impleaded, if necessary. If the non-sued Government thereby becomes a party to the action, the Governments agree not to assert cross-claims against each other, to cooperate fully in the defense of such action, and not to take positions adverse to each other. Each shall pay its percentage of liability, if any, as determined in a final judgment.

VIII.

ENFORCEMENT OF AGREEMENT
AND
GOVERNING LAW AND VENUE

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

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

- 17 -

IX.

MULTIPLE COPIES AND EFFECTIVE DATE

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

X.

INTEGRATION AND MERGER

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

XI.

TERMINATION

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

- 18 -

XII.

JUDICIAL REVIEW

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

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

XIII.

MISCELLANEOUS

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

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

THE FOREGOING Memorandum of Agreement and Consent Decree among the United States of America and the State of Alaska is hereby APPROVED AND ENTERED THIS ____ DAY OF _____, 1991.

Honorable H. Russel Holland
United States District Judge
District of Alaska

- 19 -

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

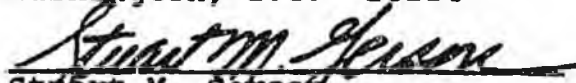
FOR THE UNITED STATES OF AMERICA

Date: 3-12-91



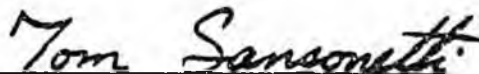
Richard B. Stewart
Assistant Attorney General
Environment and Natural Resources
Division

U.S. Department of Justice
Washington, D.C. 20530

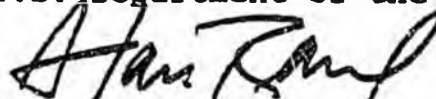


Stuart M. Gersoff
Assistant Attorney General
Civil Division

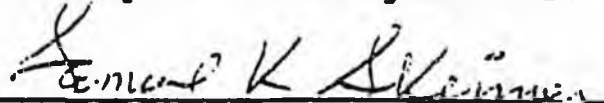
U.S. Department of Justice
Washington, D.C. 20530



Thomas L. Sansonetti, Solicitor
U.S. Department of the Interior



Alan Charles Raul, General Counsel
U.S. Department of Agriculture



Samuel K. Skinner, Secretary
U.S. Department of Transportation



Thomas A. Campbell, General Counsel
National Oceanic and Atmospheric
Administration
United States Department of Commerce

William K. Reilly, Administrator
U.S. Environmental Protection
Agency

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

FOR THE UNITED STATES OF AMERICA

Date: _____

Richard B. Stewart
Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

Stuart M. Gerson
Assistant Attorney General
Civil Division
U.S. Department of Justice
Washington, D.C. 20530

Tom Sansonetti

Thomas L. Sansonetti, Solicitor
U.S. Department of the Interior

Alan Charles Raul, General Counsel
U.S. Department of Agriculture

Samuel K. Skinner

Samuel K. Skinner, Secretary
U.S. Department of Transportation

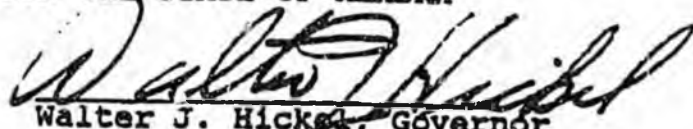
John A. Knauss, UnderSecretary for Oceans
and Administrator, National Oceanic
and Atmospheric Administration,
United States Department of Commerce

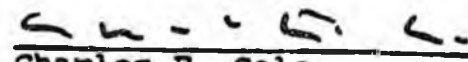
William K. Reilly

William K. Reilly, Administrator
U.S. Environmental Protection
Agency

Date: 3-17-91

FOR THE STATE OF ALASKA


Walter J. Hickel, Governor
State of Alaska


Charles E. Cole
Attorney General and
Lead State Trustee
State of Alaska
Pouch K
Juneau, Alaska 99811

MAR 13 '91 08:18 U.S. ATTORNEY'S OFC.

P.2/16

CHARLES A. De MONACO
Assistant Chief
Environmental Crimes Section
Environment and Natural Resources
Division
U.S. Department of Justice
P.O. Box 23965
Washington, D.C. 20026-3985
(202) 272-9879

FILED

MAR 13 1991

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

By _____ Deputy

Attorney for the United States of America

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA


UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
EXXON CORPORATION AND)
EXXON SHIPPING COMPANY,)
)
Defendants.)

No. A90-015-1CR
No. A90-015-2CR

MOTION TO PERMIT FILING
OF DOCUMENTS TRANSMITTED
VIA FACSIMILE MACHINE

Comes Now, the United States of America, plaintiff in the above-captioned case, by and through its attorneys, to move this Court to permit the filing of an original Plea Agreement and a Notice of Intent to Change Plea containing faxed signature pages for the reasons set forth in the attached affidavit of counsel.

Respectfully submitted this 13th day of March, 1991, at Anchorage, Alaska.


CHARLES A. De MONACO
Assistant Chief
Environmental Crimes Section
Department of Justice

ERIC NAGLE
Trial Attorney
Environmental Crimes U.S.
Section

MARK B. HARMON
Trial Attorney
Environmental Crimes Section

MARK R. DAVIS
Special Assistant U.S.
Attorney

CHARLES A. De MONACO
Assistant Chief
Environmental Crimes Section
Environment and Natural Resources
Division
U.S. Department of Justice
P.O. Box 23985
Washington, D.C. 20026-3985
(202) 272-9879

Attorney for the United States of America
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,)	No. A90-015-1CR
)	No. A90-015-2CR
Plaintiff,)	
)	AFFIDAVIT OF MARK R. DAVIS
v.)	IN SUPPORT OF MOTION TO
)	PERMIT FILING OF DOCUMENTS
)	TRANSMITTED VIA FACSIMILE
EXXON CORPORATION AND)	MACHINE
EXXON SHIPPING COMPANY,)	
)	
Defendants.)	

Mark R. Davis, being duly sworn, deposes and states as follows:

1. I am a Special Assistant U.S. Attorney assigned to represent the United States in the above-captioned matter.
2. The United States has agreed to execute a plea agreement with both defendants in the above-captioned case.
3. Counsel for both the government and defendants are located at present in three different cities: Washington, D.C., Tucson, AZ, and Anchorage, AK.
4. To permit all necessary counsel to sign the Notice of Intent to Change Plea and the Plea Agreement, they contain separate signature pages. These signature pages will

- 2 -

first be executed in Washington, D.C., then will be transmitted by facsimile machine to Tucson and then faxed to Anchorage.


5. Facsimile transmission is the fastest manner available which will permit all counsel to sign the signature page so that the plea agreement can be filed on March 13, 1991.

6. Only the signature pages will be transmitted by facsimile machine. The body of the Notice of Intent to Change Plea and the Plea Agreement are original documents.

Further more, affiant sayeth not.


MARK R. DAVIS

Subscribed and sworn before me on this the 13th day of March, 1991.


Notary Public U

My commission expires on 1/21/92.

FILED

MAR 13 1991

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

CHARLES A. De MONACO
Assistant Chief
Environmental Crimes Section
Environment and Natural Resources
Division
U.S. Department of Justice
P.O. Box 23985
Washington, D.C. 20026-3985
(202) 272-9879

Attorney for the United States of America

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

UNITED STATES OF AMERICA)
)
 Plaintiff,)
)
 v.)
)
 EXXON CORPORATION)
)
 and)
)
 EXXON SHIPPING COMPANY,)
)
 Defendants.)

No. A-90-015 CR.

PLEA AGREEMENT

I. INTRODUCTION

This document contains the complete plea agreement between the United States of America, Plaintiff in the above-captioned action, and the defendants, EXXON SHIPPING COMPANY ("EXXON SHIPPING") and EXXON CORPORATION ("EXXON").

A. The defendant, EXXON SHIPPING, is charged in Counts One, Two and Three of an indictment filed in the District of Alaska with violations of the Clean Water Act, Title 33, United States Code, Sections 1311(a) and 1319(c)(1)(A); the Refuse

Act, Title 33, United States Code, Sections 407 and 411; and the Migratory Bird Treaty Act, Title 16, United States Code, Sections 703 and 707(a).

B. The defendant, EXXON, is charged in Count Three of an indictment filed in the District of Alaska with a violation of the Migratory Bird Treaty Act, Title 16, United States Code, Sections 703 and 707(a).

C. The defendant, EXXON SHIPPING, agrees to enter a plea of guilty to the Counts in paragraph IA.

D. The defendant EXXON agrees to enter a plea of guilty to the Count in paragraph IB, subject to the factual basis for the plea being that it was oil owned by EXXON, and transported under contract with EXXON SHIPPING, that killed migratory birds, for which EXXON had no permit.

II. DEFENDANTS' AGREEMENT AND UNDERSTANDING

The defendant, EXXON SHIPPING, is represented by James F. Neal, Esq., James F. Sanders, Esq., E. Edward Bruce, Esq., and Robert C. Bundy, Esq. The defendant EXXON, is represented by Patrick Lynch, Esq., Edward J. Lynch, Esq., and John F. Clough, III, Esq. The defendants acknowledge that their attorneys have explained all of the elements of each offense charged against them.

A. If EXXON SHIPPING pled not guilty, the United States would have to prove beyond a reasonable doubt each and every one of the following charges to the unanimous satisfaction of a jury:

1. That on or about March 24, 1989, in the District of Alaska, and elsewhere, the defendant, EXXON SHIPPING, did negligently cause the discharge of pollutants, namely more than ten million gallons of crude oil, from a point source, namely the tank vessel "EXXON VALDEZ," into Prince William Sound, a navigable water of the United States, without a permit, all of which is in violation of and contrary to Title 33, United States Code, Sections 1311(a) and 1319(c)(1)(A).

2. That on or about March 24, 1989, in the District of Alaska, and elsewhere, the defendant EXXON SHIPPING unlawfully did throw, discharge and deposit, and did cause, suffer, and procure to be thrown, discharged and deposited, refuse matter, namely more than ten million gallons of crude oil, from a ship, namely the "EXXON VALDEZ," into Prince William Sound, a navigable water of the United States, without a permit, all in violation of and contrary to Title 33, United States Code, Sections 407 and 411.

3. That on or about March 24, 1989, in the District of Alaska, and elsewhere, the defendant, EXXON SHIPPING, without being permitted to do so by regulation as required by law, did kill migratory birds in violation of Title 16, United States Code, Sections 703 and 707(a) and Title 50, Code of Federal Regulations, Section 21.11.

B. If EXXON pled not guilty, the United States would have to prove the following charge to the unanimous satisfaction of a jury beyond a reasonable doubt:

That on or about March 24, 1989, in the District of Alaska, the defendant EXXON, without being permitted to do so by regulation as required by law, did kill migratory birds in violation of Title 16, United States Code, Sections 703 and 707(a) and Title 50, Code of Federal Regulations, Section 21.11.

C. Legal Basis for the Fines and Restitution Payment

1. The defendants, EXXON SHIPPING and EXXON, agree, solely for the purpose of this plea agreement and for no other purpose, that there is a legal basis with respect to the offenses charged in the indictment for the Court to impose the fines agreed to in paragraph IIIC.

2. The defendants, EXXON SHIPPING and EXXON, agree, solely for the purpose of this plea agreement and for no other purpose, that there is a legal basis for the Court to impose the payment agreed to in paragraph IV as damages recoverable for compensatory and remedial purposes by the State of Alaska.

D. Consequences of the Plea

1. EXXON SHIPPING understands that by pleading guilty to the Counts under paragraph IC, it is admitting the essential elements of the charges in those Counts.

2. EXXON understands that by pleading guilty to the Count under paragraph ID, it is admitting the essential elements of the charge in that Count on the factual basis set forth in paragraph ID.

3. Each defendant understands that by pleading guilty, it gives up the following rights:

- a. The right to be tried by jury;
- b. The right to challenge and object to the composition or procedures of the grand jury; and
- c. The right to confront and cross-examine witnesses.

E. Upon acceptance of the pleas and imposition of sentence by the Court, the United States will immediately move to dismiss Counts 4 and 5 as to EXXON SHIPPING and Counts 1, 2, 4, and 5 as to EXXON.

III. AGREEMENT OF THE PARTIES REGARDING IMPOSITION OF SENTENCE

A. The United States agrees not to seek additional criminal charges or any civil or administrative penalties, except as provided in paragraph IIIB below, against the defendant EXXON, or any of its present or former officers, directors or employees, or any of its wholly-owned subsidiaries, their present or former officers, directors or employees, or against Alyeska Pipeline Service Company or any of its shareholders or owner companies or present or former shareholder representatives, for any violation of federal law arising out of the grounding of the "EXXON VALDEZ," the resulting oil spill, the containment or cleanup of that spill, or its or their conduct in connection with the preparation or submission of oil spill contingency plans or related documents,

by Alyeska Pipeline Service Company to the federal or state government.

B. The parties agree that nothing in this plea agreement limits the right of any agency of the United States, other than the Department of Justice, to seek and take civil or administrative action against EXXON SHIPPING, EXXON, or any other EXXON subsidiaries, or their employees, or against Alyeska Pipeline Service Company, or any of its shareholders or owner companies or present or former shareholder representatives, including any such action relating to suspension or debarment or listing, but not including the civil or administrative penalties referred to in paragraph IIIA.

C. The parties agree, following the entry of pleas by EXXON SHIPPING and EXXON, and the acceptance by the Court thereof, that the defendants shall be sentenced in accordance with the provisions of Rule 11(e)(1)(C), Fed. R. Crim. P., and that under that procedure the appropriate disposition at the time of sentence is the imposition of fines which total \$100 million, as follows:

1. With respect to EXXON SHIPPING, the fine shall be \$75 million.
2. With respect to EXXON, the fine shall be \$25 million.
3. With respect to EXXON SHIPPING, \$37.5 million shall be remitted, and with respect to EXXON, \$12.5 million

shall be remitted. The remission of these amounts is appropriate in view of the following facts:

(a) The defendants recognized their responsibilities with respect to the grounding of the "EXXON VALDEZ" and the resulting oil spill;

(b) The defendants have expended in excess of \$2 billion in response to and clean up of the oil spill in Prince William Sound and its environs;

(c) The defendants have paid in excess of \$300 million to claimants allegedly injured by the oil spill; and

(d) The defendants cooperated in the federal criminal investigation of the grounding of the "EXXON VALDEZ" and the resulting oil spill.

D. The parties agree that the fines described in paragraph IIIC represent the full extent of the criminal sanctions to be imposed upon the defendants pursuant to this agreement, and are in full satisfaction of the criminal charges referred to in the indictment and all criminal charges or claims for civil or administrative penalties referred to in Paragraph IIIA. The payment of \$37.5 million by EXXON SHIPPING and \$13.5 million by EXXON shall fully discharge the criminal sanctions to be imposed pursuant to this agreement.

IV. AGREEMENT OF THE PARTIES REGARDING RESTITUTIONARY PAYMENTS

A. The defendants, EXXON SHIPPING and EXXON, agree to make payments to the State of Alaska which total \$50 million

within 30 days of the acceptance of this plea agreement by the Court. All monies paid by EXXON SHIPPING and EXXON under this paragraph IVA are remedial and compensatory payments. Such monies are to be used by the State of Alaska exclusively for restoration projects relating to the "EXXON VALDEZ" oil spill. Restoration includes restoration, replacement and enhancement of affected resources, acquisition of equivalent resources and services, and long-term environmental monitoring and research programs directed to the prevention, containment, cleanup and amelioration of oil spills.

B. The parties agree that the administration of the monies to be paid under paragraph IVA shall be under the control of the State of Alaska and that upon payment, such monies and any interest which accrues thereon shall be available for use by the State of Alaska for the purposes described in paragraph IVA without objection, challenge, or judicial or administrative review.

C. The parties agree that all payments made under paragraph IVA represent compensation for harm or injury to the State of Alaska. Such payments are intended by the parties to be exclusively remedial, compensatory, and non-punitive and are intended to be separate and distinct from the fines described in paragraph IIIC and from any other criminal, civil, or administrative penalties that could have been imposed upon the defendants.

V. GENERAL PROVISIONS

A. EXXON guarantees payment of the fine imposed on EXXON SHIPPING under this plea agreement. In the event that defendant EXXON SHIPPING fails to make timely payment of the fine, EXXON shall, within thirty (30) days of the date of demand, make payment in EXXON SHIPPING's stead.

B. The defendants, EXXON SHIPPING and EXXON, understand that the Court has discretion to accept or reject this plea agreement, and that if the Court rejects the plea agreement or does not dismiss the charges referred to in paragraph IIE, each defendant will be permitted to withdraw its plea of guilty.

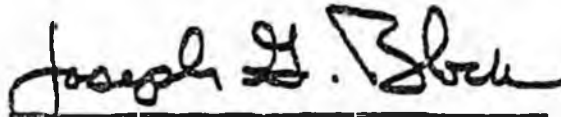
C. The parties agree, subject to the decision of the Court, that there is in the record information sufficient to enable the meaningful exercise of sentencing authority, pursuant to Rule 32(c) F.R. Cr. P., and agree that waiver of a presentence investigation and report would be appropriate.

The above-stated terms and conditions comprise the entire plea agreement between the United States of America, defendant EXXON SHIPPING and defendant EXXON, and there are no other terms or conditions, express or implied.

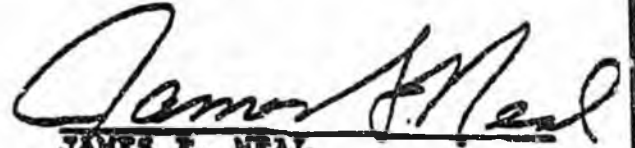
MAR 13 '91 08:17 U.S. ATTORNEY'S OFF. TUCSON
03/13/91 15:49 U.S. ATTORNEY, TUCSON

FOR THE UNITED STATES
OF AMERICA:

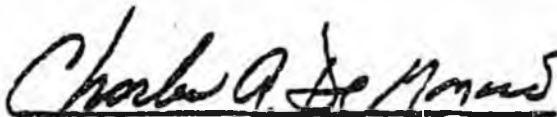
FOR THE DEFENDANTS:



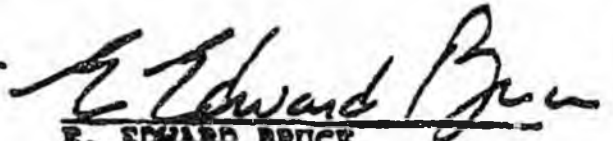
JOSEPH G. BLOCK
Chief
Environmental Crimes Section
Environment and Natural
Resources Division
U.S. Department of Justice



JAMES F. NEAL
Counsel for Exxon Shipping



CHARLES A. De MONACO
Assistant Chief

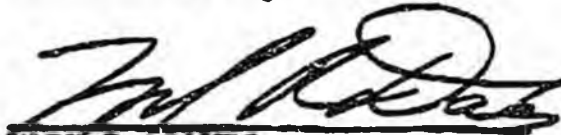


E. EDWARD BRUCE
Counsel for Exxon Shipping

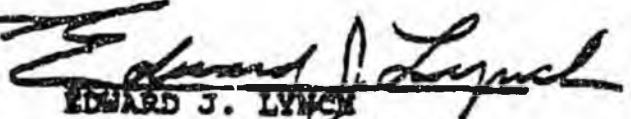


ERIC W. NAGLE
Trial Attorney

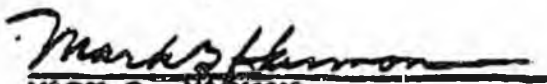
ROBERT C. BUNDY
Counsel for Exxon Shipping



MARK R. DAVIS
Special Assistant U.S.
Attorney



EDWARD J. LYNCH
Counsel for Exxon
Corporation



MARK B. HARMON
Trial Attorney



JOHN P. CLOUGH, III
Counsel for Exxon
Corporation

DATED THIS 13th day of March, 1991

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

Plaintiffs,

v.

MANUEL LUJAN, JR., et. al.,

Defendants.

Civil Action No. 91-483 SS

EILED

MAR 12 1991

CLERK, U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

Civil Action No. 91-484 SS

CHENEGA CORPORATION, et. al.,

Plaintiffs,

v.

MANUEL LUJAN, JR., et. al.,

Defendants.

MEMORANDUM OPINION AND ORDER

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

(ND)

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

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

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

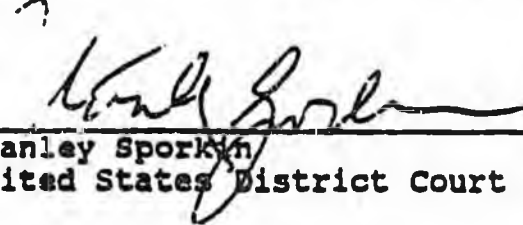
The Court accepts the defendants' good-faith representations. On the basis of these representations, the Court believes that the

plaintiffs' rights are not affected by the planned settlement agreement. Accordingly, it is this 12 day of March 1991 hereby

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

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

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


Stanley Sporkin
United States District Court

ACE
COPY
Case No. 89-06857

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT

THE STATE OF ALASKA, on its own behalf, and as public trustee and as parens patriae for the citizens of the State,

Plaintiff,

vs.

EXXON CORPORATION, a New Jersey corporation; EXXON PIPELINE COMPANY, a Delaware corporation; EXXON SHIPPING COMPANY, a Delaware corporation; ALYESKA PIPELINE SERVICE COMPANY, a Delaware corporation; AMERADA HESS PIPELINE CORPORATION, a Delaware corporation; ARCO PIPE LINE COMPANY, a Delaware corporation; BP ALASKA PIPELINES, INC., a Delaware corporation; MOBIL ALASKA PIPELINE COMPANY, a Delaware corporation; PHILLIPS ALASKA PIPELINE CORPORATION, a Delaware Corporation; UNOCAL PIPELINE COMPANY, a California corporation,

Defendants.

COMPLAINT FOR COMPENSATORY AND PUNITIVE DAMAGES, CIVIL PENALTIES AND INJUNCTIVE RELIEF

COPY
Original Received

AUG 15 1989

Clerk of the Trial Courts

The plaintiff, by and through its attorneys, State of Alaska Department of Law and Preston, Thorgrimson, Ellis & Holman, on behalf of itself and as public trustee and as parens patriae on behalf of all natural persons residing within the State of Alaska, brings this action and complains and alleges as follows:

JURISDICTION AND VENUE

1. This is a civil action for compensatory and punitive damages, civil penalties and injunctive relief for

LAW OFFICES OF
PRESTON, THORGRIMSON, ELLIS & HOLMAN
4TH FLOOR
220 S. BIRCH ST.
ANCHORAGE, ALASKA 99501-1937
(907) 278-1969

losses sustained by plaintiff arising out of, and resulting from, the unlawful and negligent discharges of crude oil and other hazardous substances into Prince William Sound by the T/V EXXON VALDEZ ("EXXON VALDEZ"), and from the intentional and negligent acts of defendants before or after the crude oil and other hazardous substances were discharged into Prince William Sound.

2. Subject matter jurisdiction is proper pursuant to Alaska statutory and common law including AS 22.10.020(a) and AS 09.05.015 and general maritime law.

3. Personal jurisdiction is proper because each defendant either transacts business in or has sufficient contacts with the State for purposes of personal jurisdiction.

4. Venue is properly laid in the Third Judicial District pursuant to AS 22.10.030 and Alaska Civil Rule 3(c) because the claims herein arose in the Third Judicial District and because defendants are present and doing business in this judicial district.

THE PARTIES

5. Plaintiff State of Alaska, (the "State") is a sovereign state of the United States. The State appears on its own behalf as the owner of lands, waters and resources of the State, on behalf of all administrative departments and agencies of the State, and as parens patriae and public trustee for the citizens of the State of all lands, waters and resources within the jurisdictional boundaries of the State. Under the common law and the common use clause of the Alaska

Constitution, Article VIII, Section 3, plaintiff is the public trustee of and possesses sovereign interests in State lands, waters and resources. Plaintiff may maintain an action as parens patriae on behalf of its citizens and to protect and defend its sovereign interests. The public trust includes, but is not limited to, State navigable waters, submerged lands, tidelands and beaches. The interests protected by the public trust include, but are not limited to, providing scenic beauty, open space, air quality, food and habitat for birds and marine life, recreational experiences, scientific studies, functioning ecological systems and the various activities and management options enabled thereby. Unless otherwise expressly indicated herein, the term "State" means the State of Alaska in all its above-described capacities.

6. Defendant Exxon Corporation is a corporation organized under the laws of the State of New Jersey, that maintains its principal place of business in New York, New York. Through its subsidiaries and divisions, Exxon Corporation engages, among other things, in all phases and aspects of petroleum exploration, development, transportation, refining and marketing. On information and belief, it is an owner and/or operator of the EXXON VALDEZ, and it owned or controlled the crude oil cargo carried on the EXXON VALDEZ at the time the vessel discharged a substantial volume of its crude oil cargo into Prince William Sound.

7. Defendant Exxon Pipeline Company, a Delaware corporation, is a wholly-owned subsidiary of Exxon

Corporation. It maintains its principal place of business at Houston, Texas. Defendant Exxon Pipeline Company is a party to the Right-of-Way Lease for the Trans-Alaska Pipeline System granted by the State on May 3, 1974 (the "State Right-of-Way Lease").

8. Defendant Exxon Shipping Company, a Delaware corporation, is a wholly-owned subsidiary of defendant Exxon Corporation. It maintains its principal place of business in Houston, Texas. Exxon Shipping Company is an owner and/or operator of the EXXON VALDEZ, and it owned or controlled the crude oil cargo carried on the EXXON VALDEZ at the time the vessel discharged a substantial volume of its crude oil cargo into Prince William Sound.

9. Upon information and belief, at all material times defendant Exxon Corporation so dominated Exxon Shipping Company and Exxon Pipeline Company as to render Exxon Corporation liable for the conduct of Exxon Shipping Company and Exxon Pipeline Company, more fully described below.

10. Defendant Alyeska Pipeline Service Company ("Alyeska") is a Delaware corporation and maintains its principal place of business in Alaska. Alyeska operates the Trans-Alaska Pipeline System ("TAPS") as an agent of the owners or assignees of the TAPS right-of-way lease granted by the State Right-of-Way Lease -- the Amerada Hess Pipeline Corporation, ARCO Pipe Line Company, Exxon Pipeline Company, Mobil Alaska Pipeline Company, Phillips Alaska Petroleum

Corporation, BP Alaska Pipelines, Inc. and Unocal Alaska Pipeline Company (collectively the "Owner Companies").

11. Defendant Amerada Hess Pipeline Corporation, a Delaware corporation, is a subsidiary of Amerada Hess Corporation. It maintains its principal place of business in New York, New York. Defendant Amerada Hess Pipeline Corporation is a party by assignment to the State Right-of-Way Lease for the Trans-Alaska Pipeline System.

12. Defendant ARCO Pipe Line Company, a Delaware corporation, is a wholly-owned subsidiary of Atlantic Richfield Company. It maintains its principal place of business at Independence, Kansas. Defendant ARCO Pipe Line Company is a party to the State Right-of-Way Lease for the Trans-Alaska Pipeline System.

13. Defendant Mobil Alaska Pipeline Company, a Delaware corporation, is a wholly-owned subsidiary of Mobil Corporation. It maintains its principal place of business at Dallas, Texas. Defendant Mobil Alaska Pipeline Company is a party to the State Right-of-Way Lease for the Trans-Alaska Pipeline System.

14. Defendant Phillips Alaska Pipeline Corporation, a Delaware corporation, is a subsidiary of Phillips Petroleum Corporation. It maintains its principal place of business at Bartlesville, Oklahoma. Defendant Phillips Alaska Pipeline Corporation is a party by assignment to the State Right-of-Way Lease for the Trans-Alaska Pipeline System.

15. Defendant BP Alaska Pipelines, Inc., a Delaware corporation, is a subsidiary of British Petroleum Company, PLC. Defendant BP Alaska Pipelines, Inc. is a party by assignment to the State Right-of-Way Lease for the Trans-Alaska Pipeline System.

16. Defendant Unocal Pipeline Company, a California corporation, is a wholly-owned subsidiary of Union Oil Company of California. It maintains its principal place of business at Los Angeles, California. Defendant Unocal Pipeline Company is a party by assignment to the State Right-of-Way Lease for the Trans-Alaska Pipeline System.

DEFINITIONS

17. "ANS" means crude oil produced on Alaska's North Slope and transported through the Trans-Alaska Pipeline System pipeline to the marine terminal facilities at Valdez, Alaska.

18. A "barrel" of crude oil means 42 United States gallons of crude oil at 60° Fahrenheit.

19. "Economic damages" includes, but is not limited to, one or more of the following:

- a. Injury to the public or private economy of the State, including goodwill, whether or not said injury occurs within the boundaries of the State;
- b. Injury to private businesses, individuals, trade organizations, or any other commercial, scientific, educational,

charitable, cultural, subsistence, or other institution or activity generating direct or indirect economic benefits in the State.

- c. Loss or uncertainty of government revenues, including, but not limited to, revenues from licenses, taxes, royalties, fees or other direct or indirect sources;
- d. Increases or uncertainty in government expenses, including, but not limited to, internal operating, maintenance, overhead and capital costs, and external costs in the provision of services to other public or private individuals or entities.

20. "Environmental damages" includes, but is not limited to, one or more types of damages to use and enjoyment values derived from State lands, waters and resources:

- (1) Use values, including consumptive and nonconsumptive uses;
- (2) Nonuse values, including existence, intrinsic, option, bequest, temporal and quasi-option values;
- (3) Values derived from the existence of management options and the expertise and data to exercise and support same;

- (4) Values associated with the necessity or desirability of restoration, replacement, assessment or monitoring;
- (5) Other ecosystem existence values.

21. The terms "Exxon," "defendant Exxon" and "Exxon defendants" refer collectively to defendants Exxon Corporation, Exxon Pipeline Company and Exxon Shipping Company.

22. The terms "grounding," "spill," and "accident" refer to the grounding and consequent rupture of the hull and oil tanks of the EXXON VALDEZ on March 24, 1989, the second rupture of the hull and the cumulative release of approximately 11 million gallons of crude oil into Prince William Sound. As more fully set forth below, plaintiff alleges that there were at least two separate incidents which caused the discharge of oil into Prince William Sound. Unless stated otherwise, both incidents are included within the meaning of the word "spill" or "accident."

23. "Owner Companies" means the Lessees of the State Right-of-Way Lease or the Assignees of a Lessee's interest in the State Right-Of-Way Lease.

24. The term "pipeline" refers to any pipeline in the Trans-Alaska Pipeline System.

25. The "State lands, waters, and resources" include, but are not limited to, any and all of the interests set forth in (a) below, controlled or influenced by the State

acting pursuant to law in one or more of the capacities set forth in (b) below.

(a) All real and personal property, together with fixtures and improvements thereon, and any other rights, uses, profits, values, authorities, or other interests or duties respecting any of the following land, resource and environmental components:

- (1) Coastal and inland waters and wetlands;
- (2) Tide and submerged lands;
- (3) Plants and animals, and their habitat, including artificially enhanced habitat;
- (4) The surface and subsurface of lands, including minerals and materials;
- (5) Air;
- (6) Aesthetics, scenic quality, and open space;
- (7) Historic, archaeological, cultural, scientific and recreational resources;
- (8) Ecological systems, together with the expertise and data necessary or desirable to control or influence same; or
- (9) Activities dependent upon or connected to any of (1) through (8).

(b) Capacities include any of the following exercised on behalf of public or private parties, whether or not residents of the State:

- (1) Sovereign;
- (2) Proprietor;
- (3) Trustee, including trustee for the public trust;
- (4) Representative, including parens patriae representative; or
- (5) Administrator.

26. "State Right-of-Way Lease" means the lease between the State of Alaska and the Owner Companies dated May 3, 1974, including all stipulations, amendments and other agreements incorporated into or made a part of the lease.

27. The term "terminal facilities" refers to those facilities of the Trans-Alaska Pipeline System, including specifically Port Valdez, at which oil is transferred from the pipeline to vessels or stored for future loading onto vessels.

28. The terms "Trans-Alaska Pipeline System" or "TAPS" refer to the pipeline and terminal facilities used to effect the transfer of ANS crude oil to markets and includes those facilities described in the State Right-Of-Way Lease between the Owner Companies and the State.

29. The term "vessel" or "tanker" refers specifically to the vessel known as the EXXON VALDEZ, which was being used to transport ANS crude oil from the terminal facility at Valdez, Alaska to Long Beach, California, and to other ports in the United States.

BACKGROUND

30. In 1968, the Prudhoe Bay oil field was discovered by Atlantic Richfield Company. It is the largest commercially developed oil field in North America. It is located on State lands and has been developed pursuant to oil and gas leases issued by the State.

31. In the early 1970s, the initial attempts to develop the Prudhoe Bay oil field were delayed, in part, because concerns were expressed about the potential adverse impact of this development on the sensitive terrestrial and marine environments that would be disturbed and through which the crude oil would be transported. The areas through which ANS oil is transported are considered to be among the last true wilderness areas in the United States, and are renowned for their beauty and natural resources. The defendants knew then and know now that many Alaskans, including commercial fishermen, subsistence users, tour operators, hunting and fishing guides, hoteliers, and many others, depend on these areas for their livelihood. Other Alaskans use, and have used, these areas for recreational activities including, among others, boating, sport fishing and sport hunting. Additionally, many Alaskans have long valued these areas for their scenic and pristine qualities and wilderness environments.

32. In order to persuade state and federal agencies to grant the permits, leases and other authorizations the Owner Companies needed to build and operate the TAPS, the

Owner Companies and Exxon defendants represented that they would take all action necessary to ensure that a major oil spill would not occur. They further represented that they would utilize the best available oil spill containment and clean up technology and that, if an oil spill did occur, they would be able to contain and clean up the oil spill.

33. Eventually, pursuant to federal and state legislation, implementing regulations and agreements between the United States, the State, and the Owner Companies, which agreements were entered into in reliance upon the representations of Owner Companies and one or more of the Exxon defendants, the construction and operation of TAPS was authorized.

34. TAPS was completed in 1977, and commercial crude oil production began from Prudhoe Bay in June of 1977.

35. Even after the commencement of TAPS operations, Alaska residents, including state officials and legislators, and others remained concerned about the potential adverse impact of an oil spill on the sensitive land, air and marine environments through which ANS crude oil was being transported. The oil industry (including the Exxon defendants, Alyeska and the Owner Companies) repeatedly assured the State and others that the Owner Companies and Alyeska would take all actions that would ensure an oil spill would not occur and, if it did, that they could and would promptly and completely contain and clean up all spilled oil.

36. Pursuant to state law, administrative regulations and the state and federal Right-of-Way Leases, Alyeska, the Exxon defendants (other than Exxon Shipping Company) and other Owner Companies were required to, and did, prepare and submit an oil spill contingency plan (the "Plan") to the State and federal officials. The Plan was periodically updated.

37. In the Plan, the defendants represented that they had developed, assembled and organized in advance the procedures, protocols, equipment, supplies, and personnel to respond immediately to a major oil spill. The Plan represented that the defendants' oil spill techniques and equipment were "state-of-the-art" and that they were prepared to and could initiate a rapid response to "contain" a spill and to "exclude" a spill from particularly sensitive areas such as hatcheries and spawning grounds. The Plan further represented that Alyeska had a 24-hour task force in Valdez, Alaska, that was fully trained to respond to an oil spill, and that Alyeska could have equipment and personnel on-scene adequate to respond to a major spill in the vicinity of Bligh Island within five hours.

38. Contrary to the representations made by defendants, defendants did not have the best available technology to contain and clean up the oil spill, did not have adequately trained personnel, equipment or supplies available to respond to an oil spill and could not and did not respond adequately to the oil spilled by the EXXON VALDEZ. Defendants

inability to respond to the oil spill was due in large part to defendants' conscious, deliberate, negligent and reckless decision to save money by reducing manpower, training, equipment and maintenance of equipment below those levels which defendants knew, or should have known, were necessary to respond to a major oil spill.

THE GROUNDING

39. On Thursday evening, March 23, 1989, the EXXON VALDEZ, a very large crude oil carrier ("VLCC") and one of Exxon's two largest oil tanker vessels, left the Port of Valdez, Alaska, bound for Long Beach, California.

40. On information and belief, Third Mate Gregory Cousins and other crew members did not have the amount of rest required by statute prior to the EXXON VALDEZ's departure from Port Valdez on the evening of March 23, 1989.

41. Prior to boarding the EXXON VALDEZ on March 23, 1989, Captain Joseph Hazelwood had been drinking alcoholic beverages in Valdez. On information and belief, at the time Captain Hazelwood boarded the vessel, he was intoxicated and in violation of United States Coast Guard ("Coast Guard") regulations and prudent practices concerning the use of alcohol and the physical and mental condition required of captains operating this type of vessel.

42. Under the command of a harbor pilot, the EXXON VALDEZ left the Valdez terminal at approximately 9:15 p.m., March 23, 1989, and passed through the Valdez Narrows. Except for a brief period at the start of the voyage, Captain

Hazelwood, who at all times relevant hereto was acting within the scope of his employment and as an agent and/or representative of defendant Exxon, was not present on the bridge of the EXXON VALDEZ when the harbor pilot was conning the vessel. In preparation for his departure, the harbor pilot requested, however, that Captain Hazelwood return to the bridge, which Captain Hazelwood did.

43. After the departure of the harbor pilot, Captain Hazelwood informed the Coast Guard that he was changing the vessel's course from the deep-water, normal outbound shipping lane. Captain Hazelwood also informed the Coast Guard that he would notify it when the vessel crossed the traffic separation zone. Captain Hazelwood did not inform the Coast Guard when the vessel crossed the traffic separation zone.

44. Captain Hazelwood directed Helmsman Harry Claar to come to a heading of 200°. Captain Hazelwood then told Helmsman Claar to come to a heading of 180° and put on the autopilot. Helmsman Claar carried out these instructions. In violation of Coast Guard regulations, the Coast Guard was not informed of the second course change, which took the EXXON VALDEZ entirely out of the traffic separation system.

45. Captain Hazelwood directed Third Mate Gregory Cousins to bring the vessel back into the shipping lanes by executing a turn at a point which he identified to Cousins on the navigational chart as a certain "38" (fathoms) notation on the chart. After giving this order, Captain Hazelwood

departed the bridge, leaving Mr. Cousins in control of the navigation of the vessel. Mr. Cousins did not have the pilotage endorsement required to pilot a VLCC through Prince William Sound. Cousins was unaware that the autopilot was on when he was left in control of the navigation of the vessel.

46. Following Captain Hazelwood's departure from the bridge, Helmsman Claar was relieved by Helmsman Robert Kagan. At all relevant times, Messrs. Cousins, Claar and Kagan were acting within the scope of their employment, and as agents and/or representatives of defendants Exxon.

47. The EXXON VALDEZ continued past the clearly-marked vessel traffic lanes into an area dangerous to vessels due to reefs and other obstructions, including the well-marked Bligh Reef. After traveling approximately three miles east of the inbound shipping lane, and ignoring until too late the buoy and flashing red light at Bligh Reef, the EXXON VALDEZ struck Bligh Reef shortly after midnight on Friday, March 24, 1989. The grounding punctured the single-hulled vessel and resulted in the rupture of several of the vessel's crude oil cargo tanks. When the EXXON VALDEZ went aground, Captain Hazelwood was not on the bridge of the vessel.

48. After the grounding, Captain Hazelwood and Exxon increased the quantity of the oil spilled into Prince William Sound by their attempts to extricate the vessel from Bligh Reef.

49. Exxon defendants have systematically reduced the crew size of tankers in the Valdez trade for the purpose

of saving money. The crew size of the EXXON VALDEZ was too small for the work responsibilities assigned to the crew. On information and belief, as a result, the crew of the EXXON VALDEZ was overworked, fatigued and not alert on the evening of March 23, 1989.

50. At the time the EXXON VALDEZ struck Bligh Reef, the vessel was incompetently manned within the privity and knowledge of the Exxon defendants, who knew, or had reason to know, that Captain Hazelwood would become intoxicated prior to the vessel's departure. The Exxon defendants had failed to institute adequate and prudent measures to preclude impairment of its officers and crews serving on VLCCs. On information and belief, the vessel was also incompetently manned within the privity and knowledge of the Exxon defendants, who knew, or had reason to know, that Third Mate Cousins would be left in charge of the vessel when he lacked the pilotage endorsement to operate the vessel in Prince William Sound. The Exxon defendants failed to take steps to insure that the EXXON VALDEZ complied with all applicable state and federal laws and regulations relating to the manning of VLCCs in Prince William Sound. On information and belief, the Exxon defendants intentionally or negligently authorized or permitted Captain Hazelwood and the crew of the EXXON VALDEZ to frequently and systematically violate Coast Guard regulations and Exxon policies concerning the manning or operation of the EXXON VALDEZ.

51. Eleven of the EXXON VALDEZ's tanks were ruptured by either the initial grounding or the subsequent efforts to dislodge the vessel from Bligh Reef, causing the largest oil spill in United States history. Approximately 11 million gallons of crude oil spilled into Prince William Sound from the EXXON VALDEZ.

RESPONSE OF DEFENDANTS TO THE OIL SPILL

52. All defendants are responsible for containment and cleanup of the oil spill from the EXXON VALDEZ. By statute, regulation, the provisions of the State Right-of-Way Lease and ordinary prudence, the defendants were required to be prepared to contain and clean up oil spilled by them and to implement the Plan in the event of an oil spill in Prince William Sound. Nonetheless, and contrary to the representations of the defendants, both in their Plan as updated and in other representations to the State and third parties, the defendants both failed to make, and delayed making, an appropriate response to the oil spill from the EXXON VALDEZ. The defendants failed to take prompt and adequate measures to contain the oil spill and to recover oil spilled from the EXXON VALDEZ.

53. Although the Plan does not disclose that Alyeska might surrender its responsibilities for containing and cleaning up an oil spill in Prince William Sound, Alyeska nonetheless withdrew from containing and cleaning up the spill. This withdrawal commenced as early as Friday evening (March 24, 1989) and withdrawal caused delay, uncertainty,

confusion and ineffective and inefficient use of containment and clean up equipment and manpower and contributed to the failure of defendants promptly to protect sensitive areas by booming as required by the Plan.

54. During the crucial first 48 hours after the oil spill, the weather conditions were well-suited to containing and recovering the spilled crude oil. Nonetheless, as a result of the inadequate equipment, insufficient and inadequately trained personnel, confusion over which defendants were responsible for what actions, virtually no oil was recovered in the first 48 hours. The ultimate assignment of containment and clean up responsibility went to Exxon Shipping Company, an entity which, on information and belief, had no substantial knowledge of the Plan.

55. When the spill occurred, the defendants did not provide the personnel, equipment or response they committed to in the Plan. The defendants did not have present at the oil spill site a trained task force capable of an adequate, sustained, state-of-the-art response. The dock and office workers who were part of the Alyeska oil spill response team had no substantial experience or training with oil spills of substantial size, and a full-time oil spill coordinator was no longer stationed in Valdez, Alaska.

56. During the first 24 hours after the oil spill, none of the defendants had the aircraft, spray equipment, fire booms, other equipment and personnel on-site to commence burning of the oil or full scale application of dispersants.

During this crucial time period, defendants only action was to start transporting equipment, supplies and personnel from locations as far as 2,000 miles from the oil spill site.

57. At the time of the oil spill, defendants' equipment and materials were not adequate, not state-of-the-art, not operational, not properly maintained and were not effective. The defendants lacked immediate access to adequate containment booms. Alyeska's containment boom deployment barge which was to be used for such emergencies was unloaded or not fully loaded and out of service. Modern self-inflating containment booms designed to contain oil slicks immediately after an oil spill were unavailable for prompt deployment.

58. The skimmer boats used by the defendants for the oil spill clean up were in poor condition and incapable of recovering the amount of oil represented in the Plan to be recoverable by skimming. A 218,000-gallon capacity tanker barge, designed to carry oil from spill sites, had been replaced by a much smaller, second-hand barge.

59. At the time of the spill, the defendants also lacked available or immediate access to equipment needed to exclude spilled oil from environmentally sensitive areas, as committed to in the Plan. Further, the defendants had no communications equipment capable of permitting effective and prompt deployment and coordination of spill response personnel and equipment.

60. Defendants Alyeska and Exxon's response effort to clean up the oil after the first 48 hours was, and

continues to be, even to the present, insufficient and inadequate. Among other things, defendants have deployed equipment and manpower ineffectively and wastefully. Defendants have failed to clean up and remove all the oil from State lands, waters and resources as required by law.

DAMAGES TO PLAINTIFF

61. As a result of the oil spill from the EXXON VALDEZ, over a thousand square miles of State lands, waters and resources have suffered ~~severe environmental damage~~. A growing number of coastal and inland sounds and bays, beaches, tidelands, tidal pools, wetlands, estuaries and other sensitive elements of the ecosystems have been devastated; thousands of mammals, fowl and fish have been killed or injured; anadromous streams, near shore environments and other fish and wildlife critical habitats have been contaminated; aesthetics and scenic quality have been destroyed or impaired, together with attendant opportunities for recreational experiences; air quality has deteriorated through the escape of evaporating pollutants; commercial fisheries have been sharply curtailed, with adverse biological and economic consequences; the greater ecosystem in the spill area has been deprived of its pristine condition with attendant damage to the condition of, and interrelationship among, living creatures comprising the system; and the management opportunities available through the knowledge and data base generated from prior experience with the ecosystem have been compromised.

62. The State has incurred, and will continue to incur, economic damages in the form of extraordinary expenses directly related to the spill including, without limitation: (i) costs of response to the oil spill, investigation and monitoring of the oil spill; (ii) costs of clean up and removal; (iii) costs of damage assessment studies; (iv) increased direct and indirect costs of providing governmental services to persons or entities adversely effected by the oil spill; and (v) the losses due to ordinary government services curtailed or impaired as a result of diversion of State resources caused by State activities related to the spill.

63. The State has suffered, and will continue to suffer, economic damages in the form of extraordinary losses of revenue relating to the spill, including, without limitation: (i) loss of fish processing tax revenue; (ii) loss of salmon enhancement tax revenue; (iii) loss of oil and gas production tax revenue; (iv) loss of corporate income tax revenue; and (v) loss of oil production royalties.

64. On information and belief, the environmental and economic damages caused by the oil spill to property, trades and business, State revenues, fisheries, marine life, various categories of State lands, waters and resources and the enjoyment thereof within, among others, Prince William Sound, Cook Inlet, Kodiak Island and the Gulf of Alaska, will continue for many years.

65. On information and belief, defendants may curtail or abandon their efforts at cleaning up the beaches

and restoring them to their pre-spill condition. Such curtailment and/or abandonment of the clean up will cause plaintiff irreparable harm because money will not prevent the environmental and other damages which will occur to State lands, waters and resources as a result of defendants' termination of clean up work. On information and belief, defendants have not yet commenced restoration work and the State will incur costs of restoration and replacement of impacted State lands, waters and resources.

COUNT I

NEGLIGENT OR INTENTIONAL FAILURE TO CONTAIN
AND CLEAN UP THE OIL SPILL
ALL DEFENDANTS

66. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

67. The containment and removal of the discharged oil which damaged and threatens to further damage State lands, waters and resources and private property was the responsibility of all defendants. Defendants had a duty to plaintiff to have adequate resources available to contain and clean up immediately and effectively the oil spill.

68. Prior to the EXXON VALDEZ oil spill, the defendants had repeatedly represented to the State and others that they had the resources, technology and a plan by which major oil spills could be contained and excluded from environmentally sensitive areas within hours of the occurrence. In the period immediately after the grounding of the EXXON VALDEZ, nothing was done to promptly contain the oil

spill. Nearly an entire day passed after the oil spill before Alyeska and Exxon representatives even started to place booms or clean up the oil spill. More days would pass before defendants took any effective action to implement exclusionary booming of sensitive areas.

69. The delays in responding to the EXXON VALDEZ oil spill were due to the defendants' lack of preparedness in personnel, equipment and materials to engage in an effective clean up of the EXXON VALDEZ oil spill.

70. Defendants knew, or should have known, that they lacked adequate equipment and materials and trained personnel to contain effectively and to clean up a spill of the magnitude of the EXXON VALDEZ oil spill.

71. The defendants either intentionally or negligently failed to control, contain and clean up the oil spill by, among other things, (i) failing to provide adequately for the containment and clean up of any discharge of oil; (ii) inadequately planning the clean up effort stemming from the EXXON VALDEZ oil spill; (iii) possessing inadequate equipment, supplies and personnel for deployment in the ensuing clean up effort; (iv) unreasonably delaying the ensuing clean up effort; (v) failing to adequately carry out the ensuing clean up effort; and (vi) choosing inadequate tactics in the ensuing clean up effort. All these actions and omissions of defendants served to aggravate and compound the environmental and economic damages to plaintiff.

72. As a direct and proximate result of the foregoing and other failures by the defendants to exercise that degree of care expected of a reasonably prudent person acting under the same or similar circumstances, the defendants in their own right, as well as by and through their agents, servants and employees, caused plaintiff to suffer substantial and continuing environmental, economic and other damages to State lands, waters and resources, and other interests in amounts to be proven at trial.

COUNT II

NEGLIGENCE
EXXON DEFENDANTS

73. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

74. Captain Hazelwood was not in control of the navigation of the EXXON VALDEZ when the vessel hit the well-marked Bligh Reef. Instead, Third Mate Cousins was in control of the navigation when the vessel ran aground, even though Third Mate Cousins lacked the proper pilotage endorsement and experience to pilot vessels such as the EXXON VALDEZ through the waters of the Prince William Sound.

75. The Exxon defendants and Captain Hazelwood and Third Mate Cousins knew, or should have known, that Cousins did not possess either the required pilotage endorsement or the requisite degree of competence to command the EXXON VALDEZ with reasonable prudence, skill or care. Acting within the scope of their employment, Captain Hazelwood and Third Mate

Cousins knew, or should have known, that it was unreasonably dangerous and also a violation of applicable Coast Guard rules and regulations for Hazelwood to leave the bridge and relinquish control of the navigation of the vessel to Cousins.

76. The Exxon defendants knew, or should have known, based on the service in which the EXXON VALDEZ was involved, that its single hull, high tensile steel construction was not sufficient to allow it to safely engage in the trade for which it was intended.

77. The negligence of the Exxon defendants, except Exxon Pipeline Company, in the operation of the EXXON VALDEZ specifically includes, but is not limited to, (i) failing to man the EXXON VALDEZ with sufficient and competent crew members so that the crew would not be overworked and fatigued; (ii) permitting Captain Hazelwood to command the EXXON VALDEZ despite his excessive use of alcohol; (iii) allowing the improper relinquishment of control of the navigation of the EXXON VALDEZ to Third Mate Cousins; (iv) using single hull, high tensile steel construction that was not sufficient to allow the tanker to safely engage in the trade for which it was intended; (v) failing to reduce speed when ice was encountered; and (vi) failing to establish proper monitoring and supervision of Captain Hazelwood in light of his known alcohol problem.

78. As a direct and proximate result of the foregoing failures by the Exxon defendants, except Exxon Pipeline Company, to exercise the degree of care expected of a

reasonably prudent person acting under the same or similar circumstances, the Exxon defendants in their own right as well as by and through their agents, servants and employees, caused plaintiff to suffer substantial environmental and economic damages in amounts to be proven at trial.

COUNT III

INTENTIONAL AND NEGLIGENT MISREPRESENTATION
ALL DEFENDANTS

79. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

80. The defendants negligently or intentionally misrepresented to plaintiff and others that they had sufficient personnel, material, knowledge and techniques at their disposal to prevent a major oil spill or to prevent or minimize environmental or other damages if a major oil spill occurred.

81. Contrary to these representations, the defendants were aware, or were negligent or reckless in not being aware, that they lacked sufficient personnel, equipment, knowledge and techniques to prevent an oil spill or to respond adequately to an oil spill on Prince William Sound before it caused substantial environmental and economic damage. Defendants knew and intentionally disregarded, or were reckless in not knowing, that they were ill-equipped and unprepared to respond to an oil spill such as the EXXON VALDEZ spill. Nonetheless, defendants failed to warn state or federal authorities or the public of their unpreparedness and

the potential adverse impact of such unpreparedness should a substantial oil spill occur in Prince William Sound.

82. Due to these negligent, reckless or intentional misrepresentations or omissions of material facts, the true dangers posed to plaintiff, the citizens of Alaska and State lands, waters and resources were not disclosed.

83. The misrepresentations and omissions of material fact by the defendants were negligently, recklessly or intentionally made to induce plaintiff and others to refrain from taking action which would have required defendants to be prepared to prevent a major oil spill and, if an oil spill should occur, to contain and clean up the spilled oil.

84. The above-mentioned misrepresentations and omissions resulted in inadequate and ineffectual clean up efforts which aggravated and compounded the environmental and economic damages caused to plaintiff by the oil spill.

85. As a direct and proximate result of the misrepresentations and/or omissions of material facts by defendants, plaintiff has suffered substantial and continuing environmental and economic damages in amounts to be proven at trial.

COUNT IV

NEGLIGENCE PER SE
EXXON DEFENDANTS

86. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

87. The acts and omissions of the defendants violated AS 08.62 and regulations enacted pursuant thereto and other state laws and regulations governing the operation of tanker vessels in Prince William Sound. In so violating these laws, defendants were negligent per se.

88. The defendants are liable to plaintiff for all environmental and economic damages resulting from the accident and discharge on account of the violations of the above-mentioned State law.

89. As a direct and proximate result of the defendants' negligent acts and omissions, the defendants have caused plaintiff to suffer substantial and continuing environmental and economic damages in an amount to be proven at trial.

COUNT V

STRICT LIABILITY FOR
INHERENTLY DANGEROUS ACTIVITY
EXXON DEFENDANTS

90. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

91. The oil transportation, loading and shipping activities engaged in by the Exxon defendants are so inherently dangerous and potentially devastating to the surrounding environment in the State of Alaska, as well as to its residents, citizens and businesses, that even when conducted under the best of circumstances and with utmost care, such activities constitute inherently and abnormally

LAW OFFICES OF
PRESTON, THORNTON, ELLIS & HOLMAN
420 A STREET
PRINCE WILLIAM, ALASKA 99501-1937
(907) 276-1969

dangerous activities for which the defendants are strictly liable.

92. The use of single-hulled vessels for transporting ANS crude oil through Prince William Sound constitutes an inherently and abnormally dangerous activity for which defendants are strictly liable.

93. The above-described inherently dangerous activities engaged in by the defendants directly and proximately caused substantial and continuing environmental and economic damages to plaintiff, in amounts to be proven at trial.

COUNT VI

MARITIME TORT
EXXON DEFENDANTS

94. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

95. By virtue of the above, the Exxon defendants negligently allowed the vessel to sail in an unseaworthy condition and/or negligently allowed the vessel to be navigated in an unprudent manner, in violation of the general maritime law. The Exxon defendants' negligence resulted in the grounding of the vessel and was a direct and proximate cause of the environmental and economic damages suffered by plaintiff, in amounts to be proven at trial.

LAW OFFICES OF
PRESTON, THORGRIMSON, ELLIS & HOLMAN
410 F. G. COOK
420 F. SCHULTZ
ALBUQUERQUE, ALASKA 99501-0001
(907) 276-0202

COUNT VII

BREACH OF RIGHT-OF-WAY LEASE AND INDEMNIFICATION
OWNER COMPANIES AND ALYESKA

96. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

97. In May, 1974, the State and the defendant Owner Companies or their predecessors in interest entered into the State Right-of-Way Lease. The State Right-Of-Way Lease imposed upon the defendant Owner Companies responsibility for the avoidance of a discharge of oil into or upon the lands, waters and resources of the State, and for the protection of the public and environment from the damages and other effects of any possible oil spill. The Owner Companies' obligations included, without limitation: (i) employment of the best practicable technology available and use of all practicable means to preserve and protect the environment; (ii) prevention of any potential spill of oil or other hazardous substance into or upon the lands, waters and resources of the State; (iii) if such an oil spill occurs, immediate corrective action using the best practicable technology available to abate serious harm or environmental damage; and (iv) restoration of the resources affected by an oil spill.

98. In accordance with State Right-Of-Way Lease, the defendants submitted to the Alaska Department of Natural Resources contingency plans for the prevention, containment and clean up of oil spills, including contingency plans applicable to tanker spills in Prince William Sound.

99. The defendants have breached the State Right-Of-Way Lease because they failed to comply with their obligation to use the best practicable technology and resources available to adequately prevent and to abate the serious harm and environmental damage threatened and caused to State lands, waters and resources as a result of the oil spill.

100. The defendants have breached the State Right-of-Way Lease because they failed to fulfill their obligations under the Lease to respond, contain and clean up the oil spill in conformity with the Plan for Prince William Sound.

101. Under Section 13 of the State Right-of-Way Lease, defendant Owner Companies must indemnify the State for liabilities, damages or injury incurred by the State caused by operation or maintenance of the TAPS.

102. Plaintiff has suffered damages and injury within the meaning of Section 13 of the State Right-of-Way Lease in an amount to be proven at trial.

COUNT VIII

PUBLIC NUISANCE
ALL DEFENDANTS

103. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

104. The acts and omissions of the defendants created a public nuisance through unreasonable interference with the rights of plaintiff to State lands, waters and

LAW OFFICES OF
PRESTON THORNTON, ELLIS & HOLMAN
4311 FLOOR
4201 BIRCH
ANNAPOLIS, MARYLAND 21403
(410) 276-1800

resources that are free from pollution and contamination by crude oil and other hazardous substances.

105. The unreasonable interference with the rights of the State resulted in special and distinct harm to plaintiff, including, but not limited to, damages to the lands, waters and resources of the State and the revenues derived from the use by third parties of natural resources of the State.

106. The substantial interference with plaintiff's interests were caused by the actions and omissions of the defendants for which they are liable to plaintiff for environmental and economic damages sustained in amounts to be proven at trial.

107. The defendants threaten to continue the acts and omissions complained of herein, and unless permanently restrained and enjoined, will continue to do so, all to plaintiff's irreparable damage. Plaintiff's remedy at law for damages is not adequate to compensate them for the continuing injuries suffered by the State.

COUNT IX

PRIVATE NUISANCE UNDER AS 09.45.230
ALL DEFENDANTS

108. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

109. The acts and omissions of the defendants created a private nuisance through substantial interference

with the use and enjoyment of plaintiff's interests in property.

110. The substantial interference with the use and enjoyment of plaintiff's interests in property includes, but is not limited to injury or loss to real and personal property, loss of income, loss of means of producing income and loss of economic benefits.

111. Substantial interference with plaintiff's interests was caused by the actions and omissions of the defendants for which they are liable to plaintiff for the damages sustained in amounts to be proven at trial.

112. The defendants threaten to continue the acts and omissions complained of herein, and unless restrained and enjoined, they will continue to do so, all to plaintiff's irreparable damage. Plaintiff's remedy at law for damages is not adequate to compensate them for the continuing injuries suffered by the State.

COUNT X

TRESPASS
EXXON DEFENDANTS

113. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

114. Through the intentional or reckless grounding of the EXXON VALDEZ upon Bligh Reef and the improper transport of crude oil, an ultrahazardous activity for which the Exxon defendants are strictly liable, the Exxon defendants spilled approximately 11 million gallons of crude oil into and upon

the State's lands and properties. Such actions constitute an unauthorized and continuing trespass upon State lands, waters and resources.

115. As a direct and proximate result of the EXXON VALDEZ's trespass upon the lands, waters and resources of the State, and continuing trespass of the EXXON VALDEZ crude oil upon State lands, waters and resources, the State has suffered and will continue to suffer substantial and continuing environmental and economic damages for which the Exxon defendants are liable in such amounts as will be proven at trial.

COUNT XI

STRICT LIABILITY UNDER AS 46.03.822 ;
EXXON DEFENDANTS

116. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

117. Oil, including the approximately 11 million gallons of crude oil which was released as a result of the grounding and rupture of the EXXON VALDEZ's oil tanks, is a hazardous substance, as that term is defined in AS 46.03.826(4)(B) of the Alaska Environmental Conservation Act.

118. The Exxon defendants owned and/or had control over the oil which was released in and on the waters and subsurface lands of Prince William Sound and other areas of the State.

119. The release of oil from the EXXON VALDEZ caused the State to incur response costs.

120. Pursuant to AS 46.03.822, the Exxon defendants are jointly and severally strictly liable to plaintiff for all damages to plaintiff, including, but not limited to, injury or loss to real and personal property, loss of revenue, loss of means of producing income, loss of economic benefits, costs of responding, containing and removing the oil, including the cost of monitoring and overseeing the clean up, and all damages to State lands, waters and resources in amounts to be proven at trial.

COUNT XII

AS 46.03.780 LIABILITY FOR RESTORATION
ALL DEFENDANTS

121. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

122. All defendants have violated provisions of AS 46.03, AS 46.04 or AS 46.09 and have failed to perform duties imposed by such statutes, which violations have caused, without limitation, injuries and death to fish, animals and vegetation, degradation and other environmental damages to the lands, waters and resources of the State.

123. Pursuant to AS 46.03.780, defendants are liable to plaintiff for an amount equal to the sum of money required to restock injured land and waters, to replenish damaged and degraded resources and to restore the environment to its condition before the injury.

COUNT XIII

CIVIL DAMAGES UNDER
AS 46.03.760(e)
EXXON DEFENDANTS

124. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

125. The Exxon defendants permitted the discharge of crude oil from the EXXON VALDEZ in violation of AS 46.03.740.

126. Pursuant to AS 46.03.760(e), Exxon defendants are liable to the State for the full amount of damages suffered by the State, including, but not limited to, all direct and indirect costs associated with the abatement, containment and removal of the oil, restoration of the environment to its former condition and all administrative expenses in amounts to be proven at trial.

COUNT XIV

CIVIL PENALTIES UNDER AS 46.03.758(b)(1) and (2)
EXXON DEFENDANTS

127. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

128. Pursuant to AS 46.03.758, Exxon defendants are liable to plaintiff for the penalties in the amounts set forth therein due to the discharge of crude oil from the EXXON VALDEZ and the failure to contain and clean up the discharged oil.

129. The crude oil was discharged from the EXXON VALDEZ because of Exxon defendants' gross negligence. Pursuant to AS 46.03.758(b)(2), the Exxon defendants are

liable to the State for five times the civil penalty established by AS 46.03.758(b)(1) and 18 AAC 75.500 et seq.

130. Following the crude oil discharge from the EXXON VALDEZ, the Exxon defendants failed to take reasonable measures to contain and clean up the discharged oil from the EXXON VALDEZ. Pursuant to AS 46.03.758(b)(2), defendants are liable to the State for five times the civil penalty established by AS 46.03.758(b)(1) and 18 AAC 75.500 et seq.

COUNT XV

AS 46.03.760(a)

ALL DEFENDANTS

131. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

132. Defendants have violated provisions of AS 46.03 (other than AS 46.03.250-46.03.314, AS 46.03.740 and AS 46.03.758 and provisions of AS 46.04 and AS 46.09 and regulations adopted pursuant to those statutes, including, without limitation, at least the following:

- a) AS 46.03.140
- b) AS 46.03.710
- c) AS 46.04.030
- d) AS 46.09.020

133. Pursuant to AS 46.03.760(a), defendants are liable to plaintiff for a civil assessment of not less than \$500, nor more than \$100,000, for each initial violation, plus not more than \$5,000 for each day thereafter for each violation, and for all other damages and costs incurred by plaintiff.

COUNT XVI

NEGLIGENT OR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
ALL DEFENDANTS

134. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

135. The actions of defendants in discharging crude oil into the waters of Prince William Sound and failing to take adequate measures to contain and clean up the crude oil caused substantial and abnormal environmental and economic damages to the State and its residents. On information and belief, as a result of the actions of the defendants, many state residents are suffering, and will continue to suffer, emotional distress from having witnessed the destruction of the environment in which they live and work and having their livelihoods threatened and their personal and family lives disrupted. As a result of the defendants' acts and omissions, the State has incurred, and will continue to incur, substantial costs in increased demand for social services, mental health treatment and other community services for the severe emotional distress suffered by the citizens of the State.

136. The severe emotional distress suffered by many state residents was a reasonably foreseeable consequence of the grounding of the EXXON VALDEZ and the failure to properly contain and clean up the spilled crude oil.

137. As a direct and proximate result of the defendants' conduct as described above, plaintiff has suffered

substantial and continuing economic and other damages, in an amount to be proven at trial.

COUNT XVII

PUNITIVE DAMAGES
ALL DEFENDANTS

138. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

139. The acts and omissions of defendants alleged in Counts I, II, III, VI, VII, VIII and X were undertaken in deliberate disregard or with reckless indifference to the rights and interests of plaintiff and entitle plaintiff to punitive damages in an amount to be proven at trial.

RELIEF SOUGHT

WHEREFORE, plaintiff prays that this Court:

1. Award all statutorily authorized civil penalties, compensatory, incidental and punitive damages in amounts to be determined by the finder of fact;
2. Award all compensatory and punitive damages authorized under the common law, including, but not limited to, environmental and economic damages.
3. Award all compensatory and punitive damages authorized under the general maritime law.
4. Order that the defendants be permanently enjoined to remove all spilled oil and to restore the surface and subsurface lands, wildlife, waters, fisheries, shellfish and associated marine resources, air and other State lands,

waters and resources affected directly or indirectly by the spill;

5. Order immediate and continuing environmental monitoring and assessment of the conditions of the air, waters and subsurface and surface lands, fisheries, shellfish and the associated marine resources and other natural resources;

6. For a judgment against defendant Owner Companies for all environmental and economic damages suffered by the State of Alaska by reason of the defendants' breaches of the State Right-of-Way Lease, including, without limitation, the cost of monitoring the clean up of the oil spill, the environmental damages to State lands, waters and resources, damage to the State's economy and lost revenues;


7. For a judgment that the defendant Owner Companies are obligated to reimburse and indemnify the State of Alaska for all environmental and economic damages suffered by the State of Alaska by reason of the defendants' breaches of the State Right-of-Way Lease, including, without limitation, the cost of monitoring the clean up of the oil spill, the environmental damages to State lands, waters and resources, the damage to the State's economy, lost revenues, the costs of all enforcement actions and the costs of all expert studies, consultancies and reports conducted or prepared by or for the State to assess the injury or damages caused by defendants' actions and inactions;

8. Award prejudgment interest, attorneys' fees and the costs of this action; and,


9. Award such other and further relief as this Court deems just and proper.

DATED this 15th day of August, 1989.

DOUGLAS B. BAILY
ATTORNEY GENERAL

By: 
Barbara Herman
Craig Tillery
Assistant Attorneys General
State of Alaska

PRESTON, THORGRIMSON,
ELLIS & HOLMAN
Attorneys for Plaintiff

By: 
Frederick H. Boness
Joseph K. Donohue

LAW OFFICES OF
PRESTON, THORGRIMSON, ELLIS & HOLMAN
4TH FLOOR
420 L STREET
ANCHORAGE, ALASKA 99501-1937
(907) 276 1688

EXXON VALDEZ OIL SPILL SETTLEMENT

DOCUMENT/CASE	LEGAL BASIS	TYPES OF DAMAGES	AMOUNT PAID	TO WHOM PAID	RESTRICTIONS ON USE	WHO DECIDES HOW USED
U.S. and Alaska v. Exxon (Federal Court Alaska) Consent Decree	Federal Clean Water Act (CWA) 33 USC 1321(f)	Past and future cleanups, response and assessment (state and federal) Damage to state and federal natural resources	\$900 million less Exxon's cleanup cost from 1/1/91 to final approval of consent decree This is <u>joint</u> recovery for U.S. and Alaska	Federal and state trustees jointly (As directed by state and federal Attorneys General)	CWA requires use for restoring, rehabili- tating or acquiring equivalent of damaged natural resources	Trustees in accordance with MOA
U.S. v. Alaska (Federal Court Alaska) Memorandum of Agreement (MOA)	CWA regulations 43 CFR 11.92 and 11.93 40 CFR 300.600- 300.615	1) State cleanup, response and litigation costs through 12/31/90 2) Federal cleanup, response costs through 12/31/90 3) Federal and state cleanup costs after 12/31/90 4) Restoration, rehabilitation, acquisition	Out of the \$900 million: 1) Up to \$72 million 2) Up to \$62 million 3) No stated limit (May effective- ly be limited to \$150 million) 4) Remainder of settle- ment	1) State government 2) Federal government 3) State or federal government 4) Trustees: 3 state 3 federal	1) None 2) None 3) None 4) Restoration, rehabilitation, acquisition of natural resources	1) State Legislature 2) Federal Government 3) State Legislature and Federal Government 4) Unanimous agreement of trustees Failing that, federal judge

*How to
Spend the
Money*

DOCUMENT/CASE	LEGAL BASIS	TYPES OF DAMAGES	AMOUNT PAID	TO WHOM PAID	RESTRICTIONS ON USE	WHO DECIDES HOW USED
Alaska v. Exxon (State Superior Court) <i>State Law</i> 89-06852	State law (Statutory and Common Law)	Cleanup, response, assessment, damage to natural resources, lost state revenue (taxes), litigation costs, prejudgment interest	? (No settlement proposal)	To state government	None	State Legislature
U.S. v. Exxon (Federal Court Alaska) Criminal Case	Federal law	1) Fine 2) Restitution	1) \$50 million 2) \$50 million	1) U.S. Government 2) State Government	1) None 2) Only for restoration projects related to spill	1) Federal Government 2) State Legislature

ROBERT B. SANDERS, Ph.D.
Chief Geologist



Sanders Resource Associates, Inc.

11661 Rockridge Drive
Anchorage, AK 99516
(907) 345-0203

March 21, 1991

Senator Rick Halford
P.O. Box V
Juneau, AK, 998811

Dear Senator Halford:

I am most strongly opposed to one of the conditions of the Federal/State-Exxon Valdez Spill Settlement Agreement, i.e. the provision to not release the scientific studies regarding the spill.

The spill studies contain extremely valuable data which MUST be available to the public. Some of the data in these studies may be critical in formulating a best response to the inevitable future events in similar environments. Most of the studies were undertaken on the basis of precisely such rationale.

Further, it should be noted that most of the studies were funded or supported by the federal government and as such would be subject to disclosure through the Freedom of Information Act. Others were conducted under NSF and private grants which contractually REQUIRE the publication of results. Finally, in the event of a lawsuit the "Discovery" process should effectively unmask these studies.

Rather than supressing these studies, the State would better serve the worldwide scientific community in sponsoring the dissemination of data gained through these studies. Happily, the U.S. Forest Service has opened an offoce for sauch purpose and at least one of NOAA's experts is already describing study results on the Lecture Circuit.

Whereas the studies involved would be of great value to the scientific community; were conducted with public funding; and would, in any case, eventually become public through various means; I feel that that portion of the settlement must be be deleted. Any action you might be able to take towards this end would be appreciated.

Respectfully,

A handwritten signature in dark ink, appearing to read 'R. Sanders', written in a cursive style.

Dr. Robert B. Sanders

ROBERT A. GIGLER
7447 O'Brien Street
Anchorage, Alaska 99507

Dear Member of The Alaska Legislator:

On March 15, 1991, I met with Governor Walter Hickel and Special Assistant James Rockwell to discuss public concerns regarding the EXXON Valdez Oil Spill.

Mr. Rockwell said he spoke with the underwater survey company contracted by EXXON to assess vessel damage. He gained information which suggested that the EXXON Valdez struck Bleigh Reef twice. If this is true, the public was misinformed by the initial report released by EXXON's underwater construction company.

Based on their report the following article appeared on Page A-8 of the March 27, 1989 Anchorage Times. The Starboard side of the EXXON Valdez collided with a pinnacle rock following this the tanker turned westward while sliding toward the South. Afterwards it struck the second pinnacle, at midship. Both strikes occurred approximately 2 miles apart. The President of the EXXON Corporation said the tankers speed was unknown at this time. (This is another inconsistent fact).

Page A-10 of the March 27, 1989 Anchorage Daily News, Spill Archives Reference said this collision occurred at 11:50 p.m. and the vessels speed was estimated at 8 knots. The impact ruptured three holes in the starboard side causing the tanker to turn to the west. Inertia kept it moving in the southerly direction of the first Pinnacle. This forced the vessel to travel more than a mile from the shipping lane and ground on the second pinnacle of Bleigh Reef at 12:03 a.m. on March 24, 1989.

National Transportation Safety Board hearings on May 16-19, 1989 identified the following. From the Archives of the Anchorage Daily News May 17, 1989, page A-10 included the following comments from the May 1989 NTSP hearing.

The EXXON Valdez left the shipping lanes to allegedly possibly avoid impact with ice bergs. The tanker headed west 200° at 12 knots with speed increasing to 15 knots. The course was changed to 180° and the tanker was placed on auto pilot. Afterwards the Captain left the bridge. At 11:57 p.m. March 23, 1989 Constat calls from New Jersey EXXON Valdez began and continued for 33 minutes. Captain Hazelwood did not report the new heading to the Coast Guard radio operator. After the collision, the vessel's main engine was shut down at approximately 1:45 a.m., according to engine log.

The impact was identified by Gregory Cousins in the National Transportation Safety Board hearing room in his testimony May 17, 1989. Deck watch observed the following: The Busby Island red light was viewed from the dangerous waters of Tatitluk Narrows. The 1st strike was located approximately 4000 yds. northerly from Bleigh Reef. The Loran location at 7960X 14337-7960Y32162. The Loran location was documented by a witness to the grounding in Tatitluk Narrows (Bud Hall) commercial fisherman.

From the evidence shown, we believe the grounding of the EXXON Valdez to be deliberate and intentional.

What is the truth?

Sincerely,

Robert Gigler
Greenpeace Action International

Distributed by
Governors office

MARCH 16, 1991

14 y

THE NEW YORK TIMES, SATURDAY

FYI

The New York Times

Founded in 1851

ADOLPH S. OCHS, *Publisher 1896-1935*
ARTHUR HAYS SULZBERGER, *Publisher 1935-1961*
ORVIL E. DRYFOOS, *Publisher 1961-1963*

ARTHUR OCHS SULZBERGER, *Publisher*
ARTHUR OCHS SULZBERGER JR., *Deputy Publisher*

MAX FRANKEL, *Executive Editor*
JOSEPH LELYVELD, *Managing Editor*
WARREN HOGE, *Assistant Managing Editor*
DAVID R. JONES, *Assistant Managing Editor*
CAROLYN LEE, *Assistant Managing Editor*
JOHN M. LEE, *Assistant Managing Editor*
ALLAN M. SIEGAL, *Assistant Managing Editor*

JACK ROSENTHAL, *Editorial Page Editor*
PHILIP M. BOFFEY, *Deputy Editorial Page Editor*

LANCE R. PRIMIS, *President*
RUSSELL T. LEWIS, *Sr. V.P., Production*
ERICH G. LINKER JR., *Sr. V.P., Advertising*
JOHN M. O'BRIEN, *Sr. V.P., Finance/Human Resources*
WILLIAM L. POLLAK, *Sr. V.P., Circulation*
ELISE J. ROSS, *Sr. V.P., Systems*
JAMES A. CUTIE, *V.P., Marketing*

Let

Bi

To th
"H
torial
taken
of Br
expla
About
same
Hann
and h
Mr. G
becor
flagri
of oth
All
ed co
expre
pacity
The
tion
defen
a lin
peate
been
being
as in
Pente
has b
peopl
libel
Eff
As J
once
clen
hatre
to bal
stude
bray
The
ing sp
harm
disgr
were
which
clear
stude
a mi
violat
of th
Mo
tion t
and h
defin
Fa
from
men
servi
(acti
he ha
writi
he di
conce
devel
learn

Now, Save Prince William Sound

Exxon's \$1 billion settlement of state and Federal claims stemming from the calamitous Exxon Valdez oil spill is clearly preferable to a long and chancy trial that might have yielded a smaller penalty. But the real test will be whether the money is spent wisely.

The six Federal and state agencies controlling the funds will inevitably lodge competing claims. These claims must not be allowed to shortchange the main victim of one of the worst environmental disasters in American history: Prince William Sound.

Under the settlement, Exxon and a shipping subsidiary will plead guilty to four Federal criminal charges, pay an immediate criminal fine of \$100 million and an additional \$900 million over 10 years to settle civil claims brought by the Federal Government and the state of Alaska.

The agreement wisely includes a "reopener" clause, obligating Exxon to pay an extra \$100 million if damages turn out to be greater than presently anticipated. And while the settlement relieves Exxon of Federal and state liabilities, the company still faces 300 smaller suits brought by fishermen, food processors and other individuals and businesses.

The settlement isn't perfect. The Justice Department might also have pressured Exxon to fork over the entire \$1 billion immediately. True, Exxon has already paid a stiff price for its carelessness — \$2 billion so far in cleanup costs. It's also true, as Justice argues, that the additional \$1 billion can't be spent right away. But that's disingenuous. A one-time payment would begin earning interest immediately; the same amount spread over 10 years will lose value through inflation.

A further question is why Justice chose not to

sue Alyeska, the pipeline consortium composed of Exxon and other companies with drilling interests on the North Slope. Alyeska, which had piously assured the public that it could handle any emergency, thoroughly bungled the Valdez spill. One theory is that the Justice Department feared that Alyeska would countersue the Coast Guard, which also performed miserably. As one Congressman put it: "For Alyeska and the Coast Guard, this agreement may be more shield than sword."

The agreement is unlikely to be changed, so the task now is to make sure it does the most good. Six different agencies — three Federal, three Alaskan — will collaborate in administering the funds. The agreement calls vaguely for the "restoration, rehabilitation or replacement of natural resources" or the acquisition of "equivalent resources." Those words could mean almost anything, from cleaning beaches to land acquisition for wildlife refuges to building recreational parks to encourage tourism.

There will be many good ideas and hard choices. But the first beneficiary of the money should be the sound itself. Eleven million gallons of oil did not, as some feared, turn Prince William into a dead sea. The beaches are now much cleaner and there have been predictions, challenged by some environmentalists, that salmon runs will reach record proportions this year.

But coastal wetlands have suffered grievously, as have colonies of sea birds and the bald eagles, shellfish and other species vital to the food chain and the local economy. Despite the sound's hardy resilience, there's no guarantee that the ecosystem will recover on its own. Exxon devastated that ecosystem; Exxon's money ought to be targeted first and foremost at speeding its renewal.

JUN 1991

Exxon Settles Spill For \$1.1 Billion

\$100 Million in Pact for Criminal Fine

By Michael Weisskopf
Washington Post Staff Writer

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Hazelwood was acquitted last March on state charges of criminal

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

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

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

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

cont'd

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

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

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

The New York Times

DATE: 3/13/91

PAGE: A1

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

Payments Would End Big Claims in Valdez Spill

By KEITH SCHNEIDER
Special to The New York Times

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

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

Effects Would be Studied

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

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

The proposed settlement, which has

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

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

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

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

Economists noted that Exxon would be able to claim tax deductions for every payment except for the \$100 million criminal penalty, to be paid this year.

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

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

Bottom of the Pockets?

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

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

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

"If and when things break and we have come together for a proposal to be signed, there will be extensive notification," said Mr. Lamberton.

The settlement contains provisions to make public a wealth of scientific studies conducted after the spill by the Department of the Interior, the Environmental Protection Agency and other Federal agencies. But studies sponsored by the State of Alaska and the United States Coast Guard are to remain private pending the outcome of court cases brought against the state and the Coast Guard.

"Keeping the data secret is a major problem," said Mr. Jorgenson. "All of the data available from the spill should be released. The public paid for it. It's public information."

Although the terms would make the settlement the most expensive ever for damages caused by an environmental disaster, the pact is certain to raise a stir in Alaska and in Washington. The negotiators will open the pact to public comment for 30 days after it is signed. Officials with the state and two Federal agencies said the pact could be altered as a result.

Economists who have studied the spill for the state and Federal governments said today that the \$1.1 billion settlement represents only a portion of the actual value of the damage to fisheries, water, wildlife and land. The economists said the Exxon Valdez disaster will have caused \$2.5 billion to \$5 billion in damages from the time of the



The New York Times
The spill near Valdez fouled much of the Gulf of Alaska.

To some, an offer to end the Exxon Valdez affair is too low.

spill before midnight on March 24, 1989, through 1994.

3

Cont'd

Several state officials who asked not to be identified today said they had hoped that Exxon would be required to pay \$1 billion in a one-time payment that could generate permanent income through annual interest payments. Thus, the annual payments, spread out over 10 years, are much less valuable to the state's efforts to clean up and study the effects of the spill.

Senator Frank Murkowski, a Republican from Alaska, said today that Alaska was fortunate to have gained a settlement. The alternative was years

of litigation that would have cost Alaska millions of dollars in legal fees without any assurances of success.

"I think this agreement, if it is resolved, is going to have to stand the light of day by the Legislature, the Governor and Exxon shareholders," said Senator Murkowski. "The alternative is litigation. I certainly am inclined to think a bird in the hand is worth two in the bush. The cost of litigation would be very substantial."

The settlement also calls for an advisory group made up of members of the public to help oversee how money from the settlement is spent. The Department of Justice scheduled a news conference for Wednesday to explain provisions in the settlement.

The last obstacles to the settlement were crossed this afternoon when Judge Stanley Sporkin lifted an order here that prevented the pact from being signed, and a District Judge from Alaska, H. Russell Holland, approved the agreement. Judge Holland was to have presided over the criminal trial next month.

Last week, Judge Sporkin blocked the settlement from being signed until the state and Federal Government assured more than 5,000 Alaskan native villagers that their right to gain financial damages from Exxon would not be harmed by the pact.

Today, Judge Sporkin said he was satisfied that the rights of the native villagers to fully prosecute their suits had not been harmed by any settlement between Exxon, Alaska and the Federal Government and lifted his injunction. But in an order he signed this afternoon, Judge Sporkin said he would review the settlement after it is signed to make sure the rights of the villages are ensured.

"The court shall retain jurisdiction over this matter to ensure that the defendants' representations are carried out so the plaintiffs' rights are protected," Judge Sporkin wrote in the order.

4

**THE FOLLOWING PAGES MAY
NOT FILM LEGIBLY BECAUSE OF
THE POOR QUALITY OF THE ORIGINAL**

New York Times, March 20, 1991

REPUBLICAN WEDNESDAY, MARCH 20, 1991

B3

Guilty Plea Expected in Exxon Spill

By ALLAN R. GOLD

The Exxon Corporation will plead guilty to a criminal charge in Federal District Court in Newark today and will pay a \$5 million penalty as part of a deal to settle litigation over a 567,000-gallon oil spill 14 months ago in New York Harbor, a government official said yesterday.

Of the \$5 million penalty, \$1.8 million will go to New York State, and the rest will go to New Jersey and the Federal government, said the official, who spoke on condition of anonymity. The criminal charge, under the Clean Water Act, involves negligence in the training of personnel at Exxon's Bayway refinery in Linden, N.J., the official said.

In addition to the criminal penalty, Exxon will pay \$10 million to New York State, New Jersey, New York City and Elizabeth, N.J., to settle civil litigation over damage to natural resources. Some money will be paid immediately and the rest over five years, the official said.

Some details of the settlement emerged last week, and environmental groups have criticized the agreement as too easy on Exxon. Yesterday, Representative Susan Molinari, Republican of Staten Island, urged the Federal Government and others involved in the talks to reject the \$15 million package.

Second Exxon Plea

Company officials are scheduled to appear before Judge Nicholas H. Politan today to enter the plea. State and Federal officials have scheduled a news conference for this morning in Newark to discuss the agreement.

The action expected today would represent Exxon's second criminal plea and penalty this month. Last week, the company agreed to plead guilty to four Federal criminal counts and pay a \$100 million penalty to settle charges arising from the Exxon Valdez oil spill in

Alaska in 1989. Total payments in that case could reach \$1.1 billion.

A spokesman at Exxon's Bayway refinery, Douglas O. Walt, said it would be inappropriate for the company to comment on pending legal activity. But Mr. Walt said Exxon regretted the Jan. 1, 1990, spill and shared public concern about its impact. "We took responsibility for the spill and we worked hard to minimize any damage," he said. "We've learned from the accident and look forward to continuing our improved operation in a safe, reliable and environmentally sound manner."

Leaking Pipeline

Exxon had fought to avoid criminal indictments by state grand juries in New York and New Jersey. A Federal grand jury in Newark investigated the spill, and New York City and Elizabeth also filed civil suits against Exxon.

The accident involved a leaking underwater pipeline that connected Exxon plants in Linden and Bayonne, N.J. Heating oil spilled into the Arthur Kill, a narrow waterway that separates New Jersey and Staten Island.

The spill coated miles of New Jersey and New York shorelines, including Staten Island marshlands that have become home to a revived wildlife population in the heavily industrialized area. Hundreds of birds were killed in the spill and the breeding of wading birds was disrupted.

Concern about the marshlands played a big role in determining where the \$10 million settlement would be spent. A small amount will be paid to New York City and Elizabeth to compensate for their response to the oil spill, according to the government official who described the settlement. Elizabeth will also receive some money for enhancing its marina area.

Of the rest of the money, 64 percent will go to New York and the rest to New Jersey, the official said. New York will

use \$5 million to buy environmentally sensitive land in the Arthur Kill area and the rest of its share for managing wetlands in the area. It could not be determined how New Jersey planned to spend its money.

Under the settlement, Exxon would also be required to improve its oil-handling operations.

New York City's Comptroller, Elizabeth Holtzman, one of the officials who approved the settlement, would not comment on details of the agreement. But she criticized the Federal and state governments for their negotiations with Exxon. "I am troubled that Federal regulations discourage full payment of environmental damage in urban areas," she said.

Officer Sentenced in Theft

ROCHESTER, March 19 (AP) — A former police investigator was sentenced to six months in prison today for stealing more than \$79,000 in official funds to play state lottery games. The defendant, Robert Kilpatrick, said in court that he had stolen the money to support a gambling habit, and had planned to replace it with his winnings. Mr. Kilpatrick, 50 years old, pleaded guilty to charges that he stole \$63,000 that was being held as evidence in the Rochester police property clerk's office, as well as money that he collected during investigations. The thefts occurred in 1989 and 1990.



S.

ed
ted
ar,
le.
of
in
in-
of
an
rs.

Value of Intangible Losses From Exxon Va

By John Lancaster
Washington Post Staff Writer

Confidential government studies have estimated the "social cost" of the Exxon Valdez oil spill at \$3 billion, nearly three times the \$1.1 billion that Exxon has agreed to pay to settle criminal and civil charges arising from the accident.

The controversial economic studies, conducted for the state of Alaska and the federal government, are an attempt to assign a dollar value to intangible losses said to have been suffered by the American public as a result of damage to wildlife and natural habitat. Economists polled households nationwide to arrive at the estimate, which would have figured prominently in Exxon's trial had the case not been settled out of court.

There is no guarantee that a judge and jury would have accepted the \$3 billion estimate, which was provided to The Washington Post by one of the economists involved in the studies. Federal officials deflected the settlement as a landmark penalty that avoids a costly and uncertain trial while providing immediate cash for cleanup and restoration.

But critics noted that several recent court decisions have upheld the validity of social cost studies for valuing environmental catastrophes, suggesting that Exxon may have gotten off too lightly. "The federal government has a fiduciary responsibility to the citizens to look out for these resources, to provide a market signal that if you do damage, this is what it's going to cost you," said an economist familiar with the studies.

In affirming the method two years ago, a three-judge federal appeals court panel ruled that although "the extent of damage to natural resources from releases of oil and hazardous substances varies greatly . . . it is in the mission of [federal law] to assess the public loss."

Exxon declined to comment on studies.

William K. Reilly, administrator of the Environmental Protection Agency, said in an interview that while such studies "have their place

. . . they're new, there's not a lot of litigation, and courts haven't awarded anything on the basis of how much somebody says they're willing to pay to save a river otter."

State and federal officials, citing unresolved claims from third parties such as fishermen and Native Alaskans, have refused to make any information from damage studies available to the public. "We won't do so unless we get a commitment from the plaintiffs that they won't sue us with the information," said a spokesman for Alaska Gov. Walter J. Hickel (D).

If nothing else, the debate over the economic studies illustrates the difficulty of assessing damage to natural resources from accidents

such as the Exxon Valdez spill, the nation's worst. Some values, such as cleanup costs and measurable financial damage to tourism and commercial fishing, are relatively easy to calculate. But the question of intangible losses has proved harder to resolve.

What, for example, is the price of a dead sea otter or sea bird, both of which society presumably holds dear even though they have no commercial value?

In the past, the federal government has assigned market values to dead wildlife, such as \$15 for a fur seal or \$35.74 for a Canada goose. But the appeals court decision found that such methods did not adequately compensate the public,

and ordered federal courts to give more weight to losses in figuring the environmental catastrophes.

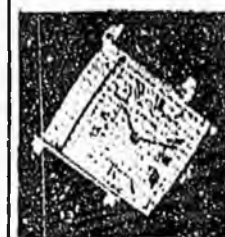
Norman Meade, chief of the damage assessment for the National Oceanic and Atmospheric Administration, commented on the latest economic studies and said "fine about the settlement

But he also defended the methodology of so-called cost-benefit studies, describing it as the only way to get at the values." He added, "What we're trying to do is to get some general welfare, what we're trying to do is to get some general welfare, what we're trying to do is to get some general welfare."

OVER 1 MILLION DOLLARS

WE

Your Watches, Jewelry
Gold, Silver, Oriental
and Colle



CARTIER "REVERSO"
As much as \$6,000



We'll pay top dollar in cash for any PATEK PHILIPPE, ROLEX, VACHERON & CONSTANTIN, MOVADO, PIAGET, CARTIER, GUBELIN, AUDEMARS PIQUET, TIFFANY, LeCOULTRE, HAMILTON, ELGIN, OMEGA and HUILOVA watches. Your watch need not be running. The more unusual the shape, the more valuable.

Watches with square or round buttons (chronographs), small dials, calendars, windows, day, date, month, moon phases, time zone and skeletons all bring top dollar--even musical and repeating watches are in big demand. The older the watch, the more value in either white, yellow or pink gold and platinum.

ERS, we specialize in and as diamond jewelry. We are interested in purchasing from all VINTAGE PERIGIAN, Victorian, Edwardian, and especially ART DECO. Additionally, we have large PREMIUM for jewelry provenance or is SIGNATURE. BUCHERON, CARTIER, FABERGE, TIFFANY & ARPELS, DAVID WEBB well known designers.

We will purchase all jewelry, white gold or platinum. Rings, pins, bracelets, earrings, clips, tiaras, lava

334-9000
Post-Haste

Value of Intangible Losses From Exxon Valdez Spill Put at \$3 Billion

By John Lancaster
Washington Post Staff Writer

Confidential government studies have estimated the "social cost" of the Exxon Valdez oil spill at \$3 billion, nearly three times the \$1.1 billion that Exxon has agreed to pay to settle criminal and civil charges arising from the accident.

The controversial economic studies, conducted for the state of Alaska and the federal government, are an attempt to assign a dollar value to intangible losses said to have been suffered by the American public as a result of damage to wildlife and natural habitat. Economists polled households nationwide to arrive at the estimate, which would have figured prominently in Exxon's trial had the case not been settled out of court.

There is no guarantee that a judge and jury would have accepted the \$3 billion estimate, which was provided to The Washington Post by one of the economists involved in the studies. Federal officials described the settlement as a landmark penalty that avoids a costly and uncertain trial while providing immediate cash for cleanup and restoration.

But critics noted that several recent court decisions have upheld the validity of social cost studies for valuing environmental catastrophes, suggesting that Exxon may have gotten off too lightly. "The federal government has a fiduciary responsibility to the citizens to look out for these resources, to provide a market signal that if you do damage, this is what it's going to cost you," said an economist familiar

with the studies. "If they're new, there's not a lot of litigation, and courts haven't awarded anything on the basis of how much somebody says they're willing to pay to save a river otter."

State and federal officials, citing unresolved claims from third parties such as fishermen and Native Alaskans, have refused to make any information from damage studies available to the public. "We won't do so unless we get a commitment from the plaintiffs that they won't sue us with the information," said a spokesman for Alaska Gov. Walter J. Hickel (D).

If nothing else, the debate over the economic studies illustrates the difficulty of assessing damage to natural resources from accidents

such as the Exxon Valdez spill, the nation's worst. Such values, such as cleanup costs and measurable financial damage to tourism and commercial fishing, are relatively easy to calculate. But the question of intangible losses has proved harder to resolve.

What, for example, is the price of a dead sea otter or sea bird, both of which society presumably holds dear even though they have no commercial value?

In the past, the federal government has assigned market values to dead wildlife, such as \$15 for a fur seal or \$35.74 for a Canada goose. But the appeals court decision found that such methods did not adequately compensate the public,

and ordered federal agencies to give more weight to intangible losses in figuring the bill for environmental catastrophes.

Norman Meade, chief economist of the damage assessment branch for the National Oceanic and Atmospheric Administration, declined to comment on the substance of the economic studies and said he feels "fine about the settlement."

But he also defended the methodology of so-called contingent value studies, describing them as "the only way to get at these kinds of values." He added, "When these [resources] are interfered with, there is a social cost, the public has lost some general welfare, and that's what we're trying to estimate."

In evaluating the losses, economists hired by the state of Alaska developed elaborate surveys aimed at calculating the public's "willingness to pay" for a clean Prince William Sound. Beginning in 1989, the economists met with "focus groups" in Seattle, San Diego and Baltimore with the aim of exploring "how people think about the oil spill and its consequences," one of the surveyors said. "You use these to find out the language and assumptions people use so you can frame your questions accordingly."

After pilot surveys in San Francisco, Toledo and rural Georgia—"They're sort of middle America," the economist explained—the contractors surveyed 1,000 households

nationwide. Surveyors conducted face-to-face interviews in which they displayed photographs and other information about the spill, then asked respondents how much they would be willing to pay to protect Prince William Sound from future spills.

Preliminary results from the survey, conducted in January and February, showed a median amount of \$30 for each household, or—figuring there are 100 million households in the country—\$3 billion for the American public as a whole, according to one of the economists. Although the federal government had not progressed as far with its studies, a federal official said the \$3 billion figure was "in the ballpark."

OVER 1 MILLION DOLLARS CASH AVAILABLE

WEBBOY

Your Watches, Jewelry, Diamonds, Coins,
Gold, Silver, Oriental Rugs, Estate Jewelry