

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILE 8672

2111 SCOMM 79: HOUSE SPEC. COMM. ON OIL & GAS, 1991-1992

229

State of Alaska

Committees

CO-CHAIR, HOUSE JUDICIARY

CO-CHAIR, HOUSE LABOR AND COMMERCE

HOUSE HEALTH, EDUCATION
AND SOCIAL SERVICES



P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-4712
465-4968/4986
(SESSION)

914 CLAY COURT
ANCHORAGE, ALASKA 99503
(907) 276-6844

Representative Max F. Gruenberg, Jr.
District 11
Spenard, Upper Midtown Anchorage

MEMORANDUM

TO: Members of the House of Representatives

FROM: Representative Max Gruenberg *MMX*

DATE: March 26, 1991

RE: Support of HB 213 (FIN), the Exxon Valdez oil spill
claims settlement oversight bill

I would very much appreciate your support of HB 213 (FIN).

This bill provides for legislative review and approval of any settlement of the Exxon Valdez oil spill litigation between the state and Exxon by:

1. requiring the governor to submit any settlement to the legislature, and
2. allowing time for the legislature to review and,
3. requiring legislative approval of any settlement before the state can bind itself.

The administration has submitted a settlement to the legislature for review. This bill sets up the procedure for the review process. Hopefully, its passage will provide the public assurance that the process will be open for public input and legislative review.

If you have any questions, please call me or Mark Handley, my Legislative Assistant, at ext. 4968.

Thank you very much.

7-LS0949D

Gaguine

3/22/91

CS FOR HOUSE BILL NO. 213 (FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY

Offered:

Referred:

Sponsor(s): REPRESENTATIVES GRUENBERG, Koponen, Moyer, MacLean, Ulmer, Brown, B.Davis, Bruckman,
Lincoln

A BILL

FOR AN ACT ENTITLED

1 "An Act providing for legislative review and approval of current and future proposed
2 settlements of the state's claims against the Exxon Corporation and its subsidiaries arising
3 out of the Exxon Valdez oil spill; requiring the governor to notify the legislature about
4 ongoing settlement negotiations; relating to the confidentiality of information relevant to
5 proposed settlements; and providing for an effective date."

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

7 * Section 1. FINDINGS. The legislature finds that

8 (1) the possible settlement of the state's actual and potential claims against the Exxon
9 Corporation and its subsidiaries arising from the Exxon Valdez oil spill would have far-reaching effects
10 on the welfare of the people of the state, the disposition of state funds, and the status of large areas of
11 state land;

12 (2) it is of paramount importance to the state's interests that any settlement proposal
13 regarding these claims be submitted to the legislature for review, that the state not bind itself with regard

1 to any settlement until the legislature has had an opportunity to review the proposal, and that the
2 legislature be given the opportunity to prevent any settlement that is not in the public interest; and
3 (3) the present administration has submitted a proposed settlement to the legislature for
4 public review and approval.

5 * Sec. 2. The state may not bind itself with regard to the proposed settlement described in sec. 1(3)
6 of this Act unless the legislature gives its assent to that settlement. The state may bind itself with regard
7 to that settlement if both houses of the legislature pass a concurrent resolution giving assent.

8 * Sec. 3. The governor or the governor's designee shall keep the legislature, through the president
9 of the senate and the speaker of the house or their designees, informed, on a daily basis if possible, of
10 any ongoing settlement negotiations of the actual or potential claims described in sec. 1(1) of this Act,
11 including settlement negotiations that occur while the legislature is reviewing a proposed settlement
12 under this Act.

13 * Sec. 4. (a) Before the state binds itself with regard to any proposed settlement to resolve the actual
14 or potential claims described in sec. 1(1) of this Act, the governor shall submit the settlement to the
15 president of the senate and the speaker of the house.

16 (b) If a proposed settlement of claims described in (a) of this section is submitted to the
17 legislature, the state may not bind itself with regard to that settlement unless the legislature by concurrent
18 resolution either waives its right to review the settlement or assents to it.

19 * Sec. 5. (a) Information relevant to any proposed settlement submitted to the legislature under sec. 2
20 or 4 of this Act, including the terms of the settlement, is not confidential, except as required by law.

21 (b) The Department of Law shall maintain for public review full documentation of each proposed
22 settlement submitted to the legislature, as well as the final settlement.

23 * Sec. 6. This Act takes effect immediately under AS 01.10.070(c).

HR 4

HOUSE RESOLUTION NO. 4**IN THE LEGISLATURE OF THE STATE OF ALASKA****SEVENTEENTH LEGISLATURE - FIRST SESSION****BY THE HOUSE RULES COMMITTEE**

Introduced: 3/18/91

Referred: Today's Calendar

A RESOLUTION**1 Establishing a House Special Committee on the Exxon Valdez Oil Spill Claims Settlement.****2 BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES:**

3 WHEREAS justice requires that Alaska be adequately compensated for the damage done to it
4 as a result of the oil spilled from the T/V Exxon Valdez in March of 1989; and

5 WHEREAS the Agreement and Consent Decree in United States v. Exxon, et al., and State of
6 Alaska v. Exxon, et al., signed by the parties on March 12, 1991, allows the United States or the State
7 of Alaska to withdraw its consent to the Agreement if the Alaska State Legislature fails to approve the
8 Agreement within 45 days from the date that notice of the Agreement is published in the Federal
9 Register;

10 BE IT RESOLVED by the House of Representatives that a House Special Committee on the
11 Exxon Valdez Oil Spill Claims Settlement is established to study the proposed Agreement and related
12 documents; and be it

13 FURTHER RESOLVED that the Speaker of the House of Representatives shall determine the
14 number of representatives to be members of the committee, shall appoint the members, and shall
15 designate a member to chair the committee; and be it

16 FURTHER RESOLVED that the House Special Committee on the Exxon Valdez Oil Spill
17 Claims Settlement shall hold, in addition to its own meetings, joint meetings with a like Senate

1 committee for the purpose of receiving public testimony on the proposed Agreement; and be it

2 **FURTHER RESOLVED** that the House Special Committee on the Exxon Valdez Oil Spill

3 Claims Settlement shall report to the House of Representatives by the 35th day after the Agreement is

4 published in the Federal Register the committee's recommendation that the House approve or disapprove

5 the proposed Agreement, and that the committee is terminated on the 46th day after the Agreement is

6 published in the Federal Register.

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

No. 1Bill Version: HR 4(H) Publish Date: 3/18/91

Revision Date: _____

Title: Establishing a House Special Comm.
on the Exxon Valdez Oil Spill claims settlement.

Sponsor: House RulesRequestor: House RulesDepartment Affected: Legislative Affairs AgencyBRU: Legislative CouncilLegislative Operating BudgetComponent: Session ExpensesLegislative Operating Budget

COMPONENT SERIAL NO: _____

782 & 796

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary)

Zero fiscal impact. Expenditures for this special committee will be absorbed within the existing Session Expenses and House Operating Budget.

Prepared By: Pamela A. Stoops, DirectorDivision: Administrative ServicesPhone: 465-3850Date: 3/15/91Approved By: Warren W. Endicott, Executive DirectorAgency: Legislative Affairs AgencyDate: 3/15/91Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

HCR 19

HOUSE CONCURRENT RESOLUTION NO. 19
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE RULES COMMITTEE

Introduced: 3/21/91

Referred: Today's Calendar

A RESOLUTION

1 Relating to the United States v. Exxon plea agreement.

2 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 **WHEREAS** the T/V Exxon Valdez oil spill of March 1989 and the actions taken by the United
4 States, the State of Alaska, and Exxon Corporation as a result of that spill have had a tremendous effect
5 on the people, land, and natural resources of Alaska; and

6 **WHEREAS** certain agreements relating to the T/V Exxon Valdez oil spill have been entered into
7 by or between the United States, the State of Alaska, and Exxon Corporation and certain of its
8 subsidiaries; and

9 **WHEREAS** these agreements provide for the settlement of various civil claims and criminal
10 charges brought by the United States and the State of Alaska against Exxon Corporation and certain of
11 its subsidiaries; and

12 **WHEREAS** the Alaska State Legislature is presently reviewing these agreements in order to
13 determine, among other things, whether the agreements are in the best interest of Alaska; and

14 **WHEREAS** the review being conducted by the Alaska State Legislature is not expected to be
15 completed until May 3, 1991; and

16 **WHEREAS** one of the agreements under review by the Alaska State Legislature is the plea
17 agreement entered into by the parties in United States of America v. Exxon Corporation and Exxon

1 Shipping Company, No. A90-015 CR; and

2 **WHEREAS** a hearing on that plea agreement is scheduled for Friday, March 22, 1991, before
3 the United States District Court for the District of Alaska; and

4 **WHEREAS** the Alaska State Legislature is concerned that approval of the plea agreement by
5 the United States District Court prior to the time the Legislature completes its review of all the
6 settlement agreements will not be in the best interest of Alaska;

7 **BE IT RESOLVED** that the Alaska State Legislature respectfully requests the parties to the plea
8 agreement in United States of America v. Exxon Corporation and Exxon Shipping Company to request
9 the United States District Court to take no final action on the plea agreement prior to May 3, 1991; and
10 be it

11 **FURTHER RESOLVED** that if the parties refuse to accede to this request, the Alaska State
12 Legislature respectfully requests the United States District Court for the District of Alaska to take
13 judicial notice of this official act of the Alaska State Legislature and on its own motion delay final
14 approval of the plea agreement in United States of America v. Exxon Corporation and Exxon Shipping
15 Company until May 3, 1991.

16 **COPIES** of this resolution shall be sent to Joseph G. Block, Chief, Environmental Crimes
17 Section, Environment and Natural Resources Division, United States Department of Justice; Charles A.
18 De Monaco, Assistant Chief, Environmental Crimes Section, Environment and Natural Resources
19 Division, United States Department of Justice; Eric W. Nagle, Trial Attorney, United States Department
20 of Justice; Mark R. Davis, Special Assistant United States Attorney; Mark B. Harmon, Trial Attorney,
21 United States Department of Justice; James F. Neal, Counsel for Exxon Shipping; E. Edward Bruce,
22 Counsel for Exxon Shipping; Robert C. Bundy, Counsel for Exxon Shipping; Edward J. Lynch, Counsel
23 for Exxon Corporation; John F. Clough III, Counsel for Exxon Corporation; and to the Honorable H.
24 Russel Holland, Chief Judge, United States District Court for the District of Alaska.

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Bill Version HCR 19
(H) Publish Date: 3/21/91

Revision Date: _____ Department Affected: _____
Title: Exxon Valdez Oil Spill BRU: _____
Litigation Component: _____
Sponsor: House Rules Committee
Requestor: _____ COMPONENT SERIAL NO.

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Rep. Johnny Ellis, Chair Phone: _____
Division: House Rules Committee Date: 3/21/91

Approved by Commissioner: _____
Agency: _____ Date: _____

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

LEGISLATURES
DENIAL

Alaska State Legislature

House of Representatives



Official Business

P.O. Box V
State Capitol, Rm. 216
Juneau, Alaska 99811
(907) 465-3718

House Special Committee on the Exxon Valdez Oil Spill Claims Settlement

April 23, 1991

Honorable H. Russel Holland
United States District Court
222 West 7th Avenue No. 54
Anchorage, Alaska 99513-7545

Re: United States v. Exxon Corporation
Case No. A90-015 Crim.

Dear Judge Holland:

The Committee appreciates the opportunity you have provided for legislative comment on the plea agreement. We particularly appreciate the courtesy of your April 12 letter.

We recognize the responsibility of all counsel not to make any threat of criminal prosecution to gain advantage in a pending civil case and your concern that the court not be a party to any such conduct.

However the legislature has its own responsibility, and that is to give thorough and thoughtful consideration to the civil agreement as well as to the plea agreement. That responsibility arises directly from, not only the civil agreement itself, but also the legislature's role as elected representatives of the people of Alaska.

In considering these agreements, it has become apparent that the civil agreement and the criminal plea agreement are in fact expressly and inextricably linked. Exxon can withdraw from the civil settlement if the criminal plea is not accepted. See item 38 on page 27 of the Agreement and Consent Decree. It was impossible (and probably inadvisable) for the parties, the public and this committee to consider them separately, without acknowledging their interrelationship. Except as set forth below, it has therefore not been possible for this committee to comment on the plea agreement alone, as if our judgment as to the public interest in that case had no relation to the civil agreement.

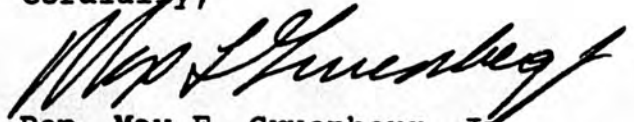
At this time, we have not reached a final decision regarding either the plea agreement or the civil agreement. We intend to present our report to the House of Representatives later this week. We are therefore unable to make conclusive comments on the plea agreement at this time. As we have previously stated in House Concurrent Resolution 19, copy enclosed, it is our view that, because these two matters are clearly linked, we request that the court defer action on the plea agreement until May 3, when the legislature will have reached a final decision regarding the civil agreement.

The Committee has several concerns about the proposed plea agreement, however:

- (1) Should Alyeska be relieved of all criminal liability without specifying the conduct or charges at issue?
- (2) Should Count IV of the indictment with respect to Exxon Shipping Company be dismissed, when the National Transportation Safety Board found that Exxon Shipping's "failure...to provide a fit master and a rested crew" was a probable cause of the grounding?
- (3) Is the criminal fine sufficient to deter other large corporations from engaging in similar criminal conduct in the future?

This letter is being sent by motion of the Committee. Individual members who are so inclined may also submit separate comments.

Cordially,


Rep. Max F. Gruenberg, Jr.
Chairman

Encl.: HCR 19

Alaska State Legislature

House of Representatives



Official Business

P.O. Box V
State Capitol, Rm. 216
Juneau, Alaska 99811
(907) 463-3718

House Special Committee on the Exxon Valdez Oil Spill Claims Settlement

April 10, 1991

Honorable H. Russel Holland
United States District Judge
District of Alaska
222 West 7th Avenue #4
Anchorage, Alaska 99513

Dear Judge Holland:

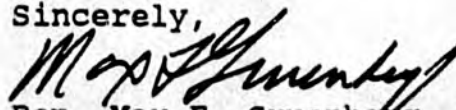
The House Special Committee on the Exxon Valdez Oil Spill Settlement has received and reviewed a copy of Congressman George Miller's letter to you dated April 8.

The matters raised in the letter present significant new issues regarding the propriety of the Plea Agreement pending in your court. The allegation by Congressman Miller that Alyeska knowingly disregarded the requirements of its own contingency plan indicates a level of culpability on the part of both Exxon and Alyeska that could go well beyond the criminally negligent conduct previously alleged against Exxon.

The Committee believes that the Plea Agreement must be considered, not solely in light of its impact on Exxon and Alyeska, but also with respect to its impact on the State of Alaska. Our report to the House, scheduled to be issued prior to April 24, will reflect that aspect of the case.

We respectfully renew our request, embodied in HCR 19, that you delay final action on the Plea Agreement until after May 3, when the legislature will have considered this issue and the remainder of this committee's report.

Sincerely,


Rep. Max F. Gruenberg, Jr.
Chairman

cc: John F. Clough III, Counsel for Exxon Corporation
Charles A. DeMonaco, United States Department of Justice

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 RANDY "DUKE" CURRIGHAM, CALIFORNIA

CHIEF COUNSEL

FORWARD S. WELSH

CHIEF CLERK

BARBARA L. CAVAS

 MINORITY STAFF
 DIRECTOR/CHIEF COUNSEL
 GEORGE D. PENCE

U.S. House of Representatives Committee on

Merchant Marine and Fisheries

Room 1334, Longworth House Office Building
 Washington, DC 20515-6230

April 12, 1991

Dear Judge Holland:

We are writing to express our views regarding certain aspects of the proposed settlement of Federal and state civil claims arising from the EXXON VALDEZ oil spill.

These views are based on the ongoing effort of our Subcommittees to monitor the response to the oil spill, particularly by Federal agencies, including the assessment of injury to natural resources and plans for restoring the environment of Prince William Sound. In this capacity, our Subcommittees conducted an oversight hearing on the proposed settlement on March 20, 1991. Prior to that hearing, we asked the Department of Justice to prepare and make public a summary describing and quantifying the scope and severity of injuries caused by the EXXON VALDEZ spill to natural resources. That summary was prepared and submitted to Congress and the Court on April 8th.

Following the hearing, we asked the Justice Department to provide "all documents summarizing or estimating the dollar value of injuries done to natural resources by the spill and the costs of restoring those damages", while offering, if requested, to maintain the confidentiality of those documents. That request was denied in a letter to us on April 9th. A copy of the correspondence is enclosed.

We believe there is a strong general argument to be made in favor of settling the pending Federal and state claims now, thereby avoiding prolonged litigation and making funds immediately available for restoration purposes. But we also believe that no settlement should be accepted unless it serves the public interest and meets the requirements of Federal law. We are unable at this time to determine if the proposed settlement satisfies these criteria. We therefore respectfully recommend that you not approve the proposal unless and until certain fundamental issues are clarified.

April 12, 1991
Page Two

Specifically, we believe that the following three actions should be taken prior to approval of the settlement: 1) disclosure to the court of enough information to permit a fully informed judgment about the monetary sufficiency of the proposed settlement; 2) a commitment by the trustees to release all damage assessment and restoration studies and related documents to the public after the settlement is approved; and 3) clarifications by the trustees concerning the manner in which the recovered funds will be spent and the extent of public participation in the restoration planning and decisionmaking process. Each point is discussed below.

1. THE TRUSTEES HAVE FAILED TO PROVIDE THE INFORMATION NEEDED TO ASSESS THE MERITS OF THE PROPOSED SETTLEMENT.

a. How much will restoration cost?

Section 311 of the Clean Water Act requires the United States to recover from Exxon sufficient funds to cover the costs of replacing or restoring the natural resources under its trusteeship that were damaged or destroyed by the oil spill. At this point, only the trustees--and perhaps not even they--are in a position to judge whether or not the amount of the settlement is sufficient to meet this statutory obligation. This is true because the trustees have not disclosed to the court, and have refused to disclose to Congress and the public, the detailed information necessary to assess the severity of damage and the anticipated costs of restoration or replacement.

Although we do not know how large the settlement should be, we do know that it is not as large as some of its proponents have encouraged the public to believe. Last month, we asked the Congressional Research Service to review the proposed agreement to determine its net value to the Federal and state governments in real terms, taking into account the effects of inflation and Exxon's ability to deduct civil payments from its taxes. That study, a copy of which is enclosed, placed the estimated net value of the settlement at between \$421 million and \$524 million.

The difficulty of judging the adequacy of the settlement is further complicated by the facts that the damage assessment process is, according to the Administration's April 3th summary, still in a "preliminary" stage; the degree of injury to some important species, including salmon, will not be known for years; injuries to several other species are continuing; and specific restoration plans have not been made, nor costs estimated.

April 12, 1991

Page Three

b. Should restoration funds be used to pay cleanup costs?

Today, more than two years after the spill, oil remains trapped in sediments and gravel. More cleanup may occur this summer. Under the proposed agreement, any future cleanup activities (and certain past cleanup costs) will be paid for by the Fund established to finance restoration activities. This will create a direct tension between cleanup funding and restoration funding -- an "either-or" scenario even though the Clean Water Act requires both.

The adequacy of this arrangement depends upon the sufficiency of funds to cover both obligations. Once again, no good conclusion can be made about this aspect of the agreement without better information on projected cleanup costs and restoration costs.

We, like the public, are not able to make a good judgment about the monetary adequacy of the proposed settlement. That is important, but it is far more important that the court have access to all the documents it needs to make that judgment. Those documents must include more than a summary of the injuries to natural resources that have occurred, but also an expert evaluation of the cost of restoring those injuries, acquiring equivalent resources, if necessary, and providing compensation for lost use and other values pending restoration. We urge you to withhold approval of the settlement unless and until that information has been provided to the court.

2. THE PUBLIC'S NEED TO KNOW.

As mentioned above, the trustees have refused to release their evaluations of the scope and severity of the injury to natural resources resulting from the spill. This refusal is based on the claim that disclosure would jeopardize the proposed settlement and is covered by a loosely construed attorney-client privilege.

We agree that the trustees are entitled to maintain the confidentiality of a limited amount of detailed information gathered or prepared specifically to assist the prosecution of a pending case and that would, if publicly revealed, seriously undermine their legal position. That entitlement is an extremely narrow one in our judgment, however, and should never again be interpreted as broadly as it has been by the trustees in the present case.

April 12, 1991
Page Four

The fact is that the trustees in this instance developed a virtual obsession about secrecy. That obsession undermined the effectiveness and coordination of oil spill response and damage assessment efforts and unnecessarily limited public access to information on matters as important as public health. The sharing of scientific data and the dissemination of expert opinions is vital to maintain public confidence and ensure the effectiveness of response actions. In this case, the trustees operated with a degree of secrecy for which there was no practical or legal justification.

It is important to remember that the information available to the Executive branch concerning natural resource injuries in the EXXON VALDEZ case was gathered pursuant to public law, by public personnel and at public expense. The information pertains to resources that are publicly managed, publicly owned and subject to public trusteeship under federal law. Accordingly, we believe that citizens deserve access to the information whether they desire simply to assess the merits of the deal worked out by the trustees or to make a more informed judgment about their own legal options.

Consequently, we urge you to solicit an enforceable commitment from the Federal Government that all information available to it concerning the scope and nature of injuries done to natural resources as a result of the oil spill, including documents that place an estimated dollar value on those injuries and the costs of restoration, will be made public promptly subsequent to approval of any proposed settlement.

3. THE TRUSTEES MUST CLARIFY VAGUE COMMITMENTS ABOUT HOW THE FUNDS WILL BE SPENT.

The proposed settlement and Memorandum of Agreement between the Federal and state trustees provide only a vague and inadequate description of the purposes for which the recovered monies will be spent and the manner in which decisions about spending priorities will be made. We therefore recommend to the court that it seek substantial further clarifications from the trustees on these matters.

The effect of the consensus decisionmaking approach proposed for the Trustee Council will be to allow each Federal and state representative to veto any proposal by any participant. In the event that the obligations of the Federal and state trustees under Federal and state law are not identical, the Trustee Council may be operating under a set of dual and potentially conflicting obligations. Under section 311 of the Clean Water Act, recovered funds must be used to solely to restore,

April 12, 1991
Page Five

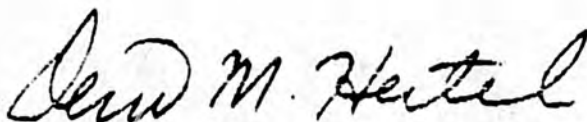
rehabilitate or acquire the equivalent of the damaged natural resources. We encourage the Court to make it clear that this limitation must be strictly adhered to by the trustees. The restoration fund is not to be viewed as a general fund to finance favorite projects or to conduct assessments in perpetuity.

We also urge you to solicit a clearer commitment from the Federal and state trustees for public participation in the natural resource damage restoration process. As you know, the proposed Memorandum of Agreement and Consent Decree provides that the Trustees shall ensure "meaningful public participation", including the "possible" establishment of a public advisory group. We believe a more detailed commitment should be made before the agreement becomes final.

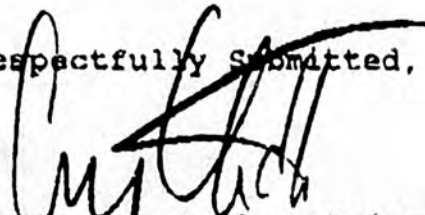
CONCLUSION

We appreciate the opportunity to provide the court with our recommendations on the proposed settlement. While we value and applaud the attempt by the litigants to settle their differences, we believe that certain clarifications are necessary before the proposed settlement is approved. We respectfully urge the court to seek those clarifications prior to taking final action on the agreement.

Respectfully Submitted,



Dennis M. Hertel, Chairman
Subcommittee on Oceanography,
Great Lakes and the Outer
Continental Shelf
Committee on Merchant Marine
and Fisheries



Gerry E. Studds, Chairman
Subcommittee on Fisheries and
Wildlife Conservation and the
Environment
Committee on Merchant Marine
and Fisheries



William J. Hughes, Chairman
Subcommittee on Intellectual Property
and Judicial Administration
Committee on the Judiciary

The Honorable H. Russel Holland
U.S. District Judge
U.S. District Court
222 West 7th Avenue
Anchorage, Alaska 99513

Enclosures

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April 8, 1991

DANIEL P. BEARD
 STAFF DIRECTOR
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 DANIEL VAL KISH
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Honorable H. Russel Holland
 United States District Judge
 U.S. District Court
 222 West 7th Avenue No.4
 Anchorage, Alaska 99513

Honorable Stanley Sporkin
 United States District Judge
 U.S. Court House
 3rd and Constitution, N.W.
 Washington, D.C. 20001

In Re:

United States of America v. Exxon Shipping Company and Exxon Corporation (No. A90-015 CR.)
[Criminal Plea Agreement]

United States of America v. Exxon Corporation, Exxon Shipping Company, and Exxon Pipeline Company,
in personam, and the T/V Exxon Valdez, in rem (A91082 Civil) [Agreement and Consent Decree]

State of Alaska v. Exxon Corporation, Exxon Shipping Company and Exxon Pipeline Company, in
personam, and the T/V Exxon Valdez, in rem (A91083 Civil) [Agreement and Consent Decree]

United States of America v. State of Alaska, and The State of Alaska v. United States of America (A91081
Civil) [Memorandum of Agreement and Consent Decree]

State of Alaska v. Exxon Corporation, et al., (3AN-89-6852 Civil)

The Native Village of Chenega Bay, et al., v. Manuel Lujan, Jr., et al. (91-483 SS Civil) and Chenega
Corporation, et al., v. Manuel Lujan, Jr., et al. (91-484 SS Civil)

Gentlemen:

For purposes of your review of the pending cases cited above and other claims arising from the Exxon Valdez oil spill of March 24, 1989, I want to bring to your attention some significant evidence concerning Exxon Corporation's and the Alyeska Pipeline Service Company's culpability.¹

¹The owner companies of Alyeska Pipeline Service Company ("Alyeska") are B.P. Pipelines Alaska, Inc. (50.01 percent); Exxon Pipeline Company (20.34 percent); Arco

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As Chairman of the Subcommittee on Water, Power and Offshore Energy Resources, I have conducted an investigation of matters related to the Exxon Valdez oil spill, including the cleanup response, damage to natural resources, and operation of the Trans-Alaska Pipeline System.² The Committee on Interior and Insular Affairs was a principal author of the Trans-Alaska Pipeline Authorization Act (P.L. 93-153) and has broad jurisdiction concerning public lands and natural resources in Alaska and a special interest in issues affecting Alaska Natives.

In the course of this investigation, Alyeska has provided me with documents which indicate that Exxon and the other owner companies which control Alyeska: (1) knew that Alyeska could not effectively respond to an oil spill in Prince William Sound; (2) failed to make necessary improvements in Alyeska's oil spill response capabilities; and, (3) secretly decided that Alyeska would not respond to an oil spill in Prince William Sound in the manner prescribed by Alyeska's Oil Spill Contingency Plan.

Alyeska's Promises

Before the Pipeline Was Approved

In 1971, during the consideration of the trans-Alaska pipeline project, Alyeska's pollution control specialist R.L. Benyon promised the public in testimony before the Department of the Interior that:

"The contingency plan which will be drawn up will detail methods for dealing promptly and effectively with any spill which may occur, so that its effect on the environment will be minimal. We have adequate knowledge for dealing with oil spills and improvements in techniques and equipment are continuing to become available through world-wide research. The best equipment, materials and expertise which will be made available as part of

Pipe Line Co. (20.34 percent); Mobil Alaska Pipeline Co. (4.08 percent); Amerada Hess Pipeline Corp. (1.5 percent); Unocal Pipeline Co. (1.36 percent); and Phillips Alaska Pipeline Corp. (1.36 percent).

²"Investigation of the Exxon Valdez Oil Spill, Prince William Sound, Alaska," Oversight Hearings before the Subcommittee on Water, Power and Offshore Energy Resources of the Committee on Interior and Insular Affairs (Serial No. 101-5, Parts I to V) (hereinafter "Investigation of the Exxon Valdez Oil Spill").

the oil spill contingency plan, will make operations at Port Valdez and in Prince William Sound the safest in the world. [Emphasis added.]"

On April 10, 1973, the President of Alyeska, E.L. Patten, in testimony urging approval of the pipeline project, promised Congress that the very best technology would be in place:

"In safety [sic] superior American tankers the light traffic between Valdez, Alaska, and the west coast involves hazards of less magnitude than any other tanker run of which I have knowledge. The most modern loading equipment and proposed vessel designs will reduce even these modest risks before pipeline authorization begins."³

In the Right-of-Way Agreements

In exchange for the right to build the Trans-Alaska Pipeline System on public lands, Alyeska signed right-of-way agreements with both the United States and the State of Alaska.

In the section on oil spill contingency plans in the right-of-way contract with the United States, Alyeska promised to control and clean up any oil spill:

"It is the policy of the Department of the Interior that there should be no discharge of Oil or other pollutant into or upon lands or waters. Permittees must therefore recognize their prime responsibility for the protection of the public and environment from effects of spillage.... Permittees shall demonstrate their capability and readiness to execute the [contingency] plans....If during any phase of the construction, operation, maintenance or termination of the Pipeline, any Oil or other pollutant should be discharged from the Pipeline System, the control and total removal, disposal and cleaning up of such Oil or other pollutant, wherever found, shall be the responsibility of Permittees, regardless of fault. [Emphasis added.]"⁴

³ "Oil and Natural Gas Pipeline Rights-of-Way," Hearings before the Subcommittee on Public Lands of the Committee on Interior and Insular Affairs (Serial 93-12) at p.526.

⁴Stipulation 2.14 to Agreement and Grant of Right-of-Way for Trans-Alaska Pipeline, January 23, 1974, between United States of America and Alyeska owners. As used in Stipulation 2.14, Oil Spill Control is defined as: (1) detection of the spill; (2) location of the spill; (3) confinement of the spill; and (4) cleanup of the spill.

At the time of the Exxon Valdez spill

According to the "purpose" section of Alyeska's Oil Spill Contingency Plan (the "contingency plan") which was in effect on March 23, 1989, Alyeska promised rapid and effective response to any oil spill using state-of-the-art technology:

"The objective of the Alyeska Oil Spill Contingency Plan is to minimize damage to the environment...in the event of an oil spill...the resources of [Alyeska] are organized in a preplanned manner to assure rapid and effective response to any oil spill emergency. This manual outlines the techniques which will be in accordance with state-of-the-art oil spill cleanup technology. [Emphasis added.]"⁵

In section 102 of the contingency plan, Alyeska promised that it is the policy of the owner companies to fully comply with the laws and to take "every reasonable action" to minimize environmental damage from oil spills:

"It is the policy of the eight owner companies, constituting the Permittees under the Federal Right-of-Way Grant and the Lessees under the State Right-of-Way Lease and represented by their agent, Alyeska Pipeline Service Company, to take every reasonable action to prevent oil spills and, if they occur, to minimize environmental damage. Alyeska will comply with the relevant pollution laws for the protection and conservation of environmental resources. [Emphasis added.]"⁶

Alyeska also promised in section 102 of the contingency plan that it will be fully prepared to implement the contingency plan even in the event of a major oil spill:

⁵ Section 101, Alyeska Pipeline Service Company Oil Spill Contingency Plan General Provisions (January, 1987).

⁶ "The 'relevant pollution laws' according to Alyeska are: 'Alaska Statute Title 46, and 18 AAC75, and the National Oil and Hazardous Substances Pollution Contingency Plan, and any revisions thereof, as issued by the Council on Environmental Quality (CEQ) under the authority of the Federal Water Control Act [sic], as amended (Public Law 92-500). Alyeska Policy and these plans are intended to be written and executed so as to comply with the Grant and Agreement of Right-of-Way and the Right-of-Way lease with the United States of America and the State of Alaska, respectfully. Alyeska Pipeline Service Company will ensure that the National Contingency Plan is followed during any spill event." p.1-1

"Regularly scheduled training programs will be conducted....The objectives of this training program are:....To maintain the Plans as fully operable working documents [and] To update the Plans to reflect state-of-the-art capability....Full scale, company-wide field exercises will be held at least once per year to insure overall readiness for response to large scale oil spills.... [Emphasis added.]"

Alyeska further promised in section 102 of the contingency plan that, as agent for the owner companies, it will effectively direct and conduct cleanup operations, including those related to any spill in Prince William Sound:

"[C]leanup operations within the areas of liability and responsibility [imposed by law] will be conducted by Alyeska as Agent for the Owner companies and will be conducted in a manner as not to require assumption of control of such cleanup operations by federal or state officials....Alyeska will direct cleanup operations of spills resulting from...[O]peration, involving tankers carrying or destined to carry crude oil transported though the Trans-Alaska Pipeline System, occurring at Valdez terminal, in Port Valdez, Valdez arm or Prince William Sound. [Emphasis added.]"

Promises Versus Performance

In an addendum to its Oil Spill Contingency Plan in 1982, Alyeska informed the Alaska Department of Environmental Conservation that, in the event of a spill in Prince William Sound, the "[e]stimated time of completion of spill cleanup of a 100,000 barrel spill would be less than 48 hours."⁷

At the urging of the State of Alaska's Department of Environmental Conservation, Alyeska reluctantly included a response scenario for a 200,000 barrel spill in the 1987 Oil Spill Contingency Plan for Prince William Sound. "Alyeska believes it is highly unlikely a spill of this magnitude would occur."⁸

⁷Letter from B.L. Hilliker, manager, environmental protection and government reports, to Alaska Department of Environmental Conservation, dated June 22, 1982, reprinted in "Investigation of the Exxon Valdez Oil Spill," Part I at p. 894.

⁸ Oil Spill Contingency Plan Prince William Sound (January 1987), p.3-54. By letter to the Alaska Department of Environmental Conservation dated October 23, 1986, Alyeska predicted that the probability of a 200,000 barrel spill occurring in Prince

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This Prince William Sound response scenario assumed that the spill would occur 30 miles from the Valdez terminal and that weather conditions would be conducive to oil spill cleanup. The contingency plan called for equipment, including a barge, to be in place within 5 hours after the spill.

Alyeska's Prince William Sound contingency plan predicted that 35 percent of the oil would be recovered from the water (70,000 barrels), 30 percent recovered from shoreline cleanup, 30 percent to disperse naturally or evaporate, and only 5 percent to remain in the environment.⁹

Yet when the Exxon Valdez spilled some 260,000 barrels on March 23, 1989 the cumulative total of oil recovered within the first 72 hours was less than 3,000 barrels. As one example of the response failure, the equipment barge which the contingency plan relied upon was damaged and unloaded at the time of the spill. The barge did not reach the spill site for more than 14 hours, even though the contingency plan called for it to be on the scene within five hours. Based on my investigation, there were clearly not sufficient quantities of dispersants or application equipment available to make up for the utter failure of the mechanical recovery effort.¹⁰

Even under extraordinarily good weather conditions for the first three days, Alyeska did not have equipment or resources to contain and collect even a fraction of the amount specified in the contingency plan. The failure of Alyeska's cleanup response in the first 72 hours significantly contributed to the ultimate environmental impacts of the spill, since winds of over 70 miles per hour spread the slick completely out of control (more than 40 miles from Bligh Reef) by the fourth day.

The Exxon Valdez spill would eventually soil over 1,000 miles of Alaska's coastline, inflict one of the worst wildlife disasters in our nation's history, and disrupt the lives of thousands of Alaskans who depend on the natural resources of this region.

William Sound would be once in 241 years. "Investigation of the Exxon Valdez Oil Spill," Part I at p. 834.

⁹Oil Spill Contingency Plan Prince William Sound (January 1987) at p. 3-56.

¹⁰"Investigation of the Exxon Valdez Oil Spill, Prince William Sound, Alaska", Part I at p. 303.

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As the Alaska Oil Spill Commission concluded, "[p]ublic pronouncements by Alyeska and its owners that the company employed the best available technology and committed adequate resources to safety purposes turned out to be false."¹¹

Exxon and the Alyeska Owner Companies Knew That Alyeska Was Not Equipped to Effectively Respond To An Oil Spill in Prince William Sound.

My investigation revealed that Alyeska was on notice in 1984 that its own personnel believed they were incapable of effectively responding to an oil spill in Prince William Sound. James K. Woodle, former commander of the U.S. Coast Guard's Marine Safety Office in Valdez, and marine superintendent at the Valdez terminal, informed Alyeska's President George M. Nelson that:

"Serious doubt exists that Alyeska would be able to contain and clean-up effectively a medium or large size oil spill....Response to any spill beyond the limits of Valdez narrows should not be attempted with present equipment and personnel. [Emphasis added.]"¹²

A series of documents, which I have enclosed, reveal that Alyeska by 1988 -- one year prior to the Exxon Valdez oil spill -- had reached the same conclusion as James K. Woodle: it was seriously unprepared for an oil spill in Prince William Sound.

On April 18, 1988, W.D. Howitt, then Alyeska's Valdez Marine Terminal Superintendent, wrote to the Marine Services Subcommittee -- comprised of representatives of the owner companies, including Harvey Borgan of Exxon Shipping -- to inform them of a meeting in Bellingham, Washington on May 18, 1988. "Oil Spill Response Equipment" was listed on the agenda [Exhibit A].

On April 28, 1988, Howitt wrote to the Marine Services Sub-committee members with additional information for the May 18 meeting [Exhibit B]:

"The first part of the information package contains the T.L. Polasek briefing that was presented to the Operations Subcommittee on April 6-7, 1988, at the quarterly meeting. The briefing is the result of an action item from January's meeting during which a concern was raised by ARCO on

¹¹Final Report of the Alaska Oil Spill Commission (February 1990) at p.135.

¹²Letter from James K. Woodle dated April 15, 1984 concerning operations of the Marine Department, Alyeska Marine Terminal, Valdez, Alaska, reprinted in "Investigation of the Exxon Valdez Oil Spill," Part I at p. 179 and 890.

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Alyeska's capability to respond to oil spills at midpoint of Prince William Sound. [Emphasis added.]¹³

Theo L. Polasek's (Alyeska's Vice President of Operations) briefing on April 6-7 for the Operations Subcommittee was entitled "Oil Spill Issues -- Status of Action Items from January Owners Meeting." [Exhibit C] The topic of "Alyeska's Response Capability to Spills at midpoint of Prince William Sound" is included under the heading "ARCO/Alyeska Response Equipment Discussions." What follows is a comparison of the equipment available to the "Clean Sound" Cooperative in Puget Sound, Washington. According to the document, Clean Sound's spill cleanup methodology is "immediate, fast response to spill, at any location, with boom to contain, exclude, and/or divert oil."

By contrast to the equipment available to Clean Sound, Polasek's briefing on "Present Alyeska Prince William Sound Capability" notes that "no new skimming vessels purchased since 1977." The list of Alyeska equipment is clearly deficient by comparison to Clean Sound.

Polasek's briefing on Alyeska's Prince William Sound cleanup response equipment includes the following indictment of Alyeska's capability to meet its obligations under its own Oil Spill Contingency Plan:

"Immediate, fast response to mid-point of Prince William Sound not possible with present equipment complement." (emphasis added)

Exxon and the Alyeska Owner Companies Failed to Improve Alyeska's Oil Spill Response Capabilities Before the Exxon Valdez Spill on March 23, 1989.

Theo Polasek's briefings to the owner company representatives in April and May 1988 outlined the deficiencies in Alyeska's equipment including the fact that "no new skimming vessels had been purchased since 1977."

¹³Howitt's letter also states that purchases of clean-up equipment for Alyeska, as recommended by Jeff Shaw of Arco, would be discussed at the May 18th meeting. In a document with the heading "Alyeska Equipment Project (for oil spill cleanup)" dated March 22, 1988, Jeff Shaw recommends: 1) a large oceangoing skimmer; 2) a 10,000 barrel barge; 3) an adds pack; 4) fast spill response vessels; 5) a destroil skimmer with power pack; and 6) an additional 5,000 feet of sea quality boom. [Exhibit D] In addition, a separate document indicates that the marine subcommittee members discussed an advanced skimmer recovery system which could operate in open waters, the "Dynamic Inclined Plan Oil Vessel." [Exhibit E]

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When Polasek testified, under oath, at a hearing I chaired in Valdez on May 7, 1989, he acknowledged that: "the equipment in this plan was similar to the plan in 1977. We increased the amount of boom and take [sic] other actions, but essentially that was the same equipment decided upon."¹⁴

Polasek's briefing includes a reference to the planned acquisition of a 10,000 barrel tank barge by late 1988. In fact, this oil spill barge -- the "Betty-K" -- was stored in Washington state for the winter of 1989 and was not available in the Exxon Valdez cleanup.

Moreover, Polasek's briefing refers to a "mobile contingency command center with communications repeaters" which would be installed by "mid 1988." In fact, such a system was not in place at the time of the Exxon Valdez spill.

Exxon and the Alyeska Owner Companies Secretly Decided that Alyeska Would Not Respond to an Oil Spill In Prince William Sound in the Manner Prescribed in the Contingency Plan.

According to a June 30, 1988 telex from Roger A. Gale, Manager, Marine Operations, Sohio Oil (now BP) to Polasek of Alyeska, the Marine Services Subcommittee decided to make five recommendations to the Owners Committee as part of an "acceptable compromise" [Exhibit F]:

First, the "current stockpile of clean up equipment is adequate" for spills at the terminal, but "should be maintained to the highest state of readiness."

Second, for spills in Prince William Sound, additional equipment should be purchased of the "type best suited for near shore and beach operations."

Third, a large barge (50-100,000 barrel capacity) equipped with ocean boom and skimmers was needed.

Fourth, a "study of the best and quickest methods of moving the barge around" including predeployment in Prince William Sound.

Fifth, that Alyeska and the owners "press" state and federal officials for "preapproval to use chemicals on a widespread basis."

¹⁴"Investigation of the Exxon Valdez Oil Spill, Prince William Sound," Part I at p. 155.

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However, on July 6, 1988, Stanley Factor, Vice President, Chartering and Evaluations, Arco Marine, Inc., objected to Roger Gale's recommendations because the owners had already decided that Alyeska would not respond to spills in Prince William Sound in the manner required by the Oil Spill Contingency Plan [Exhibit G]:

"Arco Marine Inc. does not agree with this telex nor do we concur that this represents the thoughts of the subcommittee.

"At the owners committee meeting in Phoenix, it was decided that Alyeska would provide immediate response to oil spills in Valdez Arm and Valdez Narrows only. Further efforts in the Prince William Sound would be limited to the use of dispersants and any additional effort would be the responsibility of the spiller. [Emphasis added.]"¹⁵

Conclusion

At my subcommittee's hearing on May 7, 1989 in Valdez, Theo Polasek testified under oath on Alyeska's behalf that "[w]e fulfilled our promises in that [oil spill contingency] plan. We have not broken our promises to the people of this State."¹⁶

But the evidence I have set forth indicates that Alyeska broke the law as well as its promises to the State of Alaska and the Congress.

For example, section 309(c)(4) of the Clean Water Act (33 U.S.C. section 1319(c)(4)) provides that substantial criminal penalties may be imposed upon any corporation or responsible corporate official that files information with Federal authorities with knowledge that the documents contain material misstatements.¹⁷ In addition, criminal penalties may be imposed on any person who knowingly submits false information to any agency of the United States under 18 U.S.C. section 1001.¹⁸

¹⁵The Chairman of the Owners Committee at the time was Darrell Warner, President of Exxon Pipeline Company.

¹⁶"Investigation of the Exxon Valdez Oil Spill," Part I at p. 169.

¹⁷ A fine of up to \$10,000, or a prison term of up to two years or both may be imposed under this section.

¹⁸ A fine of up to \$10,000, or a prison term of up to five years, or both, may be imposed under this section.

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Thus, since Alyeska knew that it could not and would not respond to an oil spill in Prince William Sound as required by its oil spill contingency plans, Alyeska and any responsible officer could be exposed to substantial criminal penalties.

However, the Department of Justice has not even filed any criminal charges against Alyeska or its owner companies other than Exxon. Furthermore, in the proposed Criminal Plea Agreement, the United States would waive its rights not only to pursue any criminal charges against Alyeska and its owner companies, but also waive its rights to pursue civil or administrative penalties against Alyeska and its owner companies.¹⁹

The proposed Agreement and Consent Decree also provides generous protection for Alyeska. The United States and the State of Alaska both waive their rights to raise claims against Alyeska for natural resource damages in Paragraph 20. In addition, should either government recover any amount from Alyeska for claims of any kind, Exxon is entitled to be reimbursed for 20.34 percent of the governments' recovery (this figure represents the percentage ownership by Exxon of Alyeska). Yet Alyeska, including its shareholders and owner companies other than Exxon Pipeline, expressly reserves their rights to sue the United States or the State of Alaska in Paragraph 19 of the proposed settlement agreement.

In my view, the inclusion of Alyeska in the proposed Criminal Plea Agreement and in the proposed settlement Agreement and Consent Decree is contrary to the public interest. Based on the evidence, it is inconceivable that the Department of Justice would waive its rights to pursue criminal claims, and virtually all civil claims, against Alyeska.

In sum, the proposed Exxon settlement fails to hold Alyeska accountable to the public for its wrongdoing and fails to serve as a deterrent for similar conduct in the future.²⁰

¹⁹ Section III.A. of the Plea Agreement states that "[t]he United States agrees not to seek additional criminal charges or any civil or administrative penalties.... against Alyeska Pipeline Service Company or any of its shareholders or owner companies or present or former shareholder representatives, for any violation of federal law arising out of the grounding of the 'EXXON VALDEZ,' the resulting oil spill, the containment or cleanup of that spill, or its or their conduct in connection with the preparation or submission of oil spill contingency plans or related, by Alyeska Pipeline Service Company to the federal or state government...." p.5.

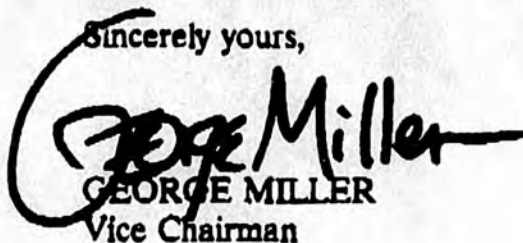
²⁰ Under Alaska law, punitive damages are awarded for the public policy reasons of punishment and deterrent when the defendant's conduct was outrageous, reckless, or malicious. In this instance, there is clear and convincing evidence that Alyeska's conduct merits the award of punitive damages.

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After extensive debate about the environmental risks, the Trans-Alaska Pipeline System was approved in 1973 by only a one-vote margin in the U.S. Senate. In exchange for access to environmentally sensitive public lands, the Congress was assured by Alyeska and the owner companies that the pipeline system would be operated in a safe and environmentally sound manner, using state-of-the-art technology.

The oil industry betrayed its own promises and deceived the Congress with respect to operations of Alyeska and the Exxon Valdez oil spill. Without a commitment by the Department of Justice to prosecute this intentional deception, how is it that Congress and the people of the State of Alaska can rely on such assurances in the future?

Sincerely yours,


GEORGE MILLER
Vice Chairman

cc:

The Honorable Walter J. Hickel, Governor, State of Alaska
The Honorable Ben Grussendorf, Speaker, Alaska House of Representatives
The Honorable Richard Eliason, President, Alaska Senate
The Honorable Senator Ted Stevens
The Honorable Senator Frank Murkowski
The Honorable Representative Don Young
The Honorable Richard L. Thornburgh, Attorney General, U.S. Department of Justice
The Honorable Manuel Lujan Jr., Secretary, U.S. Department of the Interior
The Honorable Samuel K. Skinner, Secretary, U.S. Department of Transportation
The Honorable Edward R. Madigan, Secretary, U.S. Department of Agriculture
The Honorable William K. Reilly, Administrator, U.S. Environmental Protection Agency
The Honorable John A. Knauss, Undersecretary for Oceans and Administrator, National Oceanic and Atmospheric Administration, U.S. Department of Commerce
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April 17, 1991

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The Honorable H. Russel Holland
 United States District Judge
 U.S. District Court
 222 West 7th Avenue No. 4
 Anchorage, Alaska 99513

Dear Judge Holland:

I have reviewed the U.S. Department of Justice's memorandum supporting the government's criminal plea agreement in United States v. Exxon Corporation and Exxon Shipping Company (No. A90-015-CR) which was filed in your court yesterday (April 16, 1991).

In my view, the Department of Justice's memorandum fails to satisfactorily explain why it is in the public interest to agree not to bring criminal charges or any civil or administrative penalties against Alyeska Pipeline Service Company ("Alyeska") or its owner companies, including British Petroleum and Arco, for their conduct related to the Exxon Valdez oil spill.

In my April 8, 1991, letter, I set forth compelling evidence from company documents that Alyeska and its owner companies were aware long before the Exxon Valdez spill that Alyeska could not effectively respond to an oil spill in Prince William Sound, failed to make recommended improvements in Alyeska oil spill response capabilities, and secretly decided that Alyeska would not respond to an oil spill in the manner prescribed by Alyeska's Oil Spill Contingency Plan.

Despite this evidence, the Department of Justice failed to file any criminal charges or pursue any civil litigation against Alyeska or its owner companies other than Exxon. Yet Alyeska and its owner companies and shareholder representatives are immunized in both the proposed criminal plea agreement and civil settlement with Exxon.

The Department of Justice's memorandum acknowledges that criminal charges could have been brought against Alyeska for false statements in violation of 18 U.S.C. section 1001 (p.21). However, Justice asserts that "it was in the best interests of the public" to

The Honorable H. Russel Holland

April 17, 1991

Page 2

let Alyeska and its owner companies off the hook by including them in the proposed plea agreement with Exxon. However, Justice failed to explain how they weighed the evidence against Alyeska to arrive at this conclusion.

How can it be "in the best interests of the public" when the Department of Justice is not even attempting to recover a single penny in compensation from Alyeska or its owner companies other than Exxon?

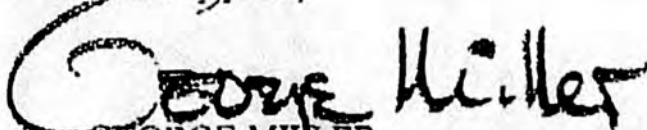
As Justice's memorandum points out, factors to be considered by the court pursuant to 18 U.S.C. section 3553 in reviewing the proposed plea agreement include the need of the sentence to: reflect the seriousness of the offense; promote respect for the law; provide just punishment; afford adequate deterrence; and provide restitution for victims.

It is difficult to understand how granting Alyeska and its owner companies immunity from criminal prosecution can conceivably "promote respect for the law" or meet any of the other sentencing criteria.

In defending the non-prosecution of Alyeska, Justice's memorandum states that the plea agreement "preserves the federal government's right to prosecute any employee of Alyeska for any criminal conduct that may have been associated with the spill plan." Yet this obfuscates the reality that it was the Alyeska owner companies and their representatives on Alyeska's Owners Committee who are most culpable since they decided not to commit the resources necessary for the Alyeska employees to respond effectively to an oil spill in Prince William Sound.

The Department of Justice has failed to meet its burden of proof that providing immunity for Alyeska, its owner companies, and their shareholder representatives, is in the public interest. I urge you to reject the plea agreement as currently written.

Sincerely yours,


GEORGE MILLER
Vice Chairman

cc: The Honorable Richard L. Thornburgh
Attorney General, U.S. Department of Justice

FILED

APR 16 1991

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
Deputy

CHARLES A. De MONACO
Assistant Chief
Environmental Crimes Section
Environment and Natural Resources
Division
U.S. Department of Justice
P.O. Box 23985
Washington, D.C. 20026-3985
202-272-9879

Attorney for the United States of America

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
EXXON CORPORATION AND)
EXXON SHIPPING COMPANY,)
)
Defendants.)

No. A90-015-CR

GOVERNMENT'S MEMORANDUM
IN AID OF SENTENCING

I. INTRODUCTION

United States v. Exxon Corporation and Exxon Shipping Co. is a criminal prosecution arising out of this nation's largest oil spill. The 11 million gallons of oil that spilled from the Exxon Valdez polluted a vast expanse of the previously pristine waters and shores of Prince William Sound and the Gulf of Alaska, and killed a multitude of wildlife. The disaster was caused by egregious failings that could and should have been foreseen and prevented.

Consequently, the United States in the plea

- 19 -

consent decree.

A. Comments Favoring the Plea Agreement

Eleven commenters urged the Court to accept the plea agreement. In general, those commenters cited the value of obtaining a certain result in this case immediately, rather than an uncertain result after years of litigation. Some commenters also cited a desire to give Exxon credit for its efforts to clean up the spill. The government agrees that the definite sentence set forth in the plea agreement is preferable to the uncertain sentence that could result even if convictions were obtained after trial. The range of uncertainty in this case is particularly broad, because of the dramatic difference between the normal maximum fines and the level of fines that the Court could, in its discretion, impose under the Alternative Fines Act.

B. Comments Opposing Agreement Not to Prosecute Alyeska

Representative George Miller, Vice-Chairman of the Committee on Interior and Insular Affairs of the U.S. House of Representatives, wrote to the Court to say that he objects to the provision in that plea agreement in which the government agreed not to prosecute Alyeska Pipeline Service Company for any offense arising from Alyeska's preparation of oil spill contingency plans. The National Wildlife Federation raised a similar objection. Vice-Chairman Miller stated that Alyeska knew that it could not and would not

- 20 -

respond effectively to a major oil spill, and suggested that the government could charge Alyeska with violating the false statement provision of the Clean Water Act, 33 U.S.C. § 1319(c)(4), or the false statement provision at 18 U.S.C. § 1001.

At the outset, it is necessary to clarify the meaning of the non-prosecution provision of the plea agreement and respond to this comment. First, the plea agreement preserves the federal government's right to prosecute any employees of Alyeska for any criminal conduct that may have been associated with the spill plan. This would, of course, include the government's ability to prosecute any individuals for possible false statements in violation of 18 U.S.C. § 1001. Moreover, the State of Alaska retains full authority to prosecute Alyeska and its employees for any criminal violation of state law that may have occurred.

The government conducted a thorough investigation of possible criminal conduct associated with Alyeska's submission of spill plans. The evidence would not support a prosecution for false statements under the Clean Water Act, 33 U.S.C. § 1319(c)(4), because that section applies only to documents required to be filed under the Clean Water Act. Alyeska's spill plans were not required to be filed under that Act. After carefully weighing the evidence, the relevant law and attendant litigation risks, the possible

- 21 -

sanctions for any criminal charges that might have been brought against Alyeska,⁹ and the unprecedented criminal fines and guilty pleas the government would obtain from Exxon under the plea agreement, the government concluded that it was in the best interests of the public to include a non-prosecution agreement for Alyeska in the plea agreement.

C. Objections to Lack of Data on Spill Damage

In order to assist the Court in reviewing the plea agreement, the government filed a summary of preliminary results of a number of extensive oil spill damage assessment studies. That summary does not purport to offer a definitive tally of the tremendous damage done by the spill to the waters, wildlife and people of Alaska. It does, however, provide the government's present best estimate of these damages, based on all the information they have collected over the two years since the spill. This assessment of the harm caused by the spill was available to responsible government officials who negotiated the plea agreement and consent decree. While the full scope of that harm may not be known for several years, there are no present indications of significant long term injury to resources other than those specifically identified in the summary.

⁹The maximum corporate fine for a false statement in violation of 18 U.S.C. § 1001 is \$500,000, pursuant to 18 U.S.C. § 3571(c).

Alyeska Group Is Subpoenaed By Grand Jury

**Inquiry Involves the Oil Spill
By Tanker Exxon Valdez
In Prince William Sound**

By CHARLES MCCOY

Staff Reporter of THE WALL STREET JOURNAL

A federal grand jury has issued subpoenas to Alyeska Pipeline Service Co. and at least one of its owners as part of an investigation into possible criminal wrongdoing in connection with the disastrous Valdez oil spill.

The grand jury investigation, long rumored, was confirmed in documents filed with the Securities and Exchange Commission by Atlantic Richfield Co. Arco's Arco Pipeline Co. unit owns 21% of Alyeska, the consortium set up by several big oil companies to operate the Trans-Alaska Pipeline. A separate but related Federal Bureau of Investigation investigation has been under way since shortly after the March 24 spill, caused when the Exxon Valdez super-tanker crashed into a reef and dumped 11 million gallons of crude oil into Alaska's Prince William Sound.

Alyeska is responsible for mounting the first efforts to contain damage from spills in the sound and had long assured state regulatory bodies that it was capable of responding speedily to any major spill. It has been bitterly criticized for a slow, stumbling response in the hours immediately after the Exxon Valdez ran aground. Although Alyeska has defended its efforts, environmentalists and many state officials maintain that Alyeska's failure to corral more of the oil before it drifted away from the ship greatly increased the environmental damage done as the oil roamed the sound and washed up on its rocky shoreline.

Late yesterday, Alyeska confirmed that it had been subpoenaed but said that the Justice Department had informed it that it was "not a target" of the probe. An Alyeska spokesman declined to specify the target. Neither the Justice Department nor the FBI had any immediate comment on the grand jury probe.

In its filings, Arco said Arco Pipeline had been subpoenaed by a federal grand jury in Anchorage for records of its "review and evaluation of Alyeska's oil spill equipment, personnel, capabilities and contingency plans."

To operate the pipeline, Alyeska is required by state law to submit contingency plans spelling out how it will respond to spills or other disasters. In the Valdez spill, Alyeska failed to do many of the things it had said it could do in its plan. For example, the plan called for Alyeska to respond in less than five hours to spills in the area where the Exxon Valdez crashed. Significant emergency equipment didn't begin arriving at the spill site

A6 THE WALL STREET JOURNAL THURSDAY, AUGUST 31, 1989

1989

so what happened to
this grand jury?

nearly 14 hours after the tanker went aground. In addition, some of Alyeska's spill-fighting equipment was in disarray or quickly broke down.

Lawyers familiar with the numerous investigations and lawsuits surrounding the spill also said it was likely that, in addition to Arco, the other owners of Alyeska had been or will be subpoenaed, too. Those companies are Exxon Corp. (which owns the Exxon Valdez), British Petroleum Co., Mobil Corp., Amerada Hess Corp., Unocal Corp. and Phillips Petroleum Co.

Arco wouldn't elaborate on precisely what the grand jury is looking into. A spokesman would say only that "we have been asked for records, and we are in the process of compiling those records." None of the other owners could be reached to comment.

However, the probe most likely focuses on whether any of the companies may have been guilty of negligence that would constitute violations of federal anti-pollution laws such as the Clean Water Act. The laws authorize sizable fines and—in certain circumstances—prison sentences of as many as 15 years. Last month, Alaska dropped a criminal probe of Alyeska, saying that federal laws have stiffer penalties and tougher provisions than state laws and thus were better suited to the case.

Alyeska has already been named a co-defendant in many of the suits filed in connection with the spill, including the massive civil lawsuit filed by the state earlier

3111 C STREET, SUITE 455
ANCHORAGE, ALASKA 99503
(907) 561-7628

WHILE IN SESSION
P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-3704

ALASKA STATE HOUSE



CHAIR
RULES COMMITTEE

JUDICIARY

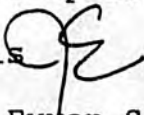
SPECIAL COMMITTEE ON INTERNATIONAL
TRADE & TOURISM

LEGISLATIVE COUNCIL

REPRESENTATIVE JOHNNY ELLIS

MEMORANDUM

TO: Rep. Max Gruenberg, Chair,
and Members of the House Special Committee on the
Exxon Valdez Oil Spill Claims Settlement

FROM: Rep. Johnny Ellis 

RE: Comments on the Exxon Settlement

DATE: April 26, 1991

In the aftermath of Judge Holland's decision regarding the criminal plea in the suit between Exxon and the federal government, I understand the Committee will proceed as planned with deliberation on the civil suit, at least until any of the parties give notice that they are withdrawing. Although I am not a member of the Special Committee, I would like to offer my comments regarding the proposed civil settlement.

You may have noted in a recent Anchorage Times article that I was one of two legislators who has decided to vote against the proposed settlement. The article was correct if the the choice for legislators is to simply take it or leave it. However, I see no reason why the legislature can not set its own list of conditions for acceptance of the settlement. **I encourage the Committee to adopt the position that the settlement be rejected unless certain changes are made.**

I would be willing to vote for the settlement if it included the following changes:

1) PAYMENT UP FRONT OR WITH INTEREST OVER TIME

If we accept \$900 million as the settlement figure (which is much lower than the preliminary damage assessment figures), then the state should receive it in one lump sum or with interest if paid over time. The expectation created by the Governor is that the settlement figure would be around \$1 billion and not \$500 million, which is the approximate present value amount.

2) DAMAGE ASSESSMENT INFORMATION SHOULD BE MADE PUBLIC

The settlement should be written to ensure that all damage assessment information is released to the public. While the Attorney General has a legitimate need to protect the government's interest by withholding this information, the legislature has a broader interest in representing the people of Alaska who have a right and a need for the information.

3) PUBLIC/LEGISLATIVE APPROVAL OF TRUST FUND EXPENDITURE

The settlement needs to provide for an ironclad guarantee that the Alaskan public is allowed to participate in decisions regarding the restoration process and use of the settlement monies. Perhaps the legislature's approval should be required which has the advantage of helping to avert constitutional (dedicated fund) challenges.

4) RECOVERY OF LOST TAX REVENUES

The state should receive immediate payment for lost tax revenues related to the oil spill in addition to the restoration monies. This includes \$19-33 million in lost petroleum tax and \$5-6 million in lost fish tax revenues, as estimated by the Legislative Research Agency.

cc. all House members

7-LS1330A

Cook

5/1/91

HOUSE CONCURRENT RESOLUTION NO. 29**IN THE LEGISLATURE OF THE STATE OF ALASKA****SEVENTEENTH LEGISLATURE - FIRST SESSION****BY THE HOUSE SPECIAL COMMITTEE ON THE EXXON VALDEZ OIL SPILL CLAIMS SETTLEMENT**

Introduced:

Referred:

A RESOLUTION

1 Disapproving the proposed Exxon Valdez settlement and suggesting amendments.

2 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 **WHEREAS** the Attorney General has negotiated a proposed settlement of most of the state's
4 claims arising from the Exxon Valdez oil spill; and

5 **WHEREAS** under the terms of the proposed settlement the legislature has been granted an
6 opportunity to review the settlement and to express its approval or disapproval of it; and

7 **WHEREAS** the House Special Committee on the Exxon Valdez Oil Spill Claims Settlement has
8 carefully reviewed the proposed settlement, and has concluded that it should be disapproved unless
9 certain changes are made;

10 **BE IT RESOLVED** by the Alaska State Legislature that the proposed settlement is disapproved
11 as written; and be it

12 **FURTHER RESOLVED** that the parties to the proposed settlement are requested to amend the
13 proposed settlement in the following respects:

14 (1) to provide for the payment of at least \$700,000,000 within one year of the date the
15 settlement is approved;

16 (2) to provide for a plea agreement establishing a criminal fine of at least \$500,000,000,
17 with at least \$100,000,000 of the fine to be remitted on payment of that amount to the State of Alaska

1 as restitution for economic losses incurred by the state as a result of the oil spill, and with at least
2 \$300,000,000 of the fine to be remitted on payment of that amount into the trust fund established in the
3 civil settlement, as restitution for damages to natural resources;

4 (3) to provide that there shall be no deduction from state taxes of any amounts payable
5 under the settlement;

6 (4) to provide for membership of two members of the legislature as ex officio nonvoting
7 members of the trustee board governing the operation of the trust fund established in the civil settlement;

8 (5) to provide that the state's share of the funds recovered in the civil settlement shall
9 be subject to appropriation into the trust fund, and expenditures from the trust fund of the state's share
10 shall be subject to appropriation by the Alaska State Legislature;

11 (6) to provide that if the trust fund is found to be an unconstitutional dedicated fund, the
12 civil settlement shall in all other respects be maintained;

13 (7) to provide that the funding decisions of the trustees of the trust fund shall be made
14 with input from a broad-based citizens' advisory board, and that the trustees shall comply with Alaska
15 law regarding open meetings, public records, and adoption of regulations;

16 (8) to provide that scientific and economic data obtained by the state shall be released
17 unless the state demonstrates that the data is privileged, and that release of the information would
18 materially and substantially harm the state's case in pending litigation;

19 (9) to clarify the status of third-party claims and claims for damages to archaeological
20 resources;

21 (10) to require the parties to enter good faith negotiations to resolve the claims of third
22 parties; and

23 (11) to delete the "reopener" clause.

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HCR 29

Revision Date: _____ **Department Affected:** None

Title: Disapproving the proposed Exxon **BRU:** _____
Valdez Oil Spill Settlement and suggesting

Amendments: Spec. Cmte. Exxon Valdez

Sponsor: _____ **Component:** _____

Requestor: _____ **COMPONENT SERIAL NO.**

--	--	--	--

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS: N/A

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Max Gruenberg, Jr.
Prepared By: Rep. Max Gruenberg, Jr.
Division: Chair, Spec. Cmte. Exxon Valdez

Phone: 465-3718

Date: 5/1/91

Approved by Commissioner: _____ **Date:** _____
Agency: _____

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

7-LS1323A
Cook
5/1/91

A

HOUSE CONCURRENT RESOLUTION NO.
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE SPECIAL COMMITTEE ON THE EXXON VALDEZ OIL SPILL CLAIMS SETTLEMENT

Introduced:

Referred:

A RESOLUTION

1 Approving the proposed Exxon Valdez oil spill claims settlement.

2 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 **WHEREAS** the Attorney General has negotiated a proposed settlement of most of the state's
4 claims arising from the Exxon Valdez oil spill; and

5 **WHEREAS** under the terms of the proposed settlement the legislature has been granted an
6 opportunity to review the settlement and to express its approval or disapproval of it; and

7 **WHEREAS** the Attorney General has stated in a public meeting that if the legislature fails to
8 approve the proposed settlement the state will take action to terminate the proposal;

9 **BE IT RESOLVED** by the Alaska State Legislature that it approves the Agreement and Consent
10 Decree signed March 12, 1991, relating to the settlement of State v. Exxon Corporation, et al., United
11 States District Court, District of Alaska, Civil Action No. A91-083; and be it

12 **FURTHER RESOLVED** that the Governor is respectfully requested to inform the United States
13 Department of Justice that the legislature has approved the proposed settlement.

7-LS1330A

Cook

5/1/91

B

HOUSE CONCURRENT RESOLUTION NO.
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE SPECIAL COMMITTEE ON THE EXXON VALDEZ OIL SPILL CLAIMS SETTLEMENT

Introduced:

Referred:

A RESOLUTION

1 Relating to the Exxon Valdez oil spill settlement.

2 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

3 WHEREAS the Attorney General has negotiated a proposed settlement of most of the state's
4 claims arising from the Exxon Valdez oil spill; and

5 WHEREAS under the terms of the proposed settlement the legislature has been granted an
6 opportunity to review the settlement and to express its approval or disapproval of it; and

7 WHEREAS the House Special Committee on the Exxon Valdez Oil Spill Claims Settlement has
8 carefully reviewed the proposed settlement, and has concluded that it should be disapproved unless
9 certain changes are made;

10 BE IT RESOLVED by the Alaska State Legislature that the proposed settlement is disapproved
11 as written; and be it

12 FURTHER RESOLVED that the parties to the proposed settlement are requested to amend the
13 proposed settlement in the following respects:

14 (1) to provide for the payment of at least \$700,000,000 within one year of the date the
15 settlement is approved;

16 (2) to provide for a plea agreement establishing a criminal fine of at least \$500,000,000,
17 with at least \$100,000,000 of the fine to be remitted on payment of that amount to the State of Alaska

1 as restitution for economic losses incurred by the state as a result of the oil spill, and with at least
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3 civil settlement, as restitution for damages to natural resources;

4 (3) to provide that there shall be no deduction from state taxes of any amounts payable
5 under the settlement;

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19 (9) to clarify the status of third-party claims and claims for damages to archaeological
20 resources;

21 (10) to require the parties to enter good faith negotiations to resolve the claims of third
22 parties; and

23 (11) to delete the "reopener" clause.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

WALTER J. HICKEL, GOVERNOR

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-5295

April 25, 1991

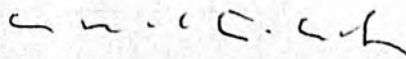
Hon. Max Gruenberg, Chairman
House Special Committee on the
Exxon Valdez Oil Spill Claims Settlement
House of Representatives
P. O. Box V
Juneau, AK 99811

Dear Mr. Chairman:

This will confirm my remarks to you earlier this afternoon that Governor Hickel's position continues to be that the State will terminate the Agreement among the United States, the State of Alaska and Exxon Corporation, et al. if the Alaska Legislature does not approve the Agreement as written.

It will also confirm my view that action by the Legislature to approve the Agreement is inappropriate until Exxon decides whether to terminate it because of Judge Holland's rejection yesterday of the criminal plea agreement.

Very truly yours,



Charles E. Cole
Attorney General

CEC:pml

cc: Hon. Richard I. Eliason, President, Alaska State Senate
Assistant Attorney General Richard Stewart, U.S.
Department of Justice
J. G. Clarke, Senior Vice President, Exxon Corporation

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

WALTER J. HICKEL, GOVERNOR

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-5295

April 25, 1991

Hon. Max Gruenberg, Chairman
House Special Committee on the
Exxon Valdez Oil Spill Claims Settlement
House of Representatives
P. O. Box V
Juneau, AK 99811

Dear Mr. Chairman:

The State of Alaska does not intend at this time to withdraw from the Agreement and Consent Decree entered into among the United States of America, State of Alaska, and Exxon Corporation, et al. on March 12, 1991.

If the State of Alaska later decides to withdraw from the Agreement, it will notify you promptly.

Very truly yours,

Charles E. Cole

Charles E. Cole
Attorney General

CEC:pml

EXXON

J. G. CLARKE
Director and Senior Vice-President

April 25, 1991

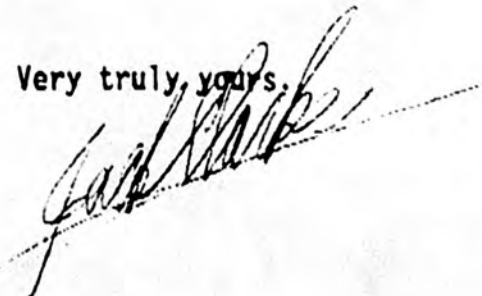
VIA FACSIMILE

The Honorable Max F. Gruenberg, Jr.
Chairman, Special Committee on the
Exxon Valdez Settlement
House of Representatives
Alaska State Legislature
P. O. Box V
State Capital, Room 216
Juneau, Alaska 99811

Dear Mr. Gruenberg:

With reference to your letter of April 24 to Charles Cole, Richard Stewart and me, this will confirm that if we decide to withdraw from the March 12, 1991 Civil Agreement and Consent Decree, we will inform you in a timely manner of that decision after we have informed the other parties to that agreement.

Very truly yours,



JGC:nc

c: The Honorable Charles E. Cole
The Honorable Richard Stewart



STATE OF ALASKA
House of Representatives
District 27

Representative Cliff Davidson
Chairman
House Resources Committee



Box V, Juneau, AK 99811
(907) 465-2487
Box 746, Kodiak, AK 99615
(907) 486-8250

TO: Representative Max Gruenberg, Chair
House Special Committee on the Exxon Valdez Settlement

FROM: Representative Cliff Davidson

DATE: 23 April 1991

SUBJECT: Disapproval of Settlement Unless Modified

Below are some conditions that I believe the Committee should support as we take up consideration of disapproval without these conditions in the settlement:

1) All factual information accumulated during the course of the Exxon Valdez oil spill scientific studies, whether done by Exxon or the governments of Alaska or the United States must be made available immediately upon the final approval of this settlement.

This may be the most important element in the restoration of the faith of our citizens in government. That should be one of the primary public policy goals in resolving this tragedy. It is clear that the current settlement does just the opposite and this provision is essential to the restoration of a measure of justice and openness in this process.

2) The payment of the full amount of the settlement should occur over 3 years, not 10 years.

If Exxon wants to resolve this situation as soon as possible, this will do it quicker. As a sweetener, I propose that we eliminate the reopener clause. Its effectiveness was limited and it only served to artificially inflate the apparent value of the settlement.

3) Delete those provisions which provide that Exxon can set off cleanup expenses against the settlement.

Settlement for the damages caused by Exxon's mistakes should not relieve Exxon of the responsibility of continuing the cleanup to the satisfaction of both the state and federal governments.

4) Prior to final agreement, there should be a better definition of how the Trustees will be selected, under what rules of procedure

they will operate, how the public process will operate and what kinds of projects will qualify for funding.

These are very important provisions that should not matter to Exxon, thus they will not affect the overall settlement. I am unclear as to how they should be worked into our disapproval of the settlement, but feel strongly that they should be.

5) Alyeska should not be mentioned in the settlement.

Alyeska was not a party to the negotiations and they should not be absolved from culpability.

Alaska State Legislature

House of Representatives



Official Business

P.O. Box V
State Capitol, Rm. 216
Juneau, Alaska 99811
(907) 463-3718

House Special Committee on the Exxon Valdez Oil Spill Claims Settlement

M E M O R A N D U M

TO: Rep. Max F. Gruenberg, Jr., Chairman

FROM: Andy Hemenway, Counsel to the Special Committee

DATE: April 21, 1991

SUBJECT: Alternatives to Acceptance or Rejection

At your request, I have reviewed the Committee minutes, my notes, and the comments submitted to this Committee and to the federal district court with the intent of focussing discussion on possible alternatives to outright rejection or unconditional acceptance of the proposed settlement.

In considering whether specific changes in the proposed settlement are desirable and achievable, the Committee should keep in mind that there is no assurance that any requested changes would be acceptable, or that appropriate legal mechanisms can be devised within the framework of the proposed settlement. Furthermore, the effort to condition approval on specific changes could result in the collapse of the settlement altogether.

With that caveat, this document briefly describes a variety of approaches that might be considered, should the Committee wish to seek a middle ground between acceptance and rejection of the current proposal. The suggestions included are intended to address the major areas of public and legislative concern raised in the course of the Committee's hearings, and in comments submitted to the legislature and to the federal district court.

I
AVAILABILITY OF SCIENTIFIC AND ECONOMIC DATA

The Committee could condition its approval of the settlement on a specific agreement by the parties regarding the release of information gathered since the spill. Such an agreement would have to address a number of issues, including:

- (1) Which information should be released -- solely scientific data, or also economic data?
- (2) Who should be required to release their information -- the State? the United States? Exxon? all the parties?
- (3) When should the information be released -- should time be allowed to encourage settlement of private suits against the State prior to the release?
- (4) Should additional assistance in interpreting or documenting the information be required?

II
AMOUNT AND STRUCTURE OF SETTLEMENT

Clearly, the negotiators for the State and federal governments believe that the amount of the proposed settlement is the best that could have been done. If the Committee is nonetheless persuaded that the amount is insufficient, or that the payment structure is inappropriate, it could condition its approval of the proposal on changes in either the amount or the structure of payments.

Without speculating on what amount the Committee might deem appropriate, there are a number of changes in the structure of payments that might be considered, including:

- (1) Conditioning approval on payment of the the present value of the settlement in a lump sum.
- ✓ (2) Conditioning approval on immediate payment in full of the State's past expenditures.
- (3) Conditioning approval on a specific schedule for reimbursement of the State's past expenditures.

(4) That such payment not be tax deductible.

III PUBLIC PARTICIPATION IN THE RESTORATION PROCESS

The proposed settlement requires "meaningful public participation" in the restoration process. However, the manner of public participation is entirely up to the Trustees. There are a wide variety of steps that could be taken to clarify the manner of public participation in the Memorandum of Agreement between the State and federal governments, including:

- (1) Providing for a public or legislative role in the designation of State Trustees. Under federal law, the Governor must designate the State Trustees for purposes of any recovery under the Clean Water Act. It is unclear, however, that the State's recovery in this case is under the Clean Water Act. Furthermore, the administration has not pointed to any provision in federal or state law which prevents the legislature from establishing the process by which the Governor may make his designations. Even if there is such a limitation, the Governor could choose to waive it, in order to obtain legislative approval of the settlement agreement.
- (2) Making a Citizens Advisory Board mandatory, rather than optional.
- (3) Legislatively establishing the makeup of a Citizens Advisory Board, e.g., by requiring the membership of certain elective officials, or representatives of named interest groups. If such a group is designated by the legislature, a provision for funding its operations through the trust fund should be devised.
- (4) Requiring the Trustees to submit specific plans for public participation to the legislature for approval, prior to final acceptance of the settlement. This would require gaining the approval of all parties to an extension of time.
- (5) Requiring State representatives to abide by Alaska law governing Open Meetings and Public Records, and requiring that the Trustees promulgate policies of general application substantially in accordance the requirements for issuing regulations under Alaska law.
- (6) Clarifying the nature of projects qualifying for funding by: (a) specifically designating certain categories of projects as eligible or ineligible; (b) enacting legislation establishing funding priorities or criteria; or (c) requiring the Trustees to submit priorities/criteria to either the Citizens Advisory Board or the legislature.

IV LEGISLATIVE OVERSIGHT

The issue of legislative oversight has been discussed primarily in terms of its appropriation power. While the Attorney General and legislative counsel have both addressed the constitutional issues raised in this case, the only sure way of determining whether the proposed settlement is constitutional would be to obtain a ruling by the Alaska Supreme Court. Alaska rules of court provide that the United States District Court may certify directly to the Alaska Supreme Court questions of state law which "may be determinative of the cause then pending". The Committee may wish to consider making its approval of this settlement conditional on that procedure being followed.

In addition to seeking clarification of the constitutional issues, the Committee may wish to seek clarification of the precise funding mechanisms envisaged by the parties. Testimony before the Committee indicates that the Trustees will grant monies to State and federal agencies to perform much of the scientific work associated with the restoration process. If that is the case, the money spent by the State agencies will presumably flow through the general fund, with the specific conditions for spending the money attached. If this is the plan, then the legislature will in effect have a veto power over any such expenditures, since it will not be obligated to appropriate any such grants.

Other issues that might be clarified include the relationship between Trust funding and the Section 470 Fund, ensuring that any changes to the Consent Decree or the Memorandum of Agreement are submitted to the legislature for approval, and whether the Legislative Budget and Audit Committee will have full access to Trust records for auditing purposes.

V OTHER ISSUES

A variety of issues have been raised that do not fall into the broad categories above, but which the Committee may wish to see addressed in the settlement documents before recommending approval. Among the more significant issues are these:

- (1) Exxon's payment of Fish Enhancement Taxes.
- (2) Clarification of the legal claims preserved, e.g., damages to archaeological resources.
- (3) Completion of damage assessment.
- (4) Tax deductibility of payments under State law.
- (5) Assurance that adequate public health studies will be done.

I
Consent Decree

NOON
FRIDAY

A. Monetary Terms

(i) Terms of Payment

RECOMMENDATION: The Committee recommends that the proposed settlement be disapproved unless all payments due under the consent decree are paid in a single lump sum within 90 days of the effective date of the consent decree.

COMMENT: The Committee believes that the current structure of delayed payments leave the state vulnerable to the vicissitudes of inflation, uncertain payment dates, and problematic offsets which Exxon may or may not be able to apply to reduce future payments.

(ii) Amount of Payment

RECOMMENDATION: The Committee recommends that the proposed settlement be disapproved unless the lump-sum payment for the joint natural resource damage and the other claims extinguished under the proposed consent decree is at least \$713 million. This is the amount that the attorney general testified would fairly represent the present value of the

payments he states will occur in the future under the proposed settlement.

III 1991 Clean-up Expenses

RECOMMENDATION: The Committee recommends that the proposed settlement be disapproved unless it is amended to provide that Exxon shall be responsible for clean-up expenses incurred in 1991.

COMMENT: The Committee believes that the clean-up is a legal obligation of the spiller, and that it is inappropriate for the state to give up the established principal that the responsibility for these costs should be directly and strictly charged to the responsible party.

IV Reimbursement of Government Costs

RECOMMENDATION: The Committee recommends that funds recovered under the revised settlement for reimbursement of state and federal costs be allocated substantially as contemplated in the proposed settlement, i.e. \$72 million to the state and \$62 million to the federal government, to be paid out of the lump sum.

COMMENT: While it is possible that other reimbursement claims might be advanced by either government, nothing in the

testimony received by the Committee suggested that the amounts or their allocation as between the two governments was inappropriate.

V Allocation of Funds Recovered

RECOMMENDATION: The Committee recommends that all funds recovered in excess of the reimbursements of government costs described above be devoted exclusively to the restoration, replacement or acquisition of equivalent resources.

(B) Public Access to Science Information

Release of Scientific Information

RECOMMENDATION: The Committee recommends that the settlement be rejected unless provision is made for the prompt public release of all raw scientific damage assessment information gathered by the state, the federal government, and Exxon, unless a clear showing of privilege is made.

COMMENTS: The committee believes that the burden of proof regarding any attorney-client or other privilege that may apply to scientific information should be borne by the party requesting that the information be withheld. The committee suggests that the scheme embodied in HB 117 for determining

privilege, involving an ex parte review by the court of requests to withhold, be considered by the parties.

II

Decision Making Structure

The Committee is concerned that the MOA as presently written makes no specific provision for "meaningful public participation" in the restoration process. In particular, it does not require that a Citizens Advisory Board be created, and it provides that all funding decisions will be in the hands of the Trustees alone.

The Committee has reviewed the memoranda providing for the disbursement of funds received in settlement of other similar actions, and has concluded, based on a review of those documents, the Consent Decree, and the applicable law, that the parties have the authority to provide in the MOA for a direct public role in the disbursement of funds received in this settlement.

It is therefore the Committee's recommendation that the settlement agreement be rejected unless the MOA is amended to provide for direct participation by representatives of the public, to be determined subject to the approval of this legislature, on a committee with full authority to make fund projects under the MOA.

The Committee also recommends that the settlement agreement be rejected unless it the MOA is amended to provide that: (1) all

- 1 -

meetings of the trustees, the funding committee, and the Citizens Advisory Board will be conducted in accordance with Alaska law; (2) the Legislative Budget and Audit Committee shall be provided full access to Trust Fund records pursuant to Alaska law; and (3) rules and regulations adopted by the trustees, the funding committee, and the Citizens Advisory Board, shall be promulgated pursuant to Alaska law.

III

Constitutional Issues

Under the Alaska Constitution, a state asset cannot be disposed of without legislative action. State assets include not only tangible things, like money and land, but intangible things, such as the legal right to collect damages in a lawsuit. The Alaska Constitution also forbids the creation of dedicated funds of state money.

The proposed settlement agreement raises substantial questions with respect to both of these constitutional prohibitions. The Attorney General has issued an opinion that the funds received in exchange for the release of the State's claims are not State assets, because they go into a Trust Fund that is under joint federal and state control. According to the Attorney General, the legislature's appropriation power "obviously does not extend to monies that are not assets belonging to the State, but are instead assets of a joint Trust Fund not subject to sole State ownership or control." Inf. Op. of Att'y Gen., April 2, 1991, at 6 [emphasis in original; hereinafter cited as Op. Att'y. Gen.] The Attorney General concludes that "for similar reasons, the Alaska Constitution's prohibition concerning dedicated funds is not violated by the Trust Fund."

①

In the opinion of legislative counsel and this Committee, the Attorney General's opinion does not satisfactorily resolve the constitutional issues. The key issue is whether the money in the Trust Fund is in fact an asset of the state, and the Attorney General's opinion simply does not address that issue, except to assert -- without making any reasoned legal argument -- that it is not. As is pointed out by legislative counsel, there is in fact a substantial legal question as to that issue. See Mem. of Leg. Counsel, April 8, 1991, at pages 9-12.

Because the settlement agreement raises these substantial legal questions with respect to matters that lie at the heart of the relationship between the executive branch and the legislative branch of the government of the State of Alaska, this Committee is compelled to recommend to the full body that the proposed settlement not be approved unless the constitutional issues are fully resolved.

A satisfactory resolution of the constitutional issues raised by the proposed settlement requires at least three elements:

(1) Funds paid by Exxon in exchange for the release of the State's claims must be appropriated into the Trust Fund.

(2) The State's interest in funds expended by the Trust Fund must be appropriated out of the Trust Fund.

(3) Funds in the Trust Fund may not be dedicated to a specific purpose, except insofar as is "required by the federal government for state participation in federal programs."

In the opinion of legislative counsel and this Committee, the primary aspect of the dedicated funds dispute which must be resolved at this time is whether Exxon would be able to avoid payments if the dedication of funds in the consent decree were later found unconstitutional. To eliminate that possibility, the Committee recommends that the settlement agreement be rejected unless Exxon specifically waives any right it may have to avoid making payments as required by the consent decree even if the dedicated use of the payments is found to be unconstitutional.

The issue of appropriation of funds into the Trust Fund can be resolved by passing legislation on an annual basis appropriating into the Trust Fund the State's interest in funds received pursuant to the Settlement (other than funds which under the terms of the settlement agreement are not part of the trust corpus).

The Committee therefore recommends that the settlement agreement be rejected, unless legislation is enacted appropriating the State's interest in the settlement funds into the Trust Fund or the general fund, as may be proper.

The issue of appropriation of funds out of the Trust Fund can be resolved by amending the MOA to require that all Trust Fund expenditures (other than administrative costs) must be made to state or federal agencies, for purposes within the authority of the agency receiving the funds. Funds received by State agencies in this manner would be available for direct expenditures by the agency, or through contracts with third parties, to the extent permitted under state law. All such funds would be subject to appropriation by the legislature.

The Committee therefore recommends that the settlement agreement be rejected unless the MOA is amended to establish a process for expenditures of Trust Funds as set forth above, including a specific acknowledgment that the state appropriation process will apply to all expenditures by state agencies.

IV

Third Party Claims

The Committee received written comments and public testimony requesting clarification of the impact of the proposed settlement agreement on certain claims held by third parties. The Committee believes that it is in the public interest to avoid litigation over this aspect of the agreement to the maximum extent possible. We therefore recommend that the settlement be rejected unless provisions are added to clarify that:

(1) Notwithstanding any language in Paragraph 13(b) and (c), this agreement does not in any way limit, alter, bar, create or otherwise affect any right, claim, title or interest in recoveries for damages to natural resources or to uses of those resources which any third party could have asserted in the absence of the settlement agreement.

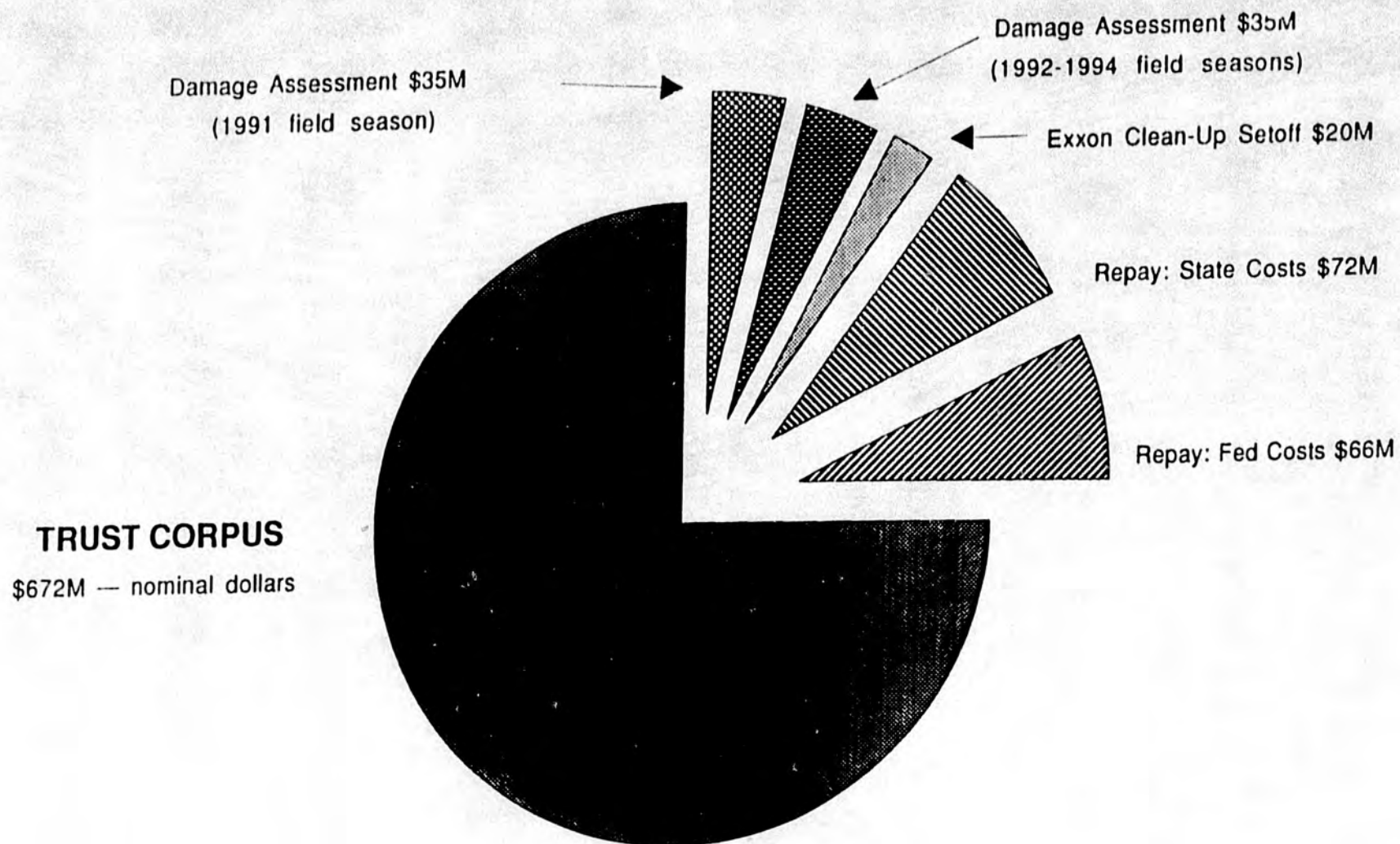
(2) Any and all claims for damages to archaeological resources which would have been asserted by either the State or third Parties are similarly preserved. (Alternatively, the MOA should be amended to specifically provide that Trust Funds may be expended to restore, preserve, or otherwise provide compensation for damages to such resources.)

①

(3) Exxon must pay in full to the appropriate Regional Aquaculture Association the 2% of the amount it has paid, or pays in the future, to third party fishermen as compensation for loss of fishing opportunities.

COST OF SPILL

PROPOSED EXXON CIVIL SETTLEMENT
ESTIMATED COSTS



NOTE: Not shown is \$100M in criminal restitution.

**STATE OF ALASKA
EXXON VALDEZ OIL SPILL
(ESTIMATED ALLOWED COSTS - \$ IN MILLIONS)**

RECORDED RESPONSE COSTS THROUGH 2/28/91 (1)	\$56.0
ESTIMATED OVERHEAD THROUGH 12/31/90	4.0
ESTIMATED FINANCING COSTS THROUGH 12/31/90	3.9
SUBTOTAL	\$64.5
LESS: EXXON REIMBURSEMENTS	(\$30.0)
NET ESTIMATED UNREIMBURSED RESPONSE COSTS (RECORDED AND INCURRED THROUGH 12/31/90)	\$34.5
RECORDED DAMAGE ASSESSMENT COSTS THROUGH 2/28/91 (2)	\$20.1
RECORDED DAMAGE ASSESSMENT OBLIGATIONS THROUGH 2/28/91	3.1
SUBTOTAL	\$23.2
LESS: CERCLA REIMBURSEMENTS	(5.7)
NET ESTIMATED UNREIMBURSED DAMAGE ASSESSMENT COSTS (RECORDED COSTS AND OBLIGATIONS THROUGH 2/28/91)	\$17.5
RECORDED LITIGATION COSTS THROUGH 2/28/91 (2)	\$17.3
RECORDED LITIGATION OBLIGATIONS THROUGH 2/28/91	2.5
NET ESTIMATED UNREIMBURSED LITIGATION COSTS (RECORDED COSTS AND OBLIGATIONS THROUGH 2/28/91)	\$19.8
TOTAL ESTIMATED UNREIMBURSED RESPONSE, DAMAGE ASSESSMENT, AND LITIGATION COSTS	\$71.8

NOTES:

- (1) ALLOWS TWO MONTH LAG TO RECOGNIZE ESTIMATED INCURRED BUT UNRECORDED COSTS PRIOR TO 12/31/90. EXCLUDES ALL RECORDED RESPONSE OBLIGATIONS AT 12/31/90.
- (2) DAMAGE ASSESSMENT AND LITIGATION RECORDED COSTS AND OBLIGATIONS AS OF 2/28/91. AMOUNTS AT 3/12/91 WERE NOT AVAILABLE.

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PREPARED AT THE DIRECTION OF
ATTORNEY - COUNSEL**

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&
DRAFT**

ACE 1744212



Alaska State Legislature

HOUSE OF REPRESENTATIVES

Official Business

P.O. Box V
State Capitol
Juneau, Alaska 99811

TO: Mike Greeny, Director
Legislative Finance Division

Randy Welker, Legislative Auditor
Legislative Audit Division

FROM: Representative Max Gruenberg, Chair *Max Gruenberg*
House Special Committee on the Exxon Valdez Settlement

Representative Kay Brown, Chair *Kay Brown*
House DEC Budget Subcommittee

DATE: March 25, 1991

SUBJ: Accounting of Exxon Valdez Spill Related Expenditures

As you are perhaps aware, during recent meetings of the House Special Committee on the Exxon Valdez Oil Spill Settlement questions have been raised about the quantity and type of the total expenses incurred by the state in responding to the Exxon Valdez oil spill. These same questions have also been raised during the operating budget deliberations of the House Finance Committee.

In the proposed Exxon settlement, it is proposed that the state can recover up to \$72 million for reimbursement of the state's past spill expenses. At this point, however, we are not aware of any definitive accounting of the state's spill-related expenditures incurred to date. The purpose of this memorandum is to ask for your assistance in providing both the House Special Committee on the Exxon Valdez Oil Spill Settlement and the House Finance Committee with an accounting of state expenditures on the Exxon Valdez spill response, clean up and related activities such as legal costs.

Specific questions we would like addressed include the following:

1. What is the total amount of state expenditures in response to the Exxon Valdez oil spill, including response, clean up, damage assessment, restoration and litigation, accounted for by agency, by Fiscal Year, and by funding source (ie., general fund, Oil and Hazardous Substance Release Response Fund/470 Fund, program receipts, other)?

2. Which of these expenditures have been billed to Exxon or other parties? Which of these expenditures have been reimbursed by Exxon or other parties? Which of these expenditures, if any, are still potentially eligible for reimbursement from Exxon or other parties, apart from reimbursement as part of the proposed settlement (ie., is Exxon still in the process of reviewing expenditures for possible reimbursement apart from the proposed settlement)?

It is our understanding that the former Oil Spill Coordinating Office had been tracking the state's spill-related expenditures but we do not know what became of the materials or analysis developed by that office, or whether that information is still current. We also understand that Peterson and Associates, under subcontract to the Department of Law's contractor, Preston Thorgrimson in Seattle also prepared an analysis of these accounts under the direction of a Mr. Bob Grey. We would also note that Commissioner John Sandor indicated to the House Finance DEC Budget Subcommittee that the DEC had initiated an internal audit of the Oil and Hazardous Substance Release Response Fund (470 Fund). The status of this audit is not known, although it could presumably provide information relevant to the effort of accounting for total state spill related expenditures.

In order to expedite the work of the House Special Committee on the *Exxon Valdez* Oil Spill Settlement, we would appreciate a response to this request by April 18. We appreciate your assistance with this request. If you have questions concerning this matter, please let us know or contact our offices (Eric Myers in Representative Brown's office at 465-4998 or Andy Hemenway in Representative Gruenberg's office at 465-4968).

cc: Commissioner John Sandor
Attorney General Charlie Cole
Dick Pegues/Department of Law

STATE OF ALASKA

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

MEMORANDUM

AUDIT DIVISION
P.O. BOX W
JUNEAU, ALASKA 99811-3300

TO: Representative Max Gruenberg, Chair
House Special Committee on the *Exxon Valdez*
Oil Spill Claims Settlement

Representative Kay Brown, Chair
House DEC Budget Subcommittee

FROM: Randy S. Welker *Randy*
Legislative Auditor

DATE: April 18, 1991

SUBJECT: Information Regarding Expenditures Covered by the Memorandum of Agreement between the State, the Federal Government, and Exxon.

This memorandum has been prepared in response to your request regarding information on state expenditures involved in responding to the *Exxon Valdez* oil spill. In order to respond to your questions, we reviewed the Memorandum of Agreement (MOA) between Exxon and the State and federal governments.

We were able to obtain expenditure information compiled by Peterson and Associates that appears to have been the basis for the \$72 million cost recovery amount included in the MOA. Due primarily to time constraints, we are not able to provide you with total assurance regarding the reasonableness of the MOA's cost recovery provisions.

The expenditure information used in the development of the MOA's \$72 million ceiling is comprehensive. From our cursory review of the Peterson and Associates information, and discussions with a Peterson and Associates representative and agency staff of the significantly involved departments, we believe that the \$72 million amount in the MOA appears to reasonably represent the oil spill response, assessment, and litigation costs incurred by the State through December 31, 1990.

Using the Peterson and Associates information, compiled from the State's accounting system, we have developed the following information. We also offer some observations and concerns that we have regarding cost recovery under the terms of the MOA.

COST REIMBURSEMENT

Section V. B of the MOA allows the State to receive up to \$72 million for "reimbursement of allowed expenses," incurred through December 31, 1990. The section further allows the State to receive reimbursement of "response and cleanup costs incurred after December 31, 1990."

From the detailed listing of expenditures prepared by Peterson and Associates, we developed the following table summarizing expenditures by agency through December 31, 1990.

DEPARTMENT	Estimated Recorded Expenditures (thousands)	Reimbursements from Exxon or CERCLA (thousands)	Remaining Expenditures or Costs (thousands)
Administration	3,591.0	488.0	3,103.0
Commerce and Economic Development	627.0	499.0	128.0
Community and Regional Affairs	1,429.0	40.0	1,389.0
Environmental Conservation	38,652.0	24,621.0	14,031.0
Fish and Game	23,467.0	6,440.0	17,027.0
Governor's Office	1,345.0	730.0	615.0
Health and Social Services	827.0	7.0	820.0
Labor	895.0	273.0	622.0
Law	17,342.0	0.0	17,342.0
Military and Veterans' Affairs	949.0	653.0	296.0
Natural Resources	2,989.0	1,341.0	1,648.0
Public Safety	334.0	18.0	316.0
Transportation and Public Facilities	1,131.0	1,013.0	118.0
University of Alaska	439.0	53.0	386.0
TOTALS	94,017.0	36,176.0	57,841.0
NON-CASH EXPENDITURE ADDED IN MOA TOTALS:			
Overhead (4,600.0)/Financing (3,900.0) Estimates			8,500.0
Damage Assessment Obligations (costs incurred but not paid by 12/31/90)			3,100.0
Litigation Obligations (costs incurred but not paid by 12/31/90)			2,500.0
Total Expenditures used to set MOA Cost Recovery Cap			71,941.0

The table on the following pages highlights the major, but not all, components of each department's costs and includes our observations.

DEPARTMENT (Total Expended)/ COMPONENT DESCRIPTION	COMPONENT AMOUNT (thousands)	COMMENTS
ADMINISTRATION (3,591.0): Valdez Oil Spill Commission Telecommunications	952.0 2,200.0	The Telecommunication costs may be understated. We reviewed information as of 8/15/90 that showed expenditures of 3,300.0 primarily for two projects: Prince William Sound microwave system (2,091.0) and a non-microwave system for the South Kenai/Kodiak link (1,206.0).
COMMERCE AND ECONOMIC DEVELOPMENT (627.0): Alaska Seafood Marketing Institute (ASMI) Weigh Stations	475.0 130.0	ASMI received 800.0 directly from Exxon. Actual expenditures were somewhat greater than reflected here, however it is immaterial as any costs are paid from funds already received, with a net zero effect on nonreimbursed costs.
COMMUNITY AND REGIONAL AFFAIRS (1,429.0): Community Assistance Grants	1,173.0	Grants were awarded on a competitive/needs based evaluation. Eighteen grants were awarded ranging from 2.3 to Port Lions for equipment repair to 684.0 to Kodiak for a Social/Economic Study.
ENVIRONMENTAL CONSERVATION (38,652.0): Personal Services Travel Contractual Equipment	14,000.0 2,218.0 20,000.0 1,000.0	The oil spill drastically impacted DEC. Personal services included significant overtime, project new hires, and back-fills for employees assigned to the spill. We are more confident in the accounting section at DEC than most of the impacted departments. However, we will verify that further with a detailed financial review for FY 90.
FISH AND GAME (23,476.0): Personal Services Travel Contractual	10,350.0 1,000.0 8,455.0	The majority of the department's work dealt with impact assessment studies on a wide variety of fish and wildlife species. The department fiscal staff believes the total recorded expenditures adequately cover costs incurred.
GOVERNOR'S OFFICE (1,345.0): Oil Spill Coordination Office	995.0	
HEALTH AND SOCIAL SERVICES (827.0): Substance Abuse Grants Mental Health and DD Grants	522.0 231.0	
Labor (895.0): OSHA/Inspections/Job Service Training Spill Workers in Safety Compliance	325.0 174.0	
LAW (17,342.0): Legal Expenses Experts and Consultants	11,400.0 4,682.0	According to the department, the total amount recorded plus the 2,500.0 litigation obligation will cover costs through 12/31/90. It is estimated an additional 4,000.0 will be needed for 1991 costs.
Continued on Next Page.		

(Continued) DEPARTMENT (Total Expended)/ COMPONENT DESCRIPTION	COMPONENT AMOUNT (thousands)	COMMENTS
MILITARY AND VETERANS' AFFAIRS (949.0):		Significant initial response effort from the Division of Emergency Services.
NATURAL RESOURCES (2,989.0): Personal Services Equipment	2,000.0 600.0	Most personal services costs were for temporary project hires for oil spill response. Fiscal staff is confident total covers costs incurred.
PUBLIC SAFETY (334.0): Increased Enforcement Two Enforcement Vessels	100.0 142.0	Personal services costs for overtime/sea pay for troopers and Fish and Wildlife vessel crew for increased enforcement. Little, if any, regular compensation for permanent employees is included.
TRANSPORTATION AND PUBLIC FACILITIES (1,131.0): MV Aurora MV Bartlett	488.0 46.0	MV Aurora provided floating lodging for oil spill workers.

Almost half of the State expenditures were made with 470 funds

Of the \$94 million in expenditures, it has been estimated that more than \$46.7 million has been spent out of the Oil and Hazardous Substance Response Fund (OHSRF), also known as "470 Funds." According to a draft of an internal audit report prepared by the Department of Environmental Conservation, the expenditures from the fund, broken down by agency, are:

EXPENDITURES BY DEPARTMENT FROM THE OIL AND HAZARDOUS SUBSTANCE RESPONSE FUND	Estimated Recorded Expenditures (thousands)
Administration	2,281.0
Environmental Conservation	32,889.0
Fish and Game	7,095.0
Governor's Office	275.0
Labor	272.0
Law	92.0
Military and Veterans' Affairs	60.0
Natural Resources	1,529.0
Transportation and Public Facilities	786.0
University of Alaska	59.0
Other	1,400.0
Total	46,738.0

According to the information compiled by Peterson and Associates, the Department of Fish and Game has received \$5.7 million in reimbursements from the Federal CERCLA process. As of December 31, 1990, Exxon had reimbursed \$30 million to the State's Oil and Hazardous Substance Response Fund (OHSRF). Given these reimbursements, total "out-of-pocket expenditures," broken down by "funding source," are as follows.

Expenditures by "Funding Source"	Expenditures (thousands)
General Fund	41,100.0
CERCLA Reimbursement to General Fund	5,700.0
EXXON Reimbursement to the Oil and Hazardous Substance Response Fund	30,000.0
EXXON Reimbursement to Alaska Seafood Marketing Institute	500.0
Unreimbursed Oil and Hazardous Substance Response Fund Expenditures	16,700.0
Total "Out-of-Pocket" Expenditures by State	94,000.0

OBSERVATIONS AND QUESTIONS

1. What requirements, if any, must the State meet to receive recovery? - It is our understanding that the cost recovery totals listed in the MOA are to settle all expenditure claims still pending before Exxon, in addition to reimbursing the State for expenditures not yet submitted. According to a January 4, 1991 summary, \$49.7 million in state expenditures had been submitted to Exxon. Of this amount Exxon had paid just over \$30 million, was still considering \$4.4 million, and had rejected \$14.8 million in submitted claims. As suggested by the summary of expenditures submitted to Exxon already, a significant part of the \$72 million recovery amount contemplated in the MOA has previously been rejected for reimbursement. Does the cost recovery amount allowed for in the MOA supersede earlier decisions by Exxon officials not to reimburse the State for some of the costs claimed? Does the use of the phrase "allowed expenses" in the MOA imply that the State's expenditures must meet some specific criteria or requirement prior to being eligible for reimbursement?

We have been informally advised by Legal Services Director Tam Cook that the agreement is silent about any specific criteria for "allowed" expenditures. She commented that this possibly could be an issue subject to further discussion and negotiation between the State and Exxon. However, Ms. Cook also reported that Attorney General Cole testified before the Committee that the reimbursement would be paid without further audit or scrutiny by Exxon. We suggest that the Committee get a clear understanding of any further review and approvals to which these expenditures may be subjected.

2. Ownership of assets and other personal property - From the outset of the cost reimbursement process, Exxon had told the State that any durable goods and equipment purchased by the State and reimbursed by Exxon belonged to the company after the oil spill activity was finished. The summary of expenditures that make up the MOA's \$72 million recovery cap, lists over \$4 million in equipment bought by the State. Additionally, more than \$11 million was paid by Exxon directly to vendors. This amount may also include payment for equipment used by the State.

Is Exxon going to continue to insist on the return of the numerous computers, filing cabinets, boats, and telecommunications equipment paid for by the company? If so, a significant effort will be required to inventory, centralize, and value this property, which may require future appropriations from the legislature. It may be in the State's best interest to compensate Exxon for the current diminished value of the equipment.

3. Audit Access to Restoration Funding - In a March 18, 1991 overview memorandum, the Division of Legal Services raised the issue of audit access to the expenditures of the trustees. The memorandum rhetorically asks who, if anyone, will perform audits of the trustees' expenditures? We concur that audit access should be clarified. Due to the unique relationship between the state and federal governments in administering these funds, some provision should be made that clearly gives the Legislative Auditor access, on behalf of the State, to expenditures of the trustees.

In summary, we believe that the \$72 million amount appears reasonable. Additionally, the overhead and financing amount of \$8.5 million is not based on identified expenditures, but on estimates. Therefore, we believe there may be some "cushion" in this number to cover costs not identified as of December 31, 1990.

We hope this memorandum provides some insight into the make-up of the \$72 million ceiling in the MOA. If you need further clarification or detail please contact me at 465-3830.

cc: Representative Ron Larson, Chairman
Legislative Budget and Audit Committee

Members of the Legislative Budget
and Audit Committee

Members of the Senate Special Committee on the
Exxon Valdez Oil Spill Claims Settlement

ISSUES

TO

RESOLVE

CONSENT DECREE, MOA AND PLEA AGREEMENT

QUESTIONS FOR FEDERAL REPRESENTATIVES
(revised 4/16)

1. To what extent can the state recover damages under federal law for species under federal management? Under the common law, could the state recover for losses to those species?
2. Does the federal government object in principle to a division of natural resource damages between the state and federal governments? What percentage of the total recovery would you expect to receive under such a division?
3. Will money spent by federal agencies from trust proceeds be made available to the agencies through the federal appropriation process?
4. Do the Consent Decree and the MOA as written provide for a natural resources damages recovery under the Clean Water Act? How? What specific provisions in either document make the CWA the governing law?
5. What is "enhancement" of natural resources, within the meaning of the Consent Decree and the MOA?
6. Were the state Trustees consulted when the federal government called for public comment on the method of public participation in the restoration process under the MOA, in the March 19 Federal Register? Do you view that notice as sufficient to provide for "meaningful public participation" from the local Alaskans most impacted by the spill? What steps will the federal Trustees take to ensure that in the future, there is meaningful public participation in the restoration process?
7. Would the federal Trustees object to conditioning implementation of the settlement agreement on a final decision by the Alaska Supreme Court on the constitutionality of the settlement agreement under Alaska law? Would the federal government be prepared to request certification of this issue from the federal district court to the Alaska Supreme Court, if requested by the legislature?
8. What are the projected costs of damage assessment over the next three years? Is it the policy of the federal Trustees to continue damage assessment until the full extent of long term damages has been ascertained?

9. The legislature may be unwilling to accept the settlement agreement on the present terms. Does the federal government object in principle to the revision of the MOA in any respect?

10. Have the federal trustees, to this point, acted to ensure that the federal government will be able to take advantage of the rebuttable presumption regarding damages under CERCLA?

11. When, and under what conditions, will information generated by the federal government regarding damages (biological and economic) be released if this settlement is approved?

12. Why was Alyeska relieved of all civil liability for natural resources damages under the settlement agreement? Was the decision to release Alyeska from all criminal liability in any way linked to the civil settlement? Did Exxon refuse to settle its civil case unless Alyeska was relieved of criminal liability? Was the federal government aware of the information contained in Rep. Miller's letter when it agreed to drop criminal charges against Alyeska?

13. Do the subsistence rights of Native villages give rise to a claim for damages to natural resources "appertaining to" Native villages, within the meaning of Paragraph 13(b) of the Consent Decree?

14. Are the rights of fishermen to commercially fish post-1989 fish resources a "present property interest", within the meaning of Paragraph 13(c) of the Consent Decree?

15. How do the federal Trustees intend to provide for public participation in the restoration process?

16. What specific ideas do the federal Trustees have at this point regarding the types of projects that would qualify for funding under the settlement agreement?

17. Will the Trust pay its own administrative expenses? Will the Trust reimburse the state for the costs of state oversight of its activities?

18. Under what conditions would it be appropriate to spend Trust money on projects outside Alaska? What sorts of projects might be funded in this way? In particular, could Trust money be spent to acquire habitat outside the state for species damaged by the spill, or for other species?

19. If the State were to reject a settlement, would the federal government continue to prosecute its civil claims with full vigor?

20. Would the federal government accept designation of a state official as a special master to the federal judge, in its capacity as tie-breaker?

21. What are specific examples of uses to which the restitutionary funds could be put? Are there any limitations on the use of these funds in federal law, or is the Plea Agreement the sole limitation?

22. If the Trust is sued, will Trust funds bear the cost of litigation?

23. Have any of the federal damage assessment studies, or the economic damage surveys, been shared with the Exxon Corporation? Have the federal economic damages studies been shared with either Exxon or the State?

24. Has the federal government insisted on using the Clean Water Act as the model for settlements in other similar cases?

CONSENT DECREE

MASTER LIST OF ISSUES
(revised 3/29)

[I]
Introduction
(pages 2-3)

- 1. Could the state still sue Exxon for violation of state criminal laws? Does it intend to do so? [PF]
- 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? [PF]
- 3. The parties represent that the payments called for are in addition to "those described above". Does this mean that for purposes of the Consent Decree, the amounts recovered are not subject to CWA limitations?

[II]
Jurisdiction
(paragraph 1; page 4)

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

[III]
Parties
(paragraphs 2-5; page 4)

[IV]
Definitions
(paragraph 6 [a-i]; pages 5-7)

- 5. Why are the natural resources damages of the state not separated from the natural resource damages of the federal government? [PF]

6. If the court signs the consent decree, when does the time for appealing that decision expire? [PF]

7. Does the reference to claims under state law mean that this recovery is not entirely under the CWA? [PF]

8. 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 [PF]

8.1 When was the last date that all parties signed? [PF]

[V]

Effect of Entry of Decree by Court
(paragraph 7, page 7)

9. What impact does the agreement have on the state's rights/legal position prior to "final approval" but after the "effective date", i.e., right now?

[VI]

Payment Terms
(paragraphs 8 [a-d], 9-10; pages 9-11)

Payment Schedule (paragraph 8)

10. What is the present value of the amounts to be paid by Exxon? [PF]

11. Has Exxon paid the first \$90 million? [PF]

12. What guarantee is there that Exxon will pay the required amount? Is this a debt dischargeable in bankruptcy? [PF]

13. Are the amounts Exxon will pay deductible under federal tax law? Under state tax law? [PF]

Escrow (paragraph 9)

Use of Money (paragraph 10)

14. 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. choose 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? [PF; Rep. Barnes, 3/19]