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Alaska State Legislature

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QUESTIONS FOR ATTORNEY GENERAL CHARLES COLE
FROM THE SENATE SPECIAL COMMITTEE ON THE EXXON SETTLEMENT

APRIL 10, 1991

1. There has been some concern expressed over the State's filing of a claim against the oil spill liability fund established under the Trans-Alaska Pipeline Authorization Act, as our claim will reduce the amount that other claimants will be able to receive under this fund. Evidently Judge Holland had asked that the state and federal governments not file TAPL fund claims since they had other recourse. The press reported that the federal government has agreed to withdraw its claim if the proposed Exxon settlement is approved and if the fund promises to drop its claims against the government.

Why did you choose to file this claim on behalf of the state, and would you withdraw the state's claim if the settlement is approved or under any other conditions?

2. You mentioned in a House hearing that if the settlement is not approved and the state litigates under state law, the expenditure of money recovered might be dedicated to restoration work under the "public trust doctrine."

Would you please elaborate on that?

3. What affect, if any, do you believe the release of the scientific report by the federal government to the federal court will have? Does the release of that report make any difference in your willingness to release any of the state's data?

4. What is your response to the letter from Congressman George Miller to the federal court which states that Alyeska is being "let off the hook" by the settlement? Governor Hickel has issued a press release which states that the State will still pursue civil charges against Alyeska, but Miller's letter speaks to the criminal charges that he feels should be pursued. Please explain why criminal charges will not be pursued against Alyeska.

(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
(Submitted March 29, 1991)

General Settlement Questions:

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?
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.
9. Please provide a copy of the reimbursement contract signed by Exxon with the State after the spill.
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.
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?

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 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?