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Alaska State Legislature

SENATOR RICHARD I. ELIASON

President of the Senate

P.O. Box V
Juneau, Alaska 99811
(907) 465-3755

MEMORANDUM

TO: MEMBERS OF THE SENATE SPECIAL COMMITTEE ON THE EXXON SETTLEMENT

FROM: SENATOR DICK ELIASON, CHAIRMAN

DATE: MARCH 29, 1991

RE: SECOND SET OF QUESTIONS FOR THE ATTORNEY GENERAL

ATTACHED IS A COPY OF THE COVER LETTER AND LIST OF QUESTIONS WHICH I HAVE SUBMITTED TO ATTORNEY GENERAL CHARLIE COLE ON BEHALF OF THE SENATE SPECIAL COMMITTEE ON THE EXXON SETTLEMENT TODAY.

PLEASE REVIEW THESE QUESTIONS AND BE PREPARED TO DISCUSS THESE, AND ANY OTHERS THAT YOU WOULD LIKE TO BRING UP, AT OUR NEXT MEETING ON THURSDAY, MARCH 4, AT 8 A.M. IN THE BUTROVICH ROOM.

PLEASE ADD THIS LIST OF QUESTIONS TO YOUR COMMITTEE BINDER AND BRING IT WITH YOU TO THURSDAY'S MEETING.



Alaska State Legislature

SENATOR RICHARD I. ELIASON

President of the Senate

P.O. Box V
Juneau, Alaska 99811
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March 29, 1991

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

Dear Attorney General Cole:

Thank you for meeting with the Senate Special Committee on the Exxon Settlement yesterday. We appreciate the time you are spending with the Committee to explain the settlement and answer questions.

Enclosed is a second list of questions which the Committee would like to have you answer, beginning at the meeting we have scheduled with you next Thursday morning, April 4, at 8:00 in the Butrovich Room.

As you go through the questions, please identify any that you feel should not be answered in a full public hearing. The Committee may want to go into executive session to give you the opportunity to respond to those. Perhaps we can set aside all of the questions which you believe require executive session and take them up all at once.

I hope that your legal analysis of the constitutionality of the settlement will be completed and available to the Committee by Thursday's meeting as well.

We look forward to meeting with you again on Thursday.

Sincerely,

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

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

SENATE SPECIAL COMMITTEE ON THE EXXON SETTLEMENT

SECOND LIST OF QUESTIONS FOR THE ATTORNEY GENERAL

(Submitted March 29, 1991)

General Settlement Questions:

1. What were dollar amounts of settlement based on? Please provide the figures you used for the State expenditures for which the \$72 million is reimbursement. How was the value of the natural resource damages figured? Was actual present day value figured in when it was decided to spread it over 10 years? 3/24/91
2/2/91
2/3/91
2. The \$50 million to the State under the plea agreement must be spent on restoration. Does the \$50 million which comes to the federal government under the plea agreement have to be spent on restoration ~~too?~~ NO
Also.
3. Does approval of the Decree constitute approval of the MOA? What would happen if the Legislature approved of the Decree but not the MOA? Could approval of the Decree be made contingent upon changes in the MOA? YES
-NOT likely-
4. Can the State exercise appropriation power over joint funds? Does the State "own" other property jointly (e.g., AHFC jointly-owned mortgages)? Does an agreement that the recovery will be joint necessarily require that the funds be expended without legislative authority? -The
Theory
5. Could the legislature, within the framework of the MOA, require that the State's interest in the joint funds be annually appropriated after the trust has submitted a proposed budget to the legislature and that budget has been approved? NO
6. If the court does not accept the agreement, can it go forward anyway as an "agreement" rather than as a decree? NO
7. The State gives up its right in the settlement to ever go after Exxon for the State's lost revenue from lost oil and gas taxes and royalties, corporate taxes, State's portion of salmon enhancement taxes, etc. How much did the State figure those to be worth (as it had already sued for all of those under the State suit it now gives up), and what were our chances of proving and recovering those? Will these particular claims be pursued against Alyeska? YES
8. What was the State's potential recovery/claim under the "dollars per gallon" state law (AS 46.03.758-759)? Please provide a copy of the letter from the State to Exxon, dated approximately April of 1989, requesting early settlement of that claim. Copy

9. Please provide a copy of the reimbursement contract signed by Exxon with the State after the spill. *Comment*
10. What will the Department of Law be seeking in appropriations to defend against third party lawsuits for FY 92 through FY 95? Please estimate and compare legal fees that will have to be paid by the State with and without the settlement. *12-15M. Annually*
11. What are specific examples of types of things that might be eligible for funding under the re-opener clause? How likely is it that anything would ever trigger the receipt of that money? *?*
12. You have stated that you plan to keep scientific data regarding the spill confidential due to the pending claims against the State. If and when those claims are resolved, will you release all data to the public? Do you believe that it is legal to keep that information confidential? Is it likely that this data will be made public anyway through the normal "discovery" process during the third parties' litigation proceedings, making the question of the legality of keeping the information confidential moot. *YES*
Possible

Hold Over

→ Questions regarding third party lawsuits:

13. What third party suits have been filed? (Please provide list of them). What is the total estimated dollar amount of the third party claims against the State resulting from the oil spill and clean-up? Are any of the plaintiffs seeking punitive damages?
14. Since the \$72 million is recovered under the CWA it can only be reimbursement for funds already expended, and the \$50 million must be spent for restoration. With the remainder of the settlement money going to the Trust, there is no money to help the State pay for any third party liability or legal fees. Won't there ultimately be a net loss of millions of dollars to the State treasury?
15. Paragraphs 29 and 30 on page 23 of the Decree, do not appear to be specifically limited to lawsuits related to the oil spill. Was this a drafting error? If not changed, how likely is a court to interpret these paragraphs as applying only to lawsuits related to this spill? *✓*
16. How are third party suits affected by this settlement? Does the State have a responsibility to protect interests of groups of Alaskan citizens? If third parties need the State's help wouldn't they be affected by the Decree, even though the Decree says it does not affect third parties?

17. The MOA also prevents any of the three parties involved from ever challenging the authority of the others to enter into this agreement. If the Legislature disapproved of the Decree, and the Governor chose to go ahead with it anyway, would the Legislature as a part of "the State" be precluded from ever challenging the authority of the parties to enter into the agreement? Are the claims of municipalities, which are political subdivisions of the State, barred by the State's release of its claims?

Questions regarding Clean Water Act:

18. Since CWA requires money to go into state or federal treasuries, do we know for sure whether this settlement is even legal under the CWA? *YES!!*
19. Is filing under the CWA an "election of remedies?" Does it necessarily preclude the State from pursuing the case in State court if the settlement is terminated? *NO*

Questions about the Trustees and Joint funds:

20. The Trustees named in the settlement were evidently already designated as trustees before this settlement. *YES*
When was this particular group of Trustees established and under what authority? *PRES- FED, STATE & GOV.*
21. If there is a lack of consensus among the trustees and the court is left to make decisions about expenditures from the Trust Fund, what would the court use for standards to make its decisions? *SOUND DECISION*

Indemnification questions:

22. The non-indemnification language evidently puts Exxon and the federal government and the State together defending themselves against the Alaskan citizens and other groups of third party litigants. Under the terms of the settlement is there a way the State can avoid being put in that position? *NO*
23. Section VII. B. on page 14 of the MOA states that the governments will not sue each other or take other legal action with respect to determining the scope or proportionate share of either government's ownership, rights, etc. over natural resources. It appears that this falls under the language of the opening phrase, "Solely for purposes of the Oil Spill Litigation... and related proceedings." Please confirm whether the opening phrase binds the whole paragraph, so that the agreement to not argue over state and federal land and resource ownership does not go beyond the scope of this settlement. *YES*

Questions about how money can be spent:

TRUST FUND PORTION:

24. Please provide a list of specific examples of the kinds of expenditures that would be possible and likely with the use of the Trust Fund.
25. Could federal employees already working in Alaska (or elsewhere) and currently being paid out of the regular federal budget, end up being paid instead out of this fund?
26. What are "natural resource services"? (one of the things that fund money can be spent on). Please give specific examples of things that would qualify.
27. If assets are purchased or built with trust fund money, who will own them? How would those properties or facilities be administered, etc.?
28. Will all operating costs, travel, staff, per diem, etc. of the Trustees and the Trust come out of the Trust?
29. What mechanism will ensure public accountability? There appears to be no required budget review, annual oversight by elected officials, appropriation process, or audits of the trustees' expenditures.
30. Is there a limit on how much can be spent to reimburse Exxon for whatever clean-up work they do between the effective date of the Consent Decree and the date of final approval of the Consent Decree?

\$72 MILLION PORTION:

31. If the \$72 million to be paid to the State is over a five-year period, when does that start? Will the five payments be of equal amounts? Any interest charged on payments to bring the total up to a real level of \$72 million in today's dollars? Is there any requirement that the 470 Fund specifically be reimbursed?

(This revised version of the March 29 list has been prepared for the committee's April 11 meeting with the Attorney General. In this version, the questions to which the AG responded at the previous meeting have simply been deleted).

SENATE SPECIAL COMMITTEE ON THE EXXON SETTLEMENT

SECOND LIST OF QUESTIONS FOR THE ATTORNEY GENERAL
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