

SCOMM

77:77

So the AG is not
pursuing the fish tax on
behalf of the munis?
He said he is willing to
turn over state's quantification
of the best fish tax to
the lawyer for the municipalities?

What sorts of things
would trigger it?

Pam thinks it might
take the discovery of
a new species to qualify
for "could not have
been anticipated"

Note: If they refer to "CV studies" it means "contingent valuation studies" regarding resource damage assessments.

FOR DICK----

POSSIBLE QUESTIONS FOR THE FEDERAL ATTORNEYS

If the settlement Consent Decree is approved as is, but the MOA is unacceptable to the Legislature, would they be willing to alter some provisions of that ?

Does the federal government plan to make ALL of their studies public? If so, when? If there are suits filed against the federal government (Coast Guard, etc?) do they believe that release of the studies will harm their defense?

Regarding the "Re-opener" clause of the settlement, what specific types of things do they believe would trigger payment under that clause? Would it require discovery of a "new species" or something that remote to qualify as something that "could not have been anticipated?"

What rules will govern the meetings of the trustees -- that is, will they have to meet open meetings requirements of state law, etc.? What provisions will be made for public input into decision-making?

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 trust fund?

If assets are purchased to be built with trust fund money, who will own them? How would these properties or facilities be administered, etc.?



Alaska State Legislature

SENATOR RICHARD I. ELIASON

President of the Senate

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

REVISED FOR APRIL 17, 1991 MEETING

1. Please provide the committee with a list of the claims the State currently has against Alyeska.

2. 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?

3. Please comment on the status of the state's "dollars-per-gallon" claim (AS 46.03.758) against Exxon. (See Dept. of Law letter dated 4-25-89). Is this claim affected in any way by the settlement?

4. 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?

5. 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?

6. Please comment on Legislative Legal Services attorney Pam Finley's memo of 4-8-91 regarding the constitutionality of the Exxon settlement.

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

APRIL 10, 1991

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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:

- He said
he'd discuss
this is —
executive
session
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.
- Will
Send
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:

- He will
provide list
He will
bring the
down
copy of the
17 suits
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? *Must at least exceed 1 billion \$.*
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?

cases aginst state could be dropped. With or w/o settlement the 3rd party suits will cost \$.

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?

Under admiralty or maritime law

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?

All claims municipalities held before the settlement, they retain after the settlement

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?

"recreational use" - tourism

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.

Will bring info next time

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?

He just believes it will all
happen

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?

QUESTIONS FOR MESSRS. STEWART AND CAMPBELL

Issues from House Testimony

1. What part, if any, did Mr. Cole have in the negotiations for the criminal plea agreement with Exxon?
2. Did Exxon request any consideration from the state (e.g., covenants not to sue for criminal liability) during any of the discussions you had with them?
3. Mr. Cole read a letter to the House Committee yesterday dated 3/12 to Lee Raymond, counsel of Exxon: as part of the settlement covered by the plea agreement, state will not pursue criminal proceedings against Exxon"
4. Do you have any reason to believe from this letter that Mr. Cole can prosecute Exxon if the civil settlement is not approved?
5. Do you have any other information indicating that this arrangement is contingent upon the civil settlement?
6. If the legislature disapproves the civil settlement proposed, is there a substantial possibility that the criminal plea will be accepted anyway?
7. Has the state essentially given up the possibility of any case against Exxon as a result of this letter?
8. To Campbell, yesterday you indicated that there was a conflict between your role in NOAA wanting to distribute science, and with your concern about releasing data because you are being sued. Is that a common situation within the department when it is obligated to develop science, but is also looking over its shoulder about another agency's liability?
- 9a. If he acknowledges that it is common, get a list of the specific cases when this has happened before.
- 9b. If he says it is unusual, or that this is the first case, ask how he balances the two responsibilities he has as the trustee?
10. Yesterday you indicated that if this settlement is approved, you will make changes in the trustee science away from damage assessment, and more to restoration. What do you mean by that? What kinds of studies will be given up?
11. (Once you get the list of those studies which are to be compromised), "Aren't those the very studies on which private plaintiffs will be relying to show their damages? Isn't the effect of taking the state and federal government out of the case that the private cases are compromised because they will not have science regarding future damages -- long term effects on the

natural resources which they harvest, or on which they depend?

12. What is the present value of this settlement to the trustees? What more comes from the criminal side? What then is the total present value of the settlement?

13. What tax benefits does Exxon get from this settlement? What benefits were talked about during the negotiations? Is the effect of those tax benefits to reduce the real cost of this settlement to Exxon? have you made any attempt to calculate the real cost of this settlement to Exxon? What is it?

14. Is the effect of a tax break on this settlement to Exxon from the government to reduce monies -- taxes -- that would otherwise come into the coffers of the state or federal government? If the value of the settlement to the state and federal government is \$600,000,000, but the cost, because of tax benefits to Exxon is \$450,000,000, isn't the real effect of the tax benefits that the value to the government is \$450,000,000 because though we get \$600,000,000 in one hand, we give up \$150,000,000 in the other in lost taxes?

Why didn't you try to get the \$900,000,000 up front? To the extent he says (as he did yesterday) that we couldn't have used it, establish that lots more would have been available down the line if they had because the interest would have been available and could have accumulated? Isn't the real reason you didn't ask for more that Exxon was unwilling to pay any more than something with a real economic effect of \$425 million to the company?

15. To Stewart: Yesterday you indicated that, as to private plaintiffs, Exxon would be free to argue that private plaintiffs might have their claims for future damages based on natural resources losses extinguished by this settlement. right

You also said that nothing in this settlement would change those substantive rights, one way or the other. Plaintiffs either had then or didn't have them. right

but isn't it trust that if this settlement goes through, and if the state is sued by a private party, the state will then be postured in such a way that it would want to join Exxon in arguing that private plaintiffs' rights have been curtailed by the settlement? Wouldn't the state then be in a position that it would want to argue that private plaintiffs' damages are as low as possible.

Wouldn't the state be arguing with Exxon to try generally to diminish the private plaintiffs' cases?

16. Bring Stewart back to Section 13(c) discussion, and have him, Cole and Campbell confirm that section was placed in there only to deal with allotments or other property rights going to native Americans where the federal government is currently holding title. Have them each confirm that Exxon explicitly understands

that as well from the course of dealing in the negotiations.

17. Ask Stewart what Section 13(b) is about. Why is it in the agreement? (To the extent he has a reason for it being there, try to limit its use, and establish that

Issues from Campbell's Written testimony

1. Mr. Campbell, in your written testimony, you characterize this hearing as an "oversight hearing." What is your understanding of what our role is, as it was explained to you? (Campbell wants no significant input from the committee).

Issues from Mr. Stewart's written testimony

1. Do you have independent verification that Exxon spent \$2 Billion so far on the cleanup? What is that verification? How much was actually spent on which aspects of cleanup? If you have such information, please provide it to the committee, because it lets us gauge how much more needs to be done, and that impacts how much of the present value of the settlement we are going to have to give back to Exxon.

2. How much of the present value of this settlement would be recoverable in court?

a. do you think you can get back the \$80 million you've spent on studies? Is that a slam dunk? Wouldn't you get interest on that?

b. Would you have a right to your out of pocket expenditures for cleanup so far? Would they be a slam dunk? How much are they?

c. Would the state have a right to its out of pocket expenditures for cleanup so far? Would that be a slam dunk? How much? (If he doesn't know how much these are, it is incredible, because it is what's left, after these expenses are considered which is the natural resources damage claim).

d. Would the state have a right to attorneys' fees under Alaska law on the amount for which it recovered? (Yes, Rule 82).

e. Do you think that the amount that Exxon will get paid back from the settlement -- for the work that it does this year -- would have been recoverable? Wouldn't that have been a slam dunk if the Coast Guard had ordered it? Do you have any way to quantify what that will be right now (note the agreement has two alternate clauses -- one under \$35,000,000, and one over \$35,000,000 -- why was that number employed)

What is the effect of the two different clauses regarding pay back to Exxon of monies expended this summer?

Are there any realistic guidelines on the amount Exxon can drain back from its own settlement this summer? (Note the expansive language in the agreement as to what costs can be billed - including "other professional services")

f. Did the federal government get anything back for its attorneys' fees on either the civil or criminal side, or is that just a cost you have eaten?

What is the total of all this? Isn't the true cost of the settlement minus all this what Exxon is paying for the natural resource damages? Isn't that the real number you should be using when you address this committee?

3. Regarding the "unprecedented win" for the government that this settlement reflects (page 5), have you been to Chenega Bay, or to Tatitlek in Prince William Sound? have you considered any of the effects of this spill on the people who live and depend on the sound? on the other areas in the gulf of Alaska affected by the spill?

How did you garner public comment to know whether the public supported your handling of the trust responsibility? Were your trustees out in the affected area, or is that something which is committed exclusively to the attorneys in Washington? You tell us that your scientists studied the animals, but did they study the people?

4. On the reopener clause, if your damage assessment has been extensive as Mr. Campbell has led us to believe, what is it for? What might be out there that you haven't found or had an opportunity to find? Isn't this clause almost worthless? And doesn't it just invite litigation and a piddling settlement from Exxon later even if it is invoked?

[I stopped on page 5; more tomorrow]