

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILE 8672
1949 SCOMM 76: HOUSE SPEC. COMM. EXXON VALDEZ OIL SPILL. . 1991-92

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Merchant Marine and Fisheries
Room 1334, Longworth House Office Building
Washington, DC 20515-6230

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LATE

April 12, 1991

CHAMBERS, U.S. DISTRICT JUDGE
H. RUSSELL HOLMES

ACE 459936

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Page Two

Specifically, we believe that the following three actions should be taken prior to approval of the settlement: 1) disclosure to the court of enough information to permit a fully informed judgment about the monetary sufficiency of the proposed settlement; 2) a commitment by the trustees to release all damage assessment and restoration studies and related documents to the public after the settlement is approved; and 3) clarifications by the trustees concerning the manner in which the recovered funds will be spent and the extent of public participation in the restoration planning and decisionmaking process. Each point is discussed below.

1. THE TRUSTEES HAVE FAILED TO PROVIDE THE INFORMATION NEEDED TO ASSESS THE MERITS OF THE PROPOSED SETTLEMENT.

a. How much will restoration cost?

Section 311 of the Clean Water Act requires the United States to recover from Exxon sufficient funds to cover the costs of replacing or restoring the natural resources under its trusteeship that were damaged or destroyed by the oil spill. At this point, only the trustees--and perhaps not even they--are in a position to judge whether or not the amount of the settlement is sufficient to meet this statutory obligation. This is true because the trustees have not disclosed to the court, and have refused to disclose to Congress and the public, the detailed information necessary to assess the severity of damage and the anticipated costs of restoration or replacement.

Although we do not know how large the settlement should be, we do know that it is not as large as some of its proponents have encouraged the public to believe. Last month, we asked the Congressional Research Service to review the proposed agreement to determine its net value to the Federal and state governments in real terms, taking into account the effects of inflation and Exxon's ability to deduct civil payments from its taxes. That study, a copy of which is enclosed, placed the estimated net value of the settlement at between \$421 million and \$524 million.

The difficulty of judging the adequacy of the settlement is further complicated by the facts that the damage assessment process is, according to the Administration's April 8th summary, still in a "preliminary" stage; the degree of injury to some important species, including salmon, will not be known for years; injuries to several other species are continuing; and specific restoration plans have not been made, nor costs estimated.

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b. Should restoration funds be used to pay cleanup costs?

Today, more than two years after the spill, oil remains trapped in sediments and gravel. More cleanup may occur this summer. Under the proposed agreement, any future cleanup activities (and certain past cleanup costs) will be paid for by the Fund established to finance restoration activities. This will create a direct tension between cleanup funding and restoration funding -- an "either-or" scenario even though the Clean Water Act requires both.

The adequacy of this arrangement depends upon the sufficiency of funds to cover both obligations. Once again, no good conclusion can be made about this aspect of the agreement without better information on projected cleanup costs and restoration costs.

We, like the public, are not able to make a good judgment about the monetary adequacy of the proposed settlement. That is important, but it is far more important that the court have access to all the documents it needs to make that judgment. Those documents must include more than a summary of the injuries to natural resources that have occurred, but also an expert evaluation of the cost of restoring those injuries, acquiring equivalent resources, if necessary, and providing compensation for lost use and other values pending restoration. We urge you to withhold approval of the settlement unless and until that information has been provided to the court.

2. THE PUBLIC'S NEED TO KNOW.

As mentioned above, the trustees have refused to release their evaluations of the scope and severity of the injury to natural resources resulting from the spill. This refusal is based on the claim that disclosure would jeopardize the proposed settlement and is covered by a loosely construed attorney-client privilege.

We agree that the trustees are entitled to maintain the confidentiality of a limited amount of detailed information gathered or prepared specifically to assist the prosecution of a pending case and that would, if publicly revealed, seriously undermine their legal position. That entitlement is an extremely narrow one in our judgment, however, and should never again be interpreted as broadly as it has been by the trustees in the present case.

The fact is that the trustees in this instance developed a virtual obsession about secrecy. That obsession undermined the effectiveness and coordination of oil spill response and damage assessment efforts and unnecessarily limited public access to information on matters as important as public health. The sharing of scientific data and the dissemination of expert opinions is vital to maintain public confidence and ensure the effectiveness of response actions. In this case, the trustees operated with a degree of secrecy for which there was no practical or legal justification.

It is important to remember that the information available to the Executive branch concerning natural resource injuries in the EXXON VALDEZ case was gathered pursuant to public law, by public personnel and at public expense. The information pertains to resources that are publicly managed, publicly owned and subject to public trusteeship under federal law. Accordingly, we believe that citizens deserve access to the information whether they desire simply to assess the merits of the deal worked out by the trustees or to make a more informed judgment about their own legal options.

Consequently, we urge you to solicit an enforceable commitment from the Federal Government that all information available to it concerning the scope and nature of injuries done to natural resources as a result of the oil spill, including documents that place an estimated dollar value on those injuries and the costs of restoration, will be made public promptly subsequent to approval of any proposed settlement.

3. THE TRUSTEES MUST CLARIFY VAGUE COMMITMENTS ABOUT HOW THE FUNDS WILL BE SPENT.

The proposed settlement and Memorandum of Agreement between the Federal and state trustees provide only a vague and inadequate description of the purposes for which the recovered monies will be spent and the manner in which decisions about spending priorities will be made. We therefore recommend to the court that it seek substantial further clarifications from the trustees on these matters.

The effect of the consensus decisionmaking approach proposed for the Trustee Council will be to allow each Federal and state representative to veto any proposal by any participant. In the event that the obligations of the Federal and state trustees under Federal and state law are not identical, the Trustee Council may be operating under a set of dual and potentially conflicting obligations. Under section 311 of the Clean Water Act, recovered funds must be used to solely to restore,

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Page Five

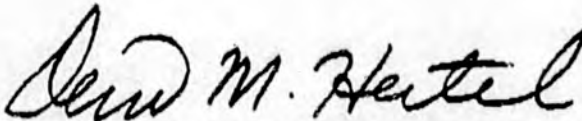
rehabilitate or acquire the equivalent of the damaged natural resources. We encourage the Court to make it clear that this limitation must be strictly adhered to by the trustees. The restoration fund is not to be viewed as a general fund to finance favorite projects or to conduct assessments in perpetuity.

We also urge you to solicit a clearer commitment from the Federal and state trustees for public participation in the natural resource damage restoration process. As you know, the proposed Memorandum of Agreement and Consent Decree provides that the Trustees shall ensure "meaningful public participation", including the "possible" establishment of a public advisory group. We believe a more detailed commitment should be made before the agreement becomes final.

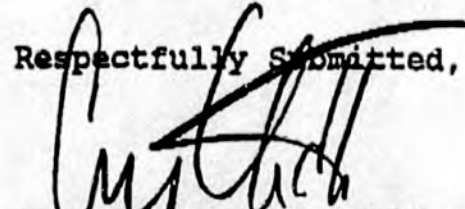
CONCLUSION

We appreciate the opportunity to provide the court with our recommendations on the proposed settlement. While we value and applaud the attempt by the litigants to settle their differences, we believe that certain clarifications are necessary before the proposed settlement is approved. We respectfully urge the court to seek those clarifications prior to taking final action on the agreement.

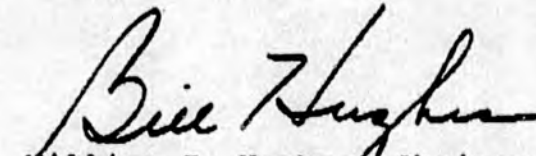
Respectfully Submitted,



Dennis M. Hertel, Chairman
Subcommittee on Oceanography,
Great Lakes and the Outer
Continental Shelf
Committee on Merchant Marine
and Fisheries



Gerry E. Studds, Chairman
Subcommittee on Fisheries and
Wildlife Conservation and the
Environment
Committee on Merchant Marine
and Fisheries



William J. Hughes, Chairman
Subcommittee on Intellectual Property
and Judicial Administration
Committee on the Judiciary

The Honorable H. Russel Holland
U.S. District Judge
U.S. District Court
222 West 7th Avenue
Anchorage, Alaska 99513

Enclosures

ACE 459940

WALTER D. JONES, NORTH CAROLINA, CHAIRMAN

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DIRECTOR/CHIEF COUNSEL
GEORGE S. FENCE

U.S. House of Representatives
Committee on
Merchant Marine and Fisheries
 Room 1334, Longworth House Office Building
 Washington, DC 20515-6230

March 26, 1991

Mr. Dick Thornburgh
 Attorney General of the United States
 Department of Justice
 Constitution Avenue and Tenth Street, N.W.
 Washington, D.C. 20520

Dear Mr. Thornburgh:

We are writing to re-state our interest in obtaining information concerning the recently negotiated proposed settlement of certain civil and criminal liabilities resulting from the EXXON VALDEZ oil spill.

We understand that your Department is currently preparing a summary of information describing and quantifying the scope and severity of injuries to natural resources caused by the spill and that this summary will soon be available to the Committee and the public.

We also request that documents, studies and memoranda be made available to us for the purpose of allowing us to make an informed judgment about the reasonableness of the settlement that has been reached. These materials need not include raw scientific data, but they should include all documents summarizing or estimating the dollar value of injuries done to natural resources by the spill and the costs of restoring those damages. If requested, we will agree to maintain the confidentiality of these materials. We ask that the materials be provided no later than the close of business on Thursday, March 28.

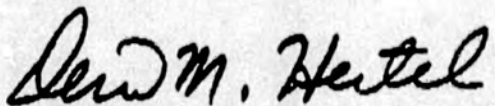
ACE 459941

March 26, 1991
Page Two

If you have any questions about these requests, please let me know or ask a member of your staff to contact Bill Woodward or Will Stelle of the Subcommittee staff at 226-3533.

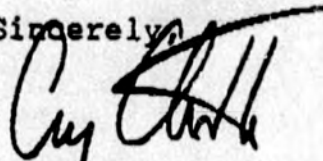
We look forward to your continued help and cooperation.

With kind regards.



Dennis E. Hertel, Chairman
Subcommittee on Oceanography
and Great Lakes and the
Continental Shelf

Sincerely,



Gerry E. Studds, Chairman
Subcommittee on Fisheries and
Wildlife Conservation and the
Environment

cc: Mr. John Knauss, Administrator
National Oceanic and Atmospheric Administration

ACE 459942



U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

April 9, 1991

Honorable Gerry E. Studds
Chairman
Subcommittee on Fisheries and
Wildlife Conservation and
the Environment
Committee on Merchant Marine
and Fisheries
U.S. House of Representatives
Washington, D. C. 20515

Honorable Dennis M. Hertel
Chairman
Subcommittee on Oceanography and
Great Lakes
Committee on Merchant Marine
and Fisheries
U.S. House of Representatives
Washington, D. C. 20515

Dear Chairman Studds and Hertel:

This responds to your letter to the Attorney General, dated March 26, 1991, requesting documents prepared in connection with the pending criminal and civil litigation arising from the Exxon Valdez oil spill. These are United States v. Exxon Corporation, et al. (Nos. A90-015-1CR; A90-015-2CR) and United States v. Exxon Corporation, et al. (No. A-91-082 Civ. D. Alaska).

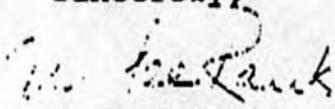
The Department has endeavored to obtain appropriate criminal penalties and civil remedies for the wrongdoing and injuries related to the oil spill. The court is scheduled to sentence the defendants who have entered pleas in the criminal case during the next month. A proposed settlement and consent decree are pending before the court in the civil case and we expect that the court will rule on them at the end of the current notice and comment period. We believe, based upon the available information, that the proposed settlement is adequate, proper and would serve the best interests of the United States. If, however, the court decides not to accept the pretrial resolution of one or both of these actions, then they could proceed to trial. In that event, the United States would be forced to litigate the criminal and civil claims against Exxon, which litigation would run for years. Also, additional litigation has recently been filed alleging that the United States bore some responsibility for the Valdez spill.

We have prepared and filed with the court a summary of our scientific studies relating to natural resource damage from the spill in order to assist the court in evaluating the civil consent decree and the criminal plea. A copy of the summary is enclosed. We also can furnish some of the raw scientific data, which will not have a material affect on our litigation position, gathered by the federal trustee agencies in connection with damage assessment and restoration planning, which will be placed in the Oil Spill Public Information Center (OSPIC) in Anchorage. We believe that these documents, and the extensive materials already on file at the OSPIC, examples of which are listed in the enclosed bibliography, will provide an ample basis for evaluating the proposed plea agreement and civil settlement.

We regret that we cannot provide additional documents which were developed during the course of the pending litigation. Some of these documents, which include information furnished by expert consultants on a confidential basis, have not been disclosed outside of the Department and its federal agency clients. They also include materials that would not be available to an opposing party in the litigation. After careful consideration and despite our appreciation of the interests of your Subcommittees, we have concluded that the production of additional documents at this time would be inappropriate and pose an unacceptable risk to the pending litigation.

We appreciate your understanding of the importance to the United States of these proposed criminal and civil resolutions relating to the Valdez spill and the litigation sensitivity of the considerations that have gone into the proposed resolutions of these matters. We also appreciate your understanding that we must protect the exercise of fiduciary responsibilities by the natural resource trustees, who are among our client agencies, in achieving the best resolution of these claims. At the same time, we appreciate the Committee's oversight role in these matters. Once the litigation is resolved, we would be pleased to discuss the possibility of providing additional information.

Sincerely,


W. Lee Rawls
Assistant Attorney General

Enclosures

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U.S. House of Representatives
Committee on
Merchant Marine and Fisheries
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CRS Estimates Value of Settlement

The attached memorandum from the Congressional Research Service (CRS) estimates the current value of the Exxon Valdez settlement at a low of \$421 million and a high of \$524 million.

The estimate takes into account the deductibility of the civil payments and discounts future payments to current value.

Majority Staff
 House Fish and Wildlife
 Subcommittee



March 19, 1991

TO : House Committee on Merchant Marine and Fisheries
Attention: Will Stell

FROM : Bernard A. Gelb
Specialist in Industry Economics
Economics Division
and
Jane G. Gravelle
Senior Specialist in Economic Policy

SUBJECT : Net Present Values of the Exxon Valdez Settlement

This memorandum is in response to your request for a calculation of the present value of the recent settlement of the Exxon Valdez case to the U.S. Government and to Exxon Corporation. (Such a "value" would be negative in the case of Exxon.) The gross amount received (or paid) can differ from the net cost to the firm depending on tax liabilities, and values could differ with choice of discount rate. Because of uncertainties we have prepared several alternative scenarios.

One uncertainty is the ultimate amount to be paid. The agreement provides for a \$100 million criminal penalty, which we assume will be paid May 1, 1991, and for a series of civil payments tentatively payable on September 1 of this and the following ten years. These payments are set at \$90 million in 1991, \$150 million in 1992, \$100 million in 1993 and \$70 million for the next eight years. These amounts total to \$1 billion. There also is, however, the possibility of up to \$100 million more being payable after the year 2001, if additional environmental damage is discovered. In this alternative, we assume the \$100 million will be paid in two installments in the two years following.

Undiscounted, the payments will sum to \$1 billion and \$1.1 billion in the two payment scenarios. The net cost to Exxon will be smaller, however, because the civil payments can be deducted from income for purposes of both State and Federal taxes. The Federal tax rate is set at 34 percent; and we add three percentage points to account for State income taxes net of the

deductibility against Federal taxes.¹ Thus, the combined tax rate is set at 37 percent. As a result, the net cost to Exxon (net receipts to the Government) will be \$655 and \$716 million, respectively, without discounting.

A second major uncertainty is the discount rate. The present value of both net and gross costs depend on the discount rate used, and the proper discount rate is not entirely clear.

We consider several. The Forestry Service uses a 4 percent real return, while the Office of Management and Budget (OMB) suggests a 10 percent real return. (The regulations on evaluating natural resource damages, 43 CFR 11, direct the use of the OMB rate). The General Accounting Office (GAO) suggests using a nominal rate of return similar to a Treasury security for the same maturity. The 4 percent rate of return is closer to a riskless rate; it is also quite similar to the Government bond yield for three to ten year maturities assuming an inflation rate of around 4 percent. The 10 percent rate seems quite high, and would be associated with a relatively risky investment. Our understanding is that this rate was based on an attempt to estimate the pre-tax real return on physical capital investment. We would estimate that the average pre-tax return on private capital investment is lower than these numbers, at around 7 percent.²

Since the payments are in nominal dollars, these real returns should be converted to nominal returns. Assuming an inflation rate of 4 percent, the nominal rates would be 8.16 percent for the Forestry Service number (and consistent with the GAO approach), 11.28 percent to correspond to the average pre-tax return on private capital, and 14.4 percent to correspond to suggested OMB rates.

Using the three discount rates with the two payment scenarios, we obtain the following results:

(1) For the 8.16 percent rate, the present value to the Government ranges between \$734 million and \$773 million. The cost net of taxes to Exxon would be \$499 to \$524.

¹ This adjustment was suggested to us by Andy Yood of the American Petroleum Institute, who indicated that an add on of two to three percentage points was a typical rule of thumb to obtain a combined Federal and State income tax rate.

² To estimate the pre-tax return requires a measure of yields on debt and equity and an estimate of the effective tax rate. See Jane G. Gravelle, *Differential Taxation of Capital Income: Another Look at the 1986 Tax Reform Act*, National Tax Journal, December 1989, pp. 441-464 for a discussion of the methods used to derive this number.

(2) For the 11.28 percent rate, the present value to the Government ranges from \$666 million to \$694 million. Exxon's cost net of taxes would be \$456 million to \$474 million.

(3) For the 14.4 percent rate, the present value ranges from \$611 million to \$631 million. The cost net of taxes would be \$421 million to \$434 million.

While we would consider the discount rate in (3) as probably too high, the choice between (1) and (2) is less clear. Since the stream of payments is fixed, there is some justification for using a relatively riskless rate of return. On the other hand, the present value using the estimated pre-tax return rate represents the quantity of actual physical capital that would be necessary to generate the stream of future payments.

Please contact us (at 7-7300) if you have further questions on this matter.

R. Merrick Peirce
175 Blue Fox Run
Fairbanks, AK 99712
(907) 457-2600

LATE 00

Judge Holland
222 W. 7th Ave. Federal Building
Box 4
Anchorage, AK 99513

Re. Proposed criminal plea bargain for Exxon Corp.

Apr. 10, 1991

APR 15 1991

FED. U. S. DISTRICT COURT

Dear Judge Holland:

If I were the federal Judge that was to decide whether to accept, or reject the proposed plea bargain between the United States and Exxon, I would consider the following:

Does a 100 million dollar fine adequately penalize Exxon for their conduct, and will it deter them from engaging in the type of conduct that allowed the Valdez oil spill to happen? The answer to both questions is no.

The 100 million dollar fine is a substantial amount of money to the average individual or company, but Exxon is one of the largest corporations in the U.S., if not the world. By way of a rather crude analogy-100 million to Exxon is like \$10.00 to you or me. The Statement by Exxon Chairman L. Rawls that the fine can be paid without significantly affecting his company attests to this. For this reason alone the fine is not adequate. Further, another oil spill as disastrous as the "Exxon Valdez" spill could occur tomorrow because the industry continues to engage in shipping practices that are little- better than they were on the night the Exxon Valdez slammed into Bligh Reef. During periods of bad weather (6' high seas, etc.) it is impossible to conduct a oil spill cleanup, yet Exxon and the others refuse to halt tanker traffic during inclement weather. Dennis Kelso, the former head of the ADEC, requested a suspension of tanker traffic for this reason, but was rejected. A substantial fine would induce Exxon (and the others) to halt tanker traffic during bad weather.

The Exxon Valdez spilled aprx. 258,000 gallons of oil, yet the spill cleanup capability of Alyeska (of which Exxon is an owner) is only 200,000 gallons. If we recognize that oil spills are inevitable, shouldn't the oil companies have the ability to clean them up when they do happen? I think so, and I believe they will assume that responsibility if they know they will receive fines for their misconduct that will significantly effect their financial profitability. Judge Holland, 100 million dollars is not enough. A fine of 1.5 Billion would be much more appropriate.

Finally, allowing a criminal to negotiate the fine they would like to pay is repugnant. Justice would be better served if the courts, not Exxon, determined the criminal penalties in this, and all other cases.

I believe that the judicial branch of the government is in the best position to influence positive, constitutionally appropriate and constructive change within our society. Judge Holland, by rejecting this terrible plea bargain you will be following in the

footsteps of the great judges who, through their intelligent decisions, have made this country better, fairer, and stronger.

Sincerely,


R. Merrick Peirce

P.S. It is easy to forget, but the reckless actions of Exxon caused the needless suffering and death of 100's of thousands of animals. I hope you keep this in mind.

ACE 459951

R. Merrick Peirce
175 Blue Fox Run
Fairbanks, AK 99712
(907) 457-2600

Judge Holland
222 W. 7th Ave. / Federal Bldg.
Box 4
Anchorage, AK 99513

APR 18 1991

FED. U. S. DIST. COURT

Re. Correction of my previous letter, regarding the Exxon Inc. proposed settlement.

Apr. 10, 1991

Dear Judge Holland:

In my last letter I mistakenly stated the Exxon Valdez spilled 258,000 *gallons* of oil, and that Alyeska had a spill clean-up capability of 200,000 *gallons*. I meant to write that the Exxon Valdez spilled 258,000 *barrels* of oil, and that Alyeska's present spill cleanup ability is limited to 200,000 *barrels*.

In the rush to get my comments to you before the deadline I didn't adequately proofread my letter. I apologize for this error and hope that this letter of correction will accompany my comments.

Sincerely,


R. Merrick Peirce

ACE 460009

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LATE

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Judge Holland
222 W. 7th Ave.
Federal Building - Box 4
Anchorage, AK 99513
Dear Judge Holland:

April 14, 1991
Room 211 Irving-UAF
Fairbanks, AK 99775

APR 15 1991

U.S. DISTRICT COURT
DISTRICT OF ALASKA

This note is in regards to the proposed settlement of the state and federal litigation with Exxon.

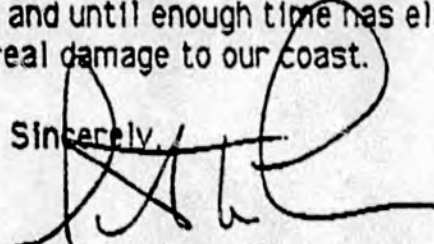
I do not feel that the proposed settlement is in the best interests of anyone but Exxon. The cost to Exxon, although it sounds large to us as individuals, is a mere pittance to such an immense corporation, especially when spread out over a ten year period. It is also likely insufficient to fund any recovery efforts necessary to alleviate damage from the spill.

This last point is critical. The public has not been given access to any of the data that has been gathered to assess damage from the oil spill. Recent summaries of results released by the US Fish and Wildlife Service certainly point to much graver damage than many previous estimates had showed. Life cycles of salmon and other marine life require several more years before we even have a hint of how severely they have been damaged. Recent record returns of salmon only show that good conditions existed prior to the spill.

Perhaps when all the data in the proposed settlement will prove to be fair. However, present sketchy evidence, and the desire by state authorities to keep data under wraps until after a settlement has been finalized point to a desire for a politically motivated settlement rather than one that is fair to the peoples of Prince William Sound, coastal Alaska, Alaska, and the United States.

I urge that the proposed settlement be scrapped until the public has had a chance to see the results of the millions of dollars of scientific studies that have been conducted on the spill, and until enough time has elapsed for these studies to truly determine the real damage to our coast.

Sincerely,


Stephen W. Lewis

ACE 459952

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Institute of Marine Science
University of Alaska
Fairbanks, Alaska 99775
April 10, 1991

Judge Holland
222 West 7th Avenue
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APR 15 1991

FEDERAL U. S. DISTRICT COURT

Dear Judge Holland:

As a resident of Alaska, and as a biologist conducting research in Prince William Sound, I would like to submit to you my comments regarding the proposed settlement of criminal charges against Exxon for damage caused by the oil spill of 1989.

I have been working in Prince William Sound since 1986, and since 1987 have been taking part in a long-term study of the population of killer and humpback whales in the Sound. Since the oil spill I have been part of a damage assessment study funded by the National Marine Fisheries Service. Since the spill, we have documented the disappearance of 13 members of a 36 member pod of killer whales that is seasonally resident in the Sound. Like other scientists conducting spill related research, we are not allowed to discuss our findings, though we are allowed to publicize the numbers that I have stated here. I strongly feel that the proposed settlement does not (and cannot, because of restrictions on scientific data) adequately take into account the impacts of the Exxon Valdez oil spill on the biological integrity of Prince William Sound. Millions of dollars were spent following the spill for the purpose of assessing the damage to the marine environment. These data were to be used in litigation that would have sought to hold Exxon accountable for the damage that was done. It seems ridiculous to me that this data is now not even being considered in the settlement. Alaskans have a right to know the full impacts of the spill before they agree to let Exxon off with a fine.

Judge Holland, I am sure you are aware that the settlement, as it stands, does little to encourage Exxon and other oil companies to prevent future spills. After all, these companies make billions of dollars in profits every year. Being in close proximity to the entire oil spill cleanup made it very clear to me that spending tremendous amounts of money was of little object to Exxon. I am very concerned that the payment of the settlement over ten years will be of even less consequence to Exxon, and will hinder restoration efforts. For example, one proposed restoration effort would be the protection of fish, wildlife, and marine resources in the Sound from logging. Buying up timber sales will require a more substantial sum than could be attained in any given year under the current settlement.

As a part-time resident of the Sound, I can attest to the psychological damage of the oil spill. The proposed settlement is a slap in the face to all who suffered from the spill. The oil companies are walking away with the message that throwing a lot of money at environmental damage that they cause will make

consequences to them go away. Alaskans are left with little faith that federal and state agencies will hold oil companies accountable for their actions.

Please do not allow this settlement to be carried through. It is an insult to all Alaskans, to science, and to Prince William Sound.

Sincerely,

Eva Saulitis

Eva L. Saulitis

Federal Courthouse
Box 4
Anchorage AK 99513

LATE

Jan Straley 91
PO Box 273
Sitka AK 99835

attn: Judge Holland

Re: oil spill settlement

APR 15 1991

10 April 91

U. S. DISTRICT COURT

Dear Judge Holland,

I am concerned about the proposed settlement. I agree an amicable agreement will benefit all parties. It seems, though, that the amount Exxon needs to pay should be larger. A billion dollars can't be enough money to assure quality restoration of Prince William Sound. In addition, there should be money enough for baseline studies all along Alaska's coast. In the event of another spill (from Barrow to Ketchikan) ← we would be in exactly the position PWS was in March 1989: There just isn't enough scientific information to adequately make sound judgments as to the effect of a devastating oil spill anywhere along our coast! I would like to see the oil companies and the State of Alaska really pay for the cost of developing an oil industry - that includes knowing what was present prior to an oil-related accident.

I propose the following:

- 1) Assure all scientific information be publically released. This should allow all data to be published and all data released back to the investigators.
- 2) Include enough money to study ^{the} Prince William Sound ecosystem on a long-term basis and to purchase proposed logging interests.
- 3) Include money to make baseline studies of other areas possible from Barrow to Ketchikan. This is critical

Thank you for your time

ACE 459955

Jan Straley
A. Straley, Esq.
(95)

LATE

APR 15 1991

THOMAS A. LAKOSH

P.O. Box 100648, Anchorage, Alaska 99510

(907) 258-5767

92

April 15, 1991

Honorable H. Russel Holland, Judge
U.S. District Court of Alaska at Anchorage

Dear Judge Holland:

Thank you for the opportunity to provide testimony on the Exxon Settlement at hand. My name is Thomas Lakosh. I am a resident of Whittier, Alaska, Senate District E, House District 6 in this great state of Alaska. I am a commercial fisherman, subsistence user, and recreationalist in Prince William Sound. In addition, the sacred and holy lands of the Prince William Sound have inspired me to religious insight available at no other place in my 36 years of travel among 42 states of the United States and 5 Provinces of Canada.

I am presently litigating claims for damages caused by the grounding of the T/V Exxon Valdez on behalf of myself and all others similarly situated. My civil action in U.S. Federal District Court, District of Alaska at Anchorage as a named Pro Se Class Action Representative is filed under Case No. A89-140 Civil/A89-95 Civil. I am, as well, a Pro Se named Class Action Plaintiff in the Consolidated Class Action Plaintiffs interlocutory appeal to the 9th Circuit Court of Appeals concerning Order No. 38 of District Court Judge H. Russel Holland concerning maritime tort as the only actionable tort claim available to consolidated plaintiffs, allegedly applicable to both Federal and State plaintiffs.

I am additionally a Pro Se plaintiff in State Superior Court before the Honorable Judge of Appeals Judge Milton Souter, case file number 3AN-89-9365 Civil. This is in my effort to seek restitution for clean up activities which were required by public nuisance; intentional invasion of protected lands; special injury sustained by Alaska residents and subclasses of protected natural resource users suffering from activity proximately caused by the grossly negligent grounding of the T/V Exxon Valdez.

I am also requesting as a resident of Alaska, bound by fiduciary relationship with the State and its agencies, all data within the possession of the State which materially affects our fiduciary contract of representation by the Legislature and Attorney General as it relates to this tragic environmental disaster and the related constitutional statutory and common law crises resulting from it. This request was made on April 12th 1991 on behalf of myself and the Alaska Center for the Environment by the Trustees For Alaska, Randall M. Weiner, Executive Director. The Public Records Request was served directly on Commissioner Harold Heinze, Alaska Department of Natural Resources, Commissioner Rosier, Alaska Department of Fish and Game, Commissioner Sandor, Alaska Department of Environmental Conservation, and Charles Cole, Attorney General. Accurate copies of

PAGE 1 of 3

ACE 459956

962

the aforementioned Public Records Request were also faxed to the Senate Special Committee on the Exxon Valdez Settlement and the House Special Committee on the Exxon Valdez Settlement. The Request cites AS 9.25.110 as authority and is supported by Anchorage School District v. Anchorage Daily News, 779 P.2d 1191 (Alaska 1989) where the opinion of the court states, "[A] public agency may not circumvent the statutory disclosure requirements by agreeing to keep the terms of a settlement confidential."

This concept of full and fair disclosure of all relevant scientific and economic spill studies is likewise supported in House Concurrent Resolution 8, House Joint Resolution No. 25, House Bill No. 213 and public testimony presented on this issue to Alaska Legislative Committees by those Alaskans who have been subject to the heinous environmental crimes of Exxon and the fraudulent withholding of material evidence by the Executive Branch of Alaskan government. I therefore request the Legislature and/or all courts of jurisdiction to immediately resolve and order a restraint of all Legislative voting upon or court-approved settlement of these civil and criminal claims. It is clearly illegal by judicial decree to restrain public access to the materially relevant information regardless of the existence of a negotiated settlement. It is therefore an abuse of the civil liberties and right to informed consent of the residents of Alaska to proceed with any voting or any court-approved settlement conference unless and until the residents of Alaska are afforded their rights to informed consent.

Moreover, any settlement or plea bargaining must consider defendants' liability as promulgated by the False Claims Act of 1946, 31 U.S.C. §3729 et. seq.. Under this statute, any contractor submitting or conspiring to submit false claims to the United States Government or its agencies is criminally liable for fraud and civilly liable for double the damages sustained by the U.S. Government and the associated costs in prosecuting the public interest. All Exxon subsidiaries associated with the exploration, production, transportation and indemnification activities associated with the transportation of crude oil as contracted with the United States Government and Alaska have sworn to abide by all environmental laws and regulations promulgated to protect Alaskan resources. The clear violation of laws and regulations before, during and after the grounding of the Exxon Valdez by defendants establishes a prima facie cause of action of fraudulent claim against the government by the unauthorized and illegal appropriation of natural resources for the private, inferior purposes of Exxon subsidiaries and their subcontractors. The defendants, with full knowledge, fraudulently failed to disclose material facts to its fiduciary partners: United States Government, State of Alaska, residents of Alaska, and citizens of the planet. These material facts only now being released indicate that the "Seven Sisters" knew full well that adequate response to an oil spill of the magnitude experienced, was unavailable at any time subsequent to the initial flow of oil to the present day.

Additionally, defendants conspired to deny the rights of all injured parties to seek compensation from the statutorily established Trans-Alaska Liability Fund through construction and concealment of illegal and unauthorized contracts between the Fund and defendant Exxon Shipping. The plan, according to a Fund employee and other sources, was to create a contract which would allow Exxon Shipping to falsely make claim for its disbursements to damaged parties against the Fund. Pursuant to my motions before Judge Holland, the U.S. District Court declared that fraudulent contract invalid and instructed defendant, Exxon Shipping, that such claim against the Fund was inappropriate. These fraudulent misrepresentations and claims were premeditated with intent to obtain unjust

enrichment at the expense of our: sacred trust; holy lands; subsistence lifestyle; religious beliefs; commercial interests; recreational interests; and national symbols of the bald eagle and whale populations in the affected areas.

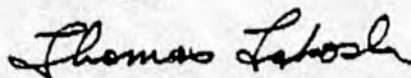
Such premeditated heinous criminal activity should be prosecuted to the fullest extent of the criminal law with appropriate punitive civil and actual damages awarded to discourage any future conspirator. Criminal fines should be calculated for each animal illegally killed or harassed in violation of federal and state statutes. These fines should be commensurate with those levied against persons not entitled to take animals within the state, i.e., non-resident, non-licensed trespassers. Civil penalties should be assessed in a manner commensurate with the standard applicable to the most grossly negligent and intentionally invasive trespass upon public property, private property, or special injury interest.

All judicial administrative and legislative agencies empowered by the public mandate hold our sacred trust in protecting these interests and are obligated to undertake all reasonable and considerable extraordinary efforts to fully investigate and inform the public and their democratically elected representatives as to the intent and affect of defendants criminal, fraudulent, negligent, conspiratorial, and unconscionable abrogation of the fiduciary duty which they promised to undertake in good faith as a condition of their considerable financial gain to be reaped from the natural resources owned by and with each individual resident of the State of Alaska and the citizens of the United States. The Department of Justice of the United States and the Attorney General of the State of Alaska have the statutory duty and mandate to investigate and protect pursuant to the aforementioned innumerable violations of statute, tort, and common law.

Additionally, there should be no relaxation of the defendants' liability pursuant to the Clean Water Act, the Resource Recovery and Conservation Act, CERCLA, or Alaska Statutes creating strict liability for all pollution abatement and resource restoration. By no means should Exxon or other culpable defendants be relieved of funding the most cost-effective and technologically advanced clean up activities required to remove the remaining threat to the public health, safety, and sense of decency. This strict liability for implementation of the best available technology should likewise apply to all restoration activities.

Let it be known that on this day I request those legislative and administrative representatives of our will be pallbearers at the burial of my heart in Prince William Sound where it will lie in torment with the remaining five million gallons of crude oil in the beaches, in the water, and on the ocean floor of this sacred land. We are caught in the Devil's bargain and we must get ourselves back to the Garden.

Sincerely,



Thomas A. Lakosh

Humane Society of North Pinellas
3040 State Road 500 Clearwater, FL 34610
(813) 797-7722

93

LATE

April 11, 1991

U.S. District Judge Russel Holland
222 W. 7th Ave., Room 54
Anchorage, Alaska. 99513-7545

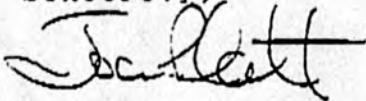
Dear Judge Holland:

I am writing for the membership of the Humane Society of North Pinellas, Florida.

We understand that Exxon Corporation pleaded guilty in March, 1991, to misdemeanor violations in the nation's worst oil spill, under a plea agreement with the federal government. Also, we understand you are waiting for sentencing until public comment can be gathered. Even though Exxon will pay \$100 million in criminal charges, and \$900 million over 11 years to clean up Prince William Sound. We feel this is only MONEY THAT WILL BE ADDED ON AT THE PUMP...THE PUBLIC WILL PAY THEIR FINE. Therefore, we ask you WHO IS CRIMINALLY RESPONSIBLE?

We await your reply!

Sincerely,



Mrs. Joan Platt
Legislation Chair

ACE 459959

Shelter one mile East of U.S. 10 on State Road 500

(97L)

12 April 1991

PO Box 2397
Homer, Alaska 99603

Judge H. Russel Holland
c/o Clerk of the Court
Room 261 U.S. Dist. Court
222 W. 7th Avenue
Anchorage, Alaska

LATE

94

Dear Judge Holland:

In the wake of the Exxon Valdez Oil Spill there has been much suffering. This suffering comes in many forms, but it has been here with us every day since that terrible tragedy...that care-less terrible tragedy! The pain of watching so many beautiful creatures endure unspeakable deaths, the anger and frustration of participating in a clean-up effort with no equipment and the fear that our livelihood of fishing has been severely damaged these are but a few of our continuing nightmares.

With these things in mind I request that you suspend a determination until the scientific and economic data has been released and the public and legislature have the opportunity to review it.

This issue is gravely important! I urge you to allow it to be done with great care and consideration.

Sincerely,

Gail Parsons

Gail Parsons

cc: Barbara Herman Office of the Attorney General
Thomas A. Campbell General Council, NOAA
Senator Paul Fischer
Rep. Mike Navarre
Rep. Gail Phillips

LATE

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RECEIVED

APR 15 1991

CHAMBERS, U.S. DISTRICT JUDGE
H. RUSSEL HOLLAND

Judge Holland —

You must suspend a determination of the
Exxon Settlement until the scientific data
has been released and the public and
the legislature have had an opportunity
to review it.

This is not a JUST Settlement —

Charlie Cole is wrong and does not speak
for the people of Alaska —

Raymond Commisa
310 Stewart St.
Anchorage 99508,

Dear Honorable Judge Holland

We find the Exxon settlement unacceptable.

4/9/91

The people of the state of Alaska would not receive due compensation for the damage to their once pristine Prince William Sound from this settlement. In addition, the one billion dollar settlement in view of tax write-offs and no interest payment plan amounts to \$480 million which is totally inadequate as a deterrent for such gross negligence on Exxon's part in the handling of the Exxon Valdez. Also, we find the immunity granted to Alyaska Pipeline Co. repugnant. Alyaska is the spill cleanup contractor with the State of Alaska and should be held accountable for their lack of response to the spill.

Please approach this decision with thoughtfulness and the desire for just resolution.

We hope that you will reject this settlement.

Thank you for your consideration.

Lynne & Michael O'Leary

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ACE 459962

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Honorable Judge Holland,

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T/10/91

97

This letter is regarding the Exxon Oil Spill Settlement. We do not support the proposed \$900 million settlement, and would like to see further litigation and appropriate compensation for the State of Alaska.

Please consider a punishment that would at least act as a deterrent - the extent of damage is still unknown, and results of the studies have not been released.

We feel Exxon and Alaska Pipeline Company should be required to pay more than the proposed \$100 million criminal fine. Also, we believe that Alaska should ^{NOT} be granted immunity and that if a disagreement arises between state and feds over the fine that Exxon should still be required to pay regardless.

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APR 16 1991

CHAMBERS, U.S. DISTRICT JUDGE

ACE 459963

Sincerely
[Signature]

Antman

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PORT
Graham
CORPORATION

VIA POST OFFICE HOMFR • PORT GRAHAM • ALASKA 99603

LATE



April 11, 1991

Judge Holland
222 W. 7TH Avenue #54
Anchorage, Alaska 99501

Dear Judge Holland:

In reference to the Exxon Criminal settlement we make the following comments:

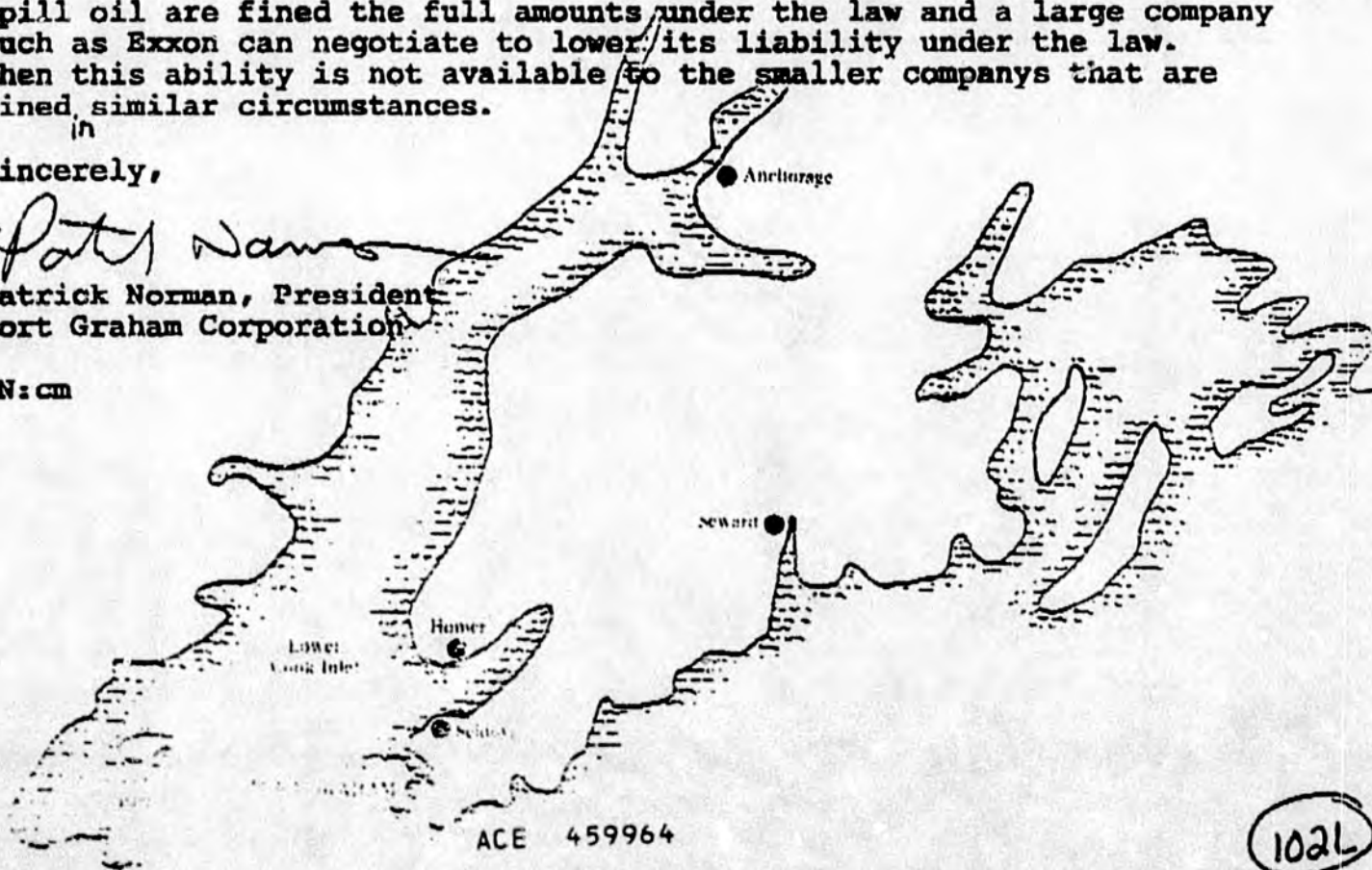
We feel that the settlement of one hundred Million dollars is too lenient on Exxon because of the damage done to the state and federal land. The natural resource damage to the animals such as the seals, seaotters and fish according to the Federal governments study is beyond what we expected it to be. Additionally there is no statement on how the state is to use its portion, and we strongly disagree with the Federal Government agreement to put its portion in to the violent crimes compensation fund. This money was for crimes in the state of Alaska and the money should be spent on the citys, and villages that were traumatized emotionally and physically by the oil spill and the clean up efforts.

In closing it is wrong in our minds that smaller companys that spill oil are fined the full amounts under the law and a large company such as Exxon can negotiate to lower its liability under the law. When this ability is not available to the smaller companys that are fined in similar circumstances.

Sincerely,

Patrick Norman
Patrick Norman, President
Port Graham Corporation

PN:cm



102L

LATE

99

P. O. Box 2993
Homer, Alaska 99603
April 13, 1991

Judge Russel Holland
United States District Court
222 West 7th Avenue
Anchorage, Alaska 99501

Dear Sir:

Thank you for inviting public comment on the Exxon-Valdez oil spill settlement. I would like to recommend an extension of the time period allowed for input from the public in order for everyone to have time to analyze the results of the scientific study and, hence, make informed decisions.

My personal opinion, without having studied the document, is that the settlement is woefully inadequate. It makes provision for very little of the very real damages, expenses and inconveniences incurred by the spill and its continuing effects. And it is far from over. I would like to see the entire case restudied and renegotiated.

Thank you again for the chance to comment. Best wishes in your deliberations.

Sincerely,


Elizabeth Balkus

Law Office of Joseph A. Sonneman, Ph.D., Esq.

324 Willoughby, Juneau, Alaska 99801
PH: (907) 463-2624 FAX: (907) 463-3802

100

LATE

The Honorable Stanley Sporkin
United States District Judge
U.S. Court House
3rd & Constitution, N.W.
Washington, D.C. 20001
FAX (202) 426-5079
PH (202) 535-3573

April 11, 1991

Dear Judge Sporkin:

re: Exxon Valdez Settlement

I am an attorney not representing anyone in this case, but have been a reporter covering the Alaska Legislative hearings regarding the Exxon Valdez and other settlements. So my comments are made in the public interest, not in the interest of a client.

I sent the following telegram today to Judge Holland in Anchorage:

The Exxon plea agreement is part of package that includes Consent Decree, Memorandum of Agreement. That package is not in public interest, because negotiators intentionally structured settlement to exclude Legislative branch, both Congress and Alaska Legislature, from any influence or control over spending, despite Constitutional provisions requiring all money bills to originate from Congress, Legislature. State AG Cole testified to Legislative Committees as to that exclusionary intent by settlement negotiators. Just say no.

Because your court accepts FAXes for public comments, but because Judge Holland's court does not, I can also send you what I could not send him, a copy of my testimony Saturday to the Joint Alaska House and Senate Settlement Review Committees.

The basic thrust of that testimony is that the settlement format of setting up a trusteeship independent from Legislative branch control is not accidental, but was done deliberately. The Clean Water Act was not the only avenue open to the State to seek recovery, but it was the avenue chosen. Citizens of Alaska will be deprived of any ability to determine spending through their elected officials, despite Constitutional guarantees backed by court decisions that only the Legislature may appropriate funds, and spending decisions unduly limited, despite a clause in Alaska's Constitution attempting to ensure unlimited Legislative discretion in spending by prohibiting dedicated funds.

The entire settlement package is flawed and not in the public interest because of these constitutional problems.

Sincerely,

Joe Sonneman

ACE 459966

104L

TESTIMONY OF JOE SONNEMAN TO JOINT SETTLEMENT REVIEW COMMITTEES
OF THE ALASKA LEGISLATURE, April 6, 1991

Thank you and good morning. My name is Joe Sonneman. I have a varied background, and I'll tell you just a little bit of it. I earned a Ph.D. in Government and a law degree as well. I am also working as a reporter for a number of newspapers, which is how I have come to attend many of the meetings not only of the Settlement Committees but also the House Judiciary Committee, which earlier took testimony on legislative involvement in the settlement.

I have previously sued the State over a case involving legislation from last year, in which I believe the Legislature violated the "no dedicated funds" clause of the Constitution. I'm not going to discuss that now; that's for the courts to decide. I just want to let you know, that some people think--I'm certainly one of them--your staff attorney, Pam Findley, has suggested, that anybody can sue if they feel that the Legislature is not doing what the Constitution requires that the Legislature should do.

I am not representing anybody other than myself in my testimony here

I think my main concern about the settlement is not about the fact of the settlement, nor even about the amount, but about its effect, its effect on government. And I think its effect on government takes it out of the public interest. Its effect on government is essentially to create one branch of government.

And this was, I believe, not an accidental effect.

I know that your own rules, in the Legislature, you tend to avoid looking into motive or purpose, to avoid arousing personality opinions, I guess, but I think some of that has to be done here, and I will try and

show some of that through circumstantial evidence as well as direct evidence.

Circumstantial evidence was best explained to me as, when you look out of the window after it's been snowing, and you see a rabbit footprint, you know the rabbit's been there, even though you haven't seen the rabbit. So, even if the rabbit should happen to come by later and say that it hadn't been there, you would still have circumstantial evidence to know that it had.

That's what, some of what's going on.

Basically, having watched government here for about twenty years, people who come to government from the private sector believe in this one branch of government. It's not that they're evil, it's just that they are not experienced in the ways of government; they think there is only one branch, the executive, that's how you get things done.

Governor Hickel, despite his previous experience as governor, his previous involved in government, has that sort of philosophy, let's get it done, can-do government, strong executive--the Legislature, well, if we have to, well, okay.

At a private meeting for the press, Governor Hickel did say to me, this was a conversation between us, that, well I had told him what many of you folks say routinely about every governor, and that is "the governor can cut, but he can't add." [The Governor has line-item veto powers, including budget line items, but only the Legislature can put items in the budget].

And Governor Hickel's response was to say, something to the effect that maybe he could find a way to

multiply. And I think that he has found such a way to multiply in creating this, this trusteeship which is not really subject to the will and control of the Legislature.

In addition, Governor Hickel also made the comment, he had been told, years before, that he was "the foreman of the ranch." He really liked that metaphor about Alaska, and that the Legislature, that means you, were just hired hands, whom he could tell what to do.

Now we all know, or some of us know, the Speaker of the House discoursed upon this metaphor, that the Governor may be a foreman, but you are more like the Board of Directors. Again, I think that's the important point to talk about here.

The Attorney General, I believe, also shares this view, that you are just hired hands. You should give advice, but you shouldn't control. Control should be left within the hands of the trustees.

The Attorney General, for example, said to the House Judiciary Committee, words to the effect that federal negotiators did not want the Legislature to have the ability to appropriate money to any purpose, they wanted it restricted to natural resource damage restoration.

However, to one of your Review Committees, the Attorney General said there was no substantive discussion of the Legislature's power to appropriate.

On the other hand, yesterday, to the House Review Committee, he said, "There are some--who shall remain nameless--who did not want Congress to be involved."

Today, earlier, almost in his opening remarks, in reply to the gentleman from Homer, the Attorney General, when talking about the reason for the settlement, said he

wanted the money to go for restoration, because of the fear that the Legislature might want to spend the money for education or some other purpose.

That's, the whole point, the whole point is, it's up to the Legislature, the Constitution gives the power to the Legislature to decide appropriations, to decide where the money shall be spent.

The Attorney General instead considers that the Legislature should be advisory only. To the House Review Committee yesterday, when Rep. Hudson asked if the Legislature could have some sort of an advise and consent power over the direction of trustee spending, the Attorney General said "No," however he thought [you] could be advisory only.

So that's sort of where the Attorney General is coming from, this one-branch concept of government that ignores the role of the Legislature in determining appropriations. And you know, these are little phrases here and there, but when you add them up, that is circumstantial evidence of that.

Now I suggested to members of both Review Committees that there might be some problems in truthfulness and completeness in getting statements from the various witnesses. You chose not to take sworn statements from subpoenaed witnesses; I still recommend that to you.

Let me see, on, for example, the Attorney General has been saying recently that it was his, it was his initiative, as it were, that he stood up for the right of the Legislature to be involved in the settlement process. Now of course he also testified that even if the Legislature says "no", the Governor could sign the agreement anyway. Of course, he testified that the Governor will not do so, but he has testified that the Governor may do

so.

So, again, you are seeing, you don't really have the power under the agreement that was set up this way; it's merely that the Attorney General and the Governor by their grace give you that power. Is that the way the Constitution works? I don't think so.

And in addition, to the House Judiciary Committee on March 7, the Attorney General said--and here I am reading not from a verbatim transcript but from the official minutes of that meeting--the Attorney General "felt that any Legislative involvement in the settlement process and the approval of such settlements was highly ill-advised public policy."

So that's inconsistent with his more recent testimony that he is the champion of Legislative involvement. He isn't.

Now, also on truthfulness and completeness, Representative Gruenberg [Chair of the House Settlement Review Committee] twice yesterday had to ask the Attorney General on whether or not there had been any discussion of separating the [resource damages? settlement recovery money?] between the State and the Federal government. The second time ... the Attorney General made the answer very specific: he said that he had not had such a discussion with Richard Stewart.

That was not entirely a responsive answer. [It begs the question of whether anyone else had such a discussion with Stewart or with any other person]. I asked him about that afterwards, and he said that there had, that in essence there had, that the sovereign claims of Alaska and the United States, were so important to them that they would not reach agreement on it; they had had litigation on it going on for 12 or 13 years.

My question is, why not even ask? If you have a settlement that is settling everything else, why not settle, why not have a discussion, why not even ask about settling the difference between the two governments, about whose resources, how the money is to be divided?

There's no absolute necessity for setting up a trusteeship, unless one intends to exclude the Legislative bodies, both Congress and the Legislature.

And I think that is a fair reading of what's been happening, of why things were set up as they were.

I see I have several other comments here; I will skip most of them because I've taken up so much time, but I have, I guess, two, two more.

One is a short comment that you might want to ask your own attorneys about, and that has to do with release of information.

The Attorney General is correct in his statement of the general rule about withholding that information, but there are exceptions to that rule as well, and you might like to ask your attorneys to look at some of those exceptions, for example, can you get the information if that information is not available from any other source, and since the condition of the land has changed, it may be impossible ... not available from any other source, that might ... information subject to [discovery].

And, finally, those of you who know Rep. Barnes, and those of you who know me, know that we very rarely agree. And so, it's somewhat to my own surprise, that I find that we do agree here.

Her, Representative Barnes is of the opinion that almost by necessity, there must have been some State assets involved. You can

debate how many and how much, but [there must have been] some State assets involved for the State to receive anything. And if State assets were involved, then [the money paid for damages to those State assets is itself a State asset, and] it is up to the Legislature to decide how those State assets should be appropriated.

It's a point that she cannot escape and I think the Governor and the Attorney General cannot escape [it], but they try to, because they believe in this one branch form of government.

And again, I don't think they are evil, I think it is because they come to us from the private sector. Perhaps with more experience, they will understand the Legislative role better, but this agreement is not now in the public interest, because it contradicts the three-branch form of government that we have.

Thank you.

ACE 459970

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LATE

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APR 16 1991

CHAMBERS, U.S. DISTRICT JUDGE
H. RUSSEL HOLLAND

Dear Judge Holland,

I am writing to you concerning the proposed settlement over the Exxon Valdez oil spill. I am outraged that the spill data has not been released. The legislature must pass a resolution requiring release of the state's economic and scientific data. There must also be clear opportunities for public participation in determining how settlement monies should be spent. This should include a legislative appointed public advisory group with members from the environmental community and spill affected communities whose comments legally bind the Trustees' Council. The money should be spent on: buy back of timber rights along spill affected coastlines to prevent further damage; restoration activities; and ongoing studies in the Sound.

Judge Holland should suspend a determination on the settlement until the scientific data has been released and the public and the legislature have had opportunity to review it.

Sincerely,



ACE 459971

105L

National Parks
and Conservation Association

LATE
102

PO Box 202045
Anchorage, AK 99520
April 10, 1991

The Honorable H. Russell Holland
US District Court
222 W. 7th Avenue, Room 261
Anchorage, AK 99513

Re: United States v. Exxon Corporation and Exxon Shipping Company
No. A90-015 Criminal

Dear Judge Holland,

I am writing on behalf of the National Parks and Conservation Association, the only national non-profit citizens organization that focuses on national park concerns. Our 280,000 members nationally, including over 1,800 in Alaska, promote the protection, preservation and public understanding of our nation's National Park System through diverse activities. We appreciate this unusual opportunity to submit comments regarding the plea agreement entered into between the parties listed above.

Central to the equitable settlement of any criminal suit is the imposition of a sentence that reflects the seriousness of the offense, that promotes public respect for the law and that serves as a deterrence to future criminal behavior by the defendants and others.

Given the recent release of "Summary Of Effects Of The Exxon Valdez Oil Spill On Natural Resources And Archaeological Resources March 1991" by the federal government without any paid or projected costs, it was difficult to evaluate the adequacy of the proposed fine. We ask that the Court order public disclosure of the financial information which provides the basis for the \$100 million proposed fine and that an opportunity then be given for the public to offer supplemental comments.

Exxon Corporation has yet to acknowledge any culpability nor demonstrate any remorse. Corporations, particularly one with assets as large as Exxon's, pose interesting challenges with respect to imposing sentences for criminal behavior. Corporations do not go to jail. Corporations can often absorb fines and



1015 Thirty-First Street, N.W., Washington, D.C. 20007-4406

Telephone (202) 944-8530 944-8535

ACE 459972

106L

Holland
page 2

redistribute their impacts, due in part to our tax laws. Exxon has likened the entire proposed settlement costs, not just the criminal fine, as a typical cost of doing business. High fines often achieve the goals of fairness and deterrence. The structure of corporations however, is such that fines, while necessary and important, may not lead to rehabilitative changes in management.

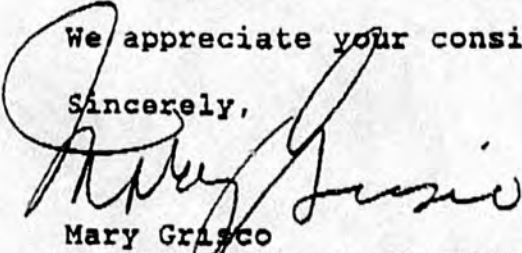
Creative sentencing can be drafted and tailored to meet this challenge. For example, the Court could also require Exxon to undertake a comprehensive environmental audit of all their facilities engaged in the extraction, refinement and shipment of oil. Besides setting timelines for reporting, the Court could also mandate public involvement in this audit. It is our water, air and land that is at risk when Exxon extracts, refines and ships oil. Requiring Exxon to complete this and perhaps other "community service projects" could effect corporate management behavior.

Alyeska Pipeline Service Company played a crucial role in the events following the grounding of the Exxon Valdez. Alyeska's failure to comply with oil spill contingency plans contributed to the extensiveness of the damage and to the confusion of roles for the various agencies and companies. The opportunity to ascertain whether Alyeska's conduct warrants criminal and/or civil penalties should not be foreclosed.

Finally, while we are pleased that half the proposed criminal fine will go to the State of Alaska for restoration projects, we think the public has a right to review the proposed activities and to challenge any that may seem inconsistent with the specific language of the settlement. The State should not be given unilateral authority to resolve disagreements nor to insulate itself from public debate and scrutiny.

We appreciate your consideration of our comments.

Sincerely,



Mary Grisco
Alaska Regional Director

ACE 459973

APR 18 1991 10:24 FROM Environmental Crimes PR TO Dep. of Law P.48

LATE 103

Miss Nancy Donalds
835 Bonifant Street
Silver Spring, Maryland 20910

April 11, 1991

H. Russell Holland, Chief Judge
U.S. District Court
222 West 7th Avenue, Box 12
Anchorage, Alaska 99513

Dear Judge Holland:

You must make Exxon pay for that oil spill, which they deliberately caused, as I perceive it. This incident is just one evil of "world unity." Communism's only concern is world domination. They could care less about the world that our Lord Jesus Christ created for us, and which is our responsibility to care for.

Cordially yours,

Nancy Donalds
Nancy Donalds

ACE 459974

107L

APR 15 1991 10:21 AM FROM Environmental Crimes Unit TO Dept. of Law P.01

April 14, 1991

LATE 104

Judge H. Russell Holland
c/o Clerk of the Court
Room 261, U.S. District Court
222 West 7th Avenue
Anchorage, AK 99513

RE: Exxon Valdez Settlement

Dear Judge Holland:

Respectfully, I am writing to ask you to consider suspending a determination on the Exxon Valdez Settlement until scientific and economic data has been released and the public and the legislature have had an opportunity to review it. I am not at all convinced that the acceptance of this settlement will benefit the state and the people of Alaska.

This is a precedent setting case and we the people need time to make the right decision. With all the catastrophic pollution problems today, specifically concerning oil, we need to send a message to polluters to clean up their act and prevent spills.

Sincerely,

Holly L. Werner
Holly L. Werner

Holly Werner
1500 Russian Jack Dr. #40
Anchorage, AK 99508

ACE 459975

108L

LATE

103

Brent W. McCowan
560 N. Gower St.
Los Angeles, CA 90004

April 12, 1991

H. Russel Holland
Clerk of the Court
Rm 261, U.S. District Court
222 W. 7th Ave.
Anchorage, Alaska 99513

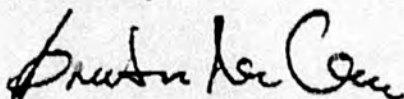
Dear Judge Holland,

I understand that the state of Alaska has refused to release scientific and economic damage information regarding the Exxon oil spill in Prince William Sound which would provide key answers for a comprehensive public evaluation of the problem. The withholding of any information to the concerned public about a public matter is not only unwise, but irresponsible if that matter were to have public repercussions in the future. It remains good business and political sense to involve well-informed public participation in such grave and far reaching matters.

Therefore I call for a public advisory group with members from the environmental community and spill affected communities to participate in discussions with the proposed Trustees Council to insure the proper spending of settlement monies. It is important that any determination on the settlement be suspended until the scientific data has been released and the public and the legislature have had adequate time to review it.

You have an opportunity to insure that the state of Alaska does not fall victim to the same downturns that have affected other states in the lower forty-eight. Please take the time to make the right decisions.

Sincerely,



Brent W. McCowan

ACE 459976

109L

TOTAL P.42

Law Office of Joseph A. Sonneman, Ph.D., Esq.

324 Willoughby, Juneau, Alaska 99801

PH: (907) 463-2624 FAX: (907) 423-3802

LATE

106

General Counsel Thomas A. Campbell
National Oceanographic and Atmospheric Administration
Department of Commerce
14th & Constitution, N.W., Rm. 5814
Washington, D.C. 20230

Barbara Herman
Attorney General's Office
State of Alaska
1031 West 4th Avenue, Suite 200
Anchorage, Alaska 99501

Handwritten: J.A.S. / H.A.S.
COPY w/ ORIGINAL SIGNATURE

16 APRIL 91

Dear Mr. Campbell and Ms. Herman: re: Exxon VALDEZ Settlement

Following are my comments on the proposed settlement.

Credentials and Disclaimer:

I earned an M.A. and Ph.D in Government at Claremont Graduate School and a J.D. (cum laude) at Georgetown. I passed bar exams in Alaska, Massachusetts, Hawaii, and New York and hold membership in the bars of Alaska and Massachusetts [only paperwork pending in the other states]. I came to Alaska to live in 1971.

However, I am representing only myself and, hopefully, the public interest here and am representing no other client. I am a pro se plaintiff in public interest litigation against the State of Alaska on a Marine Highways case involving the dedicated funds question.

I have been working as a reporter for five small Alaskan weekly newspapers, which is how and why I happen to have attended many of the Exxon VALDEZ settlement events. I am not representing any newspaper in this letter or in prior testimony.

I am a member of the Juneau Democratic Precinct Committee and chair a Democratic luncheon speakers' club, the Bill Egan Forum, but represent neither the Precinct nor the Forum here. In fact, I discussed and sought approval for my letter and testimony with no one else. So I am representing no one else, other than myself and the public interest, in these comments.

Not in Public Interest: One Branch of Government Intent

The settlement is not in the public interest because it intentionally creates or tends to create a one-branch form of government in which only the Executive has power, even though both State and Federal governments have a tripartite form of government.

The settlement in fact creates a one-branch form of government because only Trustees, who are appointed Executive branch officials, will control the spending of the bulk of the money recovered under

the settlement, because both Legislative branches--Congress and the Legislature--are removed from the appropriation, allocation function despite constitutional and court requirements that all money bills originate with the Legislative branch only, and because the settlement avoids the Judicial branch decision, except as a rubber stamp upon the Executive branch settlement itself and not upon the merits of the case.

This emphasis upon and factual creation of one-branch government is intentional and not accidental, as shown by the following direct and circumstantial evidence.

1. In late January or early February, Governor Hickel, responding to my report to him of a common legislative saying about all governors, that "a governor can cut, but he cannot add" [meaning that Alaska's governor has a line-item veto but only the Legislature can put items into the budget], said that he would try to find a way "to multiply." He made this comment in his offices in Juneau during a 'meet the press' session, but no one other than I heard the Governor's remark. Still, I did hear it.

The settlement, by creating a \$1 billion money pot administered by Executive branch officials not subject to Legislative branch oversight and direction, does 'multiply' Hickel's powers as Governor.

2. Attorney General [AG] Charles Cole, testifying to the Alaska House Judiciary Committee March 7,

a. when asked if his repeated failure to answer Committee questions about the settlement, on deadlines he chose, was an attempt to stall the Committee until after he had completed the settlement negotiations, said, "What difference would that make?"

b. said that legislative involvement in the negotiation process or in settlement approval would be "highly ill-advised public policy."

3. AG Cole also told the House Judiciary Committee that there were negotiators who did not want the Legislature to have the ability to make appropriations for any purpose. [Alaska's Constitution prohibits "dedicated funds" in order to let the Legislature make unrestricted judgment calls about each year's budget.]

4. AG Cole told the House Settlement Review Committee on April 5 that some settlement negotiators "who shall remain nameless" did not want Congress to control settlement funds.

5. AG Cole told Rep. Hudson and the House Settlement Review Committee April 5 that the Legislature could not have "advise and consent" powers over Trustee spending, but could be advisory only.

6. AG Cole admitted to the House Settlement Review Committee

that he had had no discussion with U.S. Assistant Attorney General [?title?] Richard Stewart over the possible division of natural resource damage claims between the State and the Federal government. [Remember this one; we come back to it later].

This is significant, because, if the governments had reached agreement on this division, then the State could have pursued its own claims in State court and any damages it won there clearly would have been General Fund monies clearly subject to the plenary power of the Legislature to appropriate as it saw fit. By failing even to have such a discussion, AG Cole acted consistently with an intent to withhold from the Legislature even the chance that it could exercise its constitutional power over appropriations.

7. AG Cole admitted to the Senate Settlement Review Committee that, even though regulations promulgated under the Clean Water Act required the deposit into the Federal Treasury of all damages recovered under the Act, "the Governor and I were unwilling to permit that deposit into the Federal Treasury," in part, because "it takes an Act of Congress to get money out of the Federal Treasury."

This is significant, because it shows both a willingness to violate Federal regulations, agreed to by both State and Federal negotiators, and an intentional effort to avoid Congressional control of settlement monies Exxon paid.

8. Alaska Representative Niilo Koponen said that the Hickel Administration "was relying on the settlement as a way of keeping payments out of the Legislature's hands." April 6-9 period.

While Koponen's saying so does not make it so, the fact that he said so means that I am not the only person to think it so.

9. On April 12, at a press conference that I did not attend but an uncut videotape of which I watched later, another reporter asked Governor Hickel a question I had not 'planted', namely, was it Hickel's intent to shift the balance of power from the Legislature to the Executive. Governor Hickel answered that he did have such an intent, that he was doing his accustomed role of giving increased Executive direction, that it was a counter to Legislative control during the late '70's, and that he expected to be at least partly successful at encouraging that shift that was trying to happen.

This is significant because now the Governor's intent to increase Executive branch control was made public--not just confided in me--and not at my instigation or suggestion.

So, therefore, the settlement is not in the public interest because Governor Hickel and others actively intended to--and did act to accomplish their intention to--create a large sum of money subject only to Executive branch control, taking acts both of commission and omission to accomplish this improper end.

Illusory Benefits of Settlement

The settlement is not in the public interest because it does not end litigation the way a properly-structured settlement would do. Because ending litigation is the primary advantage of a settlement, the continued existence of ~~outstanding~~ litigation means that the proposed settlement does not achieve the ends for which it was created. That is, the benefits of settlement are illusory.

1. Settlement benefits are illusory, according to former AG Doug Baily, because now individuals who sued Exxon will also have to sue the State of Alaska. Thus, said both Baily and Assistant Revisor of Statutes Pamela Findley to the Juneau Bar Association luncheon April 12, Alaskans will be suing Alaska, leading in Baily's words to "legal civil war." Findley and Baily foresaw difficult political decisions for legislators who would be asked to fund litigation against their own constituents.

2. Settlement benefits are also illusory, because public interest litigants [who need not pay their governmental opponents' costs, because under Alaska law it is in the public interest to get public answers to public interest questions] have, under Alaska's Constitution, a right to a legislature which itself exercises its sole right to make appropriations.. See Kenai Lumber.

3. Settlement benefits are also illusory, because under Alaskan law, citizens can intervene in a government case merely by showing that possible non-feasance occurred. see McCormick v. Smith, a 1989 Alaskan case in two parts [see both].

NOW go back to the AG's failure even to ask Richard Stewart about the division of natural resource damage claims between the two governments. Because Cole failed even to ask that question, the legislature was excluded even from the chance of getting the appropriation power due it under Alaska's constitution.

And that "possible non-feasance" is enough to permit intervention of right by a public interest litigant(s) who want to enforce their constitutional right to a Legislature that makes appropriations.

Alyeska Received Too Great a Release from Liability

1. AG Cole for the first time testified April 13 in Kodiak that Exxon had insisted that Alyeska be released from liability, because, Cole said, Exxon did not want to settle ITS claim only later to become liable for Alyeska, which it partly owns.

2. But, said Cole, that release was so broad that Alyeska was also released from liability to Alaska for natural resource damages even if Alyeska had either acted independently from Exxon or acted on behalf of another 3rd party, most likely another owner.

3. And, given Congressman Miller's letter showing that Alyeska and its owner companies most likely in fact intentionally violated promises to Congress, there would be reasons for someone to bring suit against Alyeska.

So, for these three reasons good and true, I urge you to "just say 'no'" to the settlement.

Violating State Right to Appropriate Funds Without Restriction

Once again, however, let me explain, adopting Rep. Ramona Barnes' analysis, the argument for State control of some portion of Exxon payments.

1. Although it may be difficult to draw the line exactly which separates Federal from State natural resources damaged, nevertheless it is a virtual certainty that there are some damaged natural resources that would belong to the State; i.e., that are State assets.

2. If there are even any State assets, then the part of the recovery which applies to those State assets is itself in reality a State asset, albeit in financial rather than in natural resource form, and however differently denominated. But, though the form may differ, nevertheless the recovery from Exxon is to that degree a State asset.

3. Alaska's constitution and court cases here give ONLY to the Legislature the right to make appropriations of State assets.

4. The Alaska Constitution further prohibits "dedicated funds," i.e., funds spent for a special purpose. Therefore, funds in the General Fund are subject to the general appropriation power of the Hickel Administration.

5. So, therefore, the Legislature is intended by the constitution specifically to consider all possible State needs, not just natural resource damage restoration needs. Alaska has an abysmal infant mortality rate and some of the nation's worst per-capita rates for alcoholism, drug abuse, homicide, suicide, accidental death. The U.S. may differ; still, that is Alaska's view: the legislature should be able to balance needs for one more deer along the north slope against needs for a clean water drinking system in a rural area.

I hope this all makes sense. I am including a fact sheet and calendar or diary of Settlement talk events.

Sincerely & cordially

Joseph A. Sonneman

ACE 460014

15 APR 1991

A PARTIAL 1991 CHRONOLOGY OF EXXON SETTLEMENT EVENTS

GOVERNOR MEETS PRESS, Jan-Feb. ?

Responding to 2nd floor saying that "a governor can cut, but he can't add," Gov. Hickel says perhaps he can find a way to "multiply."

HOUSE JUDICIARY, February dates

AG repeatedly refuses to answer Committee questions about settlement progress and clauses, alleging incomplete answer-preparation process.

HOUSE JUDICIARY, 3/7

Asked if his repeated failure to answer Committee questions, on deadlines he chose, was an effort to stall the Committee until after the settlement was complete, the AG says "What difference would that make?"

AG says legislative involvement in negotiation process or settlement approval would be "highly ill-advised public policy."

HOUSE JUDICIARY, Feb-March??

AG says some settlement negotiators do not want Legislature to be able to appropriate to any purpose.

HOUSE SETTLEMENT REVIEW COMM., ??

AG says negotiators had "no substantive discussion" of Legislature's power to appropriate.

AG does not answer Rep. Gruenberg question re: any discussion of dividing the damaged resources between Alaska and U.S. governments. Gruenberg asks again if "any discussion." AG then says he did not discuss that with U.S. Asst. AG Stewart.

AG says Hickel got idea for \$1.2 billion figure from "intuition."

SENATE SETTLEMENT REVIEW COMM. ??

AG says Hickel got idea for \$1.2 billion figure from analysis.

HOUSE SETTLEMENT REVIEW COMM, 4/5

AG says some settlement negotiators "who shall remain nameless" do not want Congress to control funds.

AG tells Rep. Hudson that the Legislature can not have "advise and consent" power over Trustee spending, but may have advisory-only role.

Rep. Barnes says that some damaged natural resources were State assets, that money recovery for that damage must thus also be a State asset even if not so called, and that only the Legislature can appropriate State assets. "So I have a constitu-

by Joe Sonneman

tional problem" with the proposed settlement's Executive branch trustee control of most settlement money.

SENATE SETTLEMENT REVIEW COMM., 4/6

AG says he considered alternative, that Legislature might want to fund restoration, would need half of Exxon money and Legislature might want to spend it on education.

Private lawyer questions settlement amount as inadequate, especially upset that no trial means no chance of punitive damages.

AG says he would consider releasing data if Legislature asked him to do so by a joint resolution. Sen. Eliason asks why the Legislature would want to take Cole off the hook and put themselves on it.

CONG. MILLER LETTER, 4/8

U.S. Rep. George Miller writes Judges Holland & Sporkin that: "Exxon and the other owner companies which control Alyeska: (1) knew that Alyeska could not effectively respond to an oil spill in Prince William Sound; (2) failed to make necessary improvements in Alyeska's oil spill response capabilities; and (3) secretly decided that Alyeska would not respond to an oil spill in Prince William Sound in the manner prescribed by Alyeska's Oil Spill Contingency Plan."

Cong. Miller includes photocopy telex evidence as proof, asks the judges not to accept plea bargain.

SENATE MEMORANDUM, 4/8

Findley writes that possible constitutional issues exist, both as to dedicated funds--because settlement receipts mostly for special purposes, though "federal programs" exception may apply--and as to the power only of the Legislature to appropriate--because Trustees, not Legislature, disburse Exxon settlement payments.

FEDS RELEASE STUDY SUMMARY, 4/9

U.S. Govt. releases summary of scientific studies, showing spill damage as reportedly twice the level previously known.

LEGISLATOR COMMENTS, 4/6-9

Rep. Sharp observes that if State & Federal trustees are not unanimous, a single Federal judge

decides, and "our batting average is not good before Federal judges."

Rep. Koponen says Hickel administration was "relying on the settlement as a way of keeping payments out of the Legislature's hands."

Rep. Kubina says settlement "a poorly-negotiated contract, but what's the alternative?" He "won't vote 'No' lightly," because of the District 6 money, likes idea that all settlement funds limited to natural resource restoration purpose, but still has "many questions."

GOVERNOR'S PRESS CONFERENCE, 4/12

Gov. Hickel publicly admits an intent to try to shift the balance of power from the Legislature to the Executive branch.

Gov. says he will stand by DNR Comm'r Heinze as State Trustee, even though Heinze may have acted for ARCO in agreeing not to provide Alyeska the oil spill response capabilities required under the Contingency Plan.

JUNEAU BAR ASSOCIATION LUNCHEON, 4/12

Former AG Bailly questions the public policy decision of election to proceed only under the Federal Clean Water Act, rather than advancing some State claims under State law, so that recovery for those claims could flow to the General Fund.

Bailly & Asst Revisor of Statutes Findley agree that settlement puts the State on the same side as Exxon, against Alaskan citizen-litigants. They forecast political, public policy problems as legislators are asked to fund litigation against their own constituents. Bailly: legal "civil war;" doubts that the State avoids litigation through settlement, if result is only to join State with Exxon defense against many plaintiffs.

Bailly says that "the greater the rapidity by which the Exxon VALDEZ spill recedes, the sooner it is politically possible to consider ANWR development." A relationship exists.

Findley says that Clean Water Act limits recovery on a \$/bbl.basis, to much less than under proposed settlement. She says this means either settlement is not wholly under CWA or else Exxon knew it had much bigger liabilities for non-CWA claims.

HOUSE SETTLEMENT REVIEW COMM., 4/12

AG admits to Rep. Brown that no village by village assessment of damages was made.

AG also admits to Rep. Brown that subsistence opportunities were not evaluated.

AG tells Rep. Brown that best-available damage assessment techniques were used.

AG tells Rep. Gruenberg that the "reasonably anticipated" language of the re-opener clause is mutually exclusive with "reasonably known".

AG tells Rep. Gruenberg that language excusing restoration if costs are "grossly disproportionate" to results is "like any other legal test."

AG refuses, despite repeated requests, to provide Rep. Gruenberg and the Committee with a "contractual history" of the whole settlement, offers to provide such a history only for requested parts of the settlement. Rep. Gruenberg says the "re-opener" section would be one such requested part.

HOUSE REVIEW COMM.--in Kodiak, 4/13

AG explains that Alyeska's release from liability was a "deal-breaker" requirement of Exxon, who did not want to settle its own liability only to find itself liable for its part ownership of Alyeska. Rep. Gruenberg notes that this is first time AG said this.

AG tells Rep. Gruenberg that the State would be unable to sue Alyeska for natural resource damages due to Alyeska's independent action, or due to Alyeska's actions on behalf of non-Exxon Alyeska owners, even despite Congressman's Miller's allegations of owner company intentional violations, because of the settlement clause intended to release Alyeska for liability for its actions on behalf of Exxon only.

Aquaculture Assn. says funds promised it by Exxon were not paid.

HOUSE REVIEW COMM.--in Cordova, 4/14

Mayor says, "Don't ask us to trust you; we prefer it in writing, backed by a letter of credit."

Oil Spill Response Center worker says "continue suit;" good evidence exists; Exxon pays costs, fees; you set environmental law precedent.

THE FOLLOWING DOCUMENT MAY NOT FILM
LEGIBLY BECAUSE OF THE POOR QUALITY OF THE
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RECEIVED

APR 17 1991

CHAMBERS, U.S. DISTRICT JUDGE
H. RUSSEL HOLLAND

concerning the release of
information regarding the
Valdez oil spill. The
data has not been released
and a result of this
conduct is that the
opportunity to review
the data has been denied
the public and the
U.S. District Judge
H. Russel Holland should
suspend a determination on
the settlement until the
scientific data has been
released and the public
and the U.S. District
Judge have had opportunity
to review it.

Sincerely,
Julia Soros

Fax was
illegible
(m) 4/18

1131

ACE 460018

Frank Murphy

Sincerely,

Dear Judge Holland:

I am writing to you concerning the proposed settlement over the Exxon Valdez oil spill. I am outraged that the spill data has not been released. The legislature must pass a resolution requiring release of the state's economic and scientific data. There must also be clear opportunities for public participation in determining the settlement. Money should be spent on public advisory groups with members from the environmental community and other affected communities. Those comments (likely) from the trustees of the fund should be spent on the money should be spent on, but back on the money along with affected communities. Timely release of the spill data is essential to prevent further damage, restoration activities, and ongoing studies in the Sound. Judge Holland should suspend a determination on the settlement until the scientific data has been released and the public and the legislature have had opportunity to review it.

CHAMBERS, U.S. DISTRICT JUDGE
H. RUSSEL HOLLAND

APR 17 1991

RECEIVED

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LATE

109

4015 N. Hermitage Avenue
Chicago, IL 60613
April 10, 1991

U. S. District Judge
H. Russell Holland
Clerk's Office
Anchorage, Alaska
99513

Dear Judge Holland:

Exxon must adhere to a basic vlaue -- you did it, you fix it!

Powerful companies must not be allowed to destroy the environ-
ment because of profit. Double-hulled ships must be mandatory.

Probability of accidents is not a factor is providing solutions
to oil spills. Accidents of this magnitude must never be allowed
to happen.

Sincerely,

Anne Barrett

Anne Barrett

ACE 460019

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110

P.O. BOX 100105
ANCHORAGE, AK 99510
(907) 276-2656

April 15, 1991

Judge H. Russel Holland
c/o Clerk of the Court
Room 261, U.S. District Court
222 West 7th Avenue
Anchorage, Alaska 99513

Dear Judge Holland:

I am writing to request that you suspend a determination on the Exxon oil spill settlement until the scientific data has been released. The public and legislature must have an opportunity to review the information for a satisfactory resolution. I thank you for your attention to this matter.

Sincerely,

Katherine A. Kunz

Katherine A. Kunz

ACE 460020

115L

LATE

DAVID P. JANKA
P.O. BOX 1022
VALDEZ, ALASKA 99686

(111)

MEETINGS,

4-16-91

I AM A 15 YEAR RESIDENT OF PRINCE WILLIAM SOUND, ALASKA. I HAVE KAYAKED, SAILED, POWER BOATED, FLOWN, RESEARCHED, HIKEED, WORKED, ENJOYED AND AM RAISING A FAMILY HERE.

I HAVE BEEN INVOLVED AT TIMES WITH OIL SPILL RESPONSE AND HAVE FOLLOWED ALASKA LEGISLATIVE HEARINGS RELATED TO THE EXXON VALDEZ SETTLEMENT.

I DO NOT FEEL THIS SETTLEMENT IS IN THE PUBLIC INTEREST OR DOES IT EVEN MEET THE NON-PUBLIC INTERESTS. IT IS CLOSE TO BEING A GOOD SETTLEMENT THOUGH! THE CONCERNS RAISED OVER THESE PAST WEEKS COULD BE SATISFIED WITHIN A SHORT PERIOD OF TIME (1 YEAR I BELIEVE) WITH A REWORKED SETTLEMENT.

PLEASE WITHDRAW FROM/OPOSE THIS SETTLEMENT AND COME BACK TOGETHER WITH A COMMITMENT TO WORK OUT A GOOD, WELL REPRESENTED SETTLEMENT BASED IN REALITY WITH PUBLIC AND LEGISLATIVE PARTICIPATION THROUGHOUT THE PROCESS.

THANK YOU FOR ALLOWING US TO COMMENT. I ONLY WISH WE WERE BROUGHT INTO THE PROCESS EARLIER.

D. P. Janka

cc: BARBARA HERMAN - ST. OF ALASKA
THOMAS A. CAMPBELL - NOAA WASH. D.C.
H. RUSSEL HOLLAND - US DIST. COURT AK.
EUGENE KUBINA - AK. LEGISLATURE
KURT MENARD - AK. LEGISLATURE
JAY KERTUJIA - AK. LEGISLATURE
CHARLES COLE - ATTORNEY GENERAL, ALASKA
WAITER HICKEL - GOVERNOR, ALASKA

(116L)

April 11, 1991

LATE

Honorable H. Russel Holland
U.S. District Court
222 W. 7th Ave.
Anchorage, Alaska 99513

Dear Judge Holland:

I have thoroughly read the **Settlement Agreement Concerning the Exxon Valdez Oil Spill Between the United States, the State of Alaska and the Exxon Corporation** as published in the March 19, 1991 federal register and wish to make the following comments:

John Knauss of the National Oceanic and Atmospheric Administration (NOAA) referred to the settlement between the federal government, the state of Alaska and Exxon Corporation as "a good deal for the nation" and Secretary of Transportation Samuel Skinner called it a "tough but fair settlement."

I disagree with them. It is neither good nor fair.

It is neither good nor fair to the citizens of Alaska and the United States directly or indirectly affected by the spill. It is neither good nor fair to the hundreds of thousands of sea birds and the uncounable marine life killed by the oil from the *Exxon Valdez*. It is "tough" but not for Exxon as Skinner implied. Exxon Chairman Lawrence Rawl said that the settlement "will not have a noticeable effect on our financial results." Consequently, it is anything but tough.

There are other problems with this settlement that I wish to outline for you. As an Alaskan affected by the oil spill, it is my hope that you will seriously consider my concerns and agree that many of the provisions of the settlement are "improper, inadequate and inappropriate."

I have four concerns: money, secrecy of scientific information, public participation, and legal matters.

First of all, the money is insufficient. The \$1 billion seems like a lot, but it is reduced by:

- * \$100 million in fines, half of which will be remitted;
- * \$174 million to reimburse the state and the federal governments for clean up costs already incurred;
- * an estimated \$40 million for cleanup by the state in 1991;
- * an unknown amount for cleanup by the federal government in 1991.

That leaves \$726 million for restoration. That figure is further reduced to approximately \$370 million after you take into account the ten year payment schedule (which amounts to an interest-free loan to Exxon). It is unclear how much money it will take to restore the Sound to a near-original state (if that's possible) since the state and federal government have not released scientific studies documenting the damages. Figures quoted in the Anchorage Daily News (March 31, 1991) suggest the cost of restoration could be as high as \$8 billion. Therefore, I feel the financial provisions for restoration as described in the settlement are inadequate and should be increased substantially.

The fines imposed on Exxon are too low also. Since half of the \$100 million is to be remitted, only \$50 million remains as a punishment for crimes committed by a corporation that earns \$177 billion a year. This fine is equivalent to \$34.19 for a person earning \$40,000 a year. That is a flaccid penalty at best. Yet, U.S. Attorney General Dick Thornburgh said the fine "represents a clear and unmistakable signal to those engaged in environmental crime" that they will be punished. Hardly. Because this figure is so low, I feel it is inadequate and inappropriate. The amount of the fine does not match the crime.

To the credit of the architects of the settlement, there is a provision for reopening the settlement in the event of discovery of unknown damages (paragraphs 17 And 18 of the Settlement Agreement). In light of the many ecological and social unknowns related to the spill, this is a very good idea. Unfortunately, the maximum amount is again too low - \$100 million. I believe we should set no limit on the amount of damages that can be recovered in the future. Perhaps a time limit could be set such that after 20 years, for example, Exxon would be no longer responsible for paying damages. This limit as written is improper and inadequate.

If the figure of \$900 million remains as the amount paid to the governments I believe it is best spent completely on restoration, replacement, rehabilitation, and/or enhancement of the damaged or injured natural resources and not on cleanup costs. Better to consider restoration and cleanup as separate actions with separate effects. Cleanup should be thought of as an emergency measure, a bandage to stop the bleeding. Restoration should be thought of as techniques designed to rehabilitate and revive. The governments should be reimbursed for the costs of cleanup, but the reimbursement should be in addition to and separate from restoration money. For this reason, I consider it inadequate and improper.

The second area of concern is the release of scientific studies. On Monday, April 8, an 18-page federal summary of scientific studies so far was released which indicated the spill was far more lethal than previously thought. In light of this, it is critical that we have all the data *before* a settlement is agreed upon. The state must release the studies in complete form, not just a summary. I urge you to disapprove the settlement because of this enormous and inexcusable inadequacy.

If the studies were released, we'd have a firm idea of how much money is needed for restoration. Instead, we have the figure of \$1 billion which is a fabrication of Governor Hickel's mind. Where did he get that number? On March 13, 1991 he said "I have had a boat down there for 30 years. I know the Sound". That's ludicrous. When we are dealing with large sums, as we are here, we need to have more evidence than one man's memory of water recreation.

There are other reasons to release the information:

- * Taxpayer's money has funded the studies;
- * they concern public resources;
- * other scientists need and want the studies in order to understand the spill;
- * the information could help other Alaskans harmed by the spill to get a fair settlement from Exxon.

One other reason to release the studies: the state should own up to its responsibilities. If it was in error somewhere along the line it should be

held accountable. Withholding the studies is improper and undermines the entire settlement.

The third area of concern is the public participation process. State Attorney General Charlie Cole, referring to what he believes is public disinterest in the spill said "I don't think it's of great consequence to the store owner in Galena how many eagles were killed as a result of the spill". I disagree. The spill hurt people everywhere on this planet, not just fishermen or native subsistence users. I recall a woman from Massachusetts who quit her job and sold her house to come to Alaska to help the injured animals after the spill.

Such a response does not indicate apathy as Cole would like us to believe. Interest in the spill and the settlement is still high and every citizen of the United States, and especially Alaska, should have the opportunity to take part in a complete, well-publicized and effective public participation process. As it is written in the settlement, the public has 30 days to comment (as I am doing here), an insufficient and inadequate amount of time. I urge you to suggest to the appropriate authority an extension of the public comment period. There is no need to rush through this sensitive and critical issue.

Unfortunately, even if there was ample public participation, it would fall on deaf ears. As the settlement is written, there is no wording that forces the governments to respond to the comments, only the courts can force them.

Especially deficient is the wording in paragraph 37 of the settlement agreement concerning the legislature. It reads, in part: "Each Government reserves the right to withdraw its consent to the Agreement within fifteen (15) days following the close of the public comment period... if before the end of that 15 day period, the Alaska State Legislature has not approved the Agreement as written." The operative term here is "reserves the right to withdraw". That does not mean that each government must withdraw. But I think it should. It does mean that either government need not be responsive to the legislature.

The Memorandum of Agreement (MOA) between the United States and Alaska states that "the public will be given meaningful opportunities to participate in the restoration process. Public comment is invited..." I

think the opportunities provided thus far are inadequate. I suggest the following:

- * Allow the legislature to approve, disapprove or modify the agreement as if it were any other piece of legislation. The public, then, could comment through elected representatives.
- * Publish all scientific studies. Then provide public workshops and hearings within a 90 day comment period.

A related concept involves the way in which the money is to be spent if the Agreement is signed off. Within the MOA, it is written that the "Trustees shall establish procedures providing for meaningful public participation in the injury assessment and restoration process, which may include establishment of a public advisory group..." I suggest that the wording be changed from "may" to "must" and further that the public advisory group be The Regional Citizens Advisory Council (RCAC).

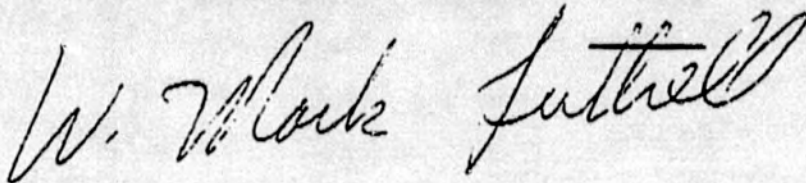
The fourth concern is legal matters. I feel that a reopener clause similar to paragraphs 17 and 18 is needed that allows the governments to sue Exxon if unknown damages are discovered or criminal or civil evidence arises in the future. It is foolish to think that all is currently known. We need to have the door open if in the future we need it.

Alyeska should not be immune from prosecution. On April 9, Rep. George Mitchell, acting Chairman of the House Insular and Interior Affairs Committee, said "Alyeska Pipeline Service Co. decided a year before the 1989 Exxon Disaster not to prepare for a spill of it's kind" thus further misrepresenting their capabilities, preparedness and commitment. Perhaps this allegation is not true, but until this is settled, we must not close the door on litigation against Alyeska. Because of this issue and the lack of a reopener clause against Exxon, I feel the settlement is inadequate.

I'm all for avoiding a lengthy and costly court battle, so I think a settlement is a good idea. But as the settlement is now written, it is inadequate. What's needed is more time for all parties, including the public and third party interests, to work cooperatively on its shortcomings. I urge you to disapprove the settlement.

Thank you sincerely for taking the time to read my comments.

With respect,

A handwritten signature in cursive script, reading "W. Mark Luttrell". The signature is written in dark ink on a light-colored background.

W. Mark Luttrell

Box 511
Seward, Alaska 99664

ACE 460027

TOTAL P.20

SCOMM

76:28

HOUSE SPECIAL COMMITTEE ON THE EXXON
VALDEZ OIL SPILL SETTLEMENT AGREEMENT

PUBLIC COMMENT LETTERS ADDRESSED TO
JUDGE HOLLAND ON THE CIVIL SETTLEMENT
AGREEMENTS

1

Jerry Celey
6766 Double Tree Court
Anchorage, Ak 99516
(907) 346-2800

DEPT

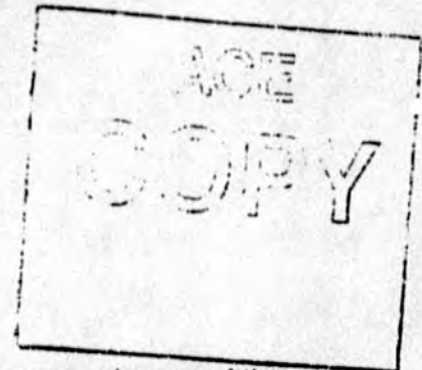
W

'91 MAR 26 1991

ATTORNEY

OFFICE

Thomas Campbell, general counsel
National Oceanic and Atmospheric Administration
U.S. Department of Commerce
Room 5816
14th St. and Constitution Ave., N.W.
Washington, D.C., 20230



Dear sir,

I hereby submit my comments concerning the proposed Exxon settlement of the Exxon "Valdez" incident as far as the Federal Government and the State of Alaska are concerned.

As you can see by the attached letter, I have always felt that the State of Alaska was more at fault for the spill damage than Exxon was. The Alaska Department of Environmental Conservation is the State's front line defense against, among other things, oil spills.

This Department, under the direction of Dennis Kelso, bungled their responsibilities so badly that it was pathetic. In turn, the lawsuit against Exxon was so ill prepared that it was embarrassing. If you have never read the lawsuit, you should. It will prove to be very enlightening.

Therefore, based on the present condition of Prince William Sound, and based on the terms of the settlement, I think the State and the Federal Government "made out like bandits", and should grab the money and run.

Very truly yours,

Jerry Celey

cc: Barbara Herman
State of Alaska
Attorney General's Office
1031 W. Fourth Street
Anchorage, Ak 99501

ACE 1821733

3/22/91

AUGUST 15, 1989

GOVERNOR STEVE COWPER
P.O. BOX A
JUNEAU, AK 99811

IN REGARD TO THE LAWSUIT FILED BY THE STATE OF ALASKA TODAY AGAINST ALYESKA ETAL, THIS IS TO ADVISE THAT IT WAS NOT FILED ON MY BEHALF, IT WAS NOT FILED FOR THE GOOD OF ALASKA, IT DOES NOT HAVE ANY LEGAL MERIT AND IT IS A TOTALLY IRRESPONSIBLE ACT DONE IN AN ATTEMPT TO DRAW ATTENTION AWAY FROM THE STATE'S RESPONSIBILITY. BOB LERESCHE'S TERM 'SHAM' WAS CORRECT BUT IT WAS DIRECTED AT THE WRONG SUBJECT. THIS LAWSUIT IS TRULY A 'SHAM' AND I RESENT BEING NAMED A PARTY TO IT EVEN BY INFERENCE AND DEMAND TO BE SPECIFICALLY EXCLUDED.

THEREFORE, MY FAMILY AND I REQUIRE TO BE IMMEDIATELY AND PROPERLY NAMED AS NOT BEING A PARTY TO THIS LAWSUIT.

THE PARTIES SHOULD BE LISTED AS FOLLOWS:

JERRY C. CELEY
6766 DOUBLE TREE COURT
ANCHORAGE, AK 99516

SANDRA K. CELEY
6766 DOUBLE TREE COURT
ANCHORAGE, AK 99516

JAMES N. PRICE
6766 DOUBLE TREE COURT
ANCHORAGE, AK 99516

APRIL R. CELEY
6766 DOUBLE TREE COURT
ANCHORAGE, AK 99516

SIGNED: _____
JERRY C. CELEY

ACE 1821734

SANDRA K. CELEY

JAMES N. PRICE

APRIL R. CELEY

CC: SEE ATTACHED LIST

ACE 1821735

CC LIST

DOUGLAS B. BAILY, ATTORNEY GENERAL
P.O. BOX K
JUNEAU, AK 99811

STATE OF ALASKA COURT SYSTEM
303 K STREET
ANCHORAGE, AK 99501

HONORABLE TED STEVENS
UNITED STATES SENATE
522 HART BUILDING
WASHINGTON, D.C. 20510

HONORABLE FRANK MURKOWSKI
UNITED STATES SENATE
709 HART BUILDING
WASHINGTON, D.C. 20510

HONORABLE DONALD E. YOUNG
HOUSE OF REPRESENTATIVES
2331 RAYBURN BUILDING
WASHINGTON, D.C. 20515

ANCHORAGE DAILY NEWS
P.O. BOX 14-9001
ANCHORAGE, AK 99514-9001

ANCHORAGE TIMES
P.O. BOX 40
ANCHORAGE, AK 99510-0040

FAIRBANKS DAILY NEWS MINER
P.O. BOX 710
FAIRBANKS, AK 99707

JUNEAU EMPIRE
3100 CHANNEL DRIVE
JUNEAU, AK 99801-7814

COPY

2

ROBERT A. GIGLER
7447 O'Brien Street
Anchorage, Alaska 99507

DEPT

'91 MAR 26 12:54

Dear Member of The Alaska Legislator:

ATTORNEY
ANCHORAGE

OFFICE

On March 15, 1991, I met with Governor Walter Hickel and Special Assistant James Rockwell to discuss public concerns regarding the EXXON Valdez Oil Spill.

Mr. Rockwell said he spoke with the underwater survey company contracted by EXXON to assess vessel damage. He gained information which suggested that the EXXON Valdez struck Bleigh Reef twice. If this is true, the public was misinformed by the initial report released by EXXON's underwater construction company.

Based on their report the following article appeared on Page A-8 of the March 27, 1989 Anchorage Times. The Starboard side of the EXXON Valdez collided with a pinnacle rock following this the tanker turned westward while sliding toward the South. Afterwards it struck the second pinnacle, at midship. Both strikes occurred approximately 2 miles apart. The President of the EXXON Corporation said the tankers speed was unknown at this time. (This is another inconsistent fact).

Page A-10 of the March 27, 1989 Anchorage Daily News, Spill Archives Reference said this collision occurred at 11:50 p.m. and the vessels speed was estimated at 8 knots. The impact ruptured three holes in the starboard side causing the tanker to turn to the west. Inertia kept it moving in the southerly direction of the first Pinnacle. This forced the vessel to travel more than a mile from the shipping lane and ground on the second pinnacle of Bleigh Reef at 12 03 a.m. on March 24, 1989.

ACE 1614971

National Transportation Safety Board hearings on May 16-19, 1989 identified the following. From the Archives of the Anchorage Daily News May 17, 1989, page A-10 included the following comments from the May 1989 NTSP hearing.

The EXXON Valdez left the shipping lanes to allegedly possibly avoid impact with ice bergs. The tanker headed west 200° at 12 knots with speed increasing to 15 knots. The course was changed to 130° and the tanker was placed on auto pilot. Afterwards the Captain left the bridge. At 11:57 p.m. March 23, 1989 Constat calls from New Jersey EXXON Valdez began and continued for 33 minutes. Captain Hazelwood did not report the new heading to the Coast Guard radio operator. After the collision, the vessel's main engine was shut down at approximately 1:45 a.m., according to engine log.

The impact was identified by Gregory Cousins in the National Transportation Safety Board hearing room in his testimony May 17, 1989. Deck watch observed the following: The Busby Island red light was viewed from the dangerous waters of Tatitluk Narrows. The 1st strike was located approximately 4000 yds. northerly from Bleigh Reef. The Loran location at 7960X 14337-7960Y32162. The Loran location was documented by a witness to the grounding in Tatitluk Narrows (Bud Hall) commercial fisherman.

From the evidence shown, we believe the grounding of the EXXON Valdez to be deliberate and intentional.

What is the truth?

Sincerely,

Robert Gigler
Greenpeace Action International

ACE 1614972

March 27, 1991

3

TO: The Honorable Judge H. Russell Holland
U.S. District Court
222 West 7th
Anchorage, Alaska 99513

FROM: Tim Martin
7100 Lake Otis #37
Anchorage, Alaska 99507

SUBJECT: Comments concerning the Exxon Settlement

'91 MAR 28 2:01

ATTN:

Judge Holland:

I was the first caller to talk with Gov Hickel yesterday on the live statewide call in "Live With The Governor", broadcasted on public radio.

I told Gov Hickel that I received his response to my letter from James Rockwell, the governor's special asst., concerning Exxon's settlement with Alaska.

Mr Rockwell's letter to me stated that he talked with the dive supervisor of the local construction company that handled the underwater work for Exxon on the Exxon Valdez. He confirmed my observation that there were two impacts on the Exxon Valdez. The letter went on to state that the ship's inertia caused the second impact. His explanation was that tankers don't stop on demand and the first outcropping wasn't enough to halt forward movement and that the second and final impact did.

At this point I told Gov Hickel that this letter doesn't address my question. Where is the site of the first impact?

I've studied the depth chart and there is no place close by where the Exxon Valdez could have hit on the starboard side. I said, "The first impact caused more damage to the vessel than the grounding, yet the crew acts like they didn't feel it".

I told Gov Hickel that I was under the impression that Caleb Brett Co gauged the Exxon Valdez and that the gauging process was closely monitored by the Coast Guard and the Alaska Department of Conservation, but found out later that Exxon did all the gauging on the Exxon Valdez and that the DEC and Coast Guard did not monitor the gauging process but that the DEC simply took the figures from Exxon.

I told Gov Hickel that I also discovered that Exxon used the wrong process for determining how much oil was on the Exxon Valdez. They used the loadmaster which only shows how much liquid was in the tanks, but this process doesn't show how much of the liquid is oil or water. I said that the proper way to have gauged the tanker is the "paste and ball method", which shows how much water is below the oil. Because the wrong method was used to figure the loss of oil far more spilled from the Exxon Valdez than was reported.

ACE 1287211

At this point my phone line to the governor was cut off.

Gov Hickel went on to say, in effect, that the settlement with Exxon is a done deal.

He wasn't concerned that this settlement is contingent upon a public comment period nor did he care what might be the result of these comments.

Gov Hickel is not representing the interests of Alaskans. He represents the interests of oil.

Though he appears to take a tough stand against the industry, pushing for greater interest penalties on monies owed to the state, his figures don't add up. Gov Hickel said there are monies owed by the industry to the state that go back 14 years and that Alaska could realize hundreds of millions when these debts are paid.

"No Governor, Alaska should see a few billion from past debts owed to the state".

Alaskans have benefited from oil, but where do we draw the line?

If this grounding had been caused by one impact it would have been, literally, impossible to prove that it wasn't accidental. But being that the first impact caused more damage to the tanker than the grounding, and since no one on board seems to have really felt it, the grounding of the Exxon Valdez was intentional and far more oil was lost than was reported.

I'm a 17 year member of the Alaska Piledriver's Union, the Bridge, Dockbuilder's and Diver's Union. I worked on the first piling holes on the first tanker dock at Valdez.

I've talked with divers who worked on the Exxon Valdez. The scrapes on the bottom of the tanker run straight from bow to stern. If the tanker had been in the process of turning these scrapes would have tended to run from port to starboard.

I've also heard from reliable sources that a considerable amount of sea water was pumped off the Exxon Valdez to the on-loading tankers.

Some lawmakers and attorneys have been pushing for Exxon to release data concerning the cause of the spill. Why should they incriminate themselves? If Exxon did release information, could it be trusted?

As a person, not associated with the industry, I believe that I know more about the details of this grounding than anyone.

I could organize a preliminary dive to determine the site of the first impact, on my own, but against industry's efforts to squelch information, how could I reach established channels? Last month's, 'Live With The Governor' was covered in the Anchorage Daily News the next day, but this month's program wasn't covered in either paper. Was it too much truth?

I wrote and had printed a letter in 'Letters to the Editor' in the Anchorage Daily News more than a year ago and had one printed recently, calling for a first impact dive, but no one from the state or media has seen fit to follow it up. Does any of them know where the tanker first hit?

Gregg Erickson, former director of the state's Oil Spill Assessment and Restoration Division was fired from his post on March 1st for making mildly abrasive comments against Exxon, so this is supposed to make him eminently suited for his new position as economist for the House Oil-Spill Settlement Committee that reviews this statement? I agree with Jim Zawacki, R-Girdwood, I don't trust him either. He reminds me of Lee Fisher, Revenue Commissioner, who boldly lashed out at the governor's proposal for collecting oil debts as an "immoral business practice" who announced that he now supports the governor. He's the same person that told me I have no right to oil royalty information.

Though most members of the legislature are beholden to oil, where do they draw the line?

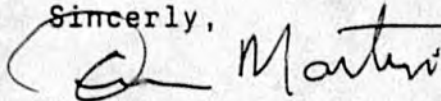
Gov Hickel is no longer pushing his agenda on a few hundred thousand Alaskans. He's now subject to world opinion, as is Alaska's legislature.

If a three day dive will clear up all doubt as to whether or not the grounding was intentional, shouldn't it be performed?

As a certified commercial diver, I want to see for myself the location and take pictures of it. I want to head up this dive.

I'm requesting \$10,000 from the state for divers and the charter of a fully equipped diving vessel with chamber. This amount will also cover a detailed report on the findings of a three day dive. I also extend an offer for Exxon to take part in a coordinated fact finding mission, but they supply their own boat.

Sincerely,


Tim Martin

Inclosures

next page

ACE 1287213

Thomas A. Cambell NOAA

Barbera Herman Attorney General's Office

Nancy Quinto Senate Special Committee on Exxon Settlement

Cheryl Hinkes Tundra Times

Howard Weaver Anchorage Daily News

Dan Lawn Alaska Department of Environmental Conservation

Greg Erikson House Special Committee on Exxon Settlement

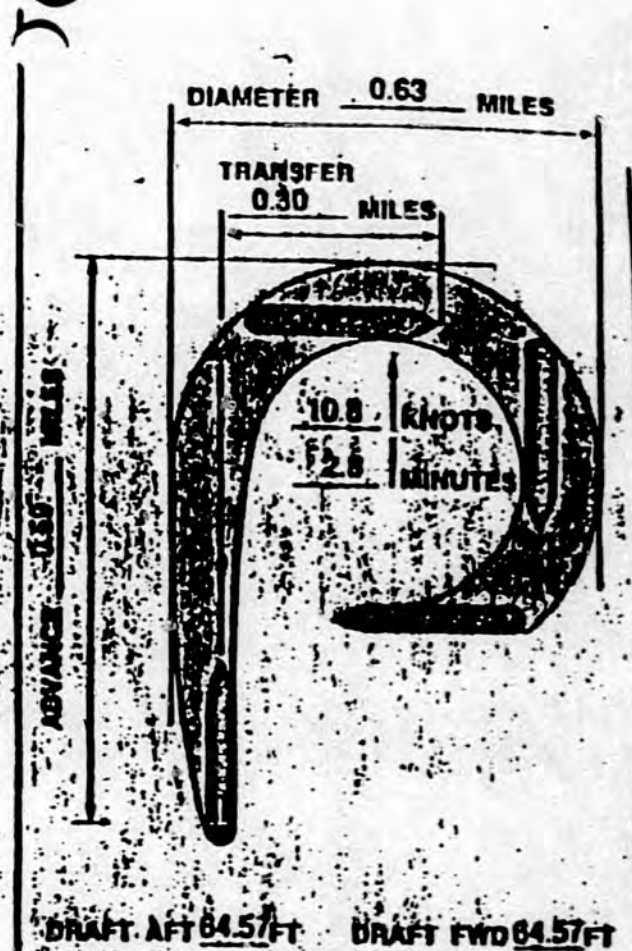
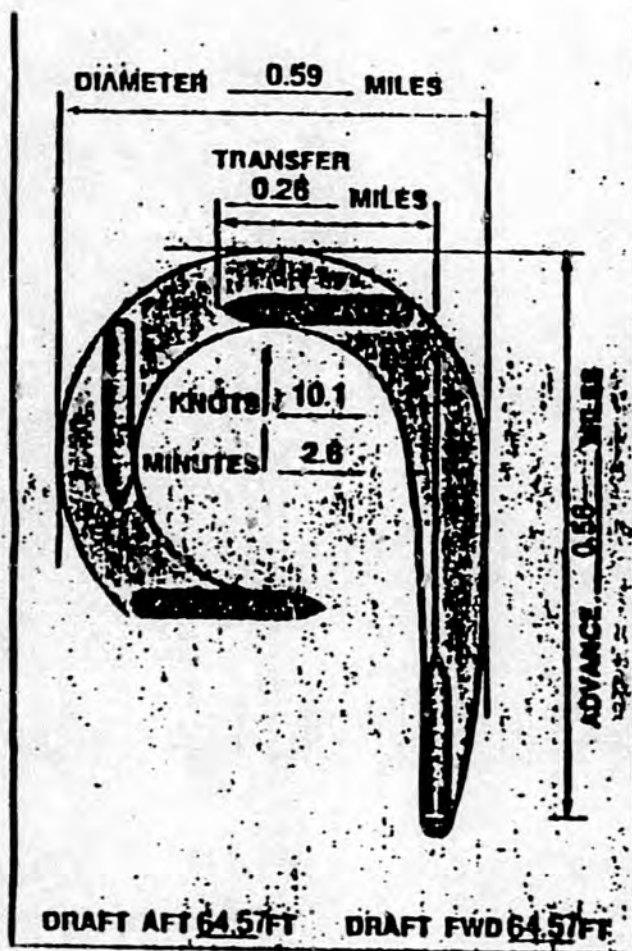
Lawrence G. Rawl Exxon

Walter Hickel Governor's Office

Others

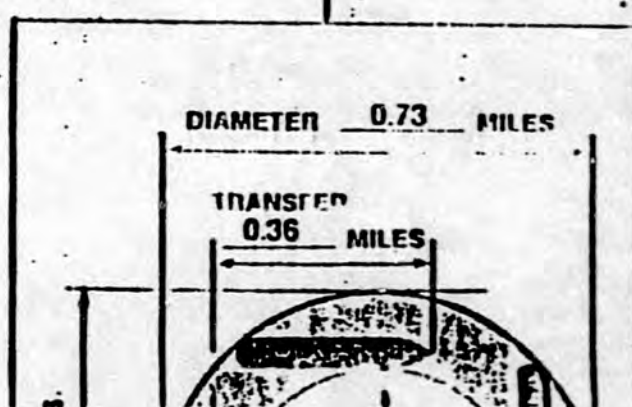
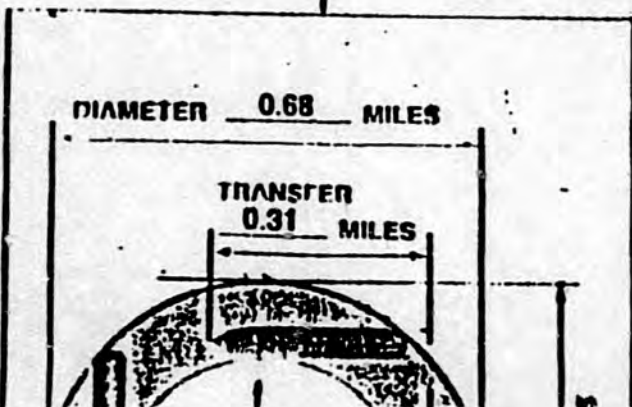
FROM NTS B HEARINGS

ACE 1287215



FULL SEA SPEED
17.8 KNOTS

BALLAST



4
RECEIVED

Department of Law

APR 05 1991

Office of the Attorney General

Anchorage Branch

Attorney General

ral Free Delivery
chitka Island
aska 98796

28 March 1991

Barbara Herman
Alaska Attorney General's Office

Thomas Campbell
U.S. Department of Commerce

Dear Counselors:

I am writing to request that you withdraw from the existing negotiated settlement with Exxon Corporation which is meant to cover their liabilities arising from the "Exxon Valdez" case.

I feel that the sum of money is too small, and that the arrangements do not assure that Alaskans will benefit from the payments.

Current actions by the Federal Reserve virtually guarantee that we will see double-digit inflation in the mid-1990s. Thus, I ask you to re-negotiate a settlement which will assure immediate payment of the entire sum, immediately.

Thank you for your courtesy in receiving my comments.

Sincerely,

Alan Horowitz

Alan Horowitz

ACE 447529

ACE 447530

BARBARA HERMAN
ATTORNEY GENERAL'S OFFICE
SUITE 200
1031 W. FOURTH AVE
ANCHORAGE 99501



5

RECEIVED

Department of Law

APR 05 1991

March 4, 1991 Office of the Attorney General

Anchorage Branch

Anchorage, Alaska

Ms. Barbara Herman
Attorney General's Office
State of Alaska
1031 West, 4th Avenue, Suite 200
Anchorage, Alaska, 99501

Dear Ms. Herman:

I have thoroughly read the **Settlement Agreement Concerning the Exxon Valdez Oil Spill Between the United States, the State of Alaska and the Exxon Corporation** as published in the March 19, 1991 federal register and wish to make the following comments:

John Knauss of the National Oceanic and Atmospheric Administration (NOAA) referred to the settlement between the federal government, the state of Alaska and Exxon Corporation as "a good deal for the nation" and Secretary of Transportation Samuel Skinner called it a "tough but fair settlement."

I disagree with them. It is neither good nor fair.

It is neither good nor fair to the citizens of Alaska and the United States directly or indirectly affected by the spill. It is neither good nor fair to the hundreds of thousands of sea birds and the uncountable marine life killed by the oil from the *Exxon Valdez*. It is "tough" but not for Exxon as Skinner implied. Exxon Chairman Lawrence Rawl said that the settlement "will not have a noticeable effect on our financial results." Consequently, it is anything but tough.

There are other problems with this settlement that I wish to outline for you. As an Alaskan affected by the oil spill, it is my hope that you will seriously consider my concerns and persuade the courts that many of the provisions of the settlement are "improper, inadequate and inappropriate."

I have three concerns: money, secrecy of scientific information, and public participation.

ACE 447531

First of all, the money is insufficient. The \$1 billion seems like a lot, but it is reduced by:

- * \$100 million in fines, half of which will be remitted;
- * \$134 million to reimburse the state and the federal governments for clean up costs already incurred;
- * an estimated \$40 million for cleanup by the state in 1991;
- * an unknown amount for cleanup by the federal government in 1991.

That leaves \$726 million for restoration. That figure is further reduced to approximately \$370 million after you take into account the ten year payment schedule (which amounts to an interest-free loan to Exxon). It is unclear how much money it will take to restore the Sound to a near-original state (if that's possible) since the state and federal government have not released scientific studies documenting the damages. Figures quoted in the Anchorage Daily News (March 31, 1991) suggest the cost of restoration could be as high as \$8 billion. Therefore, I feel the financial provisions for restoration as described in the settlement are inadequate and should be increased substantially.

The fines imposed on Exxon are too low also. Since half of the \$100 million is to be remitted, only \$50 million remains as a punishment for crimes committed by a corporation that earns \$177 billion a year. This fine is equivalent to \$34.19 for a person earning \$40,000 a year. That is a flaccid penalty at best. Yet, U.S. Attorney General Dick Thornburgh said the fine "represents a clear and unmistakable signal to those engaged in environmental crime" that they will be punished. Hardly. Because this figure is so low, I feel it is inadequate and inappropriate. The amount of the fine does not match the crime.

To the credit of the architects of the settlement, there is a provision for reopening the settlement in the event of discovery of unknown damages (paragraphs 17 And 18 of the Settlement Agreement). In light of the many ecological and social unknowns related to the spill, this is a very good idea. Unfortunately, the maximum amount is again too low - \$100 million. I believe we should set no limit on the amount of damages that can be recovered in the future. Perhaps a time limit could be set such that after 20 years, for example, Exxon would be no longer responsible for paying damages. This limit as written is improper and inadequate.

If the figure of \$900 million remains as the amount paid to the governments I believe it is best spent completely on restoration, replacement, rehabilitation, and/or enhancement of the damaged or injured natural resources and not on cleanup costs. Better to consider restoration and cleanup as separate actions with separate effects. Cleanup should be thought of as an emergency measure, a bandage to stop the bleeding. Restoration should be thought of as techniques designed to rehabilitate and revive. The governments should be reimbursed for the costs of cleanup, but the reimbursement should be in addition to and separate from restoration money. For this reason, I consider it inadequate and improper.

The second area of concern is the state's unwillingness to release scientific studies documenting the damages to natural resources. Though this situation is not addressed in the settlement, I definitely think it should be. It isn't just a state issue, the secrecy affects everyone. Since the agreement focuses mostly on money matters, all damage information must be available so that we know how and where to spend the money. This is economic common sense. An insurance company would never pay a claim without knowing the damages.

If the studies were released, we'd have a firm idea of how much money is needed for restoration. Instead, we have the figure of \$1 billion which is a fabrication of Governor Hickel's mind. Where did he get that number? On March 13, 1991 he said "I have had a boat down there for 30 years. I know the Sound". That's ludicrous. When we are dealing with large sums, as we are here, we need to have more evidence than one man's memory of water recreation.

There are other reasons to release the information:

- * Taxpayer's money has funded the studies;
- * they concern public resources;
- * other scientists need and want the studies in order to understand the spill;
- * the information could help other Alaskans harmed by the spill to get a fair settlement from Exxon.

One other reason to release the studies: the state should own up to its responsibilities. If it was in error somewhere along the line it should be

held accountable. Withholding the studies is improper and undermines the entire settlement.

The third area of concern is the public participation process. State Attorney General Charlie Cole, referring to what he believes is public disinterest in the spill said "I don't think it's of great consequence to the store owner in Galena how many eagles were killed as a result of the spill". I disagree. The spill hurt people everywhere on this planet, not just fishermen or native subsistence users. I recall a woman from Massachusetts who quit her job and sold her house to come to Alaska to help the injured animals after the spill.

Such a response does not indicate apathy as Cole would like us to believe. Interest in the spill and the settlement is still high and every citizen of the United States, and especially Alaska, should have the opportunity to take part in a complete, well-publicized and effective public participation process. As it is written in the settlement, the public has 30 days to comment (as I am doing here), an insufficient and inadequate amount of time.

Unfortunately, even if there was ample public participation, it would fall on deaf ears. As the settlement is written, there is no wording that forces the governments to respond to the comments, only the courts can force them.

Especially deficient is the wording in paragraph 37 of the settlement agreement concerning the legislature. It reads, in part: "Each Government reserves the right to withdraw its consent to the Agreement within fifteen (15) days following the close of the public comment period... If before the end of that 15 day period, the Alaska State Legislature has not approved the Agreement as written." The operative term here is "reserves the right to withdraw". That does not mean that each government must withdraw. But I think it should. It does mean that either government need not be responsive to the legislature.

The Memorandum of Agreement (MOA) between the United States and Alaska states that "the public will be given meaningful opportunities to participate in the restoration process. Public comment is invited..." I think the opportunities provided thus far are inadequate. I suggest the following:

- * Allow the legislature to approve, disapprove or modify the agreement as if it were any other piece of legislation. The public, then, could comment through elected representatives.
- * Publish all scientific studies. Then provide public workshops and hearings within a 90 day comment period.

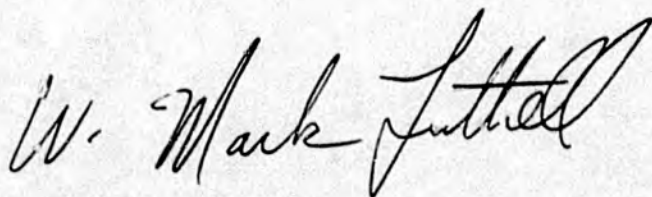
A related concept involves the way in which the money is to be spent if the Agreement is signed off. Within the MOA, it is written that the "Trustees shall establish procedures providing for meaningful public participation in the injury assessment and restoration process, which may include establishment of a public advisory group..." I suggest that the wording be changed from "may" to "must" and further that the public advisory group be The Regional Citizens Advisory Council (RCAC).

One last suggestion: I feel that a reopener clause similar to paragraphs 17 and 18 is needed that allows the governments to sue if unknown damages are discovered or criminal or civil evidence arises in the future. It is foolish to think that all is currently known. We need to have the door open if in the future we need it. Without such a reopener clause, the settlement is inadequate.

A settlement is a good idea, but as written, it is inadequate. What's needed is more time for all parties, including the public and third party interests, to work cooperatively on its shortcomings. I urge you to convince the courts to cancel the settlement.

Thank you sincerely for taking the time to read my comments.

With respect,



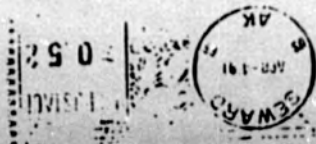
W. Mark Luttrell

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AMERICAN INSTITUTE OF PROFESSIONAL GEOLOGISTS

11661 Rockridge Dr. '91 APR -8 19:19
Anchorage, AK. 99516
March 21, 1991

ATTOR:
ANC.

OFFICE

Mr. T. A. Campbell
Gen. Counsel. NOAA
U.S. Dept. Commerce.
16th & Constitution, NW
Washington, DC 20230

Dear Mr. Campbell:

The Alaska Section, American Institute of Professional Geologists, a Certifying organization akin to your ABA, is strongly opposed to one of the conditions of the Federal/State-Exxon Valdez Spill Settlement Agreement, i.e. the provision to not release the scientific studies regarding the spill.

We feel that the spill studies contain extremely valuable data which MUST be available to the public. Some of the data in these studies may be critical in formulating a best response to the inevitable future events in similar environments. Most of the studies were undertaken on the basis of precisely such rationale.

Further, it should be noted that most of the studies were funded or supported by the federal government and as such would be subject to disclosure through the Freedom of Information Act. Others were conducted under NSF and private grants which contractually REQUIRE the publication of results. Finally, in the event of a lawsuit the "Discovery" process should effectively unmask these studies.

Rather than suppressing these studies, NOAA would better serve the worldwide scientific community in sponsoring the dissemination of data gained through these studies. Happily, the U.S. Forest Service has already opened an office for such purpose, and at least one of NOAA's experts is already describing study results on the Lecture Circuit.

Whereas most of the studies involved would be of great value to the scientific community; were conducted with public funding; and would, in any case, eventually become public through various means; we feel that that portion of the settlement be deleted.

Respectfully,

Dr. Robert B. Sanders
Legislative Affairs Committee

Mr. Eric Opstad
President, Alaska Section

CC: Barbara Hermann ✓

ACE 447523



AMERICAN INSTITUTE OF PROFESSIONAL GEOLOGISTS

11601 Rockridge
Anchorage, AK 99516



Barbann Hermann
A.G.'s office
1031 W. 4th Ave
Anchorage, AK 99501

ACE 447524

April 8, 1991

Mr. Thomas Campbell
General Counsel
National Oceanic and Atmospheric Administration
U.S. Department of Commerce
14th St. and Constitution Ave., N.W., Room 5816
Washington D.C. 20230

DE 3210 Wyoming Drive
Anchorage, AK 99517

'91 APR 10 10:24

ATTORNEY OFFICE
ANCHORAGE

Dear Mr. Campbell:

First let me say that I for one appreciate the time and effort State of Alaska Attorney General Cole and Gov. Hickel put in to this deal. It may not be the perfect arrangement for everyone, but I feel its acceptable.

Second, I claim to be no expert on the settlement as the only information I have came from the two newspapers here in Anchorage and from my State Senate representative Sen. Pat Rodey. The newspapers, in particular the California Daily News seemed to be more into "well Mr. Cole said this and the environmentalists/lawyers representing claims say this rather than presenting anything of use to the public. Sen. Rodey cleared some things up.

Basically it sounds like just a few points are a question in peoples minds as to whether this is a good deal and whether we should accept it. The first being whether the State and Federal Governments could get more money by taking EXXON to court for 5-10 years. I'm not a gambler and I'm more tune to a bird in the hand is worth two in the bush. Certainly no jury in the world is going to convict EXXON of bird hunting without a license and fine 'em 100 million so we are ahead there. A billion dollars spaced out over 10 years so people don't waste it stupidly sounds pretty good. Is the damage worth more? Is the new Star Trek better than the old one? Depends on who you ask.

Another point is who spends the settlement. Anybody but the State of Alaska Legislature would be okay with me. I'd rather they didn't have anything to do with it period. My understanding is there would be a committee of 3 State, 3 Federal, and an EXXON Rep. that would decide. I guess I wouldn't mind having a few more folks representing the State but I can accept the committee as is. Just make sure the Legislature doesn't have anything to do with picking out the members. Certainly the residents of Alaska should be able to provide input to the committee.

That's pretty much all I wanted to say. I support the settlement as is and hope it is accepted. It's about time we put this spill behind us. Quite honestly, while its EXXON oil that spilled, I place most of the blame for the environmental damage on the Alaska State Government, and in particular Dennis Kelso and his DEC outfit. By not allowing EXXON to use the approved spill response plan immediately, they could be blamed for much of the damage. I have a feeling a lot of jury's will come to that conclusion too. In summary I say accept the settlement and take the money. Thanks for your time.

Sincerely,



Michael E. Beck

c: Barbara Herman

ACE 1284539