

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILE 8672

1939 SCOMM 76: HOUSE SPEC. COMM. EXXON VALDEZ OIL SPILL. 1991-92

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1 MR. PIPER: One thing to keep in mind is that there's a lot
2 of existing literature on the toxic effects of hydrocarbons on
3 ingesting them. I mean, there's a lot of stuff in the
4 literature that's been helpful. NOA has pulled together
5 information that they've given us because part of the job of oil
6 spill clean-up is to protect public health. That's one of the
7 things that's listed that you're supposed to do during the
8 clean-up. And, while you can see some effects of, like I
9 mentioned, where the fish were metabolizing some hydrocarbons at
10 some point, that may show up as an activity of that particular
11 enzyme but the flesh itself is edible. And, the other thing
12 that NOA has made sure that we know is that they haven't seen
13 what they call biomagnification of the food chain so that if
14 you catch a halibut, it's unlikely that what you're eating is a
15 carcinogenic flatfish.

16 MR. KUBINA: So, you're saying NOA is doing studies to
17 determine if there is any health hazards out there, and if they
18 found any, the public would have been notified?

19 MR. PIPER: They're not doing any specific studies. It has
20 primarily been this sort of literature search that generally
21 goes on in these things. There is a lot of existing information
22 about that. But, by definition, they're supposed to let us know
23 if there's any public health hazard. And, by definition, if
24 there is, we're supposed to do some clean-up to protect public
25 health.

1 MR. KUBINA: By both of your answers, you've indicated that
2 studies were certainly more directed towards litigation research
3 rather than health and safety of the food chain.

4 MR. BRODERSEN: More than being directed at litigation, it
5 was directed at restoration of the ecosystem from the NRDA
6 studies. There was a separate set of studies, as Mr. Dean was
7 stating, that looked at health hazards. The NRDA studies are
8 directed at making the ecosystem whole again. Litigation just
9 happens to be method of getting the money to do that so that
10 while doing the studies, we had to keep in mind that they were
11 litigation driven. But, in terms of their actual end point and
12 direction they take and all that kind of thing, litigation was
13 secondary. And, as soon as we get this settlement behind us,
14 which we hope we will, then those small aspects of the studies
15 be dropped out and the studies will become entirely restoration
16 which is what we, the scientists, wanted to do in the first
17 place and have been doing primarily.

18 MR. KUBINA: Is there any analysis going in the studies
19 right now that can determine this particular study may have some
20 litigation effect and we should keep it secret, and these over
21 here, in your opinion, would not have any bearing on litigation
22 and should be made public? So, are the ones sitting aside now
23 secret, is there any analysis to determine which ones we could
24 release?
25

1 MR. DEAN: I guess how I want to address that is, I believe
2 most of these studies were designed for assessing the damage for
3 scientific reasons. That information will be used for
4 litigation. We've been requested to re-evaluate the studies in
5 oil year three. What studies may be dropped because they're
6 strictly litigation studies or strictly supportive of
7 litigation? I think the answer to that question is, most of
8 these studies aren't going to be altered that much when they
9 show up in the pink book. They are studies based upon
10 scientific methodology. That information then will be used for
11 litigation purposes. There wasn't a study strictly designed for
12 litigation in mind. To answer your question in that regard, the
13 release of that information then is still being covered by the
14 Department of Law that it's still restricted and we can't
15 release it. And, my response to that is, it's going to stand on
16 scientific merit, it's just because of legal concerns which I
17 don't understand that that information is being restricted.

18 MR. KUBINA: Well, I guess maybe my question would be
19 better directed towards the Department of Law on that. But,
20 have they asked you to make any recommendations on what you
21 thought could be released or have they, as far as you know,
22 looked at it all, some of the results, to determine if it can be
23 released? What I'm trying to say is you've got such a big pot
24 in there that is being held secret there's probably a good chunk
25

1 of it that you could be able to let go now and let the science
2 community have it without affecting any lawsuits.

3 MR. DEAN: Yes. That would have to be determined by the
4 Department of Law.

5 MR. KUBINA: And, they haven't asked anything like that?

6 MR. DEAN: No. Although we have prepared a schedule of
7 reports of when the final reports of these individual projects
8 could be ready for public release. And, I believe that the
9 federal participants are moving in that direction to release
10 information in the public realm, both the summary report as well
11 as large amounts of raw data.

12 MR. KUBINA: My last point is, what would your reaction be
13 if this Committee subpoenaed all the scientific studies or some
14 portion thereof?

15 MR. DEAN: I guess I really have no opinion. I guess if
16 that's the case, the information that's there, as far as I'm
17 concerned, is generated for a purpose, a scientific purpose or
18 whatever purpose, and if the Committee wants to look at it, I
19 have no objections to that. I've just been directed for
20 litigation concerns not to release it. My own person belief is
21 this is scientific data that will stand on its own merits one
22 way or the other.

23 MR. KUBINA: I think you side-stepped my question. What
24 would you do if this Committee issued a subpoena do you telling
25 you to turn over all the scientific data to this Committee?

1 MR. DEAN: I guess I would have to formulate some further
2 questions of the Committee as to what information they were
3 looking at and what form. It wouldn't do the Committee any good
4 if I turned over a large set of raw data of hydrocarbon
5 technical analysis without any caveats. This is some of the
6 concerns I have on the federal side about releasing this data
7 without any qualifications on it. If you have just large
8 numbers and large technical chemical implications on it without
9 explanations or someone to look at it, then you just have some
10 useless data that's in the public realm. I'd probably take an
11 inventory of exactly what you're looking for, what is available
12 in report forms and summary to provide the Committee and make my
13 staff available to discuss any of them they would like.

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15 MR. GRUENBERG: I have Representative Leman, Representative
16 Hudson, then Representative Davidson in that order.

17 MR. LEMAN: Thank you, Mr. Chairman. Ernie, in one of your
18 earlier statements, you said that the 1991 work plan for clean-
19 up is basically in place with or without the settlement. And, I
20 just heard Mark Brodersen say a similar thing that the
21 scientific studies have been driven more on the basis of how do
22 we restore ecosystem rather than who pays for it. But, my
23 question is, from a practical point, what is the effect of the
24 settlement in terms of the extent and the timing of future
25 activities? Are we still going to have them anyway? Are they

1 driven by certain statutory responsibilities, certain
2 regulations? And, the same thing with the other substance.
3 What I'm trying to determine, does this enhance our ability to
4 move this restoration up? Do we gain five years in the process
5 or some other period of time? Or, are we merely talking about
6 restoring funds into these funds that we're working out of right
7 now? There may be an indirect benefit because if those funds
8 don't have sufficient dollars to work from, then I guess that
9 would be a practical application of that. What, in your
10 opinion, is the practical effect of the settlement?

11 MR. PIPER: In terms of the the clean-up, the practical
12 effect is it makes my life a lot easier. It gives us a much
13 more direct command structure to deal with Exxon. They're our
14 contractor now. I think that we need to remember that the
15 federal government under federal law really has the primary
16 response and the overarching control of all of this. And, while
17 Exxon was paying for it out of its own funds, I think there was
18 a -- the Coast Guard felt that it was important to include Exxon
19 in a more expansive way in the decision making process and
20 that's not the case anymore. They're a contractor and it really
21 cuts down the job billing time necessary to make good decisions
22 and get them done quickly. I think it will make the clean-up go
23 a lot more efficiently quite frankly. That's a very limited
24 part of the settlement. I'm not passing judgement on the whole
25

1 thing, that's for the Committee to do. But, in terms strictly
2 of clean-up, it makes my life easier.

3 MR. LEMAN: Mark, do you have any comments in terms of
4 restoration?

5 MR. BRODERSEN: In terms of restoration, the benefits are
6 much greater even than they are for response or for clean-up.
7 We can get on with restoration. There has been a major
8 discussion amongst federal and state governments as to whether
9 we could even start restoration prior to settlement
10 (indiscernible) litigation, or an out of court settlement. We
11 made some attempts this year to kind of start that prior to
12 settlement discussion, but they were very limited mainly because
13 you're concerned about being reimbursed. If you can get a
14 settlement in place and you don't have to worry anymore about
15 being reimbursed, you know how much money you have, you can go
16 ahead and start your restoration, you can get your restoration
17 plan in place, and you can do it. If you're trying to get
18 through court, through appeals and everything, you could easily
19 wait 10 to 15 years before you can actually get on with the
20 process. I would hate to think that we would be waiting that
21 period of time before we make Prince William Sound an the Gulf
22 of Alaska (indiscernible - background noise) is what it comes
23 down to in a nutshell.

24 MR. LEMAN: I agree with that. That's one of my concerns
25 in this whole thing is that we're not waiting 10 or 15 years

1 because I don't think we have that time to wait, I don't think
2 we should, and I would like to move ahead. I think the question
3 is, is the settlement sufficient in terms of it has some
4 negative aspects to it as well as the positive. And, that's
5 just a value judgement that I think each of us is going to have
6 to weigh. Mark, you earlier made a comment about the dollars
7 available for restoration, the cash flow stream that's
8 available, and you said something to the effect that it's a lot
9 of money, it's probably more than we can spend efficiently just
10 strictly in restoration so we're looking at this aspect of
11 equivalent resources. How strict do you anticipate the trustees
12 will be in defining what are equivalent resources? In your
13 discussions, how strict do you think the trustees will be in
14 application of this guideline?

15 MR. GRUENBERG: I would appreciate it if all members of the
16 panel would answer that question.

17 MR. BRODERSEN: I think that folks really don't have a
18 completely clear picture of how strict they're going to be.
19 That's part of development of the final restoration plan. One
20 of the main aspects of that that I'm hearing from the trustees
21 and seeing in the agreement is that they want a large amount of
22 public participation in here to try and figure out what
23 everybody does want. That one of the advantages of getting a
24 settlement as opposed to having to go through litigation is that
25 we're not as strictly bound by the regulations as to how we

1 interpret equivalent resources, direct restoration, such things
2 that within reason we can pretty well do what we want to do. I
3 think that means that the people of the state of Alaska can do
4 what they want to do. That's why we're trying to get a much
5 larger public participation come out and into restoration. The
6 restoration people have been chomping at the bit here for quite
7 awhile to get on with restoration, make it a public process.
8 One of the advantages that we in restoration see of the
9 settlement is that hopefully the data will be released pretty
10 soon and that we can go out and tell people this is what has
11 been damaged and this is what has not been damaged, because
12 there's also quite a bit of that, and then figure out how do we
13 all want to fix it, try and tell people their options and get on
14 with it. That's my simplistic view of that. I hope that helps.

15 MR. PIPER: Mr. Chairman, as far as the technical aspects
16 of how the trustees would or would not spend restoration money,
17 I'm not the most qualified person to best discuss that. But,
18 just in terms of management structure, as I said before, if a
19 lot of this is going to come down to leadership and a lot of
20 that depends upon how close elected accountable people are,
21 officials, whether it's legislature, the President, or the
22 Governor, how close they are to directing activities of the
23 trustees, it becomes merely another off budget source of funding
24 for government agencies, we're going to have an institutional
25 feeding frenzy and we're not going to get anything meaningful

1 out of it. But, if there is good leadership from elected
2 officials on those trustees we have and on the federal side,
3 then I think that it will work very well.

4 MR. DEAN: I think Mr. Piper hit on and a more important
5 point to me is the changing role of the state trustees. We have
6 the Department of Law currently as lead trustee, we have the
7 Department of Fish and Game, Department of DEC. Right now the
8 litigation concerns are foremost in this process. And, I guess
9 some of the questions I have is involving the other state
10 agencies and perhaps what the future organizational structure
11 will look like for the trustees. I'm not sure there's going to
12 be an evolving change with the Department of Law if the
13 settlement is reach in their overall trusteeship or their
14 function in the process diminishes. Their trusteeship will then
15 be passed on to another organization or entity of the State.
16 That concerns me on how we're going to organize this process in
17 the future. One of the things I guess I am concerned with is I
18 think right now involving the public and in this process of
19 restoration is really important. A lot of the way we've done
20 business in the past in state government perhaps is not the most
21 cost efficient or best way to do things. I think we have an
22 opportunity here of being quite creative especially in the realm
23 of acquisition or acquiring the (indiscernible) of injured
24 resources. There's only so much you can do for certain
25 resources as far as direct restoration. You can't go out and

1 build a crab hatchery or Prince William Sound does have a lot of
2 salmon, you know, there are (indiscernible) right now. Where
3 are those alternatives? Some of the things I think you could
4 have limited funds on a yearly basis, then some of the private
5 groups could be used in this realm as contractors or perhaps
6 competing for these limited funds and have that process set up
7 for review by the trustees and those restoration work group as
8 the best way for it. Some of the agencies, I think, would have
9 to take a critical look at their roles of how they're involved
10 in this restoration process and if that is the best way for
11 those resources that were injured, not only Prince William
12 Sound, but the lower Cook Inlet and the Peninsula and Kodiak
13 area. I'm not sure that the way we've done business and the way
14 we're doing business now would be perhaps the most cost
15 efficient way to do it in the future. Establishment of a trust
16 fund where, perhaps, small businesses could take loans out
17 against that and utilize it for pledging of land rights or
18 right-of-ways or acquisition timber rights against that in order
19 to develop their own economic base may be a way to approach it.
20 There are various opportunities both in the private entity and
21 the public entity that I think will be competing for these
22 limited funds for restoration. And, I think it should be open
23 to all ideas out there.

24 MR. LEMAN: I think that's a pretty interesting concept
25 that you've just talked about. In your discussions with these

1 other agencies, either casual or formal, what has their reaction
2 been to such thinking? Or, have you shared that type of idea
3 with them?

4 MR. DEAN: It has just been real simplistic. As I said,
5 I've been mainly involved in internal directing of these studies
6 for the State logistic-wise trying to get them on the ground,
7 reports done, things like this. And, my program manager,
8 specifically the group that Mr. Brodersen is associated with,
9 the restoration planning workgroup, is the group that's really
10 starting to kick these ideas around now. And, I've just had
11 some real brief discussions of ideas with them.

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13 MR. GRUENBERG: I have Representative Hudson,
14 Representative Davidson, and then I'll ask questions myself.

15 MR. HUDSON: Pursuing the summary that has just been
16 released and comparing that to materials held, scientific data
17 that was held, we haven't seen the summary. Is it terribly
18 revealing or is it just a general overview of damages?

19 MR. DEAN: I believe it contains just an overview of the
20 damages. The data or the specifics of methodology or the
21 details of it is not contained in the report. It's just a
22 summary briefing of the species from the last draft that I've
23 seen. I have not seen what was actually turned in that report.

24 MR. HUDSON: And, the materials held, if we were to obtain
25 an executive briefing as legislators here which we have done

1 already at least in a cursory manner from another source there,
2 would that be very revealing?

3 MR. BRODERSEN: I was at sessions, I think, that were held
4 there. It's essentially the same information that you've
5 already received about six weeks ago. There hasn't been that
6 much more information obtained from the studies other than what
7 you already have. One more point I should on these studies is
8 that probably the best form the information could come to you in
9 to be useful to you is stuff that you've already had in terms of
10 those hearings. Final reports are not available, the PIs are
11 now out in the field. In terms of dumping raw data on you that
12 I don't that would be too terribly helpful, maybe it would. I
13 would be reluctant to bring a truckload of information up here
14 and just dump it on you and say go to it. I would much prefer a
15 summary basis and say this is what we found, this is not what we
16 found.

17 MR. HUDSON: It's been really interesting listening to your
18 thinking of where we go next with this, particularly if we have
19 the settlement. And, I would like to just a little observation
20 to see if I'm thinking right here. But, it looks to me like at
21 this point in time at any rate, we've been reacting to the
22 spill, responding to it, cleaning it up, trying to minimize the
23 damage to the extent possible, and then, predominantly gathering
24 technical and substantiative information to protect our long-
25 term interest to make certain that were made whole by the

1 perpetrator of the spill. And, so, throughout your whole
2 process of cleaning up and et cetera, there have been a great
3 deal of public input into that process, it seems to me, both in
4 actually conducting clean-up as well as the hearings you've had
5 as to what you're doing and what value it's having and where the
6 problems remaining are. And, all of this has been done, for the
7 most part, from general fund monies and from the 470 monies, and
8 from direct recoveries from the Exxon Corporation. Now, we're
9 looking at an offering essentially to take us out of the
10 litigation and process and put us into a really scientific
11 practical mode as opposed to contentionary modes. I don't even
12 know if that's the right word. And, I'm wondering, we looked at
13 this clean-up restoration equivalency of injured resources, and
14 do you think that the one big outstanding concern out there, I
15 think, from an awful lot of the public, at any rate, is how do I
16 get back my economic losses. That is, the loss in business, the
17 loss in fish values, fish prices, and things of this nature. Do
18 you think that in the purviews of using this \$900 million
19 through this trustee relationship that there can be some
20 consideration for developing mechanisms in equivalent values and
21 things of this nature that would enhance over time the
22 restoration of some of the economic losses of, say, Prince
23 William Sound communities, Native corporations, and et cetera?
24 Have you thought about that?
25

1 MR. BRODERSEN: It's a difficult question when you start
2 talking about enhancement because the regulations are all set up
3 to return you to baseline. While you're returning to baseline -
4 - let me back up here. We've always stated that we followed the
5 regulations when it suits our needs, including the trustees.
6 So, we're not necessarily locked into that directly. Still, you
7 try and follow those guidelines to the extent possible. So,
8 you're looking at getting back to baseline. As you do get back
9 to baseline, you are necessarily doing work in the effected
10 areas which any time it seems work is done in any area, you
11 necessarily enhance the local area. Even if you're just
12 returning to the baseline, there's also the work that's done
13 peripherally to get you back to that point. So, we've been
14 trying to look at how do we get back to baseline, how do we use
15 the money most effectively, and at the same time, get as many
16 spin-offs as you're talking about as possible on that. And,
17 that's something that really needs to come out of the final
18 restoration plan with considerable public input. And, we're
19 just not there yet. We're trying to stretch our minds as much
20 as possible to figure out how to get there. And, I anticipate
21 being helped in that process when we can actually go out to the
22 public and start dealing with a much more informed basis.

23 MR. HUDSON: One of the things that we have to either
24 concur with the proposed settlement or don't, I really think
25 that's where we're at. And, yet, from a timing point of view,

1 one of the things that would help, at least in my mind, knowing
2 how to vote on this thing would be a lot of these things that
3 you don't quite know the answers to yourself. And, that is,
4 what's the relationship going to be between you folks and the
5 trustees? Now, I can take the legislature totally out of it. I
6 mean, as long as it's accomplishing something that is useful
7 like restoring the Sound and all of the affected areas and
8 improving that whole lot over there and leave that entirely up
9 to the mechanisms out there, but we don't know what that
10 mechanism is. And, I assume, at any rate, you folks have had
11 closer talking relationships with some people who are on the
12 inside of this settlement either from the legal departments or
13 from the federal agencies there. Do you feel somewhat
14 comfortable that there will be adequate involvement on your
15 part, as well as the public's part, in the spending and use of
16 these funds?

17 MR. PIPER: I would give the same answer to that question
18 as I did to an earlier question from Representative Ulmer. I'm
19 not confident until I see the system. That doesn't mean that
20 the settlement, therefore, is bad and should be scratched
21 because we don't have the system yet. I think the settlement
22 sets up a structure that we can create a good system, but we
23 have to stay on it and we shouldn't kid ourselves into thinking
24 it will just work itself out. We really need to do a lot of
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CORRECTION

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HAS BEEN REPHOTOGRAPHED
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24 it will just work itself out. We really need to do a lot of
25 homework and a lot of negotiation to make it work right.

MR. GRUENBERG: Representative Davidson.

MR. DAVIDSON: Does this settlement get us back to baseline expeditiously?

MR. PIPER: Perhaps the best way to get at this is that, speaking with a little bit of perspective having gone through this for two years in the Cooper Administration as well, I guess those of who were associated seeing the spill unfold and the response unfold and seeing the inner workings of that and having some contact with how the settlement was being put together, have a different set of expectations perhaps than the public. This is not to criticize the public expectations. But, I think that we found since the beginning of this spill that the institutions that were created to deal with large spills are not sufficient to rectify the situation. And, that goes all the way from the original system that was in place and failed for prevention, it goes to the inadequate response techniques or advances in the technology over 15 years and I'll extend that on through the legal system and the laws that are set up to do that. If we expect to be made whole by an oil spill clean-up, we're sorely mistaken. And, I think that if we expect to be made whole by a settlement alone, we're also going to be disappointed as well. What I think would be appropriate, Mr. Chairman, if I were in your shoes and I was looking at this, I would say are there a set of attainable goals that this

1 settlement presents us with and can we reach them. But, that
2 won't end the job of what we need to do to restore people's
3 livelihoods and their lives. You know from your community, it
4 has been emotionally wrenching and still is.

5 MR. DAVIDSON: Of course, there's political as well as
6 economic explanations for the difficulty of not being able to
7 meet the responsibility of the catastrophe. But, another
8 question is, we've heard the visionary figure of \$1.2 billion.
9 That's the most we've ever talked about in terms of this
10 immediate settlement. In the three of your experiences, you
11 have been very close to a lot of this information all along the
12 line, just to pick a figure like that out of the sky, is that in
13 your mind a good base number to start from in terms of dollars
14 to do the job that we face?

15 MR. PIPER: Again, I'm a generalist and generalist wind up
16 making a lot of decision and they don't always have a wealth of
17 technical advice behind them. I think all of us would like to
18 have gotten more money. All of us would have liked to have
19 gotten \$5 million or \$10 million, but there were a lot of things
20 that come into play when putting a settlement together. And,
21 not sitting in on the negotiations, I can only assume that
22 people who are a lot more skilled at negotiation than I picked
23 attainable goals and tried to work towards them.

24 MR. DAVIDSON: Ernie, I guess my point is that you start
25 from a figure that you project from the shaking down of all the

1 information of which you are all specialists. You just don't
2 start from a figure and work down. And, I'm not sure what that
3 is based on. Anyway, I'd like to get back to this issue of
4 information. It appears that once again we have a situation
5 where legal preparation requirements are permitting a just and
6 fair process to deal with the damaged individuals and resources.
7 We're so concerned now that some of this information is going to
8 get out that might help third-party litigants that it seems to
9 have disrupted the real scientific damage assessment process.
10 Is that a fair statement?

11 MR. DEAN: I think it has interfered with the normal way
12 that scientists are used to doing business, as far as the free
13 exchange of information. I do not know that it has surrendered
14 or hurt the process itself in the end because the information
15 has been sequestered for litigation purposes. But, certainly
16 the freer the exchange, the more critical reviewed it is. But,
17 the peer review or world ~~review~~ have had a chance to review the
18 data that was generated. ~~in a~~ a university public format
19 (indiscernible - background ~~information~~ reports or information
20 to be exchanged. I guess ~~that's~~ difference. Those
21 constraints are -- a lot of the scientists aren't used to those.

22 MR. DAVIDSON: As a scientists, Mr. Dean, does you
23 delineate the way you prepare your scientific data between legal
24 kinds of information and the kinds of restoration damage
25 assessment that we're trying to arrive at?

1 MR. DEAN: I believe the detailed format that these studies
2 are presented in are a very similar format and we have some
3 goals and objectives and methodology involved in laying out the
4 cost of the study as well as the restoration science studies
5 that are put forth those are peer reviewed. From a scientific
6 point of view, they are set up in a detail format and reviewed
7 to kind of strengthen or reason from the way their developed.

8 MR. DAVIDSON: Could you expand on what some of those
9 criteria difference are?

10 MR. DEAN: Early on back in '89, there was a set of
11 criteria developed for putting forth studies, the end result
12 would be the yellow book of first year studies. Those are
13 entirely different criteria set up than what the restoration
14 science studies were evaluated on. I'm sorry I don't have a
15 list of either one of those with me.

16 MR. DAVIDSON: How about the third year studies, Mr. Dean,
17 you said that you were instructed to review the third year
18 studies to determine which were directed towards litigation.
19 And, then, I think you indicated further that these studies were
20 either to be terminated or cut back on. What does that do to
21 our overall attempt here, this effort to get as much information
22 as we can to do the job and Mr. Piper has indicated we've got to
23 do to make sure that we get the job done?

24 MR. DEAN: Essentially, what's left is scientific
25 information you can use to move forward in the restoration

1 process. I believe that what you will find is after review of
2 these projects, very little of them are being driven.....

3 (Tape changed)

4 Tape 11, Side A

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6 MR. DAVIDSON: How do you feel this withholding of this
7 information is delaying or slowing down the restoration efforts?

8 MR. DEAN: At this point in time, a settlement with the
9 process going forward as is, I don't believe it is delaying down
10 the process involving and where we are going right now with
11 restoration. I think if the settlement is reached, it will
12 change direction at some point. I guess I'd like to clear
13 something up is I do not know from a legal standpoint what is so
14 important from a litigation standpoint the information that
15 could be detrimental to the State or couldn't be. I mean,
16 that's not my job. That's the Department of Law's. So,
17 following their direction of this information, that's what I'm
18 doing. So, I'm not saying that the scientific information is
19 going to damage or not. I mean, I can't address that. But, I
20 feel that being this information is the best science we could
21 put forth and how we did, you know, it's going to stand on its
22 own if it becomes public soon or in a year or so. If the
23 settlement fails and we still have to go into ten years of
24 litigation, and I don't know what that means, but from a program
25 manager, getting there as aspect to running an efficient program

1 involving these studies that a lot of the methodology or the
2 expenses are coming strictly from a litigation standpoint of
3 expert witnesses or reviewing the studies themselves. And, it's
4 my responsibility to take a look at them and say if we do reach
5 a settlement, can I build a better mousetrap here on these
6 things, where am I going with it and can I reduce the cost
7 without reducing the goal and objectives of these studies. And,
8 I think, you know, I've been involved in this in the last couple
9 of years and I personally feel responsible that I've put a good
10 program together. I'm not saying some things w
11 things didn't, or some things slipped through. hat's
12 the way the program works and the way the proces
13 But, I personally feel responsible that I've given my best shot
14 at least from the damage assessment side of things.

15 MR. DAVIDSON: Do you feel any frustration with the work
16 that you've done as to where we've come to at this point in
17 time?

18 MR. DEAN: A lot of it, yes.

19 MR. DAVIDSON: Finally, Mr. Chair, if I may?

20 MR. GRUENBERG: One more question.

21 MR. DAVIDSON: When we talk about restoration, what are
22 some of the specific projects in your opinion we should be
23 pursuing with priority?

24 MR. GRUENBERG: Representative Davidson, that I consider
25 will take a little time to answer. We will start with

1 Representative Davidson tomorrow. The answer to that question
2 we will start with tomorrow. So, please hold that question. We
3 will have for tomorrow Representative Davidson, myself,
4 Representative Brown in that order. If anyone else wants to get
5 in line? Okay. Now, I asked the members to stay around because
6 I have a question for you. Mr. Cole will still be out of town
7 tomorrow, we intend to have him back on Thursday. We want to
8 finish with these departments tomorrow, or at least continue
9 with the questioning with these departments tomorrow. And, my
10 question to the members is whether we wish to have the
11 commissioners here, or either of the commissioners.

12 MR. HUDSON: The one commissioners we may want to talk to
13 would be the three people that are going to be on the trust
14 board and how they think they may be able to answer some of our
15 concerns about how this thing is going to work, how they
16 envision it.

17 MR. GRUENBERG: The present trustees are these two
18 commissioners and Mr. Cole. Mr. Cole may or may not remain.
19 That's the reason for my question to you right now. (Discussion
20 pursued regarding this question.) All right. With that, I will
21 take that as a request to have the commissioners here as well as
22 you gentlemen. Would you please convey that to the
23 commissioners? And, staff you will expect the commissioners to
24 be here. We will attempt to maximize the use of their time so
25 they will not have to be here longer than necessary.

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Rep. Gruenberg adjourned the meeting at 10:00 a.m.

HOUSE SPECIAL COMMITTEE
EXXON VALDEZ OIL SPILL CLAIMS SETTLEMENT
April 10, 1991
12:55 P.M.

MEMBERS PRESENT:

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

MEMBERS ABSENT:

Rep. Ramona Barnes
Rep. Dave Donley

OTHER LEGISLATORS AND STAFF PRESENT:

Pat Williams, Committee Secretary
Andy Hemenway, Committee Attorney
Gregg Erickson, Committee Economist
Commissioner Heinz, Department of Natural Resources
Commissioner Rosier, Department of Fish and Game
Ernie Piper, Department of Environmental Conservation
Mark Dean, Department of Fish and Game
Mark Brodersen, Department of Environmental Conservation

Tape 12, Side A

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Chairman Gruenberg called the meeting to order at 12:55 p.m. in Room 17, House Transportation Committee Room in Juneau on Wednesday, April 1, 1991. He noted the presence of the Commissioner of Fish and Game, ^{Carl} Paul Rosier.

Mr. Rosier stated that he had no opening statement at this time, but was willing to proceed with any questions the Committee may have.

Chairman Gruenberg began asking questions of Commissioner Rosier as follows:

MR. GRUENBERG: What steps have the trustee designates taken so far? Have you met? What kinds of communications have you had between you, and so forth?

MR. ROSIER: At this point, there has been one meeting that I participated in. This involved all of the federal trustees as well as the state trustees. And, we began to discuss in general terms the scenario under which we might proceed if the agreement was signed by the Judge and approved by everyone concerned. Those discussions have been very preliminary at the present time. They didn't address the issue of what kind of a structure we might want to look at. That issue was turned over to the management group under the existing structure to kind of develop some options for us to take and the next trustee counsel meeting coming up here the end of April or early May. We've had, of course, the exchange of the paper documents associated with the

1 settlement and the Consent Agreement as well as the Memorandum
2 of Agreement. That type of information has been exchanged.

3 MR. GRUENBERG: Was your meeting public?

4 MR. ROSIER: No, that trustee counsel meeting was not a
5 public meeting.

6 MR. GRUENBERG: Commissioner, what generally are the plans
7 of the trustees? How is this going to be set up? What is the
8 structure going to be? How do you plan to proceed?

9 MR. ROSIER: Well, I think, at least my view and I
10 certainly can't speak for all of the other trustees, but it
11 would be my perception on how we would proceed, would be to
12 utilize the resources that are currently in place to develop the
13 organizational options. And, these organizational options
14 would, in fact, be debated amongst the trustee counsel with us
15 making the decision, ultimate decision, on how to go. I believe
16 under the Memorandum of Understanding, we have 90 days following
17 the final signing of the Consent Agreement to come up with that
18 kind of a structure. And, I can say that we're looking at quite
19 a broad array of possible options here all the way from a very
20 simple system in which we might have an executive director, a
21 very small administrative staff to support and put the
22 responsibility of the program into the agencies. I'm not saying
23 I'm endorsing any of these at the present time. But, there is a
24 large array of different structures that might be used including
25 the continuation of the structure that's currently in place.

1 But, we really need to take a look at it in terms of what's good
2 for the restoration program. And, I think this may be an area
3 where we begin to diverge a little bit between the state and the
4 federal people on this. I think that generally we're looking
5 that a system, one that involves a significant amount of public
6 involvement. We're looking at a system that would really not
7 put a lot of emphasis on the administration, the bureaucracy
8 supporting this and keeping it as simple as possible.

9 067

10 MR. GRUENBERG: What will you do to ensure that the federal
11 trustees also understand that their view of meaningful public
12 participation and adequate public notice is (indiscernible) or
13 equally admitted to the process?

14 MR. ROSIER: Again, Mr. Chairman, speaking for myself on
15 this, I just deal with the -- some system will have to be
16 developed within the trustee counsel to ensure us that people
17 within the State are being given the opportunity here to
18 participate in the process. Whether this is the development of
19 an interest mailing list that we routinely send the items out to
20 or whether it is some other system, I really can't say at the
21 present time. I know that it's important that we get that
22 material to as broad a cross section of the public as possible
23 on this. And, I've never been a supporter of the Federal
24 Register system for notice in the state. I just don't feel the
25 Federal Register is made available to a major cross-section of

1 the public that's going to be interested in what that counsel is
2 going to be doing. But, again, it's one of those questions I
3 can't answer you specifically on what we're going to do. I can
4 tell you this that I think that it's important that the public
5 not only be notified, that the information coming back is
6 carefully weighed and I really feel the public has as much right
7 to participate in the expenditure of those funds as any of the
8 government agencies.

9 097

10 MR. GRUENBERG: I see it's 1 o'clock and we don't won't to
11 keep you from your meeting. We will invite you back.

12 MR. ROSIER: Thank you, Mr. Chairman. I'm sorry that I
13 have to run off at the present time, but I will make myself
14 available to the Committee at any time you wish to call me.

15 MR. GRUENBERG: Thank you, Commissioner Rosier. We have
16 the Commissioner of Natural Resources, Harold Heinz here and
17 would like to welcome you to the Committee.

18 (Discussion ensued between Rep. Navarre and Rep Gruenberg
19 regarding a confidential briefing by the Department of Law or
20 Department of Fish and Game or whoever has the information on
21 resource damage so that the Committee can get a feel for the
22 overall valuation. Rep. Gruenberg asked the staff to contact
23 the Attorney General on that briefing and stated he would like
24 to see as much in open session. Rep. Phillips and Rep. Navarre
25 just arrived.)

1 MR. GRUENBERG: Commissioner, again, welcome. I know you
2 have not thus far been designated as a trustee. I don't think
3 it takes a clairvoyant personality that you might possibly
4 looked at in the future for that particular role. And, with
5 that in mind, we would like to welcome you. Would you have any
6 opening comments?

7 OPENING STATEMENT BY HAROLD HEINZ

8 MR. HEINZ: My name is Harold Heinz. I'm the Commissioner
9 of the Department of Natural Resources. I guess I would start
10 two parts; number one, I was not personally involved in any of
11 the discussions or negotiations of the settlement so my
12 background as to the settlement is the same as everybody else's
13 from what I read in the newspaper. I have, however, done some
14 thinking about it. If it would be of interest, as a decision
15 maker, I think I'd be happy to share that with you.

16 MR. GRUENBERG: Please feel free.

17 MR. HEINZ: Number one, I see the decision before you as a
18 rather straight forward one in terms of outcomes. Basically,
19 it's to accept or reject. And, I guess my own personal weighing
20 of the situation just happens to be to accept it. That's mainly
21 driven by what I see as the negatives of rejection. The only
22 two basis I can identify in my mind for rejecting the settlement
23 as proposed is 1) if I felt I could go back and negotiate a
24 better settlement. I, in my previous lifetime, had the
25 experience of dealing with Exxon for some 15 years and I know

1 them to be very tough and capable negotiators. And, I think the
2 Attorney General has very properly indicated to you that he's
3 had his shot at it. And, before I would reject in hopes of a
4 better negotiated settlement, I'd think about who was going to
5 do that negotiation and whether you really thought you could
6 come out ahead. The other part of the negotiated approach that
7 is fraught with problems as I see it is the fact that right now
8 you have a settlement that is the federal and state government
9 together. If the state for some reason chose to drop out of
10 this, I think the federal government would have every right to
11 proceed and do whatever it felt was right. Based on the
12 indications of the past, I think they are very interested and if
13 they reach a settlement and the state was left out there, I
14 think you are in a very difficult position to negotiate from
15 them. The only other basis I can come up with basically to
16 reject to basically proceed down the litigation route, and again
17 I would have to believe that I could do better out of the
18 litigation than I can out of the settlement. The litigation
19 route, I basically again see just a couple of problems. But, I
20 think they're kind of severe problems. I'm not a lawyer, but in
21 many ways this is a straight forward damage case type situation
22 where the courts would not only look at the value, the
23 assessment of damage, the dollars, but they would also look at a
24 phase where they would attribute damage to the various parties
25 that potentially could have contributed to that. And, while

1 there hasn't been a lot of discussion, I will remind you that
2 the federal government and the state of Alaska could be brought
3 in as parties to that. And, again, I have no particular feel
4 for what that assessment might be. That would be an issue in
5 the court and it would be done on an adversarial basis amongst
6 all the parties. The judge would give weight to everything as
7 far as assessment. So, I think that is very difficult.

8 Secondly, I know there's a lot of concern over the damages out
9 in the future, and there very well may be. On the other hand,
10 as time has passed, there also is evidence that keeps coming
11 forward that seems to contradict some of the basic arguments.
12 The other day we learned, for instance, that Prince William
13 Sound salmon run this year may be excessively large. And,
14 again, those kind of factual situations in a court room sitting
15 might argue against some of the issues that the State has.

16 The bottom line of my thinking, that's the way I try to
17 think of it from a decision point of view. And, for whatever
18 it's worth, we can stop there or we can go on to your other
19 questions on the trustee side.

20 (Representative Ulmer arrived.)

21 (Rep. Gruenberg took up the issue of the letter that was
22 drafted with respect to material the committee received from
23 Congressman Miller's yesterday addressed to Judge Holland. He
24 stated the question is, do we wish to look at any of the issues
25 in that letter, and if so, do we wish to inform the court that

1 we're doing so with a request that the court give us enough time
2 to do that. Rep. Phillips agrees to sending the letter, but has
3 some objections to some of the wording in the letter. Rep.
4 Ulmer said she felt we should send the letter. Rep. Navarre and
5 Rep. Kubina had no comments. Rep. Phillips suggested removing
6 the sentence that says "The documented allegation that Alyeska
7 knowingly disregarded the requirements, et cetera." She also
8 suggested adding a little rewriting to the third paragraph in
9 the line that says, "Our committee believes that the
10 (indiscernible) agreement must be considered not solely in light
11 of the impact on Exxon." She would suggest changing the wording
12 to say "and Alyeska, but also our state." Also, the line that
13 says "In view of these new allegations", those allegations are
14 not from this Committee and she would like that phrase left out.
15 Rep. Gruenberg suggested adding the phrase "by Rep. Miller"
16 after the phrase "allegation". No one objected to eliminating
17 the word "documented". It was also recommended that he be
18 referred to as Congressman Miller rather than Representative
19 Miller. Rep. Hudson suggested changing the word "goes" to
20 "could go" in the sentence regarding a level of culpability on
21 the part of Exxon and Alyeska. There being no further
22 objections to the letter, the letter was approved for
23 remittance.)

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25 MR. GRUENBERG: Thank you, again, Commissioner.

1 MR. HEINZ: Well, I have just shared very briefly my view
2 of the decision. The only other thing is during the time that
3 the settlement discussions were going on I did take time to work
4 with a few of my folks and try to generate some ideas from a DNR
5 perspective of what kind of additional ideas we might bring to
6 the party if there was a large monetary settlement. I think the
7 way maybe to summarize it to you is that our focus was probably
8 looking at more than just reclamation. And, frankly, I would
9 explain my concept of it as trying to look to a conservation
10 authority where the funding would have been used in a very broad
11 sense to deal with conservation issues in that general area.
12 And, I think that would have given the kind of latitude that I
13 would have like to have seen. There are even under the
14 restrictive and, as I understand it at this point, the federal
15 requirements of what the settlement is all about have eliminated
16 the possibility of some of these broader definitions.
17 Basically, we were looking at our reclamation funds.

18 Some things of interest from our perspective, for instance,
19 in reclamation and there may be areas in the Sound that were
20 disturbed in such a way either at the spill or during the clean-
21 up that it may be unrealistic to reclaim to "an original state".
22 And, some of those areas particularly if they were in cold
23 sheltered water or some thing like that, I certainly would look
24 to the possibility of making them more a landing type park even
25 though they may not be restorable to a fully natural state that

1 may be very compatible with human park use, a wharf, a cabin, a
2 dock, a picnic table, those kind of things. There is not a lot
3 of that kind of facility in the area and it is a way to utilize,
4 I think, some of those areas in terms of reclamation. Beyond
5 that, at this point, we have just tended pretty well to look at
6 studies that are on the table. And, there's not a lot we can
7 offer in terms of expertise on those, they're generally in a
8 biological area as opposed to the areas that are generally of
9 interest to us.

10 MR. GRUENBERG: Thank you. I do have one question to start
11 us off by the staff, a question. The Department of Natural
12 Resources if, by definition, the state agency most affected by a
13 trust that administers a fund dedicated to the restoration,
14 rehabilitation, and enhancement of natural resources owned by
15 the State. Has the Administration considered replacing the
16 Attorney General with yourself after the litigation is resolved?
17 What role will the Department of Natural Resources play in the
18 trust decision making process if you are not a trustee?

19 MR. HEINZ: Thank you, Mr. Chairman. This question the
20 Administration has worked through. And, it was felt important
21 at this point that the Attorney General be one of the three
22 trustees because at least in setting up this group initially he
23 represented the only one with the legal background and the
24 knowledge of the settlement to really be implementer of that
25 smaller group of folks. In the long term, the Attorney General

1 has realized and acknowledged from the beginning that the
2 partnership should be represented on there, and basically, once
3 the group is functioning I would look to replace the Attorney
4 General. In the interim, we have the Attorney General's
5 considerable invitation to us, had a lot of interactions with
6 him, shared with him our thinking, and we feel we very directly
7 have had input at this point. But, the getting started chore
8 was indeed more important than our having direct influence.

9 MR. GRUENBERG: Let me go on to the specific questions once
10 again. Would it be likely that at some point you would be
11 substituted in for the AG?

12 MR. HEINZ: Absolutely.

13 MR. GRUENBERG: You weren't here generally when I was
14 asking Commissioner Rosier questions. The Administration has
15 stressed the need for public input in reaching the decisions
16 regarding how the trust money should be spent and how the trust
17 should operate. However, the federal trustees have already
18 issued a call for public comment on how the public should be
19 involved and this is by means of a notice in the Federal
20 Register. What would you do to ensure that notice is provided
21 to local residents in the state of Alaska generally and in the
22 spill affected areas in particular, an important of public
23 participation in the trust process? And, how will you ensure
24 that the federal trustees also understand that their view of
25 "meaningful public participation" adequate public notice is not

1 the only view that counts but that Alaskans need to be heard on
2 at least an equal voice?

3 MR. HEINZ: Well, I've heard a little bit of the former
4 Commissioner's answer, and I share his feeling that the Federal
5 Register is maybe not a suitable notice in terms of most
6 Alaskans. Based on my own experience number one, I would try to
7 come from the point of view trying to find as broad a context as
8 would be permissible under that trust relationship to include
9 things in terms of projects and ideas that was possible. In
10 doing that, my experience to date has indicated 1) no lack of
11 individuals with enthusiasm and ideas that have come forward. I
12 have probably already talked to a dozen individuals with a dozen
13 different very interesting ideas for projects in that area.
14 And, certainly, I would continue that. Secondly, I'd certainly
15 have no problem with the public meeting process. And, I guess
16 as far as number three, influencing the federal trustees,
17 certainly I would consider it a very good meeting site to be on
18 both Prince William Sound.

19 MR. GRUENBERG: Commissioner Rosier said before you got
20 here that there had been one meeting of the trustees at which
21 they discussed how to proceed and what the structure would be.
22 Did you or members of your department participate?

23 MR. HEINZ: I did not participate in that meeting. One of
24 our people was there. There was a large number of studies that
25 were proposed. They were basically studies in biological

1 species, a fair amount of money. I think our opinion was that
2 maybe it was a little premature to be committing to that many
3 of those specialized studies and, quite frankly, using up a lot
4 of effort in that regard at this point and rather than going
5 through a process of trying to broaden the scope of what the
6 trustees might look at. And, as I understand it, that's
7 basically what happened, that while there was certainly no
8 negative associated with any of the proposals, there was a
9 deferring of consideration of a number of them.

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11 REPRESENTATIVE ULMER: Just on that point, when you
12 referenced the notion of broadening the scope of what the
13 trustees might look at, I just wondered if you might share with
14 the Committee what you had in mind when you say that? And,
15 maybe if you might share with us some of the dozen or so ideas
16 that mentioned, the creative ideas? Beyond biological research,
17 what are the sorts of things that you and the other members of
18 the Administration might include?

19 MR. HEINZ: Thank you. Some of things I've heard, for
20 instance, were the (indiscernible) and biological studies is, of
21 course, a proposal in Seward of a marine mammal study center, a
22 concept of research, educational, a number of other -- there is
23 no sort of Arctic marine mammal type center anywhere. Those
24 kinds of ideas, the sort of culmination of scientific
25 educational research but much more center based and providing a

1 place that's really sort of the home for that type of work.
2 There obviously are some unique adaptations of some hatchery
3 ideas, shellfish related type ideas, things like that. Again,
4 how much of them are devoted to repopulation, research,
5 education, commercial activity, again, I would tend to see them
6 in the broadest context possible. I think from there it ranges
7 to ideas related to the use of the area and the access to the
8 area by all sorts of people and for a wide variety of reasons.
9 I guess at the other end of the spectrum, of course, some of the
10 people are suggesting that some of the money be used to buy out
11 the timber holdings in the area to preserve the area unharvested
12 in terms of timber. And, again, that's clearly an issue not
13 related "to the oil spill", but if you look at it as a
14 conservation area, it certainly is a very legitimate concern.

15 (Mr. Gruenberg noted for the record that Representative
16 Davidson is here.)

17 MS. ULMER: Commissioner, following the same line of
18 thinking and comments, I have a great level of discomfort in the
19 statements that were made earlier in the hearing that there
20 would be a possibility if the trustees agreed that these funds
21 which are funds which are coming to us because of the spill
22 could be spent some place other than Alaska, to be used on other
23 reclamation projects because of the restrictions of the Clean
24 Water Act. And, I would just like to hear comments on that,
25 please.

1 MR. HEINZ: Well, I think my own comment is as I understood
2 the procedures, it required all six to unanimously approve any
3 expenditure.

4 UNIDENTIFIED MALE: Commissioner, I've been trying to get
5 sort of a practical side of what would happen if this were
6 approved and where would the concentration of these funds be in
7 the early years. I wondered if you had some ideas. For
8 example, do you believe that ongoing research in better
9 equipment to handle oil spills, for example, do you think that
10 would be something that would fit in research of spill recovery
11 equipment or other ways to respond to maybe faster breakdown of
12 oil that is spilled?

13 MR. HEINZ: Well, again, the area you just sketched out is
14 a fairly broad area. As I think about the issues related to,
15 for instance, recovery type equipment from the water, I think
16 that may be getting pretty far from the federal definition, as I
17 would understand it, at this point. On the other hand,
18 certainly could justify, I think, certain type of research into
19 bacteria or other things that just might have the effect of
20 reducing oil whether they're on the water or in the land or
21 whatever, I think that would seem to fit in my mind very neatly
22 into the concept of reclamation. And, so, I think in terms of
23 what you sketched out, I guess what I'm saying is there's some
24 of it that it would seem you could fit in the definition,
25 there's some of it that doesn't. Where that line is, it would

1 be part of the intellectual talents of those folks.

2 UNIDENTIFIED MALE: (Indiscernible) essentially are trying
3 to figure out how to fully recover not only in the Sound, but
4 hopefully Cook Inlet, the backside of Shilikoff Straights and
5 Kodiak Island and other places that have been oiled, what about
6 expenditures on maybe some sort of revolutionary equipment to do
7 that, for example, some sort of a scientific vessel and a
8 contract offer of that vessel throughout to examine the
9 hydrocarbons in areas that are not immediately in the Sound, for
10 example?

11 MR. HEINZ: Some sort of oceanographical research type
12 vessel? Again, I certainly am not going to have problems with
13 those kinds of things. I think the boundaries of my thinking
14 are far broader than I think again will be permissible by the
15 federal approach. I think what we're going to find is the
16 federal approach will really limit what can be done to a point
17 where and for several years it becomes fairly obviously that
18 unless one is really wasteful of the money that you're just not
19 able to utilize the funding that's there for the type of things
20 that are permissible. And, hopefully, at that point, at least,
21 people will reconsider whether some of that definition might be
22 broadened to include a number of things like you're talking
23 about. And, I have no personal objection at all and I support
24 whether it's a mammal center or a ship or whatever, but I'm not
25 sure that's going to fit under the definition as I understand

1 it.

2 UNIDENTIFIED MALE: That's part of our problem is we don't
3 know what's going to fit in and I guess that's something we're
4 all concerned with. But, I see just a limited amount that we
5 can actually do, say, physically in the Sound. You can only
6 manipulate it so much and you can only spend so many dollars in
7 that respect. But, it sure seems to me like there's been a
8 tremendous loss of marine mammals and fisheries and everything
9 else, and it seems to me like a legitimate expenditure from this
10 account would be stream enhancement maybe even in other parts of
11 Alaska, say, the south side of the Aleutian chain and places
12 like that, and that might be a good trade-off for the losses.

13 MR. HEINZ: I would agree with that. There's obviously a
14 lot of ideas in terms of habitat enhancement that would help
15 areas recover. There are a lot of trade-offs that can be made
16 like that, things that can be done that are very effective.
17 But, again, you have to look at (indiscernible). But, it's my
18 general experience that even those projects cannot use up huge
19 sums of money. I mean, they are fairly modestly priced in terms
20 of habitat enhancement.

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22 MR. KUBINA: You used the words use and access,
23 Commissioner, in your response. First of all, this is basically
24 your opinion, you haven't set down with the other trustees or
25 the Governor and really talked about this yourself; is that

1 correct? This is pretty much your own thoughts on it?

2 MR. HEINZ: I have definitely not talked with the other
3 trustees about this. Certainly, as the whole idea has
4 progressed, there has been discussion within the Administration.
5 As you saw very early in the process, the Governor outlined some
6 vision he had of Prince William Sound. And, I think several of
7 us did try to sit down and try to put our view of it into some
8 context. As I said, I saw more of a conservation authority as -
9 - everybody knows what a port authority is or an airport
10 authority, but this one's purpose would be conservation. And,
11 in that concept of use and access, that might include, as I
12 said, a landing area on some of these islands, a wharf, a cabin,
13 a trail to the top of the mountain, those types of things.
14 Those are not available now so those would be new additions in
15 that sense.

16 MR. KUBINA: I've talked to the Governor about this myself
17 and support some of his ideas out there. But, let me just press
18 you a little farther because you will be one of these trustees
19 so your personal thoughts obviously are going happen. In the
20 beginning, the Governor talked about a possible road to Cordova
21 and other things, and it seemed like those ideas really got kind
22 of shot down. This probably could not be used for that. What
23 are you thoughts on that, say, a road to Cordova is probably out
24 of bounds or the definitions there?

25 MR. HEINZ: Again, I think it's clearly outside this

1 definition. As I said, my understanding of the definition is
2 that it's very narrow. I can think a lot of things that I
3 wouldn't have even thought of as reclamation that don't meet the
4 definition.

5 MR. KUBINA: I mean, how about ports and harbors in the
6 areas affected, what would you think of that?

7 MR. HEINZ: Again, that, I think, fits my definition of a
8 conservation authority. But, again, as I would understand it,
9 that's not the type of activities people are looking at.

10 Mr. KUBINA: Would you assume then also that you are going
11 to in essence prioritize things, that obviously in the beginning
12 part of this you're going to spend most of your time and efforts
13 on scientific studies or how to mitigate the results of those
14 studies and things like that, and you're talking about down the
15 road 2, 3, 4, 10 years on other things as you have money left
16 over; would that be an accurate statement?

17 MR. HEINZ: I think you'll find I'm sort of a fiscal
18 conservative in that sense. Given the type definition, I think
19 the focus has to be on basically studies that are going to look
20 more at the recovery potential, studies that reveal reclamation
21 progresses can be made, what types of techniques might be more
22 effective, certain monies for implementing those techniques. I
23 guess it's my feeling that at some point people are just going
24 to see in a cost effective sense that there's a much larger
25 dollar resource than really it is sensible to spend in terms of

1 impact and everything else. I'm sure we could go out there and
2 build a lot more hatcheries or something else, but I'm not sure
3 that's what an area wants or needs.

4 MR. KUBINA: With that in mind, what would you think if we
5 got to a point five years down the road and we've done under the
6 narrow scope of the Clean Water Act probably provides and we're
7 to a point where nothings fits in that scope anymore, where do
8 you think we would stand or what might be the directions that
9 would come into your mind that would be taken if that scope is
10 reached or the limits of it?

11 MR. HEINZ: Well, I think in the practicality of ownership,
12 which again the land that's adjacent to the waters here and the
13 waters if you look at it, there is a very large federal
14 ownership as well as a state ownership. And, I think that there
15 is an argument that could be made.....

16 (Tape changed)

17 Tape 12, Side B

18 000

19 MR. HEINZ: general sense on it. I guess the way I
20 would express it to you is that if 10 or 20 years down the road
21 the fund and the trustees have done a good job, hopefully we're
22 talking about an area that has a context when people see it,
23 when they visit it, when they use it, when they conduct their
24 activities there, whatever, that hopefully it's better, a lot
25 better maybe even than it was at the time of the spill. And, I

1 think that's the challenge. It may be that the definition is
2 just too encumbering to accomplish that purpose, and sooner or
3 later reason prevails, I think.

4 MR. KUBINA: One last point then. If we reach that point
5 at some stage where we hit those limits, the document certainly
6 that we've had before us doesn't speak to this and I haven't
7 read the entire Clean Water Act only really know about what
8 people have told us of it, is there a possibility that we reach
9 a point where we say that's enough of this trusteeship and we
10 divide up what's left?

11 MR. HEINZ: Again, I wouldn't be adverse to that proposal.
12 I like to think about it in a positive context. I think this is
13 a unique opportunity for the state and federal government to
14 work together. As several of you know, I seem to end up with
15 the brunt of the conflict with the federal government issues
16 within the state departments so I'm not adverse to being at odds
17 with them. I think this is legitimately an opportunity to work
18 with them in a very positive way. I think, you know, over time
19 the trustees can realize that the federal government also has a
20 stake in that geographic area. And, I think we can help them be
21 responsible land owners and landlords in that area. And, as
22 such, maybe I'm being too optimistic in my hope that we can work
23 together there. And, I would hope that we didn't have to just
24 sort of split up, just split the money.

25 032

1 MR. GRUENBERG: I have Representative Phillips,
2 Representative Davidson (indiscernible - speaks too soft).

3 MS. PHILLIPS: :Commissioner, I know you haven't much time
4 or involvement in this state, but have you looked or had the
5 opportunity to look at us accepting a settlement in any other
6 light other than through the Clean Water Act?

7 MR. HEINZ: I have not personally thought about that at
8 all. I'm sorry. The Attorney General is the expert on that.
9 038

10 MR. DAVIDSON: Mr. Commissioner, thanks for coming today.
11 One area that I was thinking about, it seems that you feel that
12 there's possibly more money than they're going to be able to
13 utilize over the course of the decade. (Indiscernible) the
14 criteria that we're restricted to spending on, is that
15 (indiscernible)?

16 MR. HEINZ: Yes, I think it's -- I'm trying to portray to
17 you my personal feeling which is that while there would be some
18 immediate claims on the money and certainly the initial monies
19 that though they may be largely staked out, as I look through
20 this initial list of proposals and everything else, it's just
21 hard for me to visualize that list growing over time and being
22 supported over a time at levels of lots of tens of millions of
23 dollars a year. I have trouble expanding that list to that many
24 dollars over a long time. And, clearly, as I would understand
25 the settlement, over time there are a lot of dollars flowing in.

1 MR. DAVIDSON: Do you feel that the reward, then, was maybe
2 too large, that \$1 million settlement, or what would be your
3 response to that?

4 MR. HEINZ: As I talked about earlier when we first
5 started, my recommendation to you is clearly to accept the
6 settlement. And, that's based upon trying to think through what
7 rejection of the settlement means. And, I don't think there is
8 a chance of negotiating a better settlement and I think there
9 are some very legitimate concerns you ought to worry about in
10 terms of litigation to achieve the same ends. So, I accept that
11 the Attorney General did a good job in a tough negotiation
12 against someone frankly that I've known and had to negotiate
13 with for 15 and I think he done pretty good. So, the way I
14 would express it is, I'd like my share, you can decide what to
15 do with yours. But, I think we ought to take it.

16 UNIDENTIFIED MALE: You mentioned a conservation authority,
17 Commissioner, yet it seems like both in the last administration
18 as well as this one there has not been a whole lot of enthusiasm
19 for a biological recovery area which to me is similar to a
20 conservation authority. And, I was wondering if you would
21 expand on what you would see as a conservation authority and
22 would it, in fact, encompass some of the ideas that I think are
23 suggested or put forth in a biological recovery area.

24 MR. HEINZ: The reason I chose the conservation authority
25 is that conservation to me is the wise use and so it could be

1 (indiscernible) authority. The reason I chose authority is that
2 people understand that authorities can conduct almost any
3 activity that I know of that a business can, buy, sell, lease,
4 operate, contract for, contract with, whatever. It is a vehicle
5 that does everything and anything related to its purpose. In
6 this case, I think I was trying to reflect compatibility of some
7 of the long-standing uses of the area in terms of fisheries with
8 currently an expanded recreation and yet, at the same time, a
9 very clearly expanded scientific interest in the area and a real
10 basis to build a science educational type presence. And, those
11 are at least three of the axis that I saw, the recreation, the
12 traditional sort of commercial harvest from the water, the
13 fisheries, and the science educational use. And, again, I think
14 a conservation authority is big enough to include more than that
15 if you want it, but those seem like pretty good starting points
16 in my mind.

17 UNIDENTIFIED MALE: Would that science and educational
18 component include (indiscernible) for better prevention as well
19 as better response, or have you carried that beyond these
20 initial ideas?

21 MR. HEINZ: It could if that was the right place to do it.
22 Again, I was not looking that this idea as necessarily trying to
23 force things into the area, but really trying to make some things
24 work naturally in the area, an inter-weavement (ph). The Seward
25 marine mammal center that I mentioned before, I mean, there's

1 obviously a research science assigned to that that's very
2 important as an educational side that's very important. But
3 also, frankly, if anybody has ever seen those kind of
4 facilities, they're tremendous attractions for visitors. There
5 might be some aspects of it that almost become recreational.
6 You can go pretty far with those kinds of ideas, and it would be
7 unique to that area and it would build on that area.

8 UNIDENTIFIED MALE: Commissioner, you've indicated to this
9 Committee that you feel strongly that your recommendation is to
10 sign on the dotted line, that's in our best interest. And,
11 because you seem so convinced of that, I was wondering -- I
12 realize my question here is probably outside the purview of the
13 state aspect of this, but I was wondering would you say that in
14 spite of what you felt about the Plea Agreement and exactly how
15 do you feel about that Plea Agreement?

16 MR. HEINZ: I'm sorry. I don't really understand the last
17 part of the question.

18 UNIDENTIFIED MALE: If the Plea Agreement stands alone from
19 this settlement, we know that Alyeska, a company which you
20 probably have a very close association as well as knowledge, it
21 seems that the -- well, they probably got the best deal of all
22 from what I understand. And, I was just wondering because you
23 are recommending or advising that we sign the settlement, I was
24 wondering what your thoughts were regards that Plea Agreement as
25 it affects Alyeska?

1 MR. HEINZ: I'm still not sure I can differentiate just
2 exactly what you're looking for. Let me try and say to you that
3 I see the settlement as a settlement of damages. And, certainly
4 as I explained earlier, that settlement of damages, I think this
5 is the kind of deal where presented to you as (indiscernible), I
6 think (indiscernible - background noise). I just see a lot of
7 difficulties with the alternatives, litigation or further
8 negotiations. As to those damages, I guess it was my
9 understanding that the only relationship of Exxon and Alyeska,
10 in particular, being drawn into it related to those damage
11 claims specifically. And, as I understood the basis of that,
12 Exxon felt they would be sort of held in double jeopardy if that
13 provision was not included. And, I think there's some validity
14 to that line of reasoning on their part. So, if they settled
15 this, Exxon, but there was another whole route back into Exxon
16 for those same claims, I can understand them not feeling they
17 had made a settlement.

18 UNIDENTIFIED MALE: I certainly can understand your
19 approach there. However, what would be your feeling as regards
20 to the damages caused or not caused by Alyeska?

21 MR. HEINZ: I think the way I would have to answer you
22 there is to say that I visualize, for instance, in a court room
23 setting where one is in the damage allocation phase of this, and
24 I think clearly not only Exxon and Alyeska would be in there,
25 there's no doubt about that in my mind, but I think also the

1 United States Coast Guard and the state of Alaska would be in
2 there, at least those four parties for sure. And, I just am
3 unable to predict what, you know, in that sort of court room
4 setting where everybody gets to shoot at everybody and it's one
5 of those wonderful rules that apply in court, I just can't tell
6 you where a judge would come down in terms of the allocation
7 amongst those four parties.

8 UNIDENTIFIED MALE: We received an interesting letter today
9 as well as yesterday. And, it's my understanding there were, in
10 fact, some examples where Alyeska did not perform in the manner
11 in which they had agreed they would perform, that is, promises
12 to Congress, promises to the state of Alaska. And, if I'm not
13 mistaken, I think you were in a very key position dealing with
14 some of these -- well, dealing with some of the agreed upon
15 responses that would have been taken by Alyeska in event of a
16 major spill out in the Sound, yet since was not the case and I
17 think there was a few days there where the right hand and the
18 left hand got pretty well tangled up with not only the
19 historical promises as well as some of the other provisions of
20 what was stated would be done in event of a major spill such as
21 the Exxon Valdez. And, I was just wondering how you felt how
22 Alyeska's role as it relates to how they're being taken care of.
23 And, I can understand that we don't want to put anybody in
24 double jeopardy, that's a constitutional basic. But, at the
25 same time, it seems like there were some key players here and

1 some key roles and by roll of the dice, I guess, some of those
2 key players are going to be in even more key positions. I'd
3 just like to go into another area here and that is.....

4 MR. HEINZ: Could I? Again, I just respond extensively
5 other than say that I'm aware that there is some allegation by
6 Representative Miller. I have not seen it so I don't even know
7 what it says. You are right. I mean, clearly at the time of
8 the spill, I was ARCO's representative to TAPS ownership
9 committee, and yes, I do have knowledge in that sense of what
10 went on, TAPS ownership, whatever. I was one of those people
11 that was woken up at 2:30 in the morning of the spill and
12 certainly I've lived through a lot of the events and I have
13 impressions. And, it would be really very inappropriate for me
14 to comment on that to any extent absent, again, not knowing what
15 forums and what settings may come out in the future. So, it's
16 an area that I personally can't touch I think for both legal and
17 moral grounds.

18 UNIDENTIFIED MALE: I'm not trying to get you in a
19 quandary, Commissioner. It's just with your heavy emphasis and
20 recommendation on settling this and the other relationship prior
21 to this spill as well as what happens in the Plea Agreement
22 struck a chord of interest and I won't continue to pursue that,
23 but I appreciate your candor and thank you.

24 MR. HEINZ: I think again you should realize that that was
25 one of the reasons I purposely disqualified myself really from

1 any conversations with the Attorney General about the settlement
2 and all these types of things. I accept the fact that having
3 been on the other side of this specific issue that it would be
4 unethical for me in regards to those past associations to cross
5 over and be part of the basic formulation of a litigation
6 strategy. Now, in all my conversations with the Attorney
7 General, he sees no problem, and I have no ethical problems in
8 moving forward once the settlement is reached with the
9 implementation thereof. But, as long as there is that tie to
10 the past, I do have to stick to somewhat of my ethical
11 considerations from the past.

12 UNIDENTIFIED MALE: Well, moving then on down past the
13 settlement, what do you see as the role of the trustees and how
14 they would expend money for subsequent clean-up? How would you
15 as a trustee look out for Alaska's interest? This settlement
16 apparently means that if there is subsequent clean-up, at least
17 \$100 million of it down the line is going to be paid for by
18 Exxon. And, does that mean then that you would feel then that
19 if there was more than \$100 million of clean-up required that
20 you would see that it would be the obligation of the trust to
21 provide the funds to do that?

22 MR. HEINZ: I think there's a little difference in the way
23 we're looking at it. As I understood, there was a portion of
24 this that recognized that there might be additional damages, and
25 that's what the \$100 million was about, for damages, and there

1 really was no promise. And, it may not be a very proper
2 judgement to clean up anymore. The point here is the
3 compensation is for damages. And, it may be that the right
4 thing is to not clean up anymore. I noticed also from the
5 recent news reports here lately, according to the commentary was
6 that maybe some damage had been done by some of the clean-up
7 that should have been avoided and maybe the thing to do at some
8 point was to stop cleaning up and just recognize that there was
9 damage. And, again, (indiscernible) trying to suggest that in
10 some of the areas that, for instance, conversion to a park type
11 area, some place on a bay, or something, designed for human use,
12 it may not be necessary to resort to some of these techniques
13 and that may be a better use for it. I don't see this as this
14 money has to go in clean-up. I'm not sure we haven't reached
15 pretty far towards the end of the road of what is an effective
16 clean-up in terms of restoration.

17 UNIDENTIFIED MALE: Well, then going on down the calendar
18 then, how would you see additional funds dealings with the
19 problem of subsistence? We don't know how long these people can
20 depend on the resources there. But, do you see a role for the
21 trustees in righting that wrong and those damaged resources as
22 well as people dependent on the life style?

23 MR. HEINZ: My personal feeling is that a number of the
24 villages that were very directly oiled, I think, suffered very
25 direct damage and I think there is an obligation here to assure

1 that in the reclamation sense that as much as can done as
2 humanly possible to restore that to the productivity it was
3 before.

4 UNIDENTIFIED MALE: Commissioner, my final question
5 concerns the reimbursements to the 470 fund. What would be your
6 feelings about any of the monies that would come to the state as
7 a result of the settlement reimbursing the 470 fund?

8 MR. HEINZ: I really haven't taken a position at all on
9 that. I haven't even thought about it.

10 258

11 (Chairman Gruenberg adjourned the meeting at 2:00 p.m.)
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HOUSE SPECIAL COMMITTEE
EXXON VALDEZ OIL SPILL CLAIMS SETTLEMENT
April 12, 1991
12:00 P.M.

MEMBERS PRESENT:

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

MEMBERS ABSENT:

Rep. Ramona Barnes
Rep. Dave Donley

OTHER LEGISLATORS AND STAFF PRESENT:

Attorney General Charles Cole
Rep. Kay Brown
Pat Williams, Committee Secretary
Andy Hemenway, Committee Attorney
Gregg Erickson, Committee Economist

1 Tape 13, Side A

2 000

3 Chairman Gruenberg called the meeting to order at 12:08 p.m.
4 on April 12, 1991 in Room 17, House Transportation Committee Room
5 in the Capital Building. He noted the presence of the Committee
6 members present, and welcomed the Attorney General of the State
7 of Alaska, Charles Cole, to the meeting.

8 Chairman Gruenberg pointed out that they had previously left
9 off with questions regarding the Consent Decree on page four with
10 question 29. He stated that before they began he was asked to
11 clear up a misunderstanding concerning the disclosure of
12 information. He asked if the legislature were to pass a
13 concurrent resolution requesting the AG to release information to
14 the public, what would be his response.

15 The Attorney General said that he would give such action on
16 the part of the legislature weighty consideration. He said that
17 he thinks the legislative body is the body elected by the people
18 and as a matter of courtesy, if not sound judgement, it should
19 have the opportunity to express its views to him and he would
20 carefully consider such.

21 059

22 Chairman Gruenberg began questioning Attorney General Cole
23 with question number 31 as follows:

24 MR. GRUENBERG: The first sentence of paragraph B provides
25 that Exxon has no clean-up obligation after final approval of the

1 Consent Decree except as set forth in this agreement. Has
2 another paragraph of the agreement imposed clean-up obligations
3 after final approval?

4 MR. COLE: Yes.

5 MR. GRUENBERG: Please explain.

6 MR. COLE: Paragraph 11A found on page 11 provides that
7 Exxon shall continue clean-up work relating to the oil spill
8 after the effective date as directed subject to prior approval by
9 the federal on-scene coordinator (indiscernible) work directed by
10 the federal on-scene coordinator and that that obligation to
11 continue continue clean-up work after the effective date
12 continues with directions of the state on-scene coordinator.

13 MR. GRUENBERG: And, that is the reference?

14 MR. COLE: Well, the.....

15 MR. GRUENBERG: The phrase that the question refers to is on
16 page 12 of the Consent Decree under subsection B, lines two and
17 three, "Upon final approval, Exxon shall have no further
18 obligation with respect to clean-up of the oil spill except as
19 set forth in this agreement."

20 MR. COLE: Well, the agreement requires them to continue to
21 perform clean-up work as required by the federal and state on-
22 scene coordinators. I'm certain that no one is of the view that
23 upon final approval Exxon is suddenly somewhat magically released
24 from its clean-up obligations.

25 093

1 MR. GRUENBERG: Next is question 33. To what extent is
2 Exxon's current liability for clean-up limited by the settlement?
3 Why are we reimbursing Exxon for future clean-up even if the
4 settlement is rejected?

5 MR. COLE: The governments are not reimbursing Exxon for
6 future clean-up even if the settlement is rejected. The
7 provision, paragraph 12, was in effort to give Exxon credit for
8 work it performed under the Settlement Agreement after the
9 effective date if the Settlement Agreement does not have final
10 approval. In other words, Exxon's view was well, if we perform
11 clean-up work under the agreement and then the agreement is not
12 approved and we are back performing clean-up work absent this
13 Settlement Agreement, we should be entitled to credit for the
14 work which we performed under the disapproved Settlement
15 Agreement. They didn't want to perform clean-up work under this
16 agreement, have the agreement disapproved, and then, not get
17 credit as against their clean-up obligations for the work which
18 they had performed under the Settlement Agreement. That's the
19 basis for that provision.

20 MR. GRUENBERG: Do we know how much we can anticipate that
21 Exxon will be able to deduct under this provision tax-wise?

22 MR. COLE: Exxon's tax return or prospective tax returns
23 were not furnished to me, and I do not know what the tax
24 consequences of this provision or the agreement itself has on
25 Exxon.

1 MR. GRUENBERG: I'm sorry. It wasn't a tax deduction, how
2 much their credit will be.

3 MR. COLE: Well, that will depend upon the amount of the
4 clean-up and work. But, let's be clear about it. They may not
5 receive any credit at all. I mean, if I understand your question
6 correctly, they may be required to perform clean-up work and as
7 you say receive credit against their 1992 payment for the work
8 directed by the state and federal on-scene coordinators in 1991.
9 Maybe now I understand your question a little better. Well, you
10 can sort of see if you look at paragraph 13 that that \$35 million
11 figure looms out there. Now, that is not necessary any limit one
12 way or the other, but it was a sense and only a sense of what the
13 cost of state and federally directed clean-up activities would
14 cost in 1991, perhaps slightly above that, I suspect, and it
15 could very well go below it, I suspect. I choose those words
16 very carefully or articulate them slowly because I try to
17 (indiscernible) correctly the thought. We conferred with the
18 federal representatives and we conferred with the state
19 representatives when we arrived at that number. It wasn't
20 something that we plucked out of the ionosphere.

21 MR. GRUENBERG: What is this year's 1992 budget for clean-
22 up, do you know?

23 MR. COLE: I don't have that figure before me.

24 MR. GRUENBERG: Do you know what the budget is for '93 to
25 '95?

1 MR. COLE: For clean-up, I believe and only believe that
2 clean-up expenditures in 1992, '93 are not anticipated. I
3 believe that it is expected that all clean-up work will be
4 completed in 1991 calendar year.

5 MR. GRUENBERG: Do you have any idea what the figures are
6 for this calendar year?

7 MR. COLE: No, but I believe they are contained in the pink
8 books, and I can have them here later after a recess.

9 MR. GRUENBERG: If you could provide that information in
10 writing to us?

11 MR. COLE: I shall.

12 170

13 MR. GRUENBERG: We're going to move on now to the release
14 paragraphs, which is the paragraphs 13 and following up on page
15 14. Other questions by the Committee at this point? If not,
16 we'll proceed to question 35. Mr. Attorney General, in the state
17 case, the state asserted claims for lost revenue from the salmon
18 enhancement tax, loss of oil and gas production revenue tax, loss
19 of (indiscernible) tax revenue, plus loss of oil production
20 royalties. These claims will be given up as to Exxon. Would the
21 state have been able to prove this claimed loss of revenue and,
22 if so, how much did the state believe it could prove? Does the
23 state intent to continue litigating against other defendants in
24 the state case? If so, do you expect that it will be successful?
25 What has it gained in the Consent Decree to compensate for the

1 loss of those claims?

2 MR. COLE: It's true that under the Settlement Agreement the
3 state released the claims which are recited in the first sentence
4 of this paragraph. The next question of whether the state would
5 have been able to prove this claimed loss of revenue, I believe
6 the state would have been able to prove some loss of revenue.
7 How much? I would prefer not to say in a public meeting because
8 we are continuing to assert those claims against Alyeska Pipeline
9 Service Company and its constituent owner company.

10 MR. GRUENBERG: Would you be willing to answer that question
11 in executive session?

12 MR. COLE: Yes.

13 MR. GRUENBERG: Would you be prepared to do so today?

14 MR. COLE: I could give a sense of it today.

15 (Chairman Gruenberg noted that that should be put on the
16 list to be covered at a confidential briefing next week.)

17 201

18 MR. NAVARRE: As we're talking confidential, did the
19 trustees ever set up to do the assessment or give you or give
20 anyone a number or range of numbers in terms of what the value
21 was for, you know, if we have \$1.1 billion is where we're at in
22 the settlement, I'm wondering if there is some number that we can
23 look at that provides us for range of values that the trustees
24 came up with based on their assessment.

25 MR. COLE: The answer specifically to that specific question

1 is that there is no single number, and there is not in writing a
2 range of numbers. I have said before, my personal view is that
3 the possibility of recovering less \$900 to \$950 million, or
4 however you want to quantify this settlement, is greater than the
5 possibility that the governments would recover more.

6 MR. NAVARRE: I appreciate your opinion as our attorney. I
7 would like to know whether or not, in fact, the trustees provided
8 a range of values for an estimate of what the case was worth that
9 we could look at it and maybe assess that and give our opinion as
10 to whether or not we think after weighing it in terms of
11 legalities, how hard it is to collect or prove damages of a
12 certain type in court, whether we could make an assessment as to
13 whether or not the \$900 million was enough or not enough.

14 MR. COLE: Let me respond preliminarily as follows. There
15 have been over the past several months three state trustees. I,
16 as the Attorney General, was one of them, the Commissioner of
17 Fish and Game was another, and the Commissioner of Environmental
18 Conservation was another. Those other Commissioners were not
19 those who evaluated the settlement range. That evaluation was
20 done by the Department of Law. The Oil Spill Section has been
21 working on this litigation for essentially two years. And, the
22 estimates of settlement range were discussed among members of
23 that team and myself. There is, however, nothing in writing
24 which, as far as I recalls, gives an overall estimate of the
25 settlement's range.

1 MR. NAVARRE: Attorney General, I guess what I need to have
2 in order to, I guess, feel that this is a good settlement or not
3 is some information that tells me what the value of the resource
4 damage assessment is. And, you, as our Attorney General, looked
5 at some information like that and valued it and determined what
6 you thought was maybe likely recoverable. And, you and the
7 Department of Law made that assessment and maybe based the
8 settlement on that. That's fine. I'd like to have the same type
9 of information in order to make my best judgement, and I'm
10 wondering if that's available either through you or through the
11 trustees, whether it's available here, whether it would be
12 available if we went into executive session because, I guess, my
13 frustration is that if I'm going to make an informed decision on
14 this, I need some information.

15 MR. COLE: I will respond to this in executive session. You
16 may see all of the economic studies which the Department of Law
17 had prepared. A number of those economic studies were not
18 complete. Overall let me say with respect to the settlement
19 amount, the large numbers in any settlement or any claim against
20 Exxon were damages to the natural resources owned by the United
21 States or the state of Alaska. The large damages in the range of
22 hundreds of millions cannot be derived or established economic
23 (indiscernible) by the state such as loss of taxes. Large
24 damages claimed against Exxon would come from subsistence values
25 and largely, I think, non-use values so far as damages to be

1 sustained by the governments. And, I've said before and I repeat
2 that measuring existing values is one of the most difficult
3 exercises or requirements in the law of damages. There is very
4 little law in that area and the economists are still to this day
5 trying to formulate tests to measure those damages. Now, I could
6 elaborate on that a little bit by simply saying largely those are
7 measured by contention valuation studies.

8 MR. NAVARRE: I guess I appreciate those observations. What
9 I'm wondering is, maybe a direct question, is there a summary
10 sheet that we could look at which gives us a range of values for
11 each of the possibilities, what is the highest valuation that we
12 could put on this case, and then, we could look at it and weight
13 it, like I'm sure that you did, to see what is reasonable that we
14 could achieve?

15 MR. COLE: I'll say this. We could give you preliminary
16 pilot studies of contingent valuations. That's where the big
17 numbers are. We can also give you (indiscernible) somewhat
18 preliminary perhaps, somewhat tentative perhaps, but I think
19 reports which give a good sense of the economic damages. We
20 would be prepared to do that.

21 MR. NAVARRE: I would like to have that, and if we need to
22 do that in executive session, that's fine with me. I also
23 recognize that it may be hard under the laws to determine whether
24 or not it's a loss to the federal government or a loss to the
25 state government, so that part of the settlement helps in that

1 respect. At the same time, we're going to be shipping oil out of
2 Alaska for a long time and maybe we ought to reach some
3 conclusions as to how we're going to value these things and who's
4 going to be compensated for the different migratory water fowl or
5 the marine life, things like that. Maybe that needs to be
6 litigated. I mean, maybe we need to find out who gets what. I
7 don't know, that's a policy problem. It's easier if you don't
8 litigate it, obviously. But, maybe from a policy perspective,
9 in case, God forbid, we ever have another spill like this, we at
10 least have some precedence in place.

11 MR. GRUENBERG: Did you wish to respond?

12 MR. COLE: No, I think that Representative Navarre has
13 touched upon a point which we would be glad to furnish him all
14 the information which we have and discuss these damage tests with
15 him and with the rest of the Committee.

16 MR. GRUENBERG: Would you prefer to do that in executive
17 session?

18 MR. COLE: Oh, I think it's essential.

19 MR. GRUENBERG: We will tentatively schedule an executive
20 session for one of our visits with you next week, and we will
21 determine before the end of today which of those will be the
22 executive session.

23 MR. COLE: I would like to have attending that session with
24 me representatives of the Oil Spill Section of the Department of
25 Law in Anchorage to furnish you with their insights. As I've

1 said, members of that section were with me in Washington, D. C.
2 when we negotiated this agreement and I relied upon their
3 judgement and knowledge and experience in this area when the
4 settlement was negotiated. I did not simply take it upon myself
5 to make all of this (indiscernible). I would like to say, I
6 believe I can safely say there was substantial agreement among
7 all members of the oil spill (indiscernible - background noise)
8 when we negotiated this agreement in Wasnington, D. C.

9 MR. GRUENBERG: I would like to tentatively set that
10 executive session for next Tuesday.

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12 (Discussion ensued regarding when to meet in executive
13 session.)

14 MR. KUBINA: One thing I'm getting from what you're saying
15 with Representative Navarre's questions is that you really didn't
16 study the damage assessment and come up with a figure, that
17 really your argument that this is a good settlement is really
18 based not so much on what the damage assessment really is out
19 there, but irrelevant of what that is, what you think that we may
20 be able to get in the long term no matter what the studies say
21 and the argument that having something now is better than, I
22 guess, what you might get later. Is that accurate?

23 MR. COLE: Let me see if I can put that somewhat in my own
24 words. No experienced trial attorney in litigation which is
25 (indiscernible) realize in my view in settling the case on a

1 finite number. It's an art form, it's not a science. And,
2 attorneys who say well, my damages are \$1 million, I'm going to
3 stick with \$1 million and so forth, because experienced, I think
4 all experienced trial counsels full well recognizes that cases
5 cannot be fairly evaluated in that fashion. And, I had a sense
6 and a good sense of the outer limits of the amount of damage
7 testimony which would be introduced or attempted to be introduced
8 into evidence by the State. I had a good sense of that. On the
9 other hand, I evaluated the possibility that the court might not
10 admit all of that testimony. And, I also evaluated how strong
11 were the credit worthiness of that testimony might be before a
12 jury. That's always important, and that's what I did.

13 MR. KUBINA: Let me clarify something that I think you said
14 a few days back and I took it wrong. I believe you said we have
15 agreed in the document before us that we would not sue Alyeska on
16 natural resource damages; is that correct?

17 MR. COLE: That is correct.

18 MR. KUBINA: But, that we do have the ability to sue on
19 other grounds and there is, in fact, a lawsuit right now between
20 the state and Alyeska.

21 MR. COLE: That is correct.

22 MR. KUBINA: Did you not say somewhere in there, you said
23 you gave your word as Attorney General that there would not be --
24 you would not sue anyone else?

25 MR. COLE: That's not correct.

1 MR. KUBINA: That was someone else you said that about. Who
2 was that?

3 MR. COLE: Here's what I said. I said that I gave writing
4 to Exxon that the State would not file criminal charges in the
5 future against Exxon.

6 MR. KUBINA: You're right. That's the one I was thinking
7 bout.

8 MR. COLE: And, let me just say, I said that because I
9 thought the decision substantiatively not to sue Exxon criminally
10 or file criminal charges against Exxon had been made two years
11 ago. But, there has been no agreement or representation not to
12 sue Alyeska and its constituent owner companies criminally or
13 anyone else with whom or against whom the State has a valid claim
14 worthy of prosecution in my judgment.

15 MR. KUBINA: I have one other thing I'd like to ask you and
16 that is a letter we received today and announced representative
17 committee on merchant marine and fisheries. Have you had a
18 chance to look at this letter, the one dated today?

19 MR. COLE: The one dated today, no, I have not, sir.

20 MR. KUBINA: It is to Judge Hall and signed by the three
21 sub-committee chairmen, Hurdell, Suds and Huges (ph), and it asks
22 specifically that they respectfully recommend that you not
23 approve the proposal unless and until certain fundamental issues
24 are clarified. And, on page two lists three specific points in
25 the first paragraph there at the top, 1) disclosure to the court

1 of enough information to permit a fully informed judgement about
2 the monetary sufficiency of the proposed settlement, 2) a
3 commitment by the trustees to release all damage assessment and
4 restoration studies or related documents to the public after the
5 settlement is approved, and 3) clarification by the trustees
6 concerning the manner in which the recovered funds will be spent
7 and the extent of public participation in the restoration. I'd
8 like your comments basically in general on all three points, and
9 if you believe these are three points that we should take into
10 consideration in rejecting or accepting this document.

11 MR. COLE: I'd be pleased to respond. Let us address number
12 one. "Disclosure to the court of enough information to permit a
13 fully informed judgement about the monetary sufficiency of the
14 settlement." I represented this morning to this Committee that
15 the Department of Law, myself, as Attorney General, will furnish
16 to this Committee all of the information dealing with the nature
17 and extent of the damages which is in the possession of the
18 Department of Law. Now, how this Committee uses it and how it
19 evaluates it is up to the Committee, but I've certainly expressed
20 a willingness to provide the Committee with data to permit it to
21 make "a fully informed judgement about the monetary sufficiency
22 of the proposed settlement." I really question, I must say that
23 I think that that's the type of informed judgement which trial
24 lawyers are experienced to make, an informed judgement. And, I,
25 however, will commit that to the Chairman of this Committee's

1 comments to this Committee and abide by and acquiesce in his
2 views on that regard. I think at the end of the day
3 (indiscernible - cough) and his supporting staffs, we will
4 certainly furnish you with the information.

5 Number two, "A commitment by the trustees to release all
6 damage assessment and restoration studies and related documents
7 to the public after the settlement is approved." I do not agree
8 with that for the reasons which I repeatedly stressed
9 (indiscernible - cough) unless you would like me to address them
10 now.

11 MR. KUBINA: Representative Davidson, I believe, would like
12 for you to reiterate those reasons.

13 MR. DAVIDSON: If you really wouldn't mind, Attorney
14 General, I really would appreciate the review.

15 MR. COLE: All right. Let me say this, if this settlement
16 is approved, the State would continue to prosecute these claims
17 against Alyeska Pipeline Service Company. And, an additional
18 comment in that regard that Congressman Miller, I believe, is
19 going to furnish the State with information which will be helpful
20 in the prosecution of those claims. But, if all of this data
21 which this Committee suggests be released, it will be available
22 to Alyeska Pipeline Service Company and its constituent members
23 and it would be used by them, I'm certain, in the defense of the
24 State's claims against them. In my judgement, the State should
25 not give that credible litigation gift to Alyeska. It would make

1 a much more difficult prosecution of the claims against Alyeska.
2 Bear in mind in addition that Alyeska is not giving us its
3 information, all of its witnesses' statements, all of its in-
4 house studies and analysis and damage assessment studies. And, I
5 see no reason why under those circumstances the State should make
6 such a multi-million dollar donation to Alyeska. Let me add that
7 the State now has some 20 lawsuits filed against it on damages
8 arising out of the oil spill. Daily I receive as Attorney
9 General copies of more claims for actual damages and punitive
10 damages. I have furnished this Committee with a compilation of
11 those claims and, in addition, a copy of all of those complaints.
12 If one were to add up the amount of the complaints stated in the
13 prayers of relief for all of those claims, the amount is easily
14 in excess of \$500 million. I want to defend on behalf of the
15 State most effectively against those claims and I do not want to
16 furnish the claimants with all of the information which the State
17 has acquired so it can be used in furtherance of claims against
18 the State. I, in addition, I'm told and am looking into it that
19 the 1989 appropriations and the 1990 appropriations from the
20 legislature contain a provision that those appropriations were
21 made under representation that those amounts, could be recovered
22 from Alyeska. That would seem to me that the legislature made
23 those appropriations in furtherance, not in pure scientific
24 studies, but in furtherance of the prosecution of the claims
25 against Exxon and Alyeska. And, therefore, it's fair to say that

1 that is a recognition by the legislature that those monies were
2 expended for the settlement of litigation work product.

3 Number three, "Clarifications by the trustees concerning the
4 manner in which the recovered funds will be spent and the extent
5 of public participation in the restoration planning and decision-
6 making process." I discussed this subject, I believe, before
7 this Committee at length. You will recall that there is a
8 provision in the agreement for the creation of a public advisory
9 body. We did not list the constituent members in that group
10 because we wanted to have time to be able to conduct hearings and
11 receive comments as to what groups should be on that advisory
12 body. And, it's my belief that the trustees.....

13 (Tape changed)

14 Tape 13, Side B

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16 for the expenditure of the recovered funds. And, in
17 that regard let me say that those guidelines are the very
18 guidelines which Congress itself adopted in the Clean Water Act
19 and it's just an observation that if Congress itself was not
20 satisfied with those guidelines in adopting the Clean Water Act,
21 one would think they would have been more specific about the
22 guidelines. But, I think Congress wisely enacted the limitations
23 which they did in recognition of the fact that each oil spill
24 contains different elements of damage, different possibilities to
25 restore the damaged resources, different possibilities of

1 acquisition of alternative resources, and wisely committed that
2 decision to the federal trustees.

3 MR. KUBINA: I guess I would summarize that then, one and
4 three you believe that you have gone to great extent to deal with
5 those two points of concern, but two you'd be in disagreement
6 with the position?

7 MR. COLE: Yes, and I think that before the trustees would
8 make any decisions on the lines sought in number three, it should
9 receive input from the people in the spill-affected areas to see
10 what their desires are, what do they think are the best use of
11 those funds. I mean, instead of having three federal trustees
12 sitting in Washington, D. C. saying this is what I think we ought
13 to do with these funds, I think what we ought to do is we ought
14 to hear from the people in the spill-affected areas, you know, in
15 your area, say, tell us, members of the public, what you think we
16 ought to do with these funds and would be restore them for your
17 use. It just makes sense to me.

18 MR. KUBINA: Mr. Chairman, my last question, a very short
19 one. Can you, Attorney General, tell me if you have knowledge of
20 Exxon trying to settle other third party claims? Is there an
21 effort going on by that corporation to do what they've done with
22 the state and federal government? And, is it a serious effort, if
23 there is one, in your opinion?

24 MR. COLE: I really don't know the answer to that question.
25 I have not spoken to the Exxon lawyers since the night this

1 agreement was signed, and I've not spoken with the lawyers in
2 Anchorage, and I've not spoken in that regard with the lawyers
3 for the claimants.

4 MR. KUBINA: Was it discussed during the negotiations about
5 third party claims or how to deal with the rest of the lawsuits?

6 MR. COLE: No.

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8 MR. HUDSON: Just a statement to begin with. I guess now
9 I've attended everyone of these meetings and I've been fortunate
10 enough to attend a couple of the senate meetings as well and it's
11 been interesting to listen because there were some questions on
12 that side that are coming out over here. One thing that I heard
13 the other day discussed was this relationship between the
14 settlement with Exxon under these circumstances and the expected
15 continuing litigation against Alyeska. I think that's a critical
16 element in our decision-making process here as to what the
17 Attorney General, how he sees that in his mind. And, I guess
18 what I'd like to do as we get into executive session, Attorney
19 General, is to sort of get into your mind just a little bit. I
20 don't know what we're going to find there. (Laughs) But, let me
21 tell you why. We've not been party to the negotiations, not with
22 Exxon nor have we been party to many of the probable strategy
23 meetings that you've had with those you confer with on a legal
24 basis on behalf of the state of Alaska. And, it seems to me it
25 would be good for us to hear what you expect from this and what

1 your expectations from this current settlement with Exxon and
2 what you expect out of it. And, when we have that, Mr. Chairman,
3 I would ask for that. And, this is the question, Mr. Attorney
4 General, and that is do you still feel that you have sufficient
5 funds in the fiscal year '92 budget to aggressively pursue your
6 litigation of claims against Alyeska?

7 MR. COLE: Well, the answer to that question, I'm not quite
8 sure because I never know where the fiscal appropriation winds
9 up, and I haven't been able to (indiscernible) of those matters
10 regarding the Department of Law as I'd like to. I felt, however,
11 that the Department of Law needs a super-fund to continue the
12 litigation which I think it faces not only in the prosecution of
13 the claims but also for the expenses on the claims against the
14 state. But, with respect to the proposed use of these funds, I
15 would say that maybe questions of that nature could be addressed
16 to Tom Campbell, the General Counsel of NOA, when he is here next
17 Tuesday. He might be able to furnish some insight in that regard
18 and he works with Dr. Canounce (ph) internationally known and
19 respected scientist.

20 MR. HUDSON: The three questions that came up above, after
21 analyzing this carefully, I don't see how in the world the third
22 demand by this Committee could be met because how in the world
23 are we going to possibly know what the long term uses of these
24 funds are going to be until we get into to the program, programs
25 developed to the best of the needs indicated by the scientific

1 data. So, again, it's Washington, D. C., no doubt, looking after
2 what they think are the right interests. I don't see how that
3 can be possibly responsible.

4 MR. COLE: I agree with the statement. What I'd like to say
5 is that here we have an agreement which gives the state
6 representatives power over the decisions made in Washington, D.
7 C. dealing with Alaska's natural resources. And, you know, I
8 think that's one of the major accomplishments of this agreement.
9 I mean, we can to say to the federal representatives, look, we're
10 not (indiscernible) to the agreement to take your dictates, how
11 this money is spent and how Alaska's natural resources are going
12 to be restored. That to me is a major achievement, but maybe I
13 missed the boat. But, I say that here under the settlement, we
14 have a voice in how the federal natural resource recoverable
15 damages would be spent. Look at it this way, if we gone our way
16 in the prosecution of the state claims against Alyeska, certainly
17 we know that we would only get some share, or fraction, or
18 portion of recovery for the natural resource damages because it's
19 clear beyond any question that the federal government had the
20 right to recover for a good portion of the damaged resources in
21 Prince William Sound. And, if they had recovered for their own,
22 they and they alone would have had the right to expend those
23 funds however they wanted and the state would have had no voice
24 whatsoever. Under this agreement, the state has in a sense veto
25 power of how the federal damage recoveries can be expended. It's

1 a major accomplishment.

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3 MR. DAVIDSON: Mr. Attorney General, what I'd like to
4 understand is the very first vision, for lack of a better term,
5 the vision number \$1.2 billion is the very first number that I
6 heard and we have continued to keep before us. In fact, it was
7 that very number that became the focus of the settlement. Now,
8 that number, as I understand from your discussions in the various
9 committees I've heard you, was not based on contingent valuation,
10 it was not based on pilot studies, that was the number, so that's
11 the first statement. Now, you talked about the economic damage
12 and sir, I must admit my questions are ignorant because I do not
13 have the slightest knowledge of the art form in which you excel.
14 But, on the economic damage, it appears to me that the state in
15 the effort, the team, did not sit down with the litigants who
16 were damaged and who have now become third-party litigants. It
17 appears to me that we did not make that effort to sit down with
18 the people of Alaska and also with the federal government and
19 also with Exxon and say, now, we want to talk and we would like
20 to arrange a settlement that not only takes care of the state of
21 Alaska and its ability to cash in on federal ownership of
22 resource damage, but also we want you to consider what these
23 other people have lost or have been aggrieved. And, I guess I
24 would like to know why we didn't do that because it seems to me
25 the way this process has unfolded, the settlement process, we

1 have generated additional claims against the State because it
2 worked like a limited entry system. We're going to limit your
3 entry into the settlement process, so get in the door. So, a lot
4 of people were forced to jump into the litigious stream. Now,
5 the question is, could we have avoided some of these third-party
6 problems if the State had gone to those people and said, look,
7 we're going to talk about your problems as well? Was that done?

8 MR. COLE: No.

9 MR. DAVIDSON: Why not?

10 MR. COLE: Because I have a fiduciary duty to the state of
11 Alaska as a litigant. I did not think that I could discharge my
12 fiduciary duty as Attorney General by inviting to the settlement
13 discussions or negotiations, if you will, 50 other lawyers or
14 more representing five or 10,000 people. I thought that those
15 Wall Street lawyers could effectively represent the clients whom
16 they represented. I don't mean to be pejorative about lawyers,
17 but just let me say that daily I hear about these claims, you
18 know, why didn't you bring us in. But, when they filed their
19 lawsuits against Exxon, they didn't say I want the Attorney
20 General's name on their complaint. They filed their own lawsuit
21 represented by top drawer lawyers. And, I assumed then and
22 believe now that those lawyers can effectively represent their
23 clients in the prosecution of the claims against Alyeska. And,
24 let me say this, one of the difficulties of the State proving
25 damages in this case are because a lot of the damage claims are

1 held by these third parties. I mean, a lot of these claims, like
2 the loss of tourism claim, those are held by the tour operators,
3 they're not held by the state. So, I didn't see it upon my
4 obligation as Attorney General to go and say, all right, now I'm
5 going to take the tourism operator's claims and go to Exxon and
6 say can we settle this, and then, can I say, well, we'll settle
7 the sport fishing claims against Exxon, and then, I'll say, well,
8 I'll settle the commercial fishing claims against Alyeska, I'll
9 do that. And, then, I'll say we should have here the cannery
10 worker's claims against Exxon and we'll do that. I mean, that
11 just won't work. I mean, these people are represented by their
12 own lawyers and they're prosecuting their own claims against
13 Exxon, and that's the way the system works.

14 MR. DAVIDSON: I can appreciate that Mr. Cole. What I seem
15 not to be able to appreciate is did we miss an opportunity to
16 clarify the total problem here of all the people who were
17 damaged. I'm not saying take these people's lawyers to
18 Washington. I'm saying wasn't there a preliminary attempt before
19 we really got moving in the settlement process to try to
20 understand how these people were damaged and how we as a state as
21 well as a state government could work to leverage, understand, to
22 deal with the problem. And, it seems to me that you're saying,
23 well, geez, we don't have this obligation to our people in this
24 state.

25 MR. COLE: Wait a minute. A lot of these people and a lot

1 of these claims against the State, I don't know how many of them,
2 are claims by non-residents against the State. I mean, I'm not
3 going to go down and look through these complaints and say, well,
4 you know, 25 people out of these 150 are state residents, 125 of
5 them are non-residents and I'm going to look after their claims
6 against Exxon. Don't you think this problem is big enough
7 without bringing in another 10 or 20 or 30,000 claims to this
8 table? I mean, we can't even get this singular one done without
9 trying to settle the claims of another 50,000 people represented
10 by over 100 different lawyers. Getting this done was a massive
11 effort and we're still not done with it. And, let me say this, I
12 see the Native villages are receiving \$1 million from Congress to
13 prosecute their own claims to hire experts. The Native villages,
14 the subsistence users, have claims that are represented by
15 lawyers, they're not wards of the state by any sense and the
16 state has no direct trustee duties to them.

17 MR. DAVIDSON: I think I failed to focus in on the point
18 that I was trying to focus on and that was, it seems to me that
19 we missed the opportunity to sit down as people of the state of
20 Alaska to quantify, to qualify how we all were damaged. I mean,
21 two or three people who have gone bankrupt whether it's a
22 processor or a fisherman because of this accident, because of
23 this catastrophe, it seems to me that we have an obligation
24 somewhere from the time that it happened to resolution of the
25 conflict somewhere along there it would be nice to touch base

1 with these folks.

2 MR. COLE: My lawyers tried to touch base with their lawyers
3 every day in Anchorage for two years. I mean, we didn't not
4 touch base with them.

5 MR. DAVIDSON: Did you ever go up to Exxon and say, look,
6 this is the State's position and, you know, we'd like to know how
7 you're planning to handle some of these processors that are going
8 to have to close down or are going bankrupt, that are going to
9 quit processing the fish, take money out of their communities
10 because this thing happened?

11 MR. COLE: If I had done that, the lawyers for those
12 claimants would have said what's the Attorney General doing
13 mucking around in my case, it's unethical, it's improper, I'm
14 going to call him up before the State Bar Association and file
15 ethical charges against him. I don't have any right to get
16 involved in the prosecution of their claims. And, the first
17 thing they would say, I would imagine, well, he's damaged our
18 case, I mean, we had a real good before he went to talk to Exxon
19 and said what about settling this case. Whammo. I mean, I would
20 be in trouble, the State would be in trouble. And, furthermore,
21 let me say this. We can't even quantify the State's damages.

22 MR. DAVIDSON: Well, why did you settle for a \$1.2 million?

23 MR. COLE: Well, I can tell you that, you know, if want to
24 give me the time. But, what I'm saying is, we're having all
25 these discussions, all these problems now trying to satisfy this