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ALASKA STATE LEGISLATURE SENATE

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PRESIDENT OF THE SENATE
LABOR & COMMERCE COMMITTEE
RESOURCES COMMITTEE
RULES COMMITTEE
CHAIRMAN, SPECIAL COMMITTEE ON
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March 27, 1991

Honorable Charles Cole
P.O. Box K
Juneau, AK 99811

Dear Attorney General Cole:

The Senate Special Committee on the Exxon Settlement appreciates your acceptance of our invitation to meet with us tomorrow morning at eight o'clock in the Butrovich Room. At this initial meeting with you regarding the Exxon settlement, the committee would particularly like to discuss a number of the policy-type decisions that went into the negotiations and ultimate settlement agreement. A list of the questions we would like you to be prepared to discuss tomorrow is attached. The committee is likely to bring up questions beyond this list, but I plan to try to keep this first discussion to primarily addressing the basic premises and approaches used in creation of the settlement, rather than getting into the details.

We hope to meet with you again within the next week or so to begin discussing the many technical and legal questions which have arisen. My office will be providing you with a list of specific questions in advance of that next meeting with you.

We look forward to meeting with you in the morning.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dick", written over the word "Sincerely,".

Senator Dick Eliason, Chairman
Senate Special Committee on the Exxon Settlement

Used as basis of discussion
with Attorney General at
3-28-91 Committee meeting.

SENATE SPECIAL COMMITTEE ON THE EXXON SETTLEMENT

QUESTIONS FOR ATTORNEY GENERAL CHARLES COLE

The following questions regarding the Exxon settlement relate mainly to the basic thinking, premises, policy calls and general approach used in the negotiations and outcome of the settlement. A separate list of more technical and legal questions about the settlement is being compiled.

1. Why did the state choose to settle under the Clean Water Act?
2. If under CWA the combining of the state and federal funds was not required, why did the MOA require it?
Whose idea was it to commingle the funds?
How difficult would it have been to make a determination or agreement regarding what percentage of the loss was state and federal?
3. The Clean Water Act (33 USC 1321(k)) specifically requires that money recovered by the federal government under the Act is to be deposited in the federal treasury. Regulations (43CFR 11.92) require state recovery to be deposited in the state treasury or in an account payable to the state treasury or in an account payable to the state trustee. During negotiations was there discussion about whether this agreement would be valid under federal law if the funds were never deposited into the treasuries?
4. In negotiations, did the parties discuss each of their preferences regarding involvement (or lack of it) of the Legislature in the appropriations process and future decisions regarding how the money is to be spent? Did the question of constitutionality come up during negotiations?
5. Why was it determined that decisions of the Trustees have to be unanimous rather than simply a majority on each side (state and federal)?
6. Why does the decision power go to a federal judge when consensus can't be reached? How do you see this as working?
7. Has the complaint under the Clean Water Act been filed yet?
8. Why did you choose to not bring state criminal charges against Exxon?
9. Do you plan to pursue the state's case in state court against the remaining defendants?

10. Why was all the language regarding Alyeska included when they were not a party?

11. Why is there no language asking that the trustees confer with advisory groups already established to deal with all aspects of the spill to avoid having to establish new ones?

12. Please describe the approach taken to third party litigants. What were the objectives?

13. Please describe the approach taken to the issue of indemnification of parties in the settlement. Does non- indemnification language put Exxon and the state together defending themselves against the Alaskan citizens?

14. Why was the section deducting future cleanup costs allowed to stand alone even if the Decree is disapproved?

15. What is the purpose of the provision in the MOA allowing Trust Fund money to be spent outside of Alaska?

16. Why is the payment of the \$72 million to the state spread out over a five year period, and why does the settlement not specify which five year period?

17. What is a "natural resource service," which is listed in the settlement as something that the settlement money can be used for?

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