

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

143

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

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(907) 424-5999

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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 Luger & 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

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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-

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. Sheldon*, 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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HENDRICKSON v. FREERICKS

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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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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
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buyer based on
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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/his
 - [professional representat
- 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.

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Exxon-Valdez Settlement

Pat Williams - (4) Special Committee

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8

(Including Cover Sheet)

4/15/91

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City of Cordova

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Telecopy No : (907) 424-6000

Chape
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 - *plumto*

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

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

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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

Exxon Valdez Oil Spill Claims Settlement Kieran Donahue page 6

- 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

3111 C STREET, SUITE 455
ANCHORAGE, ALASKA 99503
(907) 561-7628

WHILE IN SESSION
P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-3704

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
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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

Attorneys at Law

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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.

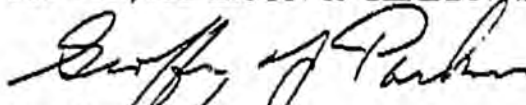
Congressman Miller has described Alyeska's broken promises regarding its ability to prevent or respond to a spill of this magnitude. The merits of any criminal case or civil penalties against Alyeska cannot be determined without court proceedings, but to foreclose that possibility erodes confidence that 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.

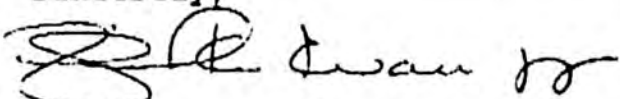
Get rid of problems before you start to make things
worse.

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 a 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.

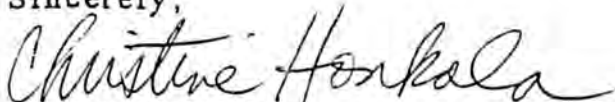
The State of Alaska is proposing settling for \$900 million. At \$100,000 per sea lion, that works out to 9,000 sea lions. It is not inconceivable to me that this number of sea lions were killed.

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 Honkola". The signature is fluid and written in dark ink.

Christine Honkola

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, crabs (bidarkies), octopus and all the fish, even trout, were 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.

Frantically Impacted:

Bob Huntsman
Port Graham, AK 99603
P.O. Box 160

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 cleanup. 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 alot 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 cleanup. My earnings compared to the boats that made money would look like pennies. my Honda ~~has~~ 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 governments + we the people will not see it. Also I can't afford to come + voice my opinion by person

P.O. Box 661, Port Graham, AK 99603-8998

Jean Huntsman

CORRECTION

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



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

RACHEL II

DAVID HARRISON

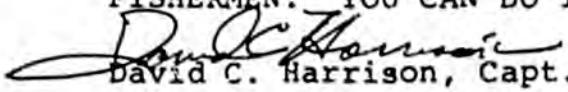
APRIL 10, 1991

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 alot 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 ~~thru~~ 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.

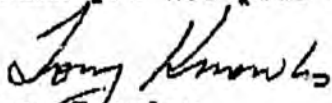
2. Settlement monies must be used to purchase the timber and development rights to acquire habitat areas throughout Prince William Sound, Katchemak Bay, and other appropriate areas. I believe this permanent habitat protection, restoration and enhancement is an essential part of any settlement. It was 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
ATTN: 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.

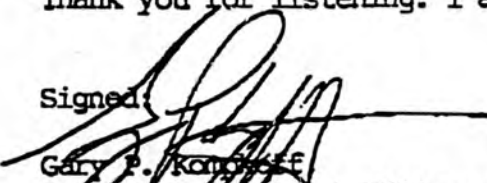
The recently released federal study: "Summary of Effects of the Exxon Valdez Oil Spill on Natural Resources and Archaeological Resources, March, 1991" which proves the devastation to the resources and environment caused by the Exxon Valdez only adds to the uncertainty that the subsistence users are experiencing. 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

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 happily 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

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.

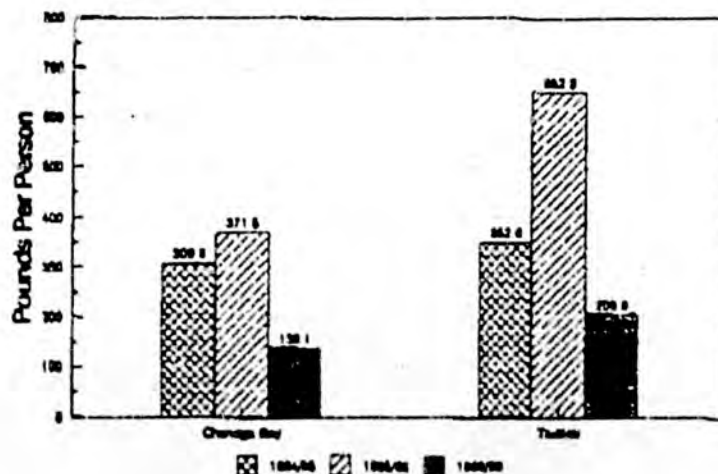
-- All but one household said that the oil spill caused this decline in their subsistence uses.

-- 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
Chronicle index available, page 3
Two new books, page 3
Calendar of events, page 4

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.

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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.