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HOUSE SPECIAL COMMITTEE ON THE EXXON
VALDEZ OIL SPILL CLAIMS SETTLEMENT

LETTERS/WRITTEN TESTIMONY ON
SETTLEMENT SUBMITTED TO COMMITTEE

ORIGINALS

A-C

KATHY ABARR



PRINCE WILLIAM SOUND

Seiners Association

DAVID P. CLARKE, PRESIDENT
PO BOX 458 CORDOVA, AK 99574
907/424-5777 FAX 907/424-5837

April 15, 1991 Oral Testimony to Juneau Written April 16, 1991

My name is Kathy Abarr
208 First Street
P.O. Box 676
Cordova, AK 99574

I am employed by the Prince William Sound Seiners Association - an organization representing seine interests in Prince William Sound. We have Chapters in Anchorage, Cascade, Cordova, Homer, Seward, and Valdez. We understand the financial ramifications of the fisheries of Prince William Sound not only on Cordova and other communities in the Sound but throughout the State and beyond - the ripple effect carries far.

We are recipients of the early damages of the Exxon Valdez Oil Spill - along with many others. The on going decline in fish prices is related to the year of the spill. We are faced with great uncertainty -- we do not yet know the full impact of the Exxon Valdez Spill on our futures and w/o the release of data gathered over the past two years and that yet to be gathered we will remain in the Wake of the Exxon Valdez for who knows how long. Recent reports regarding the detrimental affects of the spill only heighten the uncertainty. There is no reason to be flippant or coy at this time. People are what this Community, State, Nation, and World are made of. We request of our State that it watch out for our needs and our resources. *The State is the steward - empowered to manage domestic concerns, appointed to supervise the provision (a measure taken beforehand to deal with a need or contingency) and distribution of - our resources. Realizing there has been an erosion of responsibility of citizens to their government, is the opposite also not true?* We did request of State and Federal Officials assurance that the losses suffered by commercial fishermen would be included in any "global settlement". If the interests of our members and the other people affected by the spill had been protected, Exxon would have also had to agree to make restitution to them.

And what of Alyeska in light of the Miller findings?

Attorney General Cole - We applaud your efforts in securing monies for continued resource damage assessment and restoration. W/O this summers information being available - is it enough? You yourself discussed in Cordova the tremendous amount of dollars needed to carry out assessment studies--studies that are very important--does this settlement truly cover the costs of these needed studies?

Governor Hickel/Attorney General Cole - To fully evaluate the dollar amount decided upon we need greater understanding of your thoughts. What price tag does the wildstock fishery carry? The Birds? Halibut? Shellfish? Sea Grasses? The Eco System? We live in a complex environment. Now - YOU too are a part of the life cycle of the Sound and Oil Spill affected areas.

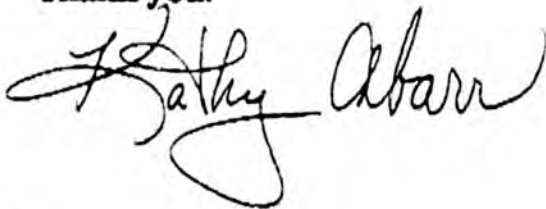
PLEASE - Help these areas recover.

Allow current information to be analyzed and reviewed. Allow additional information to be gathered. Put funds to work in impacted areas to **RESTORE** them. Long term damages to the fisheries could be partially offset by funding Prince William Sound Aquaculture Corporation - a nonprofit organization that benefits all common property fish resource users. *(Do not use funds for roads-roads will not bring the affected areas back to their former condition.)*

Request, Receive, and **LISTEN** to PUBLIC INPUT.

POSTPONE approval of this settlement until sufficient information and time is available to assess whether the settlement provides the needed elements to repair the long term damage to the resources.

Thank you.

A handwritten signature in cursive script, reading "Kathy Abarr". The signature is written in dark ink and is positioned below the "Thank you." text.

TRACY AKERS

April 13, 1991

To the Alaskan State Legislators,

I oppose ratifying the EXXON-STATE-FED. GOV'T settlement as it stands. I would like very much to see a settlement made as rapidly as possible - I don't like to prolong it either, but I feel that it is inadequate as it stands and needs to address some more issues.

- 1) It needs to address the fact that Alyeska is walking off with^{out} suffering any consequences for its inability to clean up the EXXON VALDEZ spill. I want to see a guilty plea to a charge of legal charge (I'm sure the lawyers could find one). They were responsible for initial response & then were totally unprepared and did not fulfill ~~the~~ legal obligations ~~to~~ made to the state and its people and to U.S. in 1973 ^{under the oil spill contingency plans in the right of way contract with the U.S.}
- 2) It needs to address oil spill response out of the sound (Prince William Sound). The new response program in PWS is very good, appears very adequate. But nothing addresses the communities outside of PWS, such as Homer, Kenai, Seldovia, Kodiak, island & Inlet native villages. Perhaps an oil spill response equipment cooperative with training programs could be established & funded with \$ from this settlement, ~~which leads us to~~ ^{which leads us to}
- 3) the need to address the dollar amount of the settlement; I feel it should be doubled. Exxon made a \$1.2 billion dollar profit in the 4th quarter

alone of 1990. If the \$ is doubled, money could be made available to address the "gray area" of lack of oil spill ~~of~~ response plans & programs outside the ~~area~~ Prince William Sound Area. "Prevention" is #1 in the game of oil spill clean-up & we all know "PRIOR PLANNING PREVENTS POOR PERFORMANCE".

4) We need to address the fact the state will not release its scientific data. This makes me angry - I lived this spill nightmare for 5 1/2 months, and now the STATE won't release the data? People deserve access to the data.

5) It needs to address the fact that part of this settlement will pay for ongoing clean-up. That's a slap in the face as far as I'm concerned. EXXON should pay for any continuing clean-up costs.

6) It needs to address the remaining lawsuits by fishermen, ~~the~~ cannery workers, & business, towns & village governments with EXXON. Speedy resolution with an effort by EXXON to go to the table and settle them is a good idea. The raw fish tax of any city or village ~~not~~ affected by the canceling of the salmon season should be paid before the settlement.

7) It needs to address salmon returns for the next 6 yrs from 1989 to 1995. If the year classes in the varying species pink, red, silver, king, dog ^{salmon} are affected by the spill, it won't be known until 1995 when ongoing data has been compiled. So some guarantee of compensation to fishermen, processors, cannery workers, & borough tax should be guaranteed.

8) The mental and emotional anguish suffered

What about plaintiffs who have sued only Exxon and not the state or Alaskans who have no delegation going?

by people in spill affected communities needs to be recognized and could be recognized by EXXON, ALEASKA, & the STATE sending out letters of apology ~~to~~ to members of spill affected communities. There was quite a bit of arrogant treatment by EXXON & its contractor, VECO, to members of the community here & although an apology wouldn't make up for it, but it would help. By the way, the apology is for the oil work & state not fulfilling its legal obligations to have an effective & adequate oil spill response & plan.

9). In disbursement of restoration funds, the question of the "Trustee", a representative of the public input should be looked at & addressed.

I feel also that this settlement is being rushed so the Beckel administration can hurry itself along with oil development in AWWP.

Sincerely,
Nancy Akers
P.O. Box 3131
Kodiak, Ak 99615

Dick Anahonak

Dear Legislators,

April 12, 1990

I have a native allotment 160 acres
part of which is beach.

Ever since the Exxon disaster, all
of the clams, cockles, muscles, octopus, tom
cods, and starfish have been dying off
on my beach. There use to be alot of
these shellfish but now they are all gone.
Even the ducks are gone.

We didn't get rich off the Exxon oil spill
clean up. We are even poorer now, because
we don't have the subsistence foods that
we use to live off of.

We don't think that the State & Federal
Government will include the villages
with the Exxon settlement they receive.

Sincerely,

Dick Anahonak

Nana a Kamluck

P.O. Box PGM

Port Graham, Alaska - 99603 -

4-12-91

Alaska Legislative Hearings on
the Exxon Settlement.

Dear Legislators,

I want you to know that since I don't have the money for plane fare I'm not able to attend the hearing in person.

I'm concerned for the Settlement the State of Alaska has made with Exxon. I feel the dollar amount is not equal or at the level the oil disaster created.

I worked on the oiled beaches in Windy Bay, I felt very bad and still do the animals that died the birds and the thick oil on the beaches. We'd work all day in dirty smelly oil that made us feel sick and go back to the crowded boat and next morning when we returned the beach was just as oiled as before. I worked the year of 1989 and last year did not work.

The recent information made by the Federal Government studies in

the news papers have confirmed
our fears as subcutane users.

I still have many fears in
use of subcutane foods - what will
be the long term effects on me.

Many of the subcutane foods are
still dying and mine still afraid.

519W Eghin N. Gnabrook 21
Park Graham, Alaska

PETE ANAHONAK

April 12, 1991

Re: Alaska Legislative Hearings on the EXXON Settlement

Dear Legislators:

I am 56 yrs old and I am unable to travel to Homer to testify because I have no money to travel.

I have subsisted off the water & land all my life. I worked on the beaches during the 1989 Exxon oil spill and saw firsthand what the oil did to our subsistence foods.

I am still afraid to eat my subsistence foods for I do not think they are safe. The oil spill has impacted me physically, mentally and spiritually. I feel that the oil spill has damaged my food - fish, clams, birdies, snails, bottom fish, ducks, seal etc. permanently and Exxon has an obligation to restore it. The settlement between the State/Federal government and Exxon is inadequate because I don't think they will even attempt to restore what I have lost.

During the time that I worked on the oil spill I became sick

due to the smell of the oil, & the working conditions were bad.

I usually worked in our cannery here in Port Graham but since the oil spill - it has not been in operation, & I have not been making money to get me through the winter months. I have had a very hard winter financially.

I am not satisfied with state/federal governments settlement with Exxon because it is leaving out the true victims of the oil spill.

Sincerely

Peter A. Anahonak Sr.

Peter A. Anahonak Sr.

P.O. Box PGM

Port Graham, Alaska - 99603 -

Alaska Legislative Hearing
on the Exxon Settlement
The Honorable Legislature:

Phillip ANAHONAK

I hope you will all support us in this settlement of the oil disaster of Exxon. As you may observe the damage it had done to our future. Our food from sea, lack of employment, the closure of our Cannery which we depend on for jobs we are really in a disaster situation if we can't get any financial money from Exxon. We are really in need where they are starting to take our H.U.D. houses away from us due to the lack of money. And some of us will be left homeless. Just think of all those ones that have children and the winter does come around next year. We can't afford to pay for our House payments. So including all the hardships. We were damaged emotionally with shock and grief and many other disorder. Physically we were hit with Body harm such as lungs and other organs. Also the oil damage burns that had not heal. I hope you can understand my View point of the hardship that is hitting us now that we are going through as of it. This settlement is really not enough to carry us through to get on our own to help ourselves. Sorry for my Opinion on this letter but this suffering and the damage to our livelihood is devastating. The disaster has hit the core point of its dirty work. Exxon will not dirty my backyard and get away with it. There is a price to pay for each crime we conduct. So why not Exxon. Exxon will never repay us for all the problems and Hardship we've gone through. Their billions will never pay for the destruction they had done to our Communities. The pathway and the route of the oil spill destruction had killed our seafood and sea animals and destroy our environment and livelihood we live for and depend on. The emotion, shock, and grief we still suffer after the disaster which was felt by all of us. Not only by the few that were hand picked by Exxon to get money for settlement while we wait around in line patiently for our turn. We felt the impact of the impact of the disaster also. We are in need of help so we can stand back on our feet and carry on. Our Cannery which we rely on don't operate due to lack of salmon.

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Which the oil spill is causing and our beaches are contaminated and our soil is contaminated by oiled surface waters also the substance we depend of for food is gradually disappearing and we can't go out to our beaches and dig clams and pick our sea food Exxon not only took this away from us but also took all our free will to help ourselves. These have been all our livelihood till Exxon came around to destroy the oil fed our seafood with poison where the risk was also for us to get poisoned Exxon might think we got rich by working for them. But what a price to pay by working for them. But money don't last long when you live in an isolated place with no employment. With alot of payments for housing etc and bills piling up. What made this disaster so bad besides the oil spill was an incapable drunk captain. We learn from these incident that the effects and abuse of Alcoholism is dangerous. Alcoholism the cause for which we are reaching out and are taking part to help each other to clean up our community of substance abuse. For which I am proud to say the improvement the people have helped themselves during this reproar of the disaster to start living a healthy sober life. Instead of turning into Alcohol to drown their problems there was emotional state of loss, frustration, confusion shock and mental state of feeling such as fear anger and grief by all of us. We also had a fear of survival also loss our security that we had build where we were a self help community. We were injured and destroyed by the impact the effect of the disaster will be the damaging impact of our survival in the years to come. During the time we were employed by Exxon the neglect and the prejudice cause we were natives we were treated as outcasts where the living condition were very poor for us as natives. While their people had the best and easier jobs and we had to live in a damp crowded places in a small fishing boats and some of our women slept in a damp floor bunks they work us 16 to 20 hours a day in dirty oil soaked rocks and we were lifting hundred and over pounds of bags of oily rocks and soil in the heat of the sun of 70 to 90 degrees heat where the fumes were the strongest where some of us collapse from the over exposure of heat and work and also some of end up in the hospital due to too much inhalant of the oil fumes where our lungs were damage we were treated worse then the prisoners of civil when they

3rd

use to have the colored people for slaves. The rocks
We lifted most of the day were oily and big which
they use to have the prisoners work on for punishment that
were sentence for dead penalty and also we were put into
a living quarters without no heat where we came to sleep at
night in a cold damp place after a hard days of work. I
thought this was an modern America where the law was
an order to treat the people equal and not like animals
just cause their black ~~Brown~~ yellow and white doesn't
make them any different from any human being. We do have
scars in our lives the way we were treated cause we were
natives we do have scars on our body where oil penetrated
in to our skin. We won't cry on Exxon's shoulders but we
sure need help financially to get back on our feet and start
our lives from scratch It will take time to recover and
heal from oil disaster

Respectfully
Phillip H. Anahonak

ELAINE BASE

PAGE
NO.

PREPARED BY

DATE

6820 Arctic Blvd.

Anchorage, AK. 99518

8 April 1981

Exxon Settlement Response

Juneau 5,

Juneau AK.

Dear legislators:

The Exxon settlement brings 3 issues to my mind.
They are as follows:

1. The agreement was made in quite a unilateral fashion with little or no input from the legislators &/or voters.
2. People with legitimate claims against Exxon seem to be passed over.
3. The deferred payment arrangement given to Exxon allows them to draw interest on dollars that Alaska could draw interest on, & the federal govt. is allowing Exxon millions of \$ in tax breaks for what they're supposedly being penalized for.

There's probably more to this tale, but for now Thankyou
for this opportunity to say my piece. Sincerely, Elaine Base
ELAINE BASE

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILE 8672
1926 SCOMM 76: HOUSE SPEC. COMM. EXXON VALDEZ OIL SPILL. 1991-92

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The Exxon Valdez Spill Settlement

It has been over two years since the Exxon Valdez disaster in Prince William Sound. A disaster, which engulfed a large area and effected many communities, including Kodiak. It propelled our lives into a period of uncertainty and chaos, leaving many of us involved in commercial salmon fishing without jobs that summer. As I try to formulate a personal statement based on my experience, I read several of the letters I wrote during the summer and ^{the} following months in 1989. Glancing through ^{the booklet} "The Day the Water Died", the compilation of the Citizens' Committee Hearings, I can clearly recapture my profound anger and frustration with the corporation responsible for the disaster, and for the clean-up conducted in Kodiak.

As a person who relies on commercial fishing for a living, I know how my family was effected by the spill and continues to be. Our lives were changed by the event on March 24th and many of our predictions for the long-term economic effects have evolved into reality.

Therefore, my personal goal has been, and continues to be, a just and equitable resolution for all parties involved. So, in considering the proposed settlement I ask, will justice be served if it is accepted? No, and I criticize the proposal for several reasons:

1. Gov. Hickle sidestepped all legislative and public input in formulating his proposed settlement. This was not only unfair to the citizens affected but makes a mockery of the democratic

and legal process. We need public input every step of the way.

2. The State must release all of the scientific data to the public before a reasonable settlement can be reached. How can we know if the proposed amounts will cover the extraordinary damages the federal studies are now beginning to reveal?

3. The actual value of the settlement is quite a bit less than 1 billion dollars. According to Sierra Club figures, it amounts to around \$400-700 million, after Exxon writes off one-third of the \$900 million. Also, why is Exxon allowed to use part of this settlement to pay for clean-up costs this year? The criminal penalty of \$100 million dollars is far too low, and \$50 million to be used for restoration purposes is simply not enough when you consider how many millions of acres of biologically sensitive land could be acquired through an adequate settlement.

4. ^{And finally,} Government reimbursement should not come out of the damage settlement. Exxon should pay for government expenses APART from the settlement. I recommend a gradual pay-back of government expenses instead of a lump sum of \$50 million.

Finally, I view this proposal as an attempt by the Administration to minimize the disaster and "to put it behind us" so that Hickle can press for ANWR development, meanwhile slapping Exxon on the wrist! This is unacceptable to me.

Thank you for the opportunity to share my views ~

BIXBY, COWAN & GERRY

Attorneys At Law

P.O. BOX 790

705 2ND AVENUE

CORDOVA, ALASKA 99574

(907) 424-5999

FAX # (907) 424-5357

April 15, 1991

My name is Bill Bixby; I am with the law firm of Bixby, Cowan & Gerry. We represent almost 1,300 commercial fishermen who suffered damage as a result of the Exxon Valdez oil spill.

I have listened to a tele-conference held in Cordova wherein Attorney General Cole seemed to be a little annoyed that individuals who testified asked him questions which were prepared by attorneys. Mr. Cole's position was that the attorneys could address those questions in court and therefore it was somewhat "wrong" for clients to pose those questions to him.

This is only a ploy from Attorney General Cole's part to avoid answering tough questions about the settlement. Mr. Cole knows full well that attorneys such as myself have no standing to bring a motion in court to object to the settlement. It would be akin to any of you on the committee trying to voice an objection of a settlement of an auto accident case of mine. The judge would ask you what business you had sticking your nose into my business.

The problem of standing aside there are also time constraints. The legislature must take action approving or disapproving the settlement in the very near future. As far as I'm aware there are no court hearings scheduled on this matter before the legislature must take action. The tough questions dodged by Mr. Cole must be answered before then if we are to know the meaning of the agreement.

Finally, there is nothing wrong with a client asking you or the Attorney General about the consequences this agreement will have on him. Like most of you, my clients are not lawyers. They can read the agreement but really do not understand the consequences of some of the language in it. Once their attorneys have explained what consequences the language of the agreement could have on them, you can bet your bottom dollar that none of them would ever vote for anyone who approved this settlement in its uncertain form.

Now let me discuss the gravest concern that I have regarding this settlement. It deals with language found in

paragraph 13(c) of the settlement agreement. That paragraph states:

Nothing in this agreement shall affect or impair the following:

c. The rights and obligations, if any, of legal entities or persons other than governments who are the holders of any present right, title, interest in land or other property interest affected by the oil spill.

When attorneys in our office first read that paragraph we had concerns as to the consequences of this paragraph. Our concerns became even greater when Exxon confirmed our suspicions as to how they would interpret this paragraph. We have been told by Exxon that they will not owe money to any fisherman for any damage done to the natural resource (i.e., fish) after the agreement has been adopted by the State. Under their interpretation they have paid the owner (the State) for damage done to the resource. Therefore, they do not have to pay the fishermen except for damages that have been presently accrued to the fishermen. In short, Exxon will not have to pay for damages to the 1991 salmon runs and every salmon run thereafter to fishermen who utilize the resource because they will claim that they have paid the owner (the State) for the damage already via their settlement agreement.

The following example will illustrate the problem. Suppose a client of mine has damages that once they are totally calculated amount to \$100 (for illustrative purposes only). Of that \$100 my client suffered \$30 worth of damage for 1989 and 1990. Under the terms of this agreement my client would only be able to recover the \$30 of damages he has accrued in 1989 and 1990 but will not be able to recoup the rest of his losses as that part of his case has already been settled by the State.

In Cordova, Bobby VanBrocklin posed this question to Attorney General Cole. Mr. Cole referred Bobby to paragraph 32 of the agreement. The last sentence of paragraph 32 says:

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.

Mr. Cole's reference to this sentence did not truly answer Mr. VanBrocklin's question. He again side-stepped the issue. Going back to my example of the fisherman who suffered \$100 worth of damage, this sentence still gives my client the right to go after his \$30 but still does not allow him to seek the total amount of damage he suffered by the oil spill because of paragraph 13(c) limitations.

Attorney General Cole needs to be pinned down and a definite answer received as to the answer to this question. Does paragraph 13(c) mean that commercial fishermen have no claim for damage to the fish runs after the agreement has been adopted? The agreement needs to be changed to reflect that the fishermen still have the right to go after the total damages incurred by them, i.e., both present and future damages, without interference by the State's settlement agreement.

All we ask is that the agreement reflect this in writing or by having Mr. Cole and all the other parties stipulate to this in open court.

In summary, if this agreement interferes with the right of fishermen to receive total compensation for the damages they have suffered, and will suffer in the future, it needs to be rejected.

Best regards,

Bill Bixby

William Bixby
BIXBY, COWAN & GERRY

WB/jam

Dear Representative Max Gruenberg:

Exxon must not escape punishment. a California court judge has ruled: "The purpose of punitive damages being to punish the defendant and make an example of him, the wealthier the wrongdoing defendant is the larger the award of exemplary (punitive) damages need be..."

This is also Alaskan case law because Alaskan judges have cited this ruling in these Alaskan court cases: *Sturm Ruger & Co. v. Day*; *Clary Ins. Agency v. Doyle*; and *Ben Lomond, Inc. v. Campbell*!

Exxon's gross income was \$100 billion dollars in 1990. The state of Alaska's proposed settlement, of \$1,000 million in actual damages, equals 1% of Exxon's gross earnings. Their proposed punitive damages represented a trifle \$100 million dollars - just one-tenth of 1% of Exxon's 1990 gross income.

Comparison and analogy of figures: you are a drunk, who was involved in a vehicle accident, who grosses \$30,000 per year. You would get to pay a total of \$300 for actual damages (in ^{annual} ten non-interest bearing payments even); and your punitive damages would be \$30 total.

Exxon is under indictment with felony criminal charges pending for gross negligence, reckless indifference, outrageous and flagrant misconduct - with regards to both causing and cleaning-up a toxic oil spill of 11 million gallons.

We need meaningful, disciplinary and suitable monetary assessments awarded against Exxon's wrongdoing in order to forestall future oil spills.

Adequate punitive damages are indispensable in order to influence and have a substantial impact on both Exxon and the oil industry. If we are going to deter and discourage such behaviour in the future - Exxon must be penalized; and not be shielded from accountability for its actions!

Mike Bruner

1007 E 20th #2

Anch AK 99501

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5. Damages ⇒94

An award of punitive damages must bear a reasonable relationship to actual damage.

6. Damages ⇒94

The purpose of punitive damages being to punish the defendant and make an example of him, the wealthier the wrongdoing defendant is the larger the award of exemplary damages need be in order to accomplish the statutory objective from which it also follows that the poorer the wrongdoing defendant the smaller the award of punitive damages need be in order to accomplish the statutory objective.

7. Damages ⇒87(1)

On question of punitive damages, due consideration must be given to the importance of the public policy embodied in statutory provisions the violation which was the basis of plaintiff's claim and the magnitude of defendant's violation of such policy.

8. Trover and Conversion ⇒66

In action for conversion of plaintiff's automobile arising out of alleged improper repair of plaintiff's automobile by defendant without authority or consent from plaintiff, under evidence, jury was entitled to consider defendant's conduct a flagrant violation of statute designed to protect consumers against unscrupulous automotive repair dealers. West's Ann.Bus. & Prof.Code, § 9884.9.

9. Damages ⇒94

There is no fixed ratio by which to determine the proper proportion between compensatory and punitive damages.

10. Damages ⇒94

The excessiveness of a punitive damages award cannot be established by reference alone to the disparate ratio between it and the compensatory damage award.

11. Damages ⇒94

Given a fixed amount of compensatory damages, the amount of punitive damages which will serve purpose to punish offense and to serve it as an example will necessarily vary widely, the factors involved being

importance of policy violated by defendant's conduct, the degree and extent, both qualitatively and quantitatively, of the violation, and the financial circumstances of the defendant and, where objective of deterrence would not otherwise be served, the wealthy defendant cannot legitimately object to a much higher ratio.

12. Damages ⇒94

A punitive damages award which exceeds one third of defendant's net worth could only be justified on presumption that it is necessary to put defendant out of business in order to deter future conduct of a like nature and, to support such an assumption, clear evidence of a continuing course of conduct involving large-scale flagrant violations would be required.

13. Trover and Conversion ⇒62

In action for conversion of plaintiff's automobile arising out of alleged improper repair of plaintiff's automobile by defendant without authority or consent from plaintiff, punitive damage award of \$175,000, which exceeded one third of defendant's net worth, was, under evidence, excessive and based upon passion or prejudice of jury. West's Ann.Bus. & Prof.Code, §§ 9884.8-9884.10.

14. Criminal Law ⇒1213

Trover and Conversion ⇒60

In action for conversion of plaintiff's automobile arising out of alleged improper repair of plaintiff's automobile by defendant without authority or consent from plaintiff, application of statute pertaining to punitive damages to defendant was not unconstitutional on asserted ground that statute lacked a precise standard by which to fix quantum of property which defendant was to be deprived by way of exemplary damages, and punitive award made did not constitute cruel and/or unusual punishment. West's Ann.Civ.Code, § 3294.

15. Appeal and Error ⇒1178(6)

Upon conclusion that jury verdict for punitive damages was excessive, in action for conversion of plaintiff's automobile arising out of alleged improper repair of plain-

Sturm Ruger & Co. v. Day,
594 P.2d

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awarded was excessive. We have previously held that the decision to order a remittitur or a new trial rests within the sound discretion of the trial court. *E.g., Haskins v. Shelden*, 558 P.2d 487, 494 (Alaska 1976), and cases cited therein. We will not interfere with the trial court's decision unless we are "left with a firm conviction on the whole record that the trial judge made a mistake in refusing to order a remittitur or grant a new trial," *City of Nome v. Ailak*, 570 P.2d 162, 173 (Alaska 1977) (footnote omitted), and where intervention on our part is necessary to prevent a miscarriage of justice.

[18, 19] One means of determining if an award of punitive damages is excessive is to compare it with the amount of actual damages. Professor McCormick observes:

"The punitive damages given, it is said, must bear some reasonable proportion to the actual damages. As a rough working scale, this is better than nothing." [footnotes omitted]

McCormick, *Law of Damages*, Sec. 85, 298 (1935). Exemplary damages may exceed the actual damages, however, and no definite ratio between them is prescribed. *Taylor v. Williamson*, 197 Iowa 88, 196 N.W. 713 (1924). Other important factors which bear on the question include "the magnitude and flagrancy of the offense, the importance of the policy violated, and the wealth of the defendant." *Zhadan v. Downtown L. A. Motors*, 66 Cal.App.3d 481, 136 Cal.Rptr. 132, 143 (1976).

In his comprehensive law review article, *Punitive Damages in Products Liability Lit-*

igation, 74 Mich.L.Rev. 1258 (1976), Professor Owen argues cogently that while punitive damages should be awarded in appropriate cases, the awards should be subjected to greater scrutiny than in many cases in the past. Indeed, he finds a recent trend toward tightened judicial control over punitive damages. *Id.* at 1321.¹⁶ Moreover, judicial scrutiny over the awards provides a partial justification for allowing such awards in the first place. The spectre of bankruptcy and excessive punishment can be in part dispelled to the extent that trial and appellate courts exercise their powers of review.¹⁷

[20] The compensatory damages awarded to Michael Day and against Sturm, Ruger amounted to \$137,750, exclusive of costs, prejudgment interest, and attorney's fees. The punitive damage award of \$2,895,000 appears to be so out of proportion to the amount of actual damages as to suggest that the jury's award was the result of passion or prejudice. The jurors apparently responded to an invitation to punish Sturm, Ruger for all wrongs committed against all purchasers and users of its products, rather than for the wrong done to this particular plaintiff. See, *Egan v. Mutual of Omaha Ins. Co.*, 133 Cal.Rptr. 899, 919-20 (Cal.App. 1976). Under the circumstances, it was a mistake and an abuse of discretion for the trial judge not to have reduced the punitive damages or to have ordered a new trial.

After a careful review of the evidence and all of the factors which should bear upon this determination, it is our opinion

16. He gives as an example *Jolley v. Puregro Co.*, 94 Idaho 702, 496 P.2d 939 (1972). The trend can also be seen by comparing the original *Restatement of Torts* with the newer version. See *Restatement (Second) of Torts*, Sec. 908, comment d, at 81-82 (tent. Draft No. 19, 1973).

17. Among the factors which, according to Professor Owen, should be taken into account are:

- "(1) the amount of the plaintiff's litigation expenses;
- (2) the seriousness of the hazard to the public;
- (3) the profitability of the marketing misconduct (increased by an appropriate multiple);

- (4) the attitude and conduct of the enterprise upon discovery of the misconduct;
- (5) the degree of the manufacturer's awareness of the hazard and of its excessiveness;
- (6) the number and level of employees involved in causing or covering up the marketing misconduct;
- (7) the duration of both the improper marketing behavior and its cover-up;
- (8) the financial condition of the enterprise and the probable effect thereon of a particular judgment; and
- (9) the total punishment the enterprise will probably receive from other sources."

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Clary Ins. Agency v. Doyle
620 P.2d 194

HENDRICKSON v. FREERICKS

Alaska 205

Cite as, Alaska, 520 P.2d 205

48. During closing argument to the jury, Doyle's lawyer stated that Doyle's liability for Kline's injuries was at least \$95,000.¹⁸ In *Sturm, Ruger*, the jury awarded compensatory damages of \$138,000; thus, the award of \$500,000 in punitive damages was approximately three and one-half times this amount. In this case, the award of punitive damages of \$190,000 is roughly twice the amount of the compensatory damages.

[22] We do not imply that punitive damages should always bear a specific ratio to actual damages. As stated in our opinion on rehearing in *Sturm, Ruger*, "[A] comparison of actual damages with the punitive damages is a factor which may enter into the determination of excessiveness. However, there may be cases in which it is of only slight value or is totally inapplicable." 615 P.2d 621, 624 n.3, (Alaska 1980). The only reason for referring to a ratio is "to give the reviewing court a strong hand in controlling potentially excessive punitive awards." D. Dobbs, *Remedies* § 3.9, at 211 (1973). Of more importance in determining whether the award is excessive are the factors listed in *Sturm, Ruger*: "[T]he magnitude and flagrancy of the offense, the importance of the policy violated, and the wealth of the defendant." 594 P.2d at 48 (quoting *Zhadan v. Downtown L.A. Motors*, 66 Cal.App.3d 481, 136 Cal.Rptr. 132, 143 (1976)).

[23] Although there is an absence of evidence relating to the wealth of the defendants, the conduct was outrageous. Furthermore, it is strongly against public policy for an insurance agent to receive sums for premiums, assure its customer of

18. At the time of trial the parties stipulated that Doyle had paid Kline approximately \$51,000. After judgment the Clary Insurance Agency paid additional sums owed Kline, including a \$40,000 award for permanent partial disability. Because Kline's accident involved the amputation of a leg, by the time of trial it was virtually certain that this award would be made under the schedule of benefits in AS 23.30.190(a)(2). Doyle's argument to the jury that there was a minimum of \$95,000 in exposure is thus entirely supportable, and in any event, Clary and Brewer failed to raise a timely objection to it.

coverage, yet willfully fail to obtain that coverage. Not only may the customer be damaged, but third parties who are injured may not be able to obtain recovery as a result of the lack of insurance. Given the nature of Clary's and Brewer's breach of duty and the need to promote public confidence in the insurance industry, under the circumstances of this case we cannot say that the trial court abused its discretion.¹⁹

The judgment of the trial court is accordingly AFFIRMED.



Joseph J. HENDRICKSON, Appellant,
v.

Charles FREERICKS, Phyllis Freericks,
Sam Jeffcoat, and Andrew J.
Hall, Appellees.

Phylene JEFFCOAT, Cross-Appellant,
v.

Joseph J. HENDRICKSON,
Cross-Appellee.

Joseph J. HENDRICKSON, Appellant,
v.

Phylene JEFFCOAT, Appellee.
Nos. 4292, 4565 and 4605.

Supreme Court of Alaska.

Nov. 21, 1980.

Opinion on Rehearing March 27, 1981.

Purchaser of lessor's property brought trespass action against assignees of lessee's

19. Clary and Brewer raise several objections to the form of the judgment order. With regard to subrogation rights, the Clary Insurance Agency has assumed the position of Doyle's workers' compensation carrier and therefore has the same subrogation rights against Jet Alaska as any other workers' compensation carrier. The appellants' objection that the judgment order might potentially embrace liability to Doyle for other accidents that occurred during the time he was uninsured is frivolous. The judgment order is not defective.

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Superior Court,
airbanks, James
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or punitive dam-
n light of ratio
pensatory award

hypothetical use value of generator even if
buyer did not prove that he would have
used generator during period of detention,
that buyer incurred expense in obtaining a
substitute generator, or that defendants
profited from the detention.

2. Replevin $\Rightarrow$ 75

In replevin action, rental value is one
permissible standard for measuring dam-
ages for loss of use of equipment and
injured party is not required to establish
that in fact he hired a replacement before
he can establish loss of use damages.

3. Replevin $\Rightarrow$ 88

In replevin action brought by buyer
who purchased diesel generator at auction
against defendants who took possession of
generator following auction, evidence, in-
cluding testimony of witness who had sold
and rented machinery for approximately
three years that reasonable rental value of
type of generator in question in reasonably
good operating condition was \$1,365 per
month, and testimony of witness involved
in generator repair business that generator
in question was in very good condition, was
sufficient for jury to value loss of use
damages suffered by buyer.

4. Appeal and Error $\Rightarrow$ 1004.3

Trial judge has considerable discretion
to decide whether damages are excessive,
and the Supreme Court will interfere in the
exercise of such discretion only in the most
exceptional circumstances to prevent any
miscarriage of justice.

5. Replevin $\Rightarrow$ 75

Loss of use award in a replevin action
is not limited to value of property in ques-
tion.

6. Replevin $\Rightarrow$ 82

In replevin action brought by buyer
who purchased diesel generator at auction
for \$575 against defendant who took pos-
session of generator following auction, tes-
timony that rental value of \$1,365 per
month for generator in question would ap-
ply for one month or one year, that fair
market value of generator in good condi-
tion was approximately \$8,000, and that

generator in question was in very good
general condition, gave jury reasonable ba-
sis to value generator at \$8,000, and thus,
\$13,000 loss of use award to buyer was not
so much higher than an acceptable esti-
mate of generator's value as to violate rule
of proportionality.

7. Replevin $\Rightarrow$ 91

In replevin action, trial court did not
err in giving jury two instructions concern-
ing punitive damages, since first instruc-
tion emphasized that punitive damages
should not be awarded if defendants acted
in good faith, and second instruction pro-
vided standard for determining if punitive
damages were to be awarded.

8. Replevin $\Rightarrow$ 91

In replevin action, trial court was not
required to use the term "outrageous" in
instruction regarding punitive damages.

9. Appeal and Error $\Rightarrow$ 882(12)

Even if trial court in replevin action
erroneously instructed jury as to punitive
damages, Supreme Court would reject de-
fendant's appeal on such point, since de-
fendants approved instruction at trial.
Rules Civ.Proc., Rule 51(a).

10. Replevin $\Rightarrow$ 72

In replevin action brought by buyer
who purchased diesel generator at auction
against defendants who took possession
following auction, testimony that defend-
ants' representatives did not make a good-
faith mistake, although contradicted, was
sufficient to support award of punitive
damages.

11. Damages $\Rightarrow$ 94

Of more importance in determining
whether punitive damages award is exces-
sive than the ratio of punitive to actual
damages is the magnitude and flagrancy of
offense, importance of policy violated, and
wealth of defendant.

12. Replevin $\Rightarrow$ 82

In replevin action brought by buyer
who purchased diesel generator at auction
for \$575 against defendants who took pos-
session of generator following auction,

bought by buyer
generator at auction
took possession of
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reporter, or witness-
409 F.2d 309, 310
6 U.S. 909, 90 S.Ct.
91; *F. James & G.*
11.17, at 567 (2d ed.
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al proceedings.

April 12, 1991

Dear Legislators,

I worked on the oil spill in 1989 on the Port Graham beaches & the Beaches of Windy Bay. The monies I recieved would never compensate for the work & emotional stress I went through. When I worked, I was depressed because of seeing the beaches oiled so badly. I knew the beaches were sick, and I couldn't give it any medicine. It was like seeing a child dying, & not being able to help.

I myself was becoming sick from the oil - I was getting dizzy spells, headaches and I was always nauseas from smelling the oil. They flew me to Homer and left me at the clinic. Where upon I returned several times with the same symptoms. Each time I provided my own transportation.

I was stressed by the tight living quarters. 9 of us shared one stateroom. We were allowed 5 minute showers - our room was always filled with ^{cigarette} smoke. We were taken to the beaches every morning at 7:30 am, not to be ~~take~~ picked up again until 12:00 noon. We weren't even picked up to use the bathroom back on the boat, & we were told NOT to go bathroom on the beaches or up in the woods. I was afraid to say anything for fear of being cussed out by my supervisor - who was a non native. I felt more like a slave

than a worker.

Through working on the oil spill in 1989, my husband & I didn't make alot of money. In reality, we lost more than we made. I traveled all the way down to Uganik to work in the cannery and the oil spill affected the fisheries so bad that we lost working hours. I figured the hours X the \$'s would equal about \$10,000.00 that I lost that summer.

My family is still eating fish that we put away 2 years ago & before. We feel that it is safer to eat this old fish than to eat a fish we would catch today.

I wish I could attend the hearing in Homer, but due to financial stress, I can't afford it.

I don't feel the Exxon settlement with the state is going to compensate for the native communities effected by the oil spill. I don't feel that the settlement ~~will~~ will include the villages.

Sincerely,

Sally G. Carlough
P.O. Box PGM

Port Graham, Alaska 99603

Jerry Celey
6766 Double Tree Court
Anchorage, Ak 99516
(907) 346-2800

House Special Committee
On Proposed Exxon Settlement
P.O. Box V
Juneau, Ak 99811

I hereby submit my comments concerning the proposed Exxon settlement of the Exxon "Valdez" incident as far as the Federal Government and the State of Alaska are concerned.

I have always felt that the State of Alaska was more at fault for the spill damage than Exxon was. The Alaska Department of Environmental Conservation is the State's front line defense against, among other things, oil spills. The oil spill contingency plan approved by Dennis Kelso clearly shows that even under the most ideal conditions, that a spill of the magnitude of the Exxon "Valdez", would result in damages of the extent that indeed did occur.

This Department, under the direction of Dennis Kelso, bungled their responsibilities so badly that it was pathetic. In turn, the lawsuit against Exxon was so ill prepared that it was embarrassing. If you have never read the lawsuit, you should. It will prove to be very enlightening.

Therefore, based on the present condition of Prince William Sound, and based on the terms of the settlement, I think the State and the Federal Government "made out like bandits", and should grab the money and run.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'Jerry Celey', with a long, sweeping horizontal line extending to the right.

Jerry Celey



Natural Resources
Defense Council

1350 New York Ave., N.W.
Washington, DC 20005
202 783-7800
Fax 202 783-5017

April 24, 1991

Andy Hemenway
Counsel to Special Committee on the Exxon Valdez
Oil Spill Claims Settlement
P.O. Box V
State Capitol, Room 218
Juneau, Alaska 99811

Via Fax

Dear Andy:

Enclosed is specific language suggesting modifications to both the Memorandum of Agreement and Settlement Agreement that Eric Jorgensen had discussed with you yesterday. The language reflects the thinking of myself, Eric Jorgensen and also lawyers with the National Wildlife Federation.

We hope this proves helpful in your deliberations. Please call me at 212-727-4423 if you have any questions.

Yours sincerely,

Sarah Chasis
Senior Attorney

cc: Eric Jorgensen
Attachment

Suggested Modifications to the Memorandum of Agreement

1. Amend V.B to delete provisions specifying that \$134 million (of the \$900 million) shall be available for reimbursement of allowed expenses and shall be paid by Exxon over a period of 5 years.

Rationale: The amount of settlement money appears inadequate to fund significant restoration and acquisition, particularly in the early years. The limited dollars should be devoted to improving the affected environment, rather than repaying past expenses of the trustees.

Alternative: Provide that these past expenses be recouped in the later years of the payment schedule, freeing up more money in the early years for restoration and acquisition.

2. Amend V.A to specify that high priority shall be placed by the trustees on funding acquisition, including: timber rights acquisition; purchase of pupping areas, staging areas and other habitat threatened by potential development; purchase of habitat and areas whose development or degradation may destabilize or harm the ecosystem affected by the spill; fishing rights acquisition.

Rationale: There well may be only a limited number of possible effective restoration and replacement projects. The bulk of the

settlement money should be used to acquire timber rights and property interests (including conservation easements) to protect the ecosystem harmed by the spill. Recent statements by the state trustees raise doubts about their willingness to spend the money for acquisition. The legislature should condition its approval of the settlement on a modification of the MOA to give priority to such expenditures.

3. Amend VI to require that the trustees must conduct ongoing scientific studies to assess the longterm, chronic effects of the spill.

Rationale: Ongoing studies are needed to document the longterm and chronic effects of the spill. These studies are essential to effective use of the reopener clause. Such studies also are important to gaining an understanding of the longterm consequences of a catastrophic spill. There is no guarantee that the trustees, without an explicit requirement in the MOA, will maintain their commitment to such important research. Indeed, recent press reports regarding statements of trustees indicate they will cut such studies.

4. Amend IV.A.4 to require the establishment of a public advisory committee with the composition and role spelled out as recommended in the attached memo.

Rationale: This issue, so important to effective public participation, should be resolved now, not deferred until after the settlement has been approved.

5. Amend IV to require that there be two public voting members, in addition to the three state agency trustees and three federal agency trustees, who administer the trust fund. (Perhaps these could be the Chair and Vice Chair of the Advisory Committee.) These public members should be people with the highest credentials who garner broad public respect.

Rationale: Participation in decisionmaking by public members would open up the process, broaden the perspective beyond government agencies and enhance public confidence in decisionmaking.

6. Amend IV or VI to require that all scientific and economic data collected by the trustees be made promptly available to the public.

Rationale: Meaningful public participation turns on timely access to scientific and economic information. The trustees must make a commitment to making the data they collect publicly available as part of the settlement. Making the data available is also critical to the credibility of the science program which is the basis of all restoration.

7. Amend IV to require that all proposed damage assessment and restoration studies and projects be circulated for public comment with enough detail provided and at an early enough point in the process to enable meaningful public comments which can influence the design and conduct of the studies and projects.

Rationale: To date, the damage assessment and restoration processes have failed to provide for meaningful public comment due to the lack of timely requests for public comments and the lack of sufficient detail to permit meaningful comment.

Suggested Modifications to Proposed Settlement Agreement

1. Before approving the settlement, the Legislature should require that the trustees provide the public with a clear, well-supported explanation of how the amount of the settlement was calculated and why it is sufficient to compensate the public. Information on the diminution in use values, including intrinsic values, and information on the costs of restoring, replacing or acquiring the equivalent of the damaged resources -- as calculated by the trustees -- should be provided as part of this disclosure.

2. Eliminate the \$100 million cap in the reopener

provision in Para. 18 and revise the language in Para. 17 to track the CERCLA reopener provision (i.e., the reopener provision would be triggered if and when conditions unknown at the time of the settlement arise).

Rationale: The Summary of Effects, submitted by the federal trustees to the Court on April 8, makes clear that the extent of injury to many important species will not be known for many years. To cap future recovery from Exxon for such injuries puts the public in the position of bearing the longterm costs of the spill and violates the important policy of having the spiller, rather than the public, pay for the cost of the pollution. (CERCLA settlements must contain a reopener (without a cap) except in the rarest of circumstances). Moreover, the conditions under which the reopener provision may be triggered are so stringent, it would be very difficult for the trustees to ever recover the \$100 million.

3. Amend Para. 22 to delete the governments' agreement not to sue Alyeska for natural resource damages.

Rationale: It was Alyeska after all that was completely unprepared to carry out its oil spill contingency plan. Alyeska's failure to comply with the plan compounded the environmental damage that occurred. This sends a terrible message to those responsible for oil spill contingency planning

and response -- that no matter how negligent they are in implementing their plans, they can escape liability.

Amend the settlement to preclude the use of settlement money for clean-up expenses by any party, i.e., Exxon, the State or local government.

Rationale: We question whether future clean-up should be paid out of the same fund as restoration. As Congressman Studds pointed out in his April 12 letter to Judge Holland, this will create competition between clean-up funding and restoration funding when both are required under the Clean Water Act. Moreover, the amount of money that will be available for restoration already appears inadequate, particularly in the early years. The settlement money should be devoted to restoration and Exxon's obligation to conduct clean-up should continue independent of the settlement.

ATTACHMENT 1

A PROPOSAL FOR A PUBLIC ADVISORY COMMITTEE

Introduction

This memorandum proposes a structure and membership for an advisory committee that could be formed as part of the proposed Exxon Valdez settlement.

Members

We feel it is important to list categories of interests, not specific groups.

The categories we suggest¹:

- Environmental groups
 - national
 - Alaska
 - Prince William Sound
- Fishing groups
 - commercial
 - sport
- Recreational interests
 - low impact (kayaking, hiking, etc.)
 - tourism
- Natives
 - [non-profit (subsistence) only]
 - Chugach/PWS
 - Kodiak/Kenai
 - selected representatives of communities
 - archeological/cultural/historical
 - [professional representatives]
- Scientific
 - [outside scientists only, i.e., not permanent government employees; also should have no contracts, etc. with Exxon, Alyeska, and Alyeska owner companies]
 - Alaska scientist(s) with PWS focus
 - scientist(s) who studies Alaska environment
 - scientist(s) with relevant experience

¹ Where more than one subcategory is listed, we are suggesting that there be at least one representative for each subcategory.

Mechanics of Advisory Committee

Our goal is to devise a process which will allow the advisory committee meaningful participation in the work of the trust. As part of this, we feel it is important to make the committee as independent and as well-supported as possible.

We suggest that:

-- the committee have a small, paid staff and these staff members will not be employees of the trustees' respective agencies;

-- the committee members will have their expenses paid and will have a per diem;

-- the committee will meet bi-monthly and in consultation with their staff and with government agency professionals² will propose an annual workplan/spending plan for the trust; this plan will include a reasonable list of options from which the trustees would choose (trustees would have to choose options only from this list, however);

-- the staff should include a public participation expert and a scheme of adequate public participation should be guaranteed;

-- the committee would be chaired by a distinguished public citizen (for example, Jay Hammond or Russell Train) and members of the committee would be chosen by the groups/organizations/individuals that make up the specific categories of interests listed above³; private mediators/facilitators could be used to aid in this selection process.

² This would include the following agencies' professional staffs: Alaska: F&G, DEC, DNR; US: EPA, NOAA (NMFS), USFS, USF&WS, NPS.

³ The parties involved in the Exxon Valdez oil spill litigation who are included in these suggested categories could be consulted as part of this selection process.

CITY OF CORDOVA



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Exxon-Valdez Settlement

Pat Williams - (4) Special Committee

465-2444

8

(Including Cover Sheet)

4/15/91

Time: *6:45 pm*

Jacque

City of Cordova

Telephone No: (907) 424-6200

Telecopy No : (907) 424-6000

Chapman
90 Box 939
Cordova, AK
99574
Weller

Attorney General Dick Thornburg said the Exxon fine "represents a clear and unmistakable signal to those engaged in environmental crime" that they will be punished. Yesterday Alaska's Attorney General Charles Cole was in Cordova and after listening to him at the public hearing, I felt like I'd just spent the afternoon on a used car lot, being talked into buying some slick red Cadillac that needed to be moved off the lot. I can only guess that a sense of humor and fast talking goes with the territory, and that I can accept, after all I am an American. But what about Math? Isn't anyone stopping to figure out that it's not enough? The federal government has traded any future protection for our land, air and water by agreeing not to prosecute anyone associated with Exxon or Alyeska for anything associated with the wreck of the Exxon Valdez, the oil spill, the cleanup or the oil spill contingency plan for 100 million dollars. Chump change for a gang of profit-motivated criminals. I mean criminals too, there are laws against killing whales, sea lions, migratory birds out of season, poaching, driving on the wrong side of the road, and so on, basic laws which we all follow. These guys even be brought to trial unless this case goes to trial.

Stop and consider that the oil spill was not an accident, but the logical outcome of a set of cost-cutting moves by officials of Exxon. Somehow it seems that the same people who made these bad choices need to be held accountable for their actions. It's something that I am striving to teach my 7 year old, and it is not an easy task. It is however, a necessary lesson that even the largest corporation in America has to learn. If they don't learn, citizens will continue to pay the price for the mistakes and profits that Exxon makes. You'll have to believe me when I say I've been paying a pretty high price for Exxon's mistake ever since that tanker hit Bligh Reef and so has everyone else in the area. Maybe in the case of Exxon, the state feels they aren't going to be able to do the job, it will be difficult and who knows, maybe it's not even possible. From the time that Exxon came onto the scene, I have had the feeling that the tail was wagging the dog and somehow this settlement is in keeping with that logic.

As Alaskan's were being asked to give this settlement a kiss for luck. But the AIDS determination isn't back from the lab yet. Where's the data? All the economic studies are being kept secret, all the evidence that could maybe give us a clue about what the damage to the Sound is really worth are on ice. It's really absurd when you think about it, but that's what nobody wants to do anymore. Attorney General Cole explained that he is responsible for the decision not to release data. Exxon would love to get their hands on all our evidence so that they could twist it around and make it into something to benefit their case. Maybe this isn't Kansas, Toto, but Gosh, a crude laden tanker, for which a drunken captain is responsible maneuvers through

Prince William Sound, hits a well marked, lighted reef and spills millions of gallons of crude into the water. Just how is Exxon going to make that into anything else? Didn't the State keep records and gather data and prepare itself for a court trial? I think so. Let's go for it. If Exxon wants to put a billion dollars toward any future settlement, maybe we can talk about that, but to just let them skate will mean that the only thing we can really do to restore the Sound won't be done.

Restoration money will keep scientists and bureaucrats and legislators busy for a while, but we all know that the man made clean-up was a joke because all the real clean-up was and is being done by nature. The only thing that can really be done to keep the Sound and our land safe is to make sure that this sort of thing never ever happens again. I think the only way to do that is to prosecute Exxon and it's officials and for once, don't sell us short. Don't take the easy way out. I've been saying there are no heroes in the Exxon Valdez oil spill. Let's try and do something right. Walk away from the money, listen to your heart and your people, take the EXXON Corporation to Court and set some environmental precedents.

Becky Chapak
c/o Box 939
Cordova, AK
99574

CHARLIE CRANGLE

Kim Blommel

(Seward testimony)

This week, the rage I have bottled up inside since the the oil spill finally surfaced when I read the preliminary spill damage assessments released in a federal report. This report served as both a catalyst for me giving testimony this here this evening, and as a catharsis personally for my pent-up emotions over this tragedy.

*Chukchi Sea - Hickel Highway
\$50 - per mile*

This settlement is typical of the Hickel administration's shortsightedness when dealing with our state's future. Their methodology has amounted to a settle-quick, circumvention of the public process. Their philosophy has been to sally forth and not allow questions to stand in the way of the final goal- a settlement at any cost. It is a sham. It amounts to little more than a "buck a duck" when you sift through all the loopholes. Exxon is laughing all the way to the bank as they rolled up \$177 billion dollars in earnings this past year alone. Yet Mr. Hickel says "It looks good and it feels good." To who, Mr. Hickel? To you, or the people you are supposed to be representing?

It is my feeling that this settlement amounts to a quick fix. An incredibly complex and difficult case such as this one should not be settled with a quick, no-frills, Mexican divorce. No attorney in his or her right mind would suggest settling for any figure if they weren't privy to the extent of the damages hinted at in a case such as the Exxon Valdez. Why should the state's citizens be asked to go along with this settlement? If it feels good, Mr. Hickel, show us why. Don't give us lame excuses about why you can't show us your hand!

There is no doubt in my mind why Exxon Corp. was willing to settle this
thing so quickly. They didn't want the public to know what the true extent of the damage really was. The negative publicity would tarnish their corporate image, perhaps forever. Nor did they want their future development projects derailed elsewhere. They knew that in the long run, once the studies showing the extent of the real damage were released, they would end up paying far more. Public outcry would demand it.

In short, we are being held hostage by oil companies. It is disturbing to think that a government we place public trust in, has conspired with Exxon to ensure that damaging facts about ecological long term damage to our environment are being kept from public scrutiny so that future development can proceed unheeded.

Attorney General Cole and Governor Hickel both have ties to Big Oil through their investments. I believe they have a lot to profit from personally in a more relaxed pro-development environment it is hoped such a speedy settlement will spawn. Mr. Cole after taking some heat about his oil lease investments now is saying perhaps there is cause for concern about a potential for conflict of interest. He is offering to step down from his Trustee spot on the proposed settlement trustee board and be replaced by the state's DNR commissioner. Please, Mr. Cole, don't insult our intelligence! Do you really think putting the former President of ARCO Alaska, DNR Commissioner Harold Heinze on the board will improve the conflict of interest question?

Our politicians in the Hickel administration have done us no favors with this settlement. In my opinion, they have been reactive and negligent in their

duty to this state's citizens as they continue to be enslaved to, and blinded by, the notion of another batch of fast money tossed to us by the oil companies. Regarding their callous lack of stewardship, they are quick to throw money at the problem as they perceive it. This money they spend is not aimed at protecting our magnificent land, but instead to buy our silence. We have been silenced long enough. It is time to speak out!

Contrary to what Exxon would like us to believe, the Sound and its surrounding waters are not healed. The analogy comparing the damage to a mole on Marilyn Monroe's face is invalid, try as the state may in its ad financed by Exxon, there is more to the story than airbrushing away a minor defect. This is a still unraveling tragedy, more along the lines of a Chernobyl with its devastating repercussions to the entire food chain.

Our politicians in the Hickel Administration have done us no favors with this settlement. Not only is it unjust and financially insufficient, it has been crafted to be very difficult for the public or our lawmakers to reject, modify or give meaningful input beyond mere symbolic gestures. Mr. Cole, while perhaps well intentioned, I believe has been negligent in his duty to the citizens of the state of Alaska. This settlement is reactive, hasty and continues our blind adherence to the notion that this state cannot operate without Big Oil. We need to wake up and realize that oil is a finite resource. After these oil companies squeeze this state dry. After they adhere to the leanest environmental standards they can buy and pay the lowest severance taxes they can manage to lobby for, they will be gone and leave us to yet another bout of boom and bust- victimized once again.

While we sit here and discuss the fairness of this settlement, Mr. Rawls of

Exxon has just turned in another banner year in earnings for his corporation. Exxon earned \$177 billion last year alone and is joined by a number of other oil companies in their dominance of Fortune Magazines 10 highest earning companies in 1990. The oil lobby will point to the Permanent Fund as evidence of oil's commitment to giving fair dollar for resource extraction. Some simple math reveals otherwise. The Permanent Fund sits at @ \$11 Billion after almost 14 years of pipeline flow and 23 years since the first Prudhoe Bay lease sale. How much corporate profit the oil companies have garnered since the first oil production on the Kenai Peninsula in the 1950's can only be speculated here this evening. Given the size of Exxon's profit last year alone- it has to be a mind boggling sum of money. One thing for sure, \$1.5 Billion in penalty and damage money spread out over 10 years with ample opportunity to write off many of the costs on taxes and assurances of immunity from spinoff suits; is certainly not even denting Exxon. It amounts to little more than a mosquito bite on an elephants posterior end.

I believe with this settlement we are not acting as responsible stewards of our state's resources on our watch. So what if the settlement process takes 10 more years to get what the state and its citizen's fairly deserve? We need to take a more long sighted view of things here, to have some vision of the future. Who is going to take care of the future generations to come who will still be feeling the effects of the dead kelp beds, the polluted sea bottom, and resulting diseased and mutated mammal and fish life? The limited safeguards we have now for the future are established begrudgingly by the industry and in practice ineffectual. Records are routinely falsified and well

paid and well connected lobbyists permeate every sector of government working to dismantle what is there, whenever the public's guard is down.

Yes, it is true that Exxon's batch of well heeled lawyers could drag this thing on for years. Yes, we may not see any settlement money for years. This to me, is an adequate reason to not push for a fairer settlement. The oil industry is once again pushing a symbolic cash award our way and once again asking us to look the other way. They are once again interested in one thing and one thing only, buying our silence. We need to let them know our silence doesn't come cheap. We know a good deal when we see one, this is not a good deal if you weigh all the damage released in the federal findings and speculate on all the other damaging facts that still remain out of the public eye.

"Exxon-gate" is the name that comes to mind to sum up this sham of the public process. We are being asked to swallow a vastly underpriced settlement, a sum for which know no one can say how the amount was quantified. To top it off, we are not made privy to the assessment information that went into arriving at the settlement. We need to let the powers that be that it was a big mistake to exclude the main affected parties from the loop- namely the citizens of the state of Alaska. The only good news that I can glean from this deal is that it settles things. That is not a big enough factor to convince me to feel good about accepting it. Too many unanswered questions remain.

To accept this settlement constitutes entering into a "Faustian bargain" with the oil companies laughing at us behind our backs for our insatiable greed

for the quick buck. They have entered into collusion with our elected and
appointed officials to prevent findings from studies funded by public money
and that concern the vitality of public resources from being disclosed and
evaluated by the public that owns them. Of course, Exxon wants to settle this
thing. They don't want any more damaging press. They would like nothing
better than to bury the damage assessments. The fact that our Governor and
his appointed subordinates have agreed to prevent our state's citizens from
examining such documents is a violation of the public trust and may very
well be unconstitutional.

Article VIII, Section 16 of the Alaskan Constitution states:

*"No person shall be involuntarily divested of his right to the use of waters,
his interest in lands, or improvements affecting either, except for a superior
beneficial use or public purpose and then only with just compensation and
by operating of law."*

I feel the people of Alaska are being involuntarily divested of our right to
the use of unaffected waters and lands in the oil spill impacted areas and we
are certainly not being justly compensated nor being made party to the legal
process. "Just" is defined as fair minded, based on right, right in law or ethics
and legitimate. A case can easily be made that this settlement process has
circumvented much of what could be construed as "just" in a court of law. I
fear the state may feel they have won a battle with Exxon, but instead will
fall victim to a great deal of litigation from affected parties and may end up
with nothing in the end after heated court battles coming from a variety of
fronts.

I applaud the hard work of the legislature in dealing with this complex problem. I am cognizant of the fact that you too, are being victimized by an insufficient time period for evaluation and soliciting and evaluating public comment. Having just recently returned from Juneau myself, I am well aware of how hard you work. I commend you for taking time out from your very busy and hectic schedules to hold these hearings in affected communities.

Please consider my comments in summation:

- 1) This settlement is not fair minded in that it excluded and continues to exclude, with its secrecy, many injured parties from the process.
- 2) The settlement may very well be unconstitutional and may bog the Alaskan legal system down in suits against the state for years to come.
- 3) Ethically, the suit smacks of conflict of interest with Attorney General Cole's oil leases, Gov. Hickel's ownership of Yukon Pacific Corp. and DNR Commissioner Heinze's former position as President of ARCO Alaska.
- 4) We need to be more visionary in any settlement and consider future inhabitants of affected areas, especially native villages who depend on a clean ocean for their subsistence lifestyle and heritage.

In closure Mr. Hickey would like nothing better than to sweep this whole
mess under the table- "to put the oil spill behind us" to quote him. I say we cannot do so until the public knows fully the extent of the damage, has a better notion of the real costs and has the opportunity to adequately assess them. To do otherwise, is to set us up for far worse consequences in the future. Alaska is an amazing place, it needs to remain pristine and unfouled to remain the magical place it is. The oil industry through its ads is constantly claiming how it can extract oil without affecting our pristine environment. The Exxon Valdez revealed that to be the fairy tale that it is. We can't afford another Exxon Valdez, which could have been even worse had all of the oil escaped from the hull. The message needs to be heard that Alaskans can't be bought off and we can't be silenced any more. If it takes a number of years of litigation, to procure a settlement that is just and more accurately reflects the cost of the spill, so be it!

I urge you to reject this settlement and make your voices heard as a united force, representative of constituents from an affected community who are angry, frustrated and appalled by this affront to the public process. Thank you for your time.

Respectfully submitted,

Charlie Crangle Kim Blommel
Charlie Crangle Kim Blommel

P.O. Box 3394
Seward, AK 99664

D-F

STATE OF ALASKA
House of Representatives
District 27

Representative Cliff Davidson
Chairman
House Resources Committee

Box V, Juneau, AK 99811
(907) 465-2487
Box 746, Kodiak, AK 99615
(907) 486-8250

TO: Representative Max Gruenberg, Chair
House Special Committee on the Exxon Valdez Settlement

FROM: Representative Cliff Davidson

DATE: 23 April 1991

SUBJECT: Disapproval of Settlement Unless Modified

Below are some conditions that I believe the Committee should support as we take up consideration of disapproval without these conditions in the settlement:

1) All factual information accumulated during the course of the Exxon Valdez oil spill scientific studies, whether done by Exxon or the governments of Alaska or the United States must be made available immediately upon the final approval of this settlement.

This may be the most important element in the restoration of the faith of our citizens in government. That should be one of the primary public policy goals in resolving this tragedy. It is clear that the current settlement does just the opposite and this provision is essential to the restoration of a measure of justice and openness in this process.

2) The payment of the full amount of the settlement should occur over 3 years, not 10 years.

If Exxon wants to resolve this situation as soon as possible, this will do it quicker. As a sweetener, I propose that we eliminate the reopener clause. Its effectiveness was limited and it only served to artificially inflate the apparent value of the settlement.

3) Delete those provisions which provide that Exxon can set off cleanup expenses against the settlement.

Settlement for the damages caused by Exxon's mistakes should not relieve Exxon of the responsibility of continuing the cleanup to the satisfaction of both the state and federal governments.

4) Prior to final agreement, there should be a better definition of how the Trustees will be selected, under what rules of procedure

they will operate, how the public process will operate and what kinds of projects will qualify for funding.

These are very important provisions that should not matter to Exxon, thus they will not affect the overall settlement. I am unclear as to how they should be worked into our disapproval of the settlement, but feel strongly that they should be.

5) Alyeska should not be mentioned in the settlement.

Alyeska was not a party to the negotiations and they should not be absolved from culpability.

KIERAN Donahue

final
4/15/91

April 18, 1991

TO: Representative Max Gruenberg, Chairman, House Special
Committee on the Exxon Valdez Oil Spill Claims Settlement.

FROM: Kieran E. Donahue
Scientific Diver, IMS/SFOS (UAF)
5243 A. Broadway
Eielson AFB, Alaska 99702

(ph.) 907-372-3359

SUBJECT: Testimony - Exxon Valdez Oil Spill Claims Settlement

April 18, 1991

To: Representative Max Gruenberg, Chairman, and Members, House
Special Committee on the Exxon Valdez Oil Spill (EVOS) Claims
Settlement

Rm. 216, Capitol

P.O. Box V

Juneau 99811

From: Kieran E. Donahue, Student of Natural Resources
Management, and Scientific Diver for the Institute of Marine
Science, University of Alaska Fairbanks (UAF).

I would like to offer testimony on the proposed Exxon Valdez
Oil Spill Claims Settlement Agreement. It is my opinion that
the state of Alaska should accept the 9.9 million dollars that
Exxon Corporation has agreed to pay. However, in the best
interest of Prince William Sound, I would encourage that part
of the settlement money be used to: (1) Establish a Long-Term
Monitoring program for Prince William Sound and (2) the
publication of all scientific data related to the oil spill.

I offer the perspective of a university research student who
has been involved in different aspects of scientific research,
in both fresh water and marine ecosystems, for over six years.
I was a Field Supervisor/Scientific Diver for the coastal

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Exxon Valdez Oil Spill Claims Settlement Kieran Donahue page 2

habitat assesment project(subtidal) that was performed under a contract with the Institute of Marine Science(IMS)/UAF.

I am not offfering my testimony on behalf of IMS, but I draw upon my experiences and work with other scientists in developing my analysis and recommendations.

PART I LONG TERM MONITORING

The United States is in danger of losing an important national historic and scientific asset.

A.Prince William Sound and South Coastal Alaska are special.

Prince William Sound(PWS) is one of the last intact coastal environments that remains in the world. The Sound is a world class ecological resource, and is one of the most biologically productive and diverse systems of its kind in the world. In order to insure that PWS remains a productive and healthy area, a long term monitoring program should be established.

B.Relationships are complex.

I don't believe enough attention has been given to integrated approaches involving the PWS system as a whole, including terrestrial, intertidal, and subtidal components. At

Exxon Valdez Oil Spill Claims Settlement Kieran Donahue page 3

the present time, many agencies spend money and time studying the individual resources of PWS. These agencies are responding to their missions and doing what they can individually. But this fragmented effort needs to be consolidated, coordinated, and focused into an integrated approach to long term monitoring. There stands before us now a chance to pull this effort together and fill the gaps by using some of this money from the claims settlement.

C. Good information and insight is needed to make the best management decisions.

For a long term ecological monitoring program to provide useful information, managers and scientists must together define the key information needed to understand and track the health of a system. Sometimes simple measurements can be made at intervals, but it is important to maintain the effort to provide for continuity so that the measurements are meaningful.

Monitoring can be done for a variety of reasons. As an example, some of the key variables I would recommend for monitoring include:

1. Primary Producers
 - a. Kelp
 - b. Laminaria and Agarum
 - c. Plankton

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2. Harvested Species

- a. Salmon
- b. Herring
- c. Halibut

3. Keystone Species or Species of Special Interest

- a. Shellfish (eg. Sea Urchins)
- b. Sea Otters
- c. Orcas

D. The importance of monitoring primary producers as an example of species interrelationships.

Primary producer species such as kelp not only provide food for certain organisms, but they also provide habitat at both large and small scales. Kelp beds are hiding places for small fish such as juvenile salmon. They also provide a place for herring to attach their egg sacs. A healthy marine system requires healthy and abundant Kelp.

The EVOS may have threatened the productivity of PWS in an unexpected way. Kelp beds are heavily grazed by sea urchins. Sea otters, however, eat the urchins and keep their numbers in check. Without otters (killed by the spill) the system will see an increase in the sea urchin population. Sea urchins can now overgraze the kelp beds of PWS causing a drastic decline in the

Exxon Valdez Oil Spill Claims Settlement Kieran Donahue page 5

kelp population and productivity. The loss of kelp beds will reduce the habitat for spawning herring and cover for small salmon. This in turn may have an adverse effect on the fishing industry by limiting the number of fish that can be harvested, thus adversely affecting the economic balance of the area.

From this example, it is possible to see the integrated relationship of organisms within the system and why it is important to understand whether a system is healthy or not.

To help us make the right decisions in managing PWS we need to "take the pulse" of the system. In order to accomodate the questions and concerns that have been raised, and others like them, base line data needs to be gathered and formulated. The size of the base line data needed can only be obtained through a long term moitoring program.

PART II: PUBLICATION OF BASE LINE DATA

Monitoring can be simple when it is hooked up to a deep understanding.

A. Importance of Base Line data

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- 1.) Managers have a responsibility to base management decisions on a firm understanding of resource conditions and possible human impacts on the public resources they manage.
- 2.) We don't need to study or monitor everything in the system. However, there is so little known about the natural ranges of species within the PWS ecosystem that extensive work needs to be done to establish this information. Only if normal limits of individual species are known can abnormal conditions be readily identified in time to take corrective action.
- 3.) One example of base line data that has proven to be very effective is population dynamics of selected organisms--the ways in which populations change.

Population dynamics accurately reflect ecosystem conditions because organisms integrate the effects of a vast array of ecological factors, including predation, competition, and environmental conditions that are expressed as changes in readily measured population parameters.

Population dynamics permit predictions into the future providing early warning of adverse conditions through

Exxon Valdez Oil Spill Claims Settlement Kieran Donahue page 7

changes in parameters such as age structure and recruitment.

Population dynamics provide information at the species and population level, which is the level at which most management controls operate. Therefore the monitoring information is directly applicable to management concerns.

B. Existing and Continuing Base Line Data For PWS.

Following the EVOS, an effort of unprecedented magnitude by state and federal governments and Exxon to study the effects of the spill, was set in motion. Among those efforts are state and federal Natural Resource Damage Assessment studies designed to measure injuries to natural resources, including birds, mammals, fish and other wildlife, and marine and terrestrial habitats.

Some of the studies that have been done to date in the terrestrial, intertidal, and subtidal zones of PWS, are the most intensive studies of their kind ever done in the Northern Pacific. But they will be of little value if they remain secret

Exxon Valdez Oil Spill Claims Settlement Kieran Donahue page 8

and if they are not pulled together and key components continued.

I strongly recommend that all damage assessment base line data be released from secrecy once a settlement agreement is reached. To not allow the scientific community to publish and release the data they have gathered and analyzed in the last two - three years after the spill is absurd. These data are a crucial starting point in formulating a base line of biological information in PWS. The loss of this critical information will have long reaching detrimental effects on establishing a quality monitoring program in PWS. It can not be stated strongly enough, that, only if normal limits of species are known can abnormal conditions be readily identified in time to take corrective action.

In summary, I believe that;

Instead of wasting time and money in court, it is my opinion that the state of Alaska should accept the money being offered in the settlement agreement as long as an adequate sum of that money is set aside in an endowment fund (or something comparable) to put in place, and support, a long term monitoring and study program in PWS.

By establishing what exists in a system we will be better prepared to recognize and adress problems when they arise.

Exxon Valdez Oil Spill Claims Settlement Kieran Donahue page 9

Monitoring over time can give managers a firm understanding of resource conditions given that all parameters have been given a chance to be explored.

If a long term ecological monitoring program is going to provide useful information, managers and scientists must be allowed to utilize every possible tool at their disposal.

Base line data have been gathered and analyzed. It is now time to release and review that information so that the best possible management decisions can be made.

There will be other problems for PWS, why not make the best of this bad situation by doing something positive and preparing for the future.

JOHNNY ELLIS

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WHILE IN SESSION
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ALASKA STATE HOUSE



CHAIR
RULES COMMITTEE

JUDICIARY

SPECIAL COMMITTEE ON INTERNATIONAL
TRADE & TOURISM

LEGISLATIVE COUNCIL

REPRESENTATIVE JOHNNY ELLIS

MEMORANDUM

TO: Rep. Max Gruenberg, Chair,
and Members of the House Special Committee on the
Exxon Valdez Oil Spill Claims Settlement

FROM: Rep. Johnny Ellis *JE*

RE: Comments on the Exxon Settlement

DATE: April 26, 1991

In the aftermath of Judge Holland's decision regarding the criminal plea in the suit between Exxon and the federal government, I understand the Committee will proceed as planned with deliberation on the civil suit, at least until any of the parties give notice that they are withdrawing. Although I am not a member of the Special Committee, I would like to offer my comments regarding the proposed civil settlement.

You may have noted in a recent Anchorage Times article that I was one of two legislators who has decided to vote against the proposed settlement. The article was correct if the the choice for legislators is to simply take it or leave it. However, I see no reason why the legislature can not set its own list of conditions for acceptance of the settlement. **I encourage the Committee to adopt the position that the settlement be rejected unless certain changes are made.**

I would be willing to vote for the settlement if it included the following changes:

1) PAYMENT UP FRONT OR WITH INTEREST OVER TIME

If we accept \$900 million as the settlement figure (which is much lower than the preliminary damage assessment figures), then the state should receive it in one lump sum or with interest if paid over time. The expectation created by the Governor is that the settlement figure would be around \$1 billion and not \$500 million, which is the approximate present value amount.



2) DAMAGE ASSESSMENT INFORMATION SHOULD BE MADE PUBLIC

The settlement should be written to ensure that all damage assessment information is released to the public. While the Attorney General has a legitimate need to protect the government's interest by withholding this information, the legislature has a broader interest in representing the people of Alaska who have a right and a need for the information.

3) PUBLIC/LEGISLATIVE APPROVAL OF TRUST FUND EXPENDITURE

The settlement needs to provide for an ironclad guarantee that the Alaskan public is allowed to participate in decisions regarding the restoration process and use of the settlement monies. Perhaps the legislature's approval should be required which has the advantage of helping to avert constitutional (dedicated fund) challenges.

4) RECOVERY OF LOST TAX REVENUES

The state should receive immediate payment for lost tax revenues related to the oil spill in addition to the restoration monies. This includes \$19-33 million in lost petroleum tax and \$5-6 million in lost fish tax revenues, as estimated by the Legislative Research Agency.

cc. all House members

JOHNNY ELLIS

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ALASKA STATE HOUSE

CHAIR
RULES COMMITTEE

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SPECIAL COMMITTEE ON INTERNATIONAL
TRADE & TOURISM

LEGISLATIVE COUNCIL

REPRESENTATIVE JOHNNY ELLIS

MEMORANDUM

TO: Rep. Max Gruenberg, Chair, Special Committee on the
Exxon Spill Settlement

FROM: Rep. Johnny Ellis *JE*

RE: Hearing Request

DATE: April 16, 1991

Attached is a letter to Judge Russell Holland from Geoffrey Parker, an attorney with the law firm Adler, Jameson and Claraval which represents the Alaska Sport Fishing Association and other plaintiffs in civil litigation arising from the Exxon Valdez oil spill. Mr. Parker raises some very good points which may be of interest to the Special Committee.

I am especially interested in issue "C". Given the way in which the settlement figure was determined, I am convinced that the State did a poor job of taking into account the damages caused by the spill. This problem is exacerbated by the State's unwillingness to release damage assessments for public review.

For this reason, I strongly urge the Committee to independently seek information on spill damage studies that have been undertaken. It is my understanding from Mr. Parker that Dr. Michael Hanemann, mentioned on page three, would be the best qualified to provide this information. I urge you to contact him and can provide you with his phone number.

Thank you for your consideration.



ADLER, JAMESON & CLARAVAL

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April 11, 1991

Honorable H. Russell Holland
United States District Judge
U.S. Courthouse
Anchorage, Alaska 99501

Re: Comments on Criminal Plea Agreement in United States of America v. Exxon Corporation and Exxon Shipping Company, No. A90-015 CR

Dear Judge Holland:

These comments in opposition to the proposed criminal plea and settlement are submitted in behalf of our clients, the Alaska Sport Fishing Association and named individuals who are recreational plaintiffs, the Area Business Class, and approximately 500 other claimants in the civil litigation arising from the Exxon Valdez oil spill. Those plaintiffs represent a variety of recreational, commercial, subsistence and other pursuits involving consumptive and nonconsumptive use of the fish, wildlife, lands and waters affected by the spill. The Association is the largest fishery conservation organization in Alaska and has through political, legislative, administrative, and litigatory efforts achieved conservation of more than a dozen areas, totalling nearly 7 million acres of fish and wildlife habitat in Alaska since the enactment of ANILCA in 1980.

Because the Association and these class and individual plaintiffs are concerned for the conservation of fish and wildlife habitat, and because the monies from this plea and settlement may be used for such purposes, the criminal plea and settlement are of particular concern. The proposed fine is inordinately low, particularly when combined with the inordinately low settlement of civil damages. The manner with which they were reached erodes confidence.

A. This Court Should Not Allow the Governments to Settle Without Encouraging the Governments to Provide an Opportunity for Public Interest Litigants, and Probably Also Private Class Litigants, to Participate in Settlement of Negotiations.

Fundamentally, this is a political case that goes to the heart of how our judicial, executive, and legislative branches of government, as well as our corporate institutions, deal with environmental injuries of great magnitude that affect natural resources and the public in innumerable and complex ways. Here, the executive branch has chosen to operate and settle in isolation, without any opportunity for public interest litigants and private interest litigants to participate.

In a case of this nature, where the science, injuries and damages involve complex relationships between public and private claims, that should not be encouraged. It erodes confidence in the settlement, our corporate institutions and government in general. The importance of such confidence reaches far beyond this spill. By allowing public comment, this court has commendably sought to allow the public to be heard. But informed comment has been thwarted by the long silence on science and the continued silence on damage calculations. That history of silence, isolation and the need for confidence warrants rejection of this settlement. That is essentially the point reached by Congressman George Miller, when he concludes that without

Honorable H. Russell Holland
Page 2

confidence in the Department of Justice, "how is it that Congress and the people . . . can rely on (governmental or corporate) assurances in the future?"

B. This Court Should Apply the Alternative Fines Act, 18 USC Section 3571(d).

In imposing sentence, this court should apply the Alternative Fines Act for purposes of determining the appropriate criminal penalty. The Act provides that the court may impose up to twice the pecuniary loss resulting from the offense. In this case, the defendants have already paid out approximately \$300 million in damages for pecuniary losses occurring in just 1989 and for the most part to just the commercial fishing industry. There are as yet outstanding in excess of \$56 billion in claims filed against the TAPS Fund, much of which is for pecuniary loss. This court should not hesitate to conclude that the pecuniary losses resulting from this spill vastly exceed the \$300 million already paid out.

Therefore, this court is faced with the problem determining an appropriate fine based on only partially determined pecuniary losses. These plaintiffs urge this court to impose a fine as follows: \$600 million (for twice the pecuniary losses already determined) plus \$400 million (not twice, but to address pecuniary losses yet to be determined) with a remittance of any portion of the latter that is not determined.

C. The Court Should Not Accept the Plea Agreement Until the Court Has Received a Summary of the Damage Calculation Studies, and Acceptance of the Plea Agreement Should Be Contingent Upon Scientific and Economic Studies Being Made Public and Being Continued.

It has been impractical for the public, this court, or state and federal officials and legislators to evaluate this settlement or the criminal plea without scientific and economic data being available. While the recent federal release of scientific information shows the injuries to be long lasting and worse than Exxon claims, more importantly, the release shows that the entire ecosystem has been attacked from the lowest to the highest trophic levels.

The signs of this are: (1) the decline in species diversity, abundance and recruitment of benthic organisms that are important to predator-prey relationships and the food chain, (2) the widespread loss of kelp, which has been conservatively documented in similar Alaskan ecosystems to provide 58.3 percent of the organic carbon load into the environment (see Attachment A), and (3) the widespread incidence across many higher trophic species of continuing lethal and sublethal effects such as lost reproductivity, debilitating lesions, mutagenic effects, MFO induction (multi-function oxidases which attack testosterone and estrogen), behavioral and territorial disruptions, low body weight, and decreased growth rates. In general, these are the types of (post-initial mortality) injuries to be expected at higher trophic levels when the lower trophic levels are severely disrupted by oil spill contaminants. Furthermore, these injuries are most prevalent among organisms that more often than not have non-market (and often nonconsumptive) use and intrinsic value, such as marine birds, harlequin ducks, eagles, sea otters, dolly varden, killer whales, harbor seals, and intertidal benthic life, as well as among marketed and non-marketed harvested species such as salmon and shellfish.

Of greater importance are the damage calculation studies. Neither the state or federal governments has released the studies that measure the value of market and non-market losses, including commercial, subsistence, recreational, and intrinsic losses. Various reports in the press, based on interviews with economic experts, have placed the natural resources damages at multiple billions of dollars. A range of \$3 - 10 billion has been mentioned in several recent reports as

Honorable H. Russell Holland
Page 3

coming from economic studies conducted by the State of Alaska that were designed to measure the non-use and intrinsic values associated with the injured natural resources.

To reach a reasonable decision on this settlement, this court needs those studies, particularly the intrinsic value study, every bit as much as it needs the scientific summary. To obtain a summary of the intrinsic value damage study, this court should subpoena the testimony and any summaries prepared by the following experts who, by information and belief, were retained as expert witnesses by the Alaska Department of Law and performed the intrinsic value study: Dr. Richard Carson, Associate Professor of Economics, University of California, San Diego; Dr. Robert Mitchell, Professor of Sociology, Clark University, Worcester MA; Dr. Michael Hanemann, Associate Professor of Agricultural & Resource Economics, University of California, Berkeley; and Dr. Raymond Kopp, Director, Quality of the Environment Division, Resources for the Future, Inc. Washington, D.C. In addition, this court should subpoena Dr. Norman Meade, Chief Economist in the NOAA Damage Assessment Branch, Rockville, MD, who managed the federal studies of recreation damages and intrinsic values, and the following experts who, by information and belief, were retained as expert witnesses by the U.S. Department of Justice to perform those studies: Dr. Alan Randall, Professor of Agricultural Economics, The Ohio State University, Columbus; Dr. John Hoehn, Assistant Professor of Agricultural Economics, Michigan State University, East Lansing; and Drs. Nancy Bockstael, Kenneth McConnell and Ivar Strand, Professors of Agricultural & Resource Economics at the University of Maryland, College Park.

The federal and state studies of intrinsic value employed the contingent valuation approach that was recently upheld by the U.S. Court of Appeals for the District of Columbia Circuit. By information and belief, these studies had been under way for a period of about eighteen months at the time the settlement was submitted to this court and they had reached preliminary conclusions indicating a range of \$3 - 10 billion for the non-use component of the natural resources damages. The range arises from the fact that, by design, the studies sought only a lower bound on the damages and reflects differences due to the use of willingness to pay versus willingness to accept, differences in the payment vehicle and the period of time over which payments would be made, and -- most importantly -- differences in the extent and duration of the natural resources injuries. In the light of the scientific information concerning these injuries that has just been released by the federal government, it is more than likely that a final analysis of the contingent valuation data will place the value of the non-use damages near the high end of the \$3 - 10 billion range.

We urge this court not to accept this settlement and plea agreement until such information is before it and that any acceptance be contingent on release and continued assessment of damages for loss of commercial, subsistence and recreational use of natural resources, as required by 43 C.F.R. 11.83. By information and belief, including statements of Attorney General Cole at the April 6 legislative hearing, we believe those studies are not complete and that the governments have effectively turned their backs on their citizens.

D. The Settlement Represents a Gross Violation of the State and Federal Governments' Fiduciary Obligations as Trustees for the Natural Resources Injured by the Oil Spill.

From numerous press accounts of the settlement, it is abundantly clear that it was a political decision on the part of a few key players in the state and federal governments who bypassed the entire natural resource damage assessment process. By information and belief, the amount of the settlement was in no way grounded in the information developed by the scientists and economists working on the damage assessment. The idea of settling for around one billion dollars originated with Governor Hickel a few weeks after the election, if not earlier -- well before he had taken office or had obtained access to the information developed by the damage assessment.

Honorable H. Russell Holland

Page 4

At the federal level, the settlement was promoted by Secretary of Transportation Skinner, who is not a trustee and who, by his own account, was not conversant with the findings of the damage assessment.

The final agreement calls for payment of \$900 million for natural resource damages over a period of more than 10 years without interest. The trustees' decision to forego interest on the natural resource damages violates the decision of the DC Circuit Court of Appeals upholding payment of interest at a rate of 10%, and reduces the costs of conducting the damage assessment and the costs of restoration, which would be fully recoverable with interest accruing from the time that they were incurred. When these costs are subtracted from the amount of the settlement and the remainder is converted to present value terms, recognizing the time value of money, the settlement for loss of use value, non-use value, option value, amenity value, bequest value, existence value, consumer surplus, economic rent and related natural resource values amounts, at best, to about \$450 million.

By information and belief, this trifling sum is grotesquely out of proportion to any reasonable estimate of these damages and bears no relation whatsoever to the information developed by the state and federal damage assessment teams. Indeed, the trustees would have reached a figure considerably larger than \$450 million if they had merely taken the estimated kill of fish and wildlife immediately after the spill and multiplied this by replacement cost figures that have been used in earlier cases to value a very limited set of natural resources damages.

For example, in the case of the T/V Puerto Rican oil spill off the coast of San Francisco in 1984, NOAA published a damage assessment report in 1986 valuing the birds killed in the incident at from \$575,000 to \$1,528,000 using the replacement cost method, based on estimates from zoological institutions and supply houses of what it would cost to obtain replacement specimens of the birds affected. (See Attachment B.) This case was subsequently settled for about \$750,000. The Exxon Valdez spill involves many of the same species of birds. NOAA's estimate of the replacement cost for these birds was from \$200 to \$500 per bird at 1986 prices. When these replacement costs are applied to the estimates of bird losses just released by the federal government for the Exxon Valdez spill, and when similar replacement costs are applied to the many other wildlife and fish losses and the injuries to land, it is evident that a damage estimate of well over \$1 billion would be obtained for just initial effects.

It is widely recognized, including by the NOAA Attachment, that estimates of replacement cost from supply houses significantly understate the true cost of replacing of wildlife, quite possibly by an order of magnitude because it is impossible to buy a half million wild birds, let alone other wildlife. Furthermore, because of delays before restoration can be effected, there are additional, interim, losses to the fish and wildlife populations that would have to be added to this \$1 billion of damages. One would also have to add the loss of recreation and other use values. The resulting total damage would be compounded at 10% interest from the time the damage occurred until the time that payment was received by the trustees. All of this is added to the state and federal governments' other expenses for damage assessments, cleanup and restoration that are fully recoverable under existing law.

By settling for an amount that is so much lower in present value terms, and by failing to provide a credible explanation of the settlement or to relate it in a meaningful way to any theory of damage valuation, the trustees have cast aside their fiduciary obligations to determine the magnitude of natural resources damages and account for them to the general public. If this court does not intervene, it will send a signal that such wanton misconduct by trustees can become the norm in all future natural resource damages cases.

Furthermore, the gross imbalance between the actual settlement of \$450 million for natural resource damages and any reasonable accounting of such damages makes a mockery of the re-opener clause. Under this clause, an amount no more than \$100 million is payable in 2002 for injuries that could not reasonably have been known at the present time. According to press reports, William Reilly, the Administrator of the EPA had recommended that \$300 million be set aside for this purpose. When viewed as a proportion of the likely natural resource damages that already are known to the trustees --if they choose to consult their damage assessment -- even this amount seems small. By failing to provide any rationale for capping the re-opener at \$100 million, the trustees have violated their fiduciary obligations and set a bad precedent for future natural resource damages cases.

E. This Court Should Strike the Prohibition on Judicial and Administrative Review in Paragraph IV B.

Paragraph IV B provides that the State of Alaska may spend monies from the criminal plea without public objection, challenge, or judicial or administrative review. This prohibition is unconscionable. It allows the State of Alaska to spend in any manner whatsoever and should be stricken from the agreement.

F. Alyeska Should Not be Excused From Criminal Liability.

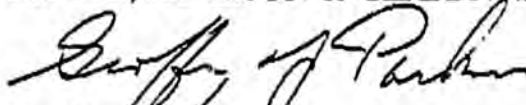
Congressman Miller has described Alyeska's broken promises regarding its ability to prevent or respond to a spill of this magnitude. The merits of any criminal case or civil penalties against Alyeska cannot be determined without court proceedings, but to foreclose that possibility erodes confidence that government diligently prosecutes major corporate perpetrators of environmental crimes. The exculpation of Alyeska should be stricken.

CONCLUSION

The political nature of this highly public case demands that the court scrutinize carefully the secretive process and evidence behind this settlement. Private litigants, particularly public interest litigants, should not have been foreclosed from that process. This court can redress that process by rejecting this criminal settlement and effectively urging the governments to pursue a more open settlement of civil aspects of this case brought by both governments and numerous public interest and class litigants. By so doing, this court will be sensitive to its own vital role in sustaining public confidence in public institutions.

Respectfully submitted,

ADLER, JAMESON & CLARAVAL



Geoffrey Y. Parker

April 12, 1991

GAIL EVANOFF

The Oil Spill Litigation Committee
of the Alaska Legislature
P.O. Box V
Juneau, Alaska 99811

Dear Ladies and Gentlemen:

My name is Gail Evanoff and my home is in Chenega Bay. Chenega Bay is a community of 70 people on Evans Island in Southwestern Prince William Sound. And, THE community most heavily impacted and damaged by the EXXON VALDEZ Oil Spill.

Since the early 1700's, Chenegans have inhabited this area in PWS. Our children hear stories from elders about their first experiences seeing airplanes and large ships. Large ships that took men and women away to work as slaves, hunting and killing off animals for furs and perfume for large companies to never before heard of lands. Ships with men that come and gouge out huge holes in our mountains for metals never heard of and to cut down trees and take them away to lands never heard of. In recent decades, people on huge ships now are taking oil found deep in the ground to places far away, and this time they don't take our men and women, but, they choke out our way of life by killing off our once rich and abundant resources by spilling oil in our waters.

We Chenegans have grown with the changing times and we experience Alaska's largest and most lucrative industry, the OIL industry, can and has caused insurmountable pain to innocent lives, that of our people, and to the marine mammals and fur animals. Chenegans have tried to join other communities in resource development for their survival into the 20th century. But, our resources in fish, otters, seals and birds have met with such high death rates on account of the EXXON VALDEZ oil spill that these resources have met with near extinction status. Marine mammals that survived are known to be starving and dying off today, 2 years after the catastrophe.

I have witnessed numerous studies conducted on Chenega Corporation lands and adjacent lands, talked with our people about the value of studies, cooperated with the bureaucracy of how they were conducted without our involvement, and asked and requested for consideration and cooperation that we be afforded information as to the results. But, NONE came. We gave of ourselves, endured criticism and insults of our way of life just to have tests and surveys done, studies that could help quiet our fears of eating contaminated foods, studies that could have helped us make responsible and informed decisions about our resources and studies that could help us prepare for the future. All our concerns and cries for studies we help make possible have gone ignored. Our State government is hiding, keeping secret, valuable information that is making such a devastating impact on our lives. That is wrong. I respectfully request that our State Legislature rectify this situation and not hold one man, the Attorney General, responsible for a decision of this magnitude. The peoples of Alaska, and we especially in PWS have charged our elected officials in the legislature to represent our interests, not the Attorney General. He is our public servant as well.

The Oil Company, EXXON VALDEZ, is our public enemy, it should not be our State government.

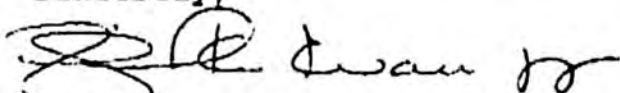
Get rid of problems before you can make things right.

April 15, 1991

There is so much oil left in our beaches that we want removed. We don't want to see Interpol or Costumblen (Bioremediation Chemicals/Fertilizers) applied anymore. There has been no scientific justification that these chemicals are safe. No research has been done, and if there was a study, we definitely don't know about it.

I'm afraid if the State settles with EXXON, the State will be paying for future clean up as I understand, they are already. I think that is wrong. In regards to Restoration we can't expect the environment to heal unless all the oil that can be removed is removed. There is a lot of trapped oil in the subsurface. The * January NOAA report attests to that. Thank you for your interest.

Sincerely,



Gail K. Evanoff,
Resident of Chenega Bay, Alaska

* NOAA attached

Also 3/91 Fish & Game
harvest results

Apr. 13, 1991

Alaska Legislative Hearing on the Exxon Settlement

Dear Legislators

I feel the dollar amount of the State of Alaska settlement with Exxon is not enough to meet the needs and repair the damages of all the Areas affected by the Oil spill.

The loss of employment due to closure of the Salmon Cannery here for 2 seasons now I've suffered from not being employed and loss of wages has impacted me and ^{also} the loss of subsistence foods. Normally we've relied on our subsistence to help us when our finances are low and now with our subsistence being affected, created a bigger impact on me. Where I use to go down on the beaches and gather mussels Steamer Clams, we ~~haven't~~ ^{have not} been able to do this anymore since 1989 oil spill, The mussels are disappearing, also we don't have anymore TomCods. The poisoning of our beaches + ^{sea} animals is a long term affect on ~~the~~ us people in the ~~area~~ ^{where} the spill affected Areas.

I worked 2 yrs for VECO and didn't earn ~~the~~ nearly enough wages compared to the seasonal Cannery wages I earned before 1989

Annie Fomin Fort Graham

G-I



Dr. David C. Harrison
1057 W. Fireweed Ln. 220
Anchorage, Alaska 99503

RACHEL II

DAVID HARRISON

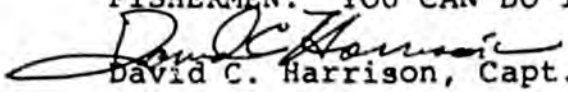
APRIL 10, 1991

TO: PRESIDENT ELIASON - STATE SENATE JUNEAU
SPEAKER GRUSSENDORF - STATE HOUSE JUNEAU
MR. BRUCE KENDALL OFFICE OF THE GOVERNOR

PLEASE ACCEPT THE EXXON SETTLEMENT AND GET ON WITH THE
BUSINESS OF STATE AND OF PROTECTING OUR ANADROMOUS FISH
ON THE HIGH SEAS.

FOREIGN HIGH SEAS INTERCEPTIONS HAVE DONE MORE DAMAGE
TO ALASKA'S ECONOMY THAN THE OIL SPILL. YOU ASK HOW I
KNOW? SINCE AND PRIOR TO 1937, FOREIGN INTERCEPTIONS OF
OUR ANADROMOUS FISH ON THE HIGH SEAS HAVE COST HUNDREDS
OF BILLIONS OF DOLLARS - TO THE STATE REVENUE - TO THE
RESIDENT COMMERCIAL FISHERMEN OF ALASKA and TO LOCAL
GOVERNMENTS THROUGHOUT ALASKA.

I KNOW MOST OF YOU HAVE HAD A LITTLE HISTORY OF THE ALAMO.
BUT DO YOU REMEMBER HJR 27 AS INTRODUCED IN 1988 by REP.
JIM ZAWACKI. YES, I KNOW, YOU HAVE FORGOTTEN RESIDENT
COMMERCIAL FISHERMEN. IT IS TIME TO STOP FORGETTING - OK!
GOV. HICKEL HAS DONE WHAT CAN BE DONE AND PLEASE ACCEPT THE
EXXON SETTLEMENT AND GET ON WITH MORE IMPORTANT THINGS. OH!
ONE OTHER THING, SUPPORT GOVERNOR HICKEL'S EFFORTS TO GET
ALASKA MOVING AGAIN. WE HAVEN'T HAD A 'DOER' IN THE GOVERNOR'S
OFFICE SINCE I KNOW WHEN. I CALL UPON ALL OUR FISHERMEN
LEGISLATORS TO STAND UP AND BE COUNTED FOR RESIDENT COMMERCIAL
FISHERMEN. YOU CAN DO IT BUT WILL YOU - TIME WILL TELL.


David C. Harrison, Capt. P/V Rachel II 33 years resident fisherman

April 14, 1991

I would like to speak about sea lions. In the March 1, 1991 "Alaska Commercial Fisherman" we can read about two fishermen who were found guilty of being involved in the death of a steller sea lion. They face a possible sentence of one year and a \$100,000 fine.

When the Exxon Corporation's tanker hit Bligh Reef, Exxon became directly responsible for the deaths of uncounted sea lions. This at a time when the species has just been elevated to "threatened" status under the Endangered Species Act.

I feel equal punishment is due for equal crimes regardless of the size and power of the offending party. If two individual citizens are liable for 1 year and \$100,000 for 1 sea lion, then Exxon is directly liable for equal sentencing.

The State of Alaska is proposing settling for \$900 million. At \$100,000 per sea lion, that works out to 9,000 sea lions. It is not inconceivable to me that this number of sea lions were killed.

I have a copy of a video tape a friend here made from an airplane of the oil spill travelling through a sea lion rookery area. This movie was the last made before Exxon and the FAA decided that no more unauthorized air traffic would be permitted in Prince William Sound. This movie shows a short small scene of a pod of sea lions swimming for their lives in the only clear water around, which happened to be on the downflow side of a navigational buoy. I doubt if these sea lions survived, and I am here to say that we will never know how many sea lions really died because of this spill. The reason we will never know how many is because Exxon covered up this knowledge. They sent out many boats on wildlife rescue charters. They racked up a lot of money spent in their numbers game of proof they were doing something. Then when the wildlife recoveries reached a level they thought would be believable, they pulled all those boats off charter. This was long before the full extent of the damage to wildlife was even known, and now untold numbers of sea lions and others will never be counted, but we know they existed. One friend told me the tide rips were full of dead wildlife as he drove through them with his boat on cleanup charter.

It would be very interesting to try and find out the official body count on sea lions, but I have no access to that information, and as I just stated, the information would show only a small percentage of the true death figures.

Equal justice under the law is what I ask, and as far as I can see, the \$900 million might just cover the sea lion losses, so what about the sea otters and eagles and king crab and all the rest?

Sincerely,

A handwritten signature in cursive script that reads "Christine Honkala". The signature is fluid and written in dark ink.

Christine Honkala

P.O.Box 100

Cordova, Alaska 99574

Dear Legislators,

4-12-91

I am writing to express my feelings on the Exxon Settlement. I work in the cannery, here in Port Graham, but the cannery is shut down and has been for a couple years.

I would rather work at home, than go elsewhere for a job.

The oil spill did affect our village. We couldn't enjoy our subsistence in '89. All the mussels, critters (bidarkies), octopus and all the fish, even trout, we considered to be oil contaminated. Even last year, 1990, we were leary of eating fish and shellfish.

I didn't get in on all the "big money" of the Oil Spill, and with no jobs I'm still suffering to pay back bills.

I'm in doubt if I as an individual will receive any monetary compensation for the stress, fears and losses from job money and food (subsistence). I think the Corporation (Village) will get the money and us little guys won't get our share.

Our main source of travel is by small plane. This is too costly even to go shopping or for medical reasons. For this reason I am writing to you. My letter will have to represent me at the meeting.

Frenetically Impacted:

Bob Huntsman

Port Graham, AK 99603

P.O. Box P6M

Jean Huntsman

4-12-91

Dear Legislators:

This is in regards to the Exxon oil spill: what impact it had in my life and in my job at the store. My family life was in chaos. My son in law + family ^{of 4} lived with us during the oil spill clean up. I had a niece I was babysitting part of the time because mom worked! I worked as a clerk plus oil spill. The store went thru a crisis because we couldn't get certain products in because of main supply being out of product. Now 2 years later I'm still being a target because I'm working and not many jobs are open. My family was victimized people would come to my home + say things like oh you have a lot of stuff in your home your rich you have 2 Hondas my how rich they would look at my home + say looks like you made lots of money during oil clean up. My earnings compared to the baats that made money would look like pennies. My Honda ~~was~~ is being purchased thru a loan. Also I don't purchase drugs + alcohol. I saved my money. I made ~~that~~ during oil clean up to go on vacation. I don't feel we're going to receive monies thru litigations. I think its going to go to the lawyers + the Big corporations or Government + we the people will not see it. Also I can't afford to come + voice my opinion by person

P.O. Box 86M, Port Graham, AK 99603-8998 Jean Huntsman

J-L

April 12, 1991

20: Alaska Legislative Hearing on The Exxon Settlement

Dear Legislators:

I am 39 years old, lived in Port Graham all my life and have lived off the land and sea. I am a subsistence user who has been impacted and still impacted by the Exxon oil spill. I am also a lifetime fisherman. I have fears that our subsistence foods are damaged, I will not eat certain subsistence foods for I do not feel they are safe.

As a fisherman our livelihood has been damaged. We have not been able to make much money fishing due to oil spill - they ruined our fish prices. Because of the oil spill I think the fish prices went down.

I also feel that I am writing this letter for nothing because I do not think anyone will read it or care how I feel about the settlement.

I do not feel the settlement between the state/federal government and Exxon will cover all the

damages or even restore our foods,
land or us as a people.

Sincerely
Ephim Kamluck Sr.

Ephim Kamluck Sr.

P.O. BOX PGM

Port Graham, Alaska - 99603.

Tony Knowles

Recd
4/26/91

April 22, 1991

Rep Max Gruenberg
Chair, Oil Spill Settlement Committee
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Dear Rep. Gruenberg and Committee Members,

Thank you for the opportunity to present written testimony concerning the oil spill settlement.

Mo Udall once said that the most appropriate prayer for politicians to make prior to giving a speech was, "Please, dear Lord, give me words to use that are tender and sweet for tomorrow I may have to eat them." I certainly feel that is good advice for anyone commenting on an issue that has such importance and impact upon Alaskans as the proposed settlement.

We all rejoice in the fact that we are now looking at both a source of revenue to remedy damages caused by the spill and an opportunity to get the issue behind us. This is far better than leaving resolution to the uncertainty and expense of lengthy litigation. For this we do owe credit to those who have led us to this point.

However as it now stands, the settlement, unnecessarily shrouded in secrecy, will continue to be a divisive force, pit the state government against its own citizens, relinquish Alaskans' rights to determine how damage done to us will be repaired, and apparently forego the unique opportunity to pass on a legacy of lasting value by purchasing the timber and development rights to Prince William Sound and other appropriate areas.

The following additions must be included in a settlement so that it can fulfill its promise to Alaska.

1. There must be complete disclosure of all information concerning the damages of the spill. Frankly, to not release this information, gathered by public agencies at public expense, smacks of a cover-up. Additionally, if we are to learn from this experience (which, after all, is important for future policy development and scientific progress), this is the information that must be made available. Finally, we must not betray those Alaskans who were damaged by the spill and have not yet resolved what is owed to them. With this settlement we not only abandon our residents but we may very well face the untenable situation of lengthy and expensive litigation against our own citizens and communities.

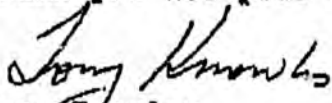
2. Settlement monies must be used to purchase the timber and development rights to acquire habitat areas throughout Prince William Sound, Katchemak Bay, and other appropriate areas. I believe this permanent habitat protection, restoration and enhancement is an essential part of any settlement. It was widely discussed during the recent gubernatorial campaign and, I believe, is strongly supported by Alaskans. It is deeply troubling that after specific promises there has been a complete change of heart and mind by the Administration in regard to timber purchases in Prince William Sound. Furthermore, there must be established in the settlement the framework for sustained and adequate scientific research on the spill and its effects.

3. The public must be involved in the process of determining how settlement monies are spent. We cannot relinquish this right to a panel one-half of whose members are appointed from outside of Alaska, have no accountability to Alaska, and can individually veto any expenditure. The villages and communities of the affected areas must have a say in remedy and restoration. Our legislators must have a role, as established in our Constitution, in the appropriation of funds.

The one clear lesson the spill hammered home was that government and industry alone cannot and will not provide the vigilance necessary for protection of our state. The public must be informed and involved as they are indeed affected. To lock out the public from the settlement would be a sad and unnecessary action with predictable consequences.

Both the Administration and Exxon have worked hard and in good faith to bring forward a settlement and should continue in the same manner. The Legislature should accept the concept of the settlement with the addition of the three points listed above. There will be some time involved both with the release of information and analyzing its affect on the proposed settlement. Additionally, identification and assessment of timber and development rights in Prince William Sound, Katchemak Bay, and other appropriate areas should begin immediately. These modifications and actions will lead to a final settlement in 1991 which all Alaskans can endorse.

Thank you for your consideration.


Tony Knowles
1146 S Street
Anchorage, Alaska 99501
279-6336

cc: Sen. Pat Pourchot, Rep. Kay Brown, Rep. Johnny Ellis

GARY KAMPKEFF

TATITLEK VILLAGE IRA COUNCIL

P.O. Box 171
Tatitlek, AK 99077Ph. (907) 325-2311
FAX (907) 325-2298RECEIVED
APR 15 P.M.FACSIMILE COVER PAGE

TO: Representative Georgianna Lincoln DATE: 4-15-91
FROM: Exxon Settlement Hearing Committee TIME: 1320
465-2864 (A.S.A.P.!)
FROM: Gary Kampkeff
RE: testimony - Exxon Valdez settlement

We are transmitting 4 pages (including this cover sheet) with a Canon FAX250; if you do not receive all pages, please call us at 325 2311 immediately. Thank you.

☐ Originals will follow this transmission via

☒ Originals will not follow this transmission unless requested.

*****MESSAGE*****

Telecopier Operator

AK

TATITLEK VILLAGE IRA COUNCIL

P.O. Box 171
Tatitlek, AK 99677

Ph. (907) 325-2311
FAX (907) 325-2298

April 15, 1991

The Exxon Valdez Oil Spill of March 24, 1989 has damaged not only the resources and environment drastically, but also the lifestyles of the people who live in the affected areas, especially the Alaska Natives and their communities, who rely so heavily on the resources and environment for their subsistence lifestyles.

The uncertainty that exists among subsistence users regarding the safety of consuming ANY of the resources in ALL of the affected areas is due mainly to the many contradicting statements from the various agencies and organizations. For example, the Oil Spill Health Task Force, which was organized to address health related issues involved in the oil spill, has, since early in the spill, communicated to us the safety of consuming any of the resources in question; yet, the Director of the Subsistence Division of the Alaska Department of Fish & Game in a meeting with the Citizen's Oversight Council on Oil & Other Hazardous Substances stated that "...I think that anybody that told people that those things (subsistence resources) were totally safe would be lying to them..." The Director of Subsistence Division is much more accessible to much more information than we, as citizens are privileged to. Statements such as this have led to the uncertainty; would you buy a steak from your butcher if he told you that your steak was probably safe to eat, BUT he wasn't real sure that it was totally safe because there might be some contaminants in it that might affect him in the long term? We are expected to, we're expected to buy it, with no complaints and we're expected to enjoy it as if nothing were wrong.

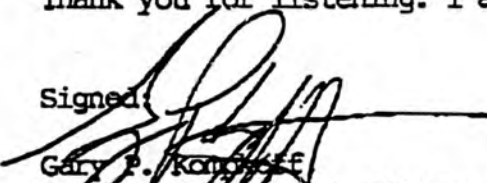
The recently released federal study: "Summary of Effects of the Exxon Valdez Oil Spill on Natural Resources and Archaeological Resources, March, 1991" which proves the devastation to the resources and environment caused by the Exxon Valdez only adds to the uncertainty that the subsistence users are experiencing. I believe that release of the data collected by the State in it's research will also show that the damages are much greater than we have been led to believe. Consumption and use of subsistence resources has lessened drastically (as much as 70% in some cases) in the affected villages because of the uncertainty and lack of proper information, which could be provided by the release of the state research data.

John Tetpon, columnist for the Tundra Times, characterized the settlement perfectly in a recent article: "Exxon spill a whole bunch of oil. About 11 million gallons right in the front yard of a number of villages in Prince William Sound. So here's Hickel from Anchorage, several hundred miles away from all the carnage, doing all the talking. His front yard didn't get oiled. His daily bread doesn't have to come from the damaged bounty of the sound. But, I know he's the only governor, the number one servant of the people. But it sounds like the number one public servant abdicated his fiduciary duty to those who hired him when he whispered in Exxon's ear, 'let's make a deal'. Everything is done behind closed doors. Number one public servant sends Alaska Attorney General Charlie Cole, whom we shall call number three public servant to negotiate. Number three servant gets so mad at the villages because they object and nearly goes home before the deal is done. I think he should have. Anyway, the state and Exxon eventually agree on \$1.1 billion. Exxon gets to pay relatively few bucks compared to its billions in profits and doesn't have to go to court to face a criminal trial. Sounds all well and good if you're Exxon and the state, but what about the villagers whose front yards are still matted with North Slope crude. They don't even know if the clams or

the seals and the fish they depend on for food are fit to eat and neither the state nor Exxon will tell them though they have the information. Sounds like they have something to hide, doesn't it."

If the state and federal governments and Exxon wish to call this a "comprehensive and global" settlement, the need to address the rights of all people involved, and include them in this so-called settlement. The time is perfect, there is an excellent opportunity right now for the state government to make this a comprehensive and global settlement by including the claims of all entities, not just those of the federal and state governments. It is their fiduciary responsibility.

Thank you for listening. I appreciate the opportunity.

Signed: 

Gary P. Komoroff
President, Tatitlek Village IRA Council
Chairman, Tatitlek Corporation Board of Directors
Member, Chugach Alaska Corporation Board of Directors
Member, Chugach Regional Resources Commission
Member, The North Pacific Rim Non-Profit Corporation B.O.D.

gpk

cc: file

Tat. Corp.

L. Miller, Att'y.

attachment



Group	GRIZZLEY BEAR
Res. Cmte	
Approved	☒
Subject	OIL SPILL
Refer To	
Time/Day	

RESOLUTION # 91 - 3

ENTITLED: RECOGNITION OF NATIVE VILLAGES AND ASSOCIATIONS IN
A PROPER SETTLEMENT AS CITIZENS OF THE STATE OF ALASKA.

WHEREAS, the damages resulting from the Exxon Valdez Oil
spill extend beyond fiscal losses to the State
government; and

WHEREAS, the Exxon Valdez Oil Spill reduced by 50 - 80% the
normal subsistence harvest, disrupted the subsistence
lifestyles, and the lingering effects include increased
incidence of mental health problems, alcoholism and
despair in the Native villages of Prince William Sound
and beyond; and

WHEREAS, there is still a very high level of apprehension over
continuing toxicity of subsistence foods and long term
damage in the affected villages; and

WHEREAS, the State of Alaska's vital interest in its settlement
with Exxon must include the protection of the cultural,
economic, health and spiritual concerns of all State
residents affected by the spill; and

WHEREAS, any settlement that disregards the concerns of Native
villages and/or its effects without consultation of
representatives of these villages evidences an
attitude of arrogance that is contrary to the call of
unity as expressed by Governor Hickel.

Now, therefore, be it

RESOLVED: that the 1991 Village Participation Conference urges
the House and Senate of the State of Alaska to reject
the settlement negotiated by the State Attorney General
unless it addresses the multiplicity of continuing
losses and damages to the Native villages whose way of
life was fundamentally disrupted by the Exxon Valdez
Oil Spill.

ADOPTED this 29th day of March 1991 by the Village Participation
Conference in Juneau, Alaska.

DRAFT

Dewey Skan, Chairperson
1991 Village Participation Conference

2001
TATITLEK VILLAGE
GARY Kompkoff

TATITLEK VILLAGE IRA COUNCIL

OK

P.O. Box 171
Tatitlek, AK 99677

Ph. (907) 325-2311
FAX (907) 325-2298

April 14, 1991

According to the U.S. Constitution, the Federal and State governments are entrusted with the responsibility of protecting the rights of the citizens of the United States, including the rights of Alaska Natives. By entering into this settlement with Exxon, the Federal and State governments have violated that trust responsibility by elevating their own interests above the interests of the very people that they are supposed to be representing.

Recently, much has been made of this so-called "comprehensive and global" settlement between our governments and Exxon for damages to the resources and environment caused by the grounding of the Exxon Valdez. This settlement is neither comprehensive or global. Comprehensive means "large in scope" and global means "pertaining to or involving the whole world". The only way that this settlement can be considered comprehensive and global is if the rights of the people are considered to be non-existent. To accept this settlement, in it's present form, would be a complete breach of fiduciary responsibility by the State Legislature, a complete re-evaluation of this settlement is in order. The new information provided in the federal "Summary of the Exxon Valdez Oil Spill on Natural Resources and Archaeological Resources, March, 1991" shows the devastation that the Exxon Valdez oil spill has caused. Release of the data collected by the State in it's research would also show the inappropriateness of this proposed settlement. The destruction of resources and damage to the environment will continue to affect the people in the impacted areas for years to come, especially those of us who rely so heavily on the resources and environment for our lifestyles as subsistence users. The uncertainty of the safety of consuming any of the resources in the impacted areas still exists. The release of the federal study only adds to that uncertainty and is additional proof that the overall damages are much greater than we have been lead to believe. =

Please consider the rights of the people in the impacted areas, and consider the overall damages that have been done to not only the resources and environment, but also to the future lifestyles of the residents of the areas affected.

Thank you.

Gary P. Kompkoff
President, Tatitlek IRA Council
Chairman, The Tatitlek Corporation Board of Directors

Joyce Kompkoff

SHAL

April 15, 1991

The Oil Spill Litigation Committee
Of the Alaska Legislature
Post Office Box V
Juneau, Alaska 99811

Dear Madam or Sir:

I have lived in most of the surrounding communities of the Prince William Sound all of my life, I was born in Cordova, and now I am living in Chenega Bay, my mother grew up in Tatitlek and my father grew up in Chenega, but was forced to move after the '64' Earthquake.

In the past two years, our way of life has quickly deteriorated before us. I used to love to go clam digging with my father whenever possible, which was just about every minus tide. In fact it is my father and I who found the lesions on the chitons, which we call gumboots. There are about three or four ladies who also, used to love to go out whenever possible. Since March 1989, not one of us have gone out clam digging. Recently, we had two bald eagles found in or around Chenega Bay, one was sick and we sent it to Fish and Game in Anchorage, the other was already dead which we also sent to Fish and Game. When we asked Fish and Game why they died, they said it isn't uncommon to have bald eagles fall out of the sky this time of the year, meaning they died of starvation, upon asking one of the elders here in Chenega Bay if he remembers this every happening. His reply was, not in all of my 66 years.

The oil spill has scarred a lot of people, Some people are still trying to cope, one of the young men in the village who loves to hunt can't hunt anymore. Right after the spill when there were literally hundreds of people on the lands he used to hunt on so freely, he almost had a break down. He was ready to crack, after that it was the community's idea to ask our priesthood to come to Chenega, they did comply and willingly, they also went to other Russian Orthodox communities in the Prince William Sound and unhappiness about the oil spill was their focus.

Being in the health field, I also noticed a strong sense of stress in the people, not only in the adults but, also in the children, there was an increase in vandalism and crankiness. It scared me into working with other health providers to find another focus for the children. This is all so overwhelming it still scares me. Thank you for your involvement and hearing my comments.

Very sincerely,

Joyce L. Kompkoff
A resident of Chenega Bay

DEPARTMENT OF FISH AND GAME

March 14, 1991

Dear Resident of Chenega Bay and Tatitlek:

You probably remember that in April 1990, several of us from the Division of Subsistence, Alaska Department of Fish and Game, visited most households in Chenega Bay and Tatitlek. We asked questions about their subsistence uses of fish and wildlife in the year following the Exxon Valdez oil spill. Since we had asked similar questions before, we can compare levels of harvest before and after the spill. We aren't quite finished with our final reports yet, but we thought you'd be interested in what we've found so far.

-- All together, we interviewed 18 households (85.7 percent) in Chenega Bay, and 22 (78.6 percent) in Tatitlek.

-- Almost every family reported that their subsistence harvests and uses were down from previous years. This was true for 85 percent of the Tatitlek households and 89 percent of the Chenega Bay households.

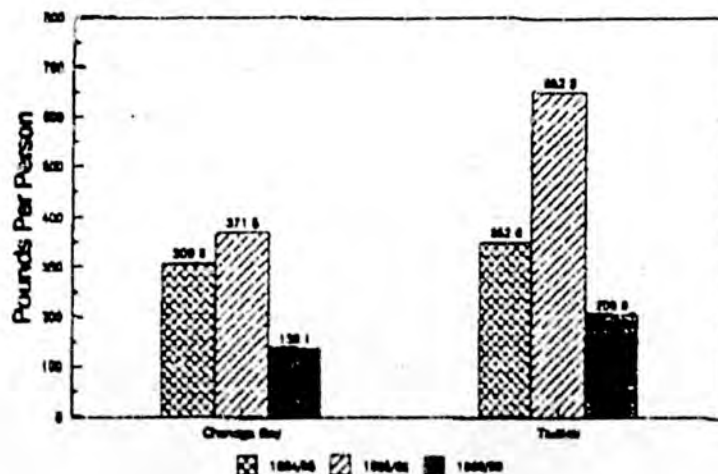
-- All but one household said that the oil spill caused this decline in their subsistence uses.

-- For most families in Chenega Bay (75 percent) and Tatitlek (61 percent), concern about whether the oil had contaminated subsistence foods was a major reason why they harvested less in the year following the spill.

-- Our calculations show that the people of Chenega Bay and Tatitlek harvested about 60 percent less subsistence foods in the year after the spill than their earlier averages. Villages such as English Bay, Fort Graham, Ouzinkie, and Port Lions, which were also part of our study, are also reporting very large declines.

-- The survey results strongly support people's own reports about this large decline in subsistence harvests. The bar chart below compares subsistence harvest information from other years with the recent survey findings. The higher the bar, the higher the village's harvest (in pounds edible weight per person). The first bar for Chenega Bay is for April to March 1984-85, the second was for 1985-86, and the third is for the year after the spill, 1989-90. For Tatitlek, the three years are April to March in 1987-88, 1988-89, and 1989-90. Notice the very sharp drops in the year of the spill.

Per Person Harvests





ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION OIL SPILL CHRONICLE

VOL 3, NO. 2

FEBRUARY 15, 1991

ANCHORAGE, ALASKA

NOAA Survey Finds Subsurface Oil Remains

ANCHORAGE — Surveys last month of a few heavily oiled beaches in Prince William Sound show little change in condition since the oil first hit the beaches, federal scientists said. There is also evidence that the beaches are recovering from bulldozer work last year, according to National Oceanic and Atmospheric Administration contractors.

The surveys were part of an ongoing study on the effects of the Exxon Valdez oil spill of March 24, 1989, said Joe Talbot of NOAA.

"This was a snapshot look at the conditions this winter," Talbot said. The survey results will be compared with similar data collected last year and compiled with other information into a report scheduled for distribution around the first of March.

The degree of oiling remaining on the shorelines is very different in 1991, said Ernie Piper, the state's spill coordinator. Five months after the spill occurred in 1989, shoreline surveys of all affected regions determined that 108 miles of shoreline were heavily oiled, 108 miles were moderately oiled and 288 were lightly oiled. Surveys of the same regions in August 1990 showed 4.4 miles remained heavily oiled, 9.1 miles moderately oiled, and 14.3 miles lightly oiled. Piper said shoreline that is still heavily oiled will be the last big cleanup problem to deal with in 1991.

Though most locations show significant improvement, some remain almost as heavily oiled as they were in September of 1989 when the NOAA group began their periodic surveys, said Jacqueline Michel of Research Planning, Inc. Michel and Miles Hayes, who were in charge of the survey, are well-known oil spill geomorphologists who have worked as science contractors for NOAA on oil spills for years, Talbot said.

The survey group visited 22 locations in Prince William Sound on the U.S. Coast Guard Cutter

Sweetbriar during the week of Jan. 19-25. They revisited most of 18 sites NOAA has been monitoring since 1989, and also looked at some additional beaches where the sometimes controversial treatment method called storm berm relocation was used during the 1990 cleanup season.

At each location surveyed, the scientists measured physical changes in beach topography, dug trenches, collected samples and estimated the amount of surface and subsurface oil remaining.

Michel reported at a briefing on January 26 that some sites seem to have changed little in the almost two years since the spill occurred and have not been disturbed at all by winter storms. One area on Pt. Helen at the southern tip of Knight Island still showed 100% oil coverage on the surface and heavy oiling throughout a 42 centimeter (about 18 inch) trench, Michel said.

At another survey site in Sleepy Bay on Latouche Island, erosion of the beach surface exposed sediments which still held heavy concentrations of sticky oil.

"There's so much oil (at that site) that we can't differentiate chemically between weathered and unweathered oil," Michel said. "It overwhelms the analysis." Debra Simecek-Beatty, another scientist on the trip, reported a heavy fuel oil-like smell at that location. Simecek-Beatty said that the oil was very soft and pliable. "It goes right down. It's not

See NOAA Survey, Page 3

INSIDE:

Bioremediation meetings, page 2
Spring shoreline survey, page 2
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Two new books, page 3
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on Chenega Cord
lands.

Two New Publications on the Exxon Valdez Oil Spill

The Exxon Valdez Oil Spill and the National Park Service: A Report on the Initial Response, by William S. Hanable and Carol Burkhart. 132 pages, bound. Copies may be obtained by writing Frank Norris, Publications Coordinator, National Park Service, Alaska Region, 2525 Gamble, Anchorage, AK 99503 or by calling 907/257-2685.

Out of the Channel: The Exxon Valdez Oil Spill in Prince William Sound, by John Keeble, published by Harper-Collins, 1990. Available at most book stores.



NOAA Survey, from Page 1
very weathered," she said.

Oil sheens were observed in the water at almost every site where the group dug trenches, Michel said.

A number of sites were surveyed during the January 1991 trip specifically to look for effects of a treatment method Exxon employed last year using small bulldozers or backhoes to move oiled sediment down into the tidal zone so it could be washed by waves and tidal action. Absorbent booms were spread on the water outside the treatment area to catch oil released into the water. Some state and federal agencies and conservation groups expressed concern last year that storm berm relocation would cause erosion of the beaches and release more oil into the water.

"At almost all the berm relocation sites the sediment has not returned to its original type, but the shape of the beach has returned," said Hayes. At a site in Northwest Bay on Eleanor Island, Michel reported that the berm relocation strategy had worked very well, and the upper part of the beach appeared to be clean. As long as the beach is exposed to enough wave energy, berm relocation appears to be an effective means of removing oil from the sediments, Michel said.

There are nine locations in Prince William Sound which federal and state agencies and Exxon have agreed not to clean up in order to study the effects of natural weathering processes on oil remaining in the environment. The survey group visited one of these "set-aside" locations in Herring Bay on Knight Island. Michel reported that the heavy oiling of 1989 has turned to a stiff surface coating and is flaking off like old paint. Though oil on the surface is being removed by storm action, a significant amount of subsurface oil remains at the site and very little changes were noted in overall oiling conditions, she said.

The sediment sample taken at that site contained almost liquid oil, and the oil-saturated sediments were showing no tendency to form pavement. "When you dig a trench oil droplets actually float on the water" which collects in the bottom of the trench, Michel said.

Updated Index to the Oil Spill Chronicle Available

An updated index to issues of the Oil Spill Chronicle from Vol. 1, No. 1, issued on July 11, 1989 through Vol. 3, No. 2 issued on February 15, 1991, is now available. To request the index or back copies of the newsletter, contact Kim Novosel, ADEC Exxon Valdez Oil Spill Response Center, 4241 B St., Suite 304, Anchorage, AK 99503, or call 907/563-1126.

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

Paul Kompkoff, SR

4/12 Seward testimony

Oil Spill Litigation Committee
Seward Hearing

testified

Ladies + Gentlemen,

I'm Paul Kompkoff, Sr. from Chenega Bay. I was born + raised in Chenega and have lived in Prince William Sound all my life, I learned my subsistence skills from my Dad when I was young. Everything was easy and beautiful then. My lifestyle was ruined because of the Exxon Valdez Oil Spill.

All our Subsistence foods are ruined and gone, not only our subsistence but all the animals, bugs + birds.

Why are people saying the sound is Clean when it isn't? It's going to take many many years to see the beaches natural again. Not only the lands but the resources as well.

Why are we being ignored, when we people that lived there all our lives, know what's going on?

I hope you Committee members can

understand what I am saying,
because we have not recovered
emotionally or spiritually, whatever
decision that you make is the
right one and not to forget the
Subsistence users in Prince William
Sound specifically Chenega Bay.

4-12-91

Alaska Legislative Hearings on the Exxon Settlement.

Dear Legislators,

I want to tell you that the Exxon disaster had a large impact on me a native Alaskan subsistence user. I'm a parent of 4 children with a house to pay for and maintain.

I feel the settlement made between the State of Alaska and Exxon will not meet the amount of damage done and or to correct them.

The oil spill continued to impact us, I'm a hunter and rely on subsistence. The stocks of ducks the bottom fish, the herring and Tom Cods have been depleted or reduced and as a result I've not been able to hunt seal. Seal Chase there fish and there not coming into the bar due to lack of fish.

When the oil spill occurred I worried about how long or how many years will it take before all back to normal.

The studies released by the Federal government confirmed the native peoples concerns.

I worked on the oiled beaches in Windy Bay and I became ill. I was overcome by the fumes of the oil spill. I never had headaches and since then I have had many.

I saw in Windy Bay dead plants, animals and sea food, everything was dead from oil. I was concerned for the fry leaving the river, swimming in the thick oil and what will happen to the eggs and larvae this year.

The salmon cannery will not operate this year and as a result I will not probably have a job...

The substitute is more important now and the fear of eating it adds more conflict to me emotionally. With the reduced substitute and no income this is a great problem.

Simeon B. Krasnokoff - Sr.
Port Graham Alaska

THOMAS A. LAKOSH

P.O. Box 100648, Anchorage, Alaska 99510
(907) 258-3767

April 15, 1991

Max Gruenberg, Chairman
House Special Committee on the
Exxon Valdez Settlement

Dear Representative Gruenberg:

Thank you for the opportunity to provide testimony on the Exxon Settlement at hand. My name is Thomas Lakosh. I am a resident of Whittier, Alaska, Senate District E, House District 6 in this great state of Alaska. I am a commercial fisherman, subsistence user, and recreationalist in Prince William Sound. In addition, the sacred and holy lands of the Prince William Sound have inspired me to religious insight available at no other place in my 36 years of travel among 42 states of the United States and 5 Provinces of Canada.

I am presently litigating claims for damages caused by the grounding of the T/V Exxon Valdez on behalf of myself and all others similarly situated. My civil action in U.S. Federal District Court, District of Alaska at Anchorage as a named Pro Se Class Action Representative is filed under Case No. A89-140 Civil/A89-95 Civil. I am, as well, a Pro Se named Class Action Plaintiff in the Consolidated Class Action Plaintiffs interlocutory appeal to the 9th Circuit Court of Appeals concerning Order No. 38 of District Court Judge H. Russel Holland concerning maritime tort as the only actionable tort claim available to consolidated plaintiffs, allegedly applicable to both Federal and State plaintiffs.

I am additionally a Pro Se plaintiff in State Superior Court before the Superior Court of Appeals Judge Milton Souter, case file number 3AN-89-9365 Civil. This action was brought in my effort to seek restitution for clean up activities which were required to abate: public nuisance; intentional invasion of protected lands; special injury sustained by all Alaska residents and subclasses of protected natural resource users suffering from tortuous activity proximately caused by the grossly negligent grounding of the T/V Exxon Valdez.

I am also requesting as a resident of Alaska, bound by fiduciary relationship with the State and its agencies, all data within the possession of the State which materially affects our fiduciary contract of representation by the Legislature and Attorney General as it relates to this tragic environmental disaster and the related constitutional statutory and common law crises resulting from it. This request was made on April 12th 1991 on behalf of myself and the Alaska Center for the Environment by the Trustees For Alaska, Randall M. Weiner, Executive Director. The Public Records Request was served directly on Commissioner Harold Heinze, Alaska Department of Natural Resources, Commissioner

PAGE 1 of 3

Rosier, Alaska Department of Fish and Game, Commissioner Sandor, Alaska Department of Environmental Conservation, and Charles Cole, Attorney General. Accurate copies of the aforementioned Public Records Request were also faxed to the Senate Special Committee on the Exxon Valdez Settlement and the House Special Committee on the Exxon Valdez Settlement. The Request cites AS 9.25.110 as authority and is supported by Anchorage School District v. Anchorage Daily News, 779 P.2d 1191 (Alaska 1989) where the opinion of the court states, ("[A] public agency may not circumvent the statutory disclosure requirements by agreeing to keep the terms of a settlement confidential.")

This concept of full and fair disclosure of all relevant scientific and economic spill studies is likewise supported in House Concurrent Resolution 8, House Joint Resolution No. 25, House Bill No. 213 and public testimony presented on this issue to Alaska Legislative Committees by those Alaskans who have been subject to the heinous environmental crimes of Exxon and the fraudulent withholding of material evidence by the Executive Branch of Alaskan government. I therefore request the Legislature and/or all courts of jurisdiction to immediately resolve and order a restraint of all Legislative voting upon or court-approved settlement of these civil and criminal claims. It is clearly illegal by judicial decree to restrain public access to the materially relevant information regardless of the existence of a negotiated settlement. It is therefore an abuse of the civil liberties and right to informed consent of the residents of Alaska to proceed with any voting or any court-approved settlement conference unless and until the residents of Alaska are afforded their rights to informed consent.

Moreover, any settlement or plea bargaining must consider defendants' liability as promulgated by the False Claims Act of 1946, 31 U.S.C. §3729 et. seq.. Under this statute, any contractor submitting or conspiring to submit false claims to the United States Government or its agencies is criminally liable for fraud and civilly liable for double the damages sustained by the U.S. Government and the associated costs in prosecuting the public interest. All Exxon subsidiaries associated with the exploration, production, transshipment and indemnification activities associated with the transportation of crude oil as contracted with the United States Government and Alaska have sworn to abide by all environmental laws and regulations promulgated to protect Alaskan resources. The clear violation of laws and regulations before, during and after the grounding of the Exxon Valdez by defendants establishes a prima facie cause of action of fraudulent claim against the government by the unauthorized and illegal appropriation of natural resources for the private, inferior purposes of Exxon subsidiaries and their subcontractors. The defendants, with full knowledge, fraudulently failed to disclose material facts to its fiduciary partners: United States Government, State of Alaska, residents of Alaska, and citizens of the planet. These material facts only now being released indicate that the "Seven Sisters" knew full well that adequate response to an oil spill of the magnitude experienced, was unavailable at any time subsequent to the initial flow of oil to the present day.

Additionally, defendants conspired to deny the rights of all injured parties to seek compensation from the statutorily established Trans-Alaska Liability Fund through construction and concealment of illegal and unauthorized contracts between the Fund and defendant Exxon Shipping. The plan, according to a Fund employee and other sources, was to create a contract which would allow Exxon Shipping to falsely make claim for its disbursements to damaged parties against the Fund. Pursuant to my motions before Judge Holland, the U.S. District Court declared that fraudulent contract invalid and instructed

defendant, Exxon Shipping, that such claim against the Fund was inappropriate. These fraudulent misrepresentations and claims were premeditated with intent to obtain unjust enrichment at the expense of our: sacred trust; holy lands; subsistence lifestyle; religious beliefs; commercial interests; recreational interests; and national symbols of the bald eagle and whale populations in the affected areas.

Such premeditated heinous criminal activity should be prosecuted to the fullest extent of the criminal law with appropriate punitive civil and actual damages awarded to discourage any future conspirator. Criminal fines should be calculated for each animal illegally killed or harassed in violation of federal and state statutes. These fines should be commensurate with those levied against persons not entitled to take animals within the state, i.e., non-resident, non-licensed trespassers. Civil penalties should be assessed in a manner commensurate with the standard applicable to the most grossly negligent and intentionally invasive trespass upon public property, private property, or special injury interest.

All judicial administrative and legislative agencies empowered by the public mandate hold our sacred trust in protecting these interests and are obligated to undertake all reasonable and considerable extraordinary efforts to fully investigate and inform the public and their democratically elected representatives as to the intent and affect of defendants criminal, fraudulent, negligent, conspiratorial, and unconscionable abrogation of the fiduciary duty which they promised to undertake in good faith as a condition of their considerable financial gain to be reaped from the natural resources owned by and with each individual resident of the State of Alaska and the citizens of the United States. The Department of Justice of the United States and the Attorney General of the State of Alaska have the statutory duty and mandate to investigate and protect pursuant to the aforementioned innumerable violations of statute, tort, and common law.

Additionally, there should be no relaxation of the defendants' liability pursuant to the Clean Water Act, the Resource Recovery and Conservation Act, CERCLA, or Alaska Statutes creating strict liability for all pollution abatement and resource restoration. By no means should Exxon or other culpable defendants be relieved of funding the most cost-effective and technologically advanced clean up activities required to remove the remaining threat to the public health, safety, and sense of decency. This strict liability for implementation of the best available technology should likewise apply to all restoration activities.

Let it be known that on this day I request those legislative and administrative representatives of our will be pallbearers at the burial of my heart in Prince William Sound where it will lie in torment with the remaining five million gallons of crude oil in the beaches, in the water, and on the ocean floor of this sacred land. We are caught in the Devil's bargain and we must get ourselves back to the Garden.

Sincerely,



Thomas A. Lakosh



ALASKA DISCOVERY

369 South Franklin Street • Juneau, Alaska 99801 • (907) 586-1911 • Fax: (907) 586-2332

April 18, 1991

The Honorable Max Gruenberg, Chair
House Special Committee on the Exxon Valdez
Oil Spill Claims Settlement
Alaska State Capitol, Room 216
Juneau AK 99801

Dear Representative Gruenberg:

On behalf of Alaska Discovery, Inc., I wish to comment on the State of Alaska's proposed settlement of civil litigation arising from the Exxon Valdez oil spill disaster. Alaska Discovery is an Alaska business that depends on tourism, primarily visitors interested in wildlife and other natural resources. We believe that the terms of the proposed settlement do not protect the public interest and that the settlement should not be accepted.

We support the concept that an adequate settlement is preferable to protracted litigation. However, the proposed settlement is inadequate because it fails to ensure restoration of injured natural resources in the areas affected and because it does not require payment substantial enough to serve as both compensation and assurance to Alaskans that operators such as Exxon will not simply externalize the costs of safety by burdening the public with the risk.

The Exxon Valdez spill killed more wildlife than any spill in history. The state-federal natural resource damage assessment studies show substantial damage to natural resources. The Summary of Effects of the Exxon Valdez Oil Spill on Natural Resources and Archaeological Resources (March 1991) estimates bird mortality at between 260,000 and 580,000 animals. (at p.8). The common murre, for example, may take decades to recover; the regional population suffered virtually total reproductive failure in both 1989 and 1990. Other species also show severe disruption of life cycles and population dynamics. Injury to marine mammals was documented, including "continuing injury to sea otters." (*Ibid.* at p. 5) The intertidal and nearshore ecosystem was "the most severely contaminated habitat". (*Ibid.* at p. 13) This was reflected in decreased biological productivity, reduced abundance of organisms, and disruption of ecosystem functions. "Contaminated clams and other invertebrates are a potential continuing source of petroleum hydrocarbons for sea otters and other species that forage in the shallow subtidal zone." (*Ibid.*) Strikingly, samples from pollock taken as far as 500 miles away from the site of the tanker grounding showed elevated petroleum hydrocarbon metabolite concentrations in their bile. (See *ibid.*)

Even without the release of all the scientific damage assessment information, it is clear that the Exxon spill caused serious long-term damage. If all the data on the intertidal and subtidal ecosystem were released, we believe it would reinforce this conclusion and document additional damage as well. The Summary of Effects also notes that "long-lived species such as bald eagles, murre, and sea otters may not manifest some effects until a number of years have passed." (at p. 15)

Harm to human communities also has been well-documented. Disruption to fisheries, to other natural resource based businesses, and to local government functions was widespread. While Exxon paid some damage claims, it has flatly refused to pay many others. Alaska Discovery is one of the businesses harmed financially by the spill. Exxon has simply refused to pay, correctly betting that the expense of litigation would make it impossible for us to pursue our claims against the company.

The Exxon spill caused serious injury beyond financial harm. For communities like Chenega Bay, it has disrupted residents' ability to use resources near the village; they have concluded that many traditional subsistence harvest areas are no longer suitable and village activities have either been discontinued or shifted to other areas, at considerably greater cost and risk. Some of these changes may be permanent. The spill has also torn apart community life in other towns and left lasting scars.

To be considered adequate, any settlement must be sufficient to restore damaged natural resources and services. In addition, however, a settlement must be substantial enough to show that Exxon is compensating the state for the many other harms to Alaskans resulting from the company's failure to prevent the spill and its failure to respond effectively and in accordance with the approved, site-specific oil spill contingency plan. Anything less will mean that Exxon has escaped without shouldering its full responsibility. If that happens, the affected public will know the State of Alaska has let an operator off the hook without clearly requiring it to take full responsibility for what its actions have caused and without establishing that industry operations must fully protect the public in Alaska.

It is important to note that the settlement is not as large as first reported. Exxon apparently is not being required to pay interest on the deferred payments. The present value of money received by the State of Alaska years in the future is much less than the face value of the debt, unless it is corrected by appropriate discounting and interest payments.

The Associated Press (March 22, 1991), citing projections by the Congressional Research Service and private companies specializing in deferred payment settlements of lawsuits, estimates that the actual cost to Exxon of the settlement may be as little as \$486.3 million -- less than half of the "one billion dollar" deal originally announced. This reduced value to the state is not merely theoretical. Every household paying a mortgage and every business facing operating loans pays interest on the deferred amount still owed; this agreement does not hold Exxon to the same standard. Even worse, Exxon would be free to set up its own annuity arrangement, using

investments and tax deductions to reduce the cost of the settlement still further.

The amount of money available for damage restoration is also reduced by the amount already expended in the response effort by the state and federal governments. Reimbursement of these expenditures will consume up to \$134 million. In addition, the costs of damage assessment studies now scheduled or planned could require another \$40 million. Together, these items will reduce the amount of the settlement actually available for restoration work by nearly \$175 million.

This settlement also lets Exxon escape all further cleanup responsibility. Additional cleanup costs will fall on the state. These expenses may total \$50 million in the short-term and another \$50 million in the future. As a consequence, the adequacy of the proposed settlement is directly and substantially reduced.

With respect to natural resource damages, the settlement does not provide for a payment large enough to cover all restoration costs. The ecosystems damaged by the spill desperately need a substantial recovery period during which they are free from further harm. Consequently, the highest priority should be prevention of additional stress on the ecosystems hurt by the spill. The most effective method is direct protection of areas that otherwise could be subject to further degradation. Examples include acquisition of timber harvest rights, land classifications to safeguard the area while recovery occurs, establishment of forested stream buffers to prevent siltation of salmon spawning beds, and protection of critical areas such as bald eagle nesting sites. These measures could easily cost \$200 to \$300 million in Prince William Sound alone and more than twice that amount if damaged areas outside the Sound are included.

Direct assistance to some plant and animal populations should be considered as well. Although the complete program depends on the results of the scientific damage assessment work and the restoration planning process, a partial list includes cleaning of affected spawning beds and bank gravels, building incubation boxes, enhancing stream channels for spawning, and replanting beach vegetation. In addition to these direct boosts to populations, it is necessary to manage fisheries harvests more precisely in order to protect wild stocks harmed by the spill. This requires expenditures for research and for better in-season management. Other techniques, such as shellfish mariculture projects, also should be considered -- especially in relation to village subsistence and economic needs.

Restoration of biological communities is not the only task remaining to be done, however. Shoreline areas used by Alaskans and visitors need substantial work. Many sites plainly need additional cleaning plus revegetation and other restoration measures. For example, recreational campsites remain badly damaged, archaeological and historical sites need attention, and areas used by village people for subsistence activities and other aspects of community life are still seriously degraded.

One other matter, equally important but more difficult to quantify, should not be neglected in evaluating the adequacy of the settlement. The Exxon spill violated Alaskans' trust and eroded our sense of confidence in the oil industry. Tremendous damage was done to the people who live in the areas hit by the spill. They and many other Alaskans experienced a strong sense of violation. The ineffective response by Alyeska and Exxon and their failure to follow the site-specific oil spill contingency plan exacerbated this feeling. Exxon's subsequent, and continuing, massive national public relations blitz, claiming that everything is clean and back to normal is further evidence that the company sees this as simply a transitory incident in its business enterprise. Exxon has spent a great deal of money in selectively releasing massaged "scientific" data, anonymously presenting airline in-flight video propaganda pieces that look like news reports, producing a torrent of glossy, misleading publications and many other items designed to convince the American public that there is no longer a problem.

This settlement does virtually nothing to vindicate the sense of violation and the sense of injustice engendered by the spill and its aftermath. The proposed deal requires Exxon to pay for things that it was required to pay anyway under applicable statutes. There is no overall compensation element to the settlement, showing that the uncompensated damage has been recognized, that the seriousness of this violation has been acknowledged, and that Alaskans can put this matter behind us with the assurance that Exxon has made a genuine commitment to safe, responsible operations.

A compensation element could take at least two forms: a monetary payment to the State of Alaska or concrete measures to provide greater protection against damage from future spills. The latter approach has the advantage of matching the compensation to the source of the harm and reducing the risks that Alaskans face from potential oil spills. For example, Exxon could fund a Marine Spill Response Center for Alaska (MSRC). Since Alaska does not now have the statewide response capacity that the MSRC would provide, Exxon's sponsorship of MSRC facilities and services would help demonstrate the company's commitment to strengthening spill prevention and response preparedness.

In summary, we believe the settlement is inadequate. The dollar amount is too low to cover the full range of restoration activities, Exxon has escaped further cleanup responsibility, and there is no overall compensation element to clear the air and reestablish confidence. In our view, the most appropriate course is to require the renegotiation of this proposed agreement. Recognizing, however, that the settlement may be approved even with these serious shortcomings, we offer the following recommendations for conditions or stipulations:

1. Exxon should be required to forego any deduction of settlement costs or cleanup expenditures from its state and federal taxes. With respect to the State of Alaska, such a deduction would amount to a direct subsidy by the people most damaged by the company's failures.

2. Use of the settlement proceeds should be explicitly limited to reimbursement of state response costs, damage assessment, and restoration. There is not enough money in the settlement to tolerate spending it for economic development projects, highway construction, or other collateral items.

3. The Alaska Legislature should exercise its oversight authority and structure the allocation of the settlement proceeds. The decision should not be left to state agency heads designated as natural resources trustees. A public process should be established so that affected Alaskans and their local governments are directly involved in making the decisions about how settlement proceeds are used. Simply commenting is insufficient; they must actually shape the decisions ultimately reached. The legislature has already created the Citizens Oversight Council on Oil and Other Hazardous Substances. This body is well-suited for implementing the kind of public process needed for decisions on how to use the settlement proceeds. Under no circumstances should the state administration be authorized to control the allocation of the funds or the appointments to any public process.

4. The legislature should direct that habitat protection and acquisition be given top priority in restoration efforts using settlement proceeds. This is the single most effective tool available to achieve lasting recovery of the natural resources damaged by the spill. Recent statements by some state officials have suggested that the administration may not give habitat sufficient priority. The legislature should not leave this crucial decision to the administration's discretion.

5. All parties should release their scientific and other studies, including economic studies. This information should include but not be limited to data generated in the natural resource damage assessment effort. Alaskans have a right to know the acute and long-term effects of the spill. Selective release of information by Exxon has skewed the public's understanding of the impacts. Honest scientific inquiry demands that the studies be subject to public and peer review.

6. The State of Alaska should not only release the scientific damage assessment studies, economic studies, technical analyses, and other information within its control, but also help the public understand the data. Public workshops to discuss the findings in the affected areas would be a useful approach. Although a legal justification for not releasing the information has been offered by the attorney general, there is a compelling public policy reason for full disclosure. The public is entitled to know what damage actually occurred, what risk still exists, and what restoration burdens may fall on local communities. The public also is entitled to know the basis used by the state to conclude that this settlement proposal was desirable.

Thank you for the opportunity to comment.

Sincerely,

Ken S. Leghorn
Ken S. Leghorn

Alaska Discovery, Inc.

testified

**TESTIMONY OF
MARILYN LELAND
EXECUTIVE DIRECTOR, CORDOVA DISTRICT FISHERMEN UNITED,
BEFORE THE ALASKA HOUSE SELECT COMMITTEE
ON EXXON VALDEZ SETTLEMENT
APRIL 14, 1991**

My name is Marilyn Leland. I am the Executive Director of Cordova District Fishermen United, also known as CDFU. I have been intimately involved with the Exxon Valdez oil spill since before 7:00 a.m. on March 24, 1989. More than two years later, the oil spill still dominates my life.

Gentlemen, first let me thank you for coming to Cordova to hear our comments on the proposed settlement with Exxon. Although we understand the need for comments at this time, the timing really couldn't be worse for Prince William Sound fishermen. As I am giving this testimony, there are roughly 1,000 herring fishermen, crewmen, tendermen and pilots who are not in town, but are on the fishing grounds. Because of that fact, I want to assure you that the sparse attendance today does not indicate a lack of interest in the settlement. Prince William Sound fishermen are very interested, but the herring are here now is when they must work to make a living.

As I see it, there are several basic problems with the settlement, some of which could have been avoided had the people who had been damaged been allowed to be a part of the process and much of which could still be cured by the release of the damage assessment data.

First, to the value of the settlement--at this time it is impossible for us to determine what the damages are worth or even if an actual damage figure can be determined now. We have not been privy to the state's damage assessment data. However, we have seen Fish & Wildlife's preliminary data this week, which indicates that there may be substantial injury to fishing resources in Prince William Sound, in particular salmon and herring. The report states: "The full extent of short term injury to pink salmon cannot be assessed until after the 1991 run returns to spawn in the summer." That statement, alone, causes us to question whether it is possible to set a value on the damage at this time.

The report also states that: "Preliminary analyses indicate a 70 percent greater mortality of pink salmon eggs laid in the summer of 1989 and a 50 percent greater mortality in the summer of 1990 in oiled streams as compared to control streams. Larvae from heavily oiled streams showed gross morphological abnormalities, including club fins and curved spines."

The report goes on: "Tagging studies have demonstrated that the annual mortality of adult Dolly Varden was 32 percent greater in oiled areas than in unoled areas." With respect to herring, it was reported that "Study results show a large increase in the percentage of abnormal embryos and larvae in oiled areas of Prince William Sound during the 1989 reproductive season. Larvae also had a greater incidence of eye tumors in oiled areas. These effects continued but at somewhat lower rates in 1990. Results also showed greater egg mortality in oiled areas as compared to unoled areas. Whether the adult population has been affected by these larval injuries will not be determined until the 1989 and 1990 cohorts return to spawn in 1992 and 1993."

While we agree that it would be good to settle the State's claims and begin to put the oil spill behind us, you cannot make a monetary settlement until the full extent of the damages are known. Exxon made partial settlements with some of the fishermen because of this same issue. Has the State explored that possibility with Exxon?

Further, with respect to the release of the damage assessment data, it is imperative that the information be made public so that reasonable plans for recovery can be made; or if it is determined that recovery is not possible in certain instances, that consideration be given for alternative enhancement projects.

We have been told that the damage assessment data cannot be released until a disposition has been made of all litigation because it could be used against the State. That's a legitimate concern. Except, the individual plaintiffs were not suing the State and did not want to sue the State, but were forced to because of this settlement. The individual plaintiffs even offered to waive all claims against the State, but that offer was declined. The individual plaintiffs asked for an extension of the statute of limitations so that the possibility for waivers could be fully explored. The extension was refused. We then filed against the State.

An argument that has been made for settlement at this time is the tremendous savings in attorneys' fees the State will realize by not having to continue the litigation against Exxon and Alyeska. However, in reality the State has traded those two defendants for thousands of individual plaintiffs. Not only will the State still have attorneys' fees, but they are also now facing exposure for actual payment of damages. The bottom line could be a greater cost to the State.

We would argue that not only is it too soon to determine the value of the injuries sustained, but the settlement figure is no doubt too small to be an incentive for the oil companies to correct deficiencies so that we could have a greater certainty that this sort of disaster will not happen again in Alaska. The total cost to Exxon, after tax, is less than \$425 million according to the federal government. The cost to Alyeska is nothing. Last year, Exxon's revenue was \$117 billion. Based on that figure, even if Exxon were to pay the total settlement in one year, it would total less than .004% of their total revenue. On the other hand, if a fisherman is caught making a set too early or drifting over a line, he is likely to be fined several thousands of dollars, be required to surrender fish he has in his hold and could potentially lose his vessel and his fishing permit, which is as it should be. The cost of the fine and the value of the surrendered fish would be significantly more than .004% of the fisherman's annual revenue and the loss of the boat and permit would most likely constitute a major chunk of his net worth. You can bet that fisherman will make better efforts to know exactly where the line is or have his watch set with Fish and Game's so that he doesn't repeat that mistake.

There are too many unanswered questions about how the settlement money will be spent. With three state and three federal officials, none of whom have been elected by the people, making up the trustees, the people who have been most impacted by the spill are likely to have little input on how those funds are spent. We still alternately hear both suggestions and denials that the funds should be spent to create a world class marine park in Prince William Sound, to complete the Copper River Highway and even to build a deep-water port at Fire Island. Random House Dictionary defines "restore" as "to bring back into existence, use, or the like; reestablish; to bring back to a former, original or normal condition; . . . to bring back to a state of health, soundness, or vigor." Because there has never been a world class marine park in Prince William Sound, the Copper River Highway has never been completed and there has never been a deep water port at Fire Island, none of these projects would fit the definition of "restore."

What is perhaps most frustrating is the fact that when this disaster began, the people most affected in the area tried to infiltrate the bureaucracy that was Exxon and Alyeska only to be told that we weren't needed, that we were amateurs and in Don Cornett's inimitable words that we should trust them and we would be made whole. Well, Exxon did find out that they needed us and we weren't amateurs, but we still haven't been made whole and we are still being treated by Exxon and now the State of Alaska as though the plans for clean up and restoration and the settlement are not any of our concern and that we should just trust you. Well, we've heard that for too long and it just doesn't work anymore.

We ask the legislature to postpone approval of the settlement until it has sufficient information and time to assess whether the settlement provides enough money to fix the long-term damage to the Alaskan environment; provisions are added to give the legislature, and the public, a voice in how the money is spent; and Exxon and Alyeska settle the compensatory and punitive damages claims of the people injured in the spill, or if that cannot be accomplished within 30 days, Exxon and Alyeska agree that they will not put the State on trial in absentia when those damage claims go to trial.



Alaska Center for the Environment

519 West 8th Avenue, Suite 201 • Anchorage, Alaska 99501 • (907) 274-3621

April 24, 1991

Representative Max Gruenberg
Alaska State Legislature
P.O. Box V
Juneau, AK 99801

Dear Representative Gruenberg:

The following comments are submitted on behalf of the Alaska Center for the Environment (ACE) regarding the proposed Exxon Valdez criminal and civil settlement agreements. ACE greatly appreciates the work done by the House and Senate Special Committees on the Exxon Valdez Settlement to provide opportunities to the public to testify before the Legislature regarding the settlement. As stated in verbal testimony, ACE considers the settlement presented to the people of Alaska by Exxon, the Governor, and the federal government to be flawed irreconcilably as currently proposed.

Release of Economic and Scientific Spill Data

ACE finds it ludicrous to be asked to evaluate the adequacy of the settlement without first being given the opportunity to review the biologic and economic study data measuring natural resource damages to Prince William Sound. Public monies paid for that data, and the public has a right to it. Attorney General Cole's argument that the spill data should not be released because it could potentially be used against the state in a lawsuit is horrifying in terms of public policy. If indeed the state was party to events leading to or causing improper response to the Prince William Sound spill (e.g. approval of a faulty spill contingency plan, failure to inspect response equipment, etc.), then the public has a right to know where the flaws were in order to evaluate how to correct them before a future spill occurs.

Review of the spill data is needed not only to evaluate the settlement, but also to help direct efforts towards restoration of Prince William Sound and prevention of future spills. How can we know where restoration is needed most, or what ongoing studies are needed without review of the spill data? Equally as important, little is currently known in "dollar for dollar" terms about the value of preventative measures compared to the costs of spill response and natural resource damages. The data from the Exxon Valdez spill could help provide answers to some of these questions. It would truly be a tragedy if another spill like the Exxon Valdez occurred in Alaska tomorrow because, for example, the arguments for prevention were outweighed by industry resistance to expending the upfront capital needed for a double-hulled tanker, or because the state did not want to pay the costs of maintaining adequate staffing of the Oil Spill Response Office in the Department of Environmental Conservation.

The summary of federal spill data recently released is not enough. Economic analysis is not included in the summary, and the report plainly states that it is "preliminary" and "available data are not fully analyzed and interpreted." The rest of the federal scientific and economic data, in addition to the state studies, must be released in order to be of value.

Public Participation

The public has been given no opportunity to participate in decisions about how settlement monies would be spent, were the settlement approved. The Trustees Council thus far has met behind closed doors, and has made no move towards soliciting public input on this matter. ACE would like to see the money spent on 1) purchase of timber rights along spill-affected coastlines to prevent further damage to these areas, 2) other restoration activities, and 3) ongoing studies of spill impacts in Prince William Sound.

ACE is disturbed to hear the Trustees Council part from the state administration's long stated intention to use the settlement monies to purchase timber tract lands. The statements against purchase of timber rights by members of the Trustees Council came forth despite the clear public support for timber buy-backs expressed in the legislative hearings on the settlement, and is further evidence of the Council's oblivion to public concerns.

Deterrent Value of Settlement

ACE is extremely pleased with Judge Holland's ruling that the \$100 million fine required of Exxon in the proposed criminal settlement is inadequate. A criminal penalty should both reflect the enormity of the crime committed by Exxon and should act to deter further crimes of this sort. The settlement fashioned by Exxon and the state and federal administrations accomplishes neither of these goals.

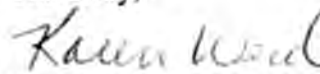
The entire settlement package clearly fails to send a message to polluters that egregious environmental crimes are unacceptable and will not be tolerated. The message it does send, however, is that polluters can make deals behind closed doors and buy their way out of messy pollution problems-- including the largest oil spill in North America.

Alyeska's Release from Culpability

ACE objects to the release of Alyeska Pipeline Service Company and its owner companies from any criminal charges, civil penalties or administrative penalties in the criminal plea, and release from natural resource damages in the civil settlement. Alyeska's failure to comply with the oil spill contingency plan in effect on March 24, 1989 significantly compounded the environmental damage that eventually occurred. According to material presented by Rep. George Miller, U.S. House of Representatives, in his letter to Judge Holland and Judge Sporkin dated April 8, 1991, Alyeska and its owners had advance knowledge of the company's inability to respond to an oil spill in Prince William Sound, and failed to take action to correct that situation. It is clearly not in the public interest for the state and the federal government to waive their rights to pursue charges against Alyeska for the Exxon Valdez oil spill.

Because of the major flaws inherent in the Exxon Valdez settlement agreement, the Alaska Center for the Environment strongly urges you to reject the settlement. We encourage you to consider these concerns and work to avoid the reemergence of the same problems in any potential future settlement proposals. Thank you for considering these comments.

Sincerely,



for
Sue Libenson
Executive Director

February 15, 1991

Dear *Representative Gruenberg*

I'm worried about our governor. He seems to think that all state decisions are his alone and constitutional checks and balances are for other elected officials, not him. This is a threat to legislative authority and really more importantly, to Alaska itself.

I am specifically concerned about Hickel's plan to settle out of court with Exxon. I urge you to do whatever is in your power to address the following points:

- * There must an opportunity for public input and consultation before the settlement is a "done deal".
- * All scientific and economic studies must be released.
- * Exxon must be required to fund scientific research into the long-term effects of the spill.
- * If there is a settlement, money should be used to restore the Sound and not fund development projects that could degrade the Sound such as Hickel's plan for a "world-class recreation area".
- * If there is a settlement, an independent, non-profit committee should be created to manage the fund. Exxon should have no say whatsoever as to how the settlement money should be spent.

I think there is still time to pull in the reins on Hickel's power trip.

Thank you for your attention to this important matter.

Sincerely,

W. Mark Luttrell

W. Mark Luttrell

Box 511
Seward, AK 99664

*Received
in Seward
4/12/91*

M-O

MARY MALCHOFF

Port Graham Corporation
P.O.Box P.G.M.
Port Graham, Alaska 99603-8998

April 12, 1991

Dear Legislatures:

With the lack of information of the scientific and economic studies done by the State regarding State damages, how can we fairly judge if the settlement is fair.

The settlement Monies will be used to repay the Federal and State Government and continuing studies. What will be left to restore the affected areas. To clean, restore the native foods-, to help the affected areas cope with crisis, heal from the ~~this~~ chaos it has caused with spill, lawsuits, grief over lost of lifestyle.

Please don't isolate the villages, keep us involved.

Sincerely,

Mary Malchoff

Mary Malchoff, Chairman
Port Graham Corporation

Sydney J. Robert

MM:cm

MELVIN MALCHOFF

4/12/91

To: Alaska Legislative Hearing
on the Exxon Settlement,

From: Village Public Safety Officer,
P.O. Box PGM
Port Graham, Alaska 99603-8998

Dear Sir:

I am the Village Public Safety Officer, of Port Graham for one year knw. With my work here in the Village, I have seen alot of Anger, Hunger and a lot of Alcohol and Drugs, also there has been a few divorces and Family's fighting, along with a couple of temp. suicides since the Oil Sill of the Exxon Valdez Oil Spill.

We have lost a lot of our Subsistance food's, that we always gather during the summer and winter minus tide's that we have here in the village.

The settlement from Exxon is not enough to restore what we have lost here in the village, there is no job's here, It has really effected our cannery that the Corporation has here in the village. The People here count on the cannery to open up during the summer time. For the last Two year's know the cannery has not opened up, the people have to leave there home town to find other job's. They do not like to leave there family's or there kid's behind. Thank you.

Sincerely yours,

Melvin Malchoff

Village Public Safety Officer

MARY JO McELROY

HC 2 Box 705

Kasilof, AK 99610

April 5, 1991

House or Senate Special Committee on Exxon Valdez
Litigation Settlement

P.O. Box V

Juneau, AK 99811-3100

Greetings:

Thanks for the opportunity to comment on Exxon Valdez oil spill civil settlement and the criminal plea agreement; however, please give the public more facts and as much info as possible so we can make reasonable comments. Below are some of my questions, the answers to which would enable me to comment.

- 1) Is the State settlement pressing only civil charges or also criminal charges?
- 2) Will the settlement forever deny the State the right to press criminal charges against Exxon?
- 3) Does the settlement provide for future claims at this time -- decimation of fish runs in certain habitat destruction, etc.
- 4) How and where will the settlement money be spent?
- 5) What % of original claim will the State accept in settlement?
- 6) Are individual fishermen and village claims (through TAPS) affected by the State settlement and in what way? For instance, since State action will set precedent, will each individual claim only be settled for same or less % of original claim as State accepts?

Thanks for supplying further information through the media. We need to know the terms of settlement.

Yours truly,

Mary Joe McElroy
Mary Joe McElroy

HARRIETTA MCGHAN

April 12, 1991

Sir.

I don't think the Government and State of Alaska are treating us Fair. not involving us Native Villages in what is going on.

Also not telling us whats going on with the Subsistences like our Fish, Seal, Cod, Halibut, Clams, By ~~Sharks~~ snails, Mussels, and all the rest of our sea Foods.

I would like to know, Why we are not being involved.

It is not Fair to keep information from us Native Villages / and Native People.

When I worked in the oil spill in 1989 I cried because I know it would affect us for years and the sea Animals. I am very hurt, Mad, upset.

I am skard to eat sea food.

No one knows if they won't affect us. here.

How long will we go being skard to eat them years.

I can not afford to fly over to Homer to attend the Meeting so I'm righting this letter

Harrietta McGhan
Port Graham, Alaska

Annie Tomin

Apr. 12, 1991

Alaska Legislative Hearing on the Exxon Settlement

Dear Legislators

I feel the dollar amount of the State of Alaska settlement with Exxon is not enough to meet the needs and repair the damages of all the Areas affected by the oil spill.

The loss of employment due to closure of the Salmon Cannery here for 2 seasons now I've suffered from not being employed and loss of wages has impacted me and ^{also} the loss of subsistence foods. Normally we've relied on our subsistence to help us when our finances are low and now with our subsistence being affected, created a bigger impact on me. Where I use to go down on the beaches and gather mussels Steamer Clams, we ~~can't~~ ^{haven't} been able to do this anymore since 1989 oil spill, The mussels are disappearing, also we don't have anymore TomCods; The poisoning of our beaches & ^{sea} animals is a long term affect on ~~the~~ us people in the ~~areas~~ ^{where} the spill affected areas.

I worked 2 wks for VECO and didn't earn ~~the~~ nearly enough wages compared to the seasonal Cannery wages I earned before 1989

Annie Tomin Port Graham

JEFFREY McMULLEN

Dear Legislators,

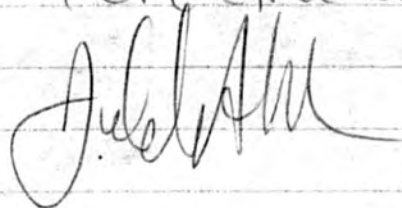
I am a Commercial fisherman and subsistence user. I am a little concerned about the settlement between the State of Alaska and Exxon. We were left out in the add on this settlement. The state obviously doesn't care about the people who were affected by the oil spill on March 24, 1989. We have rights too. How are we going to get our subsistence back, since the oil has killed off most of the animals and beach life?

For the amount of ^{THE} settlement, how is our subsistence ways going to be restored?

I worked out there in the oil when it hit our land. We saw the devastation right in front of us. It wiped out most everything that it came into contact with. I was one of the many people that was medivact out of Windy Bay because of the toxins in the oil. We were able to get help - But what about the seahife -- THEY HAD TO DIE IN IT !!

I hope that you have been reading the newspapers. The truth about the damage to the wild life is finally coming out. Since our subsistence is going to be wiped out for many years to come and our commercial fishing. I feel that it is only fair to us, the subsistence users, to be

included in the settlement. After all,
we depend on awful lot on subsistence
foods to get through the winter.
Thank you for your time.

Jeffrey McMullen
P.O. Box PEM
Port Graham, Alaska
99803-8998


JOHN McMULLEN

testified
April 14, 1991
Cordova

TESTIMONY ON THE THE STATE'S OIL SPILL CLAIMS SETTLEMENT

I am John McMullen. I am employed by the Prince William Sound Aquaculture Corporation (PWSAC). I am representing myself because PWSAC's board of directors has been unable to meet to develop an opinion regarding the settlement of the state's civil claim resulting from the EXXON VALDEZ oil spill.

I wish to preface my comments by saying that I am relatively uninformed of the facts surrounding the achievement of this settlement. I have not seen the memorandum of understanding between the state, the federal government, and EXXON, and am unsure of the direction that the restoration process might take. As one of the multitude of "outsiders," I find it difficult to be wholly supportive of the settlement.

Several days ago, I read a news article which indicated that the public was unaware of the actual damage to fish and wildlife in the area impacted by the Exxon Valdez spill. What I read there concerns me, and causes me to wonder if a pre-spill data base was available to which the post-spill biological observations could be compared. I don't believe I could assess the reports of damage to wildlife based on an 18 page summary report, much less the news article which is the only information to which I have had access.

Thorough review of the damage assessment study results would be of great value to the assessment of future spills, here and elsewhere. I would ask the state to agree to the release of scientific studies for the purpose of building better data bases on oil spills.

I think the Governor and the Attorney General are to be commended for taking action on this issue. Without considering the politics of whether or not the settlement is a good thing at this time, I believe that it is preferable to years of drawn out, expensive litigation which would further impact the operations of state agencies like the Department of Fish & Game, which already faced with declining budgets over the next several years.

I do believe the state should use whatever leverage it has to convince the oil industry that all Exxon Valdez-associated claims should be settled expeditiously.

In Prince William Sound, oil spill prevention and response plans for the oil transportation industry are being upgraded under the direction of state and federal agencies and the participation of groups such as the Regional Citizens Advisory Council, the first such group in the United States to be certified by the federal government.

With those improvements being put into place, we can begin looking to the future to determine what should be done to restore and enhance the impacted area and its living resources.

My understanding is that a restoration trust fund is established within the terms of the settlement agreement. Being a states' righter, I am a little disturbed that decisions for use of recovered funds for restoration work will require the unanimous agreement of the federal and state trustees. I believe this will increase the level of political activity surrounding the trustees which will, of course, be based on philosophical differences of the various lobbying groups.

Therefore, it is essential that persons who live and work in the impacted area be appointed as the advisory group to the trustees.

I have heard that the trust fund can be used for projects not even located in the impacted area. I hope this is not true, and believe that the manner in which the fund is used is equally or more important than the amount of money in the fund.

I have not seen the list of criteria by which project proposals will be evaluated, and can only say that the trust fund must be used for restoration projects of immediate and continuing value.

PWSAC and its hatchery complex stands ready to participate in the rehabilitation of damaged wild salmon stocks in the Sound, and the interim replacement of those stocks in the sport and commercial fisheries.

Examples of restoration and scientific data base projects in progress are those conducted cooperatively by PWSAC, the Alaska Department of Fish and Game, and the University of Alaska. These oceanographic and fishery evaluation studies increase knowledge of wild salmon stocks, juvenile salmon

food supplies, and provide guidance to the salmon restoration and enhancement program.

"State operational budgets are declining, and PWSAC is responding by assuming responsibility for the three state owned hatcheries in this region. One of those hatcheries, Main Bay, is of prime importance because the sockeye salmon which are hatched and incubated there are of Coghill and Eshamy Lake stocks, and will be used to rehabilitate those depleted wild stocks and the sport and commercial fisheries which have traditionally operated at those locations.

In addition, PWSAC has assumed responsibility for all the ADF&G sport fish, salmon stocking programs in the Sound, and is stocking king salmon smolts at Whittier, Valdez, and Cordova. Also, coho smolts are stocked at Whittier and Cordova for roadside sport fisheries.

So, my final comment is, if a plan is developed which is acceptable to the people who live, work, and otherwise use the impacted area, should we not begin restoring Prince William Sound now - rather than at some undetermined future date?

Thank you.

John McMullen
Cordova, Alaska
April 14, 1991

4-12-91

ROBERT McMULLEN

1

To Whom It Should Concern:

I am a registered voter of the village of Port Graham, Kenai Peninsula, State of Alaska, and the United States of America, just to remind you of where your bread is buttered.

On March 24, 1989, the Exxon Valdez struck the Bligh Reef in Prince William Sound causing one of the largest man made disasters in this hemisphere to date. This episode could have been either avoided or greatly minimized: if comprehensive joint planning had not been taken for granted; if the oil spill response equipment had been in readiness; if the oil companies were more strictly monitored and enforced; if the employee policies of Exxon regarding substance abuse had been more than just mere writing. But, I'm sad to say, reality wasn't sought till after. Within several days of the grounding, oil reached the lower Kenai Peninsula and Cook Inlet. If you recall state and Exxon officials stated publicly that the oil would never leave the sound.

As a result of the oiling, UECO, Exxon's

subcontractor, moved into the communities to respond. Directly carpet baggers and their Native American prejudice driven by greed imposed themselves upon us. Our people worked cleaning beaches while other crews remained anchored and aboard vessels until an Exxon official fly by was announced. They would thus head to the beaches to show their meager attempt. Our native people endured prejudice on the air waves as well as in person. But we were there to clean our beaches not just to collect Exxon subsidies.

The beaches and ocean is the spinal column of our existence. I perceive the beaches and ocean as a being like a mother and a wife, something close to my heart. Exxon has defiled her (ocean) and you expect me to believe that because Exxon's money boosted the economy and is repayment of the state and Federal expenditures that is enough. No, you are gravely mistaken.

It was my backyard that Exxon's dog

cropped in. Just because the oil was scooped up does not mean it is over. What about land water table damage, subsistence damage, effect of oil spill on the international Alaskan salmon market, the effect on foreign investment and joint ventures in fisheries? You don't have an answer yet, so don't let the sagging State and Federal pocketbooks rob us of our right to scientific studies to support our claims against Exxon. Without voters, you have no tax base and we are voters and tax-payers. It is our money you spent in these studies, so let us have access.

Access and support from the State of Alaska and the U.S.A, will help us and our local economies to restabilize. Our cannery is not running. Fish prices have decreased by 50% to 70% depending on the species since 1989. The effects of the oil spill on our community has been great, economically, socially, and mentally. Please don't add insult to injury by abandoning our needs now for more

votes at the next election.

Sincerely,

Robert McMillen

P.O. Box PGM

Port Graham, Alaska 99603-

April 12, 1991

Dear Legislators,

I am an Alaska native and a Subsistence user. My subsistence lifestyle has been affected. Subsistence is a very important part of my life and my families. I do not think our subsistence food is safe to eat and that we have lost something ~~very~~ that is a very important part of my life. I do not think the state or the Federal Government or Exxon will even try to restore our subsistence - how can they - they don't understand how much subsistence means to me or what subsistence is. I fear we have lost a lot of our subsistence foods such as clams, mussels, bivalves, snails, seaweed, Salmon, bottom fish and Crab - also our Seal. I feel they were destroyed by the Exxon oil spill. The studies released by the Federal government has shown me that our subsistence is very much affected. I want to see our subsistence restored, our beaches cleaned our fishing industry restored.

I do not think any of the settlement should go to the victims of violent crimes - that makes me mad and that is very unfair. The true victims are people of the Prince William Sound, Lower Cook Inlet and Kodiak.

The settlement is unfair and inadequate for the villages that are affected by the Exxon Oil Spill will never see any of the settlement or see our beaches cleaned, our subsistence and lands restored.

I would like to know why the Federal Government & the State Government left the affected villages to fight on their own. Are we not citizens of Alaska - Aren't you suppose to protect our rights and interests? Do we count? The state / Federal governments have neglected the villages long enough. How are you all able to sleep at night with a clear conscience?

I am concerned with the long term effects on our subsistence?

Will it be restored? Will ~~our~~ we ever feel it safe to eat our foods again?

The Exxon Oil Spill has caused me and our village a lot of mental stress, physical and spiritual stress. Will we ever heal from this disaster to our lifestyle?

I feel even though I am writing this testimony we will still go

unheard and we are writing to you
our legislators for nothing. Please
prove to me otherwise.

Sincerely,

Francis Norman
Impacted Subsistence User.

April 12, 1991

Dear Legislators,

My wife Luba and I were born in the Village of Port Graham and have lived here all our lives. We raised 11 children and now we have 30 grandchildren, I am 76 yrs. old and my wife ~~is~~ Luba is 69 yrs. old.

We have used subsistence all our lives, I am also a commercial fisherman. We are going to need subsistence now more than ever because the cash economics has been affected by the Exxon oil spill. The cash economics is almost nil in the Village of Port Graham. Our subsistence has been damaged because of the oil spill. I feel uncertain as to whether our subsistence food is safe to eat.

Our commercial fishermen have been affected which in turn affects the canneries, fish buyers and cannery workers because of the Exxon oil spill. It seems to me the Exxon Settlement offer is inadequate, but there is a need to start somewhere, use the Exxon Settlement offer as a starting point. I would go along with it as long as there is room for renegotiating at the end of 11 years then I suggest that we accept the agreement.

I might not live to see the result
but knowing Exxon will continue to take
care of the damages caused by the Exxon
oil spill - I will depart happily to
my happy hunting grounds.
Good luck.

Sincerely,

Walter R. Megawack, SR.

P.O. BOX PGM

Port Graham, Alaska 99603

JOHN NETZEL

April 26, 1991

REP. MAX GRUENBERG:

John Netzel
H.C.R. 70
Valdez, Ak. 99686
835-5940

I am writing to you today proposing one alternate to the oil spill settlement, that is both simple in format while being fair to all parties and solving the problem. A oil settlement should provide these 4 minimum services:

- (1) Money to repair damages to humans.
- (2) Money to repair the environment.
- (3) Money for scientific research for treatment and understanding.
- (4) Money for State interest in monitoring, prevention, treatment.

The exact amount of this money is unknown at this time therefore no single total charge could be the correct amount. The amount though should not be a direct burden on the Federal or State nor a punishment for Exxon. Exxon spent 2-3 billion dollars on cleanup over three summers and the criminal fine will be the punishment amount.

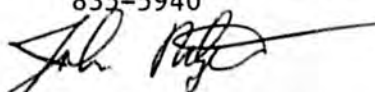
The above 4 items need funding both now and into the future. All transportation forms, like roads, air, rail, spread their total cost of doing business to all their users including auto wrecks, plane crashes, train wrecks. Lets spread the (4) costs from above, around to all the users of oil products, all users, not just Alaskan users. We can do this by having the oil company's, thru Alyeska Pipeline, lower the nearly \$4.00 per barrel charge to ship royalty oil thru there pipeline to say \$2.00 per barrel ~~for~~ State oil shipped thru, and freeze it at this rate for say 15 years. Shortly before the spill our charge per barrel was to be \$3.20 per barrel, but due to the unforeseen spill and the slow down due to tanker delay and escorting we got a \$0.50 increase in our rate, then another increase on top of this for \$0.50 for the new safety rule to boom all tankers while loading and unloading and some deployment of other boom. These two charges equal \$1.00 per barrel, this charge times the 170,000,000 barrels per year that is the States Royalty and tax share equals \$170,000,000 less dollars into the State Treasury. Because of the spill Alyeska has had to spend more and more money on items like skimmer ships, R.C.A.C., S.E.R.VS boats more booming equipment, storage yards, office buildings, and any new Federal or State required system of safety and all the huge cost for these things for labor and ongoing maintenance. All of this money drives up the per barrel charged the State thru the T.A.P.S., formula. If the charge was reduced to \$2.00 the remainder of the balance not paid by the State would be put on the oil companies who would pass it along to all

users, all users including Tesoro, Mapco, Mark Airs proposed refinery, people in the lower 48, etc. All these user groups would in a fair and equal way share the burden. Why should the people in the lower 48 pay a penny a gallon more per gallon of gas while a Alaskan pays the same penny plus \$170-500 million more ^{per year} thru the direct loss to the treasury. Exxon will pass on any costs including the original proposal of \$900 million, but under that agreement we have no T.A.P.S protection. Increased demands by Federal, State, Environmentalist, fishermen etc for more and more services that only Alaskans pay for, not Alyeska pipeline, which by law can not loose money but only make money on a cost plus type formula thru F.E.R.C., that all 7 oil companies share in those same profits, but not the State. It makes to economic sense to take in \$900 million with the right hand while handing out billions with the left. It further cost the State money to monitor the very complex T.A.P.S system and most of that could be saved thru a flate \$2.00 rate proposed.

Everyone would win something and everyone shares equally in the cost to have the energy that all Americans want. The money generated thru savings each year could be put into a Prince William Sound Trust to pay for the (4) goals outlined and could also be a safe guard for a future oil disaster like a earthquake that severly damage the line and caused huge damages in the interior. It would be State controlled not Federal and State controlled therefore it could be what ever you make it to be. There is a NEW AWARENESS of the Real cost to transport oil from this state lets not let this new cost be born by Alaskans alone, Alaskans when they buy a product made outside pay the REAL cost to make that product and get it here for us to use, so lower 48 should pay there share for our oil.

Thanks for your time and I hope you give this some thought because if we don't stop the growing T.A.P.S. cost there wont be any Alaskans to enjoy the sound.

John Netzel
H.C.R. 70
Valdez Ak. 99686
835-5940



p.s. I note in the paper that Alyeska will spend 50 million to put in Access rd. along the Dalton Hwy., as part of its new contingency plan; all 50 million will be charged against the T.A.P.S. Formula making 18 million less dollars to the treasury plus ongoing maintenance and security patrol cost Each and Every year. That's more money than the road to cordova the Yukon River

Native Village of Eyak
Box 1388
Cordova, Alaska 99574
April 11, 1991

Thomas A. Campbell
General Counsel
National Oceanic and Atmospheric Administration
U.S. Department of Commerce
Room 5816
14th Street and Constitutional Avenue N. W.
Washington, D. C. 20230

and

Barbara Herman
Attorney General Office
State of Alaska
1031 West 4th Avenue
Suite 200
Anchorage, Alaska 99501

The Native Village of Eyak comments for the record an objection to the proposed settlement between Exxon, et al, and the state and federal governments.

The proposed settlement is inappropriate as it did not allow for the communities directly affected and damaged by the Exxon Valdez Oil Spill an opportunity to assess their damages and to have access to the scientific data.

Individuals have communicated among themselves and to the appropriate agencies concerning the severity of the damages and continued damages to the sound and other oil spill areas. It has been viewed that upon report that the information was ignored, discounted, or lost. It has been a common feeling that the reports of damages would be compiled for public review and comment. It has been commonly understood that the federal and state governments would provide a method to properly and scientifically acquire the data for use in assessing the damage and future health of the sound.

This has not been so. With the proposed settlement the raw data and summary data needs to be fully released. This would confirm that what we saw, what we reported, and what we know has been made available for the public good.

The proposed settlement is improper. To address the affected areas concerning the natural resource damages and to ignore the valuable input from us is in violation of democracy. The fiduciary responsibility that the

governments so often refer to has been ignored for the past twenty years or more. We depended on our elected and appointed officials to protect our resources from exploitation; yet this settlement would imply that the greater offenders were our leadership and their appointed agents.

We believe in the democratic process; the governments are choosing to ignore this in the proposed settlement.

The proposed settlement is inadequate in scope and monetary value. The monies would only aid the tax status of Exxon, et al, and provide an inadequate government-wide source of funds. The oiled areas need specific relief.

The scope of the proposed settlement is limited; it does not address the social, cultural, and community damages, nor does it recognize the need for remedies.

The natural resource damage value can eventually be quantified; yet the damage to the human element cannot. The disruption to our lives in 1989 is beyond description. It scared us and panicked the entire sound and oiled areas. The reaction of the controlling agencies (Exxon, etc., the state and federal governments) in ~~whom~~ whom we'd placed our trust was appalling. They wielded their authority and violated our faith and trust in them. We looked to them for assistance and guidance to help us ease the pain and had discovered that it was only their own self-interests that they were perpetuating.

The agencies continued to abuse our faith in 1990; the 1991 proposed settlement confirms our worst fears: our interests, our lives and our well-being were cast aside in favor of Exxon's, the state and federal governments' economic gain.

We strongly oppose the settlement for the above stated reasons. We request to be part of the negotiating process now and in the future.

Sincerely,

Agnes N. Nichols
Chair-person
Native Village of Eyak

THE FOLLOWING DOCUMENT MAY NOT FILM
LEGIBLY BECAUSE OF THE POOR QUALITY OF THE
ORIGINAL

April 12, 1991

Dear Registrars,

I am an Alaska native and a Subsistence user. My subsistence lifestyle has been affected. Subsistence is a very important part of my life and my family. I do not think our subsistence food is safe to eat and that we have lost something ~~very~~ that is a very important part of my life. I do not think the State or the Federal Government or

Exxon will even try to restore our subsistence - how can they - they don't understand how much subsistence means to me or what subsistence is.

I fear we have lost a lot of our subsistence foods such as clams, mussels, bivalves, snails, seaweed, Salmon, bottomfish and crab - also our fish. I think they will destroy by the Exxon oil spill. The studies released by the Federal government show that the subsistence is very much affected. I want to see the subsistence restored, the fishing closed and the fishing industry controlled.

I do not think any of the settlement should go to the victims of violent crimes - that makes me mad and that is very unfair. The true victims are people of the Prince

The settlement is unique and irreplaceable
for the villages that are affected by
the Exxon Oil Spill and I hope we
any of the settlement or as the
beaches cleaned, the subsistence and
lands restored.

I would like to know why the Federal
Government & the State Government left the
affected villages to fight on their own.
Are we not citizens of Alaska - Aren't
you supposed to protect our rights
and interests? Do we count? The
State / Federal governments have neglected
the villages long enough. How are
we all going to sleep at night
with a clear conscience?

I am concerned with the long
term effects on our subsistence?
Will it be restored? Will ~~it~~
it ever really be able to get our
foods again?

The Exxon Oil Spill has caused me
and our village a lot of mental stress,
physical and spiritual stress. Will
we ever heal from this disaster to
our life style?

I feel even though I am writing

unheard and we are writing to you
our legislators for nothing. Please
write to me otherwise.

Sincerely,

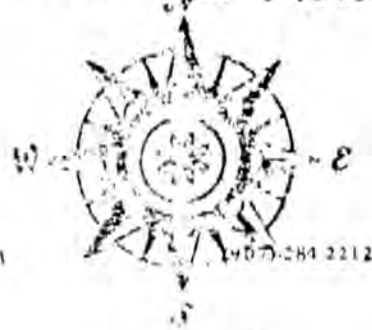
Francis Roman

Directed Assistant U.S.

PATRICK NORMAN

**PORT
Graham**
CORPORATION

VIA POST OFFICE BOX 1000 • PORT GRAHAM • ALASKA 99603



April 12, 1991

Alaska State Legislature
Oil Spill Settlement Committee
P.O. Box V
Juneau, AK 99811

Dear Committee Members:

I am President of Port Graham Corporation, an Alaska Village Corporation which owns or has selected lands around lower Cook Inlet, the Gulf of Alaska and the Kenai Fjords area. Port Graham Corporation has approximately 190 shareholders, the majority of whom live in Port Graham and other communities on the Kenai Peninsula.

The oil spill has had a devastating effect upon our local economy. All seasonal jobs have been lost because the cannery has not operated in several years. We lost our lease on account of the oil spill. We have not been able to attract a new lessee, because of concerns over oil contamination.

Our shareholders are, for the most part, traditional and subsistence oriented. Port Graham Corporation, in order to fulfill its obligations as a village corporation, has not developed its lands, so that we can guarantee a subsistence base for our shareholders.

We have been involved in the oil spill litigation for two years. When Exxon settled with the processors, it would not settle with us. We have received no reimbursement from Exxon for the closure of our cannery, the resulting loss of jobs and pressure on the corporation's scarce resources to take care of its shareholders, the tremendous costs the corporation incurred over the first summer of the oil spill in attempting to protect our land, or for any of the other extraordinary costs on account of the oil spill.

We have worked closely with the state, our people have answered innumerable questionnaires, thrown open their doors

ALASKA LEGISLATURE
OIL SPILL SETTLEMENT COMMITTEE
Page 2

to the state scientist studying the effects of the oil spill, and we have coordinated with state and federal cleanup efforts to the point where that becomes virtually our sole occupation during the summer months. We are, of only two communities in the oil spill area which did not receive local response project funds. We did not receive those funds because the Kenai Peninsula Borough had its own plans for oil spill response, which did not include our lands within the Borough. Thus, even while other communities were able to provide some employment for their residents displaced by the oil spill, we were unable to do so, and at the same time we incurred enormous expenses.

The Rocky Bay, Windy Bay area in the Gulf, which we own, continues to be highly toxic, according to state and federal studies. Yet, even though Port Graham and its shareholders contributed to the study assessments, we have not been permitted any information as to the likelihood of recovery of the polluted ecosystems, ecosystems upon which we depend. The attorney general has said that the studies would not be released because of litigation. The only reason we can figure for not releasing the studies is that the damages assessments would indicate the state is settling for an amount which would mean that the ecosystem recovery and resource damages are not being adequately compensated, and ~~we~~ does not want either you or us to know this.

As citizens of the State of Alaska, we have a direct interest in the state's success in resource and ecosystem restoration. Yet, the State's settlement has not been shown to be adequate to compensate for those damages and restoration expenses into the future. It does not make sense to accept such a situation. Just as I must advise my board of directors by the use of the corporation's professionals, it seems to me that you, the Alaska Legislature, also have a duty on behalf of all of us to make adequate inquiry before agreeing to this proposed settlement. There are too many unanswered questions. My board would not let me get away with something like this. I encourage you not to let the Chief Executive Officer of the so called owner state not get away with it either.

Please make your inquiries. Please take the time you need, and if its another 120 days, try to get it. While you are performing your diligent inquiry, I also hope that you will remember the little people, the displaced residents of Port

ALASKA LEGISLATURE
OIL SPILL SETTLEMENT COMMITTEE
Page 3

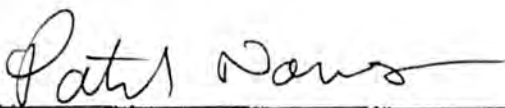
Graham, the fishermen, the cannery workers, area businesses, and the entire state which has been impacted negatively by this oil spill. Even if the state settles, that will not put the matter behind those of us who have suffered the most, but may push us into a closet with no escape.

Thank you.

Very truly yours,

FORTIER & MIKKO, P.C.

By:


Patrick Norman, President

PN:dea:573ltr

WAYNE NORMAN

Dear Legislators.

I am confused, frustrated and angered about how all the matters have been handled by most every one on the Exxon oil spill. Seems like every one doesn't trust the other guy and things aren't getting done the way they should be. If everyone would just sit down be honest with every one we probably wouldn't see all the jockeying around to see who gets richest the fastest.

and just concentrate on how to help the people that were affected and to try and help mother nature the best we can to rebuild itself and make our land back to what it was before. We know we won't make it back to what it was. But we can make it a better place to where everyone can enjoy its beauty, and its place in our lives where we live, and breathe its life and like its beauty.

So lets get together and work out a trust and work together for all Alaska.

Thank

Wayne Norman
Past Governor AK

DAVIS WRIGHT TREMAINE

LAW OFFICES
SUITE 1450 • 550 WEST 7TH AVENUE • ANCHORAGE, ALASKA 99501
(907) 257-5300

DAVID W. OESTING
(907) 257-5323

April 13, 1991

Via-Facsimile
(907) 235-3140

The Honorable Max F. Gruenberg, Jr.
House Judiciary Co-Chair
State of Alaska
District 11-B
Room 118, Capitol
PO Box V
Juneau, Alaska 99811 .

Re: The Exxon Valdez Oil Spill

Dear Representative Gruenberg:

At the request of Mr. Robert Cowan I am providing you with the following statement. I do so as one of the two Court appointed Lead Counsel charged with the leadership and coordination of the litigation of all private sector persons and entities with claims for damages arising out of the Exxon Valdez Oil Spill.

The specific topic which Mr. Cowan asked me to address is framed by paragraph 13, subparts b. and c. of the proposed Agreement and Consent Decree intended by the United States, the State of Alaska and the Exxon defendants to settle the Oil Spill litigation pending between them. More specifically, the precise selection of words contained in these subparagraphs,¹ when juxtaposed to the actual nature of the physical damages to natural resources caused by the Oil Spill and the path of transmission of that injury to private plaintiffs dependent upon the physical condition and biological production of those natural resources for their livelihoods, is serious cause for alarm. The

¹ It should be noted that the same terms are exactly and carefully duplicated and reaffirmed at paragraph III, subparts C-2. & 3., of the proposed Memorandum of Agreement and Consent Decree for settling the litigation between the United States and the State concurrently with the tripartite settlement between the governments and the Exxon defendants.

FAX: (907) 257-5399

BELLEVUE, WASHINGTON • LOS ANGELES, CALIFORNIA • PORTLAND, OREGON
RICHLAND, WASHINGTON • SEATTLE, WASHINGTON • WASHINGTON, D.C.

Max F. Gruenberg, Jr.
April 13, 1991
Page 2

selection of the words ". . . any present right, title, or interest in land or other property interest effected by the Oil Spill;" when analyzed under the legal rules pertaining to the assessment of damages illustrates quite clearly that Exxon (now to be joined by the State and the United States) intends to argue that the future biological output in the form of fish, shellfish and other harvestable products dependent upon the cleanliness and productiveness of Alaska's natural resources, is owned and controlled by the governments to the exclusion of the private and commercial harvesters of such resources. Therefore, the latter persons have no standing to claim damages for diminished future harvestable output of the natural resource assets of this State.

My opinion that the foregoing accurately states Exxon's, and the respective governments, position with respect to recovery for future natural resource damages as they affect private citizens has been distilled from numerous communications and discussions with all parties concerned over a substantial period of time in my role as Lead Counsel for private plaintiffs' Oil Spill litigation efforts. Due to constraints on certain dialogue and/or communications in that process, I am not in a position to cite to any documentation or communication supporting this opinion. However, the simple solution to determine whether it is accurate is to ask the state representatives and Exxon representatives whether a commercial fisherman in Prince William Sound or the Kodiak archipelago has a claim for economic losses suffered by reason of diminished salmon production in the future caused by the Oil Spill. If that question is answered in the negative, there can be no doubt as to the intent and objectives of the governments and the Exxon defendants with respect to such claims under their settlement agreements.

I hope the above is responsive to your inquiry as presented to me by Mr. Cowan.

Very truly yours,

DAVIS WRIGHT TREMAINE

David W. Oesting

\\27510\\1\\Gruen491.ltr

P-R

April 13, 1991

My name is Karl Pulliam, a Seldovia resident, subsistence lifestyle family person, and a Cook Inlet waters fisherman.

Money does not make everything right. A lot of what must happen, must happen within each of us, our attitudes, our priorities; from a homeless person to the CEO of Exxon. This settlement is an opportunity for a degree of rightness. Exxon has offered a great deal of money, how we spend it will reflect our attitudes and priorities. In spill responses, I was told by oil experts, the #1-priority is containing the oil, keeping it off the beaches is #2. With the Exxon settlement, we have a chance to insure that those priorities are met. Many Alaskan coastal citizens have been voluntarily working overtime to address this issue of response. Adequate funding so response plans and equipment are in place is a MUST from this settlement. A tanker passes through Cook Inlet waters on the average about once every 1.5 days, yet, there is no escort vessel available for this tanker traffic! NONE! If a spill occurred right now, the trained SOS Team here in Seldovia has a paltry 2000 feet of boom for response. But, WE WOULD RESPOND! With this money from Exxon, response equipment and programs for training could be funded. The RCAC, Cordova's Oil Spill Recovery Institute, the SOS Team, and, similar planning and response organizations coast-wide could help provide response readiness. As a coastal citizen, I am one of the people that shoulders the brute force of the next spill, my whole lifestyle is at stake. I'm not here to stuff my pockets, I'm here to ask that you be sure to provide what we're working for, DOLLARS FOR RESPONSE. That would be a degree of rightness

In closing, for me, the only event that had the same feelings of betrayal, helplessness, and loss forever that the Exxon spill had, was the death of my Dad. He died from Alzheimer's...rather quickly...I was lucky according to other Alzheimer victims. Now, if someone came up to me with a million dollars and said, "Here, this is for your Dad's death, it's from the entity that had him die.". I couldn't accept that for myself... Go ahead, picture yourself in a similar situation, the drawn out death, the loss of control, of person... but... I would want that money to go to the people who were treating, preventing, or responding to Alzheimer's. Wouldn't you? Exxon settlement funds MUST provide for response!

Thank you for listening,

SELDOVIA

1. Mike Balough - less herring ... should be here by
no dollies now.
no salmon

We don't know impacts yet!

2. EXXON CLEAN-UP

\$35M

\$26M Survey

\$19M FOR CLEAN UP

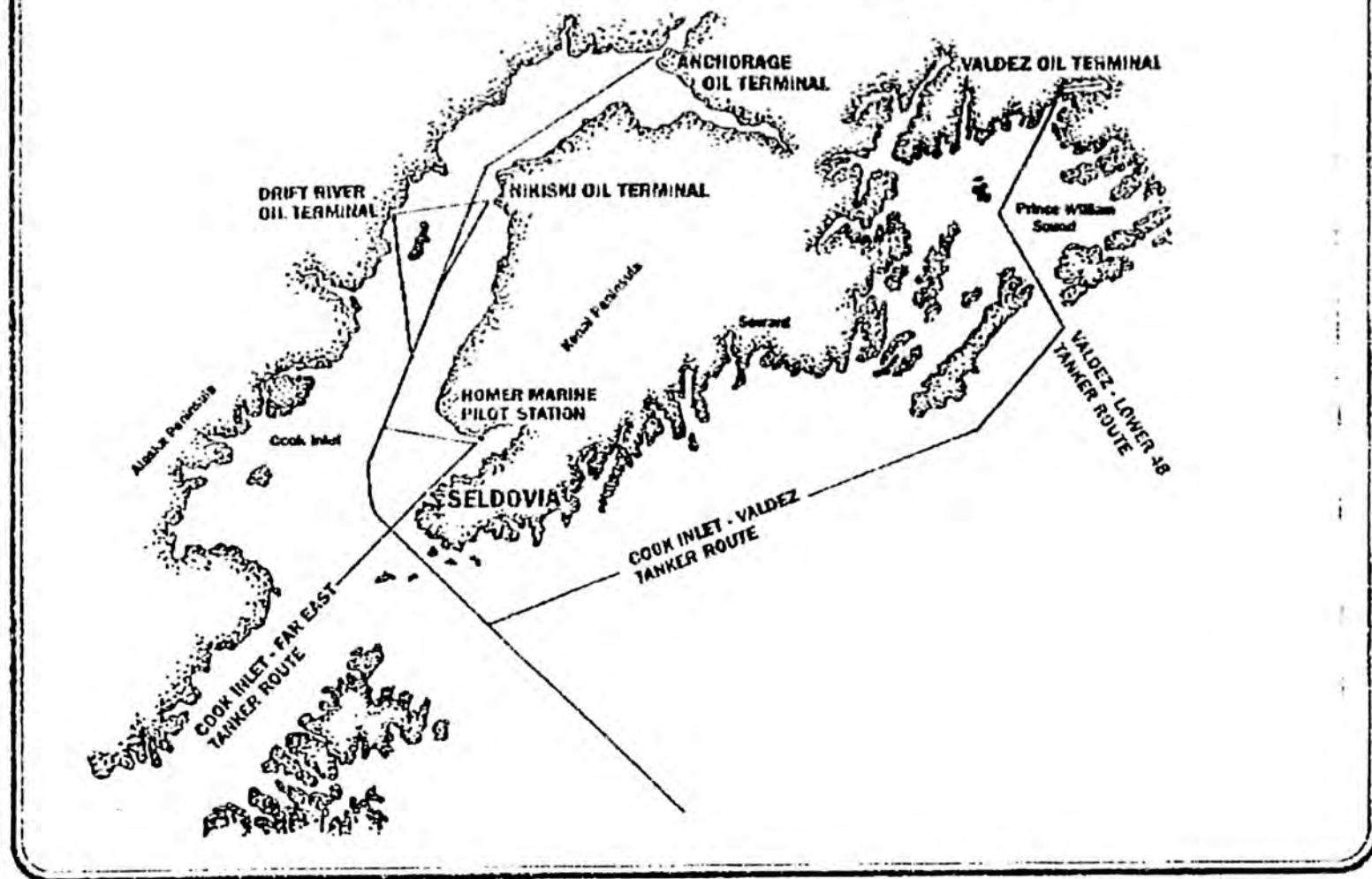
Meetings & Parties
at Capt'n Cook Hotel in Anchorage

This is other cut the beaches to be considered
on the Kenai Peninsula from 200 to 400.

Everyone knows there is still lots of oil in some beaches
out there.

SELDOVIA

MAP OF COOK INLET TANKER ROUTES



SELDOVIA

What the People of Seldovia Have Done...

- * DURING THE SPILL WE DESIGNED AND MADE 20,000' OF BOOM
- * WE ORGANIZED A SKIMMING TASK FORCE THAT COLLECTED MORE THAN 100,000 GALLONS OF OIL AND DEBRIS FROM THE WATER
- * WE'VE GROWN TO UNDERSTAND THE RISK OF LIVING IN THESE DAYS OF OIL PRODUCTION
- * WE'VE BEGAN A RECYCLE PROGRAM TO HELP REDUCE OUR IMPACT ON THE ENVIRONMENT
- * WE FORMED THE S.O.S. TEAM TO ORGANIZE OURSELVES TO RESPOND TO FUTURE SPILLS, THE FISHERMEN CONTRIBUTED WAGES TO FORM THE TEAM, THE CITY GRANTED US FUNDS, THE SELDOVIA NATIVE ASSOCIATION FUNDED SOME OF OUR TRAINING. VOLUNTEERS HAVE DONATED THOUSANDS OF HOURS TO MAKING THE S.O.S. TEAM REAL.
- * THERE ARE NOW FISHING 75 BOATS ON OUR VESSEL LIST
- * WE HAVE 40 MEMBERS, MOST HAVE HAZMAT TRAINING AND OIL SPILL CLEAN UP EXPERIENCE
- * WE KNOW THE ONLY HOPE OF SUCCESSFULLY RESPONDING TO AN OIL SPILL IS TO BE PREPARED TO RESPOND IMMEDIATELY WHEN A SPILL HAPPENS
- * WE'VE SHOWN OUR WILLINGNESS TO PARTICIPATION IN PARTNERSHIP WITH THE INDUSTRY AND THE STATE IN THE PROTECTION OF THE COASTAL WATERS ON WHICH WE DEPEND.



SELDOVIA

PROMISES NOT KEPT



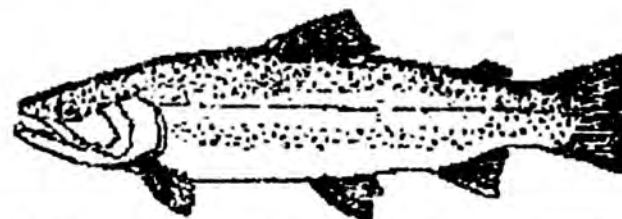
- * THE INDUSTRY PROMISED US NOT TO SPILL OIL INTO THE WATER
- * THE INDUSTRY PROMISED TO BE READY TO CLEAN UP SPILLS
- * THE GOVERNMENT PROMISED TO MAKE THE INDUSTRY DO THE ABOVE
- * DOUBLE HULL TANKERS WERE PROMISED IN THE 1970'S
- * EXXON PROMISED TO CLEAN UP THE OILED BEACHES
- * THE STATE PROMISED TO CREATE VOLUNTEER RESPONSE CORPS.
- * EXXON PROMISED TO MAKE OUR ECONOMY WHOLE AGAIN

NOW YOU PROMISE THAT THE SETTLEMENT IS A GOOD DEAL FOR EVERYONE INVOLVED. CAN WE TRUST YOU?

SELDOVIA

CONTINUING IMPACTS

- * LOWER C.I. HAD WORST SALMON FISHING YEAR SINCE 1976
LESS THAN 1/2 AVERAGE HARVEST
25% OF ADF&G PRESEASON FORECAST
- * PRICE DECLINE IN SALMON IS RELATED TO EXXON VALDEZ
- * SUBSISTENCE - PEOPLE ARE STILL AFRAID OF CLAMS
- * CITIZEN'S CONFIDENCE IN GOVERNMENT AND INDUSTRY LOW
- * SOCIAL/CULTURAL IMPACTS CONTINUE
- * THE FEDERAL GOVERNMENT HAS RECENTLY ADMITTED
WHAT WE ALREADY KNEW, THE IMPACTS TO THE
LAND AND WATERS
ARE REAL AND
CONTINUING.



SELDOVIA

WHAT WE NEED?

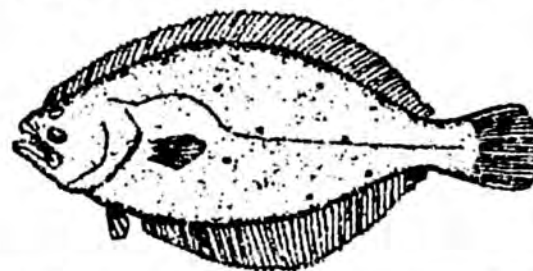


- * THE GOVERNOR TO APPOINT A LOCAL REPRESENTATIVE TO THE TRUSTEES
- * THE COMMITMENT TO THE FUNDING OF LOCAL RESPONSE CORPS ADEQUATELY TRAINED, EQUIPPED, AND DRILLED TO RESPOND TO FUTURE SPILLS
- * THE RESTORATION OF OUR SALMON FISHERIES
- * THE RELEASE OF ALL SECRET SCIENCE DETERMINING THE IMPACT ON OUR COAST AND COMMUNITIES, LET THE TRUTH BE KNOWN.

SELDOVIA

CONTINUING RISKS

- * LOWER COOK INLET STILL HAS NO RESPONSE CAPACITY
- * ALMOST 200 TANKERS PASSED WITHIN 3 NM OF WHERE YOU ARE SITTING DURING THE PAST YEAR.
- * TANKERS IN LOWER COOK INLET CAN NOT ANCHOR IF THEY LOSE POWER
- * THERE HAVE BEEN FOUR TANKER INCIDENTS IN COOK INLET IN THE LAST TWO YEARS
- * THE FISHERMEN AND OTHERS THAT MAKE THEIR LIVING ON THIS COAST SHOULD A DISPROPORTIONATE RISK COMPARED WITH OTHERS THAT BENEFIT FROM USING THE OIL THAT FLOWS BY THE COAST
- * THE RISK OF ANOTHER OIL SPILL IMPACTING OUR COAST IS REAL AND CONTINUING



TESTIMONY GIVEN IN CORDOVA, ALASKA
APRIL 14, 1991
MELYSSA L. RICE

My name is Melyssa Rice. I am an Alaska resident and a new resident of Cordova. I have spent four years in the fishing industry, and was employed in the State of Alaska's Oil Spill Response Center in Valdez following the Spill.

My job with the State was to process evidence gathered and generated by the State for use in it's lawsuit against Exxon and Alyeska. I viewed, read and absorbed virtually every piece of evidence in that office. You could say I have intimate knowledge of the State's case.

I took an oath of confidentiality and am bound by conflict-of-interest laws because of the legal nature of my position. I take them very seriously. But neither will prevent me from stating my point of view regarding this settlement, because I believe it is my duty as a resident of Alaska and as a citizen of the earth.

From what I learned, the State has an excellent case against Exxon and Alyeska. There is no doubt that the State was injured by the Spill. It is not a question of whether the State will win or not; the question is how much it will win. I would like to see the case go to trial. I believe anyone who worked on the case would like to see a trial, to see the fruits of their labor. But, there are other reasons I oppose the settlement, much more important reasons.

Number 1: WE ARE SELLING OURSELVES SHORT.

I believe, both from the evidence that I viewed, and from logical deduction and simple arithmetic, that a jury will award much more than the current settlement. Our loss has been far greater than the proposed amount. We have nothing to gain by settling now, and much to lose. Any additional attorney's fees will be covered in the verdict; that is a standard practice. Why settle for less than we deserve, and much less than we can get? I hesitate to speculate on the reasons why our officials gave in this early. Settling for this amount sells ourselves, our state, and the thousands of animals who died very, very short.

Number 2: THIS SETTLEMENT IS PREMATURE.

The NRDA summary predicts that 70% of eggs spawned in oiled streams won't survive to become mature pink salmon in 1991; it shows that hatchery fish returns decreased 50% in oiled areas last year; it shows deformities in salmon larvae. A worst case scenario is vastly decreased wild and hatchery stocks in 1991 and beyond, widespread deformities, and a ruined herring run every three years. There is potential

for an economic disaster in this state; such a disaster is not covered under the current settlement. The point is, really, that we just don't know yet. We won't even begin to know until this summer, when the first exposed species return to the Sound. Why settle now, right before the first real evidence of long-term effects comes in? Better yet, why is Exxon pushing for a settlement now? We could really slit our own throats by settling now. At the very least, we should wait until this summer's run is analyzed. Anything earlier than this fall is extremely premature.

Number 3: THIS LAWSUIT WILL MAKE LEGAL HISTORY.

If allowed to go to trial, this lawsuit will set a legal precedent, settling out of court does nothing to legal history. Beyond that, court proceedings will reveal invaluable evidence. A case of this magnitude has never been trial in environmental law. By bringing it to trial, the State, it's officials and it's people can make history in a very positive sense. Instead of Alaska being famous for the worst oil spill in the United States, it could be famous for safeguarding the environment - the place where justice was done. History would really be made if that evidence comes to light; I know. I read it. The State has a rare opportunity to expose the damaging evidence so that a disaster like this never happens again. Slapping Exxon on the wrist with a token fine teaches nothing; a searing, soul-searching investigation by trial into the heart of the beast would teach plenty. Yes, the same light will shine back on the State, and it may not always be pretty. But the little that the State will suffer should not prevent it from taking this opportunity to make history, to change environmental policy, and to influence environmental law throughout the world. It's a frightening, giant step toward saving this planet for our children. But, it's usually the most difficult projects that do the most good. It's the right thing to do.

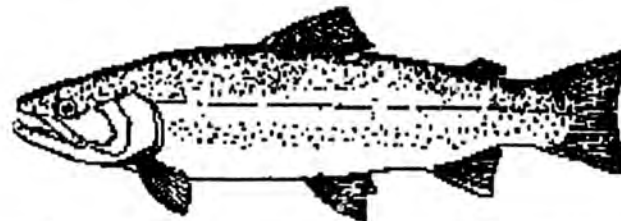
Thank you for your time.

From. Tim Robertson
President
S.O.S Team, Seldovia

SELDOVIA

CONTINUING IMPACTS

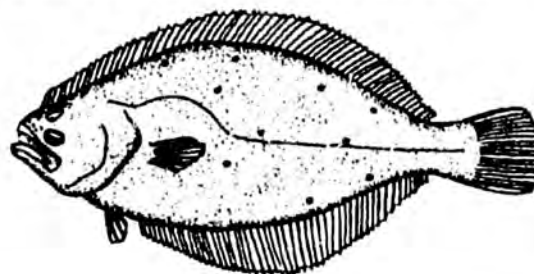
- * LOWER C.I. HAD WORST SALMON FISHING YEAR SINCE 1976
LESS THAN 1/2 AVERAGE HARVEST
25% OF ADF&G PRESEASON FORECAST
- * PRICE DECLINE IN SALMON IS RELATED TO EXXON VALDEZ
- * SUBSISTENCE - PEOPLE ARE STILL AFRAID OF CLAMS
- * CITIZEN'S CONFIDENCE IN GOVERNMENT AND INDUSTRY LOW
- * SOCIAL/CULTURAL IMPACTS CONTINUE
- * THE FEDERAL GOVERNMENT HAS RECENTLY ADMITTED
WHAT WE ALREADY KNEW, THE IMPACTS TO THE
LAND AND WATERS
ARE REAL AND
CONTINUING.



Tim Robertson

CONTINUING RISKS

- * LOWER COOK INLET STILL HAS NO RESPONSE CAPACITY
- * ALMOST 200 TANKERS PASSED WITHIN 3 NM OF WHERE YOU ARE SITTING DURING THE PAST YEAR.
- * TANKERS IN LOWER COOK INLET CAN NOT ANCHOR IF THEY LOSE POWER
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- * THE RISK OF ANOTHER OIL SPILL IMPACTING OUR COAST IS REAL AND CONTINUING



SELDOVIA

PROMISES NOT KEPT



- * THE INDUSTRY PROMISED US NOT TO SPILL OIL INTO THE WATER
- * THE INDUSTRY PROMISED TO BE READY TO CLEAN UP SPILLS
- * THE GOVERNMENT PROMISED TO MAKE THE INDUSTRY DO THE ABOVE
- * DOUBLE HULL TANKERS WERE PROMISED IN THE 1970'S
- * EXXON PROMISED TO CLEAN UP THE OILED BEACHES
- * THE STATE PROMISED TO CREATE VOLUNTEER RESPONSE CORPS.
- * EXXON PROMISED TO MAKE OUR ECONOMY WHOLE AGAIN

**NOW YOU PROMISE THAT THE SETTLEMENT IS A GOOD
DEAL FOR EVERYONE INVOLVED. CAN WE TRUST YOU?**

SELDOVIA

What the People of Seldovia Have Done...

- * DURING THE SPILL WE DESIGNED AND MADE 20,000' OF BOOM
- * WE ORGANIZED A SKIMMING TASK FORCE THAT COLLECTED MORE THAN 100,000 GALLONS OF OIL AND DEBRIS FROM THE WATER
- * WE'VE GROWN TO UNDERSTAND THE RISK OF LIVING IN THESE DAYS OF OIL PRODUCTION
- * WE'VE BEGAN A RECYCLE PROGRAM TO HELP REDUCE OUR IMPACT ON THE ENVIRONMENT
- * WE FORMED THE S.O.S. TEAM TO ORGANIZE OURSELVES TO RESPOND TO FUTURE SPILLS, THE FISHERMEN CONTRIBUTED WAGES TO FORM THE TEAM, THE CITY GRANTED US FUNDS, THE SELDOVIA NATIVE ASSOCIATION FUNDED SOME OF OUR TRAINING. VOLUNTEERS HAVE DONATED THOUSANDS OF HOURS TO MAKING THE S.O.S. TEAM REAL.
- * THERE ARE NOW FISHING 75 BOATS ON OUR VESSEL LIST
- * WE HAVE 40 MEMBERS, MOST HAVE HAZMAT TRAINING AND OIL SPILL CLEAN UP EXPERIENCE
- * WE KNOW THE ONLY HOPE OF SUCCESSFULLY RESPONDING TO AN OIL SPILL IS TO BE PREPARED TO RESPOND IMMEDIATELY WHEN A SPILL HAPPENS
- * WE'VE SHOWN OUR WILLINGNESS TO PARTICIPATION IN PARTNERSHIP WITH THE INDUSTRY AND THE STATE IN THE PROTECTION OF THE COASTAL WATERS ON WHICH WE DEPEND.



SELDOVIA

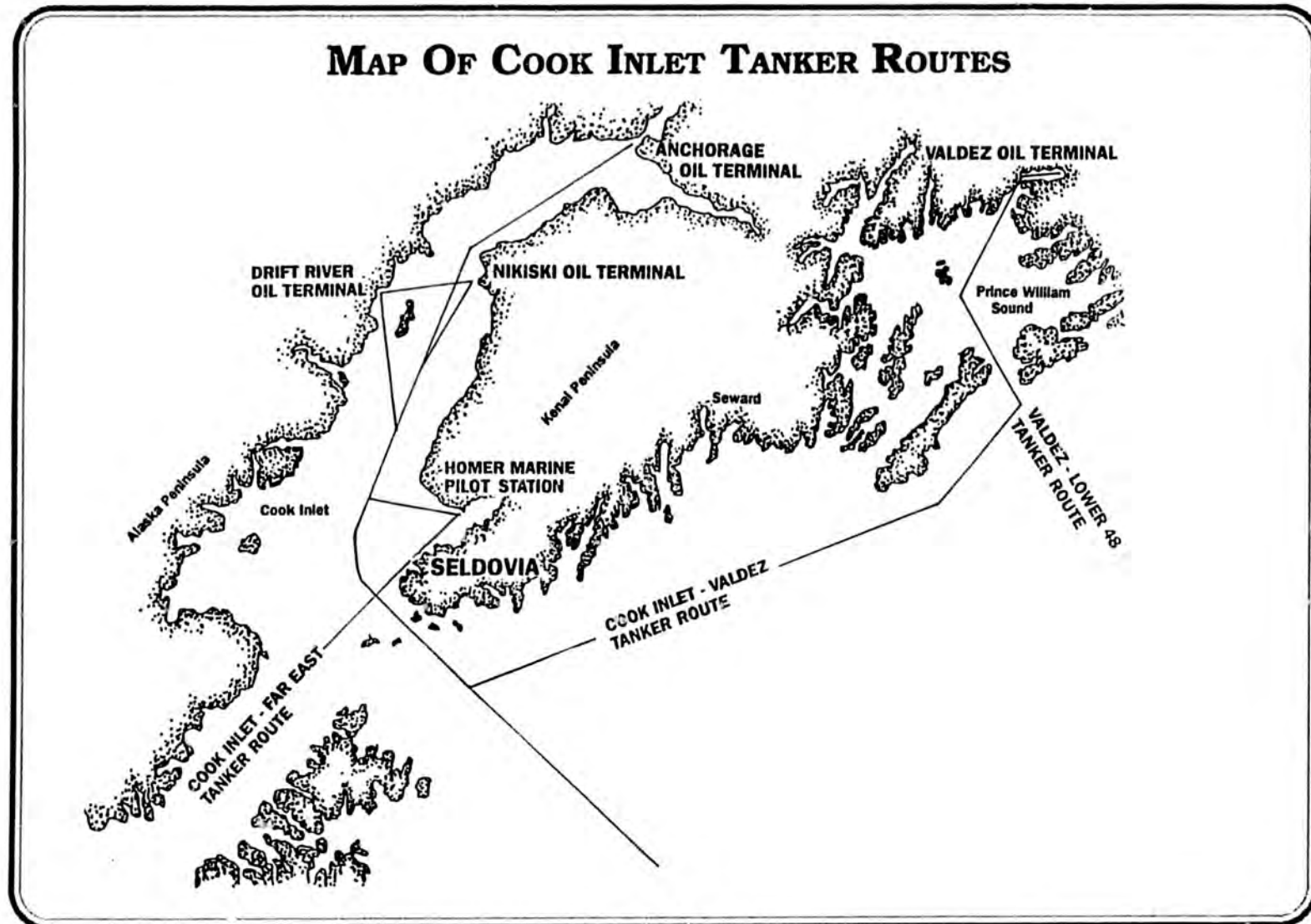
WHAT WE NEED?



- * THE GOVERNOR TO APPOINT A LOCAL REPRESENTATIVE TO THE TRUSTEES
- * THE COMMITMENT TO THE FUNDING OF LOCAL RESPONSE CORPS ADEQUATELY TRAINED, EQUIPPED, AND DRILLED TO RESPOND TO FUTURE SPILLS
- * THE RESTORATION OF OUR SALMON FISHERIES
- * THE RELEASE OF ALL SECRET SCIENCE DETERMINING THE IMPACT ON OUR COAST AND COMMUNITIES, LET THE TRUTH BE KNOWN.

SELDOVIA

MAP OF COOK INLET TANKER ROUTES



S-U

DR. SANDERS



AMERICAN INSTITUTE OF PROFESSIONAL GEOLOGISTS

11661 Rockridge Dr.
Anchorage, AK, 99516
March 21, 1991

House Oil Spill Committee
Pouch V
Juneau, AK 99811

Dear Sirs:

The Alaska Section, American Institute of Professional Geologists, a Certifying organization akin to your ABA, is 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.

We feel that 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, NOAA would better serve the worldwide scientific community in sponsoring the dissemination of data gained through these studies. Happily, the U.S. Forest Service has already opened an office for such purpops, and at least one of NOAA's experts is already describing study results on the Lecture Circuit.

Whereas most of 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; we feel that that portion of the settlement be deleted.

Respectfully,

Dr. Robert B. Sanders
Dr. Robert B. Sanders
Legislative Affairs Committee

Mr. Eric Opstad
President, Alaska Section

CITY OF SEWARD

P.O. BOX 167
SEWARD, ALASKA 99664



DARRYL Schaeffermeyer

- Main Office (907) 224-3331
- Police (907) 224-3338
- Harbor (907) 224-3138
- Fire (907) 224-3445
- Telecopier (907) 224-3248

February 13, 1991

*Seward
testimony*

Attorney General Charles Cole
Department of Law
P O Box K - Mail Stop 300
Juneau, Alaska 99811

VIA FACSIMILE
CONFIRMING COPY MAILED

RE: Settlement with Exxon

Dear Mr. Cole:

The rumors are flying about the settlement with Exxon and, at the risk of adding to the already complex matrix of issues you are confronting, I want to give you a local perspective from a community that has been careful to remain out of the process.

Early on in the oil spill the City Council of Seward decided, after much consideration, that the City of Seward would not be best served by actively pursuing litigation against the oil companies as a result of the EXXON VALDEZ disaster. Indeed, the "Seward approach" has been, we believe, a model for other communities and perhaps even the State to consider. We are very pleased that the new administration's first priority has been to re-align the State to Seward's approach.

The City was disappointed with previous representation of the local communities by the State, and we are encouraged that your efforts may lead to a resolution that is in the best interest of all Alaskans. Before the ink is dry on any agreement, we believe it is critical that the local communities be considered and consulted, at least on an informal basis to make sure overall State aims do not conflict with local interests and concerns.

To that end, we offer the following comments on issues that concern us.

1. Any "set-aside" of lands in Prince William Sound may have direct and long-term impacts on the economies of the local communities. In Seward, for example, the City has been active in providing lease land for the Chugach Alaska sawmill. It would be a shame for that investment in diversifying our economic base to be adversely affected by some resolution of the oil spill litigation. We fear some in Alaska may wish to lock Prince William Sound away and to do so will quite literally lock away Seward's future as well. We have seen too many instances of government "planning" that result in nothing more than placing our local community's future in the hands of some one else - usually some federal official!

2. Although we would prefer to be represented by state rather than federal government, we are frankly becoming distrustful of being "protected" by the state of Alaska. In our experience the biggest and most effective interest group is the state bureaucracy, and to a great extent local concerns received no more than condescension from state officials in dealing with the oil spill. The "oiled mayors" group was a desperate effort by local officials to politically force some participation in the aftermath of the oil spill. Only when all the affected mayors got together in front of the television were we able to get state representatives to meet with us. Even then, we were left on our own to try to get our out-of-pocket costs reimbursed by Exxon. Please don't assume that we have been consulted by those advising.

3. The city of Seward is committed to a long-term major effort to learn more about how responsible development and our Alaskan way of life can both be promoted. To that end, the City Council has provided financial and other support for the development of the research and scientific centers so necessary for this accommodation. Again, all we have to work from are rumors and speculation, but we are concerned that funding of long-range programs may also be "captured" by particular interests that are not as balanced as those in Seward.

4. Finally, our experience in developing a local diversified economy have taught us that a community with fishing, oil, industry and education interests can promote responsible development. Seward is the center for fishing, university research, vocational education, industrial, shipping and other businesses that are viewed by some, perhaps, as being incompatible with each other. Our experience is that a local community can provide accommodations for these different interests. We hope the State, in structuring a settlement, has the same goals in mind. We are concerned that the settlement process may be captured by a particular group of interests that are not representative of Seward.

The City of Seward does not really want to become involved in litigating over the oil spill. We think our time and efforts should be directed toward the future, not the past. We are very pleased that your efforts seem to be aimed in the same direction. All we ask is that you take our experiences and interests into account when mapping a settlement that will probably affect Seward as much, or more, than any other local community. Let's work together on this.

Very truly yours,


Darryl Schaefermeyer
City Manager

cc: Max Hodel, Chief of Staff

Greg Seider
RCD



UNITED FISHERMEN OF ALASKA

211 4th Street, Suit 112
Juneau, AK 99801
907-586-2820
Fax# 907-463-2545

April 26, 1991

MEMBER ASSOCIATIONS

Alaska Crab Coalition
Alaska Independent Fishermen's
Marketing Association
Alaska Longline Fisherman's
Association
Alaska Trollers Association
Bering Sea Fishermen's Association
Bristol Bay Driftnetters Association
Concerned Area 'M' Fishermen
Cook Inlet Aquaculture Association
Copper River Fishermen's Cooperative
Cordova District Fishermen United
Kenai Peninsula Fishermen's Association
North Pacific Fisheries Association
Northern Southeast Regional
Aquaculture Association
Peninsula Marketing Association
Petersburg Vessel Owners Association
Prince William Sound
Aquaculture Association
Prince William Sound Seiners Association
Seafood Producers Cooperative
Southeast Alaska Seiners
Southern Southeast Regional
Aquaculture Association
United Cook Inlet Drift Association
United Southeast Alaska Gillnetters
Western Alaska Cooperative
Marketing Association

Alaska State Legislature
P.O. Box V
Juneau, Alaska 99801

Dear Legislator:

The United Fishermen of Alaska is pleased with Judge H. Russell Holland's decision to reject the proposed criminal settlement in the Exxon Valdez oil spill case.

In addition, our organization is opposed to the proposed civil settlement as it now stands. We and our affected members believe there are items which must be included in a civil settlement offer before it would be acceptable to Alaska's fishers. These include:

- * the release of all spill data which have been financed by public funds;
- * payment for cleanup and restoration should originate from two different funds;
- * settlement funds should be used for restoration, rehabilitation and acquisition of equivalent resources, not for capital construction projects;
- * removal of clause which allows the use of settlement funds outside of Alaska;
- * retain state's right to pursue criminal and civil charges against Alyeska, including claims for natural resource damages; and
- * any monetary funds arising from a settlement should be paid in full or with interest.

This settlement offer, like most first offers, presents the Legislature a good starting point. We hope that future offers will include those items which we feel are currently lacking. In the meantime, the United Fishermen of Alaska remains available if we should be of assistance to you in any further negotiations.

Very truly yours,

Greg Seider _{mb}

Greg Seider
Executive Director

mb

Philip Shapland

*no address
no thank you written*

April 18, 1991

APR-18-91 THU 14:49

LAW OFFICES 330 L STREET

FAX NO. 9072786571

P. 01

Dear Senators and Representatives:

If the proposed settlement between the State of Alaska and Exxon Corporation over the damages stemming from the Exxon Valdez oil spill is approved by the legislature, it will be a tragedy of even greater proportions than the oil spill itself, and will be recorded by history as one of the greatest thefts of money rightfully belonging to the public -- specifically, to the citizens of Alaska -- of all time.

The proposed settlement is a sham, a fraud, and a "sell-out" by certain friends of the oil industry who happen to be in positions of political power at the moment.

If any of you or your families had sustained such grievous injury at the hands of one of the world's largest and wealthiest corporations, and you were advised by your attorney to accept a settlement proportional in amount and corresponding in terms to those proposed in the Exxon case, you would do well to run -- not walk -- to a new attorney who was truly interested in and capable of representing the interests of yourself and your family, as opposed to those of the party who had done the harm in the first place. Further, you might in good faith contemplate and initiate a malpractice action against the attorney who had given you such blatantly bad advice.

I urge you on behalf of all the citizens of Alaska to refuse to be party to this so-called "settlement", and further, urge you to see that justice is eventually done in this, one of the most outrageous cases in our history.

Signed,

Philip Shapland

Philip Shapland
Anchorage, Alaska

15 APR 1991

A PARTIAL 1991 CHRONOLOGY OF EXXON SETTLEMENT EVENTS

by Joe Sonneman

GOVERNOR MEETS PRESS, Jan-Feb. ?

Responding to 2nd floor saying that "a governor can cut, but he can't add," Gov. Hickel says perhaps he can find a way to "multiply."

HOUSE JUDICIARY, February dates

AG repeatedly refuses to answer Committee questions about settlement progress and clauses, alleging incomplete answer-preparation process.

HOUSE JUDICIARY, 3/7

Asked if his repeated failure to answer Committee questions, on deadlines he chose, was an effort to stall the Committee until after the settlement was complete, the AG says "What difference would that make?"

AG says legislative involvement in negotiation process or settlement approval would be "highly ill-advised public policy."

HOUSE JUDICIARY, Feb-March??

AG says some settlement negotiators do not want Legislature to be able to appropriate to any purpose.

HOUSE SETTLEMENT REVIEW COMM., ??

AG says negotiators had "no substantive discussion" of Legislature's power to appropriate.

AG does not answer Rep. Gruenberg question re: any discussion of dividing the damaged resources between Alaska and U.S. governments. Gruenberg asks again if "any discussion." AG then says he did not discuss that with U.S. Asst. AG Stewart.

AG says Hickel got idea for \$1.2 billion figure from "intuition."

SENATE SETTLEMENT REVIEW COMM. ??

AG says Hickel got idea for \$1.2 billion figure from analysis.

HOUSE SETTLEMENT REVIEW COMM, 4/5

AG says some settlement negotiators "who shall remain nameless" do not want Congress to control funds.

AG tells Rep. Hudson that the Legislature can not have "advise and consent" power over Trustee spending, but may have advisory-only role.

Rep. Barnes says that some damaged natural resources were State assets, that money recovery for that damage must thus also be a State asset even if not so called, and that only the Legislature can appropriate State assets. "So I have a constitu-

tional problem" with the proposed settlement's Executive branch trustee control of most settlement money.

SENATE SETTLEMENT REVIEW COMM., 4/6

AG says he considered alternative, that Legislature might want to fund restoration, would need half of Exxon money and Legislature might want to spend it on education.

Private lawyer questions settlement amount as inadequate, especially upset that no trial means no chance of punitive damages.

AG says he would consider releasing data if Legislature asked him to do so by a joint resolution. Sen. Eliason asks why the Legislature would want to take Cole off the hook and put themselves on it.

CONG. MILLER LETTER, 4/8

U.S. Rep. George Miller writes Judges Holland & Sporkin that: "Exxon and the other owner companies which control Alyeska: (1) knew that Alyeska could not effectively respond to an oil spill in Prince William Sound; (2) failed to make necessary improvements in Alyeska's oil spill response capabilities; and (3) secretly decided that Alyeska would not respond to an oil spill in Prince William Sound in the manner prescribed by Alyeska's Oil Spill Contingency Plan."

Cong. Miller includes photocopy telex evidence as proof, asks the judges not to accept plea bargain.

SENATE MEMORANDUM, 4/8

Findley writes that possible constitutional issues exist, both as to dedicated funds--because settlement receipts mostly for special purposes, though "federal programs" exception may apply--and as to the power only of the Legislature to appropriate--because Trustees, not Legislature, disburse Exxon settlement payments.

FEDS RELEASE STUDY SUMMARY, 4/9

U.S. Govt. releases summary of scientific studies, showing spill damage as reportedly twice the level previously known.

LEGISLATOR COMMENTS, 4/6-9

Rep. Sharp observes that if State & Federal trustees are not unanimous, a single Federal judge

decides, and "our batting average is not good before Federal judges."

Rep. Koponen says Hickel administration was "relying on the settlement as a way of keeping payments out of the Legislature's hands."

Rep. Kubina says settlement "a poorly-negotiated contract, but what's the alternative?" He "won't vote 'No' lightly," because of the District 6 money, likes idea that all settlement funds limited to natural resource restoration purpose, but still has "many questions."

GOVERNOR'S PRESS CONFERENCE, 4/12

Gov. Hickel publicly admits an intent to try to shift the balance of power from the Legislature to the Executive branch.

Gov. says he will stand by DNR Comm'r Heinze as State Trustee, even though Heinze may have acted for ARCO in agreeing not to provide Alyeska the oil spill response capabilities required under the Contingency Plan.

JUNEAU BAR ASSOCIATION LUNCHEON, 4/12

Former AG Baily questions the public policy decision of election to proceed only under the Federal Clean Water Act, rather than advancing some State claims under State law, so that recovery for those claims could flow to the General Fund.

Baily & Asst Revisor of Statutes Findley agree that settlement puts the State on the same side as Exxon, against Alaskan citizen-litigants. They forecast political, public policy problems as legislators are asked to fund litigation against their own constituents. Baily: legal "civil war;" doubts that the State avoids litigation through settlement, if result is only to join State with Exxon defense against many plaintiffs.

Baily says that "the greater the rapidity by which the Exxon VALDEZ spill recedes, the sooner it is politically possible to consider ANWR development." A relationship exists.

Findley says that Clean Water Act limits recovery on a \$/bbl. basis, to much less than under proposed settlement. She says this means either settlement is not wholly under CWA or else Exxon knew it had much bigger liabilities for non-CWA claims.

HOUSE SETTLEMENT REVIEW COMM., 4/12

AG admits to Rep. Brown that no village by village assessment of damages was made.

AG also admits to Rep. Brown that subsistence opportunities were not evaluated.

AG tells Rep. Brown that best-available damage assessment techniques were used.

AG tells Rep. Gruenberg that the "reasonably anticipated" language of the re-opener clause is mutually exclusive with "reasonably known".

AG tells Rep. Gruenberg that language excusing restoration if costs are "grossly disproportionate" to results is "like any other legal test."

AG refuses, despite repeated requests, to provide Rep. Gruenberg and the Committee with a "contractual history" of the whole settlement, offers to provide such a history only for requested parts of the settlement. Rep. Gruenberg says the "re-opener" section would be one such requested part.

HOUSE REVIEW COMM.--in Kodiak, 4/13

AG explains that Alyeska's release from liability was a "deal-breaker" requirement of Exxon, who did not want to settle its own liability only to find itself liable for its part ownership of Alyeska. Rep. Gruenberg notes that this is first time AG said this.

AG tells Rep. Gruenberg that the State would be unable to sue Alyeska for natural resource damages due to Alyeska's independent action, or due to Alyeska's actions on behalf of non-Exxon Alyeska owners, even despite Congressman's Miller's allegations of owner company intentional violations, because of the settlement clause intended to release Alyeska for liability for its actions on behalf of Exxon only.

Aquaculture Assn. says funds promised it by Exxon were not paid.

HOUSE REVIEW COMM.--in Cordova, 4/14

Mayor says, "Don't ask us to trust you; we prefer it in writing, backed by a letter of credit."

Oil Spill Response Center worker says "continue suit;" good evidence exists; Exxon pays costs, fees; you set environmental law precedent.

KRISTIN STAHL-JOHNSON

(Kodiak Testimony)

Kristin Stahl-Johnson
Kodiak Environmental Network
P.O. Box 2661
Kodiak, AK 99615

April 13, 1991

House Special Committee on
Exxon Valdez Litigation Settlement
Alaska State Legislature, Seventeenth Session
P.O. Box V
Juneau, AK 99811

Dear Representatives,

I am grateful for the opportunity to comment on the out-of-court settlement that the Hickel Administration struck with Exxon, but it is difficult to evaluate it without any substantive information on the true value of the damages. I seriously feel that the people of the State are being sold down the river in exchange for future amicable relations with the oil industry. The Legislature never makes budgetary decisions operating in a vacuum. Why are we being expected to make a major financial decision without the information needed to evaluate it?

Is Mr. Hickel aware of the mammoth amount of energy, emotional, financial, and physical, that the Exxon Valdez spill drew from the Alaskan people? It appears that he and his cohorts would like to label us as radical fanatics, placate us with this settlement and get on with the business of oil development. Does Mr. Hickel carry a mandate of the Alaskan people? Clearly not. Please let intelligent, rational processes prevail in Juneau. Insist on obtaining the results of the injury and economic studies that the public paid for before requiring us to make uninformed decisions about this settlement.

Beyond the lack of substantial data, there is circumstantial evidence pointing to the inadequacy of the settlement. The TAPS Fund has \$56 billion claimed against it, but the State's claim to the fund is confidential and therefore not included in that figure. \$900 million looks awfully insignificant in that company.

Furthermore, why are we reducing the amount of the settlement by allowing reimbursements and cleanup costs to come off the top instead of being paid as a separate item? Add those items to inflation over ten years and this settlement's value is reduced by nearly half its face value! The \$2.2 billion that Exxon squandered on the cleanup is a joke. There is case after case in Kodiak alone to prove that they wasted money at every turn, clearly for propaganda reasons. Why are they so willing to throw money away in some cases and then not pay honest reparations for criminal negligence?

And if you accept this settlement or a better one in the future, where is the public input on how the money will be spent? The Memorandum of Agreement between the federal government and the State looks like a bureaucratic black hole. The money could easily get lost in more classified studies that are unavailable to the public, not to mention the millions each trustee will garner for operating costs. The Agreement needs to include a citizens' committee with a vote.

After dealing with some of those same Trustees during the 1989 oil spill cleanup period I feel that it is imperative that a citizens' council with voting power be added to the Trustees. The agreement with the federal government is not in the best interest of the people of Alaska.

I realize that because the federal government has signed off on this agreement, the pressure is on the Legislature to acquiesce. I do pray that the Alaska State Legislature has more fortitude and integrity than that.

Please reject this Settlement and Agreement and send the negotiators back to the table with public input tempered by an adequate evaluation of public data.

Thank you.

Sincerely,



T-V

CHIP THOMA

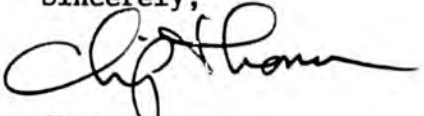
April 12, 1991

Alaska State Legislators
Pouch V
Juneau, Alaska 99801

Dear Legislator,

Attached is my submitted testimony to U.S. District Judge Holland on the proposed settlement of the federal and state charges against the Exxon Corporation, Exxon Shipping, and Alyeska Services Corporation. I hope you take the opportunity to review these comments and consider either new settlement terms or the pursuit of original and new charges through the court system, both federal and state. These are extremely important issues which, if allowed to be settled in present form, will only reinforce the understanding in Congress and the nation as a whole that Alaskans are willing to sacrifice the environment and the trust of many state residents for a very small monetary deposit in the treasury. Thank you for your time and consideration.

Sincerely,



Chip Thoma

TO: Honorable H. Russel Holland
United States District Judge
U.S. District Court
222 W. Seventh Avenue, No. 4
Anchorage, Alaska 99513

April 10, 1991

RE: A 90 - 015 CR

FR: Theodore P. Thoma
#2 Marine Way
Juneau, Alaska 99801

RE: CRIMINAL PLEA BARGAIN PROCEEDINGS
concerning EXXON CORPORATION, EXXON SHIPPING, ALYESKA SERVICES

For the record, I am a self-employed environmental lobbyist and have been closely involved in Alaska resource issues for over 20 years. As such I was a chief proponent for the re-design of the Alyeska pipeline, for an all land route through Canada, and for full environmental safeguards to protect state and national/international waters connected with the eventual marine terminal and tanker route emanating from Valdez. As you are aware, the pipeline and marine route escaped full NEPA court review as a result of Congressional action instigated by the Alaska delegation in 1973. I still believe that NEPA review would have addressed the basic environmental safety and compliance responsibilities that were the root cause of the EXXON VALDEZ disaster, and subsequent inadequate response. My direct comments follow:

- 1) I oppose the agreement to drop the FELONY criminal charges against Exxon Corporation and Exxon Shipping Company (A90-015). I strongly believe that the pursuit of these grand jury charges and probable convictions are the only way to reform the inadequate staffing and competency levels aboard U.S. tankers that service Valdez and the West Coast to Panama. From the week-long live broadcast of the National Transportation Safety Board (NTSB) hearings in the summer of 1989, it was obvious that:
 - A) Mr. Frank Iarossi, former chairman of Exxon Shipping, knowingly cut back the number of crew members aboard the EXXON VALDEZ, compromising safety, stretching the physical ability of crew to competently man this carrier of dangerous, toxic material;
 - B) That Mr. Iarossi, Exxon Shipping, and Mr. Hazelwood, the ship's master, allowed Mr. KAGAN, a known incompetent, to serve aboard the EXXON VALDEZ, against the wishes and counsel of competent crew members who knew of his mental and physical problems, and caused KAGAN to steer the vessel through dangerous, ice-choked waters, resulting in the crash of the EXXON VALDEZ and resultant spillage of 11 million gallons of oil;
 - C) That Mr. Iarossi, Exxon Shipping, and Exxon Corporation knowingly allowed Mr. Hazelwood to operate the EXXON VALDEZ without monitoring his acute alcoholism, and in fact fabricated the small amounts of paperwork in Exxon files relative to Hazelwood's condition. These two reports were without dates or signatures, yet purported to show that monitoring of Hazelwood did occur;

Consequently, I believe that counts IV & V (A90-015) should be reinstated and litigated, and actively pursued by the federal government, as these circumstances were the BASIS of state testimony before the NTSB. The agreement to bring these charges for litigation by the federal government was done in lieu of applicable state laws covering crew safety and competence.

2) Additionally, I strongly believe that the MISDEMEANOR criminal charges against

Exxon Corporation and Exxon Shipping Company are being settled far too cheaply for the great, extensive damages to wildlife over a 700 mile region. It is my understanding that the ALLIED CHEMICAL case was the largest, previous U.S. settlement for environmental damages, at \$13 million. However, this was also 10% of Allied's earnings for that year. EXXON's yearly SALES are over \$100 BILLION; their reported net, yearly earnings are \$5 BILLION; and their NYSE traded stock has gone up 13 points in the last two years, at a estimated value of \$1 BILLION per point. This huge corporation is in effect being given a pittance fine by the plea-bargain, and it in no way should be viewed as a properly negotiated fine for either the extent of damages or the worth of the corporation. Also, as you may be aware, Mr. Lawrence Rawl of Exxon has repeatedly stated to the press that the fines and settlement will in no way impair or harm his company, and that all costs will be immediately passed on the consumer in pump prices. Finally, the overall terms of the settlement, payments over ten years, are an affront to Alaskans and the nation as a whole; once Mr. Rawl 'passes on the costs', consumers will in effect be paying over and over for Exxon's corporate liabilities, while the corporation makes token payments for it's environmental assault on the nation's common resources.

3) Finally, I strongly believe that civil and criminal charges, both felony and misdemeanor, against Exxon, Exxon Shipping and ALYESKA should be reinstituted and pursued by the federal and state governments, based on the complicity, culpability and liability of Exxon and the owner companies of Alyeska to secretly plan non-compliance with terms of agreements struck with the federal and state governments to immediately respond and clean up ANY spill in Prince William Sound. The documents obtained and verified by U.S. Congressman George Miller amply demonstrate that collusion on the part of Exxon and Alyeska to ignore the existing contingency plan was commonplace, and an active topic of discussion among the owner companies in 1987-88, even to the point of written, internal memos that materials, personell and marine transport were not on-hand to address but the most minor spills in Port Valdez and Valdez Arm. The June, 1988 owners meeting of Alyeska in Phoenix, Arizona, as referenced by Stanley Factor, Vice-President of Arco Marine, Inc., states clearly the Alyeska HAD NO INTENTION of responding to a spill in Prince William Sound, except with dispersents that were not on hand, with no properly fitted aircraft to utilize them. On March 24, 1989, in the early PM hours, one of the first calls made by Mr. Iarossi, upon hearing of the spill in Houston, was to Southern Air Transport of Miami, for a C-5 aircraft, specially fitted for dispersent application, to be airborne, fly to New Mexico to pick up the dispersent ("ADDS PACK") and proceed to Anchorage. As the record shows, dispersent was not on-hand in Alaska, the plane was in Miami. The Valdez personell were not trained or available, the barge was empty, and whatever small booms and skimmers on-hand were buried in snow. I term these circumstances as criminal acts on the part of Alyeska and owner companies who were far more interested in tanker turn-around times and under manning than taking any responsibility for the consequences.

In summary, I trust you take these points into consideration, and I do appreciate the opportunity to comment. The Alaska Legislature is holding daily hearings on these vitally important issues, and I hope you are able to see the wisdom in recommending rejection of these present settlement terms, as a judicial officer responsible for determining the fairness of the settlement for immediate and long-term damage to national resources.

Sincerely,



Theodore P. Thoma

In Exxon Deal, Transportation Chief Wins Another One for the President

By KEITH SCHNEIDER

Special to The New York Times

WASHINGTON, March 20 — A week ago Tuesday, Lawrence G. Rawl, the chairman of Exxon, flew to Washington. In an informal ceremony at the Justice Department just before midnight he signed a \$1.1 billion settlement that he hoped would put the nation's worst oil spill, and the two years of civil and criminal cases that followed, behind him and his company.

Standing with Mr. Rawl, Gov. Walter J. Hickel of Alaska — the lawyers for the Department of Justice was Transportation Secretary Samuel K. Skinner.

Once again Mr. Skinner had pulled it out for the White House, bringing to a successful conclusion talks that by all accounts could easily have tipped the other way.

"I viewed my job as a facilitator," said Mr. Skinner, a former United States Attorney from Chicago. "You had a huge amount of egos and interests that had to be blended together."

"In my experience I've found that if the principals don't want to settle they look for an opportunity to get out. In this case everybody wanted a deal because they knew the alternatives didn't make sense."

A 52-year-old lawyer and protégé of James R. Thompson, the former Governor of Illinois who at one time was considered as a potential national Republican figure himself, Mr. Skinner has made his career in the capital handling domestic political issues without embarrassing the President. His background as a litigator has helped. So has his instinct for the spotlight and his good feel for the Washington social circuit.

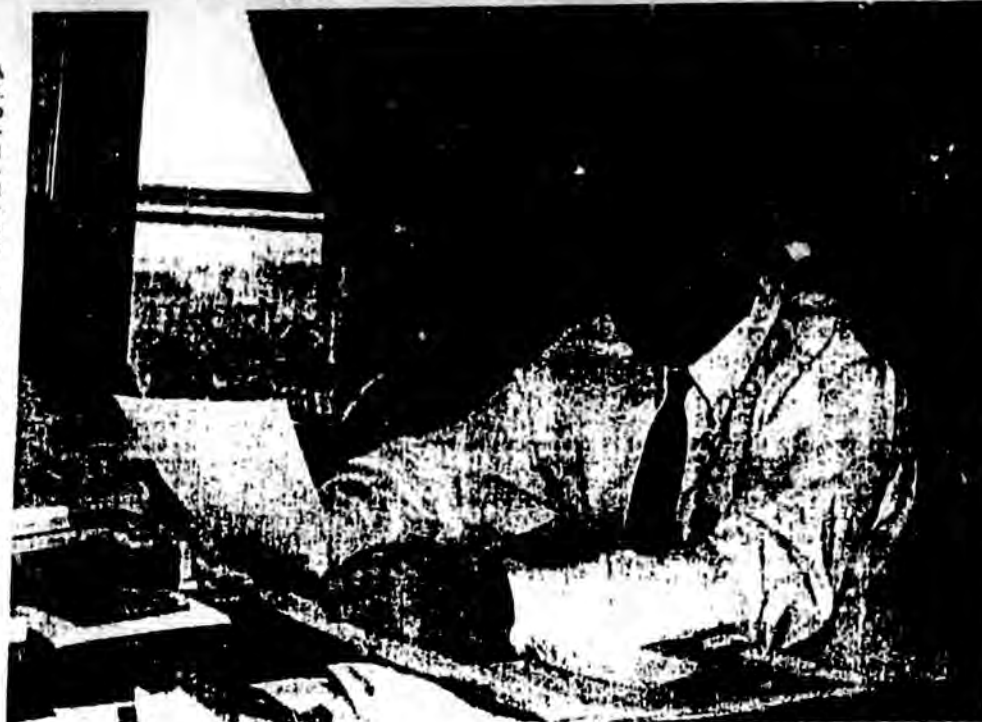
In Response to Disasters

When the tanker Exxon Valdez struck a reef in Prince William Sound in Alaska on March 24, 1989, spilling 11 million gallons of Alaska crude into the sound and turning beaches into a chaos of oil-soaked birds and dying otters, it was Mr. Skinner who was dispatched to supervise the Government's response.

Earlier that month, when machinists at Eastern Airlines went on strike, President Bush tapped Mr. Skinner instead of Elizabeth Dole, then Secretary of Labor, to handle the strike. Mr. Skinner's advice to the President: stay out of the struggle.

In September 1989 Hurricane Hugo swept through the Caribbean and struck the mainland in South Carolina, killing 24 Americans and causing immense property damage. A month later a powerful earthquake hit the San Francisco Bay Area, killing 59 people. In both disasters Mr. Skinner was called in.

Now there is the Exxon deal. With his company facing a criminal trial in April and civil litigation afterwards being prepared by the Justice De-



Marty Kaizer for The New York Times

"I viewed my job as a facilitator," said Transportation Secretary Samuel K. Skinner of Exxon's Justice Department settlement. "You had a huge amount of egos and interests that had to be blended together."

partment, Mr. Rawl had been ready for months to talk. "It's been a burden to us," the Exxon chairman said in a news conference on March 13 in Irving, Tex.

Eager for a Settlement

Governor Hickel, an independent, wanted a consistent source of money to continue recovery work in Prince William Sound, the source of a prosperous fishing and tourism industry.

The Federal Government was eager to settle, too. The civil case against Exxon was expected to take at least five years to litigate, and in the criminal case, scheduled to begin April 10, the Justice Department was going to be testing new applications of environmental law. Nobody knew how a jury would respond.

"The cleanup efforts Exxon had made in the sound made a significant difference," Mr. Skinner said. "Nature had also done a tremendous job there. Scientists were telling everybody this was not a multibillion dollar damage suit."

Mr. Rawl and Lee R. Raymond, Exxon's president, flew to Juneau, Alaska, on Jan. 15 at Governor Hickel's invitation. The state and the Federal Government had agreed three weeks earlier to work together, he told them. Mr. Raymond called Mr.

An experienced litigator finds a way to satisfy everybody.

Skinner and told him that the Governor was seeking an agreement.

Mr. Skinner said he believed that a successful negotiation was possible, but only if it was conducted at the Cabinet level. "I said this case will not be settled by lawyers," Mr. Skinner said. "First of all, they don't know how to settle it. Second, they have a built-in conflict of interest. This could go on for years."

The Chairman Cools His Heels

On Feb. 5 Mr. Rawl and Mr. Raymond were asked to come to Washington for a meeting at the Commerce Department with the Federal and state negotiators. Mr. Skinner, Manuel Lujan Jr., Secretary of the Interior, William K. Reilly, Administrator of the Environmental Protection Agency, John Knauss, Administrator of the National Oceanic and Atmospheric Administration, Govern-

Hickel and Charles E. Cole, the Alaska Attorney General.

Mr. Rawl, a combative executive whose four-year tenure as Exxon's chairman had been marred by the oil spill, was in a sour mood, several negotiators recalled. After being asked to wait outside a conference room for 30 minutes while the government officials finished a meeting, Mr. Rawl became furious.

"I went out twice and asked them to please be patient," said Thomas A. Campbell, general counsel of the National Oceanic and Atmospheric Administration, who organized the meeting. "Rawl said: 'Just tell them they don't need to take much time. What I'm going to say is short and sweet.' He was going to tell them he's had it, he'll see them in court."

Mr. Skinner said that when the Exxon chairman entered the room he lashed out at the negotiators, saying he was sick and tired of how the company had been treated by the Government, the news media and the people of Alaska. Exxon had spent \$2 billion to help clean up Prince William Sound, Mr. Rawl said, more than had ever been spent by any company for an environmental restoration project, and had received no credit.

Nobody responded until Mr. Skin-

ner disarmed Mr. Rawl, according to participants.

"Look, Larry," said Mr. Skinner, whose department includes the Coast Guard and who has developed a personal relationship with Mr. Rawl in the two years since the spill. "Let's not relive it. If we do, we'll never get past it."

'Reopener Clause' Is a Snag

Over the next 90 minutes, participants say, the broad outline of a settlement of the civil claims was established. Following Mr. Hickel's lead, the state and the Federal Government said they were looking for at least \$1 billion. Mr. Reilly insisted that the settlement include \$300 million more to be put into a special fund if more damage was found, a provision that came to be known as the "reopener clause."

Mr. Rawl and Mr. Raymond said that they wanted the settlement to make Exxon immune to any more state and Federal claims, that they did not want to pay the money in a lump sum and that they hated the reopener clause.

Three more meetings were held in Washington in February and early March before lawyers were dispatched on March 3 to put the agreement into legal language. With Washington gripped by the Persian Gulf war, the group was able to work undistracted by reporters or environmental groups or other interests.

"This had to be handled by the principals only, and it had to be handled in a short period," Mr. Skinner said.

Through February, the talks were never far from collapse. "We knew the longer the discussions went on the harder it would be to put it together," the Secretary said.

Justice Department lawyers and other participants credit Mr. Skinner with keeping Exxon and government officials at the table.

When Mr. Rawl and Mr. Raymond almost walked out because of Mr. Reilly's insistence that the agreement should have a reopener clause, Mr. Skinner told them the E.P.A. administrator's signature on the agreement was vital politically. Without it, the Secretary said, the Bush Administration and Exxon would have a hard time justifying the settlement to environmental groups.

And when Exxon insisted that Mr. Reilly be barred from attending a meeting on Feb. 24, Mr. Skinner assured Mr. Reilly that the Government would not negotiate something the E.P.A. administrator was unable to accept. In the end, Exxon and Mr. Reilly accepted a provision that called for the company to spend up to \$100 million after the year 2001 if more work in the sound was needed.

Mr. Skinner also kept the White House informed. During a meeting at the White House, John H. Sununu, the President's chief of staff, remarked that the \$1.1 billion deal sounded "like

an awful lot of money," Mr. Skinner said. But he assured Mr. Sununu that the agreement between the Government, Alaska and Exxon would be a good deal for everybody.

Exxon and its shipping subsidiary pleaded guilty to four criminal misdemeanor violations of environmental law and agreed to pay a \$100 million fine. It was the largest penalty ever assessed in a pollution case, more than three times higher than the \$29.7 million that the Government collected in 1990 for all environmental crimes. Even more, from the White House point of view, it makes good on Mr. Bush's campaign promise to penalize polluters.

From the state's point of view, the cost of the settlement, \$1.1 billion, will keep Exxon involved in the restoration of Prince William Sound for at least a decade.

Exxon, like any corporation (or person, for that matter), would have preferred not to spend any money. But Mr. Rawl said last week that he thought the settlement was good for the company. Paid out annually over 10 years, the payments reach a maximum of \$100 million this year, and then drop to \$70 million each year from 1994 to 2001.

To a corporation with an annual revenue of \$100 billion, the cost of the settlement each year is roughly the same as drilling two difficult offshore wells. "It will not curtail any of our plans," Mr. Rawl said.



APRIL 15, 1991

TO: House Special Committee on the EXXON VALDEZ Settlement

FR: Chip Thoma, #2 Marine Way, Juneau 99801

I'd like to thank the House Committee for its trip to gather testimony from spill affected areas. As you heard over and over, people feel the settlement is HASTY, that many damages are UNKNOWN, and for those that are known, the settlement terms appear INADEQUATE. In some cases, such as the Trustee arrangement, dropping charges, and relief for Alyeska for resource damages, IMPROPER.

I have again gone over the Alyeska paperwork submitted to Judge Holland by Rep. George Miller, and to me, without any doubt, the sequence of events in early 1988, especially the owners meeting in Phoenix, attended by Commissioner-designee Heinze, among others, is proof-positive that criminal conspiracy did exist to not comply with the 1987 contingency plan. The plan holder, Alyeska, did not have trained personell, booms, skimmers, boats, dispersents, or the inclination, to respond to any but the smallest spills. The owner companies, ALL OF THEM, knew the full extent of this inadequacy by memo after memo, yet did no more than talk and argue among themselves about it.

Consequently, two arguments FOR this settlement need addressing; the pace of and monies for RESTORATION. It was stated over and over by Commissioners Cole, Sandor and Rosier, the Trustee-designees, that restoration STUDIES must proceed, to replace the damage assessment studies that have been performed for the last two years. This is Mr. Sandor's agenda which he is pushing at the Trustee Council level, and has no real basis of necessity except that often-heard phrase to 'put this behind us'. But first these DA studies have to come BEFORE us. These important studies, most conducted by ADF&G and NOAA, should properly go forward in their entirety; this is the first summer of returns of the fish directly affected by the spill, and there are many questions by scientists and fishermen alike that need answering, much less the release of this data to the public.

The 1991 State/Federal Natural Resource Assessment and Restoration Plan, the 'pink book' cited by Mr. Sandor on your trip, consists of 7 pages on Restoration studies, none of which, in my view, are so important to downgrade damage assessment and accept this proposed settlement. I urge you to review these proposed restoration studies and decide for yourself whether the study of rockweed and wildrye by the Forest Service and DNR are worth the terms of this settlement.

And finally, the contention by Mr. Cole that the costs of litigation to continue, which he describes as between \$12 and \$20 million a year, will not be approved by the Legislature IS FOR THE LEGISLATURE TO DECIDE, and should not be the basis of Mr. Cole's assertion that these costs are what's driving the settlement. The State of Alaska will win it's suits against EXXON and ALYESKA, and they will be paying the costs of litigation when that day comes. And even if it is ten years from now, this Legislature has kept the faith and trust of the people and resources affected by this tragic, criminal act. You, as legislators, have important decisions to make in the next few weeks, and I think you have heard from your constituencies to not accept the settlement on these terms.

TO: Honorable H. Russel Holland

April 10, 1991

United States District Judge
U.S. District Court
222 W. Seventh Avenue, No. 4
Anchorage, Alaska 99513

RE: A 90 - 015 CR

FR: Theodore P. Thoma

#2 Marine Way
Juneau, Alaska 99801

RE: CRIMINAL PLEA BARGAIN PROCEEDINGS

concerning EXXON CORPORATION, EXXON SHIPPING, ALYESKA SERVICES

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In summary, I trust you take these points into consideration, and I do appreciate the opportunity to comment. The Alaska Legislature is holding daily hearings on these vitally important issues, and I hope you are able to see the wisdom in recommending rejection of these present settlement terms, as a judicial officer responsible for determining the fairness of the settlement for immediate and long-term damage to national resources.

Sincerely,



Theodore P. Thoma

Legislative Hearing State of Alaska Settlement
with Exxon.

4/12/91

Dear Legislators,

I'm not in agreement with the State of Alaska settlement with Exxon, I feel the amount is not enough to cover cost of the oil spill Exxon disaster. Due to the cost of travel I will not be able to attend the hearing in person.

When the Exxon disaster first occurred it was painful to watch on TV the oil come closer and then on us.

I worked on the oil spill in Wendy Bay. The beaches were badly oiled and I became ill while on the job. I was sent to Anchorage with chest pain & steadily got worse. I missed 2 weeks of work. The working conditions on the beaches were horrible, the fuel fumes ~~was~~ so strong we could taste it in our mouths.

I saw a lot of dead sea life and plant - which emotionally affected me. The oil was deep -

I strongly believe as a native Subarctic user my usage has been hindered and

Due to the spill I had to depend on the
grocery stores more when traditionally I
used subsistence.

With the depth of the oil I feel it going
to be a long while before the beach are clean
again and life returns -

When I became ill I had to pay out
of my own pocket medicine, medical care
and travel and room & board, which
you know is very expensive.

Fred E. Toko
Port Graham Alaska

CHENEGA CORPORATION

General Delivery
Chenega Bay, Alaska 99574-9999
(907) 573-5118

April 12, 1991

The Oil Spill Litigation Committee
of the Alaska Legislature
P.O. Box V
Juneau, Alaska 99811

Dear Ladies & Gentlemen:

I am President of Chenega Corporation, the village corporation for Chenega, located in Prince William Sound. We have 72 shareholders, most of whom live in Chenega Bay and other communities in Prince William Sound. For the past two years, we have been dealing with the impact of the oil spill, and the evidence that the oil spill still pollutes our beaches.

We have read the Exxon settlement papers. We are concerned, if the State does settle with Exxon, that that settlement will mean that Exxon has no reason to settle with the little people, including Chenega Corporation and its shareholders, for many years. The State of Alaska and the Federal governments have the most significant resources to bring against Exxon. We are a very small village corporation, our resources are devoted to insure the continuation of Chenega's unique culture and lifestyles. We do not have the resources to fight a giant like Exxon alone. In this case, because the State's Attorney General is insisting upon concealing the studies and assessments which would otherwise establish resource damage and estimates of recovery on the ecosystem, we have no idea how long or when the seals, otters, and other marine life, as well as land animal populations will recover.

Chenega and its lands are located in the southwestern part of Prince William Sound, and received the full impact of the 11 million gallons of oil spilled from the Exxon Valdez. 70% of our shorelines were oiled, and areas of our shoreline show no recovery whatsoever from 1989. We have devoted

enormous resources of our own in order to assist with the cleanup effort, and we have been the situs of enormous studies by the state and federal government over the course of the past two years. We feel Chenega had a big part in making the state's case for it.

The proposed settlement with Exxon leaves us on the beach, completely stranded. We don't have the resources to fight Exxon, nor do we think the damaged resources and ecosystems will be restored with the amount on the table, and which you are considering.

We have insisted, for the past two years, that damages to the resources were far greater than Exxon released studies. Studies released by the federal government within the past week established that we were right, and the once rich resources in our area of the country are destroyed. But those studies only relate to marine mammals. They do not show the extent of damages. Nor, have studies been released which will establish damages to other sea-life, including fish, crustaceans, a mollusk population on account of the 11 million gallons of oil degrading into the seabed, and below the surface and tidal areas.

The agreement also says that Alyeska won't be sued on account of resource damages. We have heard the Attorney General say that the State will still be pursuing Alyeska for misrepresentation and fraud, but we note that the settlement agreement requires the state to repay Exxon over 20% of any recovery the state might get from Alyeska.

The settlement agreement fails to answer the most basic questions, including the extent of damages to resources and the amount of time, if ever, those resources can be restored, or the ecosystem rebalanced. The settlement agreement also does not address Exxon's responsibilities to the citizens of this state, including Chenega Corporation and its shareholders. Nor, does the settlement agreement address the other small people and Exxon's responsibility to them, the villages, fishermen, cannery workers, area business, all of whom have been devastated by this spill.

We don't think you ought to let Exxon off this easily. Nor, do we think that you ought to let the Executive Branch of government conceal essential background information from you while you attempt to arrive at a decision concerning a matter which will impact the lives of many of Alaska's residents for many years. We can't put the spill behind us, and we think it is ludicrous for the Governor to insist that

the settlement agreement will permit the state to put the spill behind it. We will still be out there, still fighting with Exxon, and still trying to recover against an oil giant for the destruction of our resources and way of life.

Thank you,

Very truly yours,

CHENEGA CORPORATION

By: Charles W. Totemoff

Charles W. Totemoff

[Ltr-490]

CHENEGA CORPORATION

General Delivery

Chenega Bay, Alaska 99574-9999

(907) 573-5118

April 10, 1991

Mr. Tom Van Brocklin
Legislative Aid
c/o Representative Gene Kubina
P.O. Box V
Juneau, AK 99811

Dear Mr. Van Brocklin:

Thank you for talking with us on Wednesday, April 3rd. This letter will concern a list of matters which the Community of Chenega Bay believes must be addressed, with regard to continuing problems with the oil spill and our perceptions of the State's change of attitude.

First, we believe that the legislature as well as the individual communities in the Sound must obtain the scientific studies and assessments in order to determine the nature and extent of damages to the natural resources, as a matter of public policy. The studies and assessments are important not only to determine whether or not the monies to be received from the settlement are adequate for the purposes of restoration, but also to determine the extent to which the continued contamination poses a threat to the public health of the communities of Prince William Sound, particularly to Chenega Bay. In addition to the oil contamination, the studies and assessments should yield information as to health risks posed by the various agents which have been used for the past two years on the oil, together with whether or not those agents were effective. From a statewide perspective, it would also appear that the legislature itself is requested buy a pig in a poke. Recent reports appearing the Washington Post indicated that damages were estimated to be between 3 1/2 and 8 billion dollars to resources alone.

Second, the State's Oil Spill Response Office has, over the past month, become increasingly adversary to the Local Response Programs in Prince William Sound, not only Chenega's. All communities have received a letter from Mr. Piper indicating that this will be the last year of a coordinated oil spill cleanup

April 10, 1991

effort, that preapproved budget items have been determined as unnecessary, that assessment teams from the community are no longer invited to observe ADEC surveys which are now ongoing, and that preapproved funds will be turned back to the 470 Program.

In the case of Chenega Bay, the State's position has changed dramatically and suddenly within the past several days. As late as February 15, 1991, we were assured of additional expenditures. We were told that our efforts were appreciated and important. We presented the state a computation of our efforts through October 1990, which indicates 40 tons of oil debris were taken from several sites on North Evans Island, alone. We have attach a copy of the report, which Mr. Piper had told us would be presented to the Legislature this year.

As late as March 28, 1991, Mr. Piper told us that a Chenega Bay Local Response person would in attendance during ADEC's survey at Point Helen and Sleepy Bay. For the past two years, Chenega Corporation has assisted coordinating such activities, which occur on lands owned or adjacent to Chenega Corporation lands. This year, we were told on April 3rd, the date the survey was to occur, that the Local Response Program coordination effort was not desired by the state, and that any land managers Chenega Corporation might wish to send would be at Chenega Corporation's expense.

These few examples of broken promises and cancellations of a preapproved work plan are indicative of the state's new approach. The Oil Spill Response Office knows that Chenega needs those programs, that Chenega's interest in continued removal of oil and related contamination is great, that the crisis is not over because a lot of oil remains, and that Prince William Sound Communities cannot put the Exxon Valdez oil spill behind them until they don't have to deal with oil contamination on a daily basis. The state also knows that Chenega Bay's Local Response Program yielded the largest volume of oily waste (in one short month) of any community program in Prince William Sound.

We do not understand how the state, without assessing the oiled sites, can determine that no further work will be necessary after this year. The oil is still there. The people are still threatened. The only thing that has changed over the past two months is that there is now a proposed settlement between the

State, the Federal government and Exxon. However, that proposed settlement does not remove the oil from the Prince William Sound environment.

We request that the legislature appropriate funds for continued oil spill response work by the Local Response Programs, including Chenega Bay's.

Third, the State is presently surveying selected sites in Prince William Sound. As mentioned above, those sites include Point Helen and Sleepy Bay. In the past, Chenega Corporation land managers and representatives from the Local Response Program have accompanied the state on such surveys. This year, we have been disinvented. We understand that also the state does not want the media to be present at such site during its survey, and is concerned about public sensitivity.

None-the-less, based on its past association with the local community, Alaska Lands Act provisions, and Prince William Sound Area Plan requirements that adjacent land owners' land managers be provided with notice of state activity, the state's disinvention appears to be outside the normal legal process, and violative of our trust in the state process. In addition, we feel used, in that the state needed us in the past, but now that it is cosyng up to Exxon, has determined that we are more of a hindrance than a help. Yet, we don't think the Executive Branch could have accomplished the settlement without our earlier involvement as allies of the state against Exxon.

We request the legislature to perform its own survey and fact findings of Prince William Sound, and we specifically invite you to Chenega lands and adjacent state tideland.

Fourth, this state's ability to undertake scientific studies and assessments was on account of community assistance. On Chenega Bay's part, we provided the state with volumes of videos, photographs, daily reports on living conditions, oil segments, degradation and destruction of resources, and dead animal reports. We also sent the state cartons of dead animals, we participated in subsistence studies activities, our community threw its doors open to state workers with questionnaires, our community was besieged with numerous scientists conducting studies on behalf of the state. We did all of this because we

thought we were allied with the state, and the state would assist us in our time of need, just as we assisted the state. The truth of the matter is that most of the information which the state is now concealing from you and from us was gathered on account of our direct involvement and your appropriations.

We believe that the legislature, through its audit process, should, at a minimum, obtain those studies and assessments, seek an extension of time from the Federal Court regarding the Consent Decree, for public comment purposes 120 days, and allow the Legislature access to the studies to determine whether the settlement is really in the best interest of the state.

We also think you could help all of us, not only Chenega, by requiring the state to insist on an global approach in resolving the claims arising out of the oil spill. Such a global approach should also include continuing funding for cleanup activities.

Finally, we are attaching a joint of the corporation for your review.

Very truly yours,

CHENEGA CORPORATION

By: Charles W. Totemoff
Charles W. Totemoff, President

By: Gail Evanoff by C.W.T.
Gail Evanoff, Vice President

CWT:cbs (4/5.2:cc3)

CHENEGA CORPORATION
RESOLUTION NO. 91- 09

WHEREAS Chenega Corporation is an ANCSA village corporation composed of residents of Chenega with cultural, social, and family ties to the community of Chenega Bay; and

WHEREAS the community of Chenega, consisting of the tribe, the corporation, the residents and shareholders have a continuing interest in the restoration of Prince William Sound in general and the land and resources belonging to, held in trust for, and pertaining to, or managed by the corporation and/or the tribe; and

WHEREAS the Exxon Valdez oil spill destroyed much of the resource and ascetic beauty of Prince William Sound, and in particular, areas surrounding Chenega Bay; and

WHEREAS the State of Alaska and the United States government have announced settlement with Exxon, which settlement is subject to legislative approval; and

WHEREAS oil contamination is still present over approximately 70% of the land owned or appurtenant to lands owned by Chenega Corporation as well as traditional use lands;

NOW THEREFORE be it resolved by Chenega Corporation that the legislature be encouraged to seek an extension of the comment period before entry of the proposed consent decree between the State of Alaska, the United States, and Exxon in order that the legislature may obtain studies and assessments concerning resource damage which occurred, is occurring or will occur on account of the wreck of the Exxon Valdez and the consequential spilling of 11 Million gallons of oil into Prince William Sound; and

BE IT FURTHER RESOLVED that the legislature undertake to and conduct its own investigation concerning remaining oiled shorelines in Prince William Sound; and

BE IT FURTHER RESOLVED that the legislature appropriate funds to continue local response project activities in the event the Executive Branch discontinues those activities, which, in view of the events of the past week, is highly likely.

Adopted this 12th day of April, 1991 at
Anchorage, Alaska at which a quorum was present by a
vote of 5 in favor and 6 opposed.

CHENEGA CORPORATION

By: Philip J. Schemm
Secretary

Attest:

Charles W. S. S. S.
President

[resira.doc]

read
into
file
4/15/91

The Alaska Legislature
Oil Spill Litigation and
Settlement Committee
P.O. Box V
Juneau, Alaska 99811

Written Testimony of Charles W. Totemoff

Good Evening Ladies & Gentlemen:

My name is Charles W. Totemoff. I am President of Chenega Corporation and Chairman of Chenega Bay I.R.A. Council. I will be presenting the views of Chenega Corporation with regard to the proposed settlement. I have also been requested to present views on behalf of Port Graham Corporation and English Bay Corporation, two village corporations with extensive holdings and selections on land adjacent to the Gulf of Alaska, and into the Kenai Fjord's. Their comments will therefore be included in my testimony.

The village corporations, Chenega, Port Graham and English Bay, are involved in litigation against Exxon Company U.S.A., Exxon Shipping Company, Exxon Pipeline, Alyeska, the consortium of companies which own Alyeska Company, as well as other defendants on account of damages suffered when the Exxon Valdez hit Bly Reef. Chenega Corporation has incurred hundreds of thousands of dollars in expenses in dealing with the oil spill and its effect upon our shareholders, the vast majority of whom are subsistence users. Chenega is a small village corporation, with only 72 shareholders and 76,000 acres of land conveyed or to be conveyed in Prince William Sound. 70% of our coast line was oiled, much of it extensively and heavily oiled. The oil spill caused an immediate and we believe irretrievable loss of lifestyle and destroyed Chenega Corporation's ability to provide lands and appurtenant interests for the purpose of subsistence activities.

There are no stores in Chenega Bay; before March 24, 1989, we were by and large a subsistence economy. There are only two or three limited entry permits owned in the village; before March 24, we were not a cash economy. In order to address the needs of our shareholders, Chenega Corporation was forced to respond quickly, by insisting upon oil spill related jobs. Overnight, the village was forced to shift

from the subsistence to a cash economy and we are continuing to deal with the resulted upheaval.

Subsistence was the number one priority of Chenega's land management program. Now, our number one priority is to cleanup the environment. The community standards of sharing, however, have given way to competition for scarce jobs. Hunting and gathering activities have virtually ended, because we are uncertain of the effect of eating polluted fish and game.

We do not know what impact the spilled oil or that remaining spilled oil has on the ecosystems on which our people depend. We do not think the Alaska Legislature has sufficient information, either. Do you really know what the cost of restoration will be? Do you know what choices will be made because of shortfalls, and because studies and assessments scheduled for this year and into the future may not be completed? For instance, is it not more likely that, if a choice is made between cleaning-up clam-beds or creating a state maritime park, the choice will be made to create the park and to forego the less sexy projects? We all know that advisory committees' functions are pretty limited under the best of circumstances; under the broad sweep of the settlement agreement, what input into restoration projects, studies, or assessment will an advisory committee have in this agreement?

In addition to the uncertainty as to the nature and extent of damages, whether funds agreed upon are sufficient, and whether damages will be ongoing for years into the future, we believe that the agreement also ignores language which Judge Sporkin in Washington D.C. had believed would be included in the agreement. For instance, paragraph 13(c) of the settlement agreement preserves only a present right, title or interest in lands; Chenega, Port Graham and English Bay have future rights in lands and resources still in interim jurisdiction until conveyed. The village corporations and their shareholders, as well as fishermen and others dependent on natural resources have rights relating to future events which appear to us to be compromised by the agreement. Judge Sporkin viewed such an approach as Un-American. We also believe that the agreement, at paragraph 13(b), with regard to Alaska Native Village Claims as trustees, creates artificial limitations, and compromises important rights under ANCSA and ANILCA. We ask, why not just preserve all claims of private litigants?

With regard to natural resources, the settlement agreement misstates that only governments may recover natural resources damages under the Clean Water Act. This of course is not true. Moreover, the agreement fails to address the likelihood of polluted ecosystems to recover, and whether the ability to recover is even possible. In addition, in

paragraph 6(c) and 6(d) of the agreement the governments appear to compromise all users' claims for damages. Why? At paragraph 6(g) the agreement is unequivocal that it settles all consequences of damages to natural resources.

The agreement therefore binds us, as owners of natural resources, including lands, hand and foot, and blindfolds us and hands Exxon the club to beat us with. The Attorney General has announced that he will not provide studies or assessments to either the legislature or to the user groups to determine what happened, at what costs, and what needs to be done and at what costs. The agreement gives Exxon numerous opportunities to pummel us with the language of the agreement.

In addition, the agreement resolves natural resources damages claims against Alyeska. Why is the state giving up anything as to Alyeska, and what is it receiving? Why does the agreement explicitly allow Exxon to recover TAPPA money? We have all assisted the state during the spill, opening our doors and our knowledge of the area and its resources to the state. Why does the state, in its rush to settlement, give so much and apparently receive so little? And ultimately, why would the state and federal government offer Exxon such neutralizing weapons as are contained in this agreement? Judge Sporkin believed such tactics were Un-American.

As many of you are aware, the oil is still out there, at Sleepy Bay, Point Helen, and other areas around Chenega's selection areas; around and into the Gulf of Alaska selection and Windy Bay, Rocky Bay, Dog Fish Bay, and into the Kenai Fjords, all Port Graham and English Bay selections. This year, the state and federal governments are bearing the tab if the settlement goes through, and it is unlikely that any more oil will be recovered after this year. You are therefore buying E. n's oil, and, at what price?

I am presenting with this written testimony the views of Gail Evanoff, of Chenega Bay and Vice President of Operations for Chenega Corporation. I am also presenting written comments received from English Bay.

Thank you,

Charles W. Totemoff
Charles W. Totemoff

[Chuck.doc]

Philip Totemoff
4/12 Seward Test.

To: Oil Spill Litigation Committee of
the Alaska Legislature

From: Philip Totemoff

Testified
in Seward

P.O. Box 64

Chenega Bay, AK 99574

Date: April 12, 1991

Ladies + Gentlemen,

My name is Philip Totemoff, I am a lifelong resident of Prince William Sound, currently living in Chenega Bay. I am a subsistence user, I grew up practically on subsistence foods, it is my diet.

The Exxon Oil Spill of March 1989 ruined my way of life, lifestyle, culture and subsistence.

The Federal Government's Oil Spill Studies recently released show what I knew from the beginning that my subsistence foods are contaminated and are unsafe to eat. The seals, sealions, fish and shellfish were all affected as

the studies have shown.

It is my utmost concern that Exxon and the State of Alaska will consider us and not forget us and restore the damage done to our resources and lands, which will be many years before it is back to normal.

In the mean time I would like to see Exxon or the State of Alaska to compensate Chenega on a monetary or anyway possible to carry us through on this critical issue.

HOWARD VILLEY

Afognak Joint Venture

214 Rezanof West Kodiak, Alaska 99615
(907) 486-6014 FAX (907) 486-2514

April 13, 1991

Representative
Chairman
House Special Committee
on Exxon Valdez Settlement Claim
Alaska State Senate
Juneau, Alaska

Dear Representative Gruenberg:

We are Native corporations who are major landowners and land managers on Afognak Island in the Kodiak Archipelago. We have questions and concerns regarding the use of Exxon Settlement Funds.

We do not understand how decisions to use the Fund would be coordinated among the Fund administrators. It is our understanding that there is a time period within which the Fund's managing entities must develop a plan.

We are concerned that too much or all of the Fund could be used to pay costs of administration, costs of studies that will not result in benefits to the environment, costs of restoration where the funds expended will not result in commensurate benefits, or the costs of development projects that are unrelated to habitat protection. We urge that the use of funds include acquisition of habitat resources, or studies that could lead to habitat acquisition for protection. We believe there are special opportunities to acquire habitat. This habitat could be identical to what was damaged by the oil spill. It could also be habitat that is associated or similar to that damaged by the spill and was in the geographic area affected by the spill. On this theme we wish to encourage that the acquisition, or study for acquisition, of lands on Afognak be undertaken.

We have ideas regarding how the acquisition or studies could be accomplished, and we would welcome discussing these with the Fund's decision makers.

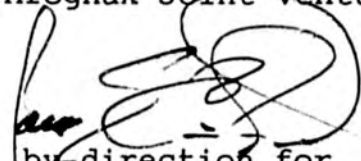
Representative Max Gruenberg
April 13, 1991
Page 2

Thank you for this opportunity to comment.

Respectfully yours,



Howard W. Valley
Chairman
Afognak Joint Venture



by direction for
Uwe L. Gross
Chief Executive Officer
Koniag, Inc.



Ruth A. Dawson
President
Afognak Native Corporation

cc: Representative Cliff Davidson

**TESTIMONY OF
MAYOR BOBBY VAN BROCKLIN,
CITY OF CORDOVA,
BEFORE THE ALASKA HOUSE SELECT COMMITTEE
ON EXXON VALDEZ SETTLEMENT
APRIL 14, 1991**

Committee Members, Attorney General Cole, Commissioner Rosier and Commissioner Sandor:

I would like to start my testimony with Cordova's point of view based on a little history.

The people of Cordova have expressed concern about the Trans-Alaska Pipeline System from the time of its conception. After a hard-fought battle, the System was approved by a margin of one vote by the U.S. Senate. During the time of operation until the Exxon Valdez spill, Cordova continued to express its concerns and always were assured that "the best equipment, material and expertise will make operations at Port Valdez and in Prince William sound the safest in the world."

On March 23, 1989, all our concerns plus some we hadn't thought of started to become a reality. Even under good weather conditions, for the first three days, Alyeska or Exxon couldn't live up to their promises. Not even close. Less than 3,000 of the 260,000 barrels were recovered. And, with a weather change, the Exxon Valdez spill would eventually soil over 1,000 miles of Alaska's coastline, inflicting one of the worst wildlife disasters in our nation's history, and disrupting the lives of thousands of Alaskans who depend on the natural resources of this region.

We all know that the Trans-Alaska Pipeline provides 25% of the nation's oil and 80% of the State of Alaska's revenue. Everyone enjoys the benefits of the oil. However, only a few coastal communities share the risk posed by the transportation of this oil along our coast. The risks and benefits are not shared proportionately. Cordova's economy is based almost entirely on Prince William Sound's resources, especially commercial fishing. Through years of efforts, we have tried to enhance these resources through the Prince William Sound Aquaculture Corporation and 1989 was the first year the plan was to be in full production. I remember a conversation I had with a local fisherman a week or two before the spill. The conversation went like this. I was asked, well what do you think the season's going to be like this year? My reply was last year we had great fish prices, but only 10,000,000 fish; this year the price will probably drop some, but the prediction is 40,000,000 fish. Even if half the fish don't return for some crazy reason, it will be better than last year, which wasn't bad. Cordova's expectations were of a good to great fishing season which would mean our economy would be thriving. On March 23, we went from being optimists to pessimists because our world as we knew it started to fall apart. Next started a time of more promises and harsh reality. The mighty resources of Alyeska and Exxon, the State of Alaska and the federal government couldn't put Humpty Dumpty back together. The community tried rage, cooperation, begging and blind faith and again we got more promises. Don Cornett from Exxon made his famous quote in Cordova: "Trust us. We will make you whole." I think Mr. Cornett's definition of "whole" is a little different than the folks of Cordova or the folks from other oil affected areas.

The Vice President, the Governor, and countless Senators, Congressmen, Admirals, cabinet members, State Senators and House members, environmentalists, reporters and lawyers came. Some made promises. Some made statements. Others just listened. But little was ever done to address the impacted people. By law, it's my understanding that

people don't qualify as a resource, so their needs haven't been addressed. If the testimony you hear today seems a little harsh, you will know why. Our mistrust in government and the oil industry is based on the fact that promises are not kept. So please don't ask us to trust you. We would prefer it in writing, backed up by a letter of credit. So much for the history lesson. Let's get to specifics on the proposed settlement.

Since we are to fend for ourselves in recovery of people damages and city governments are closer to the people than the State, I have some statements and questions that the people of Cordova and the municipality would like answers to.

The State is the trustee of all the studies and legal preparation for Exxon Valdez damages, but now the people are being put in the position to sue just to get the information. This doesn't set well when you come to us now and say the federal and state governments will fix or restore the damage if we go along with the settlement. Mr. Attorney General, tell me why I should trust the state or federal government to repair my environment and natural resources? Please give me examples of what the trustees would do and give me a equal number of examples of the trustees will not do?

What about full study of the spill? Will this be completed or curtailed because of settlement?

Why has the State, especially at paragraph 13(c), on page 15 of the agreement and consent decree, not adopted the language that it represented it would to Judge Sporkin? The State in its settlement agreement purports to reserve only 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." What does the word "present" mean in that case? Is the State trying to support Exxon's view that the only recovery available to fishermen and others dependent on natural resources is what they would have recovered in 1989, but that otherwise, the recovery belonged to the State, and that has been compromised through the settlement?

Much the same concern is raised by paragraph 13(b) which purports to preserve certain aspects of Alaska Native claims. Why not just preserve whatever Alaska Native claims which are available? Why has the State tried to give the benefit of certain language to Exxon, to the detriment of certain private plaintiffs?

Why is the State sacrificing some of the availability of the Trans-Alaska Pipeline Liability Fund, by explicitly allowing Exxon to try to recover some of its losses from that fund, to the detriment of the various private plaintiffs, who may have no other source of recovery if Judge Holland is right about Robins Dry Dock?

What do the provisions at paragraphs 24-30 mean? It looks as if Exxon is free to have the governments be responsible for a portion of the fault, but that the governments are not free to bring in Exxon. Paragraph 30.

Did the State have any responsibility to its municipalities and to its citizens (be they fishermen, landowners, kayakers, businessmen, or Alaska Natives) when they are facing a litigant of Exxon's size not to settle its claims alone, but to make more of an attempt to try to get Exxon to the settlement table and compensate the individuals who were really hurt most by the spill?

The State says its settlement does not affect any other parties' rights, but this ignores the realities of litigation. With the State in the case, Exxon recognizes that it is facing a

group of plaintiffs with formidable assets and resources, not otherwise available to private plaintiffs.

Why does the State seem to go out of its way to help support Exxon's legal positions, e.g. (a) representing that only the "Governments" may recover natural resource damages under the Clean Water Act [Par. 4 of the introduction]; (b) defining Natural Resources or Natural Resource Damages broadly to appear to cut off other parties' rights [Par. 6(c),(d)]; or (c) suggesting that the agreement settles "all consequences" of the spill (paragraph 6(g))?

The municipalities were able to get a State grant for an impact analysis to look at effects of the spill on municipal finance and other "people issues." The State should continue to fund this effort both to assist municipalities with their damage case, and to help the State and municipalities plan for future catastrophic disasters. This study was the Oiled Mayors' Study. Mr. Attorney General, have you examined the Oiled Mayors' Study? Do you know why the recommendations in the study funded by a million dollars by the State of Alaska haven't been acted upon?

Can we trust the State or Federal government to be adequate trustees of the environmental claims when they are not just pursuing those claims as trustees, but also alleged to have been a party which has violated the trust through its malfeasance? It is inconceivable that a trustee would be allowed to settle a claim for a beneficiary when it is implicated in the wrongdoing. Mr. Attorney General, last session the oiled communities tried to have the legislature advance raw fish tax claims to municipalities. This was shot down in Senate Finance--Exxon told them they would fix us up. That hasn't happened. Without State studies, can you tell me if Exxon were to agree to settle with us tomorrow, what would be a fair number without knowing the study information?

Can you clarify how municipalities will be asked to prosecute their raw fish tax claims against the defendants for maximum recovery?

Why is the State allowing Alyeska peace on certain issues, when Alyeska is still free to both sue the State (paragraph 20, last sentence), and argue that the State is responsible for most of the damages to private plaintiffs? [Paragraph 22 makes it obvious that this alternative will be open to Alyeska.]

ISSUES OF PARTICULAR CONCERN TO LEGISLATURES LOOKING AT THE SETTLEMENT FROM THE VIEW OF ALL CITIZENS OF THE STATE

1. Don't the people of the State need a much better understanding of the real effect of the money package?

(a) The real value of the money being given to the State by Exxon -- this is the whole "present value" idea. Exxon agrees to pay money over time. It is basically paying back a loan of the "Present value" of the money. What interest rate should be used in the real calculation?

(b) The real costs which the State and feds have accumulated so far --

(1) We need not just the total cleanup cost to the State and feds, but when those costs accumulated, because to the extent the State and feds don't get interest on the amount due, they are being underpaid.

(2) We need the same for attorneys fees,

(3) We need the same for the trustee and other science costs;

(4) We need a realistic estimate of what the rest of the cleanup costs will be for which a commitment has been made to pay Exxon when they do the work from their own money in the form of a credit; do we have any data on what was spent last year for cleanup to use as a guide ?

(5) The caps that the State and federal government put on the amount of the trust money which will be allocated to State and federal costs (in Par. 10 of the agreement) are not necessarily the actual value of those costs. To the extent they are not, a subsidy is being given by the people to Exxon.

(6) The federal government is not apparently seeking any money for litigation costs. Is that not just a subsidy to Exxon, or is the federal government being reimbursed from some other source?

(c) We need to really understand the tax value of this settlement to Exxon, because that affects the federal public fiscally as well. Exxon appears to have gone out of its way to force the State and federal government to spend the "leftover" money for certain projects only. How much of a tax break will that mean for Exxon? Otherwise wouldn't they have to pay taxes on this money since it would be earnings?

(d) We need to decide what is really going to be done with what, if any, money is left:

(1) Is it going to be used for projects, such as timber purchases, which might hurt local communities, e.g., Seward, more than help them?

(2) In what areas is it going to be used? Is there any understanding now of how it should be spent?

(3) Who will have control over the trust fund? It appears to be 3 federal and 3 State people, whose choice is left completely to the Governor;

- (4) What controls will there be on the trustees? There appear to be none now.
2. Can a responsible citizen or legislator now assess the appropriateness of the settlement since neither knows:
 - (a) The liability case against Exxon, and Alyeska (this is to be found largely in the work product of Preston and the AG);
 - (b) The damages case against Exxon, and Alyeska [this is to be found largely in the science from the trustees, a summary of part of which was first made available a few days ago, but the bulk of which has not been made available];
 - (c) The downside of continuing with the litigation
 - (1) The costs for attorneys? Has any serious analysis been done of the Preston and AG costs: have they been cost effective; what would it cost if a "tight ship" were set up from here on out? Is there any foundation for the representations from the Governor that it would take 10 more years to litigate the case? Is the case that complicated? What would be the real costs that are being forgone through settlement?
 - (2) The impact of not settling on other State projects (e.g., ANWR and other development projects). The assumption is that the State wants to put Exxon, and certain other tax litigation behind it so that development can occur. How valid is this position? Do the people of the State really want that development? Has this issue been really looked at?
 - (d) The case against the State for its own negligence (which for the most part may remain open as a result of the settlement given that there is a significant risk that the State will be exposed to a damage verdict).
 - (e) The effect of a settlement of some of the State claims on those that remain--is the State worse off now in terms of its potential liability to private plaintiffs than it was before? Is there a bigger chance it will have to pay than if it was in the case at a trial against Exxon?
 - (f) Can we trust the State or the Federal government to be adequate trustees of the environmental claims when they are not just pursuing those claims as trustees, but also alleged to have been a party which has violated the trust through its malfeasance? It is inconceivable that a trustee would be allowed to settle a claim for a beneficiary when it is implicated in the wrongdoing.
 3. The reopener clause appears to have severe problems:
 - (a) The reopener may be used in very limited circumstances, and only if "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" of the agreement. Is there any reasonable possibility that this clause is of any value to the State. Why was it even bargained for?
 - (b) The reopener clause invites litigation again. If the State asserts its validity, nothing stops Exxon from fighting its application, and again, "settling" differences with the State. It lacks any objective standards.

- (c) There is no scientific evidence presented from which one can make a judgment about the usefulness of the reopener clause.

4. The indemnity provisions seem to put the State in a worse position than it was prior to the settlement with respect to liability and with respect to exposure for attorneys' fees. Whereas the State had not been sued prior to the settlement and probably would not have been sued had it secured the agreement of Exxon that it would not assert that the State was responsible, or had it obtained Exxon's agreement to indemnify the State, it now has been sued by hundreds of parties who did not want to sue the State. The cost of defending the case may well exceed the cost of prosecuting the case. The State is now looking at serious potential exposure for damages, or, alternatively, with the ridiculous notion of fighting its own citizens in a liability battle, and trying to belittle their injuries suffered from the spill.

5. How does the State control billing by Exxon for post agreement spill costs? The language in paragraph 11(b) seems to cover everything in the world; including Exxon's attorneys' expenses [i.e., "other professional expenses."] Is there no control in the agreement for Exxon's accountability to the fund it itself created through a settlement with the State?

6. Why is there the tension between paragraphs 12(a) and (b)? Which is the paragraph which more probably will apply because of what we expect Exxon to actually expend, and what does that paragraph mean?

7. Why is the State allowing Alyeska peace on certain issues, when Alyeska is still free to both sue the State (paragraph 20, last sentence), and argue that the State is responsible for most of the damages to the private plaintiffs? (Paragraph 22 makes it obvious that this alternative will be open to Alyeska)

8. Is there any serious attempt at deterrence through the amount of penalty involved, especially when Chairman Rawls telling the media that the settlement and criminal penalty will have no noticeable effect on Exxon's bottom line? The \$421 million present value which Exxon is paying is just 4/10 of 1% of Exxon's annual revenues of \$95 billion.

9. What deterrent effect is there for Alyeska which avoids any liability for its part in the damage to the environment through this settlement?

10. Should the legislature be concerned with what has appeared to be an intentional withholding of information from the legislature and the citizens of the State by Exxon and the State of the information necessary to make an informed judgment about the settlement?

11. Do the recent revelations of Alyeska's conscious indifference to the need for a realistic contingency plan to deal with large spills make any difference in assessing the settlement?

12. Have the people of the State, who are just now getting an idea of what the settlement document says, and its economic ramifications had enough time to make a Judgment, or to provide you with political input into what should be done?

13. Is it constitutional for the State to enter into a plan committing to trustees, without legislative scrutiny, the discretion to spend what may be large amounts of money?

14. What is the joint conduct agreement described in paragraph 35?

WHAT SHOULD THE LEGISLATURE DO AT THIS JUNCTURE?

The legislature should postpone any approval of the settlement until:

- a. It has sufficient information, and time, to assess whether the settlement provides enough money to fix the long-term damage to the Alaskan environment;
- b. provisions are added to give the oil affected areas, a voice in how the money is spent;
- c. Exxon and Alyeska settle the compensatory and punitive damages claims of the people and entities injured by the spill, or if that cannot be accomplished within 30 days, Exxon and Alyeska agree that they will not put the State on trial in absentia when those damage claims go on trial.

W-Z



Joni Whitmore

oral
4/13

GREEN PARTY OF ALASKA

P. O. Box 141474 Anchorage, AK 99514-1474 (907) 278-7436

Ecology
Responsibility
Nonviolence
Base Democracy

Homer, AK Public Hearing
House Special Committee, Exxon Settlement
P.O. Box V
Juneau, AK 99811

Ecological Wisdom
Grassroots Democracy
Personal and Social Responsibility
Nonviolence
Decentralization
Community-based Economics
Postpatriarchal Values
Respect for Diversity
Global Responsibility
Future Focus/Sustainability

Good Morning:

The Green Party of Alaska requests that the proposed settlement in the Exxon case be denied. There are a number of problems which need to be considered before such a settlement should take place.

There is the question of Alaska's indigenous peoples. Although they have the right to pursue their claims independently of this proposed settlement, there is a clear question whether the State of Alaska is operating in the best interest of its citizens when it excludes the concerns of citizens most affected. There is also the question of jurisdiction with the tribal governments that represent people who suffered damage as a result of the Exxon Valdez spill.

There are many inadequacies in the settlement that throw open the question of public interest. There appears to be no justification for negotiating the settlement behind closed doors and then providing a very short time for the public to comment with almost no information available. If the public was really destined to participate, facts and information could have been provided to the public for the past four months. Important information is just beginning to emerge that the public needs to understand in order to make reasonable comments on the case. It seems reasonable to the Green Party that the public should have additional time to consider information recently released by the Federal Government entitled "Summary of the Exxon Valdez Oil Spill on Natural Resources" dated March 1991. Serious allegations were also raised by U.S. Representative George Miller of California in a letter to the court dated April 8, 1991. The State and Exxon have not released their studies. Alaskans in general have not had the opportunity to consider adequate information.

If the settlement were to go forward, Alyeska Pipeline Service Company would be absolved for potential wrongdoing associated with the damages caused. It would be a legal and moral travesty to let Alyeska off the hook before discovery could illuminate their role in the case. As Representative Miller said, it would tell corporations they can lie because there will be no effective punishment.

The financial aspects of the proposed settlement are very unsettling. It begs the question of how the judicial system can actually punish a corporate offender. Please consider that tax write-offs combined with the spread of payments over 10 years essentially allows Exxon to pay as little as \$300 million. Add

in the fact that Exxon's stock has gone up approximately five dollars per share during the last month, in anticipation of getting the settlement off their books, increasing the value of the company approximately \$6 billion. There is no effective deterrent to offenders.

What can be done? Should the corporate executives go to jail? Since the damages are many times more than originally anticipated, should the settlement price be raised to \$4 billion with \$1 billion up front immediately? Should the settlement include a percentage of all oil Exxon takes from Alaska in the next 20 years? These are the types of things that would make potential offenders take notice. It seems clear that it is almost impossible to punish Exxon for the wrongdoing they have admitted. Even if they didn't have write-offs, increased prices of their products would simply be passed on to consumers to cover the costs. How can justice be done?

The Coastal Coalition had proposed a \$2 billion trust fund that emphasized acquisition of equivalent resources such as buying timber rights to assure future protection. The Coastal coalition proposal also included direct restoration, research, education, and sustainable economic development -- reasonable ideas, processes and implementations.

The proposed agreement has the appearance that the State, and its poorly communicating arms of bureaucracy, is setting itself up together with large oil companies and against the very citizens it is supposed to represent. Of course people will argue that it's better to take a little money now rather than continuous litigation that may net the State of Alaska very little in the end. We are talking about justice here, and it doesn't appear that the money offered is adequate compensation for even a small portion of the damages, and it doesn't appear that the wrongdoer suffers any serious consequences for one of the world's largest oil disasters. The Green Party of Alaska believes that given enough time, Alaskans could reach consensus on what a fair settlement would be. The quick and secretive nature of the proposed settlement has prevented this type of approach. Two corporations might settle out of court in the proposed manner, but the State of Alaska is not a corporation, and a different approach should be considered.

The 10 key values of the Green Party of Alaska, (grassroots democracy, personal and social responsibility, global responsibility, respect for diversity, nonviolence, ecological wisdom, post-patriarchal values, decentralization, community based economics, and future focus), are values most people hold in high esteem. The responsibility of Exxon as a corporation is not reflected in the proposed settlement. The lack of information and public input really makes it very difficult for a democratic society and a free press to help find a solution.

What will the settlement teach us about personal, social and

global responsibility? There is no way to penalize a transnational oil corporation in a free market. Consumers and the environment will bear the entire burden. Nor could there ever be a regulatory bureaucracy large enough to monitor these conglomerates. Possibly the only way to break the hold Big Oil has on Alaska, the only way to ever get true retribution for our great losses, might be to seize a portion of their assets for every crime they make against nature. Very little will prevent the oil industry from continuing to ruin our environment until the people of Alaska have a real voice in their process. These companies agreed to respect our environment - they have not. They agreed to completely clean up any oil spills wherever they may have occurred - they have not. They can not. No complete settlement can be made until the true and total costs of the spill are known and the people of Alaska are allowed to speak.

The Green Party of Alaska believes that the Exxon proposed settlement is inadequate, not in the public interest, and leaves the court without all the facts relevant to the balance of justice. We urge you to postpone settlement, allow the cash damage award to be substantially raised based on the emerging evidence showing greater damage. We also ask that the proposed settlement be reconsidered with the addition of widespread public input after significant information becomes freely available.

Joni Whitmore, Chair
Green Party of Alaska
106 W. Bunnell Avenue
Homer, AK 99603
(907) 235-7558

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CAROL Wilson

April 15, 1961

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Carol

VIOLET YEATON

4-12-91

Alaska Legislative Hearings on The Exxon Settlement

Dear Legislators

I am writing in response to the Exxon Settlement. and why we were not ^{included} ~~included~~ with the state settlement. Why have they excluded our claim? It was our lands that were affected, our people that suffered because we were unable to continue our subsistence lifestyle. Since the oil spill our lives have been turned up-side down. Why have they ~~to~~ chose to just look away from our devastation?

I think you are all aware of the damage done to the land and how our subsistence life style has suffered and is still suffering. The information made by the federal government studies in the newspaper have confirmed our fear as subsistence users.

My husband and I are parents to and 1 and 2 year old. We want them to grow up and to be able to live off the land. What kind of future is ahead of them? My husband has to re-locate and look for what ever job he can find. Please be understanding to our situation
Thank you. Violet Yeaton

MARIE Young

4-12-91

Alaska Legislative Hearings on the Exxon
Settlement.

Dear Legislators,

I am responding to the settlement the State of Alaska has made with Exxon. The amount of damage done to our lands is not equal to the dollar amount.

As an elder I have lived off the sea all my life. I depend on my subsistence life style to help me carry thru the difficult winters. I have never seen such devastation to our land and our people. I still feel the sadness for my people and our land, just like it was yesterday.

I filled out application's to work and of course I didn't work because I was elderly and they needed strong young people to work the beaches. But I felt the need to get out and clean the beaches affected in our area because I knew it would have long time affects afterwards. So I sat back helplessly and watched the damage.

be done. To this day it is still affecting me and my people. We are struggling for a settlement that will never compensate for the damage that the oil spill has done.

As an elder, I am living off longevity bonus that is threatened by cuts and my Social Security. My husband is also ~~an~~ elderly receives the same. He is 78 years old and still he has to go fishing every year just to make ends meet. Every year he takes a loss and since the oil spill, it has been total devastation for him because of the price of fish.

Please try to be understanding of our situation and our struggles.

Thank you.

Maria A. Young