

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILE 8672
1938 SCOMM 76: HOUSE SPEC. COMM. EXXON VALDEZ OIL SPILL. . 1991-92

155

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

Jaque,

Something along these lines would suit our purposes for notification. Change the wording if you like. Thanks for your help.



Pat Williams
Committee Secretary

NOTICE OF MEETING

THE HOUSE SPECIAL COMMITTEE ON THE EXXON VALDEZ OIL SPILL CLAIMS SETTLEMENT COMMITTEE WILL HOLD A PUBLIC HEARING ON THE OIL SPILL CLAIMS SETTLEMENT IN CORDOVA ON SUNDAY, APRIL 14, NOON - 4:00 P.M. THE MEETING WILL BE HELD IN THE LIBRARY MEETING ROOM IN THE CENTENNIAL BUILDING.

THE PUBLIC IS INVITED TO ATTEND AND PARTICIPATE. FOR MORE INFORMATION, CONTACT JAQUE ROSE AT CORDOVA CITY HALL (424-6200) OR THE SPECIAL LEGISLATIVE COMMITTEE IN JUNEAU AT 465-4945.

FAXED 4-8
424-6000

SCOMM

76.23

1 Accu-Type Depositions
2 P.O. Box 102715
 Anchorage, Alaska 99510

3 Conversion Specialists
4 531 Main
5 Suite 835
6 El Segundo, California 90245

7 September 26, 1991

8 Re: NIB 8" disks converted to 5 1/4" Wordperfect

9 Dear Sir:

10 Please find enclosed the Exxon 2 & Exxon 3 Disks which were
11 previously sent to you to convert to Workperfect. These disks
12 to be converted had "bad files" and you had returned to our
13 offices to duplicate and then send you the duplicates for
14 another try. These disks have also been pre-paid for.

15 Please convert to Wordperfect disks and send to our offices at
16 the address above as quickly as possible.

17 Should you have any questions, please feel free to contact me.

18 Yours Truly,

19 *Sunshine V. Porter*
20 Sunshine V. Porter

21 DONE
22
23
24
25

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18 Should you have any questions, please feel free to contact me.

19 Yours Truly,

20 *Sunshine V. Porter*
21 Sunshine V. Porter

22 DONE
23
24
25

November 14, 1991

TO: Diane Sheridan
Representative Gruenberg's Office
Anchorage

FROM: Pat Williams *Pat*
Person-at-Large

SUBJ: Exxon Disks

Hi Diane. I got the four Exxon disks, and we still have a problem. The four disks I got were two copies of the April 16 and 17 meetings. One of the disks also contained someone else's work: Transcript of Application for Limited License in the case of Municipality of Anchorage vs. Ricky Koch, before the Superior Court (16 pages). This is the second time we've got someone else's work on the disks.

The meetings we are still missing are:

April ~~25~~ 5 (Tapes 8 and 9)
April 9 (Tapes 10 and 11)
April 10 (Tape 12)
April 12 (Tapes 13 and 14)

Meanwhile, I copied what I had for John Clough's law firm (I think he represents BP), and will go ahead and work at reformatting the meetings I have. Could you work with Sunny on getting the missing ones?

I'm at 463-3231 most weekday mornings (FAX 463-3164) Home is 586-4912.

Are you going to get to Juneau later this month?

April 17, 1991

Sunny
Accutype Depositions
P.O. Box 102715
Anchorage, AK 99510

Dear Sunny

Here are seven tapes and for the meetings:

- ✓ April 5 - Tapes 8 and 9 (Juneau)
- April 9 - Tapes 10 and 11 (Juneau)
- April 10 - Tape 12 (Juneau)
- April 12 - Tapes 13 and 14 (meeting in Juneau)

I will be sending about 15 more tapes tomorrow, but thought you could get started on these.

I have also enclosed a list of the members, a list of the officials (Attorney General, Commissioners, etc.) who have testified, and a sample of one of the meetings I did.

Do not be a slave to format, as we are in a hurry for these tapes, and can always reformat them at some distant time in Juneau. The important thing is to get most of the material in typewritten form.

You may can us collect at 465-4945 if you have questions as you go along. Our fax number is 465-2444. Alternate numbers are 465-4968, 4989, 4919, 3718 and 4945 (all Gruenberg's)

Sincerely,

Pat Williams
Committee Secretary

April 20, 1990

Sunny Porter
Accutype Depositions
P.O. Box 102715
Anchorage, AK 99510

Dear Sunny:

Enclosed are the following five tapes to be transcribed:

April 16 Tapes 27 & 28 (Juneau a.m. meeting) - HIGH PRIORITY

April 16 Tapes 29 & 30 (Juneau p.m. meeting) - HIGH PRIORITY

April 17 Tape 31 (Juneau meeting w/Cole) - MEDIUM PRIORITY

Tapes 15 through 23 will be sent to you separately. They are of a lower priority.

Pursuant to our telephone conversation last week, I understand your charge will be \$10/hour or \$3/page. We will, of course, reimburse you for miscellaneous expenses you incur for copying, postage, faxes, and phone calls.

Also, as mentioned on the phone, after Tapes 8 and 9 from the April 5 meeting have been transcribed, our top priority is transcription of Tapes 27, 28, 29, and 30, all occurring on April 16.

If you have difficulty determining who the speaker is, just leave a blank space _____, as we will be able to determine that.

Sincerely,

Pat Williams
Committee Secretary

Sunny
Accutype Depositions
P.O. Box 102715
Anchorage 99510
550 W. 7th Avenue, Suite 1800
Phone: 276-0544
Fax 279-5358
\$10/hr. for transcribing \$3/page
estimated 3 hours of work for 1 yhour of tape
1 hour = 30 pages
10 pages per hour

Alaska State Legislature

House of Representatives



Official Business

465-4945
Fax: 465-2444

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 20, 1990

Sunny Porter
Accutype Depositions
P.O. Box 102715
Anchorage, AK 99510

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If you have difficulty determining who the speaker is, just leave a blank space _____, as we will be able to determine that.

Sincerely,

A handwritten signature in cursive script that reads "Pat Williams".

Pat Williams
Committee Secretary

Alaska State Legislature

House of Representatives



Official Business

465-4945
Fax: 465-2444

P.O. Box V
State Capitol, Rm. 218
Juneau, Alaska 99811
(907) 463-3718

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Sincerely, -

Pat Williams
Pat Williams
Committee Secretary

Alaska State Legislature

House of Representatives

465-4945
Fax: 465-2444

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 20, 1990

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Accutype Depositions
P.O. Box 102715
Anchorage, AK 99510

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If you have difficulty determining who the speaker is, just leave a blank space _____, as we will be able to determine that.

Sincerely,

Pat Williams
Pat Williams
Committee Secretary

HOUSE SPECIAL COMMITTEE; CURRENT STATUS OF MINUTES

As of 4/26/91

March 19 Tuesday	Cook, Finley	Minutes done
March 20 Wednesday	Cook, Finley	Minutes done
March 21 Thursday	Finley	Minutes done
March 25 Monday	Finley	Minutes done
March 27 Wednesday	Finley	Minutes done
April 2 Tuesday	Hemenway, Erickson	Minutes done
April 3 Wednesday	Cole	Draft done
April 5 Friday	Cole	To Sunny 4/17
April 9 Tuesday	Piper, Dean, Broderson	To Sunny 4/17
April 10 Wednesday	Rosier, Heinz	To Sunny 4/17
April 12 Friday	Cole (Juneau mtg.)	To Sunny 4/17
April 12 Friday	Seward Public Hearing Cole	Not done
April 13 Saturday	Homer Public Hearing Cole, Rosier, Sandor	Not done
April 13 Saturday	Kodiak Public Hearing Cole, Rosier, Sandor	Not done
April 14 Sunday	Cordova Public Hearing Cole, Rosier	Not done
April 15 Monday	Statewide Public Hearing and Teleconference	Not done
April 16	8:00 am - Cole, Jamin	To Sunny 4/20

Tuesday	Noon: Stewart, Campbell	To Sunny 4/20
April 17 Wednesday	Cole	To Sunny 4/20
April 18 Thursday	Joint Executive Session (science studies briefing)	N/A
April 18 Thursday	Doug Bailey	Draft Done
April 19 Friday	Work Session Draft resolution/letter	Not done DRAFT DONE
April 22 Monday	8:00 am Work Session Draft letter to Holland	Not done
	3:30 pm - Work Session	Not done
April 23 Tuesday	Hemenway/Erickson Listen only teleconf. Exec. Session 11 am-noon	Not done
April 24 Wednesday	Draft letter to parties re withdrawing	Not done
April 25	am: Alternatives pm: draft recommendations	Not done

SENATE SPECIAL COMMITTEE; CURRENT STATUS OF MINUTES
As of 4/22/91

March 21 Thursday	Finley	Minutes done
March 26 Tuesday	Finley	Minutes done
March 28 Thursday	Cole	Minutes done
April 4 Thursday	Cole	Draft done
April 6 Saturday	Cole, Public Hearing	not done
April 9 Tuesday	Finley	Draft done
April 11 Thursday	Cole	Draft done
April 13 Saturday	Public Hearing	not done
April 16 Tuesday	Cook, Finley	not done
April 18 Thursday	Joint Executive Session (science studies)	N/A
April 18 Thursday	Rosier, Sandor, Cole (most in exec. session)	not done
April 22 Monday	Work session	not done

April 20, 1990

Sunny Porter
Accutype Depositions
P.O. Box 102715
Anchorage, AK 99510

Dear Sunny:

Enclosed are the following 16 tapes to be transcribed:

April 12 Tapes 15 & 16 (Seward Public Hearing) - low priority
April 13 Tapes 17 & 18 (Homer Public Hearing) - low priority
April 13 Tapes 19, 20, & 21 (Kodiak Hearing) - low priority
April 13 Tapes 22 & 23 (Cordova Public Hearing) - low priority
April 15 Tapes 24, 25 & 26 (Juneau Hearing) - low priority

April 16 Tapes 27 & 28 (Juneau a.m. meeting) - HIGH PRIORITY
April 16 Tapes 29 & 30 (Juneau p.m. meeting) - HIGH PRIORITY

April 17 Tape 31 (Juneau meeting w/Cole) - MEDIUM PRIORITY

Pursuant to our telephone conversation last week, I understand your charge will be \$10/hour or \$3/page. We will, of course, reimburse you for miscellaneous expenses you incur for copying, postage, faxes, and phone calls.

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Sincerely,

Pat Williams
Committee Secretary

April 17, 1991

Sunny
Accutype Depositions
P.O. Box 102715
Anchorage, AK 99510

Dear Sunny

Here are seven tapes and for the meetings:

April 5 - Tapes 8 and 9 (Juneau)
April 9 - Tapes 10 and 11 (Juneau)
April 10 - Tape 12 (Juneau)
April 12 - Tapes 13 and 14 (meeting in Juneau)

I will be sending about 15 more tapes tomorrow, but thought you could get started on these.

I have also enclosed a list of the members, a list of the officials (Attorney General, Commissioners, etc.) who have testified, and a sample of one of the meetings I did.

Do not be a slave to format, as we are in a hurry for these tapes, and can always reformat them at some distant time in Juneau. The important thing is to get most of the material in typewritten form.

You may can us collect at 465-4945 if you have questions as you go along. Our fax number is 465-2444. Alternate numbers are 465-4968, 4989, 4919, 3718 and 4945 (all Gruenberg's)

Sincerely,

Pat Williams
Committee Secretary

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P.O. Box 102715
Anchorage, AK 99510

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Sincerely,

Pat Williams
Committee Secretary

1 Alaska State Legislature
2 House of Representatives
3 House Special Committee
4 Exxon Valdez Oil Spill Claims Settlement
5 State Capitol
6 Room 216
7 Juneau, Alaska 99811
8 Attention: Ms. Pat Williams/Committee Secretary

9 April 26, 1991

10 Re: Transcript of April 5th, 1991 Meeting/Tapes 8 and 9
11 Transcript of April 16th, 1991 Meeting/Tapes 27 and 28

12 Dear Ms. Williams:

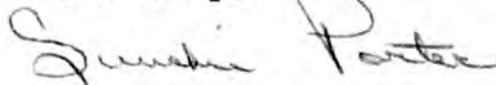
13 Please find enclosed Transcripts of April 5, 1991 and April
14 16, 1991. Both of these transcripts are in draft form and have
15 not been proof-read, et cetera. As we discussed on the phone,
16 since you are in a hurry to receive these transcripts, I am
17 sending them to you in rough draft only. We can go back later to
18 make any needed changes, corrections and/or format changes per
19 your request. The transcript of April 16, 1991, Tapes 27 and 28
20 took approximately 8.5 hours to transcribe. As you can see, this
21 transcript was done verbatim.

22 April 9th, 1991, transcript, Tapes 10 and 11, should be done
23 by tomorrow, Saturday, and April 16th, 1991, transcript, Tapes 29
24 and 30, also. I will expedite these transcripts to you via Alaska
25 Gold Streak per your request.

April 10th, 12th, and 17th, 1991, Tapes 12, 13, 14 and 31
will be forthcoming the beginning of the week.

Please keep me informed of any information which you feel is
pertinent. You should be able to reach me in my office during
the weekend. I have enclosed a business card for your
convenience.

Yours truly,



Sunshine Porter

SP/sp
Attachments as noted.

accu.type

depositions, inc.

550 WEST SEVENTH ☐ SUITE 1860 ☐ ANCHORAGE, ALASKA 99501 ☐ (907) 276-0544

HOUSE SPECIAL COMMITTEE ON THE
EXXON VALDEZ OIL SPILL CLAIMS SETTLEMENT

M E M O R A N D U M

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

FROM: Pat Williams, *Pat* Committee Secretary

SUBJ: Transcripts of Committee Meetings

All the transcripts have been received from Accu-Type Depositions and they look good. The six meetings (12 tapes) transcribed by Accu-Type are:

<u>Date</u>	<u>Witnesses</u>	<u>Tape Numbers</u>
April 5 Friday	Attorney General Cole	Tapes 8 & 9
April 9 Tuesday	Piper/Dean/Brodersen (DEC/Fish and Game)	Tapes 10 & 11
April 10 Wednesday	Rosier/Heinz (Commissioners)	Tape 12
April 12 Friday	Attorney General Cole	Tapes 13 & 14
April 16 Tuesday	8:00 am - A.G. , Jamin Noon: Stewart, Campbell (federal officials)	Tapes 27 & 28 Tapes 29 & 30
April 17 Wednesday	Attorney General	Tape 31

Ms. Porter will be sending me a computer disk containing the transcriptions so I can put them in a format compatible with the Legislature's meeting records.

Ms. Porter's statement for services in the amount of \$1,116 is attached.

wp/minstat

Sunshine V. Porter
d/b/a Accu-Type Depositions
P.O. Box 102715
Anchorage, Alaska 99510
Federal I.D. #92-0090322

May 2, 1991

Ms. Pat Williams
Committee Secretary
Alaska State Legislature
House of Representatives
House Special Committee
P.O. Box V
State Capitol
Room 216
Juneau, Alaska 99811

ORIGINAL

THANK YOU FOR CHOOSING ACCU-TYPE DEPOSITIONS FOR YOUR
TRANSCRIPTION NEEDS. DUE TO THE FACT THAT WE ARE A SMALL
BUSINESS AND NEED TO MEET WEEKLY EXPENSES, OUR INVOICES ARE TO BE
SUBMITTED FOR PAYMENT UPON RECEIPT. YOUR COOPERATION IS GREATLY
APPRECIATED.

Transcribers: Caitlin Dull/Jerri Muellenberg

372 Original Pages of Hearings on Exxon Valdez Oil Spill Claims
Settlement Meetings @ \$3 Per Page.

TOTAL AMOUNT DUE: \$1,116.00

THANK YOU!!

WE APPRECIATE YOUR BUSINESS!!

accu.type

depositions, inc.

550 WEST SEVENTH ☐ SUITE 1860 ☐ ANCHORAGE, ALASKA 99501 ☐ (907) 276-0544

HOUSE SPECIAL COMMITTEE; CURRENT STATUS OF MINUTES
As of 5/22/91

March 19 Tuesday	Cook, Finley	Minutes done
March 20 Wednesday	Cook, Finley	Minutes done
March 21 Thursday	Finley	Minutes done
March 25 Monday	Finley	Minutes done
March 27 Wednesday	Finley	Minutes done
April 2 Tuesday	Hemenway, Erickson	Minutes done
April 3 Wednesday	Cole	Draft done
April 5 Friday	Cole	Transcript done
April 9 Tuesday	Piper, Dean, Broderon	Transcript done
April 10 Wednesday	Rosier, Heinz	Transcript done
April 12 Friday	Cole (Juneau mtg)	Transcript done
April 12 Friday	Seward Public Hearing Cole	Draft done
April 13 Saturday	Homer Public Hearing Cole, Rosier, Sandor	Draft done
April 13 Saturday	Kodiak Public Hearing Cole, Rosier, Sandor	Draft done
April 14 Sunday	Cordova Public Hearing Cole, Rosier	Draft done
April 15 Monday	Statewide Public Hearing and Teleconference	Draft done
April 16 Tuesday	8:00 am - Cole, Jamin	Transcript done
	Noon: Stewart, Campbell	Transcript done

April 17 Wednesday	Cole	Transcript done
April 18 Thursday	Joint Executive Session (science studies briefing)	N/A
April 18 Thursday	Doug Bailey	Draft Done
April 19 Friday	Work Session Draft resolution/letter	Draft Done
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April 23 Tuesday	Hemenway/Erickson Listen only teleconf. Exec. Session 11 am-noon	Draft done
April 24 Wednesday	Draft letter to parties re withdrawing	Draft done
April 25 Thursday	am: Alternatives pm: draft recommendations	Draft done
April 30 Tuesday	3 separate exec. sessions	Draft done
May 1 Wednesday	Final Committee meeting - Committee recommendation	Draft done

November 14, 1991

TO: Diane Sheridan
Representative Gruenberg's Office
Anchorage

FROM: Pat Williams *Pat*
Person-at-Large

SUBJ: Exxon Disks

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I'm at 463-3231 most weekday mornings (FAX 463-3164) Home is 586-4912.

Are you going to get to Juneau later this month?

themselves, so they can move in and take over (i.e., Weyerhaeuser).

Katherine felt we had gone too far in hiring consultants. We are vulnerable because of the potential loss of corporate continuity. We must take control.

Alberta felt we need an in-house person to be on top of the IRS audit and in control of the West Douglas project. She agreed with Katherine.

Lunch Break: 11:50 a.m. - 12:40 p.m.

TOPIC: JOE AS PRESIDENT AND GENERAL BRAINSTORMING ON RELATED ISSUES

Alberta felt that Joe, and not the directors, seems to be running the company. For example, the Sheal Anderson hiring. No one questions what he does. We do not control Joe enough.

- * We need to hold Joe more accountable. Ask him questions and demand more basis for his decisions. Need to know criteria for his decisions.
- * Katherine felt we need some control over expenditures.
- * We need to ensure that Joe's expenditures do not exceed the authorization level.
- * There is an attitude that it is o.k. to do anything as long as it is explained after the fact.
- * Lee felt Joe needed public speaker training and continuing education. Alberta added that he needs to go to executive and financial training classes.
- * Rick suggested making Joe's contract on a one-year basis. He added that he has had no problems with Joe.
- * Josephine again brought up the firm's vulnerability because there was no second in command.
- * Carl was concerned because there are no checks and balances on the expenses the President incurs. He agreed we need a second in command.
- * Alberta felt we needed a longer contract than one year.

The Board discussed who would hire a second in command -- the board or Joe? Victoria pointed out that the board had to make that judgment because it is ultimately in charge.

SCOMM

76.24

IN THE HOUSE OF REPRESENTATIVES OF THE LEGISLATURE OF
THE STATE OF ALASKA - SEVENTEENTH LEGISLATURE
FIRST SESSION

SUBPOENA

TO: Douglas B. Bailly

YOU ARE COMMANDED to appear before the House Special Committee on the
Exxon Valdez Oil Spill Claims Settlement of the Legislature of the State of Alaska,

at Room 519 Capitol Building in Juneau, Alaska, on

Apr 18, 1991, at 3:30pm to testify on Exxon Valdez Settlement

and to bring with you the following documents:

none

THIS SUBPOENA is issued under the authority of AS 24.25.010. It has been
approved by the following committee members:

Fran Ulmer Mike Nauwre Bill Hudson

Gene Kubina Gail Phillips Ramona Barnes
Max Gruenberg

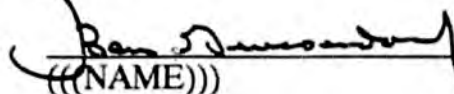
DATED this 18th day of April, 1991.


(((NAME)))

Chairman

House Special Committee on the Exxon
Valdez Oil Spill Claims Settlement
Alaska House of Representatives

CONCURRED IN this 18th day of April, 1991.


(((NAME)))

Speaker

Alaska House of Representatives

CERTIFICATE OF SERVICE

I, Mona C Machara, do hereby certify that
I have personally served Douglas B. Baily with the Subpoena issued by the House
Special Committee on the Exxon Valdez Oil Spill Claims Settlement commanding the
person served to appear before the House Special Committee on the Exxon Valdez
Oil Spill Claims Settlement of the Legislature of the State of Alaska, at
Capitol Bldg, in Juneau, Alaska, on April 18, 1991.

Mona C. Machara
Signature of person serving Subpoena

STATE OF ALASKA)
)
FIRST JUDICIAL DISTRICT) ss

Subscribed and sworn to before me, a Notary Public in and for the State of
Alaska, this 18 day of April, 1991.

M. J. Guenther
Notary Public in and for Alaska

My commission expires: 3/18/92

MOTION FOR EXECUTIVE SESSION:

I move that this joint meeting of the House and Senate Special Committees on the Exxon Valdez Oil Spill Claims Settlement go into executive session under Uniform Rule 22 for discussion of matters, the immediate knowledge of which would adversely affect the finances of a government unit, or which may, by law, be required to be confidential, and request that those permitted to participate be all members of the Alaska Legislature, Attorney General Charles Cole, Assistant Attorneys General Barbara Herrman and Sarah E. (Liza) McCracken, General Counsel for the National Oceanographic and Atmospheric Administration Thomas Campbell, and Chairman of the Exxon Valdez Oil Spill Damage Assessment Management Team Paul Gertler.

SCOMM

76.25

ROUGH VERBATIM
TRANSCRIPTS OF
SEVERAL COMMITTEE
MEETINGS

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

VERBATIM TRANSCRIPTS OF EXXON VALDEZ SETTLEMENT COMMITTEE MINUTES
PREPARED BY ACCUTYPE

Note: These transcripts were done verbatim from the tapes by Accutype Secretarial in Anchorage. House Records subsequently edited them into final minutes. These are being retained because of their "word-for-word" value.

Meetings:

April 5, 1991
April 9, 1991
April 10, 1991
April 12, 1991
April 16, 1991
April 17, 1991

HOUSE SPECIAL COMMITTEE ON THE
EXXON VALDEZ OIL SPILL CLAIMS SETTLEMENT
April 5, 1991
12:00 P.M.

MEMBERS PRESENT:

Rep. Max Gruenberg, Chairman
Rep. Ramona Barnes
Rep. Cliff Davidson
Rep. Bill Hudson
Rep. Gene Kubina
Rep. Mike Navarre
Rep. Gail Phillips

MEMBERS ABSENT:

Rep. Fran Ulmer

OTHER LEGISLATORS/STAFF PRESENT:

Attorney General Charles Cole
Andy Hemenway, Staff Attorney for the Committee
Gregg Erickson, Economist for the Committee
Pamela Finley, Legislative Affairs Attorney
Pat Williams, Committee Secretary
Rep. Georgianna Lincoln
Rep. Pat Carney
Rep. Loren Leman
Rep. David Finkelstein

COMMITTEE AGENDA:

- I Committee Announcements
- II Testimony of Attorney General Charles Cole

1 Tape 8, Side A
2 000

3 Chairman Gruenberg called the meeting to order at 12:10 p.m. in
4 the House Resources Committee Room. The Chairman noted the
presence of the members and other legislators and staff present.

5 The Chairman noted that Attorney General Charles Cole would be
6 testifying after Gregg Erickson addressed the Committee first.

7 017

8 Gregg Erickson, Economic Consultant retained by the Committee,
9 noted there was, before each member, a copy of a memorandum
10 dated April 5th. He directed everyone to page four of the
11 memorandum and the question related to restitution. The
12 question arises as to what sort of things the \$50 million which
13 might be received in restitution under the criminal agreement
14 might be spent on, and in addition, a similar question arises
15 with respect to the funds received for restoration under the
16 Consent Decree and to be allocated in accordance with the
17 Memorandum of Agreement between the State and the Federal
18 Government. He pointed out that there is language in the
19 definition of restoration in the Criminal Plea Agreement and
20 there is similar language in the Consent Decree that
21 substantially broadens the objects upon which those funds can be
22 spent. That language relates to the enhancement of affected
23 resources. Restoration is usually defined and is defined in the
24 Federal Acts as direct restoration, replacement and acquisition
25 of equivalent resources. The enhancement language is nowhere
found in Federal statutes, he noted, that he was aware of. He
thinks it's important that the Committee be aware of this
especially in light of the assertions by the Administration that
the funds under the Consent Decree that will go for restoration
are not subject to appropriation because if that is the case,
the objects of that money that is to be discretionarily
allocated by the trustees, State and Federal trustees, is much
broader than it would have been had that language not been
included.

He also mentioned that he had some hearsay comments that the
Committee might want to delve into a little more deeply. He
said he understood that Commissioner Sandor, designated by
Governor Hickel as a trustee in this issue, indicated to his
federal colleagues on the trustee counsel that it was his desire
to suspend the damage assessment studies and to suspend the
restoration science studies on the grounds that they are no
longer necessary. He stated it was also his understanding that
the federal members of the trustee counsel demurred from that

1 view. He also stated that a meeting was held yesterday to deal
2 with those issues and they may be resolved by now. He also
3 noted that it has been suggested both among the state and
4 federal participants that the intention of the State is to
5 establish the Department of Natural Resources as the lead
6 trustee. He was asked if that would be Commissioner Harold
7 Heinz. He stated yes, as soon as this agreement is in place.
8 He thinks there was concern that because of Commissioner Heinz's
9 relationship to ARCO, which was a participant in the Alyeska
10 Pipeline Company, that it would have been inappropriate to
11 involve him in this while there was still pending civil and
12 criminal litigation.

13 099

14 Chairman Gruenberg noted the time was now 12:25 and that
15 Representative Barnes has joined the meeting. He addressed
16 Attorney General Cole noting that the Committee was in the
17 process of questioning him about the Consent Decree and they
18 had gotten through question number seven. He asked the
19 Committee if anyone had any questions regarding the previously
20 covered questions.

21 Representative Davidson asked what the intent of the State was
22 at this point. Were they going to continue the assessment of
23 damages and injuries, and would there be cause to do that? He
24 wanted to know how we, as a state, were going to proceed.

25 Attorney General Cole stated yes, and also that it was necessary
for him to comment on Mr. Erickson's testimony. He said that
Mr. Sandor, after discussing the future of the expenditure of
funds from the settlement if finally approved, that a
reassessment of the studies during 1991 should be made with a
view to determining which studies in light of the settlement
could be eliminated. He stated that of particular discussion
were economic studies which had been initiated in furtherance of
the State's claims for damages against Exxon. He said that
underlying these discussions was the view that as much money as
possible should be utilized for restoration purposes rather than
perhaps singular scientific knowledge. There is planned to be
expended this summer in continuing studies and related
expenditures approximately \$35 million. He stated that he and
Commissioners Sandors and Rosier want to make certain that those
studies are in furtherance of damage assessment and restoration.
He pointed out that there is a covenant in the agreement to
continue the 1991 scientific studies and that the State trustees
have no intention of breaching or endeavoring to thwart that
provision of the agreement. He also noted that nobody among the
State trustees, to his knowledge, has any secret intent to do
other than restore Prince William Sound and the injured natural

1 resources, nobody has mentioned building roads, exotic concrete
2 and steel improvements, just restore the damages resources.

3 208

4 Representative Davidson asked that Attorney General Cole make
5 wider reference to the extent of the damages. He said it
6 frequently seems that we're concentrating only on Prince William
7 Sound and he's concerned about other areas, i.e. Kodiak, that
8 were affected by the spill.

9 Attorney General Cole said to look at the language, it's
10 referred to as the spill affected areas. He also noted that the
11 pink book contained some 150 page analysis of coast studies and
12 expenditures of \$35 million.

13 He was asked whether all of the meetings of the trustees would
14 be open to the public and he stated that he didn't really know
15 the answer because he hadn't discussed the subject with the
16 other trustees.

17 263

18 Representative Hudson said that he had just gone through the
19 double volume pink plan that is open for public review and said
20 that he was surprised to hear that they were changing that. He
21 said he understands the Attorney General's testimony is that if
22 there are changes, it will be more to pursue restoration as
23 opposed to litigation assuming at any rate that if this is
24 approved that the some of the ongoing tests or evaluations,
25 economic considerations might not be necessary if we have an
approval of this nature. He asked if that was a fair
assessment. The Attorney General stated that that was precisely
accurate.

Attorney General Cole also noted that they asked for public
comment in this document and if they didn't say they had an open
mind at this time about what we received from the public
comment, in his view, they would be acting irresponsibly.

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Chairman Gruenberg said that he was concerned about one aspect,
that the Attorney General indicated that they needed to have
faith in the trustees to do their job. He thinks that that's a
two way street, that the trustees need to have faith in them and
keep the public informed, that when they hear that studies are
being suspended at this crucial time, that that is bound to have
far reaching effects especially when they don't receive it from
the trustees but receive it indirectly from third parties who

1 leak the word out. It doesn't help in their confidence in the
2 process and leads to a question the Committee is going to have
3 to address and hasn't been addressed yet and that is, what kind
4 of legislative oversight there should be on this process if the
5 agreement is approved in whole or part and the process proceeds?
6 What type of continuing legislative oversight should there be
7 and should this legislature consider the enactment of
8 legislation requiring that?

9 Attorney General Cole responded to that by saying that here is
10 this group which has been functioning for two years, 20, 40
11 people functioning carefully and judiciously and making
12 decisions as the process goes on weekly, monthly. If the
13 legislature wants to send somebody over there to attend the
14 meetings, he said he was sure they would be welcomed. He said
15 he felt that if this was a matter of legislative concern, you
16 would think that for the past two years when the legislature was
17 appropriating these funds that it would have the oversight that
18 it now speaks about having by attending all these committees.
19 He stated that he finds this presumption of secretiveness hard
20 to accept.

21 331

22 Representative Finkelstein stated that he thinks the Attorney
23 General may be taking things out of context. He noted that the
24 Committee only hears hearsay when they don't have first-hand
25 reports, and noted that they would really appreciate him filling
them in and giving them information as to what is actually going
on. He stated that the role they play is to look at the Fish
and Game budget, look at some of the studies, the special
appropriations we made and we fund them.

Attorney General Cole reiterated that if the Committee ever
wants information, to ask for it, he'd be pleased to give it to
them.

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Chairman Gruenberg suggested moving on to question number eight,
Consent Decree. What do the terms on the first three lines on
page six mean? Does natural resource damage include economic
loss to the State?

Attorney General Cole noted that his number eight had been
marked out indicating that he would not be questioned about it,
therefore, he was unprepared to answer that.

Chairman Gruenberg asked about question number nine. What
impact does the agreement have on the State's rights and legal

1 position prior to the final approval but after the effective
2 date?

3 Attorney General Cole said that the only operative effect which
4 he can think of has to do with Exxon's obligation to continue
5 with cleanup activities prior to final approval. He said they
6 thought that final approval may involve appeals and things of
7 that nature, and who knows when they'll be resolved.

8 Chairman Gruenberg directed the Committee to look ahead to
9 paragraphs 11 and 12 of the CD Application. He said that they
10 were informed by their counsel that those paragraphs are
11 immediately effective and cannot be terminated or modified. He
12 asked if that was correct. Is the State, as much as legally
13 possible, bound by those?

14 Attorney General Cole said yes, but paragraph 12 has visions for
15 recapturing the status quo, as it were, if the agreement is not
16 approved. And, that is the reason for paragraph 12, to cover
17 the possibility that Exxon may initiate spill cleanup, may
18 expend funds, and then there be no approval by legislature or by
19 the court. Then what happens is subject to big discussion, and
20 it was hard to revise a remedial provision to cover that
21 contingency.

22 Chairman Gruenberg noted that on each question, if any of the
23 Committee members have a question on that provision to just
24 raise their hands. Next, he went on to question 14, use of the
25 money dealing with paragraph 10, which is found on page 10.
Article 9, section 7 of the Alaska Constitution prohibits
dedicating the funds. Money received under the Clean Water Act
must be designated as reflected in this paragraph. Can you, Mr.
Attorney General, choose to settle a case under a law that
requires a dedicated fund especially when the State could
recover under state law, and that state law does not require or
allow dedication? Is recovery under the CWA participation
"under a federal program" such that the prohibition against
dedicated funds in our constitution would not apply?

Attorney General Cole answered yes to both questions. He said
here are the questions. Can the Attorney General choose to
settle a case under law that requires a dedicated fund
"especially" when the State could recover under state law which
does not require dedication? He said it was his view for the
reasons stated in that opinion that the Attorney General can do
that. There's a lot of authority there and he realizes full
well that he had to make a decision, the Governor and himself,
as to how to make this settlement work. He said that the
Governor and himself and the lawyers who spent untold weeks and
hours putting this together had to make decisions and did make

1 the decisions to reach the settlement and a successful
2 settlement, that when you've got legislation, you work towards
3 getting it done. He said that he studied that question
4 carefully and concluded that the Attorney General had that
5 power, he concluded that it was in the best interest of the
6 State and that was that. He said he anticipated that someone
7 would ask if he had that power and he said he did, but he just
8 thought that they needed to get the money back so we could get
9 on with restoring the Sound and it was in the State's interest
10 to do that.

11 495

12 Representative Barnes said that she appreciated all the work
13 that the Administration has put into this settlement, but she
14 thinks the fundamental question that has to be answered as it
15 relates to the settlement is, first of all, did you settle it
16 based on a State asset? And, if you did settle it based on a
17 State asset, does the settlement then not become a State asset?
18 And, if it does become a State asset, then only the legislature
19 has the power to appropriate those funds in which you have
20 negotiated a settlement. If we, the legislature under Article
21 9, Section 13 of the Constitution, sets out that only the
22 legislature may appropriate, then how can we get from the
23 legislature to the three persons from the State, three from the
24 federal government, and a federal judge making those
25 appropriations on behalf of the State?

Attorney General Cole answered, under a federal statute which is
the supreme law of the land.

Representative Barnes said that then the answer to her question
is that the Clean Water Act supersedes our constitution?

Attorney General Cole answered that he didn't think it
supersedes the constitution because under the Clean Water Act
those assets, the regular recovery under the Clean Water Act for
State Trustees, does not come into the State treasury.

Representative Barnes said she felt that this is a settlement
based on damage to an asset of the State, even though it was
settled under the Clean Water Act, that there has to be some way
that this legislature, if it is a settlement that belongs to the
State of Alaska, any portion of it, it has to then be
appropriated by this legislature. She said she believes that
for it to be legal and binding, it must.

Attorney General Cole answered that if she felt that way, she
should vote against this settlement agreement. And, if enough
people in the legislature feel this view and agree with her on

1 that issue, we'll terminate the agreement and pick up our papers
2 and go home and start the litigation. He said that that is the
3 choice that he faced and that is the choice the Committee faces.
4 He stated it was the best decision made by he and the Governor
5 and if it's not satisfactory, you can vote it down by the
6 people. He said he didn't feel it was his responsibility as a
7 public resource trustee acting on behalf of the State to walk
8 from a billion dollars. He stated he thought it was a good
9 settlement and was in the public interest, but was prepared to
10 commit that final decision to the legislature.

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11 Representative Barnes said she can recognize the position he was
12 in when he was looking at a billion dollars, but all she's
13 saying is there must be some way within the process that
14 constitutionally we can reach the appropriation process if it is
15 a State asset. She said that if he says it is not a State
16 asset, then she will fold up her camel's tent and walk away.
17 But, if it is a State asset, the Supreme Court in Burn versus
18 State and Others and the Homestead Act in 1978 ruled very
19 clearly that only the legislature including land or any other
20 assets has the right to appropriate. She said that until such
21 time that he can show her that it's not a State asset, she's got
22 a constitutional problem.

23 Attorney General Cole said he couldn't prove it to her, but he
24 didn't think it was a State asset in that sense. And, he thinks
25 it's in the Constitution.

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17 Representative Hudson referred to the memorandum from Pam Finley
18 to Senator Sam Cotton concerning essentially the same element.
19 And, he thinks therein lies the problem for people like himself
20 who are not attorneys in trying to deal with this. He said that
21 on the second page of that document you can almost find the same
22 reasoning that in this case the court upheld that the proceeds
23 of the settlement between Chevron and the Federal Department of
24 Energy had to be used for specified purposes and were not
25 subject to appropriation by the Colorado legislature, the reason
that the money was not subject to appropriation either because
it was in trust from a private source or because it was from a
federal source with restrictions placed on its use. He thinks
that's what we're dealing with here. The Attorney General has
given us a multi-page memorandum of his constructive belief of
why this does not necessarily have to be subject to
appropriation. He feels this is the crux of the issue of
whether or not and what power, not only this legislature but
future legislatures can have. So, it's a very critical issue.

1 (Tape changed)
2 Tape 8, Side B
3 000

4 Chairman Gruenberg told the Attorney General that it appears
5 there are going to be some follow-up actions that may possibly
6 be necessary. He asked if there was any reason that this
7 settlement could not have included a requirement that the
8 legislature must appropriate the necessary amounts to the trust
9 fund each year?

10 The Attorney General answered yes. He said to look at the
11 general setting which we have. We have federal funds thrown
12 into the pot to avoid interminable litigation between the state
13 and federal government as to who owns which natural resource
14 damage recovery. He said that the United States is not going to
15 stand by and grant to the legislature of the State of Alaska the
16 power to control these lumped together funds.

17 Chairman Gruenberg asked if he ever discussed with the federal
18 negotiators a possible split, did he ever make an offer on how
19 these damages could be apportioned on a percentage basis?

20 Attorney General Cole said there was no possible way which could
21 have led to the segregation of those funds. He stated that it
22 had been discussed for 18 months through the Cooper
23 Administration and Attorney General Bailey for months and
24 months. And, there had been documents which reflected the joint
25 consolidation of whatever rights the State had and whatever
rights the feds had. Did he ever set down with Assistant
Attorney General Richard B. Stewart and say let's talk about
splitting up these recoveries? He said a fair answer to that is
no because he realized it was so impossible, it's like him
taking a rocket to the moon tomorrow. It's so impossible that
it's not worth talking about.

055

Representative Kubina said this was one area that he was
sympathetic with him on because he's seen legislators trying to
think of ways to divvy up this money in their own ways and it
scares him because he thinks it should be dedicated to the
single purpose. He asked the Attorney General to discuss in
more detail how he sees that process to happen with the
limitations on the money. What do we do those last five years
if there's nothing specifically related? Where would you go
with \$70 million a year?

1 Chairman Gruenberg noted that Representative Navarre has just
arrived.

2 Attorney General Cole said he wanted to say preliminarily that
3 not only under the Clean Water Act were these funds dedicated,
4 but under the concept of the common law of public trustee
5 concept following that theory through that the funds would be
6 required to be dedicated. He said he'd thought about it a lot.
7 He said he thought that if this money had come into the State
8 treasury under a State public resource theory based on the
9 common law that it would have to be used in the furtherance of
10 restoring the damaged resources. So, if this money were a State
11 asset and came into the State treasury, that at the end of the
12 day it would have to be used by the "legislature" in the same
13 way that it's going to be used there. He said he couldn't
14 really say all of the projects which will be used or will be
15 initiated by the trustees, but we're going to have mayors of the
16 various affected communities, municipalities on this committee.
17 They're going to have scientists, native groups, environmental
18 groups, a broad base which will furnish their views on the best
19 use of those funds to the trustees. He said he felt satisfied
20 that the trustees will act responsibly and if they don't,
21 someone should simply go to the Governor and say get this guy
22 off there.

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14 Representative Kubina said he thought that was a fairly
15 simplistic way of suggesting that someone might have influence
16 over the Governor. He said it's not going to be as simple as
17 the Attorney General suggested, someone go to the Governor and
18 tell him to get this guy off of there.

19 The Attorney General responded by saying that if the legislature
20 says, by the way, Governor, we want to add \$50 million to the
21 education budget, those things have a way of working. He thinks
22 that the political process works reasonably well.

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21 Representative Lincoln arrived.

22 Representative Navarre stated that after he realized how it was
23 set up and where the monies were dedicated for and seeing the
24 relationship between dedicating any funds recovered essentially
25 to restore what had been damaged, he thought that was a very
clever and ingenious way of dealing with things. He said that
when they were asked to approve this whole thing, one of the
questions he asked the Chairman was whether or not we could
approve it with stipulations. And, he said that one element

1 that would perhaps be amenable by all parties would be to place
2 at least an advice and consent of the legislative body into
3 whatever final expenditures or programs have been developed.
4 The idea there being that we could bring a lot of resources to
5 seeing that the decisions are met with prudent background and
6 judgement. He asked if the Attorney General thought that an
7 agreement with stipulations could be brought back to the table.

8 Attorney General Cole answered as follows: I think it would be
9 frivolous to take it back, number one. And, number two, is the
10 legislature commits widely to administrative bodies throughout
11 the State, the adoption of regulations, other projects. It does
12 it all the time. And, this strikes me as not being so far
13 afield of that which the legislature repeatedly and for years
14 has historically done with respect to administrative bodies.
15 Take, for example, the Department of Education. I mean, look at
16 what these boards of education do with one of the very most
17 basic resources we have in this State, the education of our
18 children. It's far more important, I should think, than Prince
19 William Sound natural resource damages. And, does the
20 legislature micro-manage that? I don't think so. So, that's
21 the thought. Then, the next thought I have in that regard is,
22 how much time do you really want to spend reading that book?
23 And, that's just one little year's project. That's the concise
24 summary of what projects they intend to do. Underlying that,
25 there's this much information, background supporting the reasons
for going ahead with those projects. And, there's page after
page of documents. So, for the legislature to really
effectively do anything is a massive job.

Representative Hudson said he believed that practically speaking
the implementation of this massive multi-year project will at
times embody the need to change the statutes perhaps, which is a
legislative function. What he's suggesting is it would be
constructive to the trustees and more amenable, at least making
the legislature who represent all the people of Alaska feel like
they're somewhat into the process if there was some sort of an
advise and consent. We could do that by making sure we have
someone at all of these meetings or pertinent meetings when you
start establishing the public input for the process.

Attorney General Cole responded by saying that the legislature
could have a representative on the public advisory counsel.
That would be acceptable to the trustees. He said he's also
thought that the legislature can act by way of joint or
concurrent resolutions. And, if it has a representative aboard,
then it can bring that information back and the legislature by
resolution can suggest to the trustees that we should pursue
these projects.

Representative Kubina said he disagrees with the terms of the settlement. He believes we should have gotten a little more, did a little better in that. He asked if we could approve the agreement with the stipulation that the \$900 million is paid up front today in today's dollars and then, therefore, the legislature would approve if that was done, and what would be the ramifications if that was done?

Attorney General Cole said he was asked that question yesterday in a Senate hearing and he answered that he did not think it would be possible a) to receive \$900 million, and b) he also did not think it would be possible to receive a discounted present value payment. He also said he didn't know what that would add anyway if you look at the basic problems of the state and federal funds lumped together. We were negotiating with the United States of America. Just look at the statutes that they dump on the State of Alaska and other states, and look at the power they wield over the state. He added it didn't have anything to do with this settlement.

Representative Kubina suggested that what he's saying is that we approve the settlement, all of those other things, still that trust is there, that the dollar figure that we go back to Exxon and say we've got everything approved, the State of Alaska legislature says when that's done, that money ought to be paid up front, that Exxon should just bite the bullet and then they're out from under it.

Attorney General Cole just commented that he would want to have his ear muffs on when he posed that question.

Representative Kubina suggested that if the Attorney General didn't have any other choice and Exxon looks upon him as coming to them in good faith and arguing this that they would have the final decision. They would say to themselves well, here we are, are we going to go to court for ten years or are we going to take their last best and final offer? He said it may put them in a stronger bargaining position.

Attorney General Cole suggested that if legislature really thought that the criminal case was the lever which brought Exxon to the settlement table, then you'd have to say that this is a great settlement. He asks if we could have achieved this settlement without the criminal case. If your underlying thesis is correct, you won't have to ask oneself that question.

1 Chairman Gruenberg stated that before he turns the meeting over
2 to Representative Navarre, he had a question or two. He sees
3 several different possible scenarios here not all of which have
4 been explored yet by this Committee. He thinks we have more
5 options than we have really explored here and assures the
6 Attorney General that they will explore those options before
7 rendering their report. He said the staff had a question that
8 if the Alaska Supreme Court decides this is unconstitutional
9 provisions in the agreement or another court decides it's
10 unconstitutional, how can we recover against Exxon since we're
11 dismissing our claims?

12 The Attorney General stated that we have a pending lawsuit
13 against Exxon that arises out of the Consent Agreement filed in
14 the United States District Court, so we'll just go back to the
15 legal trenches and litigate.

16 340

17 Representative Finley asks that if the constitutional problems
18 arise and it's because of provisions in the Clean Water Act,
19 which she thinks only applies to dedication funds, and the point
20 being, well, we can't sue under the Clean Water Act, all you've
21 got is a Clean Water Act case but you in the meanwhile dismissed
22 the state case which is not a specific dedication. That's what
23 she foresees as the danger.

24 Attorney General Cole responded that there's pending lawsuit
25 against Exxon filed in United States District Court which simply
amend our complaint. He added that he would assume that under
any theory that you want to sue them under, all the existing
claims would still exist.

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Representative Navarre pointed out on the page called Consent
Decree, at the end of paragraph 11A it says, "Exxon should have
no liability to any person or enemy including the government by
reason of undertaking clean-up work performed in accordance with
direction of the federal on-scene coordinator or the state on-
scene coordinator." His question was, does that mean that if
there are third-party claims that the state or the federal
governments are then liable and also is this consistent with
current state law? Can you in the Consent Decree override, or
eliminate, or make null any state statute that currently would
be applicable?

The Attorney General stated that this sentence was the subject
of focused discussion and negotiation. Exxon's position
generally was why should we be liable for doing which you told

1 us to do. So, we revised the sentence so that we could insert
2 the clause "by reason of undertaking clean-up work". Those were
3 words chosen advisedly. It means by reason of doing what you
4 asked us to do. And, we formulated that language under the
5 Federal Tort Claims Acts and under the State Court Claims Act,
6 and we thought that in general Exxon would not be liable for
7 doing what the federal and state governments asked them to do by
8 reason of the discretionary function exceptions to those Tort
9 Claims Act. He added that that has no effect on breach of
10 contract by Exxon to anyone with whom it may contract in
11 connection with the performance of these functions. It has no
12 effect on negligent actions which Exxon may commit in the course
13 of its work. He added that it has no liability for exceeding to
14 the directions of the federal on-scene coordinator that says go
15 clean up this beach and do the following. They're protected by
16 going to clean up that beach. If they, in the performance of
17 that duty, in his view, negligently injure someone's property,
18 real or personal, then they're liable for that and they're
19 liable for Workman's Compensation injuries to their employees
20 and things like that only in that narrow function.

21 431

22 Representative Navarre questioned the wording from a legal
23 standpoint when it says "Exxon should have no liability", it
24 doesn't say Exxon has no liability.

25 Attorney General Cole stated that that wording was carefully
chosen, too. He said that they gave them what is sort of known
as cold comfort.

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Chairman Gruenberg had another question from the staff referring
to the clause that Representative Navarre has been discussing.
Absent this sentence, why would Exxon have been liable for
undertaking the clean-up?

Attorney General Cole answered that they probably would have
been relieved from liability under the Federal Tort Claims Act,
discretionary function exception. Obviously, they wanted more
than they got but we didn't give it to them. We said you can
have a little bit of cold comfort because we think that under
the Tort Claims Act you don't have liability and we let it go at
that.

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1 Ms. Finley said she would understand this better, why the clause
2 was in there, if she understood what legal theories you would
sue Exxon for for merely the decision to take over clean-up.

3 Attorney General Cole stated that they (Exxon) wanted protection
4 from third-parties out there, i.e., tearing up their beach,
5 trespassing. They wanted indemnification and we said no. We
told them that we thought the Federal and State Tort Claims Acts
were applicable and that was all they were going to get.

6 474

7 An unidentified speaker asked if we wanted more and, if so,
8 what? What more did we want out of this agreement that we
didn't get?

9 Attorney General answered that we wanted \$1.2 million cash. He
10 asked why did we talk about the numbers first. He said they
11 spent weeks, maybe a week or ten days on the re-opener clause
12 itself. But, he said they negotiated very pointedly over
13 virtually every sentence in this agreement and in many
14 instances, every word. We wanted \$1.2 billion cash, we didn't
15 get it. We wanted a re-opener clause, we got one. Did we get
16 all we wanted out of the re-opener clause? Most of what we
17 wanted. Did we want to release Alyeska from the natural
18 resource damage claims? No. Why did we discuss these at the
19 outset? Well, why spend five weeks arguing all these things and
20 get down and say well we can't reach accord on the dollars?
21 Because he thinks it was the view that if you can't reach accord
22 on the dollars, we should go home. So, we wanted more cash, a
23 bigger total payment, we wanted it in cash, we also obviously
24 negotiated at length over how much was paid each year under the
25 installment. We wanted it to the extent we could front-end load
it, we got it somewhat front-end loaded, as you see. We wanted
it front-end loaded because of heavier expenses in a sense
front-end loaded.

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Chairman Gruenberg asked for other questions from the staff.

Representative Hudson asked if it would be possible for the
legislature to approve this with stipulations and he said he
thinks he hears the answer as no, you'll approve it as written
or you disapprove it. He asked if that was correct
understanding.

Attorney General Cole answered yes.

1 Chairman Gruenberg said that that is not to say that we can't
2 disapprove it with stipulations.

3 Attorney General Cole stated that he personally had no interest
4 one way or the other in this settlement. As Charlie Cole,
5 Attorney General, he believes this agreement is in the best
6 interest of the State and thinks it should be approved. He said
7 he's not here to tell the legislature what to do or even to
8 suggest what it do other than he would like to see it approve
9 this document for the reasons he's mentioned. What does he
10 think the effects of the legislature doing those things would
11 be? He thinks it would sink the settlement and we would head
12 down the path of interminable litigation.

13 650

14 Chairman Gruenberg moved on to question 17. Alaska's
15 Constitution vests the appropriation power in the legislature
16 alone. Federal laws and regulations applicable to the Clean
17 Water Act require the Governor to appoint a trustee who will
18 decide how money recovered under the CWA is to be spent. Is the
19 scheme under the CWA contrary to Alaska's Constitution and, if
20 so, does the AG have the power to enter into an agreement under
21 the CWA? He stated that he knows that AG Cole will cite them to
22 his memorandum once again and asked if there was anything he
23 would like to add to that?

24 Attorney General Cole said no, he was exhausted. (Laughs)

25 Chairman Gruenberg moved on to question 18. How much has the
State spent for response clean-up damage assessment and
litigation costs?

Attorney General Cole answered that he had a written report
outlining the same. Chairman Gruenberg asked that it be
duplicated and they would come back to question 18 after it had
been duplicated. He then moved on to question 19. To what
extent would the legislature's approval of the Consent Decree
constitute an approval of the MOA?

(Tape changed)
Tape 9, Side A
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Chairman Gruenberg added a corollary question to that of why did
only the Consent Decree have the provision about the
legislature's approval? How interrelated are the two and what
can we do?

1 Attorney General Cole answered that he thinks they're
2 irretrievably linked together and the approval of the Consent
Decree constitutes an approval of the Memorandum of Agreement,
or at least removes the less condition.

3 Chairman Gruenberg asked question 21. It appears that the
4 reimbursements to the State up to \$72 million are not restricted
as to use; am I right?

5 Attorney General Cole answered yes, that's for the legislature
6 to spend those in whatever direction you wish.

7 016

8 Representative Hudson referred to 16. Is legislative
9 authorization needed to accept funding from the trustees? That
is, if the trustees agreed to say pass X number of millions of
dollars over any particular year for a specific purpose, would
10 we necessarily have to pass laws to accept that?

11 Attorney General Cole answered yes. It's technically a very
difficult legal question. He said this is the way he looks at
12 it. If the trustees wanted to give the Fish and Game \$30
million and somebody objected to it, the trustees could say
13 well, we'll just give it to the Federal Fish and Wildlife
Service and we'll remove the problem.

14 Representative Kubina asked if you did give it to the State Fish
15 and Game, you would assume that we would actually include it in
our budget because it would be appropriated to a State agency?

16 Attorney General Cole stated that he did not know. One of the
17 problems he says he sees is that the legislature might not be in
session when the trustees decide for one reason or another to
18 make this authorization and the budget process takes quite
awhile.

19 048

20 Chairman Gruenberg moved on to question 18. He asked the
21 Attorney General to explain the lengthy document which they
received.

22 The Attorney General stated he thought it was self-explanatory.
23 He stated that it's preliminary, in draft, and confidential, but
it shows where we were headed when we agreed to the \$72 million
24 figure.

25 Chairman Gruenberg asked if this was the document used to work
up the figure of \$72 million. Attorney General Cole said it was

1 one of them. He added that the number wasn't viewed by him as
2 being a definitive number.

076

3 Chairman Gruenberg moved on to question 23. Does the settlement
4 provide for federal or state funding for continuous damage
assessment studies?

5 Attorney General Cole answered yes, it's within the scope of
6 permitted expenditures of the recovered funds.

7 Representative Phillips joined the meeting.

8 Chairman Gruenberg asked under paragraph 24 by representing to
9 the court that the money will be spent pursuant to the MOA, if
the government is barred from changing the MOA without court
approval?

10 Attorney General Cole answered yes.

11 Chairman Gruenberg asked that if they do seek court approval,
12 will they bring that back before the legislature?

13 Attorney General Cole answered that like the legislature, he
14 can't find his successors in office.

15 Chairman Gruenberg asked if he would recommend approval of House
Bill 213 which would require that under state law?

16 Attorney General Cole answered that he had not reviewed 213 so
17 he couldn't answer that.

18 Chairman Gruenberg stated that he would appreciate it if AG Cole
19 would give us his views of that Bill because that would, in
effect, get us where the legislature wants to go. And, if
20 there's any future modifications of this, that they too would be
brought before the legislature and he would include under that
the MOA because the AG has indicated that they are inextricably
intertwined.

21 Attorney General Cole said that he would.

22 Chairman Gruenberg asked, "Could the trustees or the court in
23 breaking an impasse act through a private party to preserve or
utilize the natural resources under the settlement?"

24 The Attorney General stated that he's not sure he understood the
25 question. He asked if that was by way of an arbitrator.

1 Chairman Gruenberg stated that he thought the gist of it is, can
2 the trustees act indirectly as well as directly? Can they
deputize or give authority?

3 Representative Phillips indicated that was not the question. He
4 stated that what was meant was if three on each side disagree,
5 could the court essentially provide for the breaker through a
6 Native corporation or a third party. Does the court have
sufficient leeway if there's an impasse between the trustees,
that is, if they can't come up with consent to essentially say
accomplish something through a third party?

7 Chairman Gruenberg asked could they delegate their authority or
8 appoint a special master who would make recommendations?

9 Attorney General Cole answered that that's exactly what he had
10 in mind that the court could appoint a special master to conduct
a hearing, probably would, and report back it's conclusions and
recommendations.

11 Chairman Gruenberg suggested moving on to question 28 and
12 reserve 27 until after a break. To what extent can the losses
of third parties for which the State is found liable be paid out
of those funds?

13 Attorney General Cole answered zero. He stated that these were
14 trust funds which are required to be used for the restoration of
the damaged resources. The State's liability will have to be
15 paid out of the State (indiscernible). And, hopefully, we don't
have any liability.

16 Chairman Gruenberg asked question 29. Will any of these monies
17 go into the Section 470 fund? Which funds will get used first,
the trust funds or Section 470 funds?

18 Attorney General Cole stated that's not the way his 29 reads.
19 It is noted that he does not have the latest revision.

20 Chairman Gruenberg recommended that they break and his staff
will provide the Attorney General with the most up-to-date
21 version and stated that they're going to meet tomorrow at 3:50
p.m. with the Senate on public hearings. He stated that the
22 Committee will be meeting Monday from 12:00 to 2:00 and they
would like the AG to continue Monday.

23 Chairman Gruenberg adjourned the meeting at 2:05 p.m.
24
25

HOUSE SPECIAL COMMITTEE
EXXON VALDEZ OIL SPILL CLAIMS SETTLEMENT
April 9, 1991
8:15 A.M.

MEMBERS PRESENT:

Rep. Max Gruenberg
Rep. Cliff Davidson
Rep. Dave Donley
Rep. Bill Hudson
Rep. Gene Kubina
Rep. Mike Navarre
Rep. Gail Phillips
Rep. Fran Ulmer

MEMBERS ABSENT:

Rep. Ramona Barnes

OTHER LEGISLATORS AND STAFF PRESENT:

Rep. Loren Leman
Rep. Kay Brown
Pat Williams
Andy Hemenway
Gregg Erickson
Ernie Piper
Mike Dean
Mark Brodersen

1 Tape 10, Side A

2 000

3 Chairman Gruenberg called the meeting to order in Room 124,
4 House Resources Committee Room, Juneau, Alaska on Tuesday, April
5 9th, 1991 at 8:10 a.m. The Chairman noted the presence of the
6 members and other legislators and staff present.

7 The Chairman announced that they're going to take a couple
8 of witnesses out of order. Attorney General Cole is out of
9 state. Today they'll be hearing from Ernie Piper from the
10 Department of Environmental Conservation and Mike Lean with the
11 Department of Fish and Game.

12 The Chairman passed out copies of the itinerary for the
13 upcoming weekend and noted that they have been granted
14 permission to travel to the Prince William Sound area this
15 weekend to the various Districts that are affected by the oil
16 spill. He went over the itinerary.

17 The Chairman asked the guest speakers if they had any
18 opening statements. Mr. Ernie Piper said he was here to answer
19 any questions the Committee would have and also noted that Mark
20 Brodersen with the Department of Environmental Conservation is
21 also present to answer any questions.

22 OPENING STATEMENT BY ERNIE PIPER

23 MR. PIPER: Briefly, Mr. Chairman, we're beginning the
24 third field season of clean-up of the Exxon Valdez oil spill.
25 We've had people in the field doing survey work for the past

1 week, throughout this week and the rest of the month as well.
2 At the close of May, we'll make a determination with the Federal
3 Government as to what work needs to be done and how it will
4 proceed. And, at that point, we'll go ahead and do it this
5 summer. I think in terms of the settlement, it's important to
6 point out that regardless of whose pocket the funds for the
7 clean-up are coming, our position at DEC is that we would not
8 require the spiller to do anything that we wouldn't be ready to
9 do ourselves. So, those requirements that you see this summer
10 are virtually identical that would exist regardless of whether
11 Exxon was paying for it direction or whether it was coming out
12 of this sum of monies. We've got statutes and regulations that
13 tell us what we need to do. We're fairly clear in that regard.

14 Another important point that should be made, I think, is
15 we've made a lot of progress over this winter, you know, with
16 the Federal Government in making sure that the state's
17 requirement for clean-up are fully included in all plans. We
18 had at the close of last season's clean-up some points on which
19 there was beginning to be clear divergences and we thought that
20 it was important to make sure that both the spiller and that the
21 Coast Guard understood that the state's position was that
22 biology is not the only determinant of what is important to do
23 for clean-up, that people's lives and their livelihoods and the
24 statutory requirements of Fish and Game are equally important
25 and in some cases, they make take precedence over some

1 biological matters. With that, I think it may be more useful to
2 open it up to questions rather than have me drone on.

3 MR. GRUENBERG: Thank you. Before opening it up to
4 questions, I'd like to invite first Mr. Dean and then Mr.
5 Brodersen to make opening statements. Mr. Dean?

6 OPENING STATEMENT OF MIKE DEAN

7 MR. DEAN: Thank you, Mr. Chairman. I really don't have
8 any opening statements other than I'm just here this morning to
9 try and provide whatever information that the Committee would
10 like to discuss in regards to the damage assessment for oil year
11 three or the beginning of the 1991 restoration field season that
12 we have proposed through the state and federal trustee counsel
13 process. So, anything I can help you with this morning, feel
14 free to ask me and I'll see if I can answer it.

15 MR. GRUENBERG: Thank you, Mr. Dean. Mr. Brodersen?

16 MR. BRODERSEN: The same. I don't have anything to add to
17 that. Like Ernie said, we're just here to do what we can to
18 help you out.

19 MR. GRUENBERG: Committee member's questions.
20 Representative Phillips, then Representative Hudson. I'd also
21 like to welcome Representative Davidson to the group.

22 MS. PHILLIPS: Mr. Piper, on your comments regarding a plan
23 for procedures this summer, were you able to get the detailed
24 information on the Federal Government assessment that was on the
25 news this morning?

1 MR. PIPER: I think it may be in terms of what the actual
2 clean-up has been, we've worked very closely with Fish and Game
3 and with DEC. We've been working with the trustees to make sure
4 that we get the necessary information for clean-up. If I can
5 add one specific instance, Mr. Chairman, that would be helpful,
6 one of the key points of discussion this year is how much clean-
7 up should be required in salmon streams. And, the Federal
8 Government had taken a position that there perhaps was not that
9 much of a danger for remaining weathered oil in and around
10 salmon streams. And, we sat down with Fish and Game and got
11 some very good information on the damage assessment that helped
12 us come up with a stronger position and will take precedence
13 over the federal position in that regard.

14 MR. HUDSON: I would like more information as to the status
15 of the restoration and the collective goals. Most of us are
16 down here and the only thing we really know is what we read or
17 an occasion where we get an opportunity to go up there and fly
18 over or get out to the Sound, and you folks are there. What is
19 the status and what are your goals for this summer here? Are
20 you going to get down deep underneath in the beach gravel? Do
21 you have some specific plans?

22 MR. PIPER: The biggest problem that we're presented with
23 this year is oil on the subsurface. I think it's safe to say
24 that relatively speaking the problem with surface oil, I guess,
25 has been taken care of, that's not to say there's not oil out

1 there. But, that's really not going to be the priority this
2 year. The most difficult problems is where oil is buried 10,
3 20, 30, 40 centimeters deep under clean gravel on top, sometimes
4 continuous running from top to bottom. And, that's where the
5 real hard decision comes in. I can tell you that the way we're
6 doing this is setting priorities based on things like
7 (indiscernible) fish streams, commercial use, recreational use,
8 subsistence use. Those special uses that are associated with
9 cites will tell us whether it's worth the money and disruption
10 to the environment to take in a cap and actually do tilling on a
11 beach to release the oil and then recover it. But, largely, the
12 NOA, the science advisor to the Coast Guard, we had a lot of
13 discussions with them over the winter and brought them to
14 understand our point of view better. And, they recently
15 produced their recommendations for clean-up to the Admiral, to
16 the Federal on-scene coordinator. And, they are less interested
17 in tilling areas than we are for a variety of reasons because
18 primarily biological disruption. So, again, we're not going to
19 go on an area-wide tilling and excavation program by any means,
20 but it certainly is an option at those high use and special use
21 areas which we know need help.

22 MR. HUDSON: So, what actual work will be going on up
23 there?

24 MR. PIPER: Breakdown into a couple of categories. We're
25 going to be surveying about 600 cites. If you look at the way

1 cites have fallen out in the past, I would say that there will
2 be some work at roughly half of those cites. The bulk of the
3 work will be manual pick-up, literally breaking up the types of
4 asphalt mats that are on the surface and picking them up and
5 putting them in totes and taking them away. At a select number
6 of cites, and I'll put the number just because it's not exactly
7 off the top of my head but I would say that at 25 to 30
8 individual work cites that we will go ahead and do some kind of
9 work whether it's with mechanical equipment or with rakes. And,
10 then, what happens is on the rising tide, the oil is lifted out
11 as you till it and then you have containment booms, snare booms
12 and other kinds of things to catch the oil and take it away
13 before it gets out into the inner tidal area.

14 MR. HUDSON: And, this work is funded from the 470; is that
15 correct?

16 MR. PIPER: Yes, sir. And, in terms of how it would work,
17 until the settlement, assuming it goes through and the trust is
18 set up, the cash flow is out of the 470 fund and then the trust
19 becomes the third party that reimburses the 470 fund. And,
20 again, as you ask that question, I would point out that again
21 the kind of work that we would require has to meet any of the
22 existing criteria that decide what gets spent out of the 470
23 fund. A settlement won't change the way we decide what's good
24 clean-up and what isn't.
25

1 MR. HUDSON: Do you see, say, the settlement approved, if
2 it's approved, continuation of program of clean-up and
3 restoration out of the 470 fund, or do you see -- what do you
4 see with the settlement, the Exxon Valdez litigation settlement
5 proposal? What major changes do you see? Have you had a chance
6 to assess that?

7 MR. PIPER: Well, the most significant change is that I
8 want to make sure that as we spend money out of either the
9 settlement or as it comes out of the 470 fund, but specifically
10 out of that settlement monies, that the public has a clear
11 understanding of why we're spending money and what we're doing.
12 When it was just Exxon, I didn't feel so compelled to justify
13 how we were carrying out state laws and regulations. I mean,
14 they exist, that's our job and we wanted them to do it. Now, I
15 think the public really wants to know that as clean-up is
16 conducted why it's being conducted and how it's justified. And,
17 we're going to make sure that the justifications get to the
18 public in a more direct way than they have in the past.

19 MR. HUDSON: In your wildest dreams, \$900 million over the
20 next seven years, how do you see that -- I mean, is there that
21 much work out there in just restoring the environment?

22 MR. PIPER: In terms of clean-up, there is not anywhere
23 near that. I mean, you could spend that amount of money if one
24 chose to spend that amount of money. Whether it would be an
25 intelligent use of funds is quite another question. I think

1 that perhaps the best thing, Mr. Chairman, with your permission
2 is to let Mr. Brodersen talk about how the restoration goes from
3 there. I don't expect the clean-up will take more than \$20 or
4 \$30 million, if that. But, that's just an estimate at that
5 point.

6 MR. GRUENBERG: I would like the record to reflect and also
7 welcome Representative Kubina. Representative Hudson, pleas
8 continue your questioning. And, Mr. Brodersen, did you wish to
9 step in this morning? And, you need to press the toggle switch.

10 MR. BRODERSEN: I think the question here that you're
11 asking, I'll have to rephrase it to make sure I'm answering the
12 right question, is whether we now have enough money to finish
13 restoration once clean-up is done; is that what you're asking?

14 MR. HUDSON: You are the professionals in the field, you've
15 been up there ever since, as they say in Africa, and so now
16 we're confronted with a major program, a multi-year program with
17 hundreds of millions of dollars in the offering here and I want
18 to know how you see your program going with these new funds.
19 What kind of advanced or accelerated activity will you be
20 engaging in? What are some of your ideas on how these funds
21 should be used?

22 MR. BRODERSEN: Well, restoration actually follows when
23 you're done with clean-up in terms of bureaucratic thinking
24 here, if you will. Once Ernie is done getting the oil off the
25 beaches to the point where you've done effectively what you can

1 do, then you start restoration. We basically have a lot of
2 money to do a lot of things with it. In terms of what we could
3 do directly in repairing the damage, we have more than we can
4 spend efficiently. What has been done in other areas after
5 spills like this is then you go after what is called equivalent
6 resources so that perhaps you really cannot effectively fix,
7 say, a headland or something like that that's been damaged by
8 the oil, but you can protect another headland or a same species
9 somewhere else so that the total population of a given species
10 has been damaged will then have a better opportunity to recover
11 than would otherwise be possible if you continued to stress it
12 through other means. We do not have a final restoration plan in
13 place. Under the regulations, one waits to do a final
14 restoration plan until you find out how much money you have.
15 So, it's partially driven by available funds. So, over the last
16 year we've been looking at what can reasonably be done and what
17 is really not cost effective in Alaska. We anticipate doing
18 some more of this as we learn more about what has been damaged
19 and what can be repaired. I think I'll stop at that.

20 MR. HUDSON: What role do you see, say, your continuing
21 role in this new funding and trustee arrangement there? Do you
22 see the trustees coming to you collectively for projects for
23 restoration or for equivalency and things of this nature and
24 then, perhaps, turning the actual conduct of restoration or
25

1 securing the equivalency or rebuilding particular species, or
2 something like that to you folks?

3 MR. DEAN: Mr. Hudson, I want to digress just a bit. Are
4 you aware that there's a restoration planning work group
5 established in this process already made up of representatives
6 from the state and federal agencies? Mr. Brodersen is the
7 representative from DEC, I have a gentlemen by the name of Stan
8 Center representing Fish and Game in the state of Alaska. They
9 have been the primary focus on activities in restoration
10 planning, feasibility studies, science studies that are proposed
11 for this year. They're the body that really are handling the
12 ideas associated with restoration at this time. I just wanted
13 to make sure you were aware of that. They're really the core
14 group dealing with restoration from the various agencies
15 involved here.

16 MR. HUDSON: That's what I was referring to. How do you
17 see that group continuing on in light of the settlement, with a
18 different source of funding, and a different determination as to
19 what fundings will be spent through the trustees?

20 MR. DEAN: My guess, I have to respond to that, is in lieu
21 of a settlement not reached at this time, we're progressing as
22 we have been in the past until we probably, the various
23 federal agencies, are provided directions from their legal
24 counsel on the interpretation of the settlement and what it
25 exactly means and how it's supposed to function. My general

1 understanding is real shallow in terms of the settlement, the
2 Consent Decree, other than there is a six-member trusteeship
3 established with a designation of some form of public
4 participation. Other than that, there has not really been any,
5 I guess, models thrown out for confirmation of how the process
6 would work. Although there is some discussions amongst the
7 management team and the restoration work group, various kinds of
8 models of how to include public participation, how to structure
9 themselves to function if the settlement is reached. Until that
10 time though, we are progressing along the trustee/trustee
11 counsel management team, the restoration work group and the
12 project is going forth at this time as a settlement has not yet
13 been reached at this point.

14 MR. GRUENBERG: Mr. Piper, did you want to say something at
15 this point?

16 MR. PIPER: Yes, Mr. Chairman. I guess I'll be more
17 elemental about it because I'm more of a generalist and maybe
18 this would help you, too. The trustees exist in the settlement
19 itself, but quite frankly, all the working groups and everything
20 that are involved in this restoration are trying to find a way
21 to make it a less cumbersome process and make it more direct and
22 to come up with a better system for having a good flow of ideas
23 and projects, then go up to the trustees and then out to the
24 agencies for execution. Our principal concern -- and just being
25 somebody whose worked in the Executive Branch for the last

1 several years, my particular recommendations have been that
2 there be a very short distance between elected officials,
3 whether they be legislative or executive. But, a short distance
4 between those people and the people that sit on these
5 committees. The dangers that I've sort of seen about this, and
6 perhaps you share that a little bit, is that the more
7 independent and distant this fund begins to get, the less
8 responsive it does to specific Alaska concerns that were damaged
9 by Exxon Valdez. And, I think that can be dealt with, but
10 that's what one of our concerns is.

11 MR. HUDSON: Mr. Chairman, that's precisely what I'm trying
12 to get to. We have built in place, I think, probably the best
13 expertise on what the long term needs of the Sound and the rest
14 of the oiled areas including (indiscernible) and Cook Inlet and
15 the backside of Shilikoff Straights and, you know, Spruce
16 Island, the whole works there. And, I was wondering, hoping at
17 any rate, that as this develops that that built-in brain trust
18 there, expertise, would continue to be the executing point to
19 where the trustees would turn to first of all for what needs to
20 be done and then to authorize the necessary thing and then
21 literally to turn it over so you would have an ongoing or
22 continuing long-term restoration and enhancement program.

23 MR. GRUENBERG: Any comments from the panel? If not, we
24 have Representative Ulmer and Representative (indiscernible) and
25 I'd like the record to reflect (indiscernible).

1 MS. ULMER: Thank you, Mr. Chairman. A couple of
2 questions. Ernie, why are you so sure that the trust will
3 reimburse 470 fund for clean-up costs?

4 MR. PIPER: The way it's set up is that the -- included in
5 the agreement says that clean-up costs beyond once the
6 settlement is executed, the clean-up costs are to come out of
7 there. Now, the Coast Guard and I immediately sat down with the
8 Admiral and said we've got to come to a quick agreement about
9 what constitutes a justifiable expense on each of our parts
10 because the settlement calls for unanimous consent among the
11 trustees for spending money. And, we agreed that each of us
12 would use the rules that are established, in our case by the 470
13 fund, in the Federal Government's case by the 311K fund in the
14 Clean Water Act that essentially is their clean-up fund, and
15 those rules say thou shall not do clean-up except under these
16 circumstances and to reach these goals. So, by using those
17 definitions, we don't do superfluous work or work that really
18 isn't associated with the clean-up. There are rules established
19 and we'll try to stick to those as close as we can.

20 MS. ULMER: Do you think that those rules in that
21 agreements that you've preliminary reached with your federal
22 counterpart would mean that all of the money that has been spent
23 to date out of the 470 fund for clean-up would be reimbursed out
24 of the trust. And, if so, what is that amount?
25

1 MR. PIPER: The sum of the money that was spent early on
2 came out of the general fund. Currently, the cash flow, and I
3 think it was since July of last year, virtually all of the money
4 has come out of the 470 fund and that was expected to be
5 reimbursed from there. Again, really the control on making sure
6 you get paid back is that if you as federal on-scene coordinator
7 or you as state on-scene coordinator make sure that you
8 faithfully abide by the rules laid out of best professional
9 judgement for oil spill clean-up and that you don't get off into
10 extraneous expenditures that you're likely to be reimbursed by
11 the third party. These have gone against -- I mean, this has
12 been tested in court cases and so on where you've been able to
13 recover from this type of activity and you haven't been able to
14 recover for that. So, we by definition restrict our activities
15 now to only those things that show that we have a good chance of
16 being reimbursed.

17 MS. ULMER: Do you know what that total is?

18 MR. PIPER: Out of the 470 fund itself? I can't tell you
19 exactly, but I would say that it would probably be in the
20 vicinity of \$60 million since the beginning of the spill. And, a
21 considerable portion of that has been reimbursed already. But,
22 outstanding would probably be half of that.

23 300

24 MS. ULMER: The reason I'm asking these questions is
25 because of the \$72 million (indiscernible) associated with costs

1 for not only clean-up but also litigation and a variety of other
2 costs. And, it's beginning to sound to me like we may have
3 already spent \$72 million and so additional costs from this
4 point on that the State may need either for purposes of legal
5 fees or clean-up, there would be nothing left to charge it
6 against under the \$72 million, I guess is what I'm trying to get
7 at. And, so, the State would more or less have to look to the
8 general fund, at least to the extent those costs are not within
9 the rules of the 470 fund like legal fees. You're shaking your
10 head no, so please give me some information. Do you think all
11 of the additional costs that couldn't be charged against the \$72
12 million could be charged against the 470 fund?

13 MR. BRODERSEN: It's charged against the trust. The MOA is
14 pretty clear on that. The \$72 million cap is just for expenses
15 up to the date of the settlement, and then any expenditures
16 after that both for clean-up and restoration come out of the
17 trust. The terms are fairly clear on what has to be done to
18 make it an allowable expense for reimbursement for clean-up and
19 that will be funded from that source.

20 MS. ULMER: And, even though it requires basically all the
21 trustees to agree, you're reasonably comfortable based on your
22 conversations with the (indiscernible) so far that there will be
23 a meeting of mind, so to speak, about how you will reach an
24 agreement on what should be funded and what shouldn't be?
25

1 MR. PIPER: I may be reasonably certain, but I don't leave
2 the possibility open that they won't. As a matter of fact, as
3 soon as settlement was agreed upon among the initial group of
4 parties, I immediately went in and starting sitting down with
5 the Coast Guard to make sure that we knew exactly what each
6 other was doing. And, furthermore, that the Coast Guard knew
7 what other federal agencies were doing. And, once we made sure
8 that there were those controls in place on state and federal
9 government spending and we each knew what each other was doing
10 that there was also a provision whereby we knew exactly was
11 charging for their overhead, for their expenses, that they don't
12 take any action without first clearing it through the state on-
13 scene coordinator or the federal on-scene coordinator, and in
14 fact, this week there will be a series of meetings in Anchorage
15 among the parties for reaching those kinds of agreements. The
16 principal one, I think, that the legislature and the public
17 would want to know about is that the chief financial counsel for
18 the Coast Guard for the Pacific Region is going to be in
19 Anchorage and should be there tomorrow to meet with the
20 accounting group from Exxon and from the state government so
21 that we can make sure that there aren't hidden overhead costs,
22 that there aren't costs that have been represented to be coming
23 from somewhere else and charged against the trust. Following
24 that, the next day the Admiral is sitting down with the federal
25 agencies and myself to make sure that other federal agencies

1 know that any response plans that they have for this season or
2 anything like that has to go through the Admiral and be approved
3 by him. And, by implication, it also has to be approved by the
4 State. We have to agree to each other's expenses.

5 MS. ULMER: Thank you. One final question. One of the
6 questions that was raised concerning the Consent Decree was why
7 are the natural resource damages of the state not separated from
8 the natural resource damages of the federal government. As
9 people who are in the field and know the resources, is that a
10 real naive question? I mean, is it possible to draw the line
11 between what is federal and what is state in terms of damages or
12 not? How better could we have asked that question?

13 MR. DEAN: Representative Ulmer, I'm not sure that had
14 anything to do with the way we prosecuted the damage assessment
15 program. When we first set it up, we set it up as a scientific
16 program investigating what was injured out there. We did not
17 set it up as to the respect of who claimed ownership over what.
18 We had some headbashing with the federal and state agencies when
19 we initially met way back in 1989. We put that aside and for
20 the benefit of investigations, we kind of went along the lines
21 of so called authority management, statutory authority of what
22 the federal agencies claimed, management of fisheries service,
23 Forest Service; U. S. Fish and Wildlife Service had a hospice
24 over migratory birds, sea otters; and then the Department of
25 Fish and Game, State of Alaska, and their various agencies over

1 the remaining specific resources. It was never really discussed
2 as to ownership of who owned what in setting up the program to
3 start with.

4 MS. ULMER: So, the data basically is categorized by area,
5 by species, by management regime? I'm just curious. If I
6 wanted to go look at the information the DEC in particular may
7 have that tried catalog the damages, how would it be organized?

8 MR. DEAN: In the pink book, I believe, I'm not sure if
9 someone has a copy there, it's the volume three, Natural
10 Resource Damage Assessment Plan, I made sure that it has
11 recently been printed and all the legislature members have
12 received copies or had been sent by the Forest Service who
13 printed it, in there is a designation of lead agency. This was
14 agreed upon by the management team of representatives. That
15 essentially designates who is leading on the project as well as
16 cooperating agencies. There are some projects such as birds
17 where the expertise is centered in the state of Alaska, and that
18 project then is under the U. S. Fish and Wildlife Service under
19 contract with the State. In that book there then and in the
20 summary in the back or the beginning of it is the designation of
21 lead agency, and that essentially is where the data or who is in
22 charge of the study.

23 MR. GRUENBERG: I have Representative Brown and then I have
24 Representative Kubina. Anybody else?
25

1 MS. BROWN: Thank you, Mr. Chairman. Mr. Piper, who within
2 state government has the accounting group that you referenced
3 that's going to be meeting to reconcile the numbers? What's the
4 name of the individual that's in charge of the accounting for
5 the State?

6 MR. PIPER: Mark Thorson, who is the Director of
7 Administrative Service at DEC.

8 MS. BROWN: As you carried out your work since the spill,
9 what rules have been in place, what directions have been given
10 to the agencies regarding whether the information is
11 confidential or public?

12 MR. PIPER: In terms of clean-up alone?

13 MS. BROWN: In terms of everything.

14 MR. PIPER: In terms of everything. In terms of clean-up,
15 anything I do is open to scrutiny by anyone and I welcome it,
16 as a matter of fact, I encourage it. There has been some
17 scientific work that has been done by DEC and some by Fish and
18 Game that isn't directly under the auspices of damage
19 assessment. And, it's not a lot of science, but it has been
20 helpful to us. The principal stuff the DEC has been shoreline
21 surveys to see how shorelines react, what the physical effects
22 of the oil has been on the shorelines, whether clean-up has
23 altered those shorelines, and that kind of stuff. That's one of
24 the studies we're collecting data on right now in addition to
25 doing assessment where the oil is. Fish and Game has also done

1 some work associated so-called the P450 study, it was looking at
2 the ingestion or the activity of a certain enzyme in fish livers
3 that would show that the fish were metabolizing the
4 hydrocarbons, and that's been very helpful us as well. That
5 work has also included some looks at the effects or possible
6 effects of oiled areas or oil on fry, salmon fry, pink salmon
7 fry. And, that's been -- it's not a big body of work, but
8 again, it's been helpful. The rest of the stuff has been the
9 natural resource damage assessment.

10 MS. BROWN: And, how have these two first studies you
11 mentioned, the shoreline surveys and the P450 studies, are those
12 public or confidential?

13 MR. PIPER: Public. And, the data that we have on those --
14 actually, I think Fish and Game's are probably more readable
15 sense and there are also some photos which I think are better
16 than reading a lot of charts and tables. The shoreline survey
17 information is fairly technical in nature and unless you were a
18 coastal geologist you might not be too interested in it.

19 MS. BROWN: And, the balance of the work, the natural
20 resource damage assessment, how has it been treated with respect
21 to public release?

22 MR. DEAN: I think I could probably address any questions
23 in reference to the natural resource damage assessments, more so
24 than Ernie. He's basically charged with the clean-up effort and
25 I'd hate to get him cross-wise here, likewise, I wouldn't want

1 to address his involvement in the clean-up. We've been directed
2 by the Department of Law that anything as a result of the
3 natural resource damage assessment science studies is not public
4 information. We were reminded again, even though the terms of
5 the settlement are being pursued, that information generated or
6 that comes out of these studies is still considered
7 attorney/client privileged information, litigation sensitive,
8 and not for public release. Early on in the spill, a lot of
9 studies went out in the grounds in response to it. That
10 information generated from those studies was considered to be in
11 public realm, subsistence food testing, samples that were
12 collected and analyzed for hydrocarbons under various natural
13 resource damage assessment groups were also taken some samples
14 to provide to various organizations for testing. Some of our
15 fisheries studies, Mr. Piper mentioned that the MFO studies that
16 they had conducted under response is in the public information.
17 We have some studies beyond the fisheries where the information
18 is the same techniques, but that information is confidential
19 because it's related to exposure in those organisms and not
20 available in the public realm. So, you have kind of one set of
21 techniques and some information as a result of response is
22 public, and then, a damage assessment cite, that information is
23 not public because of its connection with the science studies
24 that will probably be used for litigation is the settlement
25 fails.

1 MS. BROWN: And, if I could continue, Mr. Chairman?

2 MR. GRUENBERG: Certainly.

3 MS. BROWN: How does the information that you have that's
4 not public differ from the information that is being released by
5 NOA that I heard described on the radio as being a comprehensive
6 overview of what we know about the spill effects on biological
7 resources? Does that overview include your data also?

8 MR. DEAN: Maybe I can kind of summarize, I believe, what
9 you're referring to. Yesterday afternoon, the Department of
10 Interior filed a report called "The Summary of the Effects of
11 the Exxon Valdez Oil Spill on Natural Resource Damages", with
12 preliminary data of March, 1991, with, I believe, Judge Hall
13 under the Federal Court. This was an approximately 15 page
14 document summarizing injuries to those resources under the
15 Natural Resource Damage Assessment Program. Originally, it was
16 prepared by a representative from the Department of Interior at
17 the request of people in Washington, D. C. for presentation to
18 congressional committees, I believe, Congressman Miller's
19 committee back then. It was supposed to meet on April 8th.
20 That meeting has since been cancelled. Originally, it was
21 worked on as a cooperative effort, both state and federal
22 investigators reviewing it, Department of Law reviewing input
23 into that to take care of their concerns as far as the State's
24 litigation purposes. For whatever reason then, the federal
25 side, specifically, I believe, Department of Interior then went

1 ahead and released this report yesterday. I have not seen the
2 final version of what was released. I have a version I've
3 looked at, I believe dated April 2nd. And, the final version
4 that they did release was dated April 5th. That went forth then
5 into the legal process of being filed with the courts and
6 theoretically should come out into public information shortly.
7 I'm not familiar how the judicial process works with information
8 that is filed. But, that report was worked on by program
9 managers I have for wildlife habitat and fisheries. It was
10 reviewed and had input by the Department of Law staff people as
11 well as the senior scientist, Bob Spees, from California who is
12 under contract with both the state and federal governments as
13 the senior scientist to coordinate the science. That probably
14 would be available later this week then embodied here for their
15 review. That's kind of the synopsis of the report that was
16 filed yesterday.

17 MS. BROWN: Well, my question is, did you do other studies
18 that are being held confidential that are not included in this
19 report on other species, on other effects? My impression is
20 that the state agencies were in charge of some of the studies
21 and the federal agencies were in charge of other studies. I'm
22 trying to figure out, is this a combined report of all studies
23 or is it just the federal studies that are included in this
24 overview?
25

1 MR. DEAN: I believe it's a combined study report, a
2 summary of all the projects, those studies that did determine
3 injury and those studies that did not find injuries for various
4 reasons. It's kind of a combination presentation by presenting
5 most all of the projects that were put forth in the field.

6 MS. BROWN: Your familiar, I assume, Mr. Dean, with the
7 natural resource damage assessment process that's set out in the
8 Clean Water Act?

9 MR. DEAN: The general guidelines, I believe, are -- I'm
10 not familiar with the technical details. I'm not sure where
11 your question is leading.

12 MS. BROWN: Well, my question goes to -- well, I'm not that
13 familiar with them, but my understanding is that they establish
14 a process to assess damages and provide for restoration outside
15 of litigation. Do you agree that that is a correct statement?

16 MR. DEAN: I believe the process we've been under is injury
17 determination, quantification of that injury, then damage
18 assessment or putting a monetary value on the resources that
19 were injured, and then, under the guides of (indiscernible) and
20 Clean Water that, I believe, the process has been following,
21 then restoration would follow after monetary remuneration is
22 secured from the principal responsible parties. I've been
23 directly involved in making sure the science studies are
24 coordinated and out in the field the exact technical process
25 would be handled through the Department of Law and then the

1 legal counsel from the various other agencies. So, I guess
2 that's a process I'm aware of that we've been operating under.

3 MS. BROWN: But, there is a process in place to rectify
4 this situation without getting into litigation necessarily? In
5 other words, we have run this entire operation apparently by
6 holding everything confidential on the assumption that a) all of
7 this work was being done for litigation, and I'm just wondering
8 if that's the case? Did everyone assume from the beginning that
9 there would be litigation, or was there not a process in place
10 to resolve these matters without getting into litigation?

11 MR. BRODERSEN: Under CERCLA you have more or less a two
12 pronged approach that you can take where you can hopefully
13 resolve the whole issue without ever going to court. There also
14 under CERCLA is a process for going to court where that's not
15 possible. What's occurred to date in small spills, very small
16 spills, we have sometimes reached agreement where the spiller
17 and the governments have got together and done the process right
18 from the start without anticipating litigation. Under any spill
19 of any size, this has never worked. We've always had to end up
20 in court to get things resolved or settlements as we're seeing
21 here, which is essentially spill litigation. Does that help? I
22 guess I should mention that CERCLA is an optional process and
23 through this whole process right from the start, the trustees
24 have stated they did not feel bound by it where they didn't
25 think it was appropriate.

1 MS. BROWN: Mr. Piper said in his comments that the public
2 really wants to know what's being done and why and that the
3 State is going to do a better job of explaining the
4 justification for what's being done out there. How are we going
5 to do that in the absence of being able to explain what the
6 resource assessment studies have shown? And, when do you
7 anticipate that this information will be made public?

8 MR. PIPER: The second part of your question, I can't speak
9 to because I don't know. But, the first part about clean-up is
10 that we're not -- it really deals primarily with the physical
11 effects, what you can see is what you try to pick up. The
12 information we have that leads us to believe that we ought to do
13 more clean-up, for example, in and around salmon streams,
14 there's enough information in the public realm now that helps us
15 to reach that conclusion. So, I don't have to reach deeply into
16 damage assessment in order to come up with decisions on clean-
17 up. And, that's as far as it goes for me, that would be where
18 people like Mike would take over.

19 MS. BROWN: What was the decision making process on
20 determining what was or wasn't confidential? Did you have any
21 instructions other than just a blanket "if it relates in any
22 way, it's confidential"? Were those the instructions the
23 agencies had?

24 MR. DEAN: There has been numerous memorandum distributed
25 throughout the process by the Department of Law on disclosure of

1 information, the process of discovery, verbal instructions
2 basically with an overall coverage of none of the information is
3 to released.

4 MS. BROWN: I see here a document by the state of Alaska,
5 "Exxon Valdez Oil Spill Estimated Allowed Costs". It's a
6 summary of expenditures and it's labeled "Attorney work product,
7 confidential". What is confidential about this? How is this in
8 any way confidential? Why should this be confidential? This
9 was all a matter of public record when we were going through the
10 appropriation process.

11 MR. DEAN: I think you would probably have to direct those
12 questions to the people who determine the confidentiality rules
13 as they apply to this process. I don't believe that's any one
14 of us. I think that's from the Department of Law. We were
15 operating under their directions. I guess I'm of the believe
16 that this science program that I'm involved in will stand alone
17 on its own merits. And, once the direction comes from the
18 Department of Law for their consideration on litigation, you
19 know, I'm ready to instruct my staff.....

20 (Tape changed)

21 Tape 10, Side B

22 000

23 MS. BROWN:have access to everything, every employee,
24 or what kind of controls did you put on the information to
25 prevent its release?

1 MR. DEAN: If you have principal investigators that are
2 employed by the State that are generating the information that
3 is supposed to be considered confidential, it's somewhat hard
4 for them to understand what they can and can't do. But, that
5 direction has pretty much been provided. You don't hand it out
6 at request either written or verbally, that any question be
7 directed through the Department of Law for obtaining reports or
8 information like that. I'm sure there has been instructions
9 down through the ranks since employees of the various agencies,
10 I believe, have received the message and, you know, responsible
11 workers that some of this information has been given out both on
12 the state and federal side. The federal people have instructed
13 their people similarly not to release information in certain
14 forms. There has not been a real concrete direction provided
15 other than the memorandums that have been generated and I've
16 passed out from our headquarters level down to the field people
17 to ensure that if they have any questions, they call up and
18 we've provided the proper answers this thing and get help. I
19 mean, these people are out in the field and have questions and
20 don't know how to respond, I think it's part of my job to see
21 that if I can't answer them, then these people who are directing
22 the concerns for this attorney/client information can talk to
23 them and help them.

24 MS. BROWN: So, workers within the Department of Fish and
25 Game who are working on these projects could talk to each other

1 but not to anyone outside the Department of Fish and Game; would
2 that be accurate?

3 MR. DEAN: No, it's not accurate. I believe they could
4 talk in generalities about the study, you know, the objectives,
5 what was published in the public information real, those oil
6 spill books, the objectives. They were restricted about the
7 detail and the methodology or the sample designs, specific
8 detailed information having to do with the projects themselves.

9 MS. BROWN: But, was anyone considered to be on the same
10 client side as the State in the litigation? If not your
11 department line being the boundary, what was the boundary?

12 MR. DEAN: I don't believe there was a boundary
13 established. I mean, that information was pretty much open for
14 discussion. Anyone that inquired, the documents went out there
15 essentially for public review an comment.

16 MS. BROWN: Were there any sanctions, disciplinary
17 sanctions imposed or threatened to be imposed on people for
18 release of this information?

19 MR. DEAN: Not that I'm aware of.

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21 MR. GRUENBERG: I have in the following order
22 Representative Kubina, Representative Leman, Representative
23 Hudson, Representative Davidson. I'd also like the record to
24 reflect that Representative Navarre is (indiscernible). Anyone
25 else? Okay, Representative Kubina.

1 MR. KUBINA: What is the extent of Exxon's involvement at
2 this time in the clean-up maybe percentage-wise compared to what
3 the State's involvement is?

4 MR. PIPER: Rather than put a percentage on it, I think the
5 better way to say is they're all contractors. And, my attitude
6 is right now, and I think the Coast Guard pretty much agrees
7 with me, is the that the two governments sit down together and
8 figure out what needs to be done and we'll tell Exxon what needs
9 to do. They'll then give us a cost estimate and we'll decide
10 whether we think that's a cost effective remedy to employ.

11 MR. KUBINA: Is more consideration being given now that
12 this clean-up effort is on a smaller scale to using locals,
13 having local communities do that? Can they use the locals more
14 and get Exxon out of the process completely?

15 MR. PIPER: If we have a lot of proposals, say, for manual
16 clean-up, the breaking up of tar mats and the kinds of things I
17 talked about, if we have a lot of that work and Exxon's proposal
18 comes in through it's su' -contractor, VECO, at a cost that's
19 significantly more than we could do it some other way, I have no
20 intention of having VECO do it or having Exxon do it simply out
21 of convenience. If we can do it more cheaply, we will. And,
22 there are some things that the local response groups have done
23 very effectively and tend to do much more cost efficiently than
24 large army-type operations.
25

1 MR. KUBINA: The reason I push this is just (indiscernible
2 - cough) to give them their money back, in essence. I mean, we
3 seem to set up and are paying this fund and we're just giving it
4 right back to them to do more work. It might be better spent on
5 the local efforts than Exxon's (indiscernible). Can I go back
6 to the studies a minute, please? You said this report came out
7 as a 15 page report. Obviously, it's not a very comprehensive
8 report.

9 MR. DEAN: No, it's a summary. It's just a cursory summary
10 of most all of the resource groupings, seals, otters, fish,
11 birds.

12 MR. KUBINA: What would you call the pink book that this 15
13 pages is the summary?

14 MR. DEAN: That's probably just a cursory summary of the
15 resource groups as its listed in there. Probably, the back
16 lists a categorization of the projects under marine mammals,
17 under birds. And, I believe, the headings are pretty similar,
18 and then there's just some follow-up information with general
19 numbers and findings in regards to each category.

20 MR. KUBINA: Have your scientists been analyzing the
21 information so that if there's anything in any of the studies
22 would indicate there's a public health hazard out there to any
23 persons that that information would be immediately made
24 available and has through the process?
25

1 MR. DEAN: I don't believe the studies contained in that
2 book or any of them are designed to address public health
3 concerns. There was a health task force with various
4 representatives formed as a result of the spill that did address
5 subsistence food stuff issues and some of the information from
6 the hydrocarbon testing results were utilized by that committee.
7 They published an extensive report on health concerns. But in
8 regards to the pink book there, there are no studies directly
9 looking at public health concerns in those studies.

10 MR. KUBINA: Well, not directly, but if your studies
11 indicate that some fish species or shell fish or something that
12 may be edible by human beings has some carcinogenic, some oil
13 residue in it that may pose a health hazard, is that information
14 being made public?

15 MR. DEAN: I'm trying to think how to answer your question.
16 I don't believe any of the studies are out looking at
17 information in that respect. There is scientific biological
18 physiological information that is generated from these studies
19 that perhaps another scientist trained in aspects of human
20 health could use that information if it was available to them to
21 look at the results which came from our studies. But, there is
22 no exchange in that respect so I'm not sure how to address your
23 question.

24 MR. KUBINA: Well, my point is this, that is the study
25 purely through litigation or is there anything out there to help

1 protect the people? You said there was some studies about
2 subsistence foods, for example. I know there have been some
3 studies on bottom fish. You know, that were showing up that
4 there's any danger of any of those foods, are we asking
5 ourselves that question at all?

6 MR. DEAN: The subsistence food stuff testing project is
7 completely separate and public. The information of those tests
8 has been published in a report from the human health task force.
9 I forget the exact title. But, they have a quite extensive
10 report of their sampling that was collected out there. That was
11 done under the response mode and that information is public.
12 And, we have had several public officials involved with it and
13 various agencies to review that information. I mean, that's out
14 there and that's one of the reasons it was done to try and
15 assure some of the questions the public has on that.

16 MR. KUBINA: All right. Well, how about shrimp, halibut,
17 crab, salmon. I believe all of those in one shape or form have
18 been studied. Is there any analysis of those studies to
19 determine if any of those foods could be hazardous to one's
20 health if eaten?

21 MR. DEAN: Not from the natural resource damage assessment
22 perspective. That was not the objectives that these studies
23 were designed. I believe the health task force study has taken
24 samples of those species and conducted tests from that
25 perspectives.