

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILE 8672
2109 SCOMM 79. HOUSE SPEC. COMM. ON OIL & GAS, 1991-1992

187

Responsible party - Chevron Kenai Pipeline Company

Potential for escalation: At this time, little potential for escalation exists.

Personnel to be notified: No additional

Next SITREP: PM - 1/13/92, SITREP #10 & Final

Comments: An operational debrief will be conducted by at the Coast Guard Marine Safety Office in Anchorage on Monday morning.

End Report

SITUATION REPORT: Chevron/Kenai Pipeline Sit-Rep #9
SPILL # 92-231-004-1

Date of Report: January 10, 1992 - 1630L

I.C.S. Office:

Incident Commander.	Joe Sautner
O.S.C.	Mark Sienkiewicz
Logistics.	Margaret French
Planning.	Mark Sienkiewicz
Operations	Mark Sienkiewicz
Administration.	Margaret French
Staff	
PIO	Debby Bloom
Liaison Officers	
GLO	
GLO	
Legal Officer	
Safety Officer	
Environmental	

Situation: No overflight was conducted today due to adverse wx. The need for additional overflights will be re-evaluated Monday, 1/13. Decon continues.

Cause of spill plus types and quantity of material spilled:

The cause of the pipeline rupture is still unknown and under investigation. The industry estimate of the quantity of product spilled remains at 171 bbls with an updated figure of approximately 136 bbls of emulsified oil/water mix recovered.

Potential hazards: None foreseen at this time.

Agencies notified:

- DES-message left with security
- USCG-Local Kenai Office
- ADF&G-Claudia Slater
- ADOP/PF
- ADNR-Kris O'Connor
- ADCRA-
- USEPA-
- USPHS-
- AG-Breck Tostevin

Coordinating local officials: Kenai Borough and CIRCAC remain involved.

Containment and Clean-up: Response equipment decon continues.

coordinated through KDO personnel.

Responsible party - Chevron Kenai Pipeline Company

Potential for escalation: None

Personnel to be notified: None

Next SITREP: None.

Comments: Decon and investigation to continue.

End Report

**SITUATION REPORT: Chevron/Kenai Pipeline Sit-Rep #10 and Final
SPILL # 92-231-004-1**

Date of Report: January 14, 1992 - 1430L

I.C.S. Office:

Incident Commander.	Joe Sautner
O.S.C.	Mark Sienkiewicz
Logistics.	Margaret French
Planning.	Mark Sienkiewicz
Operations	Mark Sienkiewicz
Administration.	Margaret French
Staff	
PIO	Debby Bloom
Liaison Officers	
GLO	
GLO	
Legal Officer	
Safety Officer	
Environmental	

Situation: AM - 1/13/92 A USCG/DEC spill debriefing was conducted at the USCG MSO in Anchorage. During the debrief the need for additional overflights was discussed. It was mutually decided that, given the weather conditions, further overflights would not be needed.

Cause of spill plus types and quantity of material spilled:

The cause of the pipeline rupture is still unknown and under investigation.

Potential hazards: None

Agencies notified:

- DES-message left with security
- USCG-Local Kenai Office
- ADF&G-Claudia Slater
- ADOP/PF
- ADNR-Kris O'Connor
- ADCRA-
- USEPA-
- USPHS-
- AG-Breck Tostevin

Coordinating local officials: Kenai Borough and CIRCAC remain involved.

Containment and Clean-up: Response equipment decon will continue to be

SITUATION REPORT:

Date of Report: 1/4/92

I.C.S. Office:

Incident Commander... Mark Sienkiewicz

O.S.C.....Mark Sienkiewicz

Logistics.....Gary Folley

Planning.....Mark Sienkiewicz

Operations.....Gary Folley

Administration.....N/A

Staff

PIO.....Debby Bloom

Liaison Officers

GLO.....N/A

CLO.....N/A

Legal Officer....N/A

Safety Officer....Mark Sienkiewicz

Cause of spill plus types and quantity of material spilled: Initial indications are that the spill occurred as a result of a pipeline rupture at the Kenai Pipeline Dock in Kenai. Cause of the rupture is unknown. The pipeline contained a mix of water and Alaska North Slope crude oil. About 1600 barrels of fluid is estimated to have leaked out. About 400 barrels is estimated to be pure crude oil. As of 1500 hrs. the spilled product was about 10 miles offshore of Kenai and was breaking up into brown patches spread over an 11 mile long area.

Potential hazards: Possible shoreline impacts at Kalgin Island and mainland areas of Cook Inlet.

Agencies notified:

- DES-no contact at 800 number
- USCG -Local Kenai Office
- ADF&G -Claudia Slater
- ADOP/PF -
- ADNR -
- ADCRA -
- USEPA -
- USPHS -
- AG -Breck Tostevin

Coordinating local officials: Kenai Borough and CIRCAC have been notified

Containment and Clean-up:

Feasibility - Clean-up ongoing - good weather conditions

Methods to be used - Open water skimming operations

Responsible party -Chevron - Kenai Pipeline Company

Potential for escalation: Response could escalate if shoreline impacts occur.

Personnel to be notified: Ted Moore and Kevin O'Shea are enroute to Kenai (as of 1600 hrs) to assist the local Kenai staff.

Other Comments: The spill was first noticed at 1:00 A.M. this morning. CISPRI is responding and had a vessel skimming in the oil at 3:00 A.M. with apparent good success. Later in the day they had a second skimming operation going. As of 1600 hrs they claim to have recovered 6,000 gallons of product. They are presently planning to get up to five skimming platforms in operation by tomorrow morning. They have 4 landing craft enroute to the area for possible booming of environmentally sensitive areas. Eight fishing vessels are enroute for boom deployment. They have helicopters and fixed-wing for aerial surveillance. Tracking buoys will be deployed this evening.

ADEC is sending down two additional staff from Anchorage. The situation will be assessed again in the morning and a decision made on whether more staff are needed. The last report from Mark S. was that the slick was breaking up late in the day and no black oil was observed. CISPRI will continue to skim throughout the night. There was no immediate threat for land impacts, however, the tides could carry the slick into land if not recovered soon. The weather is calm with no ice in the inlet at this time. No impacts to wildlife have been reported.

SITUATION REPORT:

Date of Report: 1/5/92

I.C.S. Office:

Incident Commander... Joe Sautner
O.S.C.....Mark Sienkiewicz
Logistics.....Margaret French
Planning.....Mark Sienkiewicz
Operations.....Kevin O'Shea
Administration.....Margaret French
Staff
 PIO.....Debby Bloom
 Liaison Officers
 GLO.....N/A
 CLO.....N/A
 Legal Officer.....N/A
 Safety Officer....Mark Sienkiewicz

Cause of spill plus types and quantity of material spilled:
Initial indications are that the spill occurred as a result of a pipeline rupture at the Kenai Pipeline Dock in Kenai. Cause of the rupture is unknown. The pipeline contained a mix of water and Alaska North Slope crude oil. About 1600 barrels of fluid is estimated to have leaked out. About 400 barrels is estimated to be pure crude oil. As of 12:00 noon on 1/5 the first overflight sighted a long ribbon of heavy oil about 2 miles NE of Kalgin Island.

Potential hazards: Possible shoreline impacts at Kalgin Island and mainland areas of Cook Inlet.

Agencies notified: DES-message left with security
USCG -Local Kenai Office
ADF&G -Claudia Slater
ADOP/PF -
ADNR - no contact
ADCRA -
USEPA -
USPHS -
AG -Breck Tostevin

Coordinating local officials: Kenai Borough and CIRAC have been notified

Containment and Clean-up:

Feasibility - Dispersants being used this AM. Weather deteriorating. Mechanical cleanup continues.
Methods to be used - Open water skimming operations
Responsible party -Chevron - Kenai Pipeline Company

Potential for escalation: Response has escalated in last 12 hours due to potential for beach impacts and deteriorating weather. This escalation is not expected to last more than a few days because of the limited amount of product involved.

Personnel to be notified: Six additional staff from SCRO and the Pipeline Region have been sent to Kenai in the last 24 hours to assist in the oversight of the cleanup.

Other Comments: Two vessels, the Monarch and Banda Seahorse continued skimming operations into the night. They lost track of the oil at about 2:00 A.M. and were not able to find it again. There is no report on how successful skimming operations were last night. Chevron/CISPRI has reported that they have collected about 6,500 gallons of product as of this morning. This figure has not been verified by DEC although the Coast Guard believes this is a reasonable figure. Assuming that about 16,000 - 18,000 gallons was reported spilled they would have picked up about one-third if their information is correct.

The first overflight this morning at around 10:00 A.M. revealed the heaviest ribbon of oil about 2 miles SE of Kalgin. A dispersant test was done and approval was given to use dispersants on this particular ribbon of oil to avoid impacts to Kalgin I. The dispersant approval was given by the Coast Guard with concurrence from ADF&G, DEC, and CIRCAC. There was no indication of the success of this application.

Mechanical cleanup is continuing in other areas. DEC has about 10-12 staff involved in the oversight of the incident at this time. It is expected that this incident may last 2-3 days and then wind down based on the limited volume of product involved. There will probably be need for some DEC staff involvement for several days afterwards to verify any beach impacts, associated cleanups, disposal of waste material and investigative activities.

SITUATION REPORT: Chevron/Kenai Pipeline Sit-Rep No. 5

Date of Report: 1700L - 1/6/92

I.C.S. Office:

Incident Commander... Joe Sautner
O.B.C.....Mark Sienkiewicz
Logistics.....Margaret French
Planning.....Mark Sienkiewicz
Operations.....Kevin O'Shea
Administration.....Margaret French
Staff
PIO.....Debby Bloom
Liaison Officers
GLO.....Kevin O'Shea
CLO.....Kevin O'Shea
Legal Officer.....N/A
Safety Officer.....Kevin O'Shea
Environmental.....Gay Moulberg ADF&G

Cause of spill plus types and quantity of material spilled:
Initial indications are that the spill occurred as a result of a pipeline rupture at the Kenai Pipeline Dock in Kenai. Cause of the rupture is unknown. The pipeline contained a mix of water and Alaska North Slope crude oil. About 1600 barrels of fluid is estimated to have leaked out. About 400 barrels is estimated to be pure crude oil. As of 1700 hrs local on 1/6 ribbons of light to heavy sheen with congealed crude oil patches remain 6 - 8 miles to the southeast of Kalgin Island. An additional area of light sheen was observed by the afternoon overflight approximately 20 miles south of Kalgin Island.

Potential hazards: The possibility of shoreline impacts on Kalgin Island or the west shore of Cook Inlet have mitigated, but the possibility still exists.

Agencies notified:
DES-message left with security
USCG -Local Kenai Office
ADF&G -Claudia Slater
ADOP/PF -
ADNR - Kris O'Connor
ADCRA -
USEPA -
USPHS -
AG -Breck Tostevin

Coordinating local officials: Kenai Borough and CIRAC have been notified

Containment and Clean-up:

Feasibility - Mechanical cleanup efforts continue, focusing on the leading edge of the main concentration SE of Kalgin I. Deteriorating weather has

intermitently impacted recovery and
reconnaissance operations.

Methods to be used - Open water skimming operations

Responsible party -Chevron - Kenai Pipeline Company

Potential for escalation: Response has stabilized. Offshore response level should remain constant for the next 48 hours then gradually disipate. Shoreline impact is still a possibility but the probibility has significantly decreased due to product dispersion.

Personnel to be notified: No additionnal personnel need to be notified.

Other Comments: Weather has become a limiting factor. Poor visibility due to fog and snow in the vicinity of Kalgin Island has temporarily curtailed overflight operations.

audia Slater

~~ADOP/PE -~~
~~ADNR - no contact~~
~~ADCRA -~~
~~USEPA -~~
~~USPHS -~~
~~AG - Brock Toftlevin~~

BUSINESS

SUNDAY, Jan. 12, 1992

ANCHORAGE DAILY NEWS

SECTION E

As oil spills go, it was a good one

Inlet mishap big enough to test response, small enough that mistakes didn't hurt

By CHARLES WOHLFORTH
Daily News reporter

The Kenai Pipe Line Co. oil spill in Nikiski eight days ago was as good an oil spill as the oil industry could hope for.

It was small, cleanup crews were quick to work, a lot of the oil got picked up, there were no oiled birds or animals, and government agencies and company officials enjoyed a virtual love-fest of mutual praise when it was all over.

Between 40 and 47 percent of the 7,000 gallons of oil spilled was recovered, 20 to 30 percent evaporated or dissolved, and most of the rest dispersed across Cook Inlet in pieces small enough to be eaten up by bacteria and otherwise broken down by the environment, said John Whitney, Alaska scientific support coordinator for the National Oceanic and Atmospheric Administration.

"It's really a phenomenally high recovery factor," Whitney said.

But more was at stake in the spill cleanup than the oil. Kenai Pipe Line's million-dollar cleanup was the first real-life test of the millions of dollars of equipment, manpower and plans put in place after the Exxon Valdez spill nearly three years ago.

By those standards, a lot still went wrong, and the cleanup easily could have been worse.

If a barge crew hadn't noticed the oil in the water, much more could have spilled. If the cleanup crews had needed chemical dispersants they wouldn't have had them because the chemicals wouldn't come out of the nozzle. If they had needed fishing boats to corral the oil, they wouldn't have had them quickly. If they had needed a barge to store recovered oil they would have had to wait, because the barge was in Homer without a rope to tow it.

And there were other problems: The spill got lost at night and was hard to find in the morning because a homing buoy failed; helicopters spotting oil for skimming vessels had trouble

communicating with them; and Coast Guard workers searching the beaches for oil had to do their work on foot because vehicles were unavailable.

"We were fortunate that there was not a lot of product out there," said Joe Sautner, the regional oil program coordinator for the state Department of Environmental Conservation.

Even the environmentalists' response was flawed. Their public relations offensive came on Tuesday, and some of the information they released to the press was inaccurate.

Karen Wood of the Alaska Center for the Environment

was quoted in the Homer News as saying skimmers weren't ready to work on the spill because officials were relying too heavily on the failed dispersant chemicals.

In fact, skimmers were on hand and working with impressive effectiveness within 90 minutes of the spill, and the dispersants ultimately were not needed.

Cleanup officials concede there were problems, but they say it isn't fair to assume the same problems would have occurred in a larger spill. If the spill had

been larger, their response efforts would have been larger, too, and would have used different equipment.

They also say the spill was a shakedown cruise. It was like a drill, but with real oil and real weather. Officials say they'll learn from their mistakes.

"A lot more went right than went wrong, especially if you compare it to the Exxon (Valdez)," Sautner said. It was more than improved cooperation, he said. "These people were well-trained, well-prepared, and they knew what they were

supposed to be doing."

The Exxon Valdez spilled more than 1,500 times more oil than the Kenai Pipe Line terminal, but it was the standard for comparison that most people chose.

"You're seeing an evolution from the Exxon Valdez," said Coast Guard Captain Richard Asaro. "The things that really count were a lot better. And the things that count are the communication, cooperation, and not having a lot of finger-pointing and name-calling."

Please see Page E-4, KENAI

KENAI: 'Lot more went right than wrong'

Continued from Page E-1

"I think a lot of it is that they had been drilling together for the last year," Asaro said. "The people knew each other and have learned to trust each other."

Lisa Parker, director of an oil industry watchdog group, said part of the improved communication was the result of openness by Kenai Pipe Line and its cleanup contractor, Cook Inlet Spill Prevention and Response Inc. CISPRI set up a joint command center with the agencies and Parker's group, allowing them to attend planning meetings and ride along on oil-spotting flights.

But the reason for the cleanup's success was even simpler. CISPRI got its skimmers to the oil fast, the oil was concentrated by tidal currents that carried it offshore instead of onto beaches, the weather was calm and not particularly cold for winter, and the skimmers, which use a design not available during the Exxon Valdez spill, worked well in the first 24 hours before the spill spread out.

CISPRI used its two Fox-tail skimmers as its main tool, leaving in storage a skimmer with a factory rating that said it worked twice as fast. In drills they had learned that the new Fox-tails were best in ice and would be more effective than the large skimmer, said Bob Williams, manager of Kenai Pipe Line. The Fox-tail skimmers work with a crane that lowers material that absorbs oil but not water. The mechanism then wrings the oil into a tank on board.

The reasons for the cleanup's failures were generally more complicated, beginning

with the cause of the spill itself.

Workers at the terminal were transferring oil from two oil and water separating tanks through a pipe to oil storage tanks. The line linking the tanks didn't go over the water, but it was connected to a ballast-water collection pipe that extended onto a dock. There was no valve to keep the oil from going into the dock pipe even when, as in this case, the dock pipe wasn't needed. Williams, the company manager, admits that was a design flaw, and he said a valve was due to be installed soon that would have prevented this spill.

The dock pipe had a heating cable to keep the oily water it carried from freezing, but sometime after Dec. 15 the cable failed, according to Coast Guard documents and company officials. Friday, Jan. 3, the cable was repaired, but no one noticed that in the meantime water in the pipe had frozen and burst the pipe.

Saturday, Jan. 4, at 12:15 a.m., the crew of a barge at the dock noticed oil in the water. Workers visiting from the Tesoro refinery looked around and 15 minutes later found the leak, Williams said. By the time it was shut down, 42,252 gallons of oily water had spilled into Cook Inlet. Between 6,300 and 7,182 gallons of that was oil, said Whitney of NOAA.

The first CISPRI Foxtail skimmer was at the spill by 1:45 a.m., and by 8:30 a.m. the second was on its way. Most of the oil would be gathered that first day, until the skimmers lost the oil in the dark at about 3:30 a.m. Sunday, Jan. 5.

Meanwhile, Saturday, cleanup workers were trying

to hire fishing boats to place floating booms in front of two salmon streams on Kalgin Island that appeared to be in harm's way, and to corral oil in booms to assist the skimmers, said Williams of Kenai Pipe Line. But the boats they had contracted with in advance were from Kenai — and Kenai boats are generally taken out of the water in the winter, when the Kenai River fills with ice.

Karl Pulliam, a teacher in Seldovia, heard about the spill at about noon. He is a member of Seldovia Oil Spill Team Inc., a spill cleanup group formed during the Exxon Valdez spill that maintains a database of 250 boats ready for cleanup work on short notice. Pulliam called the cleanup managers and faxed them a list of boats fitting the necessary specifications. But he heard nothing more all afternoon and assumed they had the boats they needed.

Then, a member of Pulliam's group heard on the 6 o'clock news that fishing boats were headed from Seldovia to work on the spill. Pulliam knew that wasn't true, and he called CISPRI back, again offering to provide boats.

"I sent him three good men and three good boats," Pulliam said. "They were ready to go at 8 o'clock, but it took until midnight to get their contracts hammered out."

“The things that really count were a lot better. And the things that count are the communication, cooperation, and not having a lot of finger-pointing and name-calling.”

— Coast Guard Capt. Richard Asaro

Pulliam said his group had offered its services to CISPRI before the spill, with a blanket contract to provide boats on two hours' notice, but had been turned down. CISPRI's manager did not return repeated phone calls requesting comments for this story.

“It reminded me so much of the Exxon spill,” Pulliam said. “I could say, ‘I told you so.’”

Other boats came from Homer. At about 10 a.m. Saturday, CISPRI officials called John Crandall, a tug boat operator who had discussed chartering boats for an upcoming spill drill. His wife took the call, then found Crandall working on his boat on Homer Spit and told him CISPRI needed boats.

“I guess I had a list in my mind,” Crandall said. “I had to run around and catch these people.”

The fishermen were ready to go almost before he could tell them the assignment and went to the spill without contracts, Crandall said. The first of the Homer boats was on its way in early Saturday afternoon, and the last 12 hours later.

As it turned out, the fishing boats were not needed. But Williams said he learned CISPRI should have kept Homer and Seldovia fishing boats on contract before a spill, as does the operator of the Valdez oil terminal, Alyeska Pipeline Service Co.

On Saturday spill work-

ers also ordered a CISPRI barge that was docked for the winter in Homer, expecting it to arrive at the spill site Sunday morning. But the barge, intended to hold recovered oil and to act as a work platform, couldn't be towed out of Homer because the right kind of tow rope was not available, Williams said. A tug had to come from Anchorage, delaying the barge's arrival until Monday. As it turned out, the barge was not needed.

Sunday at noon, CISPRI tried bombing the spill with dispersant chemicals designed to break up the oil, Exxon-manufactured Corexit 9527, the main dispersant in its inventory. But the technique had only been tested with water in the spray equipment, never with Corexit, and in the 21-degree weather the chemical turned viscous in the helicopter's external buckets and wouldn't come out of the spray nozzle.

Officials still don't know if the failure was because CISPRI got a bad batch of Corexit, or if the product doesn't work in the cold.

NOAA's Whitney said if the spill had been large, the dispersant would have been dropped from an airplane, and that would have kept the chemical warm. Kenai Pipe Line's Williams said, however, the chemical has never been tested in cold Cook Inlet water because of environmental concerns.

But Asaro of the Coast Guard said the Corexit should have been tested at least on land to make sure it would come out of the nozzle.

“I'm as much to blame as the next guy on that,” Asaro said. “If you'd asked me two months ago, I'd say, ‘Of course it will flow.’”

TIMELINE:

Continued from Page E-1

January
4
Saturday

8:00 PM Seldovia boats ready to go, but don't have signed contracts with CISPRI.

10:00 PM Last of seven fishing boats leaves Homer.

January
5
Saturday

12:00 AM Seldovia boat owners finish signing contracts with CISPRI, leave port.

3:00 AM Both skimming vessels lose sight of the oil, stop operations for the night.

9:30 AM Officials fly over the spill, locate it again for skimming vessels to recommence work. The oil has collected in two tide rips a few miles from Kalgin Island.

10:00 AM CISPRI barge due at the spill scene, but hasn't left Homer yet because a tow line is not available.

12:00 PM An attempt to spray dispersant chemicals on the spill fails when the substance turns to slush in the nozzle in 21-degree weather.

January
6
Saturday

10:00 AM CISPRI cleanup barge again expected to arrive from Homer, 24 hours after it was originally expected.

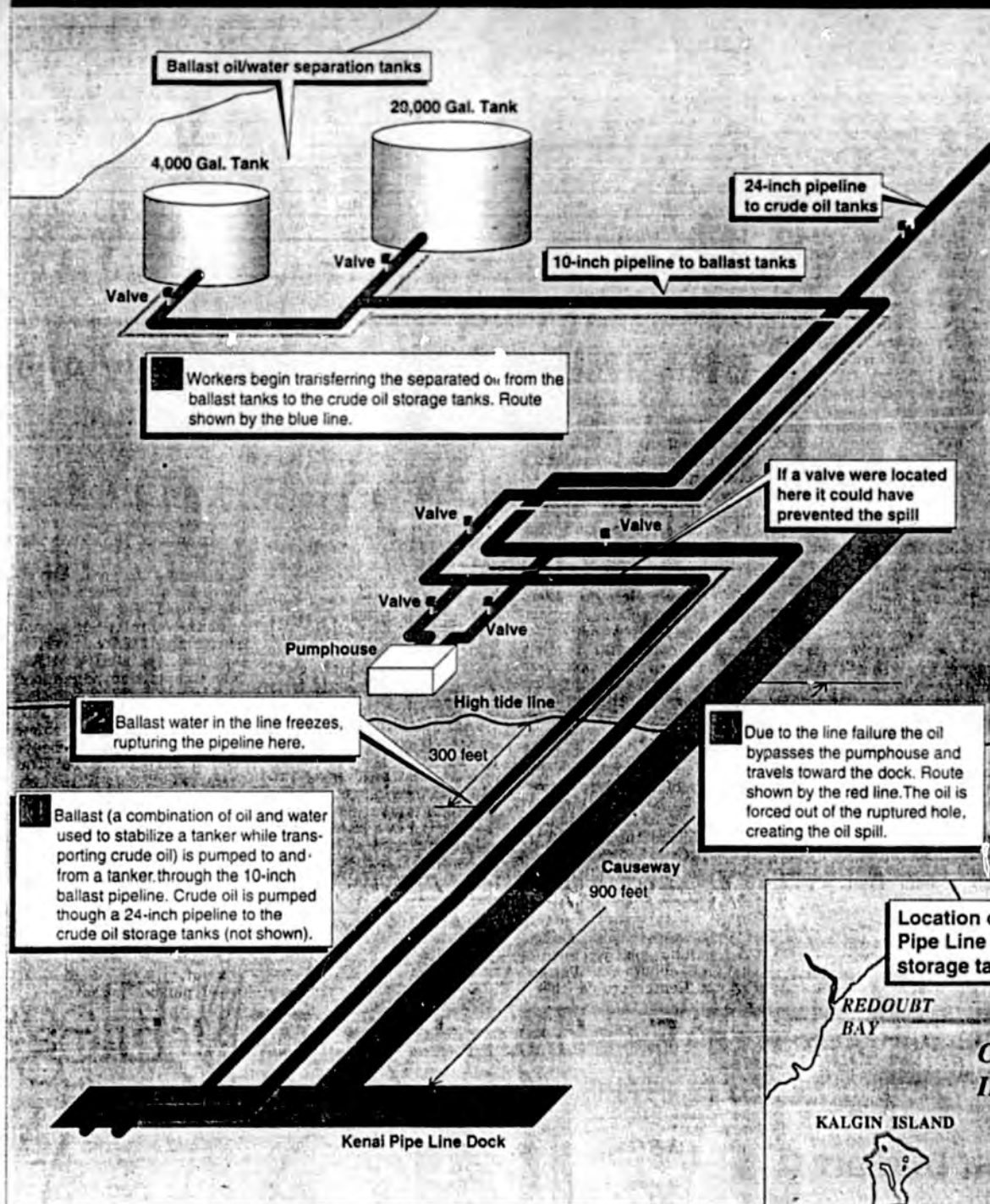
January
7
Saturday

9:45 AM Officials flying over the spill area can't find any oil.

5:00 PM NOAA and Kenai Pipeline officials reduce estimate of the amount of oil lost from 16,900 gallons to between 6,300 and 7,182 gallons. Increasing the proportion recovered to 40 percent. Environmentalists criticize the cleanup to reporters.

WHAT HAPPENED AT THE KENAI PIPE LINE OIL FACILITY

TIMELINE



January 4 Saturday

12:15 AM Workers on a barge at the Kenai Pipe Line Co. dock in Nikiski notice oil in the water.

12:30 AM The spill is discovered by terminal workers. A broken pipe spills 7,200 gallons of oil and 35,000 gallons of water from an oil/water separation tank into Cook Inlet, but workers overestimate the amount of oil, saying it is 16,900 gallons.

12:55 AM Kenai Pipe Line terminal workers notify Cook Inlet Spill Prevention and Response Inc., known as CISPRI.

1:30 AM Kenai Pipe Line workers notify Manager Bob Williams, who notifies the Coast Guard.

1:45 AM The first spill response vessel, the Banda Seahorse, arrives to begin picking up the oil.

3:30 AM CISPRI notifies the Cook Inlet Regional Citizens Advisory Council.

8:30 AM A second CISPRI vessel, the Monarch, is under way with skimming equipment.

10:00 AM The oil has aligned in strips five miles offshore and six miles long. The Monarch has joined the Banda Seahorse in skimming the oil.

10:00 AM Homer tug boat operator John Crandall receives word that CISPRI needs him to hire fishing boats.

12:00 PM Karl Pulliam of Seldovia's volunteer spill cleanup group hears from a member that there has been a spill in Nikiski. He calls CISPRI to offer Seldovia fishing boats.

12:30 PM Cleanup begins around the dock.

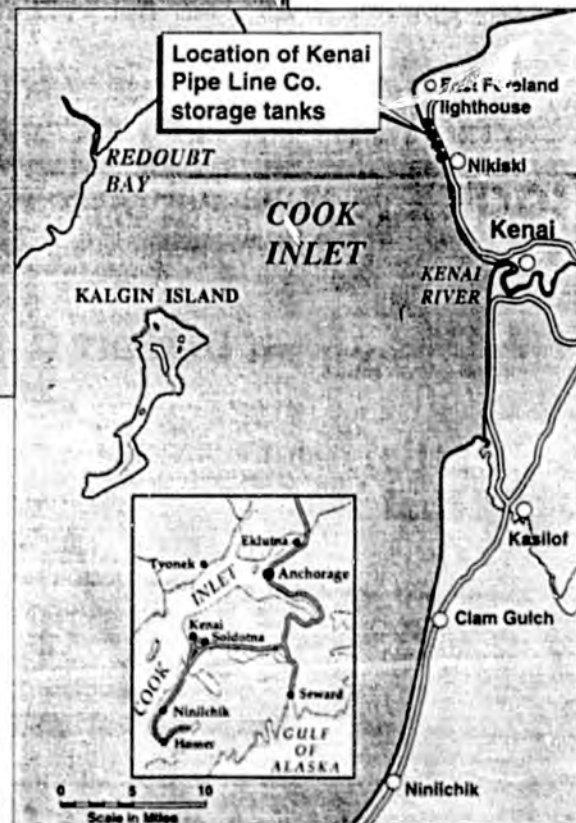
1:30 PM Pulliam sends CISPRI a list of available boats.

2:00 PM First fishing boat leaves Homer.

4:39 PM Coast Guard approves the use of dispersant chemicals on the spill.

6:00 PM Pulliam hears from the evening news that boats are heading to the spill from Seldovia. He knows that isn't so, and calls CISPRI to again offer boats.

Please see Page E-4, **TIMELINE**



STATE OF ALASKA
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

SITE SAFETY PLAN

GENERAL INFORMATION

Site: KPL OIL SPILL Spill No.: 92-2-3-1-004-1

Location: COOK INLET NEAR NIKISKI

Plan prepared by: KEVIN M. O'SHEA Date: 1/4/92

Plan approved by: X M. O'S Date: 1/5/92

Objectives: TO MONITOR OIL SPILL CLEAN UP OPERATIONS
AND CONDUCT INVESTIGATION INTO CAUSE OF
SPILL.

Proposed date of investigation: 1/4/92

Background review: Complete Preliminary X

Overall hazards: Serious Moderate
Low X Unknown

SITE/WASTE CHARACTERISTICS

Waste type(s): Liquid X Solid Sludge X
Gas

Waste characteristics: Corrosive Ignitable X
Radioactive Volatile X
Toxic Reactive
Unknown Other

Facility description: MARINE OIL SPILL

Unusual features (dike integrity, utilities, terrain, etc.):

COOK INLET HAS A STRONG CURRENT AND SEVERAL
RIP TIDE AREAS

Status (active, inactive, unknown): ACTIVE

.00 '00 07:18 PM

Page 3

Site history (injuries, complaints, previous agency action):

THERE HAVE BEEN NO INJURIES REPORTED

HAZARD EVALUATION

Summary (see hazard evaluation sheets attached following this page): PRIMARY HAZARDS ARE INHALATION OF VOLATILE ORGANIC COMPOUNDS, WATER HAZARDS, EXPOSURE TO COLD, TRIPS, SLIPS AND FALLS.

SITE SAFETY PLAN

Perimeter establishment:

Map/sketch attached? No Site secured? No

Perimeter identified? YES

Zone(s) of contamination identified? YES

Personal protection:

Level of protection: A B C X D X

Modifications: ALL PERSONNEL WORKING ON OR NEAR THE WATER MUST WEAR A USCG APPROVED PERSONAL FLOTATION DEVICE.

Surveillance equipment and materials:

HNU PHOTOIONIZATION METER

EXPLOSIMETER

Special site considerations: COLD STRESS AND
WATER HAZARDS

Decontamination procedures:

Personal: WASH ANY AREAS OF SKIN CONTACT
WITH SOAP AND WATER. IN CASE OF EYE
CONTACT FLUSH EYES WITH WATER FOR 15 MIN.
AND CONSULT DOCTOR.

Equipment: WIPE ANY OIL FROM EQUIPMENT WITH
PAPER TOWEL OR SORBENT MATERIAL.

Investigation derived material disposal:

ALL INVESTIGATION DERIVED MATERIALS SHALL
BE DOUBLE BAGGED AND SEALED.

Site entry procedures:

N/A

Team member

MARK SIENKIEWICZ
KEVIN O'SHEA
TED MOORE
BRYSON TWIDWELL
GARY FOLEY

Responsibility

OSC
DISPERSANT APP. MONITORING/INV.
INVESTIGATIONS/PROTECTION
ON WATER MONITORING/SAMPLING
FLIGHT OPS

00 '00 07:28 PM

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EMERGENCY INFORMATION

Emergency Precautions

Acute exposure symptoms

First Aid

HEADACHEDROWSINESSNAUSEAUNCONSCIOUSNESSREMOVE TO FRESH AIRREMOVE TO FRESH AIRAND SEEK MEDICALATTENTION IMMEDIATELY

Local Resources (name, address and phone #)

Ambulance 911Hospital emergency room KENAI PENINSULA GENERAL HOSP.Poison control center N/APolice 911Fire Department 911Airport KENAI AIRPORTExplosives unit N/ALocal laboratory NORTHERN TEST LAB - SOLDOTNAUPS/Fed-Ex FED-EX LOCATED AT KENAI AIRPORTResponsible party contact BOB WILLIAMS (IC) CHEVRONGENE JACKSON (D&E IC)

Other _____

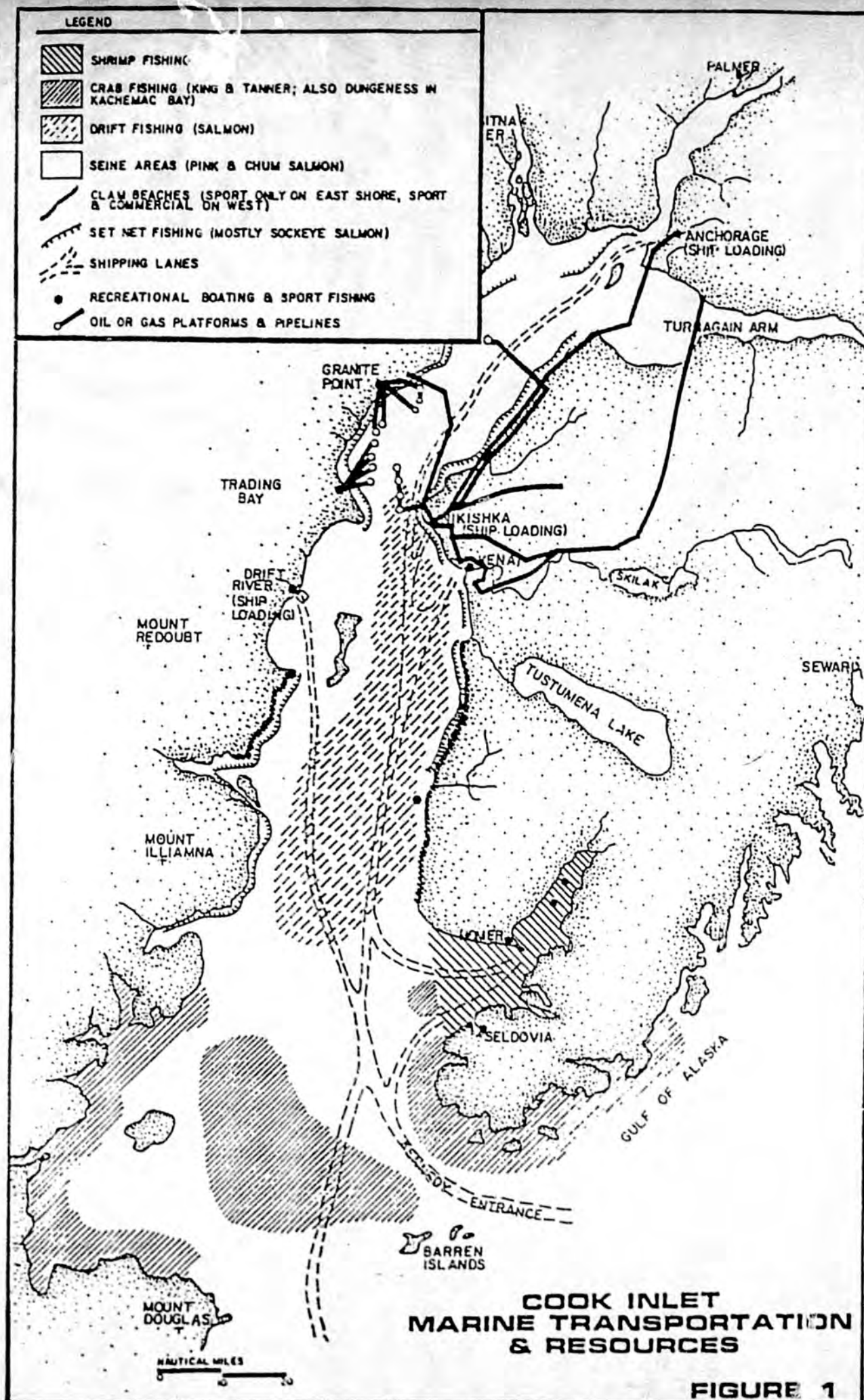
Site Resources

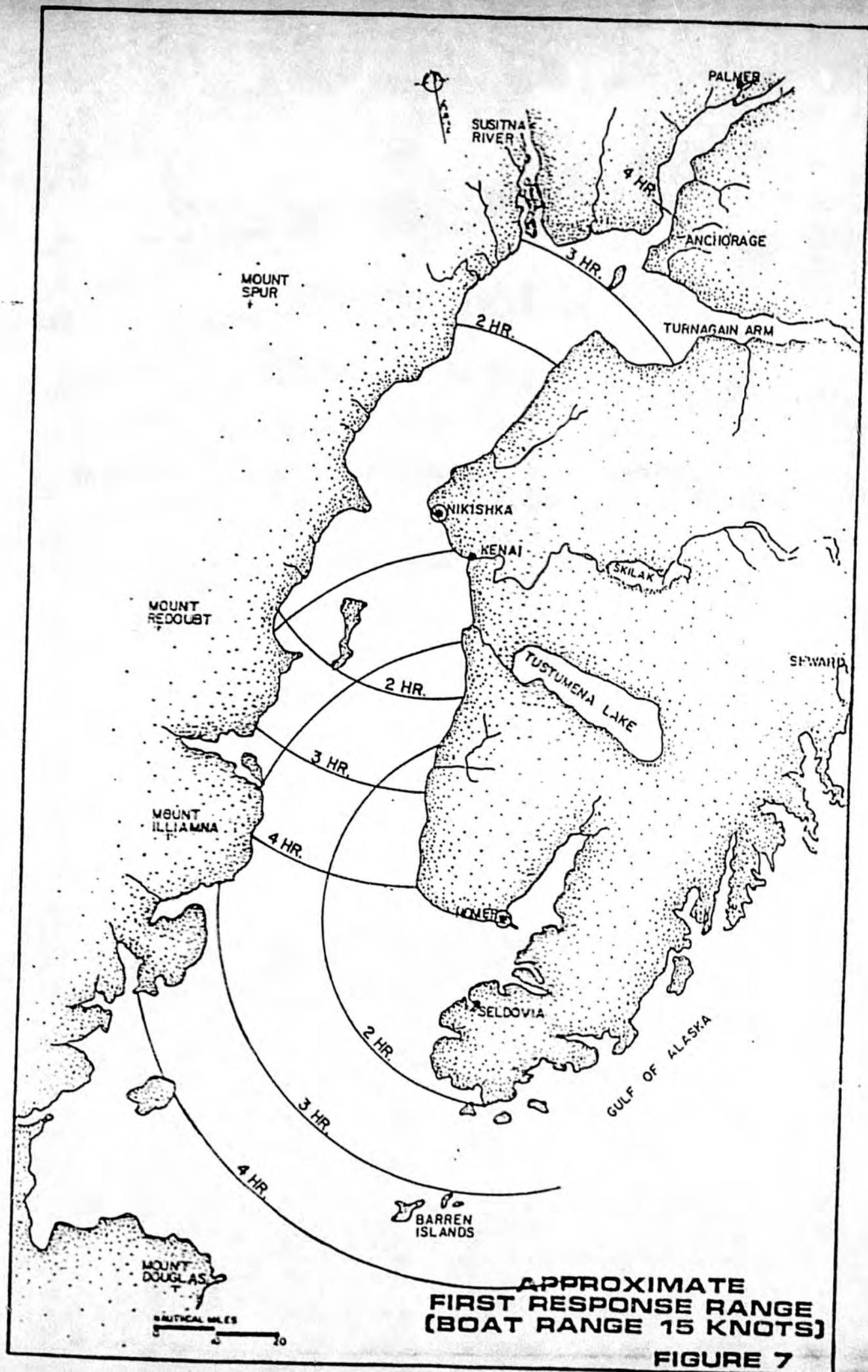
Water supply YESElectricity YESTelephone 776-5520 EXT 213Radio PORTABLE RADIOOther FAX MACHINES, COPIERS, OFFICE SUPPLIES.

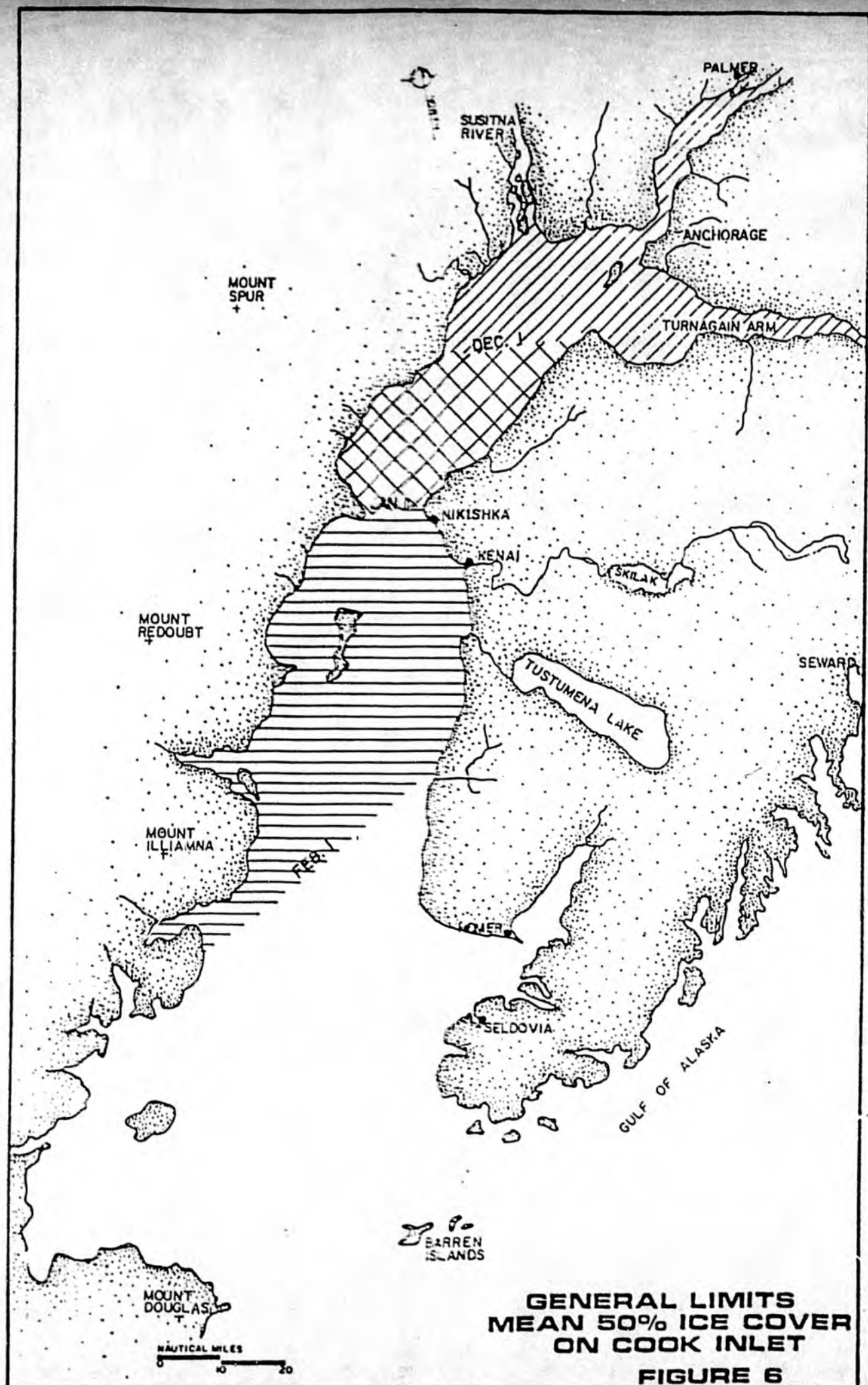
Emergency Routes

Directions to Hospital: CALL 911 AND REQUEST
AMBULANCE.

Other: _____







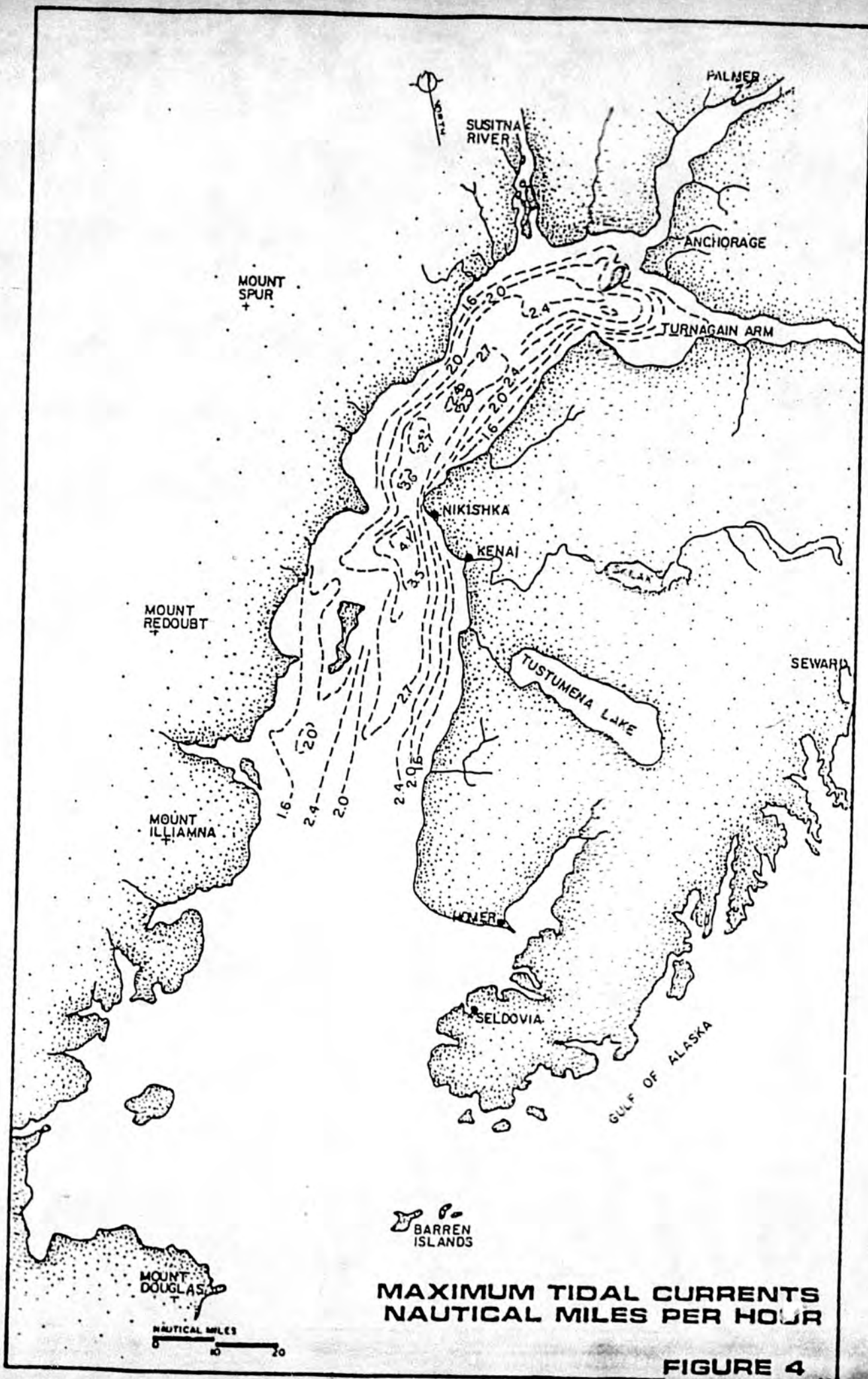


FIGURE 4

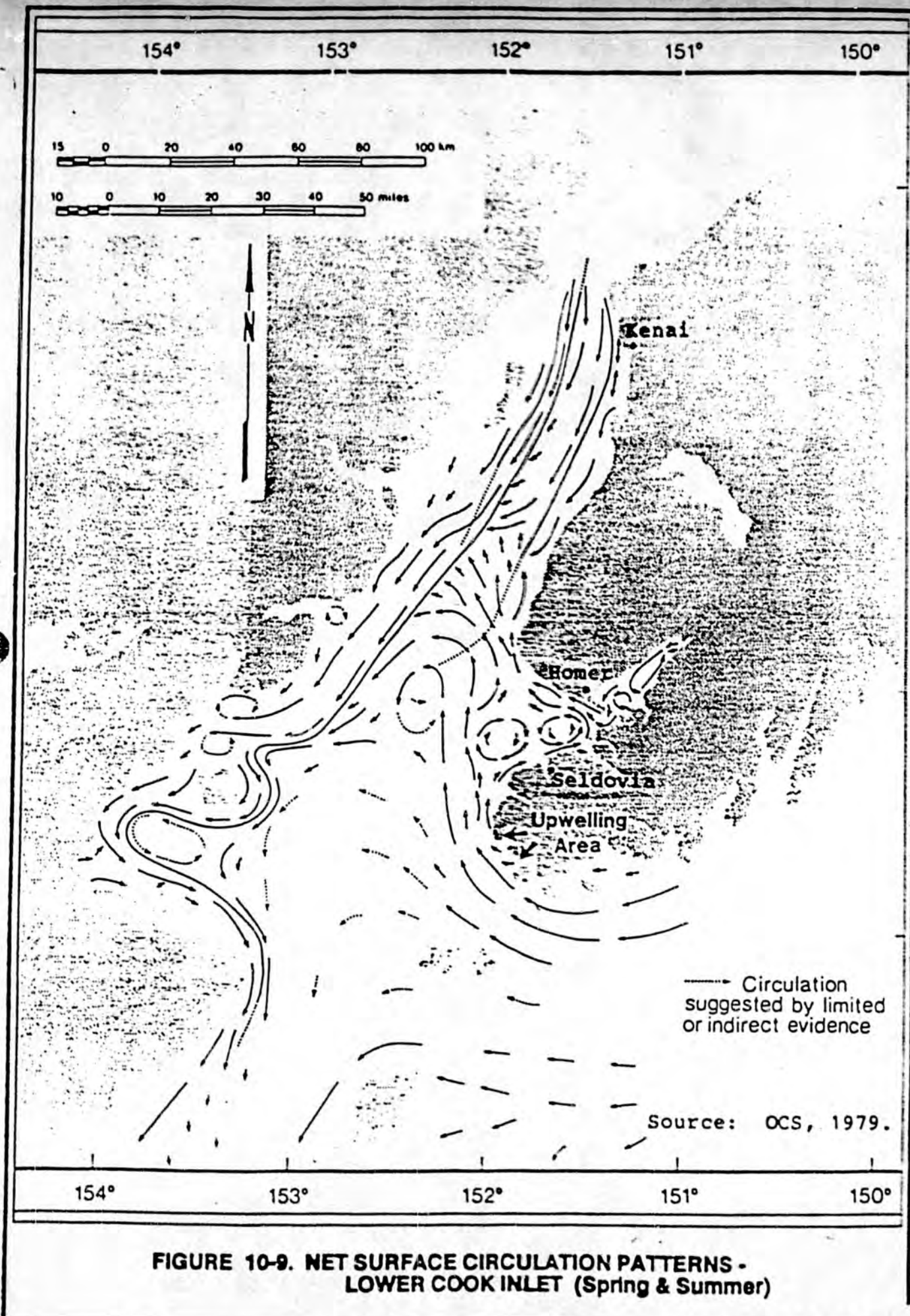


**FIGURE 10-9. NET SURFACE CIRCULATION PATTERNS -
LOWER COOK INLET (Spring & Summer)**

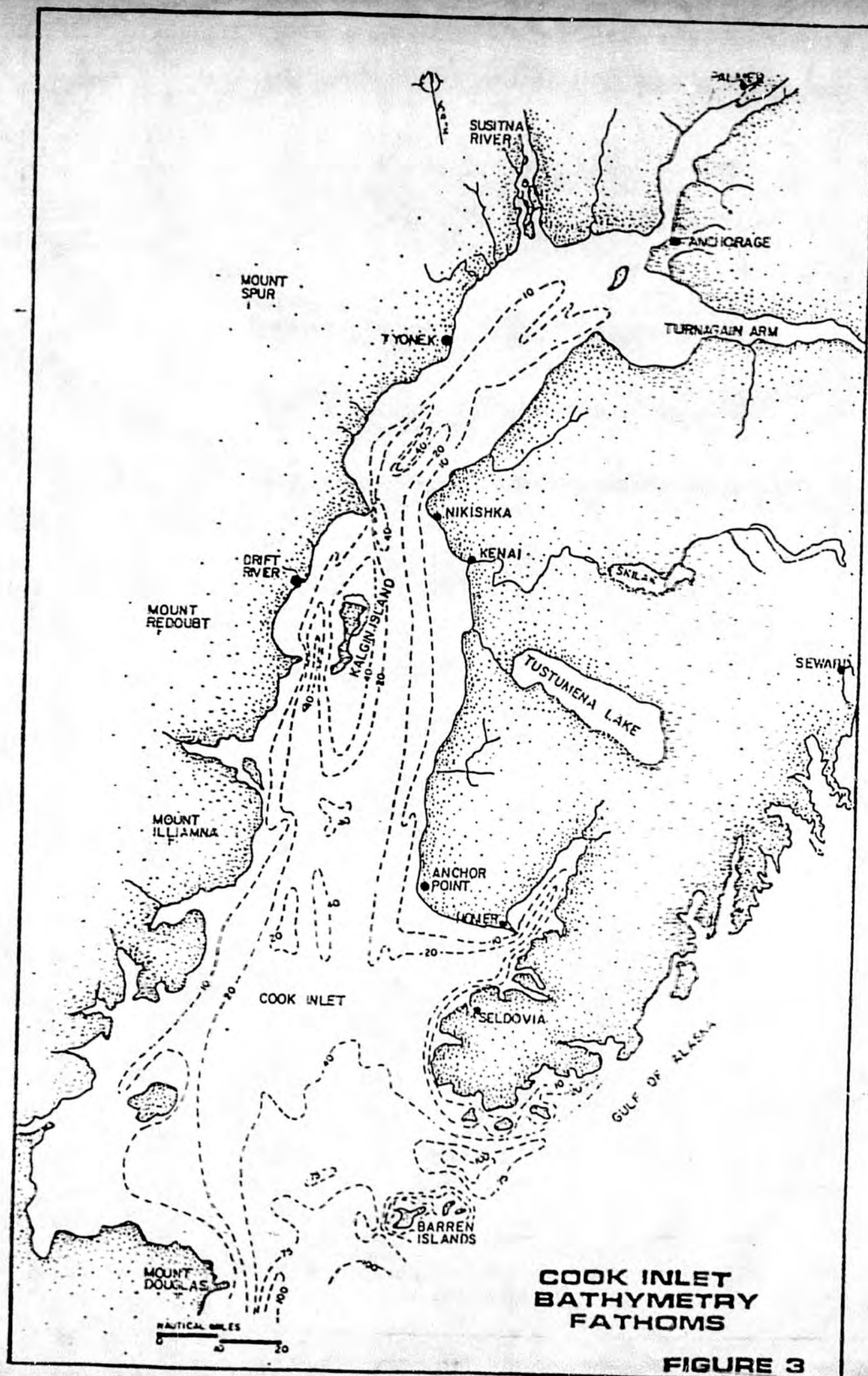
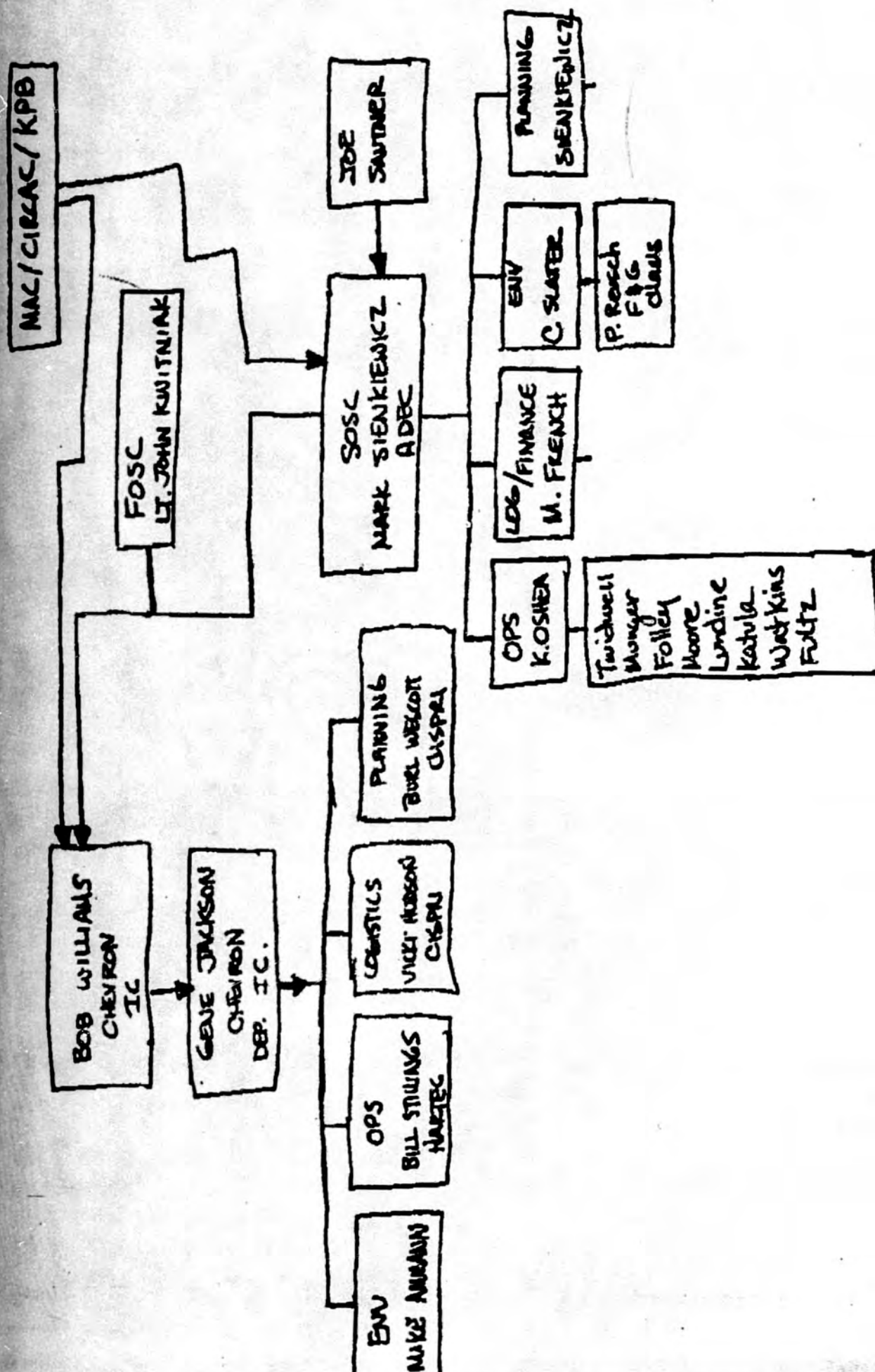


FIGURE 3



MEMORANDUM State of Alaska

To: Michael A. Conway
Director, SPAR
Department of Environmental
Conservation

Date: January 4, 1992

File No.:

Telephone:

Subject: Chevron Kenai Pipeline (KPL) Oil Spill: Encumbrance
of Funds and Type A Emergency Procurement Declaration

From: Svend Brandt-Erickson
Regional Administrator

The Southcentral Regional Office requests \$25,000 from the Oil and Hazardous Substance Release Response Fund (Response Fund) for expenditures for the Department's response to a crude oil spill in Cook Inlet. The Department of Environmental Conservation (DEC) is also declaring this oil spill a Class A Emergency per Alaska Statute, AS 36.30.310 and Alaska Administrative Code, AAC 12.440. The factual basis for this request and determination is:

Date of Incident: Saturday, January 4, 1992 at approximately 12:30 am, local time.

Location: Chevron KPL Dock near Kenai, Alaska.

Description: Approximately 400 barrels of north slope crude oil were released directly into Cook Inlet from a frozen ballast water pipeline that ruptured. An investigation is underway.

Responsible Party: Responsible party to be determined.

Basis for Determination: An imminent threat to public health, welfare and safety exists. Immediate actions by DEC staff are necessary to prevent damage to property or facilities. The crude oil was released on an incoming tide and moved up Cook Inlet initially. The crude oil at the time of this request is located in the east tide rip and consists of a 300 yard wide band that is approximately 1 - 6 miles offshore. A response is underway and a dispersant application is anticipated to minimize shoreline impacts. The Department is conducting an organized response from the command post at the Kenai Pipeline Offices on the Kenai. Monitoring of the situation will continue and adjustments made in the nature of the emergency as the situation changes.

Funding Request: Funding is necessary for staff travel to the spill site, per diem, contractual support such as boats, helicopters or fixed-wing aircraft and sample analyses to carry out the attached and future Incident Objectives. All procurement will be approved by the State On Scene Coordinator or delegated representative and accompanied by a justification as to why the particular contractor was selected and why the particular goods or services are needed to meet the Type A Emergency conditions.

This project is eligible for Response Fund funding under AS 46.08.040(a)(1). No alternative funding sources are available at this time. Not funding this work will jeopardize the state's ability to carry out the Incident Objectives, which may result in additional negative impact to state resources and limit our ability to assess penalties and collect damages.

Cost recovery of expenditures will be sought as follows:

- all state expenditures are being documented and will be forwarded to the Department of Law for development of a Bill for Collection from the responsible party.

The start date for this project was January 4, 1992 and should continue through January 30, 1992. The project manager who will be responsible for budget management, obligation/expenditure approval, fund report documentation, justification and cost recovery for this project is Svend Brandt-Erickson. Mark Sienkiewicz is delegated to approved expenditures on-scene.

The budget request for this project is based on the following estimated line item breakout:

71000: \$9,000

Mark Sienkiewicz, EPS, PCN 7574
Gary Folley, EPS, PCN 7533
Joe Sautner, EPS, PCN 7609
Margaret French, CT, PCN 7180
Matt Carr, EPS, PCN 7607
Ted Moore, EPS, PCN 7575
Deb Bloom, PIO, PCN
Kevin O'Shea, EPS, PCN 7570
Larry Dietrick, EPS, PCN 7161

(Other staff may be called upon to assist)

72000: \$5,000 - Travel and per diem for staff from Anchorage and possibly from Juneau to Kenai for state spill response activities.

73000: \$10,000 - Rental of boats, planes, helicopters for spill tracking and responsible party oversight, spill source and spill sample analyses.

74000: \$1,000 - Still camera film, video tape, processing and miscellaneous field supplies.

75000: No equipment purchases are anticipated at this time.

Total Budget Request: \$25,000

Attachments: Incident Objectives

SCOMM

79:5

Ports & Waterways Safety Act.

LTR to Federal Justice - Handing over criminal proceedings

Criminal -

Civil -

CERCLA - CWA - Tort -

Criminal Div. Dept of Justice

2 Conclusions

1. little public policy advantage
2. Feds best to proceed

Civil Litigation

Civil Litigation
State Damage - Nat. Resource Assessment.

An argument between State - Kelso &
Adm. Nelson

⑧ ~~Wasn't~~ Wasn't we still be a target - perhaps
one of three.

2 of Frans -

Booby trapped -

* IF we pass A resol. Asking the courts
to deny the agreement - what force that is to
the settlement - Sink it.

* won't the interests of the people be best
served by proceeding with the civil damages
claims. - no - gave up resource damages -
still have: • dollars per gallon
• Punitive damages
• Lost Revenue & live shutouts
• Fish taxes

6/21/89 - LTR Bailey

3/12/91 - LTR Cole -

Richard Stewart - / Thomas Campbell -

Co-equal stewardship

13 years - \$105 mill - recovered! AMOCO-CADIZ

stewards of Resources

new
memo of agreement
not an amendment - but another one.

Memo. of agreement with Fed. Govt on program
content - leg - Public involvement

* Release scientific data

* Release ex. session

what's the concern
AS to STATE & Fed.

Range of Values - Held by Feds & AG

Expenditure Criteria - CWA
Process

\$50 mill.

Restoration -
Enhancement

P Alaska different

Replace with comparable or compatible resources!

* INDEMNIFY ALASKA



avenue still open
ongoing litigation against Alaska — what's our objectives
• what's still out there.

Plea = \$50M to STATE FOR RESTORATION

⊗ A New memo of Agreement that defined Process —
terms + responsibilities!

⊗ ? ISSUE — STATE gets the door open — !
FEDS will follow. ?

⊗ Replacement values

ON PROCESS — STATE most
impacted — it's here
+ there will be the necessity
of COOPERATION —
ASSOCIATED economic
values — Accrue to the
STATE! —

1. ⊗ spending outside the region —
? → Entire region in the pot — just PWS.
Per Campbell oiled Bird — but served by enhancing repro. elsewhere!

⊗ Precedent of accepting the \$50 mil / 50 mil
to deter future spills

"Note"

\$1 Billion Precedent — Not in Present Value
only HALF that in 91 dollars!!

Kubinka's

X Any harm noted to the public's food
chain — advise them.
Anyone

X WAS THE DETERMINATION TO NOT sue under Criminal
Terror Criminal Injuries + Prosecution over ~~to~~ fees

Alternative to Accept
Time
Costs
Expectations

Parties - STATE UNDERSTANDING -

settlement w/ STATE - FEES - way not 3rd party?

— Period of Pay — Responder amt.

Unusual to reveal goals in Anticip'd
Negotiations — Harm

executive briefing re: scientific research.

① U.S. Govt - 18 mos. spend = \$20. mill
① FED Claims -
8-12 YEARS possible - ^{cont.} superior - Supreme -
Dinkum Santos - 13 yrs - open
Amoco Cadiz - 13 yrs - coming closer

② Antic. Costs - \$90-100 mill?

would going back to the table afford
better chance - less

Are we inadvertently harming future litigation
by this process, -

Hudson

Criminal charges against Exxon
was not chosen by former Atty
Gen. Bartley.

Bartley chose to proceed against
Hazelwood instead -

Atty Cole - felt criminal pro. against
Exxon would not be successful.

Exxon req'd a ltr or commitment that
State would not proceed against them.
LTR was drafted.

what was to be achieved by moving against
Hazelwood

MAR 24-89 - Spill

{ FED Filed Criminal Charges
{ STATE Filed Crim. charges against Hazelwood
LOST
Cole Filed civil charges against Exxon
Formally Filed LTR

Add - 1 - Sen.
1 - Rep -

EX OFFICIO.

1 - US Sen
1 - US Cong.

Trustees -

1. Alaska stays in - do not release
2. Exxon should comply indemnify state

Claims

STATE - Exxon - Alaska, FED

FED - " " STATE

Exxon - STATE - FED

PRIV. - Exxon - Alaska, STATE - (FEDS)

MUNYS - EXXON - Alaska - (STATE - FEDS)

* Alaska should not be released from Res.
Damages

ALASKA + PRIVATE - Partnership - Documents
↓
EXXON - ALASKA Discovery - statements

Release - of scientific info - AFTER
Court. -
Judgement - go for Exxon -
settle & go for

Public input - Accountability - Open Meetings
Regulatory Review -

OIL SPILL LITIGATION CHRONOLOGY
(April 2, 1991)

March 13, 1991

State, federal and Exxon representatives sign "Agreement and Consent Decree" and "Memorandum of Agreement and Consent Decree" in civil litigation; federal and Exxon representatives sign "Plea Agreement" in federal criminal case.

March 19, 1991

Settlement documents published in the federal register.

March 24, 1991

Statute of limitations expires on common law tort claims under state law.

April 8-9, 1991

Hearings scheduled before US House Interior subcommittee.

April 11, 1991

Deadline established by Judge Holland for public comments on the Plea Agreement.

April 18, 1991

Deadline for comments to federal and state government on Consent Decree and MOA.

April 24, 1991

Judge Holland has scheduled a hearing at 8:30 a.m. to announce his decision on the Plea Agreement.

May 3, 1991

Last day on which federal or state government may withdraw from the settlement if: (1) legislature has not approved the Consent Decree; or (2) comments show Consent Decree is inappropriate, improper or inadequate.

May 4, 1991

Last day on which any Party may terminate the Consent Decree if Judge Holland rejects the Plea Agreement on April 24 (Parties may terminate within 10 days of rejection).

10 Days After (1) Final Judicial Rejection of Consent Decree or (2) Final Judicial Approval With (a) Misinterpretation or (b) Materially Adverse Modification

Last day on which any Party may terminate the Consent Decree. This period would apparently expire at the end of the time for appealing from Judge Holland's decision, or when an appeal has been finally decided.

SETTLEMENT

**DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

March 18, 1991

SUBJECT: Exxon Settlement; Overview and Preliminary Questions; Federal Criminal Case (Work Order No. (7LS1044))

TO: Representative Max Gruenberg

FROM: Pamela Finley *Pam Finley*
Assistant Revisor of Statutes

OVERVIEW: CRIMINAL CASE

The U.S. has filed a criminal case against Exxon in federal district court in Alaska (A-90-015-1 Cr. and A-90-015-2 Cr.) There is a proposed plea agreement between the U.S. and Exxon. If it is rejected, Exxon can withdraw from the consent decree.

Legal Basis. The case against Exxon is based on violations of the Clean Water Act, (33 U.S.C. 1311(a) and 1319(c)(1)(A)), the Refuse Act (33 U.S.C. 407 and 411), and the Migratory Bird Treaty Act (16 U.S.C. 703 and 707(a)).

Types of Damages. The Plea Agreement contemplates a fine payable to the U.S. and restitution payable to the state.

Amounts to be Paid. The proposed fine is \$100 million, with \$50 million remitted (not paid). Restitution to the state is in the amount of \$50 million. *subject to*

To Whom Paid. The fine is to be paid to the U.S. government. The \$50 million in restitution will be paid to the state.

Restrictions on Use. The \$50 million paid in restitution is to be "used by the State of Alaska exclusively for restoration projects relating to the "EXXON VALDEZ" oil spill." Plea Agreement p. 8. Restoration includes replacement and enhancement of affected resources, acquisition of equivalent resources and services, and long-term environmental monitoring and research projects directed to the prevention, containment, cleanup and amelioration of oil spills. Id.

Representative Max Gruenberg
March 18, 1991
Page 2

Who Decides How Money Used. It appears that the restitution will be paid immediately to the state (general fund) and therefore the legislature will determine how it is spent, within the restrictions on use listed above.

PRELIMINARY QUESTIONS RELATED TO PLEA AGREEMENT

1. Has the state filed a criminal complaint against Exxon under state law?
Could it? When does the statute of limitations run?

PLF:pl
91-177.plm

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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Mail Stop 3101

MEMORANDUM

March 18, 1991

SUBJECT: Exxon Settlement; Overview and Preliminary Questions; State Case (Work Order No. 7LS1044)

TO: Representative Max Gruenberg

FROM: Pamela Finley *Pam Finley*
Assistant Revisor of Statutes

OVERVIEW; STATE CASE

On August 15, 1989 the State filed a complaint against Exxon and others (including Alyeska) under state law in state superior court. (89-06852). References in this memo are to pages of the complaint. If the consent decree becomes effective, all but one of the state's claims against Exxon and Exxon Pipeline in the state case will be dismissed. The one exception is for the local governments' share of fisheries business taxes lost due to the oil spill. CD 20 pp. 18-19. The consent decree also provides for the release of claims "for natural resource damages" against Alyeska. It is not clear what will happen to the state claims against other defendants: Exxon Shipping Co.; Amerada Hess Pipeline Corp.; Arco Pipe Line Co.; BP Alaska Pipelines; Mobil Alaska Pipeline Co.; Phillips Alaska Pipeline Corp.; and Unocal Pipeline Co.

Legal Basis. The state's claims are based on state statutory and common law. The claims include: negligent or intentional failure to contain and clean up the spill (p.23); negligence in piloting the Exxon Valdez (p. 25); negligent or intentional misrepresentation as to prevention and cleanup capabilities (p. 27); negligence per se (negligence proved by violation of statutes and regulations)(p. 28); common law strict liability (p.29); maritime tort (p.30); breach of right-of-way lease (p. 31); public nuisance (p.32); private nuisance (p.33); trespass (p. 34); strict liability under AS 46.03.822 (p. 35); liability for restoration under AS 46.03.780 (p. 36); civil damages under AS 46.03.760(e) (p.37); civil penalties under AS 46.03.758(b)(1) and (2) (p.37); civil assessments under AS 46.03.760(a); and infliction of emotional distress.

Types of Damages. The state seeks to recover civil penalties and assessments, response costs, cleanup costs, damage assessment costs, damage to the natural resources of the state, direct and indirect costs of providing governmental services to people adversely affected by the oil spill, losses due to ordinary government services curtailed or impaired as a result of the oil spill, loss of revenue from fish processing tax, salmon enhancement tax, oil and gas production tax, corporate income tax, and oil production royalties. (See pp 6-8 and 22).

Amount Paid. No settlement has been proposed. If the case were taken to trial, damages recovered would depend on the strength of the evidence presented at trial to prove the loss, and the amount that the fact-finder would attach to intangible losses (e.g., the value of natural resources damaged.)

To Whom Paid. If a judgment were recovered, Exxon would either pay the state or the state would execute on its judgment against Exxon's property.

Restrictions on Use. There are no restrictions on the use of damages recovered under state law. AS 46.08.020 encourages the legislature to appropriate recoveries and penalties to the oil and hazardous substance release response fund, but does not require such an appropriation.

Who Decides How Money Used. The legislature decides how the money will be used.

PRELIMINARY QUESTIONS RELATED TO STATE CLAIMS.

1. If the state settles under the consent decree, what happens to the state claims against the remaining defendants? Are there any state claims remaining against Alyeska?

2. State law allows recovery of certain damages that the CWA does not, e.g., economic losses, civil penalties. What does the state gain in the consent decree that compensates for the loss of these claims?

PLF:pl
91-178.plm

FACT SHEET

FACT SHEET

Agreement has been reached between the United States, the State of Alaska, and Exxon Corporation, Exxon Shipping Company and Exxon Pipeline Company for settlement of claims arising from the Exxon Valdez oil spill in Prince William Sound on March 24, 1989.

The settlement, totalling \$1 billion, represents the largest environmental damage settlement in history. Exxon has previously spent more than an estimated \$2.2 billion on cleanup and damage payments.

Highlights

- o Exxon will pay \$190 million immediately. Of this amount, \$100 million consists of a criminal fine payable to the United States and restitution to the State of Alaska. Remaining funds will be used to continue the science program, and for restoration planning and to initiate restoration pilot projects. The balance will be used to begin to reimburse a portion of the past expenses of the trustees and the Coast Guard (the remainder of these past expenses to be reimbursed from the later payments).
- o Exxon will pay \$150 million on September 1, 1992 (less certain cleanup costs), but this amount will be usable by the governments beginning in October 1991. These funds will be used in restoration efforts aimed at returning Prince William Sound to its pre-spill condition.
- o Exxon will pay \$100 million on September 1, 1993.
- o Exxon will pay \$560 million over a period of years beginning in FY 1993.

If significant new injury arises after the 10-year restoration period, which is based on previously unknown information, the trustees may assert additional Exxon liability up to a cap of an additional \$100 million.

Trust Fund Administration

The agreement and the joint trust fund established will be administered by a group of six trustees comprising the Administrator of the National Oceanic and Atmospheric Administration (NOAA), the Secretaries of the Departments of the Interior and Agriculture; the Commissioner of the Alaska Department of Fish and Game, and the Commissioner of the Alaska Department of Environmental Conservation, and the State Attorney-General. The Environmental Protection Agency (EPA) has been

designated by the President to coordinate restoration activities for the U.S. The Coast Guard will continue to oversee cleanup activities for the United States.

Pursuant to a Memorandum of Agreement (MOA), the trustees will act jointly in the collection and joint use of all damage recoveries. Decisions on use of recovered funds for restoration will be made by unanimous agreement; the funds are to be held in a joint trust fund under the supervision of the U.S. District Court for Alaska.

Cooperative Restoration Efforts

The governments will continue to work cooperatively conducting scientific studies and restoration efforts approved by the trustees for the 1991 field season. Among those presently under consideration are:

- o Restoration of the Beach Wildrye Community, to stabilize sites where natural or cultural resources are at risk,
- o A public information and education program, to lessen the potential for further human disturbances,
- o Habitat restoration for pink and chum salmon, using proven fisheries enhancement techniques,
- o Protection of strategic fish and wildlife habitats and recreation sites.

Public Participation and Third Party Rights Protected

The Memorandum of Agreement (MOA) between Alaska and the U.S., and the settlement agreement between the governments and Exxon, will each be published separately in the Federal Register, and public comment will be sought on each of them for a period of 30 days. Broadly based public participation will be an integral part of the program. Both the MOA and the settlement with Exxon will be subject to judicial approval.

Both agreements will be filed with the U.S. District Court for Alaska. The public will have the right to comment on the agreements and the agreements must be approved by the court before becoming effective.

The agreement with Exxon states that it is not intended to affect rights and obligations of third parties with oil spill claims. Among the third parties whose rights are protected by these provisions are Alaska natives and their villages, and other private plaintiffs.

Each government has the right to withdraw its consent to the settlement agreement within 15 days after the close of the public comment period if the comments disclose facts indicating the agreement is not in the public interest or if the Alaska legislature does not approve the agreement.

Exxon-Valdez Settlement Largest Ever

Shell-Martinez

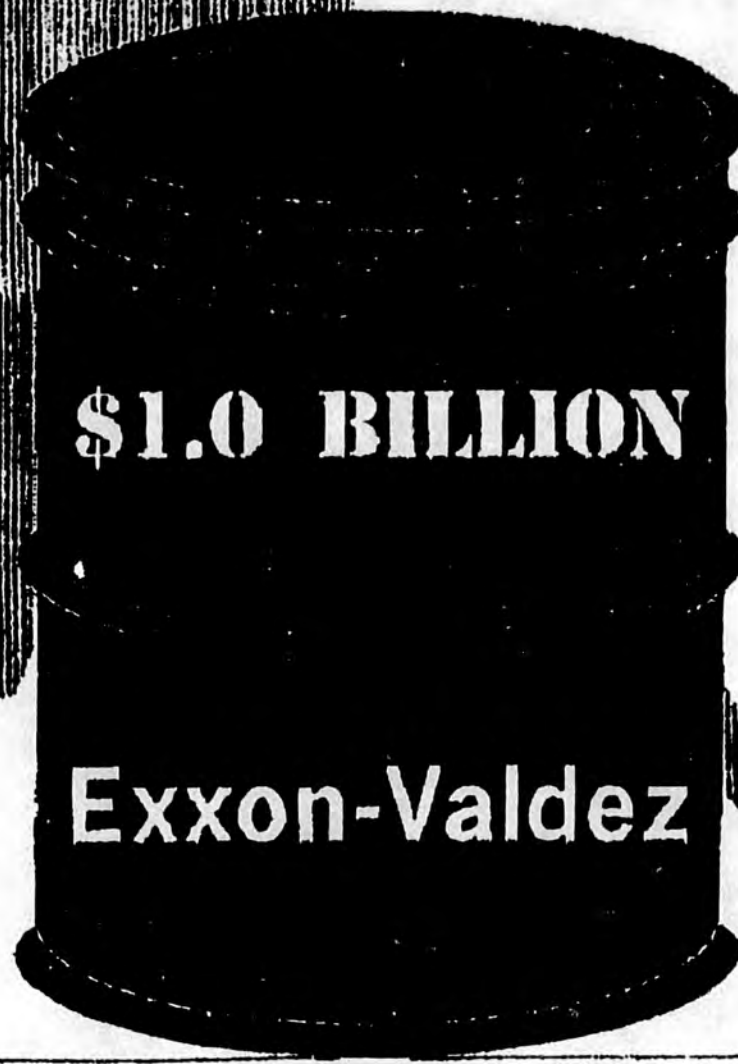
San Francisco Bay - 1988

\$19.7 MILLION



\$1.0 BILLION

Exxon-Valdez



MAR 13 '91 11:54 0202 234 8901
HARRIS REPORTS HOTEL WDC TEL: 444-6000 FAX: 444-6001
SEN. BUDENBERGER

444-6000
0007





Department of Justice

FOR IMMEDIATE RELEASE
WEDNESDAY, MARCH 13, 1991

AG
202-514-2007
TDD 202-514-1888

**EXXON TO PAY RECORD ONE BILLION DOLLARS IN CRIMINAL FINES AND
CIVIL DAMAGES IN CONNECTION WITH ALASKAN OIL SPILL**

WASHINGTON, D.C. -- Attorney General Dick Thornburgh and Alaska Governor Walter Hickel today announced that Exxon Corporation and Exxon Shipping Company have agreed to settle all federal and state civil claims resulting from the Exxon Valdez oil spill on March 24, 1989, by the payment of \$900 million in damages. The settlement also has a reopener clause stating that Exxon may incur an additional \$100 million for natural resource damages not currently foreseen.

The Attorney General also announced that the two corporate defendants have agreed to plead guilty to federal environmental criminal charges and to pay a criminal fine of \$100 million, of which \$50 million will be remitted; the State of Alaska will receive \$50 million of the \$100 million as restitution for restoration of the damaged natural resources. This is, by far, the largest single environmental criminal recovery ever exacted.

According to the plea agreement, which will be filed in the District of Alaska, Exxon Shipping Co. will plead guilty to violating the Clean Water Act, the Refuse Act, and the Migratory

(MORE)

- 2 -

Bird Treaty Act. Exxon Corporation will plead guilty to violating the Migratory Bird Treaty Act.

"The aggregate of one billion dollars in civil damages and criminal restitution is by far the largest single amount ever paid as a result of environmental violations. Through tough negotiations by the Department of Justice, the Environmental Protection Agency, the Department of Agriculture, the Department of Interior, the Department of Transportation, the National Oceanic and Atmospheric Administration (NOAA), the State of Alaska, and federal prosecutors, the federal and state interests surrounding the legal responsibilities of Exxon Shipping and Exxon Corporation have been vindicated," said Thornburgh.

Filed in the District of Alaska today is a civil complaint and accompanying consent decree alleging violations of the Clean Water Act. The decree states that Exxon Shipping and Exxon Corp. will pay a total of \$900 million in civil damages over the next ten years to federal and state trustees. The money will be used for additional cleanup and both short and long term restoration projects in Prince William Sound and the Gulf of Alaska, the areas damaged by the spill. Of the total, \$135 million is committed for past expenses such as cleanup and scientific research.

Both the Plea Agreement and the Consent Order will require court review and approval.

(MORE)

- 3 -

Governor Hickel, who initially proposed settlement in a personal one-on-one meeting in Juneau with Exxon's Chairman Lawrence Rawl on January 15, 1991, commends the outcome. Said Hickel, "When Mr. Rawl and I first met in Juneau, we made it clear that negotiations could only be successful if we kept the talks at the highest level. Today, we have a settlement which is the result of eight weeks of intensive negotiations. It's a good settlement and its use will benefit the environment directly.

"On behalf of the State of Alaska, I want to commend Attorney General Thornburgh for his legal leadership, Alaska Attorney General Charlie Cole for his aggressive yet patient commitment, Secretary of Interior Manuel Lujan for his tenacity, Secretary of Transportation Samuel Skinner, NOAA Administrator Dr. Knauss, and Environmental Protection Agency (EPA) Administrator Reilly. We have a winner -- environmentally, psychologically, and financially."

Reilly said, "I am pleased with the settlement being announced today. The one billion dollar settlement with Exxon -- plus a \$100 million reopener for damages currently unanticipated -- is the largest environmental assessment ever and the funds will be available years earlier than any recovery that could have been secured through full litigation.

"These funds assure that necessary activities will be carried out and monitored to restore Prince William Sound. It

(MORE)

- 4 -

also should send a clear signal to ship owners that they share responsibility for protecting waters and coastlines. The settlement closes a chapter on the nation's largest oil spill ever, and it allows us to turn our attention finally now to the tasks of restoration," said Reilly.

John Knauss, NOAA Administrator and Commerce Undersecretary, called the settlement, "a good deal for the nation and one that resolves all of the governments' outstanding claims against Exxon. It will permit us to complete the critical cleanup and begin restoration of Prince William Sound now, while avoiding years of lengthy and costly litigation."

Interior Secretary Manuel Lujan said of the agreement, "This settlement serves notice to all that carelessness in transporting oil can have costly consequences. It also ensures adequate funding to complete the cleanup, continue appropriate studies and restore the fish, wildlife and other natural resources of Prince William Sound."

Secretary of Agriculture Edward Madigan said of today's settlement, "The funds from the settlement will enable the Department of Agriculture to restore the natural beauty of the portion of the Chugach National Forest that was impaired by the spill."

The Department of Justice and Alaska signed an agreement outlining how and under what authority money obtained in a

(MORE)

settlement with Exxon would be spent. Following the law, there are six trustee agencies which will administer the funds from the civil settlement: NOAA, the Department of Agriculture, the Department of Interior, the Alaska Department of Fish and Game, the Alaska Department of Environmental Conservation, and the Alaska Attorney General's Office.

Under this agreement, the trustees will collectively decide how the approximately \$750 million paid by Exxon in satisfaction of civil claims and remaining after past expenses such as those for scientific research and cleanup will be spent to restore Prince William Sound and the Gulf of Alaska.

Thornburgh praised Governor Hickel; Alaska Attorney General Charlie Cole; Administrator Reilly; Secretary Lujan; Secretary Skinner; NOAA Administrator Knauss and General Counsel Tom Campbell; General Counsel of the Department of Agriculture Alan Raul; Assistant Attorney General for the Environment and Natural Resources Division Richard B. Stewart; and Assistant Attorney General for the Civil Division Stuart Gerson, for their dedication and cooperative spirit throughout the thousands of hours of negotiations needed to reach this settlement.

Thornburgh pointed out that the United States and Alaska have asked the U.S. District Court in Alaska to allow a 30-day public comment period regarding the civil consent order. This public comment period is not required by law but is being

(MORE)

- 6 -

requested to allow any interested parties not a part of this settlement to express publicly their opinion regarding today's settlement.

More than 700 miles of Alaska shoreline were covered with crude oil spilling from the Exxon Valdez when it ran aground on Bligh Reef in Prince William Sound on March 24, 1989. Approximately 11 million gallons of crude oil spilled from the Valdez fouling the waters and shorelines of both National Wildlife Refuges and National Parks. As a result, more than 36,000 migratory birds, including at least 100 bald eagles along with numerous other varieties of wildlife, were killed.

Since the date of the spill, Exxon has spent approximately \$2.2 billion to clean up Prince William Sound and the Gulf of Alaska. Cleanup has included the containment of oil using booms, skinning oil from the surface of the water, mobilizing thousands of workers to conduct excavation of contaminated beaches, high pressure water washing of beaches, and rescuing and rehabilitating wildlife fouled by oil.

On February 27, 1990, Exxon Shipping Co. and Exxon Corp. were each indicted by a federal Grand Jury in Alaska. Both were charged with one misdemeanor violation of the Clean Water Act, one misdemeanor violation of the Refuse Act, one misdemeanor violation of the Migratory Bird Treaty Act, one felony violation of the Ports and Waterways Act, and one felony violation of the

(MORE)

- 7 -

Dangerous Cargo Act. According to the plea agreement, Exxon Shipping will plead guilty to three misdemeanors and Exxon Corporation will plead guilty to one misdemeanor.

#

91-101

DOT

FACT

SHEET



Department of Justice

FOR IMMEDIATE RELEASE
WEDNESDAY, MARCH 13, 1991

AG
202-514-2007
TDD 202-514-1888

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According to the plea agreement, which will be filed in the District of Alaska, Exxon Shipping Co. will plead guilty to violating the Clean Water Act, the Refuse Act, and the Migratory

(MORE)

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Bird Treaty Act. Exxon Corporation will plead guilty to violating the Migratory Bird Treaty Act.

"The aggregate of one billion dollars in civil damages and criminal restitution is by far the largest single amount ever paid as a result of environmental violations. Through tough negotiations by the Department of Justice, the Environmental Protection Agency, the Department of Agriculture, the Department of Interior, the Department of Transportation, the National Oceanic and Atmospheric Administration (NOAA), the State of Alaska, and federal prosecutors, the federal and state interests surrounding the legal responsibilities of Exxon Shipping and Exxon Corporation have been vindicated," said Thornburgh.

Filed in the District of Alaska today is a civil complaint and accompanying consent decree alleging violations of the Clean Water Act. The decree states that Exxon Shipping and Exxon Corp. will pay a total of \$900 million in civil damages over the next ten years to federal and state trustees. The money will be used for additional cleanup and both short and long term restoration projects in Prince William Sound and the Gulf of Alaska, the areas damaged by the spill. Of the total, \$135 million is committed for past expenses such as cleanup and scientific research.

Both the Plea Agreement and the Consent Order will require court review and approval.

(MORE)

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Governor Hickel, who initially proposed settlement in a personal one-on-one meeting in Juneau with Exxon's Chairman Lawrence Rawl on January 15, 1991, commends the outcome. Said Hickel, "When Mr. Rawl and I first met in Juneau, we made it clear that negotiations could only be successful if we kept the talks at the highest level. Today, we have a settlement which is the result of eight weeks of intensive negotiations. It's a good settlement and its use will benefit the environment directly.

"On behalf of the State of Alaska, I want to commend Attorney General Thornburgh for his legal leadership, Alaska Attorney General Charlie Cole for his aggressive yet patient commitment, Secretary of Interior Manuel Lujan for his tenacity, Secretary of Transportation Samuel Skinner, NOAA Administrator Dr. Knauss, and Environmental Protection Agency (EPA) Administrator Reilly. We have a winner -- environmentally, psychologically, and financially."

Reilly said, "I am pleased with the settlement being announced today. The one billion dollar settlement with Exxon -- plus a \$100 million reopener for damages currently unanticipated -- is the largest environmental assessment ever and the funds will be available years earlier than any recovery that could have been secured through full litigation.

"These funds assure that necessary activities will be carried out and monitored to restore Prince William Sound. It

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also should send a clear signal to ship owners that they share responsibility for protecting waters and coastlines. The settlement closes a chapter on the nation's largest oil spill ever, and it allows us to turn our attention finally now to the tasks of restoration," said Reilly.

John Knauss, NOAA Administrator and Commerce Undersecretary, called the settlement, "a good deal for the nation and one that resolves all of the governments' outstanding claims against Exxon. It will permit us to complete the critical cleanup and begin restoration of Prince William Sound now, while avoiding years of lengthy and costly litigation."

Interior Secretary Manuel Lujan said of the agreement, "This settlement serves notice to all that carelessness in transporting oil can have costly consequences. It also ensures adequate funding to complete the cleanup, continue appropriate studies and restore the fish, wildlife and other natural resources of Prince William Sound."

Secretary of Agriculture Edward Madigan said of today's settlement, "The funds from the settlement will enable the Department of Agriculture to restore the natural beauty of the portion of the Chugach National Forest that was impaired by the spill."

The Department of Justice and Alaska signed an agreement outlining how and under what authority money obtained in a

(MORE)

settlement with Exxon would be spent. Following the law, there are six trustee agencies which will administer the funds from the civil settlement: NOAA, the Department of Agriculture, the Department of Interior, the Alaska Department of Fish and Game, the Alaska Department of Environmental Conservation, and the Alaska Attorney General's Office.

Under this agreement, the trustees will collectively decide how the approximately \$750 million paid by Exxon in satisfaction of civil claims and remaining after past expenses such as those for scientific research and cleanup will be spent to restore Prince William Sound and the Gulf of Alaska.

Thornburgh praised Governor Hickel; Alaska Attorney General Charlie Cole; Administrator Reilly; Secretary Lujan; Secretary Skinner; NOAA Administrator Knauss and General Counsel Tom Campbell; General Counsel of the Department of Agriculture Alan Raul; Assistant Attorney General for the Environment and Natural Resources Division Richard B. Stewart; and Assistant Attorney General for the Civil Division Stuart Gerson, for their dedication and cooperative spirit throughout the thousands of hours of negotiations needed to reach this settlement.

Thornburgh pointed out that the United States and Alaska have asked the U.S. District Court in Alaska to allow a 30-day public comment period regarding the civil consent order. This public comment period is not required by law but is being

(MORE)

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requested to allow any interested parties not a part of this settlement to express publicly their opinion regarding today's settlement.

More than 700 miles of Alaska shoreline were covered with crude oil spilling from the Exxon Valdez when it ran aground on Bligh Reef in Prince William Sound on March 24, 1989. Approximately 11 million gallons of crude oil spilled from the Valdez fouling the waters and shorelines of both National Wildlife Refuges and National Parks. As a result, more than 36,000 migratory birds, including at least 100 bald eagles along with numerous other varieties of wildlife, were killed.

Since the date of the spill, Exxon has spent approximately \$2.2 billion to clean up Prince William Sound and the Gulf of Alaska. Cleanup has included the containment of oil using booms, skimming oil from the surface of the water, mobilizing thousands of workers to conduct excavation of contaminated beaches, high pressure water washing of beaches, and rescuing and rehabilitating wildlife fouled by oil.

On February 27, 1990, Exxon Shipping Co. and Exxon Corp. were each indicted by a federal Grand Jury in Alaska. Both were charged with one misdemeanor violation of the Clean Water Act, one misdemeanor violation of the Refuse Act, one misdemeanor violation of the Migratory Bird Treaty Act, one felony violation of the Ports and Waterways Act, and one felony violation of the

(MORE)

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Dangerous Cargo Act. According to the plea agreement, Exxon Shipping will plead guilty to three misdemeanors and Exxon Corporation will plead guilty to one misdemeanor.

#

91-101

CONSENT
DECREE

**DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

COPY

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Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

March 19, 1991

SUBJECT: Sectional Analysis of Consent Decree (W.O. 17LS-1044)
TO: Representative Max Gruenberg
FROM: Pamela Finley *Pam Finley*
Assistant Revisor of Statutes

**SECTIONAL ANALYSIS OF CONSENT DECREE
THROUGH PARAGRAPH 12**

INTRODUCTION. Pages 2-3. This sets out the background of the federal case. The important points are (1) an assertion that only the trustees are entitled to act on behalf of the public as trustees to recover damages to the natural resources arising from the oil spill; (2) the payments by Exxon are in addition to the \$2 billion that Exxon alleges it has spent for past cleanup and reimbursements to the federal, state, and local governments; and (3) the payments are made in response to " pending or potential civil claims for damages or other civil relief."

Questions.

1. Could the state still sue Exxon for violation of state criminal laws? Does it intend to do so?
2. Does the fact that the money is exchanged for the extinguishment of claims under state law affect the applicability of the CWA and regulations under it?

JURISDICTION. (Page 4). This sets out the basis of the federal district court's jurisdiction---federal question; maritime and admiralty; U.S. as a plaintiff; and the Clean Water Act.

Question.

1. Why did the parties want to have a consent decree as well as an agreement extinguishing claims? (To have a remedy available to enforce agreement? Other?)

PARTIES.(Page 4). This sets out the parties to the agreement. Note that "Exxon" includes the T/V EXXON VALDEZ, but does not include Exxon Pipeline.

DEFINITIONS.(Pages 5-7). This section defines terms used in the consent decree. "Governments" is defined earlier (page 1) to mean the U.S. and the State of Alaska.

Note that "natural resources" includes those belonging to the federal government, the state, or both.

For the purposes of the consent decree, the only state trustee is the attorney general.

The "effective date" is the date all parties have signed the agreement, while "final approval" does not occur until 45 days after the agreement has been published in the Federal Register, and the court has approved the agreement and the time for appeal from that decision has elapsed without appeal, or the decision has been upheld on appeal.

Special attention should be paid to the definition of "natural resource damages." It includes damages to natural resources arising under state as well as federal law. It also includes "economic rent".

Questions.

1. Why are the natural resource damages of the state not separated from the natural resource damages of the federal government?
2. If the court signs the consent decree, when does the time for appealing that decision expire?
3. Does the reference to claims under state law mean that this recovery is not entirely under the CWA?
4. What do the terms in the first three lines of page 6 mean? Does "natural resource damage" include economic loss to the state e.g., lost taxes?
5. When was the last date that all parties signed? (My copy does not show Exxon's signature.)

EFFECT OF ENTRY OF DECREE (Page 7). Once the decree is signed and entered by the court, it is a final judgment between the state and federal governments and Exxon and Exxon Pipeline.

PAYMENT TERMS: PARAGRAPH 8 (Pages 7-8). Exxon is to pay, to both governments jointly, a total of \$900 million. The first payment of \$90 million is due

10 days after the effective date. The second payment is due September 1, 1992. The amount of the second payment is \$150 million, less (1) Exxon's cleanup costs from January 1, 1991 to the effective date (up to \$4 million); and (2) Exxon's cleanup costs from the effective date to the date of final approval. On September 1, 1993, Exxon is to pay \$100 million. On September 1 of each year from 1994 through 2001, Exxon is to pay \$70 million. The payments shall be made as directed jointly in writing by the state attorney general and the federal assistant attorney general in charge of environment and natural resources.

Questions.

1. What is the present value of the amounts to be paid by Exxon?
2. Has Exxon paid the first \$90 million?
3. What guarantee is there that Exxon will pay the required amounts? Is this a debt dischargeable in bankruptcy?
4. Are the amounts Exxon will pay deductible under federal tax law? Under state tax laws?

ESCROW; PARAGRAPH 9 (Pages 8-10). If final approval of the consent decree has not occurred when a payment is due (which will almost certainly be the case with the first payment), Exxon is to deposit the payment in an escrow account and notify the state and federal governments. The escrow agent must submit to the court's jurisdiction. After final approval, and 5 days after notification by the state and federal attorneys general, the money shall be paid to the "governments", plus interest. The interest is based on the average daily yield on three-month treasury bills. If the amount in the escrow account is not sufficient to pay that amount of interest and the escrow expenses, Exxon must make up the difference. If either government withdraws its consent under paragraph 37, or any party terminates the agreement under paragraph 38, the money in the escrow account shall be returned to Exxon.

USE OF MONEY; PARAGRAPH 10 (Pages 10-11). In this paragraph the governments agree between themselves how the money is to be spent. The consent decree states that neither Exxon, Exxon Pipeline, Alyeska, nor anyone except the governments obtains a right or obligation as a result of this paragraph.

The U.S. and the State "agree" that the money will be spent only as follows:

- (1) to reimburse the state and federal governments for response and cleanup costs incurred before January 1, 1991;

(2) to reimburse the state and federal governments for damage assessment costs incurred before the effective date;

(3) to reimburse the state for litigation costs incurred before the effective date;

(4) to reimburse the state and federal governments for cleanup and response costs incurred by either of them after December 31, 1990; and

(5) to assess injury and plan, implement, and monitor the restoration, rehabilitation, or replacement of natural resources (or natural resource services) injured, lost, or destroyed as a result of the oil spill, or acquire the equivalent of those resources or services.

RF-4
470 Fund

The maximum amount that the state can receive as reimbursement for past response, cleanup, assessment, and litigation expenses is \$72 million. The maximum amount that the federal government can receive as reimbursement for past response, cleanup, and assessment is \$62 million. The federal and state governments also "represent" that the amount recovered from Exxon will be spent in accordance with the MOA.

Questions.

1. Art. IX, sec. 7 of Alaska's Constitution prohibits dedicated funds. Money recovered under the CWA must be dedicated, as this paragraph reflects. Can the A.G. chose to settle a case under a law that requires a dedicated fund, especially when the state could recover under state law, which does not require dedication? Is recovery under the CWA participation in a "federal program" such that the prohibition against dedicated funds would not apply?

2. Alaska's constitution vests the appropriation power in the legislature alone. Federal laws and regulations applicable to the CWA require the Governor to appoint a trustee who will decide how money recovered under the CWA is to be spent. Is the scheme under the CWA contrary to Alaska's constitution, and if so, does the attorney general have the power to enter into an agreement under the CWA?

3. How much has the state spent for response, cleanup, damage assessment, and litigation costs? (This question includes supplementals tied to the oil spill and regular department budgets related to it.) How much has Exxon reimbursed for these activities to date? How does the remainder owing compare to the \$72 million maximum that the state could get back as reimbursement under the consent decree?

Major question

4. To what extent would the legislature's approval of the consent decree constitute an approval of the MOA?

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5. This paragraph refers to "natural resource services." What is a "natural resource service"?

6. It appears that the reimbursements to the state (up to \$72 million) are not restricted as to use. Is this true?

7. Despite the statement to the contrary, will a private party have a right to enforce the restrictions in use set forth in this paragraph?

EXXON'S CONTINUED CLEANUP; PARAGRAPH 11 (Page 11). Paragraph 11(a) requires Exxon to continue cleanup work after the effective date, as directed by the federal on-scene coordinator (FOSC), subject to prior approval of costs by the FOSC. In addition Exxon shall perform cleanup work as directed by the state on-scene coordinator, to the extent it does not conflict with the directions of the FOSC or federal law, subject to prior approval of costs. This paragraph also states that "Exxon should have no liability to any person or entity, including the Governments, by reason of undertaking clean-up work performed in accordance with directions of the FOSC for the State OSC." Under paragraph 11(b), Exxon's obligation for cleanup ends upon final approval of the settlement "except as set forth in this Agreement". In addition, Exxon gets a credit for its expenditures for cleanup under this paragraph. "Expenditures" includes salaries, wages, benefits, expenses for Exxon employees, for contractors, for equipment purchase and rental, for office and warehouse space, and for insurance, accounting, and other professional services.

Questions.

1. If the State OSC or the FOSC disagree with Exxon's proposed costs, does Exxon still have to do the work? (What does "subject to prior approval" mean?) In the event of a dispute about the costs, who makes the final decision?

2. The first sentence of 11(b) provides that Exxon has no cleanup obligations after final approval of the consent decree "except as set forth in this Agreement." Does another paragraph of the agreement impose cleanup obligations after final approval?

3. What does the last sentence of 11(a)---concerning immunity of Exxon from liability "by reason of undertaking clean-up work" in accordance with directions of the FOSC or State OSC--- mean? Is it intended to immunize Exxon from liability for acts connected with cleanup work Exxon does under direction of the FOSC or State OSC? Can it be read as an agreement by the state and federal governments to indemnify Exxon if a third party recovers against Exxon based on acts related to this cleanup? Does it apply to past work? Does it apply to workers compensation? Contract claims?

Representative Max Gruenberg
March 19, 1991
Page 6

EXXON'S CONTINUED CLEANUP; PARAGRAPH 12 (Pages 13-14). If the agreement is terminated, or the court does not approve it, Exxon can setoff expenditures made by Exxon under paragraph 11 against any liability Exxon may have to either government as follows:

(1) If the post-effective date expenditures are \$35 million or less, the setoff does not apply unless Exxon shows both

(a) that based on information available to the FOSC or State OSC the anticipated cost was grossly disproportionate to the net environmental benefits anticipated, or the work could not reasonably have been expected to result in a net environmental benefit; and

(b) that Exxon submitted a written objection to the work a reasonable time before beginning it, explaining its objections.

(2) If the post-effective date expenditures are above \$35 million, Exxon gets the setoff unless the government or governments show that based on the information available to the FOSC or State OSC, the work was reasonably expected to result in a net environmental benefit and the anticipated cost was not substantially out of proportion to the net environmental benefit reasonably anticipated from the work.

Question.

1. Can Exxon setoff amounts approved by the FOSC against amounts owed the State? Can Exxon setoff amounts approved by the State OSC against amounts owed the federal government?

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**DIVISION OF LEGAL SERVICES
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MEMORANDUM

March 21, 1991

SUBJECT: Sectional Analysis of Consent Decree - Paragraph 13 to end.
(Work Order 17LS-1044)

TO: Representative Max Gruenberg

FROM: Pamela Finley *Pam Finley*
Assistant Revisor of Statutes

SECTIONAL ANALYSIS OF CONSENT DECREE
PARAGRAPH 13 TO END.

RELEASE OF CLAIMS BY GOVERNMENTS; PARAGRAPH 13 (Pages 14-15).
The state and federal governments give up all civil and administrative claims they have against Exxon arising out of the oil spill. This includes all the claims the State has made in state court under state law, except for #4 below. This paragraph explicitly states that the consent decree does not impair:

- (1) the right of the state or federal government to enforce the consent decree, including the reopener clause;
- (2) the rights of Alaska Native villages to act as trustees for the purposes of asserting or compromising their claims for damage to natural resources belonging to, managed by, controlled by, or appertaining to the villages;
- (3) the rights of other parties who own or have an interest in property affected by the oil spill; or
- (4) claims by the State for tax revenues that would have been, or would be collected under existing AS 43.75.

However, if the state recovers a judgment for lost AS 43.75 taxes, the state agrees to enforce that judgment only to the amount that would have been refunded to local governments. (See AS 43.75.130). In other words, the state can go ahead and sue for the full amount of lost taxes under AS 43.75, but if Exxon decides not to pay the full

amount, the state can only force payment of the amount (roughly one-half) that is given to local governments.

Questions.

1. In the state case, the state asserted claims for lost revenue from the salmon enhancement tax, loss of oil and gas production tax revenue, loss of corporate income tax revenue, and loss of oil production royalties. These claims will be given up as to Exxon. Would the state have been able to prove this claimed loss of revenue, and if so, how much did the state believe it could prove? Does the state intend to continue litigating against other defendants in the state case, and if so, does it expect to be successful?

2. Number 2 of the exceptions refers to Alaska Native "villages". Are there any other Native groups (corporations?) whose claims would be affected by this settlement?

3. Although the consent decree states that it does not affect third party claims related to the oil spill, will settlement between the state and Exxon have any practical effect on the ability of third parties to litigate their claims?

RELEASE OF CLAIMS BY GOVERNMENTS; PARAGRAPHS 14-15 (Pages 15-17). In paragraph 14, the governments give up civil and administrative claims against Exxon Pipeline (except to the extent that Exxon Pipeline is liable because of its interest in Alyeska) to the same extent they gave up claims against Exxon in paragraph 13.

In paragraph 15, the governments agree not to make civil claims against Exxon's or Exxon Pipeline's employees, directors, and officers that relate to the oil spill. However, this provision is void if the employee, director, or officer brings an action against the governments, or either of them, relating to the oil spill.

If the state or federal government obtains a judgment against an officer, employee, or director of Exxon or Exxon Pipeline for liability relating to the oil spill, the government will collect on the judgment only to the extent the judgment is covered by insurance policies purchased by the individuals.

Question.

1. From the way paragraph 15 is structured, it appears that there may be a civil case pending against an employee, director, or officer of Exxon or Exxon Pipeline. Is this true?

REOPENER FOR UNKNOWN INJURY (Pages 17-18). In addition to other payments required by the consent decree, Exxon shall pay amounts, up to \$100 million, needed for restoration projects to restore one or more populations, habitats, or species which, as a result of the oil spill, have suffered a substantial loss or substantial decline in the oil spill areas if

(1) the cost of the restoration project is not grossly disproportionate to the magnitude of the benefits; and

(2) the injury to the population, habitat, or species could not reasonably have been known, nor could it have been anticipated by any trustee from any information in the possession of or reasonably available to any trustee on the effective date.

Ninety days before demanding payment, the governments must file plans for the projects, statement of claimed costs, and information relied upon in preparing the plan and cost estimate.

Question.

1. How likely is it that the state or federal government will be able to take advantage of this provision, given the requirement that the injury can not have been anticipated by any trustee?

RELEASES AND COVENANTS NOT TO SUE BY EXXON AND EXXON PIPELINE (Pages 18-19). Exxon and Exxon Pipeline give up all civil and administrative claims they may have against the state and federal governments, and their employees, relating to the oil spill. Exxon and Exxon Pipeline reserve the right to enforce the consent decree. This does not affect any claims Alyeska may have against the governments.

Question.

1. What claims have Exxon or Exxon Pipeline asserted against the state or federal government?

TRANS-ALASKA PIPELINE LIABILITY FUND. The TAPL Fund is established by 43 U.S.C. 1653 (c), and consists of a nickel-per-barrel fee on the shipment of oil through the Valdez facility. The fee is not paid once the fund balance reaches \$100 million, and is imposed when the balance falls below that amount. The owner or operator of a vessel and the fund are strictly liable, jointly and severally, for damages sustained as a result of discharges of oil from the vessel if the oil was transported through the trans-Alaska pipeline and placed aboard the vessel at the Valdez loading facility. Strict liability of the fund may not exceed \$100 million per incident and the owner or operator of the vessel is responsible for the first \$14 million, and the fund

is liable for the rest up to \$100 million. The fund may proceed against the owner and operator of the vessel and third parties if the negligence of any of these caused the damage.

The consent decree provides that Exxon's release of the governments does not bar a claim Exxon may have against the TAPL fund. It also provides that if the TAPL fund asserts claims against the governments based on money the fund pays to Exxon or Exxon Pipeline, Exxon will repay the governments for any liability they may have to the TAPL fund. Also, if the TAPL fund asserts claims against the governments based on money the fund pays to Alyeska, Exxon will repay 20.34% of the government's liability. (Exxon Pipeline owns 20.34% interest in Alyeska.)

Questions.

1. Has the TAPL fund paid any money to Exxon or Exxon Pipeline? Is it likely to do so?
2. Has the TAPL fund paid any money to Alyeska, or is it likely to do so?
3. How likely is it that the TAPL fund will assert claims against the state for money (if any) the fund pays to Alyeska?

PROVISIONS PERTAINING TO ALYESKA (Pages 20-21). In paragraph 22, the governments give up all claims they may have against Alyeska related to the oil spill for "Natural Resource Damages" and "damages for injury to Natural Resources." In addition, if Alyeska pays Exxon for claims relating to the oil spill, and Alyeska then recovers from the state or federal governments all or part of what Alyeska paid Exxon, Exxon will repay the governments that amount.

In paragraph 23, the governments agree that if either recovers any amount from Alyeska related to the oil spill, it will instruct Alyeska to pay 20.34% of that amount to Exxon.

In paragraph 24 Exxon and Exxon Pipeline agree to repay the governments 20.34% of any amount Alyeska recovers from the governments related to the oil spill (except for recoveries described in paragraphs 22 or 25).

Paragraph 25 covers situations where Alyeska sues the state or federal governments for its own damages related to the oil spill, or because of Alyeska's liability to third parties (other than Exxon) related to the oil spill. In this situation, Exxon will pay the governments the amounts the governments paid Alyeska, if the government asserts in good faith all defenses it has and doesn't refuse a good faith proposal for settlement with Alyeska.

Questions.

1. Are any lawsuits of the types described in paragraphs 22-25 currently pending, or likely?
2. The consent decree releases Alyeska from liability to the state for "damages for injury to Natural Resources." Are we reserving any other types of civil claims against Alyeska (e.g., economic loss)?

THIRD PARTY LITIGATION (Pages 21-23). Paragraph 26 governs cases where a third party sues Exxon or Exxon Pipeline and one or both of the governments for damages related to the oil spill. In this case, each party is to pay the amount allocated to it in the judgment recovered by the third party, and will not try to recover against the other sued party. If necessary to obtain an allocation of the liability, the sued parties may assert claims against each other, but will not enforce a judgment against each other.

Under paragraph 27, if Exxon or Exxon Pipeline is sued by a third party for damages related to the oil spill, but neither government is a party, then Exxon will not seek to hold the governments liable for any amount it has to pay. If one or both of the governments is sued for damages related to the oil spill, but neither Exxon nor Exxon Pipeline is a party, the governments will not seek to hold Exxon liable for any amount the government has to pay (except for indemnification under paragraphs 21, 22 and 25).

Paragraph 28 provides that any amount Exxon has to pay a third party will not reduce the payments required by paragraph 8 (\$900 million) or paragraph 17 (\$100 million reopener).

Paragraph 29 provides that the parties will not [?]~~tender~~ each other as defendants under Rule 14(c) of the Federal Rules of Civil Procedure. Essentially this means that the parties will not pull each other in as a defendant in a maritime or admiralty case started by a third party. Note that this paragraph is not explicitly limited to lawsuits related to the oil spill.

Paragraph 30 covers situations where a third party settles with Exxon and sues one or both of the governments. In such cases, the governments have to try to apportion fault without joining Exxon as a defendant. If the court does not allow that, the governments may join Exxon for the purpose of allocation of fault, but may not enforce any action against Exxon as a result of that allocation. Here again, this paragraph is not explicitly limited to lawsuits related to the oil spill.

Questions.

1. Are there third party suits against Exxon and the state, or are there likely to be? (Under paragraph 26, the state could not recover against Exxon for its losses in such cases.)
2. Are there third party suits against the state, or are there likely to be such, in which Exxon or Exxon Pipeline is not a defendant? (Under paragraph 27, the state could not recover against Exxon for its losses in such cases.)
3. Paragraphs 29 and 30 are not limited to lawsuits related to the oil spill. I suspect this was an oversight. How likely is a court to interpret these paragraphs as applying only to spill-related lawsuits?
4. Can the state and federal governments recover against each other for judgments they have to pay to third parties?

INTEREST FOR LATE PAYMENTS (Pages 23-24). If Exxon fails to make a payment when due under paragraph 8 ((\$900 million) or paragraph 9 (the escrow account), Exxon must pay interest on the overdue amount. The interest rate is the amount the federal government charges on amounts owed it. It is tied to the investment rate for the Treasury tax and loan accounts. 31 U.S.C. 3717 (a)(1) and (2).

RESERVATION OF RIGHTS (Pages 24-25). Paragraphs 32-35 contain fairly standard provisions. Paragraph 32 states that the agreement does not constitute an admission of fact, law, or liability. Paragraph 33 states that the agreement does not create any rights in a person who is not a party to it. Paragraph 34 states that the agreement does not prevent the governments from providing assistance or funding to those who are not a party to the agreement. Paragraph 35 states that the agreement does not impair an existing contract between Exxon or Exxon Pipeline and any entity of either Government, including a bioremediation studies agreement between Exxon and the EPA.

NOTICES AND SUBMITTALS (Pages 25-26). This section gives the addresses of the parties for the purposes of any written notices required by the agreement.

ENTRY OF AGREEMENT; WITHDRAWAL OF CONSENT (Page 26). Notice of the consent decree is to be published in the Federal Register, and public comments received for 30 days. At the end of the 30-day period, either the state or the federal government can withdraw from the agreement if comments show that it is inappropriate, improper, or inadequate, or if, before the end of the 15-day period the state legislature has not approved the agreement "as written". If either

government withdraws, the agreement terminates as of the date of notice of withdrawal.

Question.

1. It appears that the governments could keep the agreement in effect even if the state legislature does not approve it. If the legislature does not approve it and the state or federal government does not withdraw, could the legislature intervene in the federal case to prevent approval by the court? Could it intervene in the state court to prevent dismissal of claims?

TERMINATION OF AGREEMENT. Any party, including Exxon and Exxon Pipeline, can terminate the agreement if

(1) a court of competent jurisdiction disapproves or overturns a plea agreement in the federal criminal case against Exxon;

(2) a court of competent jurisdiction makes a final decision that the agreement will not be approved and entered by the court without modification; or

(3) a court of competent jurisdiction modifies the agreement in a manner materially adverse to any party, or interprets a material provision in a manner inconsistent with the parties' intentions, before or at the time of approving the agreement.

To terminate the agreement, the party must give written notice to the other parties within 10 days after the event occurs that justifies termination. If one party terminates, the agreement terminates as to all parties. The provisions for termination do not appear to involve approval of the termination by the court, although the court may get involved if the parties disagree about whether a modification was "material".

After termination under this paragraph (or termination after withdrawal under the previous paragraph), the agreement ceases to be valid, except that (1) Exxon may recover its money from the escrow account, and (2) the provisions of paragraphs 11 and 12, relating to cleanup, continue notwithstanding the termination.

Paragraph 12 gives Exxon a setoff under certain circumstances (the circumstances being different depending on whether the setoff amount exceeds \$35 million or not) for its future cleanup work against any amount that it may owe either government for the oil spill. It appears that this setoff is now cast in stone, whether the agreement is terminated or not.

Paragraph 11's relationship to termination is a bit more complex because it states that Exxon has no further obligations with respect to cleanup (except as set forth in

the agreement) after "final approval". Given the definition of "final approval" on pages 6-7, the agreement will not extinguish Exxon's cleanup duty if either of the governments withdraws from it, or if any of the parties terminates it for any reason except the rejection of the plea agreement in the criminal case. The difficulty would arise if the governments do not withdraw, the court approves the agreement without changing it or indicating that it interprets it differently from the parties, the court's decision becomes final without an appeal (at which point "final approval" occurs and Exxon's cleanup duty ends under paragraph 11) and thereafter, a court rejects the plea agreement, thereby allowing Exxon to terminate the agreement, but still arguably to claim the benefit of paragraph 11(b). This may not be very likely, but it is theoretically possible.

Questions.

1. What did the state receive in exchange for the setoff in paragraph 12, assuming the agreement is terminated?
2. Can the setoff be applied against amounts owed the state if the work was approved by the FOSC, but not the SOSC?

RETENTION OF JURISDICTION (Page 28). The court retains jurisdiction to enforce the consent decree.

MODIFICATION AND ASSERTION OF AUTHORITY (Page 28). Any modifications of the agreement can be made only with the written consent of all the parties and the approval of the court.

Also, the representatives of the parties certify that they have authority to enter into the agreement and legally bind the parties to the agreement.

Question.

1. Does the assertion by the Governor and the A.G. that they have authority to enter into the agreement and bind the state, prevent the legislature or a private party from challenging the agreement as beyond the power of the executive (e.g., if one of its provisions violates the state constitution)?

DIVISION OF LEGAL SERVICES

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MEMORANDUM

March 18, 1991

SUBJECT: Overview of Consent Decree and Preliminary Questions related to it

TO: Representative Max Gruenberg

FROM: Pamela Finley *Pam Finley*
Assistant Revisor of Statutes

OVERVIEW; CONSENT DECREE.

This settles the case between the State and Exxon and the U.S. and Exxon for civil damages against Exxon arising out of the Exxon Valdez oil spill. The case has recently been, or will soon be, filed in federal District Court in Alaska. It is based on the federal Clean Water Act (CWA), 33 U.S.C. 1321(f). The state has the choice of suing in state court under state law, or federal court under the Clean Water Act. In re Allied Towing Corp., 478 F. Supp. 398 (E.D. Va. 1979). If it chooses to pursue its federal remedies (by agreeing to the consent decree), it will give up all but one of its state claims. (The one involves fisheries business taxes.) It will also be bound by certain restrictions in the CWA and related regulations.

Legal Basis. Jurisdiction is based on the federal Clean Water Act (CWA), 33 U.S.C. 1321(f). The state and the federal government each have the right to recover for their own damages under the CWA. In re Allied Towing Corp., *supra*. There does not appear to be any requirement that the damages to the state and the damages to the federal government be combined, although the consent decree does combine them. However, if the state chooses to sue under the CWA, it must abide by the limitations of that Act as to (1) the types of damages that can be recovered, (2) the things for which money recovered can be spent, and (3) the use of a trustee in developing a plan for spending the money recovered. The state's damages under the CWA are recovered through a trustee appointed by the Governor. 42 U.S.C. 9607(f)(2)(B).

Types of Damages. Under the CWA, the state can recover for the costs of "replacing or restoring" the damaged natural resources.

Amount to be Paid. The consent decree requires Exxon to pay \$900 million less (1) Exxon's clean up costs from 1/1/91 to the date the consent decree is signed (up to \$4 million), and (2) Exxon's clean up costs from the date the consent decree is signed through the date the consent decree is approved (including any appeals from it). See CD 8(a), p.7 and CD 11, pp. 11-12. The rest is to be paid in installments from 1991 through 2001. CD 8, pp.7-8. There is no interest accruing on the unpaid amounts before they are due, but interest does accrue on overdue payments. CD31, p. 23. The \$900 million (less Exxon's clean up costs from 1/1/91) is the total that is owed to both the state and federal governments. The consent decree does not say how much of this is the federal government's money and how much is the state's money.

To Whom Paid. The trustees (three federal appointed by the President and three state officials appointed by the Governor) tell Exxon to whom the money is to be paid. CD8(d), p. 8.

Restrictions on Use. In the consent decree the U.S. and the State agree that the money will be used as follows:

1. To reimburse the U.S. and the State for response and cleanup costs incurred by them before 1/1/91.
2. To reimburse the U.S. and the State for damage assessments done before the date the consent decree is signed.
3. To reimburse the State for litigation costs incurred before the date the consent decree is signed.
4. To reimburse the U.S. or the State or both for cleanup costs incurred by either of them after 12/31/90 and to plan, implement, and monitor the restoration, rehabilitation, or replacement of natural resources or natural resource services injured, lost or destroyed by the oil spill, or to acquire equivalent natural resources or natural resource services.

The amount that can be returned to the state for past response and cleanup costs, past damage assessments, and litigation fees, is limited to \$72 million. The amount that can be returned to the federal government for past response, cleanup, and assessment is \$62 million. The remainder is to be used by the trustees for things in #4.

Who Decides How the Money is Used. The MOA, rather than the consent decree, is the document that primarily deals with the use of the money. However, in the consent decree the governments "represent" that the money will be disbursed in accordance with the MOA. CD10, p.11. Also, the consent decree does contain the restrictions discussed above as to how the money can be used. Moreover, even if there were no MOA, the CWA restricts the use of the money to restoring, rehabilitating, or acquiring the equivalent of the natural resources that were damaged. 33 U.S.C. 1321(f)(5) The regulations under the CWA also require the state trustee

to adopt a plan, and the money to be spent in accordance with that plan. 43 C.F.R. 11.92 and 11.93. However, the "up to \$72 million" that is to be reimbursed to the state for past cleanup, response, assessment, and litigation costs, and any money reimbursed to the state for future clean up should go into the general fund and be available for any use. (The consent decree and MOA are not clear on this, but it would make sense since, with the possible exception of litigation costs, this is "reimbursement" for money already spent for the required uses.)

Other. The consent decree also addresses releases, reopener for damage that could not have been anticipated at the time of the settlement, provisions covering the TAPL fund, Alyeska, and third parties. Note that if the court approves the settlement, the state gives up all its civil claims relating to the oil spill, including those currently pending in state court, except the amount that would have been refunded to local governments under AS 43.75.130 (fisheries business tax). CD 13, pp. 14-15.

The consent decree also allows the State or the U.S. to withdraw from it within 45 days after the publication of the proposed consent decree in the Federal Register if comments received on it show it is inappropriate, improper, or inadequate, or if Alaska's legislature does not approve it by that time. CD 37, p. 26 Any of the parties may withdraw for certain other reasons as well, including failure of the court to accept the plea agreement in the criminal case. See CD 38, p. 27.

PRELIMINARY QUESTIONS RELATED TO THE CONSENT DECREE

1. Art.IX, sec. 7 of Alaska's Constitution prohibits dedicated funds. Money recovered under the CWA, must be dedicated. Can the A.G. chose to settle a case under a law that requires a dedicated fund, especially when the state could recover under state law, which does not require dedication? Is recovery under the CWA participation in a "federal program" such that the prohibition against dedicated funds would not apply?

2. Alaska's constitution vests the appropriation power in the legislature alone. Federal laws and regulations applicable to the CWA require the Governor to appoint a trustee who will decide how money recovered under the CWA is to be spent. Is the scheme under the CWA contrary to Alaska's constitution, and if so, does the A.G. have the power to enter into an agreement under the CWA?

3. What guarantee is there that Exxon will pay the required amounts? Is this a debt dischargeable in bankruptcy?

4. Are the amounts Exxon will pay deductible under federal tax laws? Under state tax laws?

Representative Max Gruenberg

March 18, 1991

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5. If the legislature does not approve the settlement, can the state still agree to it? (It appears the answer is yes). Should/can the legislature intervene in the federal case if it does not approve the settlement, but the Governor decides to go ahead with the settlement?

6. How much has the state spent for response, cleanup, damage assessment, and litigation costs? (This question includes supplementals tied to the oil spill and regular department budgets related to it.) How much has Exxon reimbursed for these activities to date? How does the remainder owing compare to the \$72 million maximum that the state could get back as reimbursement under the consent decree?

7. To what extent would the legislature's approval of the consent decree constitute an approval of the MOA?

8. At the bottom of page 10 and top of page 11, the consent decree refers to "natural resources or natural resource services" that were injured, lost, or destroyed and the acquisition of equivalent "resources or services". What is a "natural resource service"?

PF:lmb

91-081.lmb

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UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

UNITED STATES OF AMERICA,
Plaintiff,

v.

EXXON CORPORATION, EXXON SHIPPING
COMPANY, and EXXON PIPELINE COMPANY,
in personam, and the T/V
EXXON VALDEZ, in rem,

Defendants.

Civil Action No.

The STATE OF ALASKA,
Plaintiff,

v.

EXXON CORPORATION, EXXON SHIPPING
COMPANY, and EXXON PIPELINE COMPANY,
in personam, and the T/V
EXXON VALDEZ, in rem,

Defendants.

Civil Action No.

AGREEMENT AND
CONSENT DECREE

This Agreement and Consent Decree (the "Agreement") is made and entered into by the United States of America and the State of Alaska ("State") (collectively referred to as the "Governments"), Exxon Corporation and Exxon Shipping Company ("Exxon Shipping") (collectively referred to, together with the T/V EXXON VALDEZ, as "Exxon"), and Exxon Pipeline Company ("Exxon Pipeline").

Introduction

On the night of March 23-24, 1989, the T/V EXXON VALDEZ, owned by Exxon Shipping, went aground on Bligh Reef in Prince William Sound, Alaska. As a result of the grounding, several of the vessel's cargo tanks ruptured and approximately 11 million gallons of crude oil owned by Exxon Corporation spilled into Prince William Sound (the "Oil Spill").

The State has filed an action in the Superior Court for the State of Alaska, Third Judicial District, arising from the Oil Spill, identified as State of Alaska v. Exxon Corporation, et al., Civil No. JAN-89-6852 ("State Court Action"), and Exxon has asserted counterclaims against the State in that action.

On or before the lodging of this Agreement with the Court, the United States and the State will each have filed a complaint in this Court against Exxon and Exxon Pipeline, asserting civil claims relating to or arising from the Oil Spill ("Federal Court Complaints"). Exxon and Exxon Pipeline have asserted or will assert counterclaims against the United States and the State in their responses to the Federal Court Complaints.

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Exxon Corporation and Exxon Shipping Company have also filed administrative demands against the United States Coast Guard, with the U.S. Coast Guard, Coast Guard Maintenance & Logistics Command-Pacific at Alameda, California under date of September 21, 1990.

The United States and the State represent that it is their legal position that only officials of the United States designated by the President and state officials designated by the Governors of the respective states are entitled to act on behalf of the public as trustees of Natural Resources to recover damages for injury to Natural Resources arising from the Oil Spill under Section 311(f) of the Clean Water Act, 33 U.S.C. § 1321(f).

Exxon represents that, during the period from the Oil Spill through the end of 1990, it expended in excess of \$2 billion for clean-up activities and reimbursements to the federal, State, and local governments for their expenses of response to the Oil Spill.

The Parties recognize that the payments called for in this Agreement are in addition to those described above, are compensatory and remedial in nature, and are made to the Governments in response to their pending or potential civil claims for damages or other civil relief against Exxon and Exxon Pipeline arising from the Oil Spill.

NOW, THEREFORE, the Parties agree, and it is hereby ORDERED, ADJUDGED, AND DECREED as follows: