

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILE 8672
1925 SCOMM 76: HOUSE SPEC. COMM. EXXON VALDEZ OIL SPILL... 1991-92

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1 I. GENERAL PROVISIONS

2 A. On or about April 22 through 23, 1988, Defendant
3 Shell Oil Company ("Shell") discharged crude oil from its oil
4 manufacturing complex in Martinez, California ("the Complex")
5 onto lands and into waters, including wetlands, surrounding the
6 Complex when a pipe connection in an oil holding tank (Tank No.
7 1256) broke and oil escaped through a drainage valve that had
8 been left open ("the Oil Spill").

9 B. Plaintiffs have alleged that at least 432,264
10 gallons of crude oil were spilled, inundating Shell Marsh and
11 Peyton Slough and entering the Carquinez Strait and Suisun Bay.
12 The exact amount of oil spilled is disputed.

13 C. Plaintiffs have alleged that the Oil Spill
14 resulted from a roof drain failure and that Shell left open the
15 drainage valve, proximately causing substantial damage to the
16 environment and natural resources of the San Francisco Bay/Delta
17 Estuary.

18 D. Plaintiff, United States of America ("United
19 States"), on behalf of the U. S. Department of Commerce, the
20 U.S. Department of the Interior, and the U.S. Department of the
21 Navy, has alleged civil claims for damages to natural resources
22 under the trusteeship of the United States pursuant to section
23 311(f) of the Clean Water Act, 33 U.S.C. section 1321(f); and,
24 on behalf of the U.S. Environmental Protection Agency, has
25 alleged claims for penalties pursuant to sections 309 and 311(j)
26 of the Clean Water Act, 33 U.S.C. sections 1319 and 1321(j).
27 The United States has also alleged claims for costs incurred in
28 conjunction with the Oil Spill under section 311(f) of the Clean

1 Water Act, 33 U.S.C. section 1321(f).

2 E. Plaintiff, State of California ex rel. Department
3 of Fish and Game, State Lands Commission, Regional Water Quality
4 Control Board for the San Francisco Bay Region, Department of
5 Parks and Recreation and San Francisco Bay Conservation and
6 Development Commission ("State"), has alleged civil claims for
7 damages to natural resources under the trusteeship of the State
8 and for penalties under the Clean Water Act, 33 U.S.C. section
9 1251, et seq.; California Fish and Game Code sections 2014,
10 5655, 12015, and 12016; California Harbors and Navigation Code
11 section 151; California Water Code sections 13304, 13350, and
12 13385; California Public Resources Code section 29610;
13 California Government Code section 66641.5; and trespass,
14 negligence, nuisance and common law natural resource damages.
15 The State has also alleged claims for costs incurred in
16 conjunction with the Oil Spill.

17 F. Plaintiff, the People of the State of California
18 in and for the Counties of Contra Costa and Solano and on behalf
19 of the California Department of Health Services, has alleged
20 civil claims for relief under California Health and Safety Code
21 Section 25189 and California Business and Professions Code
22 Section 17200 and seeks recovery of costs and penalties.

23 G. Plaintiffs, the Cities of Benicia and Martinez,
24 have alleged civil claims for relief for trespass, negligence
25 and nuisance, and seek recovery of costs and damages.

26 H. Plaintiff, East Bay Regional Park District, has
27 alleged civil claims for relief for natural resource damages,
28 trespass and nuisance and seeks recovery of costs and damages.

1 I. Defendant, Shell Oil Company, is a corporation
2 incorporated under the laws of Delaware. Shell owns and
3 operates the Complex where the Oil Spill occurred.

4 J. The United States Environmental Protection Agency
5 ("EPA") has served on Shell a Notice of Violation ("NOV"),
6 pursuant to 40 C.F.R. section 114.4, alleging that Shell has
7 violated certain oil spill prevention regulations set forth at
8 40 C.F.R. Part 112 that are applicable to the Complex. The NOV,
9 attached as Exhibit 1, initiates an administrative action
10 pursuant to 40 C.F.R. Part 114 and Clean Water Act
11 section 311(j), 33 U.S.C. section 1321(j), and 40 C.F.R. Part
12 114 and proposes the assessment of civil penalties. Shell
13 agrees that EPA has jurisdiction to institute this
14 administrative action, and EPA and Shell agree to compromise the
15 aforementioned administrative action by this Consent Decree.

16 K. A resolution of the parties' disputes would
17 require costly and protracted litigation. The parties consider
18 resolution of this dispute without litigation to be in the best
19 interests of the public.

20 L. Prior to taking any testimony, Shell and
21 Plaintiffs have agreed to making this Consent Decree. Shell and
22 Plaintiffs agree that this Consent Decree is filed in settlement
23 of this litigation and the administrative proceeding described
24 in paragraph J above and in consideration for the covenants not
25 to sue described in section V below. This Consent Decree is
26 entered into without any admission as to liability for any
27 purpose, in good faith to avoid further protracted litigation
28 relating to Plaintiffs' claims arising from the Oil Spill as

1 described in section V and to serve the public interest.

2 M. Except as provided in section II.A of this Consent
3 Decree, Shell denies any and all legal and equitable liability
4 under any federal, state, or local statute, regulation,
5 ordinance, or common law for any fines, penalties, response
6 costs, damages or claims caused by or arising out of the Oil
7 Spill; Shell does not admit liability for any purpose or admit
8 any issues of fact or law or any responsibility for the alleged
9 release of crude oil or any alleged hazardous constituent
10 thereof into the environment by entering into this Consent
11 Decree or by taking any action in accordance with this Consent
12 Decree.

13 II. JURISDICTION, VENUE AND SERVICE OF PROCESS

14 A. This Court has jurisdiction over the parties and the
15 subject matter of this Consent Decree pursuant to 28 U.S.C.
16 sections 1331 and 1345, and sections 309 and 311 of the Clean
17 Water Act, 33 U.S.C. sections 1319 and 1321. This Court also
18 has jurisdiction over the subject matter of the pendant State
19 law claims in this action. Venue is proper in this Court
20 pursuant to 28 U.S.C sections 1391(b) and (c). The Complaint,
21 filed concurrently with the lodging of this Consent Decree,
22 states claims upon which relief may be granted against Shell.
23 Shell waives all objections to the Court's jurisdiction to enter
24 or enforce this Consent Decree, as well as venue and service of
25 summons.

26 B. Shell agrees that service of notice or any legal
27 process on it for any purpose under this Consent Decree,
28 including its enforcement, may be made by mailing a copy by

1 first class mail to the attorneys below:

2 Keith Howard
3 Cooper, White & Cooper
4 1333 N. California Blvd.
Suite 450
Walnut Creek, CA 94596

5 Victoria Kincke
6 Shell Oil Company
7 Chemical Legal Department
One Shell Plaza
P.O. Box 2463
Houston, TX 77252

8 **III. PARTIES BOUND**

9 This Consent Decree shall apply to and be binding upon
10 the signatories, their agents, successors and assigns.

11 **IV. RELIEF**

12 A. On the date of lodging of this Consent Decree,
13 Shell agrees to pay the total sum of nineteen million, seven
14 hundred fifty thousand dollars (\$19,750,000.00) by check made
15 payable to California Department of Justice, Litigation Deposits
16 Fund, an interest bearing account, and hand delivered to John D.
17 Fennelly, Office of the Attorney General, 1515 S Street, South
18 Building, Fifth Floor, Sacramento, CA. Upon entry of this
19 Consent Decree by the Court, the principal and interest thereon
20 shall be disbursed from the Litigation Deposits Fund by the
21 California Department of Justice in the following manner.

22 1. The sum of eleven million, five hundred eighty-
23 eight thousand dollars (\$11,588,000.00) plus all interest
24 accumulated on the money in the Litigation Deposits Fund
25 described in Section IV.A, less any administrative costs, shall
26 be paid as follows for alleged natural resource damages:

27
28 ACE 850102

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

1 first class mail to the attorneys below:

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3 Cooper, White & Cooper
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20 shall be disbursed from the Litigation Deposits Fund by the
21 California Department of Justice in the following manner.

22 1. The sum of eleven million, five hundred eighty-
23 eight thousand dollars (\$11,588,000.00) plus all interest
24 accumulated on the money in the Litigation Deposits Fund
25 described in Section IV.A, less any administrative costs, shall
26 be paid as follows for alleged natural resource damages:
27

28 ACE 850102

1 a. The sum of ten million, eight hundred thirty-
2 eight thousand dollars (\$10, 838,000.00) plus all the interest
3 accrued on the money in the Litigation Deposits Fund described
4 in Section IV.A, less any administrative costs, shall be
5 disbursed pursuant to the Clean Water Act, 33 U.S.C. Section
6 1321(f), to the Department of Justice, State of California for
7 deposit in the California Department of Justice, Special
8 Deposits Fund into an account to be determined, hereafter
9 referred to as the "Trustees Fund." The purpose of this fund
10 shall be to compensate the Trustees for the United States and
11 the State of California for alleged damages to natural
12 resources. The Trustees shall administer and disburse the money
13 in the Trustees Fund in accordance with the Memorandum of
14 Agreement attached as Exhibit 2.

15 b. The sum of seven hundred fifty thousand
16 dollars (\$750,000.00) shall be disbursed to the Department of
17 Fish and Game pursuant to Fish and Game Code section 12017 for
18 purposes such as cleanup and abatement of oil spills, projects
19 devoted to the preservation of California plants, wildlife and
20 fisheries, land acquisition and land improvements and species
21 propagation projects. Payment shall be made payable to "Fish
22 and Wildlife Pollution Cleanup and Abatement Account, Fish and
23 Game Preservation Fund" and delivered by mail to Department of
24 Fish and Game Fiscal Division, c/o Marie Reed, P.O. Box 944209,
25 Sacramento, CA 94244-2090.

26 2. The sum of one million, three hundred twelve
27 thousand dollars (\$1,312,000.00) shall be disbursed to the
28 Department of Justice, State of California, for deposit in the

1 California Department of Justice, Special Deposits Fund into an
2 account to be determined, hereafter referred to as the "Studies
3 Fund." The purpose of the Studies Fund shall be to conduct
4 studies pertaining to the Oil Spill as set forth in Appendix A,
5 attached and incorporated by reference.

6 3. The sum of five hundred thousand dollars
7 (\$500,000.00) shall be disbursed to the United States, the State
8 of California, and the County of Contra Costa for reimbursement
9 of costs. Said sum shall be apportioned and made payable as
10 follows:

11 a. The sum of ninety-three thousand dollars
12 (\$93,000.00) shall be made payable to "U.S. Department of the
13 Interior" and delivered by mail to the Office of the Solicitor,
14 P.O. Box 36064, 450 Golden Gate Avenue, San Francisco, CA 94102.

15 b. The sum of three hundred and fifty-seven
16 thousand dollars (\$357,000.00) shall be paid to the State of
17 California as follows:

18 1. The sum of one hundred ninety three
19 thousand, two hundred and twenty-nine dollars and sixty-eight
20 cents (\$193,229.68) shall be made payable to the "Fish and
21 Wildlife Pollution Cleanup and Abatement Account, Fish and Game
22 Preservation Fund" and delivered by mail to Department of Fish
23 and Game Fiscal Division, c/c Marie Reed, P.O. Box 944209,
24 Sacramento, CA 94244-2090;

25 ii. The sum of sixty-two thousand, three
26 hundred fifty-two dollars and sixty-seven cents (\$62,352.67)
27 shall be made payable to "State Water Pollution Cleanup and
28 Abatement Account, State Water Quality Control Fund" and

1 delivered by mail to William R. Attwater, Chief Counsel, State
2 Water Resources Control Board, 901 P Street, P.O. Box 100,
3 Sacramento, CA 95801;

4 iii. The sum of twenty thousand, one
5 hundred twenty-five dollars and eighty-eight cents (\$20,125.88)
6 shall be made payable to "California Department of Parks and
7 Recreation" and delivered by mail to Richard E. Felty, Regional
8 Director, California Department of Parks and Recreation, Central
9 Coast Region, 2211 Garden Road, Monterey, CA 93940;

10 iv. The sum of nine thousand five hundred
11 sixteen dollars and fifty-three cents (\$9,516.53) shall be made
12 payable to the "Bay Fill Cleanup and Abatement Fund" and
13 delivered by mail to San Francisco Bay Conservation and
14 Development Commission, c/o Russell Abramson, 30 Van Ness
15 Avenue, Suite 2011, San Francisco, CA 94102;

16 v. The sum of twelve thousand dollars
17 (\$12,000.00) shall be made payable to "State Lands Commission"
18 and delivered by mail to Robert C. Hight, Chief Counsel, State
19 Lands Commission, 1807 13th Street, Sacramento, CA 95814;

20 vi. The sum of fifty-nine thousand, seven
21 hundred seventy-five dollars and twenty-four cents (\$59,775.24)
22 shall be made payable to "California Department of Justice," and
23 delivered by mail to Sara J. Russell, Deputy Attorney General,
24 Office of the California Attorney General, 350 McAllister
25 Street, Suite 6000, San Francisco, CA 94102. This money shall
26 be used only to defray expenses incurred by the Attorney General
27 in the implementation of this Consent Decree and otherwise to
28 defray expenses incurred by the Attorney General in his capacity

1 as legal counsel to State agencies responsible for enforcing
2 laws and programs for the protection of the State's environment,
3 natural resources and lands. Such expenses may include, but are
4 not limited to, reimbursement of the cost of expert consultants,
5 temporary employees, equipment and supplies. The Attorney
6 General shall segregate this money in a separate account which
7 shall be jointly administered by the Natural Resources Section
8 and the Land Law Section in the Public Rights Division of the
9 California Department of Justice;

10 c. The sum of fifty thousand dollars
11 (\$50,000.00), for Contra Costa County, shall be made payable and
12 delivered by mail to Huffman and Associates, Inc., 69 Aztec
13 Street, San Francisco, CA 94110, as payment of professional
14 consultant expenses.

15 4. The sum of six hundred thousand dollars
16 (\$600,000.00) shall be disbursed to the City of Benicia as
17 alleged damages. Payment in the amount of six hundred thousand
18 dollars (\$600,000.00) shall be made payable to the "City of
19 Benicia, c/o Finance Director" and shall be delivered by mail to
20 the City of Benicia Finance Department, 250 East L Street,
21 Benicia, California 94510.

22 a. Three hundred fifty thousand dollars
23 (\$350,000.00) of this money shall be used for the following
24 projects in the following amounts:

25 1. The sum of seventy-five thousand
26 dollars (\$75,000.00) shall be utilized to reconstruct,
27 rehabilitate and enlarge the 9th Street Fishing Pier.

28 ii. The sum of two hundred seventy-five

1 thousand dollars (\$275,000.00) shall be utilized to construct
2 two marsh overlooks at the ends of First Street and Second
3 Street.

4 The City of Benicia shall segregate this money in a
5 separate account which may be utilized only for these above-
6 mentioned projects. Should either, or both, of these projects
7 become infeasible, or should monies remain after the completion
8 of these projects, the City Council of the City of Benicia shall
9 have the right to re-program these monies for other projects
10 within the City of Benicia as long as such projects enhance,
11 mitigate or restore the areas or natural resources affected or
12 impacted by the Oil Spill.

13 b. Two hundred fifty thousand dollars
14 (\$250,000.00) of this money shall go to the City of Benicia
15 general fund.

16 5. The sum of one hundred and fifty thousand dollars
17 (\$150,000.00) shall be disbursed to the County of Solano,
18 payable to the "Office of the District Attorney" and delivered
19 by mail to the Office of the District Attorney, 600 Union
20 Avenue, Fairfield, CA 94533, for the specific purpose of
21 enabling the Solano County Office of Emergency Services and the
22 Solano County District Attorney Environmental Crime Unit to
23 purchase computer hardware and software and communications
24 equipment so as to enable said County to be adequately prepared
25 in the event of future oil spill disasters on its coast and to
26 provide said County with the necessary emergency response
27 capability. The District Attorney shall segregate this money in
28 a separate account which may be utilized only for the above-

1 stated purposes.

2 6. The sum of seven hundred fifty thousand dollars
3 (\$750,000.00) shall be disbursed to the City of Martinez. This
4 amount compensates the City of Martinez and the County of Contra
5 Costa for alleged damages. Payment in the amount of seven
6 hundred fifty thousand dollars (\$750,000.00) shall be made
7 payable to the "City of Martinez, c/o Finance Director" and
8 shall be delivered by mail to the City of Martinez Finance
9 Department, 525 Henrietta Street, Martinez, California 94553.

10 a. Five hundred thousand dollars (\$500,000.00)
11 of this money shall be administered by the City of Martinez and
12 utilized for a joint project of the City of Martinez and Contra
13 Costa County to enhance and rehabilitate the Martinez fishing
14 pier and to construct a landscaped walkway plaza area connecting
15 the Martinez fishing pier to the Italian Fisherman Monument.
16 The City of Martinez shall segregate these monies in a separate
17 account which may be utilized only for the above identified
18 project. Should this project become infeasible, or should
19 monies remain after the completion of this project, the City
20 Council of the City of Martinez shall have the right to re-
21 program these monies for other projects after consultation with
22 Contra Costa County. The City Council of the City of Martinez
23 may only utilize these monies for projects which enhance,
24 mitigate or restore the areas or natural resources affected or
25 impacted by the Oil Spill.

26 b. Two hundred fifty thousand dollars
27 (\$250,000.00) of this money shall go to the City of Martinez
28 general fund.

1 7. The sum of two hundred thousand dollars
2 (\$200,000.00) shall be disbursed to the East Bay Regional Park
3 District as alleged damages. Payment shall be made payable to
4 the "East Bay Regional Park District" and delivered by mail to
5 the East Bay Regional Park District, 11500 Skyline Boulevard,
6 Oakland, CA 94619-2443.

7 8. The sum of two million dollars (\$2,000,000.00)
8 shall be disbursed to the United States as penalties for the
9 Defendant's alleged violations of the spill prevention
10 regulations found at 40 C.F.R. Part 112. Payment shall be made
11 payable to the "Treasurer of the United States" and delivered by
12 mail to the United States Attorney for the Northern District of
13 California. A copy of the check and letter tendering such check
14 shall be mailed to Office of Regional Counsel, Water Branch
15 Chief, U.S.E.P.A. Region 9, 215 Fremont Street, San Francisco,
16 CA 94105, and to the Chief, Environmental Enforcement Section,
17 Land and Natural Resources Division, United States Department of
18 Justice, P.O. Box 7611, Ben Franklin Station, Washington D.C.
19 20044.

20 9. The sum of fifty thousand dollars (\$50,000.00)
21 shall be disbursed to the United States as penalties for the
22 Defendant's alleged violations of its NPDES Permit No. CA005789
23 at the Complex. Payment shall be made payable to the "Treasurer
24 of the United States" and delivered by mail to the United States
25 Attorney for the Northern District of California. A copy of the
26 check and letter tendering such check shall be mailed to Office
27 of Regional Counsel, Water Branch Chief, U.S.E.P.A. Region 9,
28 215 Fremont Street, San Francisco, CA 94105, and to the Chief,

1 Environmental Enforcement Section, Land and Natural Resources
2 Division, United States Department of Justice, P.O. Box 7611,
3 Ben Franklin Station, Washington D.C. 20044.

4 10. The sum of two million, one hundred thousand
5 dollars (\$2,100,000.00) shall be disbursed as penalties to the
6 State of California for alleged statutory violations. Payment
7 shall be made payable to "State Water Pollution Cleanup and
8 Abatement Account, State Water Quality Control Fund" and
9 delivered to William R. Attwater, Chief Counsel, State Water
10 Resources Control Board, 901 P Street, P.O. Box 100, Sacramento,
11 CA 95801.

12 11. The sum of two hundred fifty thousand dollars
13 (\$250,000.00) shall be disbursed to the County of Contra Costa
14 as penalties for alleged violations of Business and Professions
15 Code Section 17206 arising out of the Oil Spill. Payment shall
16 be made payable to "Treasurer, Contra Costa County" and
17 delivered to the Contra Costa County District Attorneys Office,
18 Special Operations Division, P.O. Box 670, Martinez, CA 94553.

19 12. The sum of two hundred fifty thousand dollars
20 (\$250,000.00) shall be disbursed to the County of Solano as
21 penalties for alleged violations of Business and Professions
22 Code Section 17206 arising out of the Oil Spill. Payment shall
23 be made payable to "County of Solano, c/o Office of the District
24 Attorney" and delivered to the Office of the District Attorney,
25 600 Union Avenue, Fairfield, CA 94533.

26 B. Except as provided in sections VII and IX, below,
27 Shell hereby waives any and all rights or claims to the money
28 described in section IV.A of this Consent Decree. Further,

1 Shell waives any and all rights to object to the implementation
2 of the Consent Decree, including, but not limited to, the
3 disbursement of such money and any decisions relating to
4 implementation.

5 V. COVENANTS NOT TO SUE

6 A. The covenants set forth in paragraphs B-I below
7 shall take effect only upon entry of this Consent Decree and
8 payment in full of all amounts set forth in Section IV
9 according to the terms and conditions of that section.

10 B. The United States covenants not to sue Shell for:

11 1. Civil violations of the spill prevention
12 regulations at 40 C.F.R. Part 112 which occurred at the Complex
13 prior to November 1, 1988;

14 2. Civil claims for costs and natural resource
15 damages under 33 U.S.C. section 1321(f) arising from the Oil
16 Spill;

17 3. Civil claims for violations of NPDES Permit
18 No. CA005789 pursuant to section 301 of the Clean Water Act, 33
19 U.S.C. section 1319(d), caused by the Oil Spill;

20 4. Civil claims pursuant to 16 U.S.C. section
21 1540(a) for violations of 16 U.S.C. section 1538(a) arising from
22 the Oil Spill;

23 5. Civil damages to the Navy for trespass on the
24 Naval Weapons Facility, Concord, California, caused by the Oil
25 Spill;

26 6. Civil damages to the Navy for nuisance to the
27 Navy caused by the Oil Spill.

28 C. The State covenants not to sue Shell for any and

1 all civil claims, demands, causes of action, penalties and
2 damages, known or unknown, suspected or unsuspected which the
3 State, on behalf of the State agencies described in Section I.E
4 above, has or may have against Shell based upon or arising out
5 of the Oil Spill.

6 D. The City of Benicia covenants not to sue Shell for
7 civil damages and costs for trespass, negligence and nuisance
8 resulting from the Oil Spill.

9 E. The City of Martinez covenants not to sue Shell
10 for civil damages and costs for trespass, negligence and
11 nuisance resulting from the Oil Spill.

12 F. The East Bay Regional Park District covenants not
13 to sue Shell for civil and natural resource damages and costs
14 for trespass and nuisance resulting from the Oil Spill.

15 G. The County of Contra Costa covenants not to sue
16 Shell for violations of the Hazardous Waste Control Act, the
17 Unlawful Business Practice Act and damages and costs for
18 trespass and nuisance resulting from the Oil Spill.

19 H. The County of Solano covenants not to sue Shell
20 for violations of the Hazardous Waste Control Act, the Unlawful
21 Business Practice Act and damages and costs for trespass and
22 nuisance resulting from the Oil Spill.

23 I. The People of the State of California covenant not
24 to proceed criminally against Shell for alleged violations
25 arising from the Oil Spill of the following statutes and
26 regulations:

27 1. California Fish and Game Code sections 5650,
28 12000 and 12002;

ACE 850112

2. California Water Code section 13387;
3. California Government Code section 66632(j);
4. California Public Resources Code section 6303.1;
5. California Health and Safety Code sections 25189.5 and 25191;
6. California Penal Code sections 372 and 602;
7. Title 14, California Code of Regulations, sections 4305, 4306 and 4307.

VI. RESERVATION OF RIGHTS

A. Each Plaintiff expressly reserves its right to initiate judicial or administrative actions against Shell for any matter not expressly covered by the covenants not to sue between that Plaintiff and Shell.

B. Nothing in this Consent Decree is intended by the parties or shall be construed as a waiver by any Plaintiff of its right to institute an action against Shell to compel compliance with this Consent Decree.

VII. PRE-LODGING OBLIGATIONS

Upon execution of this Consent Decree by Shell, Shell agrees to be bound to the terms of the decree and may not revoke acceptance unless the named representatives of Plaintiffs have not signed the decree within sixty (60) days from the date of final signature by Shell's representative(s).

VIII. PUBLIC COMMENT AND ENTRY OF CONSENT DECREE

The signatories to this Consent Decree agree that there will be a forty-five (45) day public comment period and that they will follow the procedures set forth at 28 C.F.R.

1 section 50.7 prior to moving the court to enter this Consent
2 Decree. Plaintiffs reserve the right to withdraw their consent
3 to this Consent Decree if Plaintiffs determine that comments
4 received during the comment period disclose facts or
5 considerations indicating that the Consent Decree is unlawful or
6 inadequate to protect the public interest. Plaintiffs will not
7 move the Court to enter this Consent Decree if the public
8 comment period has expired and will only submit the Consent
9 Decree for entry if, in their determination, comments received
10 during the comment period do not disclose facts or
11 considerations indicating that the Consent Decree is unlawful or
12 inadequate to protect the public interest.

13 IX. CONDITIONS FOR RETURN OF MONEY TO SHELL

14 A. Money paid by Shell into the Fund described in
15 section IV.A shall remain in such Fund and continue to accrue
16 interest for the benefit of Plaintiffs until entry of this
17 Consent Decree unless one of the following occurs:

18 1. Plaintiffs comply with the requirements of
19 this section and notify Shell that they intend to resolve the
20 matter through litigation; or

21 2. Shell complies with the requirements of this
22 section and notifies the Plaintiffs that it intends to resolve
23 the matter through litigation.

24 If the event described in either subsection A.1 or A.2
25 occurs, Shell may withdraw the principal and accrued interest in
26 the Fund, less any administrative fees owing to the agent of
27 such Fund.

28 B. Within one hundred eighty-three (183) days

1 following the close of the comment period described in section
2 VIII, Plaintiffs may file a motion for entry of this Consent
3 Decree. Should comments received during the comment period
4 disclose facts or considerations, in Plaintiffs' determination,
5 indicating that the Consent Decree is unlawful or inadequate to
6 protect the public interest, the parties shall use this one
7 hundred eighty-three (183) day period for negotiations regarding
8 modifications to this Consent Decree. Such period may be
9 extended by agreement of all parties. If Plaintiffs do not file
10 a motion for entry within one hundred eighty-three (183) days,
11 or any longer period to which all parties have agreed, Shell may
12 withdraw the principal and accrued interest from the Fund
13 provided for in section IV.A, less any administrative fees owing
14 to the agent of such Fund.

15 C. If the Court refuses to grant Plaintiffs' motion
16 for entry of this Consent Decree, including any modifications
17 made pursuant to section IX.B to which all parties have agreed,
18 the parties shall utilize the period of one hundred and eighty-
19 three (183) days from the date of denial of
20 Plaintiffs' motion in which to negotiate a consent decree that
21 addresses all concerns raised by the Court. The one hundred
22 eighty-three (183) day period may be extended by agreement of
23 all parties. If Plaintiffs do not file a motion for entry of
24 this Consent decree within said one hundred eighty-three (183)
25 day period or any longer period to which all parties have
26 agreed, Shell may withdraw the principal and accrued interest
27 from the Fund described in section IV.A the principal and
28 accrued interest, less any administrative fees owing to the

1 agent of such Fund. However, Shell may not withdraw such money
2 if any party has filed an appeal to any Court order denying the
3 motion to enter. If such appeal is withdrawn or the Appellate
4 Court enters an order other than one instructing this District
5 Court to enter the Consent Decree, the parties shall have a
6 period of ninety (90) days to negotiate a consent decree. If
7 Plaintiffs have not moved for entry within that time period,
8 Shell may withdraw the principal and accrued interest from the
9 Fund described in section IV.A, less any administrative fees
10 owing to the agent of such Fund.

11 D. If Shell withdraws the money from the Fund
12 described in section IV.A pursuant to section IX.B or IX.C,
13 Shell shall notify each Plaintiff in writing. Each Plaintiff
14 shall have sixty (60) days from the receipt of such notice in
15 which to amend the Complaint and/or Notice of Violation filed
16 concurrently with lodging of this Consent Decree or to dismiss
17 the Complaint and file in another forum. Service of an amended
18 or new complaint(s) or expiration of this sixty (60) day period,
19 whichever comes sooner, shall trigger the time limits for
20 pleadings responsive to a complaint in the forum in which such
21 amended Complaint or new Complaint is filed. Shell expressly
22 agrees to waive any rights it may have to a statute of
23 limitations or laches defense to a new Notice of Violation, an
24 amended Complaint or to any new Complaint served pursuant to
25 section IX.D.

26 X. TERMINATION

27 When the funds described in section IV.A are disbursed
28 in accordance with section IV, Plaintiffs shall notify the Court

1 that this Consent Decree is terminated.

2 **XI. REPRESENTATIVES**

3 Each undersigned representative of the parties to this
4 Consent Decree certifies that he or she is fully authorized to
5 enter into the terms and conditions of this Consent Decree and
6 to execute and legally bind such party to this document.

7 **XII. COUNTERPARTS**

8 This Consent Decree may be executed in any number of
9 counterparts and each executed counterpart shall have the same
10 force and effect as an original instrument.

11 **XIII. HEADINGS**

12 The headings in this Consent Decree are inserted for
13 convenience only and are not intended to be a part of or to
14 affect the meaning or interpretation of the Consent Decree.

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SHELL OIL COMPANY

Dated: November 22, 1989.

R. Lopez

ACE 850113

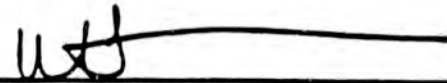
UNITED STATES OF AMERICA

Dated: 11/24/89



RICHARD B. STEWART
Assistant Attorney General
Land and Natural Resources
Division

Dated: 11/24/89



WALKER SMITH
Acting Assistant Chief
VALERIE ANN LEE
Trial Attorney
Environmental Enforcement Section
U.S. Department of Justice

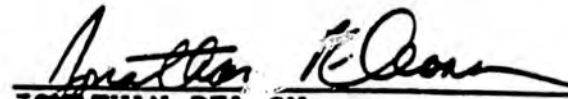
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U.S. DEPARTMENT OF THE INTERIOR

Dated:

Nov. 28, 1989


JONATHAN DEASON
Director
Office of Environmental Project
Review
U.S. Department of the Interior

ACE 850120

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Dated: NOV 27 1999

U.S. DEPARTMENT OF COMMERCE



THOMAS A. CAMPBELL
General Counsel
National Oceanic and Atmospheric
Administration
U.S. Department of Commerce

ACE 850121

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U.S. DEPARTMENT OF THE NAVY

Dated: 11-23-89


J. MARTIN ROBERTSON, Esq.
Trial Attorney
U.S. Department of the Navy

ACE 950122

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U.S. ENVIRONMENTAL PROTECTION
AGENCY

Dated: 11-24-89



DANIEL W. MCGOVERN
Regional Administrator
U.S. Environmental Protection
Agency, Region 9

ACE 850123

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U.S. ENVIRONMENTAL PROTECTION AGENCY

Dated: 11-27-89

James M. Strock

JAMES M. STROCK
Assistant Administrator for Enforcement
and Compliance Monitoring
U.S. Environmental Protection Agency

ACE 850124

STATE OF CALIFORNIA
DEPARTMENT OF FISH AND GAME

Dated: 11-27-89


PETER F. BONTADELLI
Director 11-27-89

Approved as to form:

JOHN K. VAN DE KAMP
Attorney General
ROBERT H. CONNETT
Assistant Attorney General
SARA J. RUSSELL
MICHAEL W. NEVILLE
Deputy Attorneys General


SARA J. RUSSELL
Deputy Attorney General

ACE

850125

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL
BOARD FOR THE SAN FRANCISCO BAY
REGION

Dated: 11-27-89


STEVEN R. RITCHIE
Executive Officer

Approved as to form:

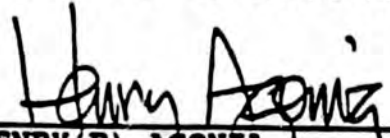
JOHN K. VAN DE KAMP
Attorney General
ROBERT H. CONNETT
Assistant Attorney General
SARA J. RUSSELL
MICHAEL W. NEVILLE
Deputy Attorneys General


SARA J. RUSSELL
Deputy Attorney General

ACE 850126

STATE OF CALIFORNIA
DEPARTMENT OF PARKS AND RECREATION

Dated: 11-27-89


HENRY R. AGONZA
Director

Approved as to form:

JOHN K. VAN DE KAMP
Attorney General
ROBERT H. CONNETT
Assistant Attorney General
SARA J. RUSSELL
MICHAEL W. NEVILLE
Deputy Attorneys General


SARA J. RUSSELL
Deputy Attorney General

ACE 850127

STATE OF CALIFORNIA
STATE LANDS COMMISSION


CLAIRE T. DEDRICK
Executive Officer

Dated: 11/27/89

Approved as to form:

JOHN K. VAN DE KAMP
Attorney General
N. GREGORY TAYLOR
Assistant Attorney General
PATRICIA SHEEHAN PETERSON
Deputy Attorney General


PATRICIA SHEEHAN PETERSON
Deputy Attorney General

ACE 850128

STATE OF CALIFORNIA
SAN FRANCISCO BAY CONSERVATION
AND DEVELOPMENT COMMISSION

Dated: 11-27-89

Alan R. Pendleton

ALAN R. PENDLETON
Executive Director

Approved as to form:

JOHN K. VAN DE KAMP
Attorney General
N. GREGORY TAYLOR
Assistant Attorney General
JOSEPH J. BARBIERI
Deputy Attorney General

Joseph J. Barbieri
JOSEPH J. BARBIERI
Deputy Attorney General

ACE 850129

CONTRA COSTA COUNTY and
PEOPLE OF THE STATE OF CALIFORNIA,
IN AND FOR CONTRA COSTA COUNTY

Dated: Nov 13, 1989


JAMES L. SEPULVEDA
Deputy District Attorney
Attorney for Contra Costa County

ACE 850130

SOLANO COUNTY and PEOPLE OF THE
STATE OF CALIFORNIA, IN AND FOR
SOLANO COUNTY

Dated: 11/14/89


MARK S. POLLOCK
Deputy District Attorney
Attorney for Solano County

ACE 850131

CITY OF BENICIA

Dated: 11-22-89

Marilyn O'Rourke
MARILYN O'ROURKE
Mayor

Approved as to form:

Howard Stern

HOWARD STERN
WALTER & PISTOLE, P.C.
Attorney for City of Benicia

ACE 850132

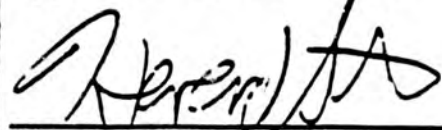
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CITY OF MARTINEZ

Dated: 11-27-89


MICHAEL MENESINI
Mayor

Approved as to form:


HOWARD STERN
WALTER & PISTOLE, P.C.
Attorney for City of Martinez

ACE 850133

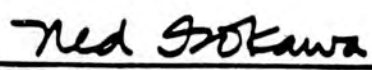
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EAST BAY REGIONAL PARK DISTRICT

DATED: November 28, 1989.


MARY LEE JEFFERS
President
Board of Directors

Approved as to form:


NED N. ISOKAWA
CROSBY, HEAFEY, ROACH & MAY
Professional Corporation
Attorneys for East Bay
Regional Park District

1 IT IS SO ORDERED, ADJUDGED AND DECREED.
2

3 Dated:

4 UNITED STATES DISTRICT COURT JUDGE
5 NORTHERN DISTRICT OF CALIFORNIA
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APPENDIX

Pursuant to the Consent Decree, studies have been funded for improving future response strategies to oil spills to ensure better restoration and rehabilitation of natural resources affected by such spills. In order to ensure that the experts carrying out the following studies have access to all available information, Shell agrees to provide the following experts all biological and chemical studies and underlying data performed to date relating to the Oil Spill upon entry of the Consent Decree. The studies, the methods for implementing and reviewing the studies, and the experts retained to perform the studies are as follows:

A. Studies.

(1) A study to assess the rate of recovery of intertidal vegetation associated with various oil spill response techniques.

This study will provide increased information about which response techniques and procedures are most effective in cleaning up a spill like the Shell Oil Spill.

The focus of the study will be on the intertidal wetland marshes affected by the spill. Building on current studies conducted by Shell Oil Company, the study will monitor the erosion rates of all the vegetated shoreline adversely affected by the spill and compare vegetation recovery rates where different response techniques were used. The study will provide better information for future purposes regarding the most effective corrective actions to clean up oil and to restore and rehabilitate impacted areas.

ACE 850136

APPENDIX

1 To carry out this study, the California Department of
2 Justice will extend its current contract with RPI International,
3 Inc., and in particular with Dr. Jaqueline Michel, in an amount
4 not to exceed \$210,000. RPI will subcontract part of this study
5 to Dr. Terry Huffman of Huffman and Associates, who was retained
6 as a consultant to the affected governments soon after the Shell
7 Oil Spill occurred.

8 The contract will be administered by the California
9 Department of Justice. Study managers for the contract will be
10 technical personnel designated by the U.S. Fish and Wildlife
11 Service (USFWS) and the California Department of Fish and Game
12 (CDFG) who will provide substantive review, criticism and
13 guidance for the study.

14 (2) A study to examine the changes in the composition
15 and concentration of San Joaquin Valley (SJV) crude oil in
16 estuarine and coastal habitats.

17 The purpose of this study is to examine the changes in
18 composition and concentration of SJV crude oil spilled in
19 intertidal and subtidal habitats in order to better evaluate the
20 best methods to restore and rehabilitate these resources. This
21 study will be coordinated with the vegetation study results
22 described above to provide a better understanding of the
23 recovery of typical coastal and estuarine environments from
24 crude oil spills.

25 The study will build on the results of current studies
26 conducted by Shell Oil Company and will have three specific
27 tasks: (a) to conduct an oil weathering study of SJV crude oil
28 in intertidal and subtidal sediments contaminated by the such

1 oil; (b) to correlate the persistence of SJV crude oil in
2 sediments with different cleanup techniques in the wetland
3 areas; and (c) to conduct sediment toxicity studies of
4 intertidal and subtidal sediments contaminated by SJV crude oil.
5 The technical reports generated by this study will provide
6 increased information to better assess the potential effects of
7 SJV crude oil spilled in estuarine and coastal environments.

8 To carry out this study, the California Department of
9 Justice will contract with A.D. Little, and in particular with
10 Dr. Paul Boehm, to continue Dr. Boehm's initial weathering
11 studies of this oil in an amount not to exceed \$357,000.

12 The contract will be administered by the California
13 Department of Justice. Study managers will be technical
14 personnel designated by the USFWS and the CDFG who will provide
15 substantive review, criticism and guidance for the study.

16 (3) A contingent valuation study to measure natural
17 resource values relevant to California oil spills.

18 The purpose of this study is to apply state-of-the-art
19 economic measurement techniques to better develop use and non-
20 use values that humans place on offshore, coastal and estuarine
21 natural resources damaged by oil spills occurring in California.
22 The study would utilize the contingent valuation approach and
23 the skills of several disciplines, including economics,
24 sociology and survey research. The study would require the
25 development of a survey instrument, the implementation of a
26 field survey, and analysis of survey data and would take about
27 one year to accomplish. The information derived from the study
28 will assist federal, state and local governments in assessing

1 damages to natural resources from future California oil spills
2 and in land use planning management and regulation of such
3 natural resources.

4 To carry out this study, the California Department of
5 Justice will extend its current contract with Dr. Michael
6 Hanemann in an amount not to exceed \$645,000. Dr. Hanemann will
7 subcontract part of this study to Drs. Richard Carson, Robert
8 Mitchell, Thomas Wegge, Stanley Presser, John Loomis and Paul
9 Ruud.

10 The contract will be administered by the California
11 Department of Justice. Study managers will be technical
12 personnel designated by the USFWS and the CDFG who will provide
13 substantive review, criticism and guidance for the study.

14 B. Review of Studies and Final Report.

15 A small group of experts in the fields of the vegetation
16 and oil studies described above will be formed to assist in
17 review of such studies, in development of a Final Report based
18 upon the conclusion of those studies and in dissemination of
19 information to the spill response community. This "peer review
20 group" will be responsible for providing detailed evaluations of
21 the study plans and annual review of all study results. It will
22 make recommendations on any necessary changes to the study
23 plans, the duration of each study element, and the termination
24 of each study element. RPI, aided by the contractors for the
25 vegetation and oil studies, by the peer review group and the
26 study managers will also be responsible for periodically
27 disseminating study data to the spill response community through
28 appropriate means such as meetings. At the conclusion of these

1 two studies, the contractors for the vegetation and oil studies
2 aided by the peer review group, RPI and the study managers will
3 develop a final report and arrange for its distribution.

4 To establish and coordinate this peer review group, the
5 California Department of Justice will contract with RPI
6 International, Inc., and in particular with Dr. Jaqueline
7 Michel, in an amount not to exceed \$100,000. The contract will
8 be administered by the California Department of Justice.

9 C. Experts.

10 The experts performing the above-described contracts
11 were retained because of their unique qualifications in the area
12 of their respective expertise. All of them are currently
13 retained as consultants to the parties to the litigation and are
14 uniquely familiar with the particular facts and circumstances of
15 the Shell Oil Spill. Therefore, retention of these experts to
16 perform and review the studies will entail the minimum
17 expenditure of time and money and be most cost effective to the
18 public and to the parties. Such experts will also provide
19 critical continuity of knowledge and analysis of the Oil Spill
20 events.

21 It is the intent of the parties that the experts will
22 perform and continue the studies, using additional persons as
23 deemed necessary, so long as is practicable. Their contracts
24 may be terminated in the event that they do not meet the
25 standards of their contracts.

26 D. Termination.

27 Upon completion of the contracts described in this
28 Appendix, the California Department of Justice shall pay into

1 the Trustees Fund any unexpended and unobligated funds remaining
2 in the Studies Fund.
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ACE 850141

FILED

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

27
RECEIVED
JUN 27 1990
NATIONAL CLERK

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY,

Complainant,

v.

SHELL OIL COMPANY,

Respondent.

SPCC IX-90-01

NOTICE OF VIOLATION,
COMPLAINT, AND NOTICE OF
OPPORTUNITY FOR HEARING

NOTICE OF VIOLATION

1. This is notification of violations of the Oil Pollution Prevention Regulations, 40 C.F.R. Part 112, promulgated pursuant to Section 311(j) of the Clean Water Act, 33 U.S.C. § 1321(j).

2. Shell Oil Company ("Shell") owns or operates a non-transportation related onshore facility in Martinez, California engaged in storage or distribution of oil and oil products, which due to its location, could reasonably be expected to discharge oil in harmful quantities, as defined in Part 110 of Title 40 of the Code of Federal Regulations, into or upon the navigable waters of the United States or adjoining shorelines.

3. Shell violated the Oil Pollution Prevention Regulations by failing to fully implement a Spill Prevention Control and Countermeasures ("SPCC") Plan in accordance with section 112.7, 40 C.F.R. § 112.7, as required by section 112.3(a), 40 C.F.R. § 112.3(a), in that:

ACE 850142

EXHIBIT 1

1 a. the drainage valves for rainwater from the levee areas
2 surrounding oil storage tanks were routinely left in an open
3 position, contrary to the requirements of section
4 112.7(e)(2)(iii) of the regulations, 40 C.F.R. § 112.7(e)(2)(iii)
5 and the SPCC Plan; and

6 b. records required to be maintained by section 112.7(e)(8)
7 of the regulations, 40 C.F.R. § 112.7(e)(8), were either missing
8 or incomplete.

9 4. Shell violated the Oil Pollution Prevention Regulations by
10 failing to amend and implement its SPCC Plan within six months
11 after a change in the facility design, construction, operation or
12 maintenance which materially affects the facility's potential for
13 the discharge of oil into or upon the navigable waters of the
14 United States or adjoining shore lines as required by section
15 112.5(a) of the regulations, 40 C.F.R. § 112.5(a).

16 a. In October 1984, construction of two new oil holding
17 tanks and alteration of the drainage systems was complete and the
18 tanks were put into operation. The new drainage system allowed
19 drainage from the levee areas around the tanks to go directly
20 through an outfall to Peyton Slough without first passing through
21 the facility's water treatment plant, thus materially affecting
22 the facility's potential for discharging oil into or upon the
23 navigable waters of the United States. Shell failed to amend its
24 SPCC Plan until October 1986, fully two years after the changes
25 at the facility; and
26

1 these proceedings. In order to obtain a hearing, you must submit
2 a written request, signed by you or on your behalf by a duly
3 authorized officer, director, agent or attorney, within thirty
4 (30) days of the receipt of the Notice of Violation. The request
5 for hearing shall be in accordance with the requirements of
6 section 114 and shall: (1) state the name and address of the
7 person requesting the hearing; (2) state with particularity the
8 issues to be raised by such person at the hearing; and (3)
9 include a copy of the Notice of Violation. Address any request
10 for hearing to:

11 Regional Hearing Clerk
12 EPA, Region IX
215 Fremont Street
13 San Francisco, CA 94105

14 SETTLEMENT CONFERENCE

15 Whether or not you request a hearing, you have the right to
16 present written explanation, information or any materials in
17 answer to the charges or in mitigation of the penalty. You may
18 confer informally with EPA concerning the alleged violations or
19 the amount of the proposed penalty. A request for an informal
20 conference does not stay the thirty (30) day period during which
21 you must submit a written request for a hearing. You have the
22 right to be represented by counsel at any such informal hearing.
23 EPA has the authority to modify the amount of the proposed
24 penalty to reflect any settlement agreement reached with you at
25 any conference. EPA encourages all parties against whom a civil
26 penalty is proposed to be assessed to pursue the possibilities of
settlement as a result of informal conferences. Any such

1 settlement shall be finalized by the issuance of a written
2 Consent Agreement signed by both parties and a written Order
3 signed by the Director of the Waste Management Division pursuant
4 to a delegation from the Regional Administrator, EPA, Region IX,
5 or by means of a Consent Decree. The issuance of such Consent
6 Agreement or Consent Decree shall constitute a waiver of your
7 right to request a hearing on any matter stipulated to therein.
8

9 Dated: Nov. 27, 1989


Jeff Zelikson, Director
Hazardous Waste Management
Division

1
2 CERTIFICATE OF SERVICE

3 I certify that on the date noted below, I sent by first
4 class mail, postage prepaid, a copy of the foregoing "Notice of
5 Violation, Complaint, and Notice of Opportunity for Hearing" to
6 the following persons at the addresses listed below:

7 Victoria J. Kincke
8 Shell Oil Company
9 Chemical Legal Department
10 One Shell Plaza
11 P.O. Box 2463
Houston, TX 77252

12 Keith Howard
13 Cooper, White and Cooper
14 1333 N. California Blvd., Suite 450
15 Walnut Creek, CA 94596

16 I further certify that on the same date below, I hand
17 delivered an original of the above document to the following per-
18 son at the address listed below:

19 Regional Hearing Clerk
20 U.S. EPA, Region 9
21 215 Fremont Street
22 San Francisco, CA 94105

23 Date: 11/27/89

24 Laurie Kermish
25 Laurie Kermish
26 Assistant Regional Counsel
27 Office of Regional Counsel
28 U.S. EPA, Region 9
215 Fremont Street
San Francisco, CA 94105

ACE 850147

MEMORANDUM OF AGREEMENT

Whereas, the United States and the State of California (the "State") are trustees for natural resources damaged by the Shell oil spill (the "Oil Spill"); and

Whereas, the National Contingency Plan, 40 C.F.R. section 300.74(c), and section 311 of the Clean Water Act, 33 U.S.C. section 1321, require that federal and state trustees cooperate with each other in carrying out their responsibilities for protecting natural resources;

Whereas, the U.S. Fish and Wildlife Service has the authority under the Fish and Wildlife Coordination Act, 16 U.S.C. section 661 and 43 C.F.R. Part 11 to enter this agreement on behalf of the U.S. Department of the Interior as trustee for natural resources damaged by the spill;

Now, therefore, the United States and the State have determined that the following procedures for disbursement and management of the funds received for natural resource damages will best enable them, as trustees, to restore, rehabilitate and acquire the equivalent of the natural resources damaged by the Oil Spill.

ACE 850148

I. THE COMMITTEE.

A "Committee" shall be established as follows:

A. Composition. The Committee shall be composed of:

1. The United States Department of the Interior, by and through the United States Fish and Wildlife Service, and the National Oceanic and Atmospheric Administration, acting as the natural resources trustees for the United States;

2. The Department of Fish and Game and the State Lands

EXHIBIT 2

Commission, acting as the natural resources trustees for the State;

3. The East Bay Regional Park District; and

4. The San Francisco Bay Conservation and Development Commission, acting on behalf of the public in the San Francisco Bay Area and on behalf of the Commission's membership, which includes representatives from federal, state and local agencies.

To insure continuity in the Committee's work, each agency represented on the Committee shall designate a permanent representative from its staff to serve on the Committee. Each agency shall also designate alternate representative(s).

B. Decisionmaking. The trustees for the natural resources damaged, the United States and the State, shall have co-equal authority in all decisions, and no decision shall be made that does not have the approval of both the United States and the State. If necessary, the trustees may establish mechanisms by which disputes may be resolved.

C. Duties and Authority. The Committee shall have final authority to disburse the money contained in the Trustees Fund referred to in section IV(A)(1) of the Consent Decree and to make all necessary decisions for the management and administration of the projects for which money has been disbursed from the Trustees Fund. The Committee may take whatever actions that the Committee in its discretion determines are necessary to effectuate the purposes of the Consent Decree and the Natural Resource Objectives described in section II of this Memorandum of Agreement ("MOA"). It is expected that the Committee will take the following actions to accomplish these

purposes:

1. Supervise the administration of the Trustees Fund and disburse money where necessary from the Trustees Fund;
2. Select one or more agencies or organizations (the "Facilitating Agency or Agencies") that, on the behalf of and at the direction of the Committee, may:
 - a. inventory land suitable for acquisition pursuant to the Natural Resource Objectives described in section II of this MOA;
 - b. negotiate for and purchase such land;
 - c. transfer ownership of such land to other public agencies;
 - d. plan for and carry out appropriate wetlands restoration projects;
 - e. contract with consultants to provide technical services to the Committee as described in Section IV of this MOA; and
 - f. take other necessary actions as requested by the Committee.

The Facilitating Agency or Agencies selected by the Committee pursuant to this paragraph shall be a public agency or agencies, unless the Committee determines that a private, non-profit organization would better achieve the Natural Resource Objectives. If the Committee determines that a private, non-profit organization should be selected as a Facilitating Agency, the Committee shall designate one of its agency members to enter into one or more contracts with a private, non-profit organization to act as a Facilitating Agency. The contract

shall set forth the duties of the Facilitating Agency and shall specify the costs of the private, non-profit organization to act as a Facilitating Agency. The costs of the contract and reasonable administrative costs to enter into such contract shall be paid from the Trustees Fund;

3. Review inventories of land acquisition sites and guide the Facilitating Agency or Agencies in negotiations to acquire the sites;

4. Authorize the Facilitating Agency or Agencies to acquire lands on terms acceptable to the Committee;

5. Select one or more public agencies to hold title to the lands acquired by the Committee and, where necessary, attach conditions to the acquiring agency's ownership that would insure the accomplishment of the Natural Resource Objectives;

6. Review and approve leases or other operating agreements between the public agency holding title to any acquired lands and the public agency to whom management responsibility is proposed to be transferred;

7. Create, review, and approve plans for the restoration and management of the acquired lands;

8. Provide funds to other public agencies for the acquisition, creation, and restoration of wetlands where the wetlands would not be acquired, created or restored but for the contribution from the Trustees Fund and where the Committee receives assurances (through a memorandum of understanding or other device) that the acquisition, creation or restoration of the wetlands would be consistent with the Natural Resource Objectives;

9. Convene meetings of the Technical Advisory Committee described in section III, and receive the advice of the Technical Advisory Committee;

10. Prepare and issue public reports from time to time disclosing the work of the Committee;

11. Pay administrative costs that the Committee determines are reasonable and necessary;

12. Establish rules to govern and facilitate the work of the Committee as necessary.

II. NATURAL RESOURCE OBJECTIVES.

The Committee will be guided by the primary objectives of restoring, rehabilitating and acquiring the equivalent of the natural resources adversely affected by the Oil Spill (the "Natural Resource Objectives"). The Committee will seek to accomplish these objectives in the following manner:

The primary means by which the Committee will seek to accomplish the Natural Resource Objectives is through the acquisition, creation, restoration, or enhancement of wetlands in the area of the Oil Spill. In determining which projects to pursue, the Committee's primary consideration shall be the "feasibility" of the proposed site. For purposes of this Memorandum of Agreement, "feasibility" means the physical suitability of the site for the creation or restoration of valuable and productive wetlands habitat, taking into account the economic cost of acquisition, restoration and management of the habitat in comparison to the cost of developing other wetlands sites in the area of the Oil Spill. In evaluating the physical suitability of the proposed wetlands, the Committee may

consider not just the intrinsic capability of the site to support natural resources, but the usefulness of the site in combination with proximate existing wetlands habitat, the location of the site in relation to existing development, and the site's level of protection from development provided under law. The Committee may acquire land adjacent or near to wetlands habitat where the Committee deems it necessary to accomplish the Natural Resource Objectives. The Committee shall attempt to establish a relatively equal number of acres of wetlands in Solano and Contra Costa Counties, as long as such an allocation would be "feasible," as described above. The Committee may coordinate its acquisition and restoration activities with other agencies involved in the acquisition and management of wetlands habitat. The Committee's decisions regarding the acquisition, creation, restoration and management of wetlands habitat shall take into account the habitat's values for supporting fisheries, particularly striped bass.

The Committee retains final discretion to determine which wetlands projects best carry out the Natural Resource Objectives. It is the goal of the Committee to create, restore, or enhance 1000 acres of wetlands. In undertaking this goal the Committee shall give fair consideration to funding the wetlands restoration project that is currently being developed by the California Department of Parks and Recreation at the Benicia State Recreation Area. In addition to its goal of establishing 1000 acres of new wetlands, the Committee shall give special consideration to the following two projects if they are "feasible", as described above:

ACE 850153

1. The enhancement of wetland habitat values at Shell Marsh and the acquisition of a buffer strip around Shell Marsh;

2. The establishment of an appropriate program to study the restoration of the state-listed rare plant mason's lilaeopsis which was impacted by the Oil Spill.

III. TECHNICAL ADVISORY COMMITTEE.

A. Composition. A committee known as the Technical Advisory Committee shall be established. The following agencies have the right to have a representative on and to participate in the activities of the Technical Advisory Committee:

1. The U.S. Fish and Wildlife Service;
 2. The U.S. Environmental Protection Agency;
 3. The Department of the Navy;
 4. The National Oceanic and Atmospheric Administration;
 5. The Regional Water Quality Control Board, San Francisco Bay Region;
 6. The California Department of Fish and Game;
 7. The State Lands Commission;
 8. The San Francisco Bay Conservation and Development Commission;
 9. The California Department of Parks and Recreation;
 10. Solano County;
 11. Contra Costa County;
 12. The City of Benicia;
 13. The City of Martinez;
 14. The East Bay Regional Park District.
- The Technical Advisory Committee may invite

representatives of other public agencies and members of the public to its meetings when, in the sole judgment of the Committee, public disclosure of the Committee's work would not prejudice the effectiveness of the Committee or the Technical Advisory Committee. With the approval of the Committee, the Technical Advisory Committee may also invite technical consultants to its meetings.

B. Duties. The Technical Advisory Committee shall meet from time to time at the request of the Committee to review, guide, and comment upon the work of the Committee. The Technical Advisory Committee may advise the Committee in any of the following areas:

1. The inventory of land acquisition sites and priorities for acquisition;
2. Negotiations and purchases of specific sites, including the feasibility of acquiring the site under the standard set out in the Natural Resource Objectives;
3. The selection of public agencies to own and manage acquired lands;
4. Plans for creating, restoring and maintaining wetlands habitat;
5. Any other area where the Committee determines that the Technical Advisory Committee could provide useful advice.

IV. TECHNICAL SERVICES.

To assist the Committee in carrying out the Natural Resource Objectives described in section II of this Memorandum of Agreement, the Committee may determine that it needs technical advisors. These advisors may provide the following

services:

- A. Provide the Committee with logistical support and coordination;
- B. Provide project design and technical review;
- C. Organize and prepare for Committee meetings;
- D. Advise the Committee during Committee meetings;
- E. Provide for quality control of chemical analyses;
- F. Assist in mitigation site selection and detailed designs;
- G. Develop mitigation success monitoring criteria;
- H. Monitor for mitigation success through data and report view and by field inspections;
- I. Provide analysis and quarterly reports understandable in layperson terms;
- J. Provide analysis and summary report understandable in layperson's terms;
- K. Assist in the preparation of periodic press releases;
- L. Provide other technical advice to the Committee and the Technical Advisory Committee as requested.

To obtain technical services, the Committee may direct a Facilitating Agency to enter into one or more contracts with professional consultants that the Committee determines are best qualified to provide services to the Committee. The total cost of the contracts, including the administrative costs of the Facilitating Agency, shall not exceed \$500,000. The costs of the contracts shall be paid from the Trustees Fund.

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ACE 850156

V. GENERAL.

A. This MOA may be amended by agreement of the trustees where the trustees determine an amendment is necessary to accomplish the Natural Resource Objectives.

B. This MOA terminates seven years from the date of entry of the Consent Decree, except that it may be extended by agreement of the trustees.

C. Upon completion of the Committee's work, any unexpended and unobligated money remaining in the Trustees Fund shall be paid into the Fish and Wildlife Pollution Cleanup and Abatement Account of the Fish and Game Preservation Fund, California Fish and Game Code section 12017.

D. No member of the Committee, the Technical Advisory Committee or a Facilitating Agency, where such Facilitating Agency is a public agency, shall be compensated from the Trustees Fund for his/her services provided pursuant to this MOA.

E. Nothing in this MOA shall be construed as obligating the United States or the State, their officers, agents or employees, to expend any funds in excess of appropriations authorized by law.

F. During the performance of this MOA, the parties will not discriminate against any person because of race, color, religion, sex or national origin.

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ACE 850157

STATE OF CALIFORNIA
DEPARTMENT OF FISH AND GAME

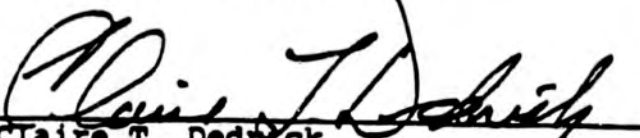
Dated:

Peter F. Bontadelli
Peter F. Bontadelli
Director 11-27-89

ACE 850158

STATE OF CALIFORNIA
STATE LANDS COMMISSION

Dated: 11-27-89


Claire T. Dedrick
Executive Officer

ACE 850159

STATE OF CALIFORNIA
SAN FRANCISCO BAY CONSERVATION
AND DEVELOPMENT COMMISSION

Dated: 11-27-89

Alan R. Pendleton

Alan R. Pendleton
Executive Director

ACE 850150

EAST BAY REGIONAL PARK DISTRICT

DATED: November 28, 1989.

Mary Lee Jeffers

MARY LEE JEFFERDS
President
Board of Directors

U.S. FISH AND WILDLIFE SERVICE
U.S. DEPARTMENT OF THE INTERIOR

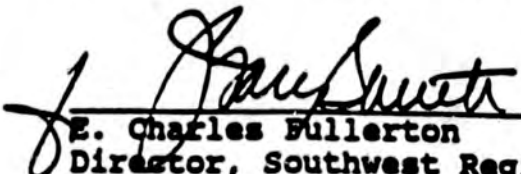
Dated: 11-27-89


Marvin L. Pienart
Regional Director
U.S. Fish and Wildlife Service,
Region I

ACE 850162

NATIONAL OCEANIC AND ATMOSPHERIC
ADMINISTRATION
U.S. DEPARTMENT OF COMMERCE

Dated: 11-22-89


E. Charles Fullerton
Director, Southwest Region
National Marine Fisheries Service

ACE 850163

SCOMM

76:8

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.

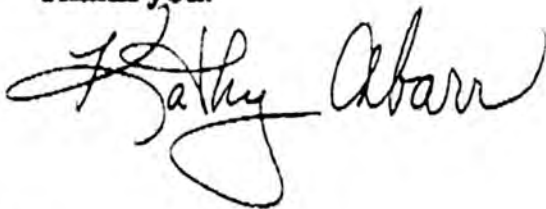
PLEASE - Help these areas recover.

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 that reads "Kathy Abarr". The signature is written in dark ink and is positioned below the typed name "Kathy Abarr".

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 ~~for~~ 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, bivalves, 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.

2nd

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 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