

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILE 8672
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METRO

THURSDAY

SECTION **B** May 2, 1991

House seems set against spill deal.

By **DAVID POSTMAN**
Daily News reporter

JUNEAU — The state House appears ready to reject the proposed \$1 billion Exxon Valdez settlement. The controlling Democrats say it's not enough money, fails to protect fishermen and Natives and gives too much power to the federal government.

After a two-hour meeting of the House Majority Caucus Wednesday night, House Speaker Ben Grussendorf said he expects the deal to be defeated when it comes



up for a vote today. The same prediction came from Caucus Chairwoman Fran Ulmer and Rep. Max Gruenberg, chairman of the committee that reviewed the settlement.

"I cannot recommend to the people of this state that we approve the settlement,"

Gruenberg said. "I am not satisfied."

The move to reject the proposal came after Attorney General Charlie Cole refused to try to renegotiate the pact among Exxon, the federal government and the state. Wednesday afternoon Gruenberg's committee said the settlement should be rejected and renegotiated with terms more to its liking.

On the Senate side, Senate President Dick Eliason was once confident the deal would be approved but said Wednesday because of last

week's furling that threw out Exxon's criminal plea bargain, "Now, I don't know."

Eliason said more important than the House committee "mucking around" is what Exxon does.

The state has until Friday to approve or pull out of the settlement. Exxon has until Saturday.

Cole said that in discussions with Exxon and the federal government Wednesday he was not able to get an extension. But he said he is confident one will be granted today.

Eliason said he will be watching carefully.

"If they're really interested in this agreement they will let us know before we run out of time," he said. "I feel simply it's Exxon's move and if they don't make a move they're not operating with us in good faith anymore."

Eliason has suspended any Senate action on the settlement until he hears from Exxon.

But the House committee,

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after weeks of hearings, meetings and closed-door briefings, endorsed a resolution that says the \$1 billion settlement should be scrapped unless major changes are made — including getting most of the money up front rather than having to wait a decade.

While there was no opposition on the committee to the resolution, member Ronna Barnes, R-Anchorage, said she did not agree with all the 10 recommended changes and she planned to voice her objections when it comes up for a vote on the floor today.

Many of the points in the resolution were also in a 40-page secret memorandum the committee gave to Cole Tuesday. Cole told the committee then that he could pitch the proposal to Exxon and federal government lawyers during a Wednesday morning teleconference.

But Wednesday afternoon Cole told the committee he had changed his mind and didn't mention the document which was made public at the meeting — during the teleconference.

Cole said he woke up at 3

a.m. and began thinking about agreeing to pass the document on to Exxon and the federal lawyers.

"At 4:22 I decided it would be inappropriate for me to send that document," he said.

Cole said he had several reasons for disregarding the committee's instructions and for going back on what he had said the day before. He said "the very sending of that document" might kill the deal, the House committee did not represent the full legislature's point of view, and he did not want to be part of any secret negotiations — something he said he was criticized for early in the process.

"I think my judgment was sound and I stand by it," Cole said. "That document just won't sell, OK? It will not enhance the settlement in any way."

Cole also said the committee was asking for too much.

"This is not simply a matter of changing a paragraph or two. It goes right to the heart of the document."

Changes called for in the resolution approved Wednesday would:

- Increase the criminal fine from \$100 million to \$500 million. The \$100 million proposed fine was

thrown out last week by a federal judge who said it was too low. According to the resolution, \$100 million of the fine would be paid to the state with at least \$300 million going to the trust fund that would be created to pay for restoration.

- Require the payment of at least \$700 million within a year of the deal being approved. The current proposal calls for the \$1 billion in payments to be spread over the next decade.

- Prohibit Exxon from deducting any of the settlement payments from state taxes.

- Require that the trustees governing the spill money include two legislators who would be non-voting members.

- Require legislative approval before any of the state's share of the trust fund money can be spent.

- Require the release of confidential scientific and economic studies unless the state could show that releasing the reports would "materially and substantially harm the state's case in pending litigation."

- Require Exxon and the state to "enter good-faith negotiations" to settle the hundreds of private lawsuits filed after the spill.

The proposals are similar to those in the memo given to Cole.

Committee members were clearly angry that Cole had refused to present their proposal.

"You're damn right I'm upset," Gruenberg said. "I'm real concerned about what went on here."

"It really is going to cause significant problems with the attorney general's relationship with the legislature on this issue."

Rep. Fran Ulmer, D-Juneau, told Cole he hurt his own case, saying his action "throws further doubt on the viability of the agreement as it stands today."

Only Barnes came to Cole's defense.

"If I were you — and I'm not — I would have taken the exact position that you did and I must say I'm glad you had the guts to do it," she told Cole.

Cole said the House should not do anything until after noon today when he will hear if the state has gotten an extension.

"I think we should remain reasonably sanguine about the situation we face," he said. "I don't have the sense Exxon is looking for a way to get out."

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State ready to bail out SBS fund

Plan cuts pension values until losses are figured

The Associated Press

JUNEAU — The Hickel administration will present a plan to legislators today calling for a bailout of a troubled public-employee pension fund.

The administration on Friday also will probably lift its freeze on requests by former employees to cash out their pension accounts, said Millett Keller, commissioner of the state Administration Department.

Keller said little about the plan Wednesday except that part of it will include a temporary reduction in the value of Supplemental Benefits System accounts.

About \$132 million of the \$620 million fund is tied up in unsecured investment contracts with Executive Life Insurance Co. The company had more than 60 percent of its assets in high-risk junk bonds when it was seized last month by California insurance regulators.

Keller said the fund's total value, and any cash-outs, will be reduced by up to 20 percent, the percentage that could be lost from Executive Life's collapse.

After the administration determines how much is lost to Executive Life and the true

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PENSION: State prepares to bail out employee fund

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value of the fund, then the state would make supplemental payments to those who received reduced cash-out checks, if necessary, Keller said.

Before last week's freeze, former employees were able to withdraw their full contributions, the state's matching contributions and any interest.

The plan to reduce payments will have to be approved by the Public Employees Retirement System board of directors, which is scheduled to meet Friday in Anchorage.

Meanwhile, a legislative attorney released an opinion

Tuesday saying the state is obligated to pay members of the retirement fund in full and on time.

Teresa Cramer, a lawyer for Legislative Affairs Agency, also said the state has no legal basis for delaying SBS payments.

Keller agreed the state is on shaky ground with the freeze, but not if it is lifted this week.

As for reducing the value of the fund, Keller said Cramer's legal opinion did not consider "accounting principles" that require the state to protect the fund for SBS members who will cash out in the future.

The fund was started in 1980 after state workers opted out of the federal Social

Security system. More than 22,000 past and present government workers have money in the fund, some up to \$100,000.

Hickel administration officials and legislators have debated whether the state is obligated to protect the fund by buying the faulty Executive Life investment contracts with state money.

Keller last week froze all pending SBS withdrawals. The move affected about 300 members. Employees must be off the state payroll for 90 days before they can get their money out of the fund.

In her legal opinion, Cramer wrote that the state was out of bounds when it stalled the payments and would go further out of bounds by

reducing payments. The opinion was requested by Sen. Jim Duncan, D-Juneau. Duncan said he interprets the legal opinion to mean that the state is required to bail out the fund.

Assistant Attorney General James Baldwin said he had not seen Cramer's opinion, but suggested the state may have the right to reduce the value of the SBS fund.

"The theory is that (the SBS fund) is only worth what it's worth," Baldwin said. "You're only entitled to what your account is worth."

"If you continue to pay out in full, somebody down the road is going to get shortchanged."

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Thumbs down on Exxon spill deal

House leaders urge settlement rejection

By DIRK MILLER

TIMES CAPITAL BUREAU

JUNEAU — House majority leaders are recommending the Legislature reject the proposed \$900 million settlement of federal and state civil claims against Exxon USA Inc. stemming from the nation's worst oil spill.

The vote is scheduled for today.

In a caucus Wednesday night, House Speaker Ben Grusendorf, D-Sitka, urged the majority to reject the civil portion of the settlement unless changes are made.

Those include making Exxon's payment term one year, instead of 11 years; increasing the criminal fine to \$500 million, reducing civil claims to \$700 million and dropping a \$100 million reopening clause.

The House meets today at 10 a.m. to take up a resolution rejecting the pact and suggesting those changes. It also will take up a resolution that would approve the settlement. The majority is made up of 23 Democrats and four Republicans.

"What it says is we are rejecting the present settlement," Grusendorf said. "At the same time, we would entertain further negotiations."

Senators, though, are waiting for Exxon to decide if it will opt out of the settlement. Federal Judge H. Russel Holland recently rejected part of the agreement, a \$100 million criminal fine.

Exxon has until Saturday to decide if it wants to withdraw. See Reject, page A8

Reject

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from the civil portion of the settlement, and Code has asked lawmakers to wait until Exxon makes a move.

"I prefer to wait until the last minute," Senate President Dick Ellason, R-Sitka, said. "I feel simply, it's up to Exxon now and if they don't move, I would assume they are not dealing with us in good faith."

Ellason, chairman of the Senate's spill review panel, said the Senate was not interested in passing a resolution that attempts to make major changes.

Gov. Walter J. Hickel has said he will abide by the Legislature's vote and reject the settlement if lawmakers turn it down.

Code said the governor would consider a rejection by one body and approval in another as turning the settlement down. The same would be true if no action were taken, he said.

But Eric Rehmann, Hickel's press secretary, said the governor's options would be open if lawmakers cannot come up with a unified decision.

"They were given 45 days to make a decision, they ought to be able to make one," Rehmann said. "You'd like to see them give some kind of clear signal."

Grusendorf, though, said he was not sure if the House had the votes to reject the settlement. It would take a simple majority, 21, to reject it.

Rep. Max Gruenberg, D-Anchorage, said he thought he knew of about 25 votes that would reject the settlement with conditions.

At least one member of the majority, Bill Hudson, R-Juneau, said he would vote for Hickel's settlement. Others said they had not decided how to vote.

Hudson said he felt the Legislature had no choice but to approve it, regardless of his reservations about parts of it.

"I hate to have to vote for this damn thing," Hudson said. "I do

Charles Code said Wednesday he decided not to deliver the House spill review panel's counter-offer because of his fears it might doom the agreement. Most of those terms are contained in the resolution supported by House majority leaders.

Code had promised the committee to deliver the changes to federal and Exxon officials during a meeting on extending the Legislature's Friday deadline to accept or reject the pact.

He told the committee he decided during a restless night Tuesday that to do so would endanger the \$1 billion agreement.

"It was my view that the very sending of that document to Exxon and the Department of Justice might in itself cause Exxon or the Department of Justice, i.e., the United States, to withdraw," Code said. "The document just won't sail."

Code said he also had concerns over the secrecy of the suggestions and the propriety of the state's attorney general delivering the committee's proposal.

"So, after I arrived at that conclusion with that underlying reasoning, (I) thought about it for a few minutes and engaged in a restful sleep for the remainder of the evening," Code said.

The decision may have soured Code's slumber, but it troubled some lawmakers.

"Damned right I'm upset," said Gruenberg, chairman of the panel. "I'm real concerned about what went on here."

Gruenberg and other lawmakers said time was running out for the House to accept or reject Hickel's settlement plan.

Code told lawmakers that he was meeting today at noon with Exxon and federal officials to again discuss extending the Legislature's deadline.

"I'm reasonably confident we can reach an agreement on an extension of time," Code said, "which the Legislature can have to approve the agreement."

A status hearing is being held on the federal Exxon litigation before Judge Holland today.

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U.S. rejects prosecution of Alyeska

Justice: Decision best for public

By DAVID WHITNEY
Daily News reporter

WASHINGTON — The Justice Department said this week it decided not to prosecute Alyeska Pipeline Service Co. for making false statements about its ability to respond to oil spills in Alaska's Prince William Sound because exempting the company from criminal charges was "in the best interests of the public."

The Justice Department was responding to a suggestion last week from Rep. George Miller, D-California, that Alyeska face criminal charges because it didn't keep its cleanup promises when the Exxon Valdez ran aground two years ago and spilled about 10.8 million gallons of North Slope



crude. Alyeska has been broadly criticized for not having sufficient equipment in working order available to respond to the spill as it had promised in its oil-spill contingency plans.

Instead of pursuing a case against Alyeska, the Justice Department agreed last month to include a non-prosecution pledge in its \$1 billion settlement with Exxon Corp. The department said that was partly because the most it could have gotten

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Officers arrest murder suspect

ALYESKA: Justice Department rejects prosecution

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out of the pipeline company was a criminal conviction and a \$500,000 fine.

Alyeska, which owns and operates the 800-mile trans-Alaska pipeline and the tanker terminal at Valdez, is owned by seven oil companies, including Exxon.

The Justice Department's disclosure was contained in a memorandum submitted Tuesday to U.S. District Judge H. Russel Holland in Anchorage, before whom the criminal plea bargain with Exxon is pending.

Under the settlement agreements, Exxon will pay \$100 million in criminal fines and restitution for fouling the Sound and another \$900 million to resolve separate state and federal natural-resources damage claims.

for its deal with Exxon, which included harsh penalties demonstrating the need for just punishment and deterrence and promotion of respect for the law.

"It is difficult to understand how granting Alyeska and its owner companies immunity from criminal prosecution can conceivably promote respect for the law or meet any of the other sentencing criteria," Miller wrote.

Miller's earlier letter to Holland was last week, when he urged that the judge reject the settlement because it immunizes Alyeska from any federal action. Miller provided internal memos showing the pipeline company knew it could not handle a spill in the Sound and that its owners committee had decided at a January 1988 meeting in Phoenix, Ariz., that it wouldn't promptly respond to spills outside of Valdez Narrows leading into the oil port.

The Justice Department immediately contacted Miller after his letter was filed with the court last week asking about the material he cited.

Alyeska has denied the material has any relevance to the 1989 oil spill. Isaacs, Alyeska's press aide, has said the memo referred to ongoing preparations for submitting a 1990 contingency plan to the state. She said Thursday that Alyeska would have a detailed response to Miller's accusations today.

The Justice Department said it elected not to bring false-statement charges against Alyeska "after carefully weighing" its evidence, the risk of going to trial and other factors.

Among these other factors was that the maximum fine it could get from an Alyeska conviction was \$500,000 and "the unprecedented criminal fines and guilty plea the government would obtain from Exxon."

Panel urges judge to delay Exxon action

ASSOCIATED PRESS

JUNEAU — A House committee reviewing the Exxon Valdez oil spill settlement asked a federal judge Tuesday to delay today's scheduled sentencing of Exxon Corp. on criminal pollution charges.

The request was not unanimous, however, as 13 of the 17 House Republicans sent their own letter to the judge disassociating themselves from the committee's letter.

Judge Russel Holland was scheduled to sentence Exxon today in U.S. District Court at Anchorage. The plea agreement is a major part of the proposed \$1 billion settlement between the state and federal government and Exxon.

Exxon would pay a \$100 million criminal fine and \$900 million to settle state and federal civil claims for natural resource damages. The \$900 million would be paid over 11 years and would go toward restoring Prince William Sound.

The tanker Exxon Valdez spilled nearly 11 million gallons of oil into the waterway when it ran aground on March 24, 1989.

Holland last month said the criminal and civil settlements were legally separate. He refused to

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Exxon

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delay the proceedings as requested by the Legislature, and he accepted Exxon's plea.

In a letter sent Tuesday, the House committee urged the judge to delay final consideration until May 3, the deadline for the Legislature to approve or reject the settlement.

"In considering these agreements, it has become apparent that the civil agreement and the criminal plea agreement are in fact expressly and inextricably linked," the letter said, noting Exxon can withdraw from the civil settlement if the criminal plea is not accepted.

"It was impossible, and probably inadvisable, for the parties, the public and this committee to consider them separately, without acknowledging their interrelationship."

A separate letter sent by House Republicans said they do not support the committee letter and have no statement on the plea agreement.

"I think it was an improper action," said Rep. Robin Taylor, R-Wrangell and House minority leader. "It was an attempt to leverage the criminal action for the benefit of the civil action."

Senate leaders said Holland has made it clear the criminal plea is not a legislative matter and they decided sending a letter would be counterproductive.

"Really, what are you going to accomplish? It doesn't do anything," said Senate President Dick Eliason, R-Sitka, and chairman of the Senate committee reviewing the settlement.

In a report released Tuesday by the Senate review committee, members said they will introduce two resolutions to approve the settlement. The Senate would then vote on the resolutions.

"The Legislature must try to determine which is the lesser of two evils — to sign off on an agreement which raises serious concerns, or to face years of expensive litigation with an unknown outcome," the report said.

Meanwhile, Gov. Walter J. Hickel released a poll Tuesday indicating Alaskans strongly support his Exxon Valdez oil spill settlement.

The poll, commissioned by the governor at state expense, showed 58 percent of the respondents said the Legislature should approve the settlement, 29 percent said it should not, and 13 percent were undecided.

The random telephone survey of 536 adult Alaskans was conducted April 2-8 by Dittman Research Corp. of Anchorage. It has an error margin of plus or minus 4.5 percentage points.

Rep. Max Gruenberg, D-Anchorage and chairman of the House committee reviewing the settlement, objected to the timing of the poll's release.

"It's a blatant attempt to influence the legislative process," Gruenberg said.

Hickel spokesman John Manly said the timing was intentional.

Gruenberg also complained that the poll question was misleading. It was worded as follows:

"The Hickel administration, the federal government and Exxon have negotiated a settlement that would have Exxon pay approximately \$1 billion over the next 10 years as payment for state and federal natural resource damage claims related to the oil spill. Do you think the state Legislature should or should not approve this settlement?"

Gruenberg said the question was "overly simplistic and misleading. It says what we're getting. It doesn't say what we're giving up."

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House panel asks delay of Exxon sentencing

By MATT KOHLMAN
The Associated Press

JUNEAU — A House committee reviewing the Exxon Valdez oil-spill settlement asked a federal judge Tuesday to delay the sentencing of Exxon Corp. on criminal pollution charges.

The request was not unanimous, however, as 13 of the 17 House Republicans sent their own letter to the judge disassociating themselves



from the committee's letter.

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The tanker Exxon Valdez spilled nearly 11 million gal-

lons of oil into the waterway when it ran aground in March 1989.

Holland last month said the criminal and civil settlements were legally separate. He refused to delay the proceedings as requested by the legislature, and he accepted Exxon's plea.

In a letter sent Tuesday, the House committee urged the judge to delay final consideration until May 3, the

deadline for the legislature to approve or reject the settlement.

"In considering these agreements, it has become apparent that the civil agreement and the criminal plea agreement are in fact expressly and inextricably linked," the letter said, noting Exxon can withdraw from the civil settlement if

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SPILL: Panel asks judge to delay sentencing

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the criminal plea is not accepted.

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A separate letter sent by House Republicans said they do not support the committee letter and have no statement on the plea agreement.

"I think it was an improper action," said Rep. Robin Taylor, R-Wrangell and House minority leader. "It was an attempt to leverage the criminal action for the benefit of the civil action."

Senate leaders said Holland has made it clear the criminal plea is not a legislative matter and they decided sending a letter would be counterproductive.

"Really, what are you going to accomplish? It doesn't do anything," said Senate President Dick Eliason, R-Sitka and chairman of the

taking a wait-and-see attitude toward the plea bargain, said Eric Rasmann, Gov. Walter J. Hickel's press secretary.

"It really doesn't concern us," he said. "We're not expecting any surprises."

Meanwhile, in a report released Tuesday by the Senate review committee, members said they will introduce two resolutions to approve the settlement. The Senate would then vote to reject or approve the resolutions.

"The legislature must try to determine which is the lesser of two evils — to sign off on an agreement which raises serious concerns, or to face years of expensive litigation with an unknown outcome," the report said.

The resolutions probably will be up for a vote early next week, Eliason said.

Some senators have indicated they want to amend the resolution to add stipulations for approval, a move Eliason said he would oppose.

prove. That clouds the issue."

Rep. Max Gruenberg, D-Anchorage and chairman of the House committee, said the panel likely will issue its report by the end of the week and the House will vote on the proposal early next week. He said he is pushing for a recommendation to reject the settlement unless some stipulations are met by federal and state officials.

The biggest question still centers around the dedication of settlement revenue, which some argue violates the state constitution's ban on dedicated funds.

Under the agreement, three state and three federal trustees would decide how to spend the trust money, not the legislature.

Lawmakers may recommend ways around that, and also introduce other stipulations that deal with such things as the tax deductibility for Exxon and payment terms.

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draws fire

58% back spill deal in survey

By DAVID POSTMAN
Daily News reporter

JUNEAU — The headline on the press release read "Alaskans Support Exxon Settlement" Tuesday when Gov. Wally Hickel issued the results of a statewide poll on the deal he cut with the federal government and Exxon Corp.

But the poll is more political trick than scientific study, says House Majority Leader Max Gruenberg, D-Anchorage. Gruenberg, who heads a special House committee reviewing the proposed settlement, questioned the timing of the poll, its accuracy and the use of \$4,000 in state money to pay for it.

"I'm very suspicious," Gruenberg said.

The governor's office was equally suspicious of Gruenberg's motives.

Hickel's deputy press secretary, John Manly, said Gruenberg, a family law attorney, is just looking out for his brethren in the bar.

"My personal opinion is, I think Gruenberg is upset because we cut a bunch of lawyers out of 10 or 15 years of work," Manly said, referring to the expected protracted litigation if the case is not settled. He said Gruenberg "is not a bad guy, just misguided."

Hickel paid Dittman Research of Anchorage to poll 136 Alaskans on six administration proposals, including the settlement of the Exxon Valdez lawsuits.

According to Dittman's report, 58 percent of those polled think the legislature should approve the settlement, 29 percent think it should not and 13 percent are unsure.

In his press release, Hickel said that shows overwhelming support for his deal.

Not so, says Gruenberg. "They are trying to put the gloss of public approval on this," Gruenberg said.

Gruenberg said Hickel was trying to counter the overwhelming negative testimony the legislature has heard about the proposed settlement.

He also said the way the question was asked ignored the drawbacks of settling with Exxon.

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POLL: Survey shows 58% in favor of oil-spill settlement

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The question was: "The federal government, the federal government, and Exxon have negotiated a settlement that would have Exxon pay approximately one billion dollars over the next 10 years as payment for state and federal natural resource damage claims related to the oil spill. Do you think the state legislature should or should not approve this settlement?"

Gruenberg said he thinks Hickel is trying to get out of his commitment to reject the settlement if it is not approved by the legislature. He thinks if the legislature votes the settlement down, Hickel will sign it anyway, claiming wide public support.

"I have serious questions as to whether he will keep his word," he said. Tuesday was the day Gruenberg's committee was scheduled to take its final vote on the settlement. That

question and said he thinks it accurately reflects what Alaskans think about the settlement. "I'm kind of sympathetic with Max's position," Dittman said. When someone gets information that contradicts what he believes, Dittman said, "it's kind of natural to be critical of it."

Dittman said legislative hearings do not give an accurate portrayal of public attitudes. "People who go to public meetings in Cordova and so forth are the activist element," he said. "They don't hear from the general public."

Officials discuss public's role in spending spill money

By CHARLES WOHLFORTH
Daily News reporter

State and federal officials will meet behind closed doors Thursday to discuss, among other things, how to involve the public in the spending of money won in the settlement of Exxon Valdez oil spill litigation.

The Trustee Council, a group of officials from state and federal resource agencies plus the state attorney general, also will decide what oil-spill restoration and study projects to pursue this summer. Anything they spend will come out of \$950 million designated in the billion-dollar Exxon settlement for cleanup and restoration of Alaska's spill-damaged environment.

They currently plan to spend \$35 million on about 60 studies but may change that because of the settlement, channeling money into restoration projects instead, said



council member John Sandor, Alaska's commissioner of environmental conservation.

But secrecy shrouds the choice of new restoration projects the council is considering, and after the decisions are made the work will soon begin, leaving no time for public review, said state restoration planner Stan Senner.

The council discussed the same issues last week in a series of telephone conferences, but Sandor said he asked to meet face-to-face to map out the future of the spill money.

"I'm going to urge that the council consider the establishment of an endowment fund that this

settlement money can be put into and held for perpetuity to further projects for restoration," Sandor said.

He said the public should be involved in spending the money, and the council will talk about that, too.

An agreement signed with the Exxon settlement March 12 lays out clearly the state and federal governments' roles in spending the money, but not the public's. It gives both governments veto power and says they "shall establish procedures providing for meaningful public participation... which may include establishment of a public advisory group."

Under the agreement, the governments have 90 days after the settlement is ratified by a judge to set up "an organizational structure for decisionmaking."

So far, the structure has been secret and Byzantine. The council

lies among four levels of decision-makers, which also include the trustees, the Washington policy group and the trustee management team. All their deliberations and most of their decisions have been kept secret because officials feared disclosing information to the governments' foes in court.

Council member Walt Stieglitz, who is regional director of the U.S. Fish and Wildlife Service, said the meetings still must be secret in case the legislature or courts do not approve the Exxon settlement. He said there will be public announcements of the council's decisions after they are made, not before.

But Stieglitz said he is not sure that process will change after the settlement is complete.

"No decision on that," he said. "That is part of deciding on an organization and process. I'm assuming there is going to be some

sort of public process."

The meeting Thursday will deal mostly with decisions about this summer's scientific and restoration work. The trustees this week published a book of some 60 studies planned for the summer and is seeking public comment. But the work is already going forward. Even Sandor's request for a council meeting this week delayed buying supplies for the projects by a week, said Michael Dean, who heads spill study for the Alaska Department of Fish and Game.

Carl Rosier, commissioner of the department and a council member, said the list of studies could come in for major surgery Thursday. Most of the studies were aimed at measuring the spill's damage. With the settlement, that work may not be needed anymore, he said.

"You've got a whole new set of players; you've got a whole new set of circumstances," he said.

OPPOSITION GROWS OVER VALDEZ PACT

Lawmakers and Alaskans Ask That \$1 Billion Settlement for Exxon Be Rejected

By KEITH SCHNEIDER

Special to The New York Times

WASHINGTON, April 22 — Prompted by new studies on the damage to Prince William Sound and annoyed that scientific and economic information is being kept secret, lawmakers, environmental groups and many Alaskans are raising increasing objections to the \$1.1 billion civil and criminal settlement of the Exxon Valdez oil spill.

In hearings this month held by a state House committee, hundreds of fishermen and native Alaskan villagers urged the panel to reject the proposed settlement, contending that \$1 billion was neither enough money to pay for damage to the environment from the spill nor a severe penalty for the Exxon Corporation.

The House committee and a separate panel of the state Senate met in Juneau today to consider the comments and decide whether to recommend accepting the settlement arising from the 11-million-gallon spill on March 14, 1989. After the panels decide, the issue will go to the full Legislature.

Opponents in Washington

Opponents of the settlement include Representative George Miller, a California Democrat who is acting chairman of the House Interior Committee. He has asked Federal District Judge H. Russel Holland in Alaska to reject the agreement made with Exxon to settle criminal violations.

Four other House Democrats last week urged the judge to postpone a decision on the settlement until scientific and economic studies on the condition of Prince William Sound are made public.

National environmental groups today also withdrew their earlier support, and officials from native Alaskan villages are pressing a court case in Federal District Court here aimed at scuttling the pact.

By far the largest settlement ever for damage caused by an environmental disaster, the agreement between the Justice Department, Alaska and Exxon calls for the company to pay up to \$1 billion over the next 14 years to reimburse the state and Federal governments for scientific studies and environmental restoration projects. The pact also calls on Exxon and its shipping subsidiary to plead guilty to four criminal violations of environmental law and pay a fine of \$100 million.

Lawyers for the Justice Department and the Alaska Attorney General, Charles E. Cole, have warned that any changes in the agreement could lead to its collapse. In an interview today, Mr. Cole said that more Alaskans now ap-

peared to oppose the agreement, but he said support for the pact is also strong in the state. A poll by an independent company commissioned by the Governor last week showed Alaskans supported the agreement by a ratio of two to one, Mr. Cole said.

"What's happened is that as more people understand the settlement, they realize that \$1 billion paid out over a decade is not enough to make up for the damages caused by the oil spill," Representative Miller said. "The people in Alaska have every reason to be concerned."

Mr. Miller complained this month in two letters to Judge Holland that the

A deal on oil spill damage may be in jeopardy.

agreement immunizes the Alyeska Pipeline Service Company, the owner of the Trans-Alaska pipeline and the Valdez oil terminal, from prosecution by the Government. Alyeska is owned by Exxon and seven other companies.

He said the protection for Alyeska was not in the public interest because documents his staff uncovered show the company knew it was unable to respond to a major oil spill, but misrepresented its abilities in documents it filed with the state.

Studies Remain Secret

Opponents are also angry that scientific studies on damage to Prince William Sound, and economic studies that show how much the damage will cost, remain secret.

Earlier this month, the National Oceanic and Atmospheric Administration released a summary of 58 scientific studies that said the oil spill killed hundreds of thousands of birds, thousands of otters and caused extensive damage to shorelines and tidal zones that will persist for years. Economists under contract to the state and the Fed-

eral Government said in interviews that they calculated in separate reports that the value of the damage was \$3 billion to \$5 billion.

Fishermen in Prince William Sound and Representative Gerry E. Studds, a Massachusetts Democrat who is chairman of a House Merchant Marine and Fisheries subcommittee, have asked Judge Holland to delay ruling on the settlement until the studies are made public.

'It's Made People Really Mad'

"This is the big thing that caught everybody's attention," said Marilyn Leland, executive director of Cordova District Fishermen United, an association in Cordova, Alaska. "The state decides it is going to withhold the damage assessment data. We're the ones who bought this information the state says we can't get. We can't tell if the settlement is worth it because we don't know what the damages are. It's made people really mad."

Mr. Studds added: "The Federal and state governments and Exxon are essentially asking us to take on faith the fact this is a fair settlement. I hope it is. I would hate to see some of the procedures used in this case repeated elsewhere."

Native Alaskan villages are also seeking to bar the settlement in a District Court here. In February, the villagers filed suit against the Government seeking to prevent the settlement from being signed. Lawyers for the native groups said the settlement would prevent the villagers from gaining damages from Exxon. District Judge Stanley Sporkin agreed to review the settlement and a hearing on the suit is scheduled for next Monday.

Exxon said through a spokesman today that it would not respond to questions about the settlement. Amy Casner, a spokeswoman for the Justice Department, said, "We'll be addressing the court Wednesday and anything more we have to say we'll say there."

SCOMM

76:20

CHARLES E. COLE
ATTORNEY GENERAL
STATE OF ALASKA

March 12, 1991

Mr. Lee Raymond
President
Exxon Corporation
225 East Carpenter Freeway
Irving, Texas 75062-2298

Dear Mr. Raymond:

As a part of the settlement of certain issues covered by the Plea Agreement, the State of Alaska agrees that it will not bring criminal charges or seek any civil or criminal or administrative penalties, except as provided below, against Exxon Corporation, or any of its officers, directors or employees, past or present, or against any of its wholly-owned subsidiaries, their offices, directors or employees, past or present, for any violations of Alaska law arising out of or relating to the grounding of the "EXXON VALDEZ," the resulting oil spill, the containment or cleanup of that spill, the oil spill contingency plans or related documents of Alyeska Pipeline Service Company, including their preparation or submission to the State of Alaska.

Nothing in the foregoing paragraph shall prevent the State of Alaska from seeking criminal charges against Exxon Pipeline Company or Alyeska Pipeline Service Company, or any of their officers, directors, or employees, for any violation of Alaska law based on an allegation of false statements made to any agency of the State of Alaska arising out of its or their conduct in connection with the preparation or submission of oil spill contingency plans and related documents by Alyeska Pipeline Service Company to the State of Alaska.

You may advise Exxon Shipping Company of the contents of this letter and provide each of them with a copy.

Sincerely,

4-2-15-4.1

Charles Cole
Attorney General

Alaska State Legislature

House of Representatives



P.O. Box V
State Capitol, Rm. 216
Juneau, Alaska 99811
(907) 465-3718

Official Business

House Special Committee on the Exxon Valdez Oil Spill Claims Settlement

April 22, 1991

Honorable H. Russel Holland
United States District Court
222 West 7th Avenue No. 54
Anchorage, Alaska 99513-7545

Re: United States v. Exxon Corporation
Case No. A90-015 Crim.

Dear Judge Holland:

The Committee appreciates the opportunity you have provided for legislative comment on the plea agreement. We particularly appreciate the courtesy of your April 12 letter.

We recognize the responsibility of all counsel not to make any threat of criminal prosecution to gain advantage in a pending civil case and your concern that the court not be a party to any such conduct.

However the legislature has its own responsibility, and that is to give thorough and thoughtful consideration to the civil agreement as well as to the plea agreement. That responsibility arises directly from, not only the civil agreement itself, but also the legislature's role as elected representatives of the people of Alaska.

man. See item 38 on p 27 of A+C D
In considering these agreements, it has become apparent that the civil agreement and the criminal plea agreement are in fact expressly and inextricably linked. Exxon can withdraw from the civil settlement if the criminal plea is not accepted. It was impossible (and probably inadvisable) for the parties, the public and this committee to consider them separately, without acknowledging their interrelationship. *except as set forth below,* It has therefore not been possible for this committee to comment on the plea agreement alone, as if our judgment as to the public interest in that case had no relation to the civil agreement.

*make
conclude
comment*

At this time, we have not reached a final decision regarding either the plea agreement or the civil agreement. We intend to present our report to the House of Representatives later this week. We are therefore unable to comment on the plea agreement at this time. As we have previously stated in House Concurrent Resolution 19, copy enclosed, it is our view that, because these two matters are clearly linked, we request that the court defer action on the plea agreement until May 3, when the legislature will have reached a final decision regarding the civil agreement.

The Committee has several concerns about the proposed plea agreement, however:

- (1) Should Alyeska be relieved of all criminal liability without specifying the conduct or charges at issue?
- (2) Should Count IV of the indictment with respect to Exxon Shipping Company be dismissed, when the National Transportation Safety Board found that Exxon Shipping's "failure...to provide a fit master and a rested crew" was a probable cause of the grounding?
- (3) Is the criminal fine sufficient to deter other large corporations from engaging in similar criminal conduct in the future?

This letter is being sent by motion of the Committee. Individual members who are so inclined may also submit separate comments.

Cordially,

Rep. Max F. Gruenberg, Jr.
Chairman

Encl.: HCR 19

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

REPLY TO:

- ☒ 1031 W 4th AVENUE SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550
FAX: (907) 276-3697
- ☐ KEY BANK BUILDING
100 CUSHMAN ST. SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907) 452-1568
FAX: (907) 456-1317
- ☐ P.O. BOX K— STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-5295

April 22, 1991

The Honorable Max F. Gruenberg
Representative
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

**CONFIDENTIAL: ATTORNEY WORK PRODUCT/
ATTORNEY-CLIENT PRIVILEGE**

Dear Representative Gruenberg:

Thank you for the opportunity to testify before the Special Joint House/Senate Committee on the Exxon Valdez settlement last Thursday, April 18. During the discussion, some members of the committee raised questions regarding the total budget for scientific studies, and I promised to provide you with correct figures. The budget for the science program is set out at pp. 283-288 of the "pink book" (1991 NRDA study plans). The grand total for all science, restoration, and public information (including federal science and economics) is approximately \$35.6 million. Of that, the state's portion for the 1991 oil year is approximately \$10.6 million, which includes approximately \$1 million for overhead and approximately \$3 million for restoration planning. If you would like additional information regarding the budget for science projects, please let me know.

I also spoke to your aide, Andy Heminway, regarding your request for a restoration report. As I indicated at the hearing, the restoration planning work group has published a summary of the public symposium held in Anchorage about a year ago, which includes a long list of possible restoration activities that were suggested by the public. In addition, the restoration planning work group published a draft technical workshop report in April, 1990, which includes a list of potential restoration activities for each of the injuries known or suspected. That document, because it contains detailed discussion of injuries, has not been provided for public distribution. The only other document that I have been able to identify is a memorandum from Stan Senner which lists some of the potential kinds of restoration projects that could be undertaken

The Honorable Max F. Gruenberg
April 22, 1991
Page 2

and sets out what the restoration planning work group anticipates it would spend on restoration under a settlement over a 10 year period. That document also has not been published for public review, but I discussed its substance in detail with Mr. Heminway.

If I can be of further assistance, please let me know.

Sincerely,

CHARLES E. COLE
ATTORNEY GENERAL

By: *Sarah E. McCracken*
Sarah E. McCracken
Assistant Attorney General

SEM/md

cc: Charles E. Cole
Attorney General

Barbara Herman
Assistant Attorney General

*source of this document?
(unknown) 1991*

EXXON SETTLEMENT

JURISDICTION

1. THE COURT HAS JURISDICTION OVER THE SUBJECT MATTER OF THE CLAIMS SET FORTH IN THE FEDERAL COURT COMPLAINTS AND OVER THE PARTIES TO THIS AGREEMENT PURSUANT TO, AMONG OTHER AUTHORITIES, 28 U.S.C. §§ 1331, 1333 AND 1345, AND SECTION 311(F) OF THE CLEAN WATER ACT, 33 U.S.C. § 1321(F). THIS COURT ALSO HAS PERSONAL JURISDICTION OVER EXXON AND EXXON PIPELINE, WHICH SOLELY FOR THE PURPOSES OF THIS AGREEMENT, WAIVE ALL OBJECTIONS AND DEFENSES THAT THEY MAY HAVE TO THE JURISDICTION OF THE COURT OF TO VENUE IN THIS DISTRICT.

PARTIES

2. "UNITED STATES" MEANS THE UNITED STATES OF AMERICA, IN ALL ITS CAPACITIES, INCLUDING ALL DEPARTMENTS, DIVISIONS, INDEPENDENT BOARDS, ADMINISTRATIONS, NATURAL RESOURCE TRUSTEES, AND AGENCIES OF THE FEDERAL GOVERNMENTS.

3. "STATE" MEANS THE STATE OF ALASKA, IN ALL ITS CAPACITIES, INCLUDING ALL DEPARTMENTS, DIVISIONS, INDEPENDENT BOARDS, ADMINISTRATIONS, NATURAL RESOURCE TRUSTEES, AND AGENCIES OF THE STATE GOVERNMENT.

4. "EXXON" MEANS EXXON CORPORATION, A NEW JERSEY CORPORATION, EXXON SHIPPING COMPANY, A DELAWARE CORPORATION, AND THE T/V EXXON VALDEZ, OFFICIAL NUMBER 692966 (NOW THE T/V EXXON MEDITERRANEAN).

5. "EXXON PIPELINE" MEANS EXXON PIPELINE COMPANY, A DELAWARE CORPORATION.

\$100 MILLION FINE TO BE PAID BY EXXON. \$50 MILLION WILL GO TO THE UNITED STATES. \$50 MILLION WILL BE PAID TO THE STATE OF ALASKA. THESE FUNDS ARE TO BE USED FOR THE RESTORATION OF THE DAMAGED NATURAL RESOURCES. \$900 MILLION WILL BE PAID OVER THE NEXT TEN YEARS. THIS WILL BE USED FOR CONTINUED CLEAN-UP AND SHORT AND LONG TERM RESTORATION PROJECTS IN PRINCE WILLIAM SOUND AND THE GULF OF ALASKA [DAMAGED AREAS]. \$135 MILLION IS COMMITTED FOR

PAST EXPENSES (CLEAN-UP & SCIENTIFIC RESEARCH) THIS WILL BE DEDUCTED FROM THE \$900 MILLION.

8. \$90 MILLION IS TO BE PAID 10 DAYS AFTER THE EFFECTIVE DATE. 9-1-92 \$150 MILLION MINUS EXXONS EXPENDITURES FOR WORK DONE FROM 1-1-91 TO THE EFFECTIVE DATE. THIS IN ACCORDANCE WITH THE DIRECTION OF THE FOSC UP TO \$4 MILLION PLUS EXPENDITURES MADE BY EXXON FOR CLEAN-UP WORK AFTER THE EFFECTIVE DATE.

9. PARAGRAPH 9 IS WRITTEN TO SET UP A ESCROW ACCOUNT IN THE EVENT THAT FINAL APPROVAL HAS NOT OCCURED BY THE DATE OF PAYMENT.

10. SOLE PURPOSES FOR MONEY

1. REIMBURSE U.S. & STATE FOR RESPONSE & CLEAN-UP INCURRED ON OR BEFORE 12-31-90
2. REIMBURSE U.S. & STATE FOR NATURAL RESOURCE DAMAGES ASSESSMENT COSTS. INCLUDING STUDIES AND RESTORATION PLANNING PRIOR TO THE EFFECTIVE DATE.
3. STATE LEGAL FEES, EXPERT FEES, & OTHER COSTS (LITIGATION COSTS)
4. REIMBURSE U.S. & STATE FOR RESPONSE AND CLEAN-UP COSTS INCURRED BY EITHER AFTER 12-31-90
5. ASSESS INJURY RESULTING FROM SPILL, PLAN, IMPLEMENT AND MONITOR RESTORATION, REHAB, OR REPLACE NATURAL RESOURCES OR NATURAL RESOURCE SERVICES INJURED, LOST, OR DESTROYED. HOWEVER THE AGGREGATE AMOUNT ALLOCATED FOR U.S. PAST RESPONSE AND CLEAN-UP COSTS AND DAMAGE ASSESSMENT COSTS UNDER ITEM (1&2 ABOVE) SHALL NOT EXCEED \$62 MILLION. THE STATE PAST COSTS NOT TO EXCEED \$72 MILLION.

THE GOVERNMENTS REPRESENT THAT MONIES PAID BY EXXON TO THE GOVERNMENTS PERSUANT TO THIS AGREEMENT WILL BE ALLOCATED, RECEIVED, HELD, AND USED IN ACCORDANCE WITH THE **MEMORANDUM OF AGREEMENT (MOA)** AND CONSENT DECREE BETWEEN THE U.S. AND ALASKA.

11. EXXON WILL CONTINUE TO CLEAN-UP AFTER THE EFFECTIVE DATE. DIRECTED AND IN ACCORDANCE WITH FEDERAL ON SITE CO-ORDINATOR (FOSC), SUBJECT TO PRIOR APPROVAL BY FOSC. AFTER EFFECTIVE DATE EXXON WILL PERFORM ANY ADDITIONAL CLEAN-UP WORK DIRECTED BY THE STATE ON SITE CO-ORDINATOR (SOSC) THAT DOES NOT INTERFERE OR CONFLICT WITH WORK DIRECTED BY FOSC OR WITH FEDERAL LAW. IF

CONFLICT OCCURS EXXON WILL NOTIFY SOSC & FSOC AND CEASE WORK UNTIL FSOC DETERMINES THERE IS NO CONFLICT OR COURT SETTLES CONFLICT.

EXXON SHALL HAVE NO LIABILITY TO ANY PERSON OR ENTITY, INCLUDING THE GOVERNMENTS, BY REASON OF UNDERTAKING CLEAN-UP PERFORMED IN ACCORDANCE WITH DIRECTIONS OF THE FSOC OR THE SOSC.

EXXON SHALL BE ENTITLED TO A CREDIT, TO BE APPLIED TO THE AMOUNT DUE FROM EXXON TO THE GOVERNMENTS. THIS INCLUDES ALL EXPENSES INCURRED BY EXXON FOR CLEAN-UP WORK PURSUANT TO DIRECTIONS OF THE FSOC OR SOSC.

EXPENDITURES DEFINITION:

SHALL INCLUDE WITHOUT LIMITATION, COSTS AND OBLIGATIONS INCURRED FOR SALARY, WAGES, BENEFITS, AND EXPENSES OF EXXON EMPLOYEES, FOR CONTRACTORS, FOR EQUIPMENT PURCHASE AND RENTALS, FOR OFFICE AND WAREHOUSE SPACE, INSURANCE, ACCOUNTING, AND OTHER PROFESSIONAL SERVICES.

12. IF AGREEMENT IS TERMINATED PURSUANT TO ¶ 37 OR 38 AND THE TOTAL EXPENDITURES ARE \$35 MILLION OR LESS, EXPENDITURES FOR WORK SHALL BE SET OFF IF EXXON SHOWS BOTH:

A. COST OF WORK WAS DISPROPORTIONATE TO THE NET ENVIRONMENTAL BENEFITS REASONABLY ANTICIPATED FROM THE WORK, OR WORK WOULD NOT BENEFIT THE ENVIRONMENT.

B. IN REASONABLE TIME BEFORE BEGINNING WORK, EXXON SUBMITTED A WRITTEN OBJECTION TO THE WORK TO THE FSOC OR SOSC WHO DIRECTED THE WORK, REQUESTING RECONSIDERATION OF THE WORK DIRECTION'S ON ONE OF THE GROUNDS SET FORTH IN SUB ¶ 12(A)(1) ABOVE. OR IF TOTAL EXPENDITURES BY EXXON FOR CLEAN-UP AFTER THE EFFECTIVE DATE EXCEED \$35 MILLION. EXPENDITURES FOR WORK SHALL SET OFF UNLESS THE GOVERNMENTS SHOW THE SAME EVIDENCE.

RELEASES AND COVENANTS NOT TO SUE BY THE GOVERNMENTS

PARAGRAPHS 13 THRU 16 COVER COVENANTS AND DISMISSAL OF CHARGES.

REOPENER FOR UNKNOWN INJURY

17. BETWEEN 9-1-2001 AND 9-1-2006 EXXON SHALL PAY TO THE GOVERNMENTS ADDITIONAL MONEY AS REQUIRED TO REHAB AND RESTORE ONE OR MORE POPULATIONS, HABITATS, OR SPECIES THAT SUFFERED DO TO THE SPILL.

IN ORDER TO QUALIFY:

1. COST MUST NOT BE DISPROPORTIONATE TO THE MAGNITUDE OF ANTICIPATED BENEFITS FROM THE REMEDIATION.

2. THE INJURY COULD NOT REASONABLY HAVE BEEN KNOWN OR ANTICIPATED AT THE TIME OF THE EFFECTIVE DATE.

18. THE AMOUNT TO BE PAID BY EXXON FOR RESTORATION PROJECTS REFERRED TO IN PARAGRAPH 17 SHALL NOT EXCEED \$100 MILLION.

19. GOVERNMENTS SHALL FILE WITH EXXON 90 DAYS BEFORE DEMANDING ANY PAYMENT PERSUANT TO PARAGRAPH 17 ABOVE. DETAILED PLANS FOR RESTORATION PROJECT WITH A STATEMENT OF ALL AMOUNTS THEY CLAIM SHOULD BE PAID UNDER ¶ 17 AND ALL INFORMATION USED TO PREPARE FOR RESTORATION AND COST STATEMENTS.

20. THIS PARAGRAPH IS EXXONS COVENANTS NOT TO SUE THE GOVERNMENTS.

TRANS-ALASKA PIPELINE LIABILITY FUND

21. THE RELEASE IN ¶ 20 SHALL NOT BE CONSTRUED TO BAR ANY CLAIM EXXON AGAINST THE (TPL) FUND ARISING TO OR ARISING FROM THE OIL

22. GOVERNMENTS CAN'T SUE EXXON HOLD GOVERNMENTS HARMLESS FROM ANY LIABILITY TO THE GOVERNMENTS HAVE TO ALYESKA BASED ON SUCH CLAIMS.

23. IF ANY MONEY IS RECOVERED BY THE GOVERNMENTS FROM ALYESKA (RESULTING FROM THE SPILL) IT SHOULD PAY EXXON 20.34% OF THE TOTAL.

24. IF ANY MONEY IS RECOVERED BY ALYESKA FROM THE GOVERNMENTS EXXON SHOULD PAY 20.34% OF THE TOTAL.

28. ANY PAYMENTS THAT EXXON INCURS AS A RESULT OF A SUIT BY A THIRD PARTY SHALL NOT BE ATTRIBUTED TO OR SERVE TO REDUCE THE PAYMENTS REQUIRED TO BE PAID BY EXXON TO THE GOVERNMENTS.

29. THE PARTIES I.E. EXXON, EXXON PIPELINE, U.S., AND ALASKA WILL NOT OFFER EACH OTHER TO ANY THIRD PARTY AS A DIRECT DEFENDANT IN ANY ACTION PERSUANT TO RULE 14(C) OF THE FEDERAL RULES OF CIVIL PROCEDURE.

30. IF A THIRD PARTY REACHES AN AGREEMENT OR PREVIOUSLY REACHED AN AGREEMENT WITH EXXON, BRINGS AN ACTION AGAINST THE GOVERNMENTS, OR EITHER OF THEM, THE SUED GOVERNMENT(S) SHALL DISTRIBUTE LIABILITY, IF ANY, ACCORDING TO PRINCIPLES OF COMPARATIVE FAULT WITHOUT THE CONSENT OF EXXON, AND SHALL THAT CONSENT OF EXXON IS UNNECESSARY TO OBTAIN THE BENEFITS OF ALLOCATION OF FAULT. NOT WITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IF THE COURT REJECTS THE SUED GOVERNMENT(S) EFFORTS TO OBTAIN A PROPORTIONAL ALLOCATION OF FAULT WITHOUT EXXONS CONSENT, THE SUED GOVERNMENT(S) MAY INSTITUTE THIRD PARTY ACTIONS AGAINST EXXON SOLEY FOR THE PURPOSE OF OBTAINING ALLOCATION OF FAULT. THE GOVERNMENTS IN SUCH THIRD-PARTY ACTIONS SHALL NOT ENFORCE ANY JUDGEMENT AGAINST EXXON.

INTEREST FOR LATE PAYMENTS

31. EXXON IS LIABLE FOR INTEREST ON THE OVERDUE AMOUNT FROM DUE DATE UNTIL FULL PAYMENT IS MADE. THE RATE IS ESTABLISHED BY DEPT. OF TREASURY UNDER 31 U.S.C. § 3717(A)(1) & (2). INTEREST SHOULD BE PAID IN THE SAME MANNER AS THE PAYMENT ON WHICH IT ACCRUED.

32. NO ADMISSION OF FACT OR LAW OR LIABILITY BY ANY PARTY OF AGREEMENT. NOTHING IN THIS AGREEMENT, HOWEVER, IS INTENDED TO AFFECT LEGALLY THE CLAIMS, IF ANY, OF ANY PERSON, OR ENTITY NOT A PARTY TO THIS AGREEMENT.

33. NOTHING IN THIS AGREEMENT CREATES ANY CLAIM IN FAVOR OF ANY PERSON NOT A PARTY TO THIS AGREEMENT.

34. NOTHING IN THIS AGREEMENT SHALL PREVENT THE GOVERNMENTS FROM PROVIDING ASSISTANCE OR FUNDING TO ANYONE THAT IS NOT A SIGNATORY TO THIS AGREEMENT UNDER THE PROGRAMS OF THEIR AGENCIES PERSUANT TO LEGISLATIVE AUTHORIZATION OR APPROPRIATION.

35. NOTHING IN THIS AGREEMENT SHALL AFFECT OR IMPAIR ANY EXISTING CONTRACTS BETWEEN EXXON, EXXON PIPELINE, AND ANY ENTITY

OF EITHER GOVERNMENT, INCLUDING THE AGREEMENT BETWEEN EXXON AND THE ENVIRONMENTAL PROTECTION AGENCY DATED 9-21-90

36. NOTICES AND SUBMITTAL CONTACTS (ADDRESSES)

37. NOTICE OF THIS AGREEMENT SHALL BE PUBLISHED IN THE FEDERAL REGISTRAR. AGREEMENT SHALL BE SUBJECT TO PUBLIC COMMENT FOR 30 DAYS AFTER PUBLICATION. GOVERNMENTS CAN WITHDRAW ITS CONSENT TO THE AGREEMENT WITHIN 15 DAYS AFTER THE PUBLIC COMMENT PERIOD. IF COMMENTS DISCLOSE FACTS OR CONSIDERATIONS WHICH SHOW THAT THE AGREEMENT IS INAPPROPRIATE, IMPROPER, OR INADEQUATE BEFORE THE END OF THAT 15 DAY PERIOD, **THE ALASKA STATE LEGISLATURE HAS NOT APPROVED THE AGREEMENT AS WRITTEN.** IF EITHER GOVERNMENT WITHDRAWS ITS CONSENT IN ACCORDANCE WITH ¶ 37 THE AGREEMENT SHALL BE DEEMED TERMINATED AS OF THE DATE OF NOTICE OF WITHDRAWAL OF CONSENT.

38. ANY PARTY MAY ELECT TO TERMINATE THIS AGREEMENT IF:

1. ANY COURT OF COMPETENT JURISDICTION DISAPPROVES OR OVERTURNS ANY PLEA AGREEMENT ENTERED INTO BETWEEN THE U.S. AND EXXON IN U.S. VS. EXXON SHIPPING CO.

2. A FINAL JUDICIAL DETERMINATION IS MADE BY SUCH COURT THAT THIS AGREEMENT WILL NOT BE APPROVED AND ENTERED WITHOUT MODIFICATION.

3. SUCH COURT MODIFIES THIS AGREEMENT IN A MANNER MATERIALLY ADVERSE TO THAT ETC.....

39. THE COURT SHALL RETAIN JURISDICTION OF THIS MATTER FOR THE PURPOSE OF FURTHER ORDERS, DIRECTION, OR RELIEF.

40. THIS AGREEMENT CAN ONLY BE MODIFIED ONLY WITH THE EXPRESS WRITTEN CONSENT OF THE PARTIES TO THE AGREEMENT AND THE APPROVAL OF THE COURT.

41. EACH REPRESENTATIVE CERTIFIES THAT HE OR SHE IS FULLY AUTHORIZED TO ENTER INTO TERMS AND CONDITIONS OF THIS AGREEMENT AND TO EXECUTE AND LEGALLY BIND SUCH PARTY TO THIS AGREEMENT.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

WALTER J. HICKEL, GOVERNOR

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-5295

April 25, 1991

Hon. Max C. ... Chairman
House Special Committee on the
Exxon Valdez Oil Spill Claims Settlement
House of Representatives
P. O. Box
Juneau, AK

Dear Mr. Chairman:

The State of Alaska does not intend at this time to withdraw from the Agreement and Consent Decree entered into among the United States of America, State of Alaska, and Exxon Corporation, et al. on March 12, 1991.

If the State of Alaska later decides to withdraw from the Agreement, it will notify you promptly.

Very truly yours,

Charles E. Cole

Charles E. Cole
Attorney General

CEC:pml

EXXON

J. G. CLARKE
Director and Senior Vice-President

April 25, 1991

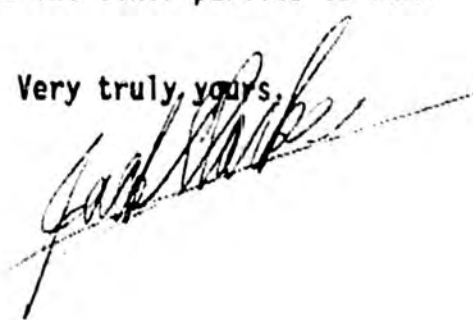
VIA FACSIMILE

The Honorable Max F. Gruenberg, Jr.
Chairman, Special Committee on the
Exxon Valdez Settlement
House of Representatives
Alaska State Legislature
P. O. Box V
State Capital, Room 216
Juneau, Alaska 99811

Dear Mr. Gruenberg:

With reference to your letter of April 24 to Charles Cole, Richard Stewart and me, this will confirm that if we decide to withdraw from the March 12, 1991 Civil Agreement and Consent Decree, we will inform you in a timely manner of that decision after we have informed the other parties to that agreement.

Very truly yours,



JGC:nc

c: The Honorable Charles E. Cole
The Honorable Richard Stewart



MEMORANDUM

State of Alaska

Department of Law

TO	Sen. Richard I. Eliason, Chair Senate Special Committee on the Exxon Valdez Oil Spill Claims Settlement	DATE	April 2, 1991
		FILE NO	
		TEL NO	465-3600
	Rep. Max F. Gruenberg, Jr., Chair House Special Committee on the Exxon Valdez Oil Spill Claims Settlement	SUBJECT	Authority of the Governor and Attorney General to Enter into the EXXON VALDEZ Settlement Agreement
FROM	Charles E. Cole Attorney General		

As you know, the Agreement and Consent Decree (hereinafter "Settlement Agreement") in the EXXON VALDEZ litigation was reached between Exxon, the State and the Federal governments after several weeks of discussion about the pending and potential litigation between them. The terms of the Settlement Agreement reflect many hours of hard bargaining among the parties, an effort to resolve on mutually acceptable terms their respective claims related to the EXXON VALDEZ oil spill ("Oil Spill") without additional expensive, potentially interminable, and uncertain litigation.

This memorandum will discuss the reasons why the Governor and the Attorney General have the authority to negotiate and agree to the Settlement Agreement on behalf of the State of Alaska.

I. THE ECONOMIC TERMS OF THE SETTLEMENT AGREEMENT

The basic economic terms related to the Settlement Agreement are the provisions pertinent to this memorandum's discussion and, therefore, merit summary at the outset.

A. The Federal Criminal Plea Agreement

The State played no role in the negotiations between Exxon and the Federal government with respect to the Plea Agreement in the Federal government's criminal case against Exxon (Case No. A-90-015 CR., United States District Court for the District of Alaska). However, under that Plea Agreement, the State is to receive half of the fine to be paid by Exxon.

¹/ The Exxon entities involved in the Settlement Agreement are Exxon Corporation, Exxon Shipping Company, Exxon Pipeline Company, and the T/V EXXON VALDEZ, the supertanker that caused the Prince William Sound oil spill. Those entities will be referred to in this memorandum collectively as "Exxon."

The second type governs the balance of the \$900 million to be paid, after deductions are made for the State reimbursement payments, for the similar federal reimbursement payments of up to \$62 million, and for expenditures made by Exxon with respect to continuing Oil Spill clean-up, as defined in paragraph 11 of the Settlement Agreement. In addition, the related Memorandum of Agreement ("MOA") provides for reimbursements to the State and Federal government for "all of the Governments' unreimbursed response and cleanup costs incurred after December 31, 1990," as certified by their spill response coordinators, "shall be paid directly to the Governments by Exxon over a period of 5 years." MOA ¶V(B). These reimbursements will thus be paid to the State and subject to the Legislature's appropriations power, like the \$72 million in reimbursements to the State for pre-1991 costs and the \$50 million in restitution to be received under the Plea Agreement.

The remaining balance of Exxon's settlement payments will be held in and administered through a joint trust fund ("Trust Fund"). Those monies must be used by the Trust Fund's trustees "to assess injury resulting from the Oil Spill, and to plan, implement, and monitor the restoration, rehabilitation, or replacement of Natural Resources or natural resource services injured, lost, or destroyed as a result of the oil spill, or the acquisition of equivalent resources or services." The Settlement Agreement provides that the Trust Fund monies are to "be allocated, received, held, and used in accordance with the Memorandum of Agreement and Consent Decree between the United States and the State of Alaska." ¶10.

Pursuant to the MOA, the Trust Fund will be administered by the State and Federal governments as "co-trustees." MOA ¶III(A). A group of six Trustees designated by the President and the Governor, three each from the State and Federal governments, are to act as co-trustees: the Administrator Of the National Oceanic and Atmospheric Administration, the Secretaries of the Departments of the Interior and Agriculture; the Commissioner of the Alaska Department of Fish and Game, the Commissioner of the Alaska Department of Environmental Conservation, and the State Attorney General. The MOA requires that the Trustees act jointly in the collection and use of all damage recoveries. Decisions on use of the monies in the Trust Fund for restoration are to be made by unanimous agreement of the Trustees, though provisions are made in the MOA for methods to resolve any disputes. MOA ¶IV(A)(3). The MOA provides that the Trustees "shall establish procedures providing for meaningful public participation in the injury assessment and restoration process, which may include establishment of a public advisory group" MOA ¶IV(A)(3). The funds are to be held subject to this co-trusteeship in a joint Trust Fund under the supervision of the United States District Court for the District of Alaska. MOA ¶IV(A)(2).

CORRECTION

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

MEMORANDUM

State of Alaska

Department of Law

TO	Sen. Richard I. Eliason, Chair Senate Special Committee on the Exxon Valdez Oil Spill Claims Settlement	DATE	April 2, 1991
		FILE NO	
		TEL NO	465-3600
	Rep. Max F. Gruenberg, Jr., Chair House Special Committee on the Exxon Valdez Oil Spill Claims Settlement	SUBJECT	Authority of the Governor and Attorney General to Enter into the EXXON VALDEZ Settlement Agreement
FROM	Charles E. Cole Attorney General		

As you know, the Agreement and Consent Decree (hereinafter "Settlement Agreement") in the EXXON VALDEZ litigation was reached between Exxon,^{1/} the State and the Federal governments after several weeks of discussion about the pending and potential litigation between them. The terms of the Settlement Agreement reflect many hours of hard bargaining among the parties, an effort to resolve on mutually acceptable terms their respective claims related to the EXXON VALDEZ oil spill ("Oil Spill") without additional expensive, potentially interminable, and uncertain litigation.

This memorandum will discuss the reasons why the Governor and the Attorney General have the authority to negotiate and agree to the Settlement Agreement on behalf of the State of Alaska.

I. THE ECONOMIC TERMS OF THE SETTLEMENT AGREEMENT

The basic economic terms related to the Settlement Agreement are the provisions pertinent to this memorandum's discussion and, therefore, merit summary at the outset.

A. The Federal Criminal Plea Agreement

The State played no role in the negotiations between Exxon and the Federal government with respect to the Plea Agreement in the Federal government's criminal case against Exxon (Case No. A-90-015 CR., United States District Court for the District of Alaska). However, under that Plea Agreement, the State is to receive half of the fine to be paid by Exxon.

^{1/} The Exxon entities involved in the Settlement Agreement are Exxon Corporation, Exxon Shipping Company, Exxon Pipeline Company, and the T/V EXXON VALDEZ, the supertanker that caused the Prince William Sound oil spill. Those entities will be referred to in this memorandum collectively as "Exxon."

Under the Plea Agreement, Exxon Shipping pleads guilty to violations of the Clean Water Act, 33 U.S.C. §§1311(a) and 1319(c)(1)(A), the Refuse Act, 33 U.S.C. §§407 and 411, and the Migratory Bird Treaty Act, 16 U.S.C. §§703 and 707(a); Exxon Corporation pleads guilty to Migratory Bird Treaty Act violations, 16 U.S.C. §§703 and 707(a). Exxon will pay \$100 million as a criminal fine under the Plea Agreement.

The Plea Agreement provides that \$50 million of that fine is to be paid as restitution to the State of Alaska within 30 days of the Court's acceptance of the Plea Agreement. It further provides that those monies "are to be used by the State of Alaska exclusively for restoration projects" relating to the Oil Spill. Restoration is defined to include "restoration, replacement and enhancement of affected resources, acquisition of equivalent resources and services, and long-term environmental monitoring and research programs directed to the prevention, containment, cleanup and amelioration of oil spills." Plea Agreement ¶4(A). Those monies will be entirely under the control of the State and will thus be subject to the legislative appropriations process, though with that restriction on their use. Plea Agreement ¶4(B).

B. The Agreement And Consent Decree

The Settlement Agreement requires Exxon to make a total of \$900 million in payments.^{2/} After the first installment of \$90 million is paid within ten days after the effective date of the Settlement Agreement, payments are to be made annually on September 1st, over a ten year period beginning in 1992, in amounts set out in the payment schedule in paragraphs 9(b) and (c) of the Settlement Agreement.

The Settlement Agreement includes two basic types of recoveries from Exxon related to the settlement of the State's civil claims. The first type, in a amount of up to \$72 million, is in settlement to reimburse the State 1) for response and clean-up costs incurred prior to January 1, 1991, 2) for its natural resource damages assessment costs, and 3) for its litigation costs, including attorneys' fees, experts' fees and other costs. Settlement Agreement ¶10.

^{2/} The Settlement Agreement also includes a "reopener" provision that provides for Exxon to pay up to \$100 million dollars for additional restoration projects in areas affected by the Oil Spill, if the projects meet a cost/benefit criterion and the injury being redressed was not reasonably known or anticipated based on information available at the time of the Settlement Agreement's effective date. Settlement Agreement ¶¶17-19.

The second type governs the balance of the \$900 million to be paid, after deductions are made for the State reimbursement payments, for the similar federal reimbursement payments of up to \$62 million, and for expenditures made by Exxon with respect to continuing Oil Spill clean-up, as defined in paragraph 11 of the Settlement Agreement. In addition, the related Memorandum of Agreement ("MOA") provides for reimbursements to the State and Federal government for "all of the Governments' unreimbursed response and cleanup costs incurred after December 31, 1990," as certified by their spill response coordinators, "shall be paid directly to the Governments by Exxon over a period of 5 years." MOA ¶V(B). These reimbursements will thus be paid to the State and subject to the Legislature's appropriations power, like the \$72 million in reimbursements to the State for pre-1991 costs and the \$50 million in restitution to be received under the Plea Agreement.

The remaining balance of Exxon's settlement payments will be held in and administered through a joint trust fund ("Trust Fund"). Those monies must be used by the Trust Fund's trustees "to assess injury resulting from the Oil Spill, and to plan, implement, and monitor the restoration, rehabilitation, or replacement of Natural Resources or natural resource services injured, lost, or destroyed as a result of the oil spill, or the acquisition of equivalent resources or services." The Settlement Agreement provides that the Trust Fund monies are to "be allocated, received, held, and used in accordance with the Memorandum of Agreement and Consent Decree between the United States and the State of Alaska." ¶10.

Pursuant to the MOA, the Trust Fund will be administered by the State and Federal governments as "co-trustees." MOA ¶III(A). A group of six Trustees designated by the President and the Governor, three each from the State and Federal governments, are to act as co-trustees: the Administrator Of the National Oceanic and Atmospheric Administration, the Secretaries of the Departments of the Interior and Agriculture; the Commissioner of the Alaska Department of Fish and Game, the Commissioner of the Alaska Department of Environmental Conservation, and the State Attorney General. The MOA requires that the Trustees act jointly in the collection and use of all damage recoveries. Decisions on use of the monies in the Trust Fund for restoration are to be made by unanimous agreement of the Trustees, though provisions are made in the MOA for methods to resolve any disputes. MOA ¶IV(A)(3). The MOA provides that the Trustees "shall establish procedures providing for meaningful public participation in the injury assessment and restoration process, which may include establishment of a public advisory group" MOA ¶IV(A)(3). The funds are to be held subject to this co-trusteeship in a joint Trust Fund under the supervision of the United States District Court for the District of Alaska. MOA ¶IV(A)(2).

II. DEFINING THE REAL ISSUE

The only real issue presented by the joint Trust Fund aspect of the settlement is whether the executive branch of the State government has authority to negotiate and agree to such a settlement mechanism.

In framing that issue, it is critical to understand that the Trust Fund monies are not monies to be received by or belong to either the State or the Federal governments. While the State's position is that it owns and is the trustee for most of the resources impacted by the Oil Spill, the Federal government contends otherwise. As a compromise of both governments' claims to exclusive control of monies recovered, the governments agreed that the monies would instead be placed in the joint Trust Fund established by Consent Decree under the Clean Water Act.

Thus, under the Settlement Agreement, those monies comprise a trust res, as to which neither government has sole ownership or control, held jointly for the benefit of certain damaged natural resources.^{3/} Consistent with well-established trust law, the governments, as co-trustees, have joint ownership control over the Trust Fund monies and must exercise that control jointly and consistently with the terms of the Settlement Agreement. See generally Restatement (Second) of Trusts §§2, 34, 185, 194 (1959) (two or more co-trustees hold trust property as joint tenants; unless terms of trust provide otherwise, co-trustees share duties and powers, which can properly be exercised only by all trustees).^{4/}

^{3/} The rights and obligations of the governments with respect to the Trust Fund are governed by the terms of the Settlement Agreement, construed in light of common law trust principles. See Restatement (Second) of Trusts §4 (1959) (terms of trust are defined by instrument creating trust). See also State v. Weiss, 706 P.2d 681, 683-83 & n.3 (Alaska 1985) (applying common law trust principles to State's obligations with respect to public lands; state legislature had no power to alter status of Mental Health Lands granted by United States, because doing so effectively terminated trust in violation of the State's duties as trustee); State v. University of Alaska, 624 P.2d 807, 814 (Alaska 1981) (private trust law principles applied to evaluation of State's obligation with respect to University lands).

^{4/} See also Mitchell v. Mitchell, 655 P.2d 748, 752 (Alaska 1982) (person seeking recovery as representative for surviving family members is "a nominal party only and holds the recovery in trust"); Thomson v. Wheeler Construction Company, 385 P.2d 111, 114 (Alaska 1963) ("A trust is a fiduciary relationship with respect to
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A. The Trust Fund Does Not Violate
The Legislature's Appropriations Authority

While there has been concern expressed about whether the Trust Fund violates the Legislature's appropriation power, that power simply does not extend to monies that are not public revenues or assets of the State and can not be placed in the State Treasury.^{5/}

The Alaska Supreme Court has discussed the definition of "appropriations" in delineating the scope of the governor's line item veto power:

'An appropriation is the setting aside from the public revenue of a certain sum of money for a specified object, in such manner that the executive officers of the government are authorized to use that money, and no more, for that object, and no other.'

For our purpose, the operative phrase "public revenue" is critical since it is the basis of the general fund and special funds from which the legislature may allocate money. Thus, any time the legislature allocates monies from the general fund or special funds, the governor's line item veto would be appropriate. However, the sale of general obligation bonds is the commitment of the state to a debtor relationship with those who purchase the bonds, and is therefore distinguishable from such allocations.

Thomas v. Rosen, 569 P.2d 793, 796-97 (Alaska 1977) (citations omitted) (governor lacks constitutional power to line item veto general obligation bonds authorizations, since they "do not qualify as appropriations").

^{4/}(...continued)

property, subjecting the person who holds ... the property to equitable duties to deal with it for the benefit of another person.") Cf., In re Cornelius, 520 P.2d 76, 85 (Alaska 1974) (one who receives money on behalf of another is a fiduciary; "the funds are impressed with a trust and conversion by the [person to his or her own uses] is a breach of that trust").

^{5/} The provision of the Alaska Constitution concerning appropriations provides, in relevant part:

No money shall be withdrawn from the Treasury except in accordance with appropriations made by law. No obligation for the payment of money shall be incurred except as authorized by law.

Alaska Const., Art. IX, §13 (emphasis added).

Most broadly interpreted, the Legislature's appropriations power extends both to "public revenues" and to all "state assets," all property owned by the State. Thomas v. Bailey, 595 P.2d 1, 4-9 (Alaska 1979) (Beirne initiative to transfer State lands to private persons based on residency violated constitutional prohibition against making "appropriations" by initiative). As the Supreme Court later explained, invalidating initiative provisions requiring the University of Alaska to transfer real and personal property to Community College System:

The reason for prohibiting appropriations by initiative is to ensure that the legislature, and only the legislature, retains control over the allocation of state assets among competing needs. This rationale applies as much or nearly as much to allocations of physical property as to allocations of money. To whatever extent it is desirable for the legislature to have sole responsibility for allocating the use of state money, it is also desirable for the legislature to have the same responsibility for allocating property other than money. Otherwise, the prohibition against appropriations by initiative could be circumvented by initiatives changing the function of assets the State already owns. We conclude that the constitutional prohibition against appropriations by initiative applies to appropriations of state assets, regardless of whether the initiative would enact a give-away program or simply designate the use of the assets.

McAlpine v. University of Alaska, 762 P.2d 81, 87-88 (Alaska 1988) (emphasis added). See also Alaska Conservative Political Action Committee v. Municipality of Anchorage, 745 P.2d 936 (Alaska 1987) (initiative seeking to require sale of municipally owned utility to private, nonprofit cooperative for \$1 would unconstitutionally make "appropriation," where utility had \$32.7 million in equity; "prohibition against appropriations by initiative applies to all state and municipal assets") (emphasis added).

However, that power obviously does not extend to monies that are not assets belonging to the State, but are instead assets of a joint Trust Fund not subject to sole State ownership or control.^{6/}

^{6/} Courts in other jurisdictions have ruled that funds received by a state for specific purposes are trust funds and are not subject to the legislative appropriations power, even where they are received and held solely by the state and not in a joint trust fund subject to co-trusteeship obligations. The Massachusetts Supreme Court well stated the rationale for that conclusion:

(continued...)

⁶/ (...continued)

If Federal funds are received by State officers or agencies subject to the condition that they be used only for objects specified by Federal statutes or regulations, the money is impressed with a trust and is not subject to appropriation by the Legislature. The recipient of such funds has no choice but to comply with the requirements imposed by Federal law.

Moreover, legislation requiring that Federal funds, including those received in trust by officers and agencies of the executive branch, be paid into the State treasury and be expended only on appropriation by the legislative branch, would result in the Legislature's interfering with the right and obligation of the executive to decide the extent and manner of expending funds in performing its constitutional duty faithfully to execute and administer the laws.

Opinion of the Justices to the Senate, 378 N.E.2d 433, 436 (Mass. 1978) (citations omitted). See, e.g., Colorado General Assembly v. Lamm, 738 P.2d 1156 (Colo. 1987) (expenditure of federal block grant funds, not subject to state matching requirement or other legislative decisionmaking, was within governor's executive power to make resource allocation decisions, since funds were essentially custodial in nature); Colorado General Assembly v. Lamm, 700 P.2d 508 (Colo. 1985) (oil company's payment to state pursuant to consent order resolving administrative proceeding alleging that company violated regulations in marketing petroleum and natural gas products was not subject to General Assembly's appropriation power, and governor's exercise of authority over fund was not an impermissible invasion of Assembly's right to appropriate public funds); Opinion of the Justices to the House of Representatives, 471 N.E.2d 1266 (Mass. 1984) (even if revenues received pursuant to bill establishing Development Bank constituted "money received on account of the Commonwealth" within meaning of State Constitution's article establishing process by which revenues are to be received and disbursed, revenues would not be subject to those requirements, since funds were impressed with a trust established to secure debt obligations of Bank, which could disburse those funds pursuant to specific conditions and limitations). See also Navajo Tribe v. Arizona Dept. of Administration, 528 P.2d 623 (Arizona 1974); MacManus v. Love, 499 P.2d 609, 610 (Colo. 1972); State ex rel. Sego v. Kirkpatrick, 524 P.2d 975 (N.M. 1974); Application of State ex. rel. Dept. of Transportation, 646 P.2d 605, 609-10 (Okla. 1982). Contra, Shapp v. Sloan, 391 A.2d 595, 604-07 (Pa. 1978), appeal dismissed sub nom., Thornburgh v. Casey, 440 U.S. 942 (1979) (custodial Federal funds must be appropriated by the legislature or returned to the Federal government).

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B. The Trust Fund Does Not Violate The Constitution's
Prohibition Against Dedicated Funds

For similar reasons, the Alaska Constitution's prohibition concerning dedicated funds is not violated by the Trust Fund. The relevant sentence in the Constitution states:

Dedicated Funds. The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in section 15 [the Constitution's Permanent Fund provisions] of this article or when required by the federal government for state participation in federal programs. ...

Alaska Const. Art. IX, §7.

The Supreme Court has interpreted that prohibition against dedicating "proceeds of a state tax or license" to extend to all similar "source[s] of revenue" received by the State. State v. Alex, 646 P.2d 203 (Alaska 1983). In Alex, the legislature had passed a statute authorizing private aquaculture associations to collect mandatory assessments on the sale of salmon by commercial fishermen, in a way that "dedicate[d] the proceeds of the assessments to the associations." The Court rejected "a distinction between 'general revenue taxes' and 'special assessments' for services," and held the dedication of assessments unconstitutional. Id. at 208-210. As discussed previously with respect to the appropriations issue, however, the Trust Fund monies are simply not "revenues" of the State.^{6/}

^{6/} (...continued)

The Alaska Supreme Court has not decided the issue whether the Legislature can or must exercise its appropriations power in order to authorize the State to expend trust monies or custodial funds held by the State, though a Superior Court decision has ruled (without elaboration) that the governor could not expend custodial funds without a legislative appropriation. Kelly v. Hammond, Case No. 77-4 Civ. (Juneau, 4/19/78).

^{7/} There is obviously a strong link between the Alaska Constitution's appropriations language and the dedicated funds prohibition. That prohibition is aimed at restraining the Legislature's creation of dedicated funds from certain State revenues through its appropriations power. See Alaska Constitutional Convention Proceedings 2364 (dedications of funds had the undesirable effect of preventing the "legislature" from "decid[ing] each case on its merits," causing it to "lose[] [the] control that it should have over the workings over state government"; appropriations should be made only after legislature (continued...))

Furthermore, even if the Trust Fund monies were State revenues, the limitations on the use of those monies to those allowed under the Clean Water Act would not violate the dedicated funds prohibition for two additional reasons: 1) the monies would be received by the State subject to co-trusteeship obligations; and 2) the monies would be received by the State subject to a federal statutory requirement as to their use.^{8/}

^{7/}(...continued)

"decide[s] each case on its merits"); id. at 2367-70 ("eventually you get so many funds earmarked that the legislature just does not have the money to work with for current operating expenses").

^{8/} In a thorough analysis of the dedicated funds prohibition after the Alex decision, the Attorney General concluded that even under the strictest conceivable interpretation, monies received in trust would not be subject to that prohibition. 1982 Op. Att'y Gen. No. 13, File No. 366-649-80 (Nov. 30, 1982) ("[E]ven under the strict view, there would be some kinds of monies received by the state which it could not, for independent legal reasons, deposit into the general fund. These monies would include trust funds, restricted gifts, and funds subject to restrictions by contract"). That opinion also concluded that the fact that some State revenue was subject to federal statutory requirements that it be spent in a particular way did not violate the prohibition. Id. ("The dedication of proceeds of fishing and hunting licenses to the operation of a Department of Fish and Game is required by federal law for participation in federal programs and is therefore authorized by Article IX, section 7. See 16 U.S.C. §669."). See also Op. Att'y Gen., File No. 366-403-85 (Aug. 13, 1985) (trust obligation exists with respect to public school fund; dedication of revenues to public school fund would not violate dedicated fund prohibition because "the legislature has removed the lands from a federally-created trust and substituted a monetary fund. We believe the exceptions to the prohibition on dedicated funds contained in article IX, section 7, of the Alaska Constitution--i.e., for dedicated funds 'required by the federal government' or 'existing upon the date of ratification of this section by the people of Alaska'--authorize the dedication of revenues to the public school fund, since the dedication of revenues is an alternate form to the pre-statehood federal dedication of lands."); Op. Att'y Gen., File No. 388-140-82 (June 22, 1982) (federal statute specifying use to which State could put its share of receipts from oil and gas leasing in National Petroleum Reserve; "federal legislation directing payment of the money to the state attaches conditions to the state's receipt of that money" and thus "impose[s] a requirement which is exempt from the dedicated fund prohibition").

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C. The Real Issue

The Trust Fund monies are not "State assets" or "public revenues," subject to the Legislature's appropriations power or the constitutional prohibition against dedicated funds.

The issue then, purely and simply, is whether the Governor and the Attorney General of the State of Alaska have the power and authority to agree to a settlement of the Exxon litigation in which a portion of Exxon's settlement payments are made into a Trust Fund, supervised by the United States District Court and administered by the State and Federal governments as co-trustees, or whether they are legally constrained to settle the Exxon litigation only on terms that require all monies to be paid directly to the State.

III. THE SEPARATION OF POWERS DOCTRINE IN ALASKA

As the legislature well knows, the principle of separation of powers is a central construct of American constitutional government and of Alaska's Constitution.^{9/}

^{8/} (...continued)

A common sense reading of the exemption where a dedication of funds is "required by the federal government for state participation in federal programs" would allow funds to be taken under the restrictions embodied in the Settlement Agreement, even were those funds considered "public revenues." The purpose of this exemption is to ensure that the State may receive monies available under federal law subject to restrictions. Though recoveries under the Clean Water Act might not be received literally from a federal "program," it is likely that the dedicated funds prohibition would be interpreted by the courts to allow the State to benefit from such recoveries with the statutory restrictions as to their use.

^{9/} The historical and intellectual origins of the separation of powers doctrine have been extensively reviewed and analyzed by scholars. See, e.g., W. Gwyn, *The Meaning of the Separation of Powers* (1965); M. Vile, *Constitutionalism and the Separation of Powers* (1967); Sharp, "The Classical American Doctrine of 'the Separation of Powers'," 2 U.Chi.L.Rev. 385 (1935). The doctrine is generally considered to have been derived primarily from the writings of John Locke concerning the delineation of functions in the English government, and the writings of Montesquieu, who strongly "argued that any combination of the judicial, legislative or executive powers would create a system with an inherent tendency towards tyrannical actions." The doctrine was incorporated into the state constitutions that predated the American Constitution and has been embodied in subsequent state constitutions. J. Nowak, R. (continued...)

The Alaska Supreme Court has long and consistently recognized that although "the Alaska Constitution does not expressly address itself to the doctrine of separation of powers," that principle is clearly "implied" from the Constitution's separate articles creating the executive, legislative and judicial branches of the Alaska government. Rust v. State, 582 P.2d 134, 138, n.11 (Alaska 1978).^{10/} "Under the structure envisaged by Alaska's fundamental charter, the legislative power of the state is vested in the legislature, the executive power in the governor, and the judicial power in a supreme court, a superior court and such additional courts as established by the legislature." Bradner v. Hammond, 553 P.2d 1, 5 (Alaska 1976) (footnotes omitted).

There is no doubt that the countervailing principle of "checks and balances" allows each branch of the State government to directly and indirectly affect the other.^{11/} Thus, the legislature may enact laws that are to be executed by the executive and interpreted by the judiciary in accordance with legislative intent;^{12/} the executive may enforce those laws in accordance with its discretionary view of the public interest and governmental priorities; and the judiciary may review the actions of both the

^{9/}(...continued)

Rotunda, and J. Young, Constitutional Law (1983), citing, J. Locke, Second Treatise of Government (An Essay Concerning the True Origin, Extent and End of Civil Government); Montesquieu, The Spirit of Laws (Nugent trans. 1949)

^{10/} See also Alaska State-Operated School System v. Mueller, 536 P.2d 99, 103 (Alaska 1975) ("Those who wrote our constitution followed the traditional framework of American government. The governmental authority of the State of Alaska was distributed among the three branches, the executive, the legislative and the judicial.").

^{11/} See, e.g., Bradner v. Hammond, 553 P.2d at 5:

A problem inherent in applying the doctrine of 'separation of powers' stems from the fact that the doctrine is descriptive of only one facet of American government. The complementary doctrine of checks and balances must of necessity be considered in determining the scope of the doctrine of separation of powers.

^{12/} For purposes of the analysis presented below in this memorandum, it is important to bear firmly in mind that the legislature can restrict the executive's constitutional discretion to execute the law only by means of a lawfully enacted statute. State v. A.L.I.V.E. Voluntary, 606 P.2d 769 (Alaska 1980).

other branches in light of applicable constitutional and other legal constraints.^{13/}

However, the Alaska Supreme Court has embraced a strict view of the autonomy of the State's governmental branches, which precludes each branch from improperly interfering with the autonomy and discretion of the others with respect to their core constitutional powers. See, e.g., Bradner v. Hammond, 553 P.2d at 6-8 ("the separation of powers doctrine requires that the blending of governmental powers [between the branches] will not be inferred in the absence of an express constitutional provision").

IV. THE GOVERNOR'S CONSTITUTIONAL AUTHORITY
TO EXECUTE AND ENFORCE THE LAWS

"There is no dispute that our constitution was designed with a strong executive in mind." Bradner v. Hammond, 553 P.2d 1, 3 n.3 (Alaska 1976). See Alaska Constitutional Convention Proceedings 1102, 1741, 1986-88, 2038, 3103. Article III, Section 1 of the Constitution provides that "[t]he executive power of the State is vested in the governor."

Principal among the governor's express constitutional powers is his or her responsibility for executing and enforcing the laws. The constitutional provision concerning that power makes clear the governor's plenary authority to initiate and control litigation brought for that purpose:

Governor's Authority. The governor shall be responsible for the faithful execution of the laws. He may, by appropriate court action or proceeding brought in the name of the State, enforce compliance with any constitutional or legislative mandate, or restrain violation of any constitutional or legislative power, duty, or right by any officer, department, or agency of the State or any of its political subdivisions. ...

^{13/} See also, e.g., State ex rel. Stephan v. Kansas House of Representatives, 687 P.2d 622 (Kan. 1984) (doctrine of separation of powers avoids dangerous concentration of power through checks and balances each branch of government has against other by assigning each branch powers and functions appropriate to it; generally, "legislative power" is power to make, amend or repeal laws, whereas "executive power" is power to enforce laws, and "judicial power" is power to interpret and apply laws in actual controversies).

Alaska Const., Art. III, §16.^{14/}

The Constitutional Convention considered the discretion of the executive branch to enforce the law to be an essential element of the strong executive intended under the Alaska Constitution:

In order to enforce the strong executive and to bulwark his power we have given him power by appropriate actions or proceedings in the court, brought in the name of the state, to enforce compliance with any constitution [sic] or legislative mandate. That is specifically written into the constitution because we want to have a broad interpretation of the powers of the strong executive.

Alaska Constitutional Convention Proceedings 1986. Thus, the governor has the constitutional mandate to use his or her judgment in enforcing the law to best protect the public's interest. See State v. Lewis, 559 P.2d 630, 635 (Alaska), cert. denied, 432 U.S. 901 (1977).

V. THE ATTORNEY GENERAL'S SETTLEMENT AUTHORITY

The Attorney General is the State officer charged with implementing the executive branch's policies with respect to execution of the law.^{15/} In that respect, the Attorney General

^{14/} See, e.g., Alexander v. State By and Through Allain, 441 So.2d 1329 (Miss. 1983) ("Executive power" is the power to administer and enforce the laws; "execution" is at the core of executive power).

^{15/} The Alaska Constitutional Convention strongly rejected proposals offered by a minority of its Judiciary Committee members either to create an elected Attorney General's position in the Constitution (defeated by a 40-12 vote) or to have the Governor appoint the Attorney General, by a process similar to that adopted for judicial appointments, from candidates determined to be qualified by the Judicial Council (defeated by a 36-18 vote). In doing so, the Convention expressly reaffirmed the Constitution's intention to have a "strong executive" and made it clear that the Governor should have full authority to appoint his or her Attorney General, in order to assure that the Attorney General could work effectively in the executive department and would be compatible with the Governor and the Governor's programs. Alaska Constitutional Convention Proceedings 2193-2202, 2215-23 (Delegate McLaughlin stating that an elected Attorney General would put "a diverse and possibly a discordant element into the executive (continued...)

has broad common law powers and responsibilities. For the historically inclined, the common law roots of the attorney general's powers were recently, tersely summarized by the Alabama Supreme Court:

The office of attorney general had its nascence in the attornatus regis of the thirteenth and fourteenth century England. The attornatus regis served as the sovereign's primary legal representative, with considerable power subject to limitation only by the King. The office was carried over to colonial America, where it eventually became the office of attorney general. All fifty states have an office of attorney general created either by constitution or statute. ...

The most far-reaching of the attorney general's common-law powers is the authority to control litigation involving state and public interests. It is generally accepted that the attorney general is authorized to bring actions on the state's behalf. As the state's chief legal officer, 'the attorney-general has power, both under common law and by statute, to make any disposition of the state's litigation that he deems for its best interest.... [H]e may abandon, discontinue, dismiss or compromise it.' In addition to having authority to initiate and manage an action, the attorney general may elect not to pursue a claim or to compromise or settle a

¹⁵/(...continued)

branch" undercutting the Attorney General's "attorney-client relationship" with the Governor, which "has to be based on faith and personal selection"; instead, Attorney General should be an "executive appointee" and "an attorney largely for the executive department"; Delegate Stewart stating that rather than giving independent advice to both the executive and the legislature, "the attorney general [should be] purely and simply the adviser for the executive"; Delegate Rivers, a territorial attorney general, agreeing that the Attorney General should not be expected to counsel both the governor and the legislature, and that an elected attorney general would undercut the constitutional intention to have a strong executive, because an elected attorney general might be of an "opposite political faith," otherwise not "see eye-to eye" with the governor, or be "inadequate or hostile to [the governor]"; Delegate Buckalew opposing the Judicial Council proposal as inconsistent with the commitment to a strong executive). See also id. 2284 (Delegate Taylor explaining that by not making the attorney general a constitutional office, the Convention was recognizing that "it was a legal department of the executive branch and ... the governor would have the right ... to appoint the attorney general who sets up the legal department of the executive department").

suit when he determines that continued litigation would be adverse to the public interest.

Weaver v. Blue Cross and Blue Shield of Alabama, 570 So.2d 675, 677 (Ala. 1990) (footnotes omitted) (attorney general had authority to dismiss state insurance department's proceedings in appeals court despite objection of commissioner of insurance).^{16/}

Alaska takes a similarly expansive view of the Attorney General's common law powers. Because the nature and extent of those powers is fundamental to the issue addressed in this memorandum, the Alaska Supreme Court's seminal discussion of the subject deserves extended quotation:

Generally, an attorney general has those powers which existed at common law except where they are limited by statute or conferred upon some other state official. AS 44.23.020 indicates that the office of the Attorney General is to function with those powers and duties normally ascribed to it at common law:

- (b) The attorney general shall . . .
- (7) perform all other duties required by law or which usually pertain to the office of the attorney general in a state.

Under the common law, an attorney general is empowered to bring any action which he thinks necessary to protect the public interest, and he possesses the corollary power to make any disposition of the state's litigation which he thinks best. This discretionary control over the legal business of the state, both civil and criminal, includes the initiation, prosecution and disposition of cases.

When an act is committed to executive discretion, the exercise of that discretion within constitutional bounds is not subject to the control or review of the courts. To interfere with that discretion would be a violation of the doctrine of separation of powers. Although the Alaska Constitution does not expressly address itself to the doctrine of separation of powers, we have noted that often what is implied is as much a part of the constitution as what is expressed. The state constitution is divided into a number of separate articles. Since Article III concerns the executive

^{16/} See also 6 W. Holdsworth, A History of English Law 467-68 (1924); National Association of Attorneys General Committee on the Office of Attorney General, Common Law Powers of State Attorneys General 9-17 (1980); Cooley, Predecessors of the Federal Attorney General: The Attorney General in England and the American Colonies, 2 Am.J. of Legal History 304 (1958).

branch, it can fairly be implied that this state does recognize the separation of powers doctrine.

Both federal and state courts have consistently and carefully observed the line which divides their branch of government from that of the executive. They have held that the Attorney General cannot be controlled in either his decision of whether to proceed, or in his disposition of the proceeding.

"In that field, the discretion of the Attorney General is plenary. He is a constitutional officer . . . and, as such, the head of the state's legal department. His discretion as to what litigation shall or shall not be instituted by him is beyond the control of any other officer or department of the state."

The order to prosecute by the Superior Court overstepped this line and was an infringement upon the discretionary powers residing in the executive branch. Such an order is not within the province of the court.

We conclude that, although we have jurisdiction to entertain this case and to find, as we have, the existence of legal authority, we do not have power to control the exercise of the Attorney General's discretion as to whether he will take action in any particular cases of contempt for non-support.

Public Defender Agency v. Superior Court, 534 P.2d 947, 950-51 (Alaska 1975) (footnotes and citations omitted) (emphasis added).^{17/}

It is thus entirely clear that, as an incident of both common law and statutory powers, the Attorney General has the discretionary authority to settle the State's litigation.^{18/}

^{17/} In addition to AS 44.23.020, which codifies certain of the Attorney General's inherent powers and provides other duties for him or her, other statutes, far too numerous for citation, expressly provide for the Attorney General to initiate or defend administrative and judicial proceedings. However, "[t]he duties of the office are so numerous and varied that it has not been the policy of state legislatures to attempt specifically to enumerate them." State ex rel. Olsen v. Public Service Commission, 283 P.2d 594, 598-99 (Mont. 1955).

^{18/} See also State of Oklahoma ex. rel. Wilson v. Blankenship, 308 F. Supp. 870, 875 (W.D. Ok. 1969), rev'd. on jurisdictional grounds, 447 F.2d 687 (10th Cir. 1971), cert. denied, 405 U.S. 918 (1972) ("Ordinarily, the Attorney General both under the common law
(continued...)

A. The Attorney General Has The Authority To Agree To
A Settlement That Includes A Joint Trust Fund

The Trust Fund settlement device agreed to by the Attorney General in the Exxon litigation is appropriate under both common law and state and federal statutes.

First, as part of the Attorney General's common law authority to initiate, participate in and settle litigation, the Attorney General may seek any available legal or equitable remedy, even if a particular remedy is not expressly provided by statute.^{19/}

^{18/}(...continued)

and by statutes, may control and manage all litigations in behalf of the state and is empowered to make any disposition of the state's litigation, which he deems for its best interest"); Island-Gentry Joint Venture v. State Through State Board of Land and Natural Resources, 554 P.2d 761 (Haw. 1976) (attorney general has exclusive authority to control and manage for state all phases of civil litigation in which state has an interest, and such authority necessarily includes control of settlement of actions); Sarkeys v. Independent School District, 592 P.2d 529, 536 (Okla. 1979) ("The authority of the Attorney General to settle or compromise the litigation in question, in the absence of fraud or collusion is exclusive."); State ex rel. Derryberry v. Kerr-McGee, 516 P.2d 813 (Okla. 1973) (attorney general had authority to settle and compromise asphalt price-fixing case; absent "fraud or collusion," court will presume that case settled for valid reasons, based on Attorney General's judgment as to the state's best interests); State v. Jones, 41 So.2d 280 (Ala. 1949) (attorney general had power to enter into good faith settlement, despite constitutional provision forbidding compromise or release of obligations owed the state).

^{19/} Attorneys general have been recognized to have numerous common law litigation powers, including: to institute and intervene in civil suits to protect the public interest, in their discretion; to challenge the constitutionality of legislative or administrative actions; to bring suits under federal law to protect members of the public; to intervene in regulatory rate cases; to litigate parens patriae (for the benefit of the state's citizens) in cases involving a wide range of matters; to bring proceedings against public officers; to sue for abatement of nuisances; to enforce charitable trusts; to intervene in will contests; to seek revocation of corporate charters; to represent state agencies; and to initiate criminal prosecutions, even where local prosecutors have not done so. See National Association of Attorneys General Committee on the Office of Attorney General, Common Law Powers of State Attorneys General 36-71 (1980).

Thus, in State v. First National Bank of Anchorage, 660 P.2d 406 (Alaska 1982), the Alaska Supreme Court held that the State's Consumer Protection Act did not regulate real property sales and that the State's Uniform Land Sales Practices Act would not apply retroactively to certain land purchases. However, the Court held that neither statute restricted "the court's traditional equity powers" to award restitution "at the instance of the State," as a remedy to benefit defrauded land purchasers. 660 P.2d at 416.²⁰/

Furthermore, the Court held that the Attorney General, on behalf of the State, had the authority to pursue the common law fraud claims of land purchasers and to seek restitution for them based on those claims. Quoting and reaffirming its recognition of the Attorney General's broad common law powers in the Public Defender case, discussed previously, the Court concluded:

We believe that the above language [from the Public Defender decision] forecloses any argument that the State is without authority to bring suit in the absence of express statutory authority. This view finds ample support in the decisions of other jurisdictions where the attorney general's common law powers are recognized. ... This authority has been held to confer standing on the attorney general to seek redress for common law fraud.

We therefore hold that the State has the authority to bring suit in the public interest on the basis of common law fraud to obtain restitution for defrauded land purchasers. ... [I]t is not the court's function to pass upon the Attorney General's determination of what is or is not in the "public interest"

660 P.2d at 420-21.

²⁰/ In reaching this conclusion, the Court found "persuasive" the California Supreme Court's reasoning in a case involving a substantially similar issue. In that case, People v. Superior Court, 507 P.2d 1400 (Cal. 1973), the Court ruled that while a California statute only expressly authorized the California Attorney General to sue to enjoin misleading advertizing, that statute "did not restrict the court's general equity jurisdiction 'in so many words, or by a necessary and inescapable inference'" Therefore, the California Court held that courts retained their "inherent power to order, as a form of ancillary relief, that the defendants make or offer to make restitution to the consumers found to have been defrauded." 507 P.2d at 1402 (citations omitted and emphasis added). The Alaska Supreme Court's First National Bank opinion noted that "a number of analogous federal cases ... had reached the same conclusion." 660 P.2d at 416.

The trust, used as the vehicle for the Exxon settlement, is an ancient equitable creature. Litigants have long asked courts to infer or create trusts as a way to remedy legal or equitable wrongs. See, e.g., Klondike Industries Corp. v. Gibson, 741 P.2d 1161, 1171 (Alaska 1987) (court may impose constructive trust where it concludes that holders of legal title to property should be considered to have duty to act consistently with the equitable interests of other persons in property); Ayers v. Jackson Township, 525 A.2d 287, 314 (N.J. 1987) (citing authorities in support of creation of equitable fund so that 1) damages from toxic discharge would not have to be estimated in advance; 2) recovery could be used for medical monitoring; and 3) trustees could make decisions on disbursements on equitable grounds). See also Milliken v. Bradley, 433 U.S. 267, 281 (1976) (courts have "broad" "equitable powers to remedy past wrongs").^{21/}

For almost 40 years, environmental trusts have been created, by settlements and court orders, as a method to use monies paid by a polluter to benefit the resource damaged by the polluter's activities. See For Land's Sake 1 (New Jersey Conservation Foundation, Morristown, N.J., 1990). Such trusts have been established with both private plaintiffs and governmental trustees making the decisions about expenditures of trust monies.^{22/}

^{21/} The creation of common or trust funds for recoveries in class action litigation is one notable and well-established example of the courts' willingness to create such funds as a remedy. See generally 2 H. Newberg, Newberg on Class Actions §§10.01 et seq., 11.15 - .21, 12.01 et seq. (2d ed. 1985) (classwide damage awards and lump sum fund settlements).

^{22/} Some examples gleaned from research done by the National Wildlife Federation as a result of the Exxon litigation:

The Chesapeake Bay Foundation and Natural Resources Defense Council sued Bethlehem Steel for polluting the Chesapeake Bay in violation of its clean water permit. The resulting consent decree gave them extensive oversight powers in administering a \$1.1 million trust fund, with monies to be spent on projects which "further the goals of the Clean Water Act by contributing to the restoration and protection of the Chesapeake Bay and its resources," consistent with the "mitigation project criteria" set forth in the EPA's Clean Water Act settlement policies. Chesapeake Bay Foundation v. Bethlehem Steel Corp., Civ. No. Y-84-1620 (D.Md., July 14, 1987).

The Hudson River Foundation was the result of a protracted case brought by environmental organizations and Hudson River fishermen opposed to the construction of the Storm King power plant. The settlement established a \$12 million endowment for scientific research on the ecology of the Hudson River.

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Representatives from the state and federal government, from the different plaintiff groups, and from New York utilities sit on a panel which recommends projects for a trustee panel. Final authority for administration of funds rests with the trustee panel, comprised of ten distinguished persons independent of government. See generally R. Sandler and D. Schoenbrod, The Hudson River Plant Settlement (New York University, 1981).

The Virginia Environmental Endowment began with a \$13.2 million deposit from Allied Chemical Corporation which had been found guilty of polluting the James River with the toxic chemical kepone. The presiding federal judge approved Allied's suggestion that instead of paying a fine, it would create an environmental trust. The judge appointed independent, prominent citizens to administer the Endowment. Projects undertaken range from educating citizens to tackling pollution problems in the Virginia area. See Virginia Environmental Endowment, Annual Report (1987).

The Ohio Fund was established pursuant to a consent decree between the EPA and parties responsible for the administration of the Hamilton County municipal sewer system, the Metropolitan Sewer District of Greater Cincinnati, which failed to comply with its NPDES permit. The purpose of the trust is to fund "environmentally beneficial project(s)" for enumerated purposes in accordance with certain criteria. The project(s) are required 1) to further the statutory goals of the Clean Water Act, 2) to address the kinds of environmental problems caused by the defendants' noncompliance, 3) to supplement any existing legal requirements, and 4) to benefit the general public rather than any of the defendants or any governmental unit. U.S. v. Bd. of County Commissioners of Hamilton County, Ohio, et al., C-1-89-0693 (S.D. Ohio, March 11, 1985).

The Whooping Crane Trust is a \$7.5 million "trust in perpetuity" created in a consent decree between an electric power company and plaintiffs, the State of Nebraska and the National Wildlife Federation. Each of the three parties to the agreement (the power company, the governor of Nebraska, and the National Wildlife Federation), appoint one trustee who may be replaced at the pleasure of the party who appointed him. The purpose of the trust is "to protect and maintain the migratory bird habitat in the so-called Big Bend area of the Platte River between Overton and Chapman, Nebraska;" the trustees may choose to fund "programs, activities, and acquisitions ... formulated to protect and maintain, consistent with the provisions hereof, the physical, hydrological, and biological integrity of the Big Bend area so that it may continue to function as a life support system for the whooping crane and other migratory species which utilize it." Platte River Whooping Crane Maintenance Trust, Trust Declaration. See also U.S. v. Metropolitan District Commission, No. 85-0489-MA (D.Mass. 1988) (establishing Boston Harbor Massachusetts Bay (continued...))

Trust funds have often been created by consent decrees entered in Clean Water Act actions for injunctive relief and other remedies.^{23/} See, e.g., PIRG v. Powell Duffryn, 913 F.2d 64, 82 (3rd Cir. 1990), cert. denied, 111 S.Ct. 1018 (1991) ("in a Clean Water Act case, a court may fashion injunctive relief requiring a defendant to pay monies into a remedial fund, if there is a nexus between the harm and the remedy"; district court can create trust fund as part of equitable relief, but civil penalties must be paid into U.S. Treasury).

The environmental trust fund most analogous to that created under the Exxon Settlement Agreement was established as a result of litigation relating to the Shell Oil Company's discharge of oil from its Martinez, California complex. That discharge affected lands and waters, including wetlands around the Shell Marsh and Peyton Slough, and entered into the Carquinez Strait and Suisun Bay, near San Francisco.

^{22/}(...continued)

Trust). Cf., United States v. Browning-Ferris Industries Chemical Services, Inc., 704 F.Supp. 1355 (M.D. La. 1988) (attorney general had defendant pay a portion of recovery to university to endow environmental research program).

^{23/} The remedies expressly available under the CWA also arguably exist at common law. The courts have long recognized common law "public trust" and "parens patriae" doctrines, under which a government is entitled to seek damages and injunctive relief in order to protect land or water resources in which it has a "public trust" interest. See, e.g., Maine v. M/V Tamano, 357 F.Supp 1097, 1101 (D.Me. 1973) (state can seek both injunctive relief and damages for oil discharge under public trust and parens patriae theories); Aerojet-General Corp. v. San Mateo County Superior Court, 257 Cal.Rptr. 621 (Cal.App. 1989) (State's public trust interest in navigable portions of river was sufficient for standing to claim damages caused by environmental pollution). See generally 1 V. Yannacone, B. Cohen, S. Davison, Environmental Rights and Remedies §2.1 et seq. (1972) (discussing development of trust doctrine). Under common law theory then, the State might seek as an equitable remedy, and a court might order created, a fund to benefit damaged resources. See, e.g., Ohio v. Wyandotte Chemicals Corp., 401 U.S. 493, 495-96 (1971) (fund sought for restoration of waters polluted by mercury); State v. Levi Strauss & Co., 715 P.2d 564 (Cal. 1986) (settlement fund for class members created in parens patriae consumer action brought by Attorney General). See also 1 W. Rodgers, Environmental Law §2.13D (1986) (range of equitable remedies possible in environmental cases is "virtually unlimited").

The Consent Decree in that case, a copy of which is available to the Legislature, resolved the claims of the United States Government, as well as those of numerous California state and local governmental entities and agencies that were also plaintiffs. U.S., et al. v. Shell Oil Company, Civ. No. C- 89-4220 (N.D. Cal., Nov. 29, 1989). Like the present case, the Consent Decree used a Clean Water Act trust as the mechanism for collectively resolving claims for natural resources and other damages sought under various state and federal statutes, as well as common law theories. See Shell-Martinez Consent Decree ¶¶I(D)-(J), V.

Prominent among its settlement payment provisions, the Consent Decree provides for approximately \$11 million to be placed in a joint trust fund.^{24/} A Memorandum of Agreement incorporated into the Consent Decree provides for decisions concerning disbursement and management of the trust fund to be made by a Committee comprised of representatives of federal, California and local governmental entities. See Shell-Martinez MOA ¶I. While the Shell-Martinez MOA enumerates various uses to which the fund monies may be devoted, the Committee is to "be guided by the primary objectives of restoring, rehabilitating and acquiring the equivalent of the natural resources adversely affected by the Oil Spill." See Shell-Martinez MOA ¶II.

Cooperation with the Federal government and the creation of a joint trust fund is clearly appropriate under the circumstances of the Exxon litigation, as it was in the Shell-Martinez case.

B. The Clean Water Act Trust Remedy

The Clean Water Act ("CWA") provides that the State and Federal governments are to act as "trustees" in seeking recovery for natural resource damages and that all recoveries by the trustees are to be used for restoration and resource acquisition purposes. See 33 U.S.C. §1321(f)(5) ("The President, or the authorized representative of any State, shall act on behalf of the public as trustee of the natural resources to recover for the costs of replacing or restoring such resources. Sums recovered shall be used to restore, rehabilitate, or acquire the equivalent of such natural resources by the appropriate agencies of the Federal Government, or the State government.").

^{24/} Like the Exxon Settlement Agreement, the Shell-Martinez Consent Decree, though dedicating the majority of the recovery to an environmental trust fund, also provided for significant monies to be paid directly to the numerous governmental parties as reimbursement for their costs and clean-up efforts, as well as penalties. See Shell-Martinez Consent Decree ¶IV(A).

Consistent with the trustee status under which the governments may recover natural resource damages, the statute is interpreted to require that such recoveries be held in trust for the damaged resources. See Commonwealth of Puerto Rico v. The SS Zoe Colocotroni, 628 F.2d 652, 675 (1st Cir. 1980), cert. denied, 450 U.S. 912 (1981) (requirement that recoveries be used to benefit damaged resource is "[i]n accordance with the trust analogy"). See also W. Fratcher, Scott on Trusts §§170, 192 (4th ed. 1987) (trustee's duty is to act with respect to trust property in the interests of the trust's beneficiaries).

The regulations promulgated under the CWA concerning such trusts expressly address only the situation where a single sovereign recovers money. "All sums recovered ... by the Federal government acting as trustee shall be retained by the trustee, without further appropriation, in a separate account in the U.S. Treasury." 43 C.F.R. §11.92(a)(1). "All sums ... recovered ... by a State government acting as trustee shall either: (i) be placed in a separate account in the state Treasury; or (ii) be placed by the responsible parties in an interest bearing account payable in trust to the state agency acting as trustee." 43 C.F.R. §11.92(a)(2). These sums must be spent "out of the account ... only for those actions described in the Restoration Plan" 43 C.F.R. §11.92(c). The regulations further provide the State trustee responsible for the Restoration Plan and spending trust proceeds in accordance with that Plan is to be an "agency designated by the governor". 43 C.F.R. §11.14(rr).

However, relevant to the joint Trust Fund created by the Exxon Settlement Agreement, the regulations also provide that the state and federal trustees should cooperate to "[d]evelop and carry out a plan" for restoration and resource acquisition where the affected resources are "contiguous," or under joint trusteeship. 40 C.F.R. §§300.615(a), (b)(4).^{25/} The CWA and its accompanying regulations therefore strongly support the conclusion that joint recoveries should be placed in a joint trust fund and administered cooperatively. See also Alaska Const., Art. XII, §2 ("The state ... may cooperate with the United States ... on matters of common interest.").

Based on these statutory and regulatory provisions, a joint trusteeship was considered the appropriate basis for the Consent Decree in the Shell-Martinez oil spill litigation,

^{25/} See also 43 C.F.R. §§11.32(a)(1)(ii), (a)(1)(iii) (trustees encouraged to cooperate in assessing inseparable damages and required to cooperate in pursuing such damages); 40 C.F.R. §§300.73-.74 (requiring trustee coordination and cooperation in fulfilling duties which, under 33 U.S.C. §1321 (f)(5), include pursuing damage claims and implementing restoration plan).

discussed previously in this memorandum. A joint trusteeship will almost certainly be upheld by the courts as an appropriate settlement mechanism, authorized by federal law, in the Exxon case as well.

C. No Statutory Provision Expressly Precludes
The Trust Fund Settlement

The Attorney General's authority to enter into the joint Trust Fund settlement with Exxon and the Federal government is certainly subsumed within the Attorney General's broad, inherent settlement powers. Because of the inherent nature of those powers, "[i]t is the general consensus of opinion that in practically every state of this Union whose basis of jurisprudence is the common law," the Attorney General retains all his or her common law powers "in the absence of express restrictions" imposed by constitution or statute. Hansen v. Barlow, 456 P.2d 177, 178 (Utah 1969) (emphasis added).^{26/}

No Alaska statutory provision expressly precludes the Attorney General from settling litigation like the EXXON VALDEZ case by means of a settlement which includes a joint Trust Fund.^{27/}

^{26/} Accord, Weaver v. Blue Cross and Blue Shield of Alabama, 570 So.2d 675, 684 (Ala. 1990); Olsen v. Public Service Commission, 283 P.2d 594 (Mont. 1955); Lund ex rel. Wilbur v. Pratt, 308 A.2d 554, 558 (Me. 1973) (attorney general "may, in the absence of some express legislative restriction to the contrary, exercise all such power and authority as public interests may, from time to time require, and may institute, conduct, and maintain all such actions and proceedings as he deems necessary for the enforcement of the laws of the State, the preservation of order, and the protection of public rights"); Martin v. Thornburg, 359 S.E.2d 472, 479 (N.C. 1987) ("[i]n the absence of explicit legislative expression to the contrary, the attorney general possesses entire dominion over every civil suit instituted by him in his official capacity ..., and his authority extends as well to control of defense of civil suits against the state, its agencies, and officers"); State ex rel. Derryberry v. Kerr-McGee Corporation, 516 P.2d 813 (Okla. 1973). See also National Association of Attorneys General Committee on the Office of Attorney General, Common Law Powers of State Attorneys General 24 (1980) ("In states which recognize common law powers, codification does not affect such powers unless the statutes expressly state so.")

^{27/} Given the absence of any such express prohibition, it is unnecessary to speculate concerning the issue whether and to what extent the Legislature might prohibit the Attorney General from so settling the litigation. However, it is clear that the separation
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of powers doctrine would restrict any legislative attempt to intrude on the executive branch's discretionary authority to conduct litigation in the State's interest. See Bradner v. Hammond, 553 P.2d 1 (Alaska 1976) (appointment of executive officers clearly an executive function, and legislature could not require legislative confirmation of lesser executive officers in addition to those made subject to confirmation by the Alaska Constitution); In re Mackay, 416 P.2d 823 (Alaska 1965), cert. denied, 382 U.S. 803 (1965) (inherent power of Supreme Court over suspension and disbarment of attorneys cannot be defeated by legislative branch of government). Cf., Granato v. Occhipinti, 602 P.2d 442 (Alaska 1979) (superior court could not constitutionally require State executive agency to perform home-study in private child custody dispute); Rust v. State, 582 P.2d 134 (Alaska 1978) (sentencing court could recommend that defendant be incarcerated in particular facility, but ultimate responsibility for classification and placement of defendant was vested in Division of Corrections, and court lacked authority to order defendant incarcerated in a designated facility); State Carlson, 555 P.2d 269 (Alaska 1976) (separation of powers principles precluded trial court from accepting guilty plea to lesser charge of manslaughter over the opposition of the prosecution). See also Bowsher v. Synar, 478 U.S. 714 (1986) (powers vested in the Comptroller General under "reporting provisions" of Balanced Budget and Emergency Deficit Control Act violated the Constitution's command that Congress play no direct role in the execution of the laws); State Board of Ethics for Elected Officials v. Green, 545 So.2d 1031 (La. 1989) (to extent statute authorized Supervisory Committee on Campaign Finance Disclosure to file civil proceedings to collect penalties for violation of Campaign Finance Disclosure Act, it unconstitutionally violated separation of powers; Committee members were legislatively appointed, and thus could not constitutionally be authorized to enforce the law); In re Opinion of the Justices, 532 A.2d 195 (N.H. 1987) (once legislature has made appropriation for executive branch, requirement of fiscal committee approval of contracts made pursuant thereto is unconstitutional intrusion into executive branch of government); State ex rel. Mattson v. Kiedrowski, 391 N.W.2d 777 (Minn. 1986) (constitutional provision that duties of state executive "shall be prescribed by law" does not allow the legislature to transfer inherent or core functions of executive officers); General Assembly of State of New Jersey v. Byrne, 448 A.2d 438 (N.J. 1982) (any legislative action which excessively interferes with executive's ability to faithfully execute the laws passed by Legislature violates separation of powers); Aiken County Bd. of Ed. v. Knotts, 262 S.E.2d 14 (S.C. 1980) (legislature may not, consistent with separation of powers, undertake to both pass laws and execute them by its own members); State ex rel. Guste v.
(continued...)

The only statutes that have been suggested to have potential impact on that settlement authority are the Alaska statutes concerned with oil and hazardous substance release remedies. However, those statutes can not be fairly said to preclude expressly the Settlement Agreement or its joint Trust Fund mechanism, for several reasons.

First, AS 46.08.020 and AS 46.08.010 require "[m]oney received by the state" to be "deposited in the general fund and credited to the special account called the 'oil and hazardous substance release account'." As discussed earlier in this memorandum in the context of the appropriations and dedicated fund issues, the joint Trust Fund monies are not monies "received by the state." Therefore, the statutory requirement to deposit such monies in the general fund, as a matter of plain statutory language, simply does not apply.

Furthermore, the most plausible reading of these statutes is that they deal only with monies recovered by the State as reimbursement for costs, as the February 15, 1991, memorandum to Senator Cotten from the Assistant Revisor of Statutes stated at page 4, ¶II(C). AS 46.08.070(a) empowers the Attorney General to seek compensation for State cleanup related expenditures. That section states:

The commissioner shall seek reimbursement promptly under this section, AS 46.03.760(e), or federal law for the cost incurred in the cleanup or containment of oil or a hazardous substance that has been released.

(emphasis added).

AS 46.08.020 similarly makes clear the cost reimbursement nature of the recoveries subject to the statutory chapter, in outlining potential appropriations of these proceeds:

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Legislative Budget Committee, 347 So.2d 160 (La. 1977) (legislature may not appoint officers to enforce its laws because that would invade the exclusive realm of the executive).

Some courts have held that the legislature may not restrict the attorney general's common law powers. See, e.g., Gust K. Newberg, Inc. v. Illinois State Toll Highway Authority, 456 N.E.2d 50, 55 (Ill. 1983) (Attorney General's duties are prescribed by law and include those powers traditionally held by Attorney General at common law; while legislature may add to his powers, it cannot reduce his common-law authority in directing legal affairs of state); Murphy v. Yates, 348 A.2d 837 (Md. 1975) (legislature may not abrogate common-law powers of Attorney General).

(a) The legislature may appropriate from the following sources to the ["Oil and Hazardous Substance Release Response] fund:

(2) money recovered or otherwise received from parties responsible for the containment and cleanup of oil or a hazardous substance at a specific cite [sic]...; [and]

(3) fines, penalties, or damages recovered under this chapter or other law for costs incurred by the state as a result of the release or threatened release of oil or a hazardous substance.

(b) Money received by the state under (a)(2) and (a)(3) of this section shall be deposited in the general fund and credited to the special account called the "oil and hazardous substance release mitigation account."

The relevant sections thus require on their faces that only those damages, penalties or fines recovered for "costs incurred by the State" for "clean up and containment" be placed in the special account in the general fund.^{28/}

Additionally, it is important to recognize that if any Alaska statute were interpreted to preclude the Attorney General from pursuing or agreeing to Clean Water Act trust fund remedies,

^{28/} The Legislature's concern was that the general fund be reimbursed for outlays of money. The legislative Fiscal Note to HB 205, the source of AS 46.04.010 as it presently reads, states, "This procedure is designed to reimburse the general fund and thus hold down overall state cleanup costs. It is intended that about 20% of all cleanup costs can be recovered." 1980 House Journal Supp. No. 43, Apr. 8, 1980. Similarly, in introducing this legislation, Representative Miles stated that "it provides for prompt clean up of oil spills and for prompt reimbursement of those spills." House Floor debates, Apr. 15, 1980.

With respect to AS 46.08, Representative Navarre noted in support of the new fund that "it appeals to me because although it offers the opportunity to charge back to the responsible party, if we can identify them, the cost of cleaning up these areas as we discover them." House Resources Comm., Jan. 29, 1986. Former DEC Commissioner Ross similarly told the House Finance Committee on Feb. 17, 1986, that "we would anticipate operating this fund in exactly the same manner, of looking for liability, and assigning it accordingly when we found it, and reimbursing the state." (emphasis added). See also Statement by Representative Pourchot before House Finance Committee, Mar. 10, 1986; statement by Representative Davis on House Floor, Mar. 19, 1986.

serious federal supremacy and preemption issues would be raised.^{29/} While the State may in many contexts provide remedies more liberal or protective than those provided by federal law,^{30/} the courts might well rule invalid an attempt by the Legislature effectively to eliminate a remedy clearly provided under federal law.

In brief, were a State statute interpreted to preclude the State from participating in trust fund recoveries under the Clean Water Act, that statute would likely be held preempted, because it would frustrate and serve as an obstacle to the Clean Water Act's purposes. See International Paper Company v. Ouellette, 479 U.S. 481, 491 (1987) ("[i]n addition to express or implied preemption, a state law also is invalid to the extent that it 'actually conflicts with a ... federal statute'"; Clean Water Act preempts private water pollution suit based upon the common law of nuisance of the state in which the alleged injury occurred, when the source of the alleged injury is located in another state).

Finally, it would make little sense for the legislature expressly to constrain the Attorney General's discretion by prohibiting him or her from agreeing to a settlement, based on federal laws, that establishes a joint State-federal environmental restoration trust fund, even when that settlement mechanism would provide the best overall outcome for the State. The Legislature clearly, and wisely, has not done so.

VI. THE SETTLEMENT STRUCTURE WAS NEGOTIATED AND AGREED TO REASONABLY AND IN GOOD FAITH

It was thus certainly within the Attorney General's authority and discretion to decide to settle the State's Oil Spill litigation with Exxon, in part by agreeing to the creation of a resource restoration Trust Fund jointly administered by State and federal Trustees. As quoted previously in this memorandum, the

^{29/} The Supremacy Clause provides:

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding.

U. S. Const., Art. VI.

^{30/} See, e.g., Webster v. Bechtel, 621 P.2d 890 (Alaska 1980) (federal Fair Labor Standards Act did not preempt State from providing greater protection and more expansive remedies under the Alaska Wage and Hour Act).

Alaska Supreme Court has strongly declared that where the Attorney General has the "legal authority" to make a particular decisions with respect to the State's litigation, Alaska's courts "do not have power to control the exercise of the Attorney General's discretion" To attempt to do so would be "an infringement upon the discretionary powers residing in the executive branch" "not within the province of the court." Public Defender Agency, 534 P.2d at 951.

Even if the Supreme Court's clear statement in that regard were disregarded, at most an Attorney General's decision concerning the conduct and disposition of State litigation can be legally challenged only if that decision was made in bad faith or, perhaps, for entirely arbitrary and capricious reasons. See Weaver v. Blue Cross and Blue Shield of Alabama, 570 So.2d 675, 677 (Ala. 1990) (courts have either "refused to interfere with the attorney general's use of his discretionary power" or "left undisturbed the use of the power to control litigation as long as the attorney general's actions are not arbitrary, capricious, or in bad faith").^{31/}

The Governor and the Attorney General must be allowed to exercise discretion to settle cases in good faith and on whatever lawful basis they think to be in the State's best interests. They are not required to doggedly pursue in every case all potential State positions and claims. In some cases, they might decide for a variety of reasons, including litigation strategy or problems of proof, simply to abandon potential claims, without seeking any recovery for them. In other cases, they might determine that injunctive relief would provide the best settlement consideration (for instance, an agreement by Exxon itself to undertake certain cleanup or restoration work at the direction of State and federal agencies), rather than seek any monetary recovery under any State or federal law.^{32/}

^{31/} See also Severns v. Wilmington Medical Center, Inc., 421 A.2d 1334 (Del. 1980) (Supreme Court will not interfere with performance of attorney general's discretionary duties, absent bad faith); Feeney v. Commonwealth, 366 N.E.2d 1262 (Mass. 1977) (attorney general's discretionary power not to be used in arbitrary or capricious manner); State ex rel. Carmichael v. Jones, 41 So.2d 280 (Ala. 1949) (consent agreement between attorney general and taxpayer settling unliquidated claim for taxes was lawful because made in good faith and within power of Attorney General); Cooley v. South Carolina Tax Commission, 28 S.E.2d 445 (S.C. 1943) (attorney general acted in good faith in compromising estate tax).

^{32/} See also Rubin v. Board of Environmental Protection, 577 A.2d 1189, 1192 (Me. 1990) ("Attorney General is entitled under the common law to seek injunctive relief against violations" of law).

There is no sense in which the Exxon Settlement Agreement was negotiated and agreed to in bad faith or arbitrarily and capriciously. Instead, for the reasons discussed in this memorandum and which will be discussed further with the Legislature during the public comment and legislative approval process, the conclusion was reached that it was in the best interests of the State of Alaska to settle the Oil Spill litigation in large part through the mechanism of a joint Trust Fund, rather than pursue separately the State's various claims for damages. For present purposes, this memorandum will merely summarize the basic reasons why the joint Trust Fund was a reasonable, even essential, component of a settlement.

As a fundamental matter, it was important for the State and Federal governments to act in concert in seeking a settlement. By acting and settling together with the Federal government, the State was able to achieve a better overall settlement for the people of Alaska, both in terms of receiving reasonable reimbursement damages (as to which the Legislature will have appropriations authority), and obtaining the greatest benefit for Alaska's damaged natural resources.

A joint Trust Fund recovery for natural resource damages and restoration was reasonably necessary to such a joint settlement because of potential disputes concerning which sovereign is trustee for which resources. It was desirable to avoid such disputes for several reasons, including: 1) the expense and considerable time unquestionably required for litigating -- undoubtedly including through the available appeals processes -- the numerous resource trusteeship issues presented; 2) the uncertain outcome, always attendant to litigation even in more clearly charted legal waters, of such disputes because of numerous unsettled questions of law concerning trusteeships of various resources; 3) the arguable prospect that some resources or restoration efforts might ultimately be held by the courts to be subject to joint trusteeship by the State and Federal governments; 4) the practical fact that even with respect to resources that might be identified with some confidence as subject to the trusteeship of a single sovereign (e.g., state tidelands and federal uplands), both the damage to those resources and restoration efforts affecting them are very much intertwined; and, finally, 5) as a tactical matter, resource trusteeship disputes could certainly have been used by Exxon to complicate hugely the litigation by interjecting at various stages issues as to which sovereign could recover and bore the burden of proving damages with respect to which resources, thereby both dividing the State and Federal governments and likely prolonging further Exxon's day of reckoning and payment.

The State believes that it has a stronger claim to many of the fish, wildlife and other natural resources impacted by the spill than does the Federal government and might well have

prevailed to that effect after lengthy and costly litigation. However, in light of the considerations mentioned above, it was more appropriate and in the best interests of the State to agree instead to a settlement that in part employed a joint State-federal resource restoration Trust Fund. Such a Trust Fund was a necessary ingredient of a settlement designed to produce the greatest benefit to the people of Alaska.

CONCLUSION

This memorandum has discussed the clear authority of the Attorney General to agree to the settlement of the EXXON VALDEZ litigation on the terms contained in the Settlement Agreement.

However, despite that authority, the settlement is obviously politically sensitive, not only because of the magnitude of the resource and economic issues addressed by the Settlement Agreement, but also because of the profound impact of the EXXON VALDEZ Oil Spill on both Alaska's political culture and -- very directly -- on the lives of many Alaskans.

Therefore, in recognition of the public's interest in the settlement and the Legislature's perceived desire to review the Settlement Agreement, the Settlement Agreement was made subject both to a public comment period and review by the Alaska Legislature. As paragraph 37 of the Agreement provides, if the Legislature does not approve the Settlement Agreement within a prescribed time period, the Agreement may be terminated by the State merely by giving notice to Exxon and the United States government.

Alaska State Legislature

House of Representatives

Official Business



P.O. Box V
State Capitol, Rm. 216
Juneau, Alaska 99811
(907) 465-3718

House Special Committee on the Exxon Valdez Oil Spill Claims Settlement

April 3, 1991

Charles A. DeMonaco, Esq.
Assistant Chief, Environmental Crimes Section
United States Department of Justice
PO Box 23985
Washington, D.C. 20026-3985

Dear Mr. DeMonaco:

The Alaska House of Representatives has established the Special Committee on the Exxon Valdez Oil Spill Claims Settlement to review the agreements entered into by representatives of the State, the United States and Exxon Corporation.

The Special Committee has heard testimony from the Alaska Attorney General and has scheduled appearances by representatives of the state agencies affected by the settlement agreement. We would very much like to hear testimony from representatives of the federal agencies involved (EPA, NOAA, Interior and Agriculture), as well as from representatives of the Justice Department.

I have tentatively scheduled the federal representatives to appear before the Special Committee on Thursday, April 10, from 8-10 a.m., and on Friday, April 11, from 12-2 p.m.

I have asked the Special Committee staff to prepare a list of questions to focus the representatives' discussion. Committee members may have additional questions at the time of the hearing.

In order to coordinate appearances, please contact Andy Hemenway at (907) 465-4945; his Fax number is (907) 465-2444. We very much appreciate your cooperation in facilitating our review of the settlement agreement.

Cordially,

Max F. Gruenberg Jr.
Rep. Max F. Gruenberg Jr., Chair

SCOMM

76:21

ERICKSON & ASSOCIATES

Economic Consultants

P.O. Box 21124, Juneau, Alaska 99802-1124

Telephone (907) 586-1290

Memorandum

5 April 1991

To: Max Gruenberg

From: Gregg Erickson *Gregg Erickson*

Subject: Economic Issues in Proposed Exxon Settlement

During the Special Committee's meeting on March 27, you requested that I work with your staff to follow-up on several issues. Some initial comments are given below. An additional memorandum addressing the more general issue of valuing natural resources injuries is in preparation.

Natural Resources Damages

What is meant by "natural resources damages"?

If Mr. A. smashes Mr. B's car, justice requires that Mr. A repair the car to its condition before the crash, or provide an equivalent replacement vehicle, or sufficient money to make Mr. B indifferent to the injury inflicted on his car. The money that Mr. B gets is his "damages," not the injury to his car.

Natural resource damages are, like the money paid to Mr. B, "compensatory and remedial" (see the definition on p. 5 of the consent decree), but from an economist's standpoint they differ from ordinary damages in two ways: (1) the injured property must in some sense be held in common ownership; and (2) the injury must be so broadly inflicted that private parties have an insufficient economic incentive to recover all the damages.

The injured resource need not be a part of nature's endowment; for example, injury to cultured fish in an artificial lake would almost certainly give rise to natural resources damages, provided the lake and fish were public resources. Commercial fishermen who lose income because of an oil spill are usually not thought to have a claim to natural resources

Memorandum
Rep. Max Gruenberg
5 April 1991

damages, as long as they have sufficient economic incentive to pursue private litigation.

What are natural resources services?

Natural resource services are a flow, distinct from the natural resources themselves, which are the stock of assets that provide the flow. If Mr. A destroys Mr. B's House, Mr A is not only liable for replacing the house (the stock), but also liable for providing Mr. B a place to live (maintaining the flow of housing services) while the new house is being built. The robins that arrive in Juneau each April are a valuable natural resource stock, providing insect control, bird-song, pleasure to bird-watchers, food to certain predators, and other valuable natural resources services .

Do natural resources damages include economic losses as from lost tax revenue? If not, is the state then giving up these claims?

It is unlikely that lost tax revenue would be considered natural resources damages.

Excepting the municipal portion of the fish taxes, the settlement explicitly extinguishes the state's tax-loss claims. There is no provision in the consent decree for making good the loss to the general fund. This contrasts to the cleanup and damage assessment claims, for which general fund reimbursement is explicitly provided. The state's negotiators may have decided that the tax loss claims had little merit, or that reimbursement was bargained away for things they judged to be of greater importance. The restitution to be paid under the criminal plea agreement may have figured in the negotiator's thinking. The attorney general denies any role in that agreement, however, and in any event, the restitution monies may only be appropriated for specific purposes, and thus do not directly compensate for the unrestricted revenue the lost taxes would have provided.

Why are the state's natural resources damages being treated as if they are inseparable from those of the federal government?

In principle, "ownership" can be determined for tidelands, submerged lands and a few other resources injured by the oil spill. Most of the natural resources damages, however, arise from injuries to biological resources to which the notion of ownership can be related only with difficulty. Who owns the sea otter, or the salt water she swims in? Who owns the clams she eats or the plankton that feed the clam? And if the sea otter dies because the clams die because the plankton die because of the oil, how is the injury and damages to be divided among the various "owners"? From an economic perspective, the notion of a joint trusteeship, whatever its deficiencies, must be measured against the expenditure of human talent and public funds that efforts by the governments to "divide the baby" would entail.

What limits are there to the "acquisition of equivalent resources"?

The federal Clean Water Act defines "restoration" as including "replacement and acquisition of equivalent resources." The question of how far one can stretch the notion of equivalent resources has been the object of considerable legal and bureaucratic discussion within the trustee agencies and among them and their legal advisers. Good economic arguments have been advanced to support the "equivalence" of a wide range of alternative resource acquisitions. For example, boat launching facilities near Talkeetna might be an economically and cost effective way to compensate sport fishermen for lost opportunities in Prince William Sound. "Equivalent resources" is an elastic concept, but restoration planners were advised that the further they chose to stretch it, the greater the risk of doing something that would be ruled non-reimbursable. Absent a compelling policy reason to push the limits, and anticipating vigorous challenges from Exxon, the attorneys counseled caution.

The Dept. of Law has addressed restoration questions in a number of contexts, including a 1990 memorandum responding to concerns among staff at the Department of Natural Resources that the purchase of upland habitat scheduled for logging might be going beyond the definition. The committee may wish to request a copy of this and other memoranda addressing the definitions of restoration in federal law.

Restitution

On what sorts of things might the state properly spend the \$50 million that may come to the state as restitution under the criminal plea agreement?

The plea agreement provides that within 30 days of the agreement's acceptance Exxon will pay the state \$50 million in "remedial and compensatory payments...to be used by the State of Alaska exclusively for restoration projects related to the EXXON VALDEZ oil spill." Restoration includes "restoration, replacement *and enhancement of affected resources*, acquisition of equivalent resources and services, and long-term environmental monitoring and *research programs directed at the prevention, containment, cleanup and amelioration of oil spills.*" (emphasis added)

In contrast to the rest of the definition, the italicized words are not found in federal statutes. The statutory language probably allows for a wide range of alternative resource acquisitions and restoration strategies. The addition of "enhancement" and "research programs directed at...oil spills" further widens the range of options available for spending the restitution money. The committee may wish to inquire concerning the origins of this new language.

Re-Opener Clause

The proposed consent decree allows the governments to collect up to \$100 million from Exxon after the year 2002 for additional restoration projects, but only if the governments can prove that "the injury [requiring restoration] could not reasonably have been known nor ... anticipated by any Trustee from any information in the possession of or reasonably

Memorandum
Rep. Max Gruenberg
5 April 1991

available to any Trustee on the Effective Date." Is there any basis for determining the likelihood of this condition being met?

Speaking from the damage assessment perspective, it is a difficult though probably not impossible standard to meet.

SCOMM

76:22

PROPOSED TRAVEL ITINERARIES

Friday, April 12

Lv Juneau Ak Air #97 4:05 pm
 Ar Anchorage 5:50 pm
 Lv Anchorage Charter 6:30 pm WILBUR'S AIR
 Ar Seward 7:15 pm 277-0511

- ① ~~Public Hearing in Seward 7:30-10:00 pm SEWARD Community LIBRARY~~
 MAX, GAIL, GEORGIANNA, Cole, Rosier
 Overnight in Seward
 HOTEL = BREEZE-IN (Rooms 108, 109, 110)

Saturday, April 13

Lv Seward Charter 8:00 am SOUTH CENTRAL AIR
 Ar Homer (ph 235-6172) 8:45 am ~~283-7676-Kenai~~
 MAX, GAIL, GEORGIANNA, Cole, Rosier

- ② ~~Public Hearing in Homer 9:00-12:00 noon HOMER Council CHAMBERS~~

Lv Homer Charter 12:30 pm PENINSULA AIR
 Ar Seldovia 12:45 pm 235-6172

- ③ ~~Public Hearing in Seldovia 1:00-2:00 pm Seldovia School LIBRARY~~

Lv Seldovia Charter 2:30 pm PENINSULA AIR
 Ar Kodiak 4:00 pm

- ④ ~~Public Hearing in Kodiak 4:30-7:30 pm AT Borough Assembly CHAMBERS~~
 Seldovia: MAX, GAIL, GEORGIANNA, Cole, Rosier

Overnight in Kodiak - Westmark HOTEL MAX, Gail, GEORGIANNA, Cole, Rosier

Overnight arrangements by individual travelers ALSO attending:
 CLIFF DAVIDSON
 FRAN ULMER
 SANDOR (DEC)
 Mead Treadwell (DEC)

Sunday, April 14

Lv Kodiak ERA Airlines 9:15 am
 Ar Anchorage (Flight 891) 10:10 am

Lv Anchorage Charter 10:45 am WILBUR'S AIR
 Ar Cordova 11:30 am (2 planes)* SEE TRAVELERS

- ⑤ ~~Public Hearing at Cordova City Hall 12:00-4:00 pm LIBRARY meeting room~~

Lv Cordova Ak Airlines #66 4:10 pm
 Ar Juneau 6:15 pm (via Yakutat)

ON CHARTER FROM ANC to Cordova
 * MAX, GAIL, GEORGIANNA,
 CLIFF, FRAN, Cole,
 Rosier, Treadwell

2 planes

KUBINA

COMMITTEE TRAVEL ITINERARY
 Public Hearings in various cities

CITY CONTACTS & MISC. INFORMATION

SEWARD (Friday, April 12)

Darryl Schaefermeyer will furnish all transportation and has made hotel reservations for legislators, Rosier and Cole at the Breeze-In.

HOMER (Saturday, April 13)

Swackhammer will pick everyone up, get you to the meeting, and take you back to the airport.

KODIAK (Saturday, April 13)

Cliff Davidson and his brother will pick everyone up. Room reservations for legislators, Cole and Rosier are at the Westmark. Transportation to airport Sunday morning no yet arranged.

CORDOVA (Sunday, April 14)

Nancy Gross, City Manager will pick everyone up, arrange for some food during the public hearing, and take everyone back to the airport.

JUNEAU (Sunday, April 14, 6:15 p.m.)

Pat Will arrange for a van to pick up whoever needs a ride from the airport.

STATE AFFAIRS

CAPITOL ROOM 102

APR 12 FRIDAY 8:00 AM
 *HB 91 JURISDICTION OF DISTRICT COURT
 *HB 234 ASSIGNMENT OF RIGHT TO PF DIVIDENDS
 SCR 20 KODIAK ISLAND: BICENTENNIAL COMMUNITY
 <PENDING REFERRAL>
 BILLS PREVIOUSLY HEARD

APR 15 MONDAY 8:30 AM
 DEPARTMENTAL OVERVIEW - DIVISION OF ELECTIONS
 HB 167 ABSENTEE VOTING
 HB 237 STATE LEASING OF NEW BUILDINGS
 BILLS PREVIOUSLY HEARD

APR 17 WEDNESDAY 8:30 AM
 *HB 55 APPROP: BUDGET RESERVE FUND
 HJR 37 ALASKA/SIBERIA LEND-LEASE PROGRAM
 HB 20 LONGEVITY BONUS/NURSING HOME RESIDENTS
 HB 122 QUALIFICATIONS FOR LONGEVITY BONUSES
 *HB 257 AK HIGHWAY COMMEMORATIVE MEDALLION
 BILLS PREVIOUSLY HEARD

APR 19 FRIDAY 8:30 AM
 SB 136 ALCAN HWY. COMMEMORATIVE LICENSE PLATE
 SJR 9 FEDERAL GRANT FOR STATE VETERANS' HOME
 SB 131 NOTICE OF ELECTIONS/MEETINGS/REGULATIONS
 BILLS PREVIOUSLY HEARD

TRANSPORTATION

CAPITOL ROOM 17

APR 16 TUESDAY 1:30 PM BELTZ ROOM 211
 JOINT MEETING WITH SEN TRANSPORTATION CMTE
 OVERVIEW BY ALASKA RAILROAD CORPORATION

APR 18 THURSDAY 8:30 AM
 *HCR 26 STATE TRANSPORTATION PLAN
 HB 132 APPROP: HANDICAPPED ACCESS ON FERRIES
 OVERVIEW PRESENTATION BY THE PORTS AND
 HARBORS TASK FORCE

SPECIAL COMMITTEES

SPEC CMTE EXXON VALDEZ SPILL CLAIMS SETL

APR 12 FRIDAY 12:00 PM - 2:00 PM CAPITOL ROOM 17
 COMMITTEE WORK SESSION
 LISTEN ONLY TELECONFERENCE

APR 12 FRIDAY 7:30 PM SEWARD LIBRARY
 NOTE TIME AND LOCATION
 LOCATION: SEWARD COMMUNITY LIBRARY
 PUBLIC HEARING, TELECONFERENCED TO ANC & JNU
 *JNU LOCATION: CAPITOL ROOM 102 (2 WAY TELECONF)
 *ANC LOCATION: ANCHORAGE LIO (LISTEN ONLY)

APR 13 SATURDAY 9:00 AM - 12:00 PM HOMER CITY HALL
 NOTE TIME AND LOCATION
 PUBLIC HEARING - TELECONFERENCED TO ANC & JNU
 *JNU LOCATION: CAPITOL ROOM 102 (2 WAY TELECONF)
 *ANC LOCATION: ANCHORAGE LIO (LISTEN ONLY)

SPEC CMTE EXXON VALDEZ SPILL CLAIMS SETL

APR 13 SATURDAY 1:00 PM - 2:00 PM SELDOVIA SCHOOL LIB
 NOTE TIME AND LOCATION
 PUBLIC HEARING - TELECONFERENCED TO ANC & JNU
 *JNU LOCATION: CAPITOL ROOM 102 (2 WAY TELECONF)
 *ANC LOCATION: ANCHORAGE LIO (LISTEN ONLY)

APR 13 SATURDAY 4:30 PM - 7:30 PM KODIAK BOROUGH BLDG
 NOTE TIME AND LOCATION:
 KODIAK BOROUGH ASSEMBLY CHAMBERS
 PUBLIC HEARING - TELECONFERENCED TO ANC & JNU
 *JNU LOCATION: CAPITOL ROOM 102 (2 WAY TELECONF)
 *ANC LOCATION: ANCHORAGE LIO (LISTEN ONLY)

APR 14 SUNDAY 12:00 PM - 4:00 PM CORDOVA LIBRARY
 NOTE TIME AND LOCATION
 PUBLIC HEARING - TELECONFERENCE TO ANC,
 JNU, VALDEZ, CHENEGA BAY, TATITLEK, & WHITTIER
 LISTEN ONLY TELECONFERENCE IN ANCHORAGE,
 TWO WAY TELECONFERENCE TO ALL OTHER SITES
 *JNU LOCATION: CAPITOL ROOM 102

APR 15 MONDAY 3:00 PM - 6:30 PM BUTROVICH ROOM 205
 STATEWIDE TELECONFERENCE (PUBLIC PARTICIPATION)

APR 16 TUESDAY 8:00 AM - 10:00 AM CAPITOL ROOM 124
 COMMITTEE WORK SESSION
 LISTEN ONLY STATEWIDE TELECONFERENCE

APR 17 WEDNESDAY 12:00 PM - 2:00 PM CAPITOL ROOM 17
 COMMITTEE WORK SESSION
 LISTEN ONLY STATEWIDE TELECONFERENCE

APR 18 THURSDAY
 NO MEETING SCHEDULED - DEADLINE FOR
 PUBLIC COMMENT ON CD/MOA

APR 23 TUESDAY 8:00 AM - 10:00 AM CAPITOL ROOM 124
 FINAL CMTE ACTION - LISTEN ONLY TELECONFERENCE
 APRIL 24: SENTENCING IN FEDERAL COURT
 MAY 3: DEADLINE FOR WITHDRAWAL FROM
 SETTLEMENT AGREEMENT

SPECIAL CMTE INTERNATIONAL TRADE/TOURISM

APR 16 TUESDAY 12:00 PM TO BE ANNOUNCED
 MEETING WITH SOVIET TRADE AND TOURISM OFFICIALS
 FROM THE CITY OF VLADIVOSTOK

SPECIAL CMTE MILITARY & VETERANS AFFAIRS

APR 17 WEDNESDAY 5:30 PM BELTZ ROOM 211
 HB *** PERSONS WHO SERVED IN ALASKA
 TERRITORIAL GUARD (PENDING INTRO & REFERRAL)
 HB *** DUTIES OF ADJUTANT GEN OF DM&VA
 (PENDING INTRODUCTION & REFERRAL)
 SJR 6 DESECRATION OF U.S. FLAG

Alaska State Legislature

House of Representatives

Official Business



P.O. Box V
State Capitol, Rm. 216
Juneau, Alaska 99811
(907) 465-3718

House Special Committee on the Exxon Valdez Oil Spill Claims Settlement

HOUSE SPECIAL COMMITTEE ON THE
EXXON VALDEZ OIL SPILL CLAIMS SETTLEMENT

MEMBERSHIP

	<u>Phone</u>	<u>Room</u>
Max Gruenberg, Chairman	4968/4986/3718	216
Dave Donley, Vice Chairman	3892/3893	120
Ramona Barnes	3438/3439	517
Cliff Davidson	2487/2498	108
Bill Hudson	3744/4991	114
Gene Kubina	4853/4859	102
Mike Navarre	3779/4977/3706	511
Gail Phillips	2689/4917	605 Court
Fran Ulmer	4947/4964	421

House Pages - 3869

Seward

P.O. Box 167
Seward, Alaska 99664

Phone: (907) 224-3331
FAX: (907) 224-3248
Street address: Fifth & Adams Street

TYPE OF GOVERNMENT: Home Rule City
INCORPORATION DATE: June 1, 1912
POPULATION: 2,400
REGULAR ELECTION: First Tuesday in October
SALES TAX: 3%
CITY COUNCIL MEETS: Second and fourth Mondays
MANAGER FORM OF GOV'T: Yes

MAYOR: Harry E. Gieseler 1989

CITY COUNCIL MEMBERS

Patrick O'Brien	1989
Beverly Dunham	1990
David L. Hilton, Sr.	1989
Michael J. Meehan	1989
William C. Noll	1990
Leslie Simutis	1990

PLANNING/ZONING COMMISSION

John Woodruff, Chair	1989
Margaret Branson	1990
Larry Johnson	1989
Chester Thorne	1990
Donald A. Sutherland	1991
Piere Authier	1989
Kurt R. Lindsey	1991

MUNICIPALLY OWNED UTILITIES

Water, Electricity, Port, Hospital, Sewer

ADMINISTRATIVE ASSISTANT	Kerry Martin
ASSISTANT MANAGER	Darryl Schaefermeyer
ATTORNEY	Fred B. Arvidson
CIVIL DEFENSE DIRECTOR	John Gage
CLERK	Linda S. Murphy, CMC
ENGINEER	Jack Anderson
FINANCE DIRECTOR	Robert Peirson
FIRE CHIEF	John Gage
HARBORMASTER	Foster Singleton
HOSPITAL ADMINISTRATOR	Keith Campbell
LIBRARIAN	Jackie Deck
MANAGER	R. Max Royle
PARKS & RECREATION DIRECTOR	Michael Yanez
POLICE CHIEF	Louis Bencardino
PUBLIC UTILITY MANAGER/PUBLIC WORKS DIRECTOR	E. Paul Diener
PURCHASING OFFICER	Judi Ledet
TREASURER	Darryl Schaefermeyer
WATER/SEWER SUPERINTENDENT	Lloyd Welch

Shaefermeyer will furnish transfer to & from



*H 9104075
Fri Apr 12
7:30 PM - 10:00 PM LIB
SEWARD Community Center (holds 60)
5th & ADAMS*

Katherine TC.

*CANDY (Annie MARTIN) secy
224-3331*

*City Hall
right across
the street
from Seward
meeting place*

*Room Reserv.
AT BREEZE-IN*

Swackhammer

*4/11 called T.conf.
 Charles
 Ditton
 235-7878
 Teleconference*



Homer

491 East Pioneer Avenue
 Homer, Alaska 99603

Phone: (907) 235-8121 - *SWACK*
 FAX: (907) 235-3140

TYPE OF GOVERNMENT: First Class City
 INCORPORATION DATE: March 31, 1964
 POPULATION: 4,513
 REGULAR ELECTION: First Tuesday in October
 GENERAL SALES TAX: 2%
 SPECIAL SALES TAX: None
 CITY COUNCIL MEETS: Second and fourth Mondays
 MANAGER FORM OF GOV'T: Yes

MAYOR: Harry E. Gregoire 1993

CITY COUNCIL MEMBERS

Mary Henry	1993
Dennis Hanoski	1991
Cathy S. Godfrey	1992
Brian Sweiven	1993
Eric Ringer	1991

PLANNING/ZONING COMMISSION

Burt Anderson, Chair	1992
Leroy Gannaway	1993
Jack Cushing	1991
Velma Ellyson	1991
Eryc Peterson	1992
Rick Echert	1992
Margaret Pate	1993

MUNICIPALLY OWNED UTILITIES

Water, Port

ASSISTANT MANAGER	Patti Whalin
CITY PLANNER.	Eileen Bechtol
CLERK	Mary Shannon
FINANCE DIRECTOR.	Rochelle Morris
FIRE CHIEF.	Robert Purcell
HARBORMASTER.	Richard David
MANAGER	C. E. Swackhammer
POLICE CHIEF.	Mike Daugherty
PORT MANAGER.	L. P. Christopher
PUBLIC WORKS DIRECTOR	Michael Hobbs
SECRETARY TO MANAGER.	Tamara Walters

TAMMY = sec'y

*Pernance
 will
 get word
 around*

9104076
Sat, Apr 13 9am-12pm
Homer City Hall
City Council Room

(11)

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Seldovia

P.O. Drawer B
Seldovia, Alaska 99663

Phone: (907) 234-7643/7878
FAX: (907) 234-7442

TYPE OF GOVERNMENT: First Class City
INCORPORATION DATE: May 7, 1945
POPULATION: 565
REGULAR ELECTION: First Tuesday in October
SALES TAX: 2%
CITY COUNCIL MEETS: Second and fourth Wednesdays
MANAGER FORM OF GOV'T: Yes

MAYOR: Gerald W. Willard 1990

CITY COUNCIL MEMBERS

David R. Cloninger	1990
Dexter Ogle	1990
Shirley Giles	1991
Keith Robbins	1989
Billie Lybbert	1989
Wayne Stamper	1991

MUNICIPALLY OWNED UTILITIES

Water, Port, Sewer

CIVIL DEFENSE DIRECTOR	Richard Perea
CLERK	Roberta Hiatt
FIRE CHIEF (Acting)	Frank Monsey
HARBOR MASTER	Dan Hecks
MANAGER	~~Kris Lethin~~ <i>VERN McCORLE</i>
POLICE CHIEF	A. W. Anderson
PUBLIC WORKS DIRECTOR	John Mickelson
SCHOOL SUPERINTENDENT	Paul Sorenson
TREASURER	Roberta Hiatt

FRAN

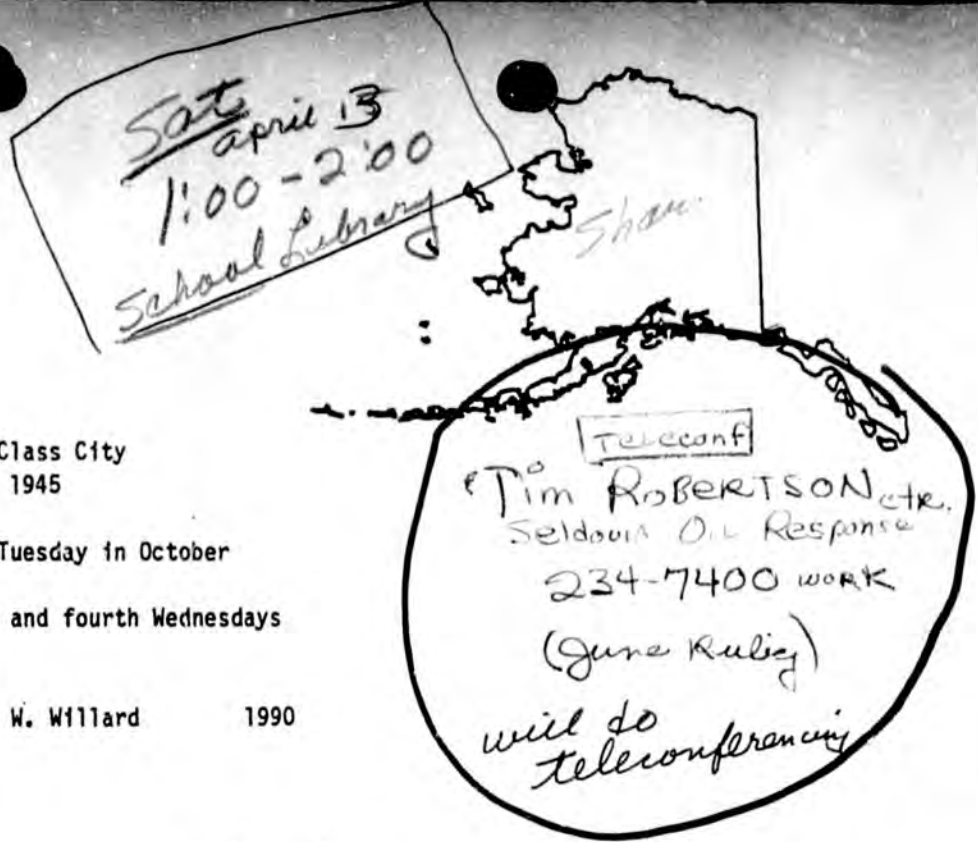
transp.

*VERN
McCORLE*

9104077
Saturday, April 13
1:00 pm - 2:00 pm
Seldovia School
Library

TC ?

(compensation)
plan all day



SAT, APR 13 ~~4:00-8:00~~ 4:30 PM - 7:30 PM

Kodiak

P O. Box 1397
Kodiak, Alaska 99615

Phone: (907) 486-8636
FAX: (907) 486-8600
Street address: 710 Mill Bay Road

TYPE OF GOVERNMENT: Home Rule City
INCORPORATION DATE: September 11, 1940
POPULATION: 6,787
REGULAR ELECTION: First Tuesday in October
GENERAL SALES TAX: 5%
SPECIAL SALES TAX: 5% Transient Room
CITY COUNCIL MEETS: Second and fourth Thursdays
MANAGER FORM OF GOV'T: Yes

MAYOR: Robert B. Brodie 1991

CITY COUNCIL MEMBERS

Christine J. Blackburn 1993
Louis P. Iani 1991
Noreen E. Thompson 1993
Bernie V. Ballao 1991
David C. Crowe 1992
Gary M. Gilbert 1992

MUNICIPALLY OWNED UTILITIES

Water, Sewer, Airport, Port

ATTORNEY	Melvin M. Stephens, II
CLERK	Marcella H. Dalke, CMC/AAE
EMERGENCY PREPAREDNESS DIRECTOR (Acting).	Herman T. Beukers
ENGINEER	Matthew C. Holmstrom
FINANCE DIRECTOR	Roy A. Deebe
FIRE CHIEF	Michael F. Dolph
HARBORMASTER	George V. "Corky" McCorkle
LIBRARIAN	Barbara L. Rudio
MANAGER (Acting).	Herman T. Beukers
MUSEUM DIRECTOR	Marian J. Johnson
PARKS & RECREATION DIRECTOR	Ian B. Fulp
POLICE CHIEF	John R. Marshall
PUBLIC WORKS DIRECTOR	John E. Sullivan
PURCHASING OFFICER.	Nancy E. Jones

- Borough Assembly
Chambers
Borough Clerk
486-5736
Gay Vaughn

TELECONF
Lorna
486-8116

KODIAK
PAY PHONE
Next to
meeting
ROOM
486-9938

members +
Cole
Westmark

#9104078

Borough Assembly
CHAMBERS

TC LORNA - Kodiak LIO
SAT APR 13 4:30-7:30pm

Westmark
1-800-478-1111
911 made i.c. Cole
Westmark
CITKA
486-5712

✓ Cliff will
pick up.
Cliff arriving
at
11:10 a.m.
4047 Mack
Ave)

SUN. APR 14 NOON - 4 PM.

LIBRARY MEETING ROOM

Cordova

P.O. Box 1210
Cordova, Alaska 99574

Phone: (907) 424-6200

FAX: (907) 424-6000

Street address: 602 Railroad Avenue

VOLUNTEER SITE
(T.C. people do)
Jaquie ROSE
Telecom



TYPE OF GOVERNMENT: Home Rule City
INCORPORATION DATE: July 8, 1909
POPULATION: 2,619
REGULAR ELECTION: First Tuesday in October
GENERAL SALES TAX: 4%
SPECIAL SALES TAX: None
CITY COUNCIL MEETS: First & third Wednesday
MANAGER FORM OF GOV'T: Yes

**CONTACT
NANCY GROSS**

MAYOR: Robert VanBrocklin 1991

CITY COUNCIL MEMBERS

Connie Taylor 1992
John Wheeler 1992
Doug Lape 1991
Jeff Hawley 1991
G.R. "Bob" Anderson 1993
Nancy Bird 1993

SCHOOL BOARD MEMBERS

Dewey Whetsell, Pres. 1993
Becky Chapek 1992
Joanne Thomas 1991
Ken Kritchen 1991
Penny Oswalt 1993

PLANNING/ZONING COMMISSION

Brooke Adkinson, Chair 1991
Jim Cunningham 1991
Larry Peltz 1992
Bill Kaltennakker 1990
Mike Anderson 1992
Larry Hogan 1992
Ellen Simpson 1993

MUNICIPALLY OWNED UTILITIES

Water, Hospital, Port, Sewer,
Refuse Collection

ASSESSOR.	Appraisal Company of Alaska
ASSISTANT TO THE MANAGER.	Jeff Currier
ATTORNEY.	Jensen, Harris & Roth
CLERK.	D. Lynda Plant
FINANCE DIRECTOR.	Dale Daigger
FIRE CHIEF.	Dewey Whetsell
HARBORMASTER.	Dale Muma
HOSPITAL ADMINISTRATOR.	Ed Zeine
LIBRARIAN.	Corrine Erickson
MANAGER.	Nancy Gross
PLANNING DIRECTOR.	Walt Wrede
POLICE CHIEF.	Kevin Clayton
SUPERINTENDENT OF SCHOOLS.	Mike McHone
WATER/SEWER SUPERINTENDENT.	Malcolm MacMaster

4/11
LIS JNO
says Valdez
Pub. RADIO
will AIR
CORDOVA
hearing

9104079
SUN APR 14
NOON - 4 PM

Rose

TC # = 424-6665
-424-6665-

424-6100
Police for
Committee
messages
on Sun

4/11 ANC TO SEWARD⁰⁰
(4 passen) cost 450

Homer to Kodiak (via Seldovia)
Charter via

Peninsula Airways
contact: Sharon or Heidi
(Kodiak) 487-4014

Navyaho / Max 7/
rents @ \$440/hr, \$220/hr
) standby
\$725 (+ 25 for Seldovia)
Homer to Kodiak
(plus \$220/hr for
Seldovia standby)

Anchorage to Seeward

Wilbur's Air Svc
243-7878

Rebook
FRI

remind mom to pick up
at Anch. International
(our people go to the
Wilbur's counter there)

Fly: Navajo (max 7/1350/45)

~~Sam~~ Same outfit is
doing Anchorage to
Cordova

~~Booked~~: 4/12 in a 402 (max 7)
Lv Anch 6:30, Ar
Swd 7:15 (Cost: \$450)

4/14 Lv Anch 10:45, Ar Cordova 11:
\$740

Seward to Itomer

South Central Air
operating out of Kmai; Book
283-7676

not bottled yet

Navajo: @ 440 hr = \$660

✓ Here 45 min Sued → Hm

2 402 Twin seater

1
2 pilots #402
5

1790⁰⁰

Senenca
Senenca Piper

3

635⁰⁰

Ghani
Shanta

LIO

376-3704

WPSILLA

ERA

243-3300
6633

#402
Twin eng seater

ERA

ANC to CORDOVA

ERA
15 seater

2354199
Liz

FINAC

S. Wilbur
276-1944

PROPOSED TRAVEL ITINERARIES

fax pschal
224-3248

Friday, April 12

Lv Juneau
Ar Anchorage 4:05 pm
5:50 pm

Lv Anchorage Charter (Wilbur's) 6:30 pm
Ar Seward 7:15 pm

Public Hearing in Seward 7:30-10:00 pm

Overnight in Seward
MAX, Gail, GEORGIANA

277-0511

City Council Chambers

gerry wilbur KRXA

Phoenia

matthe

Saturday, April 13

Lv Seward Charter (South Central Air) 8:00 am
Ar Homer 8:45 am

Public Hearing in Homer 9:00-12:00 noon

Lv Homer Charter (Peninsula Air) 12:30 pm
Ar Seldovia (sharon) 12:45 pm

Public Hearing in Seldovia 1:00-2:00 pm

Lv Seldovia Charter (Peninsula Air) 2:30 pm
Ar Kodiak 4:00 pm

Public Hearing in Kodiak 4:30-7:30 pm

Overnight in Kodiak [Westmark] 1-800-478-1111 \$69.00
MAX

Overnight arrangements by individual travelers

City Hall

what time pickup

School Library
Kern McCorkle

STARON Penn.

Sunday, April 14

Lv Kodiak ERA Air 9:10 am
Ar Anchorage 10:10 am

Lv Anchorage Charter (Wilbur's) 10:45 am
Ar Cordova 11:30 am

Public Hearing at Cordova City Hall 12:00-4:00 pm

Lv Cordova 4:10 pm
Ar Juneau 6:15 pm (via Yakutat)

valdez
telecom

MAX
LINCOLN

Airlines
526.00

Alaska
Travel

2 pilots
18 people
12 pilots
#402

3 people
4 nap
4 people
9 p.m.
14.00

4 people

cliff
max
gail
georgiana
fran

7 people
5 people
max
GAIL
JASON
DAVIDSON
ULMER
COLE
Rubina

Travellers - April 12 - 14

Max Gruenberg, Chairman (all legs)
Gail Phillips (all legs)
Georgianna Lincoln (all legs)
Charles Cole (all legs)
Carl Rosier (all legs)
Cliff Davidson - Kodiak only (maybe Cordova)
Fran Ulmer (Kodiak & Cordova only)
Mead Treadwell (Kodiak only)
Commissioner Sandor (at least Kodiak)
Gene Kubina - Cordova only

PROPOSED TRAVEL ITINERARIES

Friday, April 12

Lv Juneau Ak Air #97 4:05 pm
 Ar Anchorage 5:50 pm
 Lv Anchorage Charter 6:30 pm WILBUR'S AIR
 Ar Seward 7:15 pm

- ① Public Hearing in Seward 7:30-10:00 pm SEWARD COMMUNITY LIBRARY
 Overnight in Seward MAX, GAIL, GEORGIANNA, COLE, RO. EXB
 HOTEL = BREEZE-IN (Rooms 108, 109, 110)

Saturday, April 13

Lv Seward Charter 8:00 am SOUTH CENTRAL AIR
 Ar Homer (Ph 235-6172) 8:45 am
 MAX, GAIL, GEORGIANNA, COLE, ROSIER

- ② Public Hearing in Homer 9:00-12:00 noon- HOMER COUNCIL CHAMBERS

Lv Homer Charter 12:30 pm PENINSULA AIR
 Ar Seldovia 12:45 pm

- ③ Public Hearing in Seldovia 1:00-2:00 pm - SELDOVIA SCHOOL LIBRARY

Lv Seldovia Charter 2:30 pm PENINSULA AIR
 Ar Kodiak 4:00 pm

- ④ Public Hearing in Kodiak 4:30-7:30 pm AT BOROUGH ASSEMBLY CHAMBERS
 Seldovia: MAX, GAIL, GEORGIANNA, COLE, ROSIER

Overnight in Kodiak - WESTMARK HOTEL MAX, GAIL, GEORGIANNA, COLE, ROSIER

Overnight arrangements by individual travelers ALSO ATTENDING:
 CLIFF DAVIDSON
 FRAN ULMER
 SANDOR (DEC)
 MEAD TREADWELL (DEC)
 (MEAD NOT ON)

Sunday, April 14

Lv Kodiak ERA Airlines 9:15 am
 Ar Anchorage (FLIGHT 891) 10:10 am

Lv Anchorage Charter 10:45 am WILBUR'S AIR
 Ar Cordova 11:30 am (2 PLANE) * SEE TRAVELERS

- ⑤ Public Hearing at Cordova City Hall 12:00-4:00 pm - LIBRARY MEETING ROOM

Lv Cordova Ak Airlines #66 4:10 pm
 Ar Juneau 6:15 pm (via Yakutat)

ON CHARTER FROM ANC TO CORDOVA
 MAX, GAIL, GEORGIANNA,
 CLIFF, FRAN, COLE,
 ROSIER, TREADWELL
 ANC TO CORDOVA

KUBINA

PROPOSED TRAVEL ITINERARIES

Friday, April 12

Lv Juneau Ak Air #97
Ar Anchorage

4:05 pm
5:50 pm

Lv Anchorage Charter
Ar Seward

6:30 pm -- WILBUR'S AIR (277-0511)
7:15 pm 2 PILOTS

Public Hearing in Seward 7:30-10:00 pm **SEWARD Community LIBRARY**

Overnight in Seward **BREEZE -IN**

Saturday, April 13

Lv Seward Charter
Ar Homer TWIN ENGINE NAUASO

8:00 am South Central AIR
8:45 am (283-7676-KENAI)

Public Hearing in Homer 9:00-12:00 noon **HOMER Council CHAMBERS**

Lv Homer Charter
Ar Seldovia

12:30 pm PENINSULA AIR
12:45 pm (487-4014-KODIAK)
(235-6172 -

Public Hearing in Seldovia 1:00-2:00 pm **Seldovia Sch. LIBRARY**

Lv Seldovia Charter
Ar Kodiak

2:30 pm Peninsula AIR
4:00 pm

Public Hearing in Kodiak 4:30-7:30 pm **Borough Assembly CHAMBERS**

Overnight in Kodiak - **Westmark 1-800-478-1111**

Overnight arrangements by individual travelers

Sunday, April 14

✓ Lv Kodiak #891 ERA Airlines
Ar Anchorage

9:15 am
10:10 am

Lv Anchorage Charter
Ar Cordova

10:45 am WILBUR'S AIR
11:30 am

Public Hearing at Cordova City Hall 12:00-4:00 pm **LIBRARY meeting ROOM**

✓ Lv Cordova Ak Airlines #66
Ar Juneau

4:10 pm
6:15 pm (via Yakutat)

1400 2200

PROPOSED TRAVEL ITINERARIES

Friday, April 12

Lv	Juneau	Ak Air #97	4:05 pm
Ar	Anchorage		5:50 pm
Lv	Anchorage	Charter	6:30 pm WILBUR'S AIR
Ar	Seward		7:15 pm

~~Public Hearing in Seward 7:30-11:00 pm SEWARD COMMUNITY LIBRARY~~

Overnight in Seward
HOTEL = BREEZE-IN (Rooms 108, 109, 110)

Saturday, April 13

Lv	Seward	Charter	8:00 am SOUTH CENTRAL AIR
Ar	Homer (ph 235-6172)		8:45 am

~~Public Hearing in Homer 9:00-12:00 noon - HOMER COUNCIL CHAMBERS~~

Lv	Homer	Charter	12:30 pm PENINSULA AIR
Ar	Seldovia		12:45 pm

~~Public Hearing in Seldovia 1:00-2:00 pm - SELDOVIA SCHOOL LIBRARY~~

Lv	Seldovia	Charter	2:30 pm PENINSULA AIR
Ar	Kodiak		4:00 pm

~~Public Hearing in Kodiak 4:30-7:30 pm AT BOROUGH ASSEMBLY CHAMBERS~~

Overnight in Kodiak - WESTMARK HOTEL

Overnight arrangements by individual travelers

Sunday, April 14

Lv	Kodiak	ERA Airlines	9:15 am
Ar	Anchorage	(FLIGHT 891)	10:10 am
Lv	Anchorage	Charter	10:45 am WILBUR'S AIR
Ar	Cordova		11:30 am (2 plane)

~~Public Hearing at Cordova City Hall 12:00-4:00 pm - LIBRARY Meeting Room~~

Lv	Cordova	Ak Airlines #66	4:10 pm
Ar	Juneau		6:15 pm (via Yakutat)