

1 EXXON VALDEZ OIL SPILL SETTLEMENT
Trustee Council

2 Simpson Building
3 645 "G" Street
4 Anchorage, Alaska
July 20, 1992
10:00 o'clock a.m.

5 IN TELECONFERENCE ATTENDANCE:

6 From Anchorage, Alaska:

7 State of Alaska
Attorney General

MR. CHARLES COLE

8 State of Alaska Department
9 of Environmental
10 Conservation

MR. JOHN SANDOR
Commissioner
Council Meeting Chairman

11 Alaska Department of Fish
and Game

MR. CARL ROSIER
Commissioner

MR. JEROME MONTAGUE

12 United States Department
13 of the Interior
Secretary

MR. CURTIS McVEE
Special Assistant to the

14 From Juneau, Alaska:

15 National Marine
16 Fishery Service

MR. STEVEN PENNOYER
Director

17 MR. MICHAEL BARTON

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P R O C E E D I N G S

1 (On record)

2 MR. McVEE: This is a continuation of the July 20
3 meeting of the Trustee Council. Unless there are, I guess,
4 some objections, or another volunteer, I will continue to chair
5 the meeting. Is that all right with folks in general?

6 MR. BARTON: Yes.

7 MR. PENNOYER: Yes.

8 MR. McVEE: We have two members on the Trustee Council
9 which are in Juneau, Forest Service Mike Barton and
10 Steve Pennoyer of NOAA. And the other Trustee Council members
11 are represented here, representing Commissioner Rosier is
12 Jerome Montague; we have Attorney General Cole and
13 Commissioner Sandor, and myself, Curt McVee.

14 Dave Gibbons, is there any announcements that you wish
15 to make at this time before we go into the agenda?

16 DR. GIBBONS: Yeah, I guess I'd like to say that we
17 should include on the Agenda a public comment period at the end
18 of the session.

19 MR. McVEE: A public comment period at the end of the
20 session, okay. Well, I think, speaking for Commissioner Sandor
21 and I object to that because the public comment period has been
22 set in the agenda or hearing between 1:00 and 2:00 p.m. today,
23 and I think people probably plan on that. Inserted earlier
24 would likely deprive them of any opportunity to make their
25 comments. I think we should adhere with the schedule as

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publicly announced, 1:00 and 2:00.

1 John, do you agree?

2 MR. SANDOR: Yes.

3 MR. McVEE: Jerome? Juneau, Mike or Steve.

4 MR. BARTON: That will be fine.

5 MR. PENNOYER: Go ahead.

6 MR. McVEE: He said go ahead? Okay. There will be a
7 public comment period as shown on the Agenda for 1:00 and 2:00
8 o'clock this afternoon.

9 Dave, was there anything else?

10 DR. GIBBONS: No, that's all I had.

11 MR. McVEE: You have the Agenda before your. Are there
12 any additions or changes to the Agenda? I think, John, you had
13 one thought.

14 MR. SANDOR: Yes. Item 3, after the 1993 Project
15 discussion on Restoration, I propose a discussion of the
16 process of identifying critical habitat for acquisition. I did
17 query the staff regarding this, and I think this needs to be,
18 just very briefly summarized. So I would propose adding as
19 Item 3, discussion of the process of identifying critical
20 habitat for acquisition.

21 MR. McVEE: Do you plan on doing that this morning?

22 MR. SANDOR: Either this morning or immediately
23 preceding the public comment period at 1:00.

24 MR. ROSIER: Is staff prepared to do that?

25 MR. COLE: Mr. Chairman.

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MR. McVEE: Yes, Mr. Cole.

1 MR. COLE: I would like to be present during that
2 discussion. I may not be able to be here until approximately
3 1:10, so for what it's worth.

4 MR. McVEE: Okay. We'll schedule that so Mr. Cole can
5 be present during that discussion.

6 Juneau, any comments on the additional agenda items?

7 MR. PENNOYER: No, Curt, I had one more item I'd like
8 to just discuss for a minute or two at some point here.

9 MR. McVEE: Well, let's just get note of it, Steve, and
10 then we can put it on the agenda. What is it?

11 MR. PENNOYER: Financial Operating Procedures. We,
12 apparently, have agreement on most items except the appendices,
13 and I want to discuss the appropriateness of approving the
14 overall Financial Operating Procedures, even if we have an
15 appendix or two that's still under discussion, so we are
16 operating under some guidelines.

17 MR. McVEE: Okay. We'll put that on. I have one item,
18 just, I think, summing the -- I don't know if it really needs
19 to be an agenda item, but it has to do with the cleanup costs
20 that I want to talk about for a moment, if that's all right
21 with everyone.

22 MR. PENNOYER: We didn't hear what it was, Curt. We
23 just heard there was one additional item. Can you try it
24 again?

25 MR. McVEE: Okay. It's the cleanup costs, the costs

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that were incurred this year by Exxon.

1 MR. PENNOYER: Okay at our end.

2 MR. McVEE: Okay. We've got three additional agenda
3 items in; the discussion of the process of identifying critical
4 habitat; and then the Financial Operating Procedures; and the
5 cleanup costs be added to the Agenda. Anything else?

6 MR. COLE: Mr. Chairman.

7 MR. McVEE: Yes, Mr. Cole.

8 MR. COLE: The reason I wanted to be present during the
9 agenda item proposed by Commissioner Sandor is largely prompted
10 by this letter of July 17th from the Alaska Center for the
11 Environment which states, in general, that in the wake of
12 Governor Hickel's unconscionable veto of the land acquisition
13 monies, he urges the Trustees to seize the moment and proceed
14 along that line, and then he asks us to act at the July 20
15 meeting and he points out that even the Attorney General has
16 recommended acquisition of Katchemak Bay consistent with the
17 settlement, and I wanted to be here to defend my position in
18 that regard.

19 Thank you.

20 MR. McVEE: Would there be any problem of taking that
21 up first? Would the Trustee Council members have any problems
22 doing that? We understand that you have a new commitment, if
23 we were to discuss that issue of critical habitats, move that
24 forward on the agenda.

25 MR. COLE: It's fine with me.

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MR. BARTON: That's fine down here. You bet.

1 MR. McVEE: Okay. Let's move that forward then, just
2 change sequence before we get into the Public Advisory Group
3 Membership and discuss the process of identifying critical
4 habitat.

5 Are there any other recommendations on the agenda,
6 items or sequence?

7 MR. PENNOYER: Well, just under Other, I'd like some
8 discussion on the next meeting.

9 MR. McVEE: I didn't

10 MR. PENNOYER: I suppose you'll have another
11 discussion.

12 MR. McVEE: Oh, the discussion of the next meeting
13 schedule?

14 MR. PENNOYER: Yeah.

15 MR. McVEE: Okay.

16 MR. PENNOYER: Make sure all are on board for it.

17 MR. McVEE: Okay, that will be the final item, is the
18 schedule for the next meeting. Okay, are we ready to proceed
19 with this discussion of the process of identifying critical
20 habitats?

21 Do you want to lead that off, John?

22 MR. SANDOR: Yes, Mr. Chairman. The reason I asked
23 that this item be added to the agenda is because of the process
24 and experience that we had in looking at potential acquisitions
25 under the State budget/capital budget, formerly HB 411, that

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was incorporated in the capital budget, and I wanted to use
1 this as an illustration of the importance of moving ahead with
2 this process, specifically, in looking at the threatened areas
3 for harvest at Eyak Lake, at Cordova.

4 I specifically made quite an effort to examine the
5 merits of that proposal because I was in a position of advising
6 the Governor on whether or not those lands that were threatened
7 for harvest were -- you know, merited consideration. And I use
8 this illustration to, I guess, pass on to the Restoration Team
9 itself of what, at least I as a Trustee and, I hope,
10 collectively the Trustees, should have in the way of this
11 process of identifying critical habitat, both with an on-site
12 visit of Eyak Lake area at Cordova and in checking with both
13 Department of Fish & Game and Fish & Wildlife Service.

14 We discovered that, one, there are trumpeter swans on
15 Eyak Lake; two, that there's a potential number of eagles that
16 are in that area; also reported harlequin ducks on the lake at
17 times.

18 And yet we discovered that, one, insofar as swans are
19 concerned, the record reflects that really trumpeter swans are
20 not -- and this was the information given really by word -- but
21 it's important that we have scientific documentation of this,
22 that there were really three swans that were held as a result
23 of the Exxon Valdez, and we're not even sure those were
24 trumpeters. Secondly, I did talk with a scientist on trumpeter
25 swans, and just asked about the habitat that trumpeter swans

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require and need. And insofar as the Eyak Lake area is
1 concerned, trumpeter swans do not utilize the uplands. I was
2 told that it was imperative that the lake itself be protected,
3 but when we see the species itself is not damaged by the Exxon
4 Valdez Spill and thus is not qualified.

5 Secondly, insofar as the eagles are concerned that
6 utilize that area, and this again is by word, that the buffer
7 strips would apparently provide any protection if eagles were
8 impacted significantly by the Oil Spill. So that was not a
9 basis by which, you know, I could recommend that there was this
10 linkage.

11 Thirdly, the harlequin ducks that are on the lake,
12 there's no evidence of any nesting areas in the timber lands
13 that are actually to be harvested. As a consequence -- well, I
14 also found that, really, there was only about 600 acres
15 eminently threatened for timber harvest, that is in the next
16 fiscal -- calendar year '93. And buffer strips provided in that
17 instance -- well, it was really not really feasible to suggest
18 that that area be protected.

19 So we informed -- I personally informed the Eyak folks
20 with whom I had contact, but, you know, there's just -- was not
21 any evidence.

22 What I'm hoping, Mr. Chairman, and members of the
23 Trustee Council, is that we can have, by our next meeting, and
24 I'm talking with at least Mark Broderson, of our staff, the
25 expectation is that we will have by our August 30 meeting, some

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very specific definitive recommendations on the criteria and
1 the process by which critical habitat are identified. And
2 because it's very apparent to me in the comments we've received
3 from the public, both in writing and by phone calls and so
4 forth, and testimony before this group, that this is a very
5 critical item, and one of high interest.

6 So, I guess, in summary, Mr. Chairman, I would ask the
7 members of the Restoration Team and Mr. Gibbons -- Dr. Gibbons
8 if it is expected that at our next meeting, August 30, we will
9 have specific criteria that critical habitat can be identified
10 and essentially guides by which we can then make rational
11 decisions. I guess that's the issue I wanted to lay on the
12 table at this time.

13 MR. COLE: Mr. Chairman.

14 MR. McVEE: Yes, Mr. Cole.

15 MR. COLE: I would like to add my usual footnote. I
16 want to say that the Trustees do not have unfettered will to
17 select whatever timber they might personally wish to select for
18 acquisition with Exxon Valdez monies. We all have our personal
19 views, and some of us deeply felt personal views on that
20 subject. But we are bound by the provisions of the Settlement
21 Agreement, and in fact congressional legislation, and we are
22 accountable as Trustees for our judgments, and I think that
23 beneath Commissioner Sandor's remarks lies that concept, and
24 what we must do, and to which I subscribe, is to take an
25 inventory, if you will, of the habitat and the oil spill

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affected areas which meets the criteria, the federal law, and
1 federal judgment, and then proceed rationally from that basis.

2 Thank you.

3 MR. McVEE: Thank you. Any other comments by Trustee
4 Council members?

5 I guess I should let the record also show that Carl
6 Rosier is present now, and has been for the last several
7 minutes.

8 MR. PENNOYER: Mr. Chairman.

9 MR. McVEE: Yes, Steve.

10 MR. PENNOYER: Yeah. I'd like to second the need to
11 address, in some fashion, areas which might really be critical
12 and a critical threat to habitat that we do agree under our
13 criteria, which we've not yet adopted, of course, that would
14 meet our needs and should be addressed sooner rather than
15 later.

16 We talked about this before and the need that -- to see
17 if all this spectrum of coming up with a plan and a more
18 considerate look at the criteria is going to take us a while.
19 We don't have public comment back yet on the criteria. But it
20 does seem that we should have mechanism whereby we can float
21 real urgent situations to the top of our -- the (indiscernible)
22 and take a look at them. And so I, too, am hoping that we hear
23 that by August we'll have some way to try and address any
24 "emergency situations."

25 And I would like to hear from the staff to that fact

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that it's going to occur.

1 MR. McVEE: Is staff prepared to make comment on
2 progress?

3 DR. GIBBONS: Mr. Chairman.

4 MR. McVEE: Yes.

5 DR. GIBBONS: This is Dave Gibbons. If I can give you
6 kind of a status of where we are to date and where we're headed
7 with it. At the direction of the last Trustee Council meeting,
8 on June 29th, the Habitat Protection Group has met several
9 times, and we're moving forward with an inventory of eminent
10 threat, we're moving forward with an inventory of data
11 collection also to get at the very thing that you're
12 referencing. And we hope by the 31st to have information
13 available to us to identify parcels that are eminently
14 threatened to a point where we weren't going to apply the
15 threshold criteria. That's still out -- we'll be going out for
16 public comment here. I dropped off the supplement to the
17 framework this morning to the printers, and we'll get that out
18 as quickly as possible. But we are moving to collect the
19 information that is available on parcels that were submitted
20 for 1993, ideas for eminent threat.

21 MR. McVEE: Dr. Gibbons, I guess the concern I would
22 have is you're giving priority to areas that are scheduled for
23 eminent -- or harvest within the next year, specifically. Is
24 that part of the plan or proposal?

25 DR. GIBBONS: Yes, that's correct. The first step

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we're taking is to identify the parcels that are eminently
1 threatened.

2 MR. COLE: Do you want to comment on that? If you
3 don't, I do.

4 MR. McVEE: Mr. Cole.

5 MR. COLE: Mr. Chairman. I want to say, Dr. Gibbons,
6 that we just be very cautious about giving high priority to
7 habitat which is "eminently threatened" by logging or other
8 activities which are threatening to the habitat because I think
9 we must guard against giving priority necessarily to those
10 areas or we will be inundated with threats to log, and I also
11 think that we must be very careful if we acquiesce in the
12 acquisition of habitat under threat to log partially, that the
13 following year we will have placed before us a "threat" to log
14 the contiguous acreage. So we must be very careful that we not
15 give "undue" priority to what may be labeled habitat which is
16 under eminent threat.

17 Thank you.

18 MR. McVEE: Thank you.

19 MR. PENNOYER: Mr. Chairman.

20 MR. McVEE: Yes, Steve.

21 MR. PENNOYER: Yeah, I certainly didn't mean to imply
22 by my remarks that we automatically would take any of these
23 items or parcels and assume that we are going to put our
24 resources into that and in some way preclude future choices by
25 doing so. And I would hope until we actually have a plan and

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1 look at this in a broader spectrum that we would not be doing
2 all that much. And, in fact, most of our expenditures and
3 plans -- planned expenditures would come after we have public
4 review of criteria, and after we have an inventory of a plan
5 overall on how we wanted to proceed.

6 It was more from the idea of the fact there was out
7 there something that was critical, and not just general threat
8 of logging or development of some kind, but critical habitat
9 that we would consider critical and could easily see what's
10 critical to the recovery or continuation of some species we are
11 concerned about, and that we not preclude looking at that type
12 of opportunity.

13 I certainly didn't assume that by August 31st
14 automatically anything that was identified as possibly being
15 developed was going to become a priority for acquisition of
16 some kind. It was more just a census of what was there so we
17 could make the decision on whether it wa a priority.

18 MR. BARTON: Mr. Chairman.

19 MR. McVEE: Yes, Barton.

20 MR. BARTON: Yes. It seems to me the eminent threat
21 analysis procedure that Dr. Gibbons laid out deals adequately
22 with the problem. I think there's flexibility available to us
23 if we see something of more urgency than that; I think there
24 are a number of tools available. So, I'm not concerned that
25 we're pre-empting the future options. I think that we do need
26 to look at this very carefully and in total context.

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Now, in perspective, these are pretty significant
1 decisions, and I agree that we need to get on and identify
2 critical habitat names, get that inventory completed so we'll
3 have that. That's one of the first steps. But I believe that
4 we're proceeding, as Dr. Gibbons outlined, in a satisfactory
5 manner, you know. I think that we can accommodate any true
6 threats and deal with those, and at the same time act
7 responsibly.

8 MR. COLE: Would somebody summarize what he said?

9 MS. RUTHERFORD: I think -- Mr. Chair?

10 MR. McVEE: Yes, Marty.

11 MS. RUTHERFORD: I think what he was saying is that
12 he's satisfied that the eminent threat criteria and process, as
13 laid out, will not -- it won't put us in the position of just
14 responding to any threat that comes along, that we're actually
15 overlaying that with critical habitat analysis and that that
16 will protect us. I think what he's saying is he's satisfied
17 with the process, that's it's going to lead where you want us
18 to lead.

19 MR. McVEE: Mike, we only heard, I guess, part of what
20 you had said. Marty, who was closer to the speaker, tried to
21 summarize. I don't know whether you could hear what she

22 MR. COLE: Could we turn those things around?

23 (Off record comments)

24 MR. BARTON: Marty did very well. Thank you, Marty.

25 MR. SANDOR: I wanted to make one additional point, and

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that is -- and I think the lesson learned in this examination
1 of the Eyak Lake land, in the areas that were scheduled for
2 "harvest" which was something like over 10,000 acres, that in
3 fact were under contract, it turns out that only 600 acres were
4 "in the harvest plan for '93."

5 Anyway, we also discovered that -- of course they had
6 the buffer strips -- recognizing that for other areas not
7 related -- for other reasons not related to the Oil Spill, you
8 know, there is substantial merit in having that Eyak Lake area
9 protected. So, we -- that is both the state and federal
10 governments, are now looking at opportunities for exchanges of
11 lands and cutting rights as an option for protecting those
12 areas for entirely different reasons. And it's important that
13 the public and we as government officials understand that there
14 are various strategies for achieving objectives that may or may
15 not even be related to the Exxon Valdez Oil Spill itself.

16 So, anyway, I'm satisfied, I guess, with the discussion
17 that one, critical habitats are being identified, the criteria
18 -- that this will be presented at our August 30 meeting, and
19 that, Mr. Chairman, satisfies at least the information that I
20 was seeking with the request just be added as an agenda item.

21 MR. COLE: May I make one last comment?

22 MR. McVEE: Yes. Mr. Cole.

23 MR. COLE: If we're not careful about the eminent
24 threat in the logging, we will be like the dog chasing its
25 tail, and we will be going around annually in this fashion. So

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1 we have to be, I think, on guard against that and start first
2 with critical habitat, and then make an effort to develop a
3 priority for the acquisition of critical habitat.

4 Thank you.

5 MS. RUTHERFORD: Mr. Chair.

6 MR. McVEE: Yes, Marty.

7 MS. RUTHERFORD: Could I just point out that that
8 meeting is scheduled currently for August 31st. The 30th is a
9 Sunday.

10 MR. McVEE: Okay.

11 MR. BARTON: We couldn't hear that, Mr. Chairman.

12 MR. McVEE: What Marty said is that meeting is
13 scheduled to have the presentation on the critical habitats
14 schedule for August 31st. And we will get that down and there
15 will be a little bit more discussion on that at the end of the
16 agenda when we talk about meetings.

17 MR. BARTON: Thank you.

18 MR. McVEE: Is there any further discussion either here
19 or in Juneau on this issue? Are we ready to move

20 MR. PENNOYER: No, that's fine.

21 MR. McVEE: What was that?

22 MR. PENNOYER: No, that's fine.

23 MR. McVEE: Okay. We'll move on then.

24 MR. PENNOYER: I'm comfortable with where you are.

25 MR. McVEE: We're ready to move on then to the agenda
item of Determination of Public Advisory Group Membership.

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I'd like to preface our deliberations on dealing with
1 the Advisory Board with some discussion and a presentation on a
2 couple issues that have come up, and I would categorize them
3 first as the -- as a ethics issue on dealing with a public
4 advisory group and membership, and then the second one is the
5 concern about filing financial statements.

6 And this is something that's been researched over the
7 last couple weeks, you know. Maybe it should have happened
8 earlier, but a lot of things I think we get involved in take
9 time to accomplish, and we maybe not get them on the schedule
10 they should be on, but I'd like to have solicitor with the
11 Department of the Interior talk about these two issues, and
12 she's had -- she's looked into the requirements and had
13 discussion with people who deal with the FACA issues in some
14 depth, and we have some recommendations to make to resolve or
15 to take us through this area.

16 So, with the permission of the Trustee members, Trustee
17 Council, I'd like to have Regina Slaeter come forward and talk
18 about these two issues for a few moments before we proceed with
19 actions.

20 MS. SLAETER: Thank you. I've given everyone, I
21 believe, a copy of a little handout, and there will be copies
22 in the back for the public, and we did fax these to Juneau, to
23 DEC, so hopefully -- did you receive them in Juneau?

24 MR. BARTON: Yes, we have.

25 MS. SLAETER: Okay. I'd like to start with what Curt

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mentioned as the second issue first because it's easier to deal
1 with, and this is the concern about financial disclosure
2 statements.

3 As a little bit of background, a federal advisory
4 commission established under FACA has a possibility of having
5 people on it who fit into two different categories. People can
6 be representatives of another group or interest, or they can be
7 appointed because of their own personal knowledge and
8 expertise. In the commission that the trustees have been
9 dealing with, we've talked in terms of 12 identified interest
10 groups plus representatives of the public-at-large. You're
11 talking in terms of appointing these people based on their
12 knowledge and expertise, i.e., choosing the best representative
13 based on the knowledge of the person.

14 The reason it's important to define where we're
15 starting from with members is because if people are appointed
16 to represent interests or groups, then they do not fall into
17 any category of federal employee, they are not subject to the
18 laws of conflict of interest statements of financial
19 disclosures that apply to federal employees, if, however,
20 people are appointed to serve in their personal capacity, then
21 they are under a category called special government employees.

22
23 Special government employees are subject to numerous
24 laws and regulations which are summarized -- basically, I've
25 attached pages from the Code of Federal Register, and must fill

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out a financial disclosure form, which are the last two pages.

1 It's a general form which requires you to list all corporation
2 companies in terms of which you have employment, basically list
3 your financial interests, property holdings, and those forms
4 would be available to the public upon written request.

5 Now, having sat through your meetings now for some six
6 or nine months, it looks to me like what you're trying to do is
7 appoint representatives. As I said, representatives then are
8 representing the groups of interest. These are the 12 interest
9 groups you mentioned and the public-at-large. These people
10 would not be special government employees, if that's how you're
11 appointing them.

12 The only glitch I see in the process is that the
13 charter does not at this moment accurately reflect your
14 intention to do this. I might -- I don't know if you can
15 advise -- the charter was signed by GSA. What I'm proposing
16 that you do is today pass a technical amendment to the charter.
17 This amendment would not require another round of approval at
18 GSA, it would be forwarded to the Secretary of Interior for his
19 signature as the backup official on this.

20 This would clarify the record, making it very clear
21 that the people you're appointing, you're appointing to be
22 representatives of aquaculture, fishing interests, the other
23 interests you've indicated, and then we wouldn't have to --
24 then the discussion of financial disclosures and conflicts of
25 interests becomes a moot point because you haven't appointed

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such a government employees; you've appointed representatives
1 to best represent the views of the interest groups.

2 That's

3 MR. COLE: Mr. Chairman.

4 MR. McVEE: Yes, Mr. Cole.

5 MR. COLE: I have to leave in -- no long. What is the
6 recommendation of the Department of Interior? I'm not sure
7 that these people are really representing a particular group.
8 Loosely, they are, but whether they are strictly, I have some
9 questions about it.

10 MR. McVEE: I guess our recommendation would be that
11 they represent -- they recognize as representing the -- a group
12 of

13 MS. SLAETER: An interest group.

14 MR. McVEE: an interest group, a group of people
15 that use public plans or use resources of the area.

16 Our recommendation would be to go for the charter
17 amendment that eliminates the financial disclosure issue.

18 MR. COLE: Would you then nominate those people or
19 appoint them today?

20 MR. McVEE: We've got one more matter I think we need
21 to discuss before we would make that cut.

22 MS. SLAETER: I should point out, Attorney General
23 Cole, that the representative capacity we're talking about is
24 not a formal representative capacity. There is much guidance
25 given by the government (indiscernible) office on -- you can be

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a representative of the public at large, for instance, which is²¹
1 not that easy.

2 MR. McVEE: Mr. Sandor.

3 MR. SANDOR: Mr. Chairman, I guess I would raise a
4 question or a distinction between representing say a group like
5 aquaculture and having an interest in a specific aquaculture
6 facility, either personally or by representation as an officer
7 of that corporation, whatever. And I thought that's what we
8 were dealing with.

9 MS. SLAETER: That's the second part of it,
10 Commissioner Sandor. The first part is a mere technicality,
11 it's a bunch of regulations in a form, and you're either on one
12 side of it or you're on the other. But whether you're a
13 special government employee or not, you still should not
14 participate where you have a direct conflict of interest, where
15 you're dealing with a matter that would directly affect your
16 financial well being, your family's well being. One of the
17 guidance given by the Ethics Office deals with a situation
18 which is very similar to what we have. They talk in terms of
19 if you have science and academic proposals. Obviously, you're
20 going to have to poll members of your advisory group from the
21 science community. They're the only people around who can
22 appropriately advise you, but there's an inherent conflict
23 there because my university over your university or whatever.
24 They said, well, you have to live with that conflict but you
25 don't let the members vote on something that -- the direct

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proposal that would affect the pocketbook, i.e., the one
1 submitted by their department or by their university. And here
2 we're in a situation where we want people who are familiar with
3 the Oil Spill. We want people who know the area. If we have
4 that, we're going to have some built-in conflicts. There is no
5 question of it, but we have to deal with it in the best way
6 possible. One approach which I'm suggesting today is a draft
7 letter that would be sent to the nominees where they're
8 appointed, asking them to basically address possible direct
9 conflicts so that you would know before you appointed people
10 how many direct conflicts they had. You could still appoint
11 them anyway but then you'd just know if they were going to
12 refuse themselves from 90% of the vote or from 10% of the vote
13 or every now and then, and you wouldn't be possibly appointing
14 a committee where everybody on it had such a direct conflict on
15 five or 10 different matters that their committee couldn't hold
16 discussions. And that's the -- that's basically what I -- and
17 there I'm talking about very specific direct -- your direct
18 financial future depends on a kind of decision; your employer's
19 financial future, your spouse's financial future, not just the
20 fact that there is a potential conflict.

21 One of the things also that should be done is when the
22 board -- group gets its walking orders is to make sure that
23 there's an explanation given that it's proposed under the
24 operating procedures for the PAG, that they would refuse
25 themselves from direct conflicts. You want to focus on that

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because you don't want to prejudice the public process by
1 building into it possibilities that people are working of
2 private financial gain instead of giving you their best advice.

3 MR. McVEE: Yes, Mr. Cole.

4 MR. COLE: Mr. Chairman, does the Department of
5 Agriculture have any views on the subject?

6 MR. McVEE: Mr. Barton.

7 MR. BARTON: Mr. Chairman, yes, we do have views on the
8 subject. Now, I've not talked with our general counsel about
9 this, but it's my understanding that their view was that a
10 financial disclosure statement/conflict of interest statement
11 was required.

12 I see that the regulations that we've been provided are
13 Secretary Interior regulations, and he's the appoint authority
14 as to who knows the appropriate regs. I don't know, frankly,
15 whether Agriculture regs would indicate something different or
16 not, but I do know that our counsel has been talking with the
17 Solicitor's Office, and I thought they were of the opinion that
18 disclosure statements were needed.

19 Is that correct, Regina?

20 MS. SLAETER: Mr. Barton, I have been talking to
21 Maria Lisowski of your general counsel's office on this matter,
22 and the answer is no, where -- yes, we probably are in
23 agreement but no, financial disclosure statements aren't
24 necessarily required.

25 The general rule that we start from, which is published

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in all of those how to keep out of trouble government ethics
1 books says that financial disclosure -- says that advisory
2 committee members are special government employees, but upon
3 actually looking into the laws and regulations, in 1982, the
4 Government Ethics Office issued a statement that defined when
5 an advisory committee would be a special government employee
6 and when it wouldn't be, because it became clear that in
7 reality, not all advisory committees function in the same
8 manner.

9 And that's where the test about representative versus
10 personal capacity comes from. And I did discuss this with
11 Maria, and she said she would defer to my knowledge and
12 expertise in that. I don't know that that's binding on you.

13 MR. COLE: Mr. Chairman,

14 MR. BARTON: I appreciate that. Maria happens to be
15 (indiscernible - coughing) when we tried to hook her in, it
16 didn't work.

17 MR. McVEE: Okay. Mr. Cole.

18 MR. COLE: That, generally, having been settled, I
19 think, what is the recommendation to the Trustee Council today
20 about selecting or appointing members of the Public Advisory
21 Group or deferring that until after receipt of the statements?

22 MR. McVEE: I think that the issue before us is whether
23 we need to go out with a letter to nominees and they're
24 notified concerning the -- and ask for information concerning
25 their conflicts or whether we can go ahead and take the final

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action today.

1 I guess that Regina focussed on the only question, I
2 think, and that is are we concerned about appointing a board
3 where there is substantial conflict of interest that would make
4 it ineffective or do we want to proceed with some risk of doing
5 that.

6 MR. COLE: What is your view?

7 MR. McVEE: Our view is that -- I think it would be
8 better to go out and ask people about their conflict of
9 interest. Maybe that's the over-cautious view, but most
10 conservative view, but I feel like, you know, that might be
11 best.

12 The other -- the financial disclosure, I think we can
13 resolve that with the amendment to the Charter so that can be
14 taken care of.

15 MR. BARTON: Mr. Chairman.

16 MR. McVEE: Yes, Mr. Barton.

17 MR. BARTON: Yes. Do I take it then that we have
18 concluded that if we amend the Charter then the financial
19 disclosure problem is no problem?

20 MR. McVEE: That's true.

21 MR. BARTON: All right. I do think that we should not
22 go forward with naming the membership until we have agreement
23 from the nominee or information from the nominee relative to
24 conflict of interest. It seems to me that there may be some --
25 there's a possibility that there's a broad conflict rather than

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the specific conflicts that an individual could refuse
1 themselves in. I don't know of any, but it would be nice to
2 know that before we move ahead.

3 MR. McVEE: Mr. Cole.

4 MR. COLE: Does Mr. Pennoyer have a view on that
5 subject? We have now two federal trustees recommending
6 deferral, and since it's a federal matter, my tilt is to accept
7 the recommendations of the federal members, but I would like to
8 hear Mr. Pennoyer's views.

9 MR. McVEE: Yes. Mr. Pennoyer, can you hear us?

10 MR. PENNOYER: Yes. Mr. Chairman, thank you. We don't
11 have a separate legal viewpoint, but I think what Maria and
12 Regina talked about is consistent with our views, but I believe
13 it would be better to find out if there is a conflict here.

14 I don't know if we're going to have formal votes or
15 refusing procedures or how we're going to do that, but it seems
16 to me we ought to know if, in fact, there's a broad conflict of
17 some kind within this committee that we're appointing. So, I
18 guess I agree with Mr. Barton and Mr. McVee that we ought to
19 get something -- feedback from the letter that we're sending
20 out.

21 I will say I hope that we have all of our ducks in
22 order now and that come the next time around we don't have
23 something else we have to do that's going to cause us not to
24 reach a decision, because we do have to get on with this.

25 MR. McVEE: I share that.

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MR. COLE: We've looked into that on the state scene,
1 and our current view is there is no such requirements, but
2 certainly if we receive the federal statements, then the state
3 can have them available publicly.

4 I would, therefore, move, in light of the
5 recommendations of the federal trustees, to defer appointment
6 of Public Advisory Members until the statements have been sent
7 and received back and completed.

8 MR. SANDOR: Second.

9 MR. McVEE: Motion has been made to defer action on the
10 appointments of the PAG until we have had contact with
11 nominees. Further discussion?

12 Yes, Mr. Rosier.

13 MR. ROSIER: Mr. Chairman, would it be possible to have
14 this information at hand before the next meeting in August?

15 MR. McVEE: See, we're proposing an August meeting. I
16 think there was a teleconference meeting scheduled for the 3rd.
17 We're going to get into this next meeting thing, but I guess
18 it's possible that we can get a notice out and set a deadline.
19 I think in the draft we've asked the people to reply by July
20 29th. I guess I am as concerned -- have some concern that many
21 of the people that we have nominated are very busy during this
22 period of time, thinking of some of the folks that are in the
23 fishing industry and tourist industry, and I wouldn't want to
24 eliminate somebody with a tight deadline because they just
25 don't get their mail or have a chance to respond to it. But I

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1 would hope that we could get into this issue and wrap up the
2 nomination and selection process on the 3rd, if that's
3 possible.

4 MR. BARTON: Mr. Chairman.

5 MR. McVEE: Yes, Mr. Barton.

6 MR. BARTON: Yes. I assume that it's Mr. Cole's motion
7 and it included the amendment of the Charter.

8 MR. COLE: Yes.

9 MR. McVEE: Yes, it does.

10 MR. SANDOR: That was included in the second also.

11 MR. McVEE: Is there any further discussion? Is there
12 any objection to the motion? Hearing no objection, the motion
13 is passed.

14 Is there any further discussion on this item on the
15 agenda, the Public Advisory Group Membership?

16 I think we're ready then to move on to the next issue
17 of '93 Project Idea List and Restoration Team Actions.

18 MR. COLE: May I be excused at this time? I will

19 MR. GIBBONS: Yes, Mr. Chairman.

20 MR. COLE: defer to my vote.

21 MR. GIBBONS: This is Dave Gibbons. This is more of an
22 informational item than anything else. In the public package
23 and in the package that went to the Trustee Council is a
24 spreadsheet containing 1,227 ideas that we received for work in
25 1993.

26 We have categorized those ideas into six categories

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outlined in the cover letter on the package, and during the
1 last week that the restoration team has dealt with these ideas,
2 -- well, we've dealt with them all week until Friday at noon,
3 and if you'll go to page seven in that package, the package
4 that has the 1993 -- it's after the Public Advisory Group
5 nominees in the public package, it's called the 1993 Work Plan.
6 And at page seven of that you'll find a form that's entitled
7 "Initial Restoration Team Review of 1993 Project Ideas."

8 MR. McVEE: Oh, okay. I've got it.

9 MR. SANDOR: I'm still looking, Dave.

10 DR. GIBBONS: Okay. It's after the Trustee Council
11 nominees of the Public Advisory Group.

12 MR. SANDOR: The heading on it is Initial Restoration
13 Team Review of 1993 Project Ideas?

14 DR. GIBBONS: That's correct.

15 MR. MONTAGUE: Mr. Chairman.

16 MR. McVEE: Mr. Montague.

17 MR. MONTAGUE: It's page seven of the document that
18 begins like this.

19 MR. McVEE: Okay. Has everyone got it? Okay, proceed,
20 Dr. Gibbons.

21 DR. GIBBONS: Yes. The Restoration Team met last week,
22 commencing on Monday through Friday, and used this form to
23 analyze the 400 plus ideas submitted in 1993. Since we
24 completed just the afternoon of Friday, new spreadsheet has not
25 had time to have been produced. We used these factors,

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1 however, to look at the 427 ideas, and somewhere -- this is my
2 personal guess, less than a 100 met these criteria or are still
3 in the 1993 package. We'll try to get you a spreadsheet on that
4 as quickly as we can.

5 The first three factors relate to the resource services
6 injured by the Spill. We looked at every proposal in regard to
7 that. The Critical Factors, was it technically feasible to do,
8 and was it consistent with applicable federal and state laws.
9 And those were the first three criteria we used.

10 The Damage Assessment Ideas were applied strictly to
11 the first category called damage assessment. There was 12 idea
12 submitted in that category, and those were analyzed using those
13 four criteria.

14 The remaining projects were analyzed under the category
15 called General Restoration Ideas, and looking at is there a
16 restoration end-point, is it time critical to the recovery of
17 the injured resource/service; the idea to be conducted this
18 year or can we wait until a restoration plan is completed, and
19 we have a complete umbrella so we know the entire restoration
20 projects. And, three, opportunity lost if not funded in 1993,
21 and also then the fourth one, a long-term commitment. And it
22 was our idea until a restoration plan is completed that we
23 should perhaps not commit to long-term commitments of multi-
24 years and large fundings. And those were the ideas we used --
25 the criteria we used to evaluate the ideas.

25 Like I say, the new spreadsheet is being prepared now

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with the projects that were rejected, using these, and also the
1 projects that will move forward for three-page write-ups.

2 The next step in the process is to analyze the
3 remaining studies that were still in, to meet these criteria on
4 pages eight, nine, 10, 11 and 12, and there's specific
5 evaluation criteria by category that each of these projects
6 that are still remaining in the process will be evaluated by.

7 And, basically, that's where we are now.

8 MR. McVEE: I have a question, Dave. Is the criteria
9 on eight, nine, 10, and so on, are those going to be applied
10 after you look at the expanded write-ups -- the three-page
11 write-ups?

12 DR. GIBBONS: That's correct.

13 MR. McVEE: Okay.

14 DR. GIBBONS: Those will be applied to the ones that
15 are still -- that met the other criteria.

16 MR. McVEE: Okay. And the deadline for the -- which is
17 set for the detailed write-ups or the three-page write-ups, I
18 guess?

19 DR. GIBBONS: Yeah, that's early August, and we're
20 prepared to have this package to the Trustee Council for the
21 31st, or whatever date the Trustee Council sets in August. We
22 would prefer to have it towards the end. That's the only time
23 frame that we can really meet.

24 MR. McVEE: That package will have had the second set
25 of criteria applied?

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DR. GIBBONS: That's correct.

1 MR. McVEE: Jerome.

2 MR. MONTAGUE: Just to further elucidate your question
3 there. On the fourth through the seventh will be a meeting of
4 the Chief Scientists Peer Reviewers and the Restoration Team
5 and technical experts from the agencies to apply these project
6 evaluation factors to the three-page write-ups that are going
7 to be prepared between now and July 31st. So the three-page
8 write-ups are due the 31st, and then the 4th through the 7th,
9 they'll be ranked according to these evaluation packages. And
10 then based upon the comments that come out of this coordinating
11 technical review, the three-page descriptions will be modified
12 to change their technical aspects as directed by the Chief
13 Scientists Peer Reviewers, and then it will be put together
14 into a draft work plan to be submitted to you all the week
15 before the 31st meeting.

16 MR. McVEE: Members and Trustee Council, do you have
17 any questions or comments?

18 MR. BARTON: Mr. Chairman.

19 MR. McVEE: Yes. Is that Mr. Barton or

20 MR. BARTON: It looks like

21 MR. McVEE: Mr. Pennoyer?

22 MR. BARTON: a very good way to go, they're very
23 well organized. I think the Restoration Team has done a good
24 job in putting this action together for us, and I look forward
25 to the results of the review towards the end of August.

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MR. McVEE: Any other comment? Any comment on the
1 criteria or schedule?

2 MR. SANDOR: Mr. Chairman, I'm pleased to see a process
3 like this in place. I share Barton's views.

4 MR. McVEE: Any other further comment? I guess,
5 Mr. Gibbons, you don't need any actions, I understand, on this.

6 DR. GIBBONS: That's correct. We were just informing
7 the Trustee Council of the process that we're implementing.

8 MR. McVEE: You received a vote of confidence and
9 support, so I guess the Restoration Team can proceed on that
10 basis.

11 Moving to the other items, then we had two other items.
12 I believe Mr. Pennoyer had the issue of Financial Operating
13 Procedures. Let's take that one up next.

14 Mr. Pennoyer.

15 MR. PENNOYER: Mr. Chairman, yes, if I could. We have
16 had a set of Financial Operating Procedures in front of us for
17 some time now. I think the majority of that package has been
18 approved by the Trustee Council, and the pieces that are still
19 missing, I think there's only one, if I'm not mistaken,
20 outstanding piece that still has not been decided, and that's
21 an appendix; Appendix F. I don't know -- I don't think the
22 Counsel's got it in their packet in front of them, but
23 Appendix F was the one about the transfer of funds between
24 federal agencies of the NERDA accounts, and it's basically a
25 federal requirement we're going to have to sort out our

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process, and I guess we have to finalize the it, but my
1 understanding is the rest of the package is complete.

2 My question is how long are we going to take before we
3 approve this or can we put it on the August 3rd teleconference
4 agenda? It seems to me we should have these procedures
5 finalized and in front of us, and the only thing that's missing
6 currently is an appendix about how the federal government is
7 going to handle its funds internally, maybe that does not
8 preclude us from approving the agreed upon parts.

9 MR. McVEE: I guess my comment on this is basically
10 concern to us on the federal side, in that we haven't ironed
11 out exactly how that was going to be handled. We haven't had a
12 great deal of discussion at this level on that, but it's
13 possible that by the 3rd of August we could have that resolved
14 -- hopefully, we would have that resolved.

15 I think that Attorney General Cole, and he is not
16 present now, had to attend another meeting, had some other
17 language problems with the procedures involving the role of the
18 committee, and there has been some discussion about how -- with
19 the Attorney General's Office on modifying that language
20 though.

21 I guess my feeling is that I'm not ready to act today
22 on that but, hopefully, maybe by the 3rd, we could have that on
23 the agenda.

24 MR. PENNOYER: Well, Mr. Chairman, I was not
25 necessarily suggesting that we get agreement today, although if

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we could have, it would have been nice to have this out of the
1 way. But I have the need to get on with this, and I would be
2 satisfied with doing something on the 3rd, if we get to that
3 point.

4 MR. McVEE: Well, I would agree, Mr. Pennoyer, that I
5 would like to see the Financial Operating Procedures finalized
6 so they be a matter of record and provide guidance of our '93
7 program.

8 MR. BARTON: Mr. Chairman.

9 MR. McVEE: Yes, Mr. Barton.

10 MR. BARTON: Yes. What do you anticipate having by the
11 3rd of August?

12 MR. McVEE: What I would hope we could anticipate
13 having would be a final set of Operating Procedures with the
14 language involving the role of the Financial Committee refined
15 to resolve the problems that Attorney General Cole was having
16 with it, and also the federal problem of how we deal with OMB,
17 the cycle of OMB and Trustee approvals or our own trustee
18 actions -- federal trustee member action would be taken.

19 MR. BARTON: You're talking about Appendix F?

20 MR. McVEE: Yes, Appendix F, plus the

21 MR. BARTON: If I understand it, Attorney General
22 Cole's concerns have been addressed at the top of page 4 of the
23 July 7 version of the Financial Operating Procedures. I would
24 advise everyone's attention to that, and hope that we could
25 move ahead. I would like to move ahead without Appendix F, if

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we still have not come to agreement on the federal side on

1 Appendix F.

2 MR. McVEE: Yeah, there was a paragraph, as I recall,
3 on the last version we looked at. It was on the bottom of page
4 5 that was also a problem. I think that was the June 23rd
5 version. I realize there are probably another version that was
6 probably published after that, I believe, but the June 23rd
7 version had a paragraph that was creating problems that
8 addressed OMB -- federal OMB and the role of the trustees --
9 federal trustees.

10 MR. BARTON: Yeah, I'm informed that that also has been
11 addressed at the bottom of page five, the July 7 draft.

12 MR. McVEE: July 7th -- 7th draft?

13 MR. BARTON: Yes, that's right.

14 MR. McVEE: That was the draft that followed

15 MR. SANDOR: The latest version.

16 MR. McVEE: the latest version.

17 MR. BARTON: Now, the July 7th, I'm told, is the latest
18 version.

19 MR. McVEE: What do you want to do -- what do the
20 members want to do with this; just put it on the agenda for the
21 August 3rd teleconference meeting?

22 MR. BARTON: Yes, I think so. That's what I'd like to
23 do, with or without Appendix F.

24 MR. McVEE: Okay.

25 MR. BARTON: I'll second that. I guess I can't vote.

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MR. PENNOYER: I agree.

1 MR. McVEE: Dr. Gibbons, did you hear that discussion
2 on

3 DR. GIBBONS: Yes, I did.

4 MR. McVEE: the agenda item for the 3rd? Is
5 there any further discussion on Financial Operating Procedures?
6

7 The item that I wanted to talk about was cleanup costs.
8 And in December of '92 -- or December of '93, we will -- no,
9 December '92, the accountant will be receiving the 150 billion
10 payment, less cleanup costs incurred by Exxon for this past
11 year.

12 One of the things, I think, we have to think about is
13 how those costs would be audited, and one option we would have
14 would be to ask Coast Guard, which has not been done at this
15 point, but ask the Coast Guard to provide that audit. The
16 other option, I guess, would be to mobilize and do that audit
17 under the auspices of the Trustee Council. But it seems like
18 it would be very desirable to audit those costs before the
19 payment is made. It's not that it couldn't be done afterwards,
20 and certain credits, you know, could be made and so on, but it
21 seems it would be advantageous to audit those costs so that
22 we'd have a precise number for Exxon for that December payment.

23

24 I guess I would propose that we contact Coast Guard and
25 ask them if they're prepared to do that or if they have done

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that.

1 Is there any thoughts on that?

2 MR. BARTON: Mr. Chairman.

3 MR. McVEE: Yes.

4 MR. BARTON: Yes, I think that's an excellent idea.
5 I'd suggest that the Trustee Council ask the Coast Guard to do
6 that.

7 MR. SANDOR: I'll second the motion.

8 MR. McVEE: A motion has been made and seconded that
9 the Trustee Council ask the Coast Guard to provide an audit of
10 the Exxon expenses for the 199- -- what is it, the '92 cleanup?
11 Yes.

12 Any further discussion? '91 and '92 cleanup. Is there
13 any objections to the motion? Hearing no objection, the motion
14 passed.

15 Are there any other items for discussion or action at
16 this time?

17 MR. BARTON: Mr. Chairman.

18 MR. McVEE: Yes, Mr. Barton.

19 MR. BARTON: I move that we authorize the interim
20 administrative director to investigate and evaluate some decent
21 teleconferencing system and come back in 60 days with a
22 recommendation to the Council.

23 MR. ROSIER: Second the motion.

24 MR. McVEE: All in favor -- there's no objection to
25 that.

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MR. BARTON: Only one, Dr. Gibbons. That's fine.

1 Good.

2 MR. McVEE: Any other items? Do you want to talk about
3 next meetings before we recess? You have public comment period
4 from 1:00 o'clock to 2:00.

5 Dr. Gibbons, can you outline what your proposal is for
6 Trustee Council meetings -- future meetings?

7 DR. GIBBONS: Yes. The proposal that we had was to
8 hold an August 3rd teleconference to discuss any public
9 comments on the administrative costs of the budget. Those have
10 been shipped out mid-June. I have not received any comments
11 concerning those administrative costs, and so the August 3rd
12 date is still -- is very flexible. I'm not sure, you know, if
13 I will receive any comments, but to date, I'm not aware of any
14 comments on the administrative budget.

15 MR. McVEE: Shall we do that meeting by teleconference?
16 We've added two more subjects to that agenda. I guess that's
17 the question, the action on the PAG nomination and the
18 Financial Operating Procedures.

19 MS. RUTHERFORD: Mr. Chair?

20 MR. McVEE: Yes.

21 MS. RUTHERFORD: It's Marty, for those of you in
22 Juneau. I am not convinced at all we'll be able to get a turn
23 around on the conflict statements from the Public Advisory
24 nominees by that date. It's the 20th now. That's less than
25 two weeks. Even if we got -- and I intend to get the letters

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out today. I'm not convinced we don't get them. Some of the
1 locations will take a week to get there, that's the 27th. I
2 just don't think we can get them back in time.

3 MR. McVEE: What kind of a problem, Dr. Gibbons, do we
4 create if we delay that meeting for a week? I'm sure maybe
5 scheduling problems, but do we create problems concerning our
6 next request to the court for funds, that type of thing, the
7 scheduling of that?

8 DR. GIBBONS: Forgive me. The last Trustee Council
9 meeting we built into the 1993 review process some review by
10 the Public Advisory Group. That looks like that will not
11 occur. That will be a problem. I don't think we'll make it
12 now. Personally, I think it's too late to get that group
13 formed and get the meeting, so that would be a concern. That
14 group's review of the '93 package.

15 MR. McVEE: Yeah, I don't think that we can form that
16 --get that group formed fast enough to do that.

17 What are the wishes of the Council and the staff then?
18 August 3rd, the next Monday would be August 10th. Are there a
19 lot of scheduling problems?

20 MR. BARTON: Mr. Chairman, I'll be out of the country
21 on August 10th myself. The first time I'd be back would be the
22 week of August 17th or 24th and 31st.

23 MS. BERGMANN: Mr. Chair.

24 MR. McVEE: Yes, Pam Bergmann.

25 MS. BERGMANN: If I recall, there was something in

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request to the court about the Trustee Council taking actions
1 on the administrative portions of the budget, right around
2 August 3rd, so my question is do we need to have a Trustee
3 Council teleconference to address that particular issue so
4 we're consistent with what we indicated to the court we would
5 be doing.

6 MR. BARTON: Mr. Chairman.

7 MR. McVEE: Yes, Mr. Barton.

8 MR. BARTON: Yeah, I thought we had agreed to that
9 administrative cost budget subject to public comment. If we
10 have no public comment it would seem like the approval would
11 just stand.

12 MR. McVEE: I think that's true. It was approved, as I
13 recall, by the Trustee Council, subject to public comment.

14 MS. BERGMANN: What's the -- Dave, what's the deadline
15 again for receiving comments?

16 DR. GIBBONS: Today.

17 MS. BERGMANN: Today.

18 MR. McVEE: We have received no comments as of this
19 morning, okay. I guess my suggestion would be to stay with
20 that teleconference date. If we don't have responses back from
21 PAG nominees, then we may have to schedule something in
22 addition to that and handle that matter.

23 MS. RUTHERFORD: Mr. Chair. I would have suggested
24 that we fax them out, but I know, from having contacted them
25 for other reasons, that there's a good third of them that don't

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have access to fax machines.

1 MR. McVEE: Yes. It would be later in the month.
2 Mr. Sandor.

3 MR. SANDOR: Well, I think we should stick with this
4 August 3 teleconference date, and if we do not have all of the
5 contacts and responses, which we may well not have, we can
6 still make them subject to the submission of a satisfactory
7 ethics and financial disclosure statements. We really should
8 get on with it.

9 MR. PENNOYER: Mr. Chairman, if that's the case, I'm
10 not sure how we'll be in a different position on August 3rd
11 than we are now. We don't have them in front of us now either.
12 Maybe what we should do is go ahead and just keep the August
13 3rd date and let the executive director take a look at what
14 we've got back by then and see how it's coming, and cancel it
15 if it isn't going to work.

16 MR. McVEE: I think we will have at least an issue,
17 hopefully, two to deal with by that time and we should proceed
18 with that at the August 3rd teleconference.

19 Dave, I guess

20 MR. PENNOYER: Mr. Chairman, what are the other two
21 issues? I mean the Financial Operating Procedures we need to
22 do, but they're not -- I guess I'd just as soon see them done
23 but if not, take half a day, if we get sort of the type of
24 coordination we've got at this session. If you don't have the
25 Financial -- we don't have the PAG group back, then I'm not

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sure the other issues warrant holding a separate meeting. See
1 what I mean?

2 MR. McVEE: I think that if we just have the
3 administrative budget to deal with, and it sounds like we may
4 not have that to deal with if we don't have any public
5 comments, and the Financial Operating Procedures, it seems like
6 we could deal with either or both of those on a teleconference
7 without any problem.

8 I would suggest that we go ahead and proceed with the
9 teleconference and

10 MR. BRODERSON: August 3?

11 MR. McVEE: August 3. What would be the next meeting
12 date then, Dr. Gibbons?

13 DR. GIBBONS: The next meeting date is August 31st. It
14 will be a full meeting, but it will deal with many factors.
15 The two factors it's going to deal with is the Habitat
16 Protection Project, and the 1993 draft Work Plan. Those are
17 the two major factors of that meeting.

18 MR. SANDOR: Is that a one day meeting?

19 DR. GIBBONS: Hopefully.

20 MR. McVEE: Yeah. I'm getting hand signals from the
21 staff here, Dr. Gibbons, that says that we better schedule it
22 for two, and I guess my concern was that the involvement and
23 the time that it took to put the '92 proposal together, it
24 might take two days.

25 Any thoughts of Council members on that?

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1 MR. BARTON: I would hope we could get it all done in
one day.

2 MR. McVEE: We could try for the ultimate.

3 MR. BARTON: Sounds like a beer commercial.

4 MR. McVEE: Okay. Maybe that would help. Any other
5 thoughts on the meeting?

6 DR. GIBBONS: Mr. Chairman.

7 MR. McVEE: Yes.

8 DR. GIBBONS: This is Dave Gibbons again. If we start
9 --I know there was some concern that we started the last day's
10 meeting at 8:00 o'clock. What time would the Trustee Council
11 like to start the meeting on the 31st?

12 MR. McVEE: I'll let the Juneau

13 DR. GIBBONS: It's going to go for two days. I'd start
14 on 9:30 or something on Monday and just go into Tuesday.

15 MR. PENNOYER: If it's going to take two days, let's
16 accommodate a Monday morning flight from Anchorage to Juneau.

17 MR. McVEE: I think you have agreement among the other
18 two Juneau members here. Any other items before we recess?

19 MR. SANDOR: The August 3 teleconference is a
20 continuation of this meeting?

21 MR. BRODERSON: It has to be.

22 MS. RUTHERFORD: Why?

23 MR. BRODERSON: Because there isn't time to announce
24 it. We aren't allowed to be adjourned; it has to be recessed.

25 MR. McVEE: Juneau, did you hear that discussion?

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MR. PENNOYER? No, I did not.

1 MR. McVEE: Well, the question of Commissioner Sandor
2 is the August 3rd meeting had to be a continuation of this
3 meeting, and the staff replied that yes, there was not enough
4 time to get out a public notice to adequately inform the public
5 of a new meeting.

6 MR. BARTON: Fine.

7 MR. McVEE: With that then, we'll recess. We'll return
8 at 1:00 o'clock? Well, we're scheduled for 1:00 on the
9 schedule, so 1:00 o'clock for the public comment period.

10 MR. BARTON: All right. Thank you.

11 MR. McVEE: Thank you.

12 (Off record - 12:03 p.m.)

13 (On record - 1:00 p.m.)

14 MR. McVEE: Are you on line now? Steve Pennoyer,
15 Mike Barton, can you hear us?

16 MR. PENNOYER: Yes, Curt, loud and clear.

17 MR. McVEE: Okay, you're coming through. Let's
18 reconvene the meeting of the Trustee Council. At this point,
19 we're ready to take one hour for public comment. This is not
20 teleconferenced, so it would only be those present here in
21 Anchorage, I guess, that have comments to make. And so with
22 that, is there anyone that wants to be first? It's a matter of
23 raising your hand or coming forward. Yes, sir.

24 MR. COUMBE: Hi. I'm Mike Coumbe. I'm with the
25 Katchemak Bay Citizens Coalition. And the -- did you need

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any more identifying information from me?

1 MS. BERGMANN: How do you spell your last name?

2 MR. COUMBE: C-o-u-m-b-e. And just to let you know,
3 the Katchemak Bay Citizens Coalition is interested in one issue
4 only, and that is the protection of Katchemak Bay State Park
5 and the boundaries that were set aside by the State of Alaska
6 back in 1970 when the Legislature passed a law protecting the
7 state park.

8 And just to let you know what -- you may already know
9 through the newspapers that -- and that is that currently the
10 24,000 acres that Seldovia Native Association owns within the
11 lands that were set aside for the park, and the land that
12 Timber Trading Company has the rights to cut trees on, and the
13 land that the Cook Inlet Region Incorporated has subsurface
14 rights to within the park -- designated park land, currently
15 there is no agreement to protect that land.

16 And I realize that the Trustee Council is here to
17 protect lands that are -- or in the land acquisition program is
18 to protect lands that were affected by the Exxon Valdez Oil
19 Spill. That property, while just the beaches of the park were
20 lightly oiled, the lands within the state park are, according
21 to the Attorney General, in his opinion to Governor Hickel,
22 they are lands that support the marbled murrelet, which is a
23 bird that was heavily affected by the Oil Spill.

24 Anyway, the state park is threatened. The logging
25 company is going to go ahead with their plans to seek permits

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to log on the state lands -- not the state lands but on the
1 lands within the state park. And the \$11 million that we
2 originally asked the Council for to buy back these three
3 parties' interests within the state park now balloons to quite
4 a considerable amount more. It would at least include the 22
5 million that was the agreed upon sale price. But at this
6 point, it's -- we're not that sure that there is an agreed upon
7 sale price.

8 So, I would just like to say that the quicker this
9 process of determining what lands can be acquired by the
10 Council, the quicker that process can proceed, the more likely
11 we are to come to an agreement with the parties on a price that
12 the Council can afford. Afford isn't the right word, but
13 anyway.

14 The Katchemak Bay Citizens Coalition is willing to work
15 with the Council in whatever capacity we can to see that the
16 Katchemak State Park lands are protected, and whatever you --
17 you know, whatever help we can be to you, we would definitely
18 like to serve that purpose.

19 MR. McVEE: Thank you, very much for your comments.
20 One question. Do you have any sense of how long it will take
21 the timber companies to obtain their permits?

22 MR. CUMBE: That isn't determined at all. I talked
23 with the person at the Division of Governmental Coordination on
24 Friday to ask her where the permit process stood. She said
25 there had been no action since -- no real action with her

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office since January. But it -- for me to give you a guess, I⁴⁸
1 really don't know. I mean, I've heard anywhere from -- well, I
2 really do not actually know how long that process would be.

3 MR. McVEE: Wait for a moment here.

4 MR. COUMBE: Okay.

5 MR. McVEE: (Pause) For the benefit of John, Mr. Cole,
6 Mr. Coumbe, Katchemak Bay Citizens Coalition, is speaking with
7 the issue of Katchemak Bay State Park. We're just talking
8 about the permit process and how long it might take to acquire
9 -- for the timber logging company to acquire a permit so I can
10 get some kind of a sense of a time frame that's critical here.

11
12 Were there any other questions? Yes, Mr. Rosier.

13 MR. ROSIER: Thank you, Mr. Chairman. Mike, you made
14 the linkage here with the marbled murrelet and its nesting
15 habitat. Are there other species in your mind that are in this
16 area that this area provides critical habitat for that were
17 damaged by the Spill?

18 MR. COUMBE: I'm not a biologist in any sense of the
19 word. I don't -- myself, I don't know. There might be other
20 people in the -- that work with the coalition that would be
21 able to give that information, but I don't know.

22 MR. COLE: Mr. Chairman.

23 MR. McVEE: Yes, Mr. Cole.

24 MR. COLE: Would you summarize his testimony so I would
25 have the benefit of it, please?

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MR. COUMBE: Sure. My name is Mike Coumbe, by the way,
1 and I'm with the Katchemak Bay Citizens Coalition, and I was
2 just explaining that the sole purpose of the Coalition is to
3 protect state park lands. And I did mention a letter that you
4 wrote to Governor Hickel regarding the Katchemak Bay State Park
5 and that you mentioned that the marbled murrelet was affected
6 on state park land, and that because it was damaged by the Oil
7 Spill, I realize that that's part of the process that this
8 Council has to go through, is determining what species affected
9 by the Oil Spill -- also are affected on the land that you're
10 talking about acquiring. And also that we in the Coalition are
11 willing to work with the Council in whatever way possible. If
12 you need assistance regarding the state park, we'd be willing
13 to comply with whatever your needs are.

14 MR. McVEE: Do Council members have any questions or
15 comments? Juneau?

16 MR. PENNOYER: No, that's fine, Curt. We're here.
17 Thank you, very much.

18 MR. McVEE: Juneau is still there. Well, thank you,
19 very much.

20 MR. COUMBE: Thank you.

21 MR. McVEE: We worked backwards on that effort.

22 MR. COUMBE: Yes, we did.

23 (Off record comments)

24 MR. McVEE: Is anyone else present who wishes to make
25 comment? Yes, come forward, please.

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MR. HARUN: My name is Kevin Harun. Can you hear me
1 okay? I'm the executive director of the Alaska Center for the
2 Environment. And I represent many members throughout
3 Southcentral Alaska, including members who live in the Sound
4 and other parts of Alaska.

5 On behalf of our membership, I just wanted to thank you
6 all for this opportunity today because we feel that it's really
7 important that the public process continue, and I think we'll
8 get a lot more ideas out of that public process, and we thank
9 you very much for this opportunity, and other opportunities.

10 You know, sitting back this morning, watching the
11 Counsel in action, I was struck by the importance of the
12 decisions that you all are faced with, that you all are very
13 much vested with a tremendous amount of power to determine the
14 course of Prince William Sound. And really I think that's what
15 this process is about, that we're really concerned that out of
16 this settlement that the healing of Prince William Sound begin.
17 And I think that's really what we're all working towards. And
18 although there might be differences of opinion on how to get
19 there, I want you to know that we in the environmental
20 community sincerely want to work with you in that process.

21 One of my concerns, in looking at the process to date
22 is that we're concerned that as the money is spent that it
23 actually go to some real good, to promoting healing of the
24 Sound. We don't want to see the money go to a massive pork
25 barrel project for the area. We don't want to see it become a

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process by which museums are established all over the place,
1 even though a museum may be perfectly appropriate.

2 The purpose is really promoting healing, and land
3 acquisition is one important way to do that, and I realize that
4 there's a criteria for establishing the acquisition. We want
5 to make sure, however, that in the process of establishing that
6 process that we don't lose lands that are eminently threatened.

7 We were very, very disappointed by the Governor's veto,
8 of House Bill 411, actually the capital monies. I realize that
9 is a separate process from this process here. But we were very
10 disappointed by that and are looking to the Council for some
11 remedy where it's appropriate, particularly with Katchemak Bay
12 State Park. I think that's one area where, you know, we can't
13 afford to lose it. And I don't mean to single that area out.
14 There are other areas that may be eminently threatened as well.

15 But we look to you to do the best job you can, and I'm
16 sure you will try. If the process is extended too long, we may
17 end up being in a bind and not actually being able to get these
18 and acquire these lands before they are logged. And so I hope
19 you will move with all due speed, as well as with carefulness
20 to make sure that it's fitting whatever criteria that is
21 determined is necessary.

22 So, that's really our message, is it's real important
23 that certain areas not get lost. We don't want to see the
24 money going just to bureaucrats and pork barrel; we want to
25 make sure that it actually goes out there. And you can leave a

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1 legacy for this area that's really important, and I think
2 that's the whole reason for the settlement, is to compensate
3 for the damage that was done.

4 Thank you.

5 MR. McVEE: Questions? Questions from Council members?

6 MR. COLE: Mr. Chairman, I'd like to

7 MR. McVEE: Mr. Cole.

8 MR. COLE: say that we appreciate the offer to
9 work with the Trustee Council. I think it would be fruitful
10 for all of us to strive together instead of having this
11 constant apparent tension between the groups, as I think all
12 these members of the Trustee Council are certainly in good
13 faith, trying to achieve the most fruitful ends. So, thank
14 you.

15 MR. HARUN: Thank you.

16 MR. McVEE: Yes, Mr. Rosier.

17 MR. ROSIER: Mr. Chairman, thank you. Kevin, you say
18 don't spend the money on pork barrel, and I don't think any of
19 us are interested in seeing that happen. Do you think,
20 however, that there's a role for good science, in terms of
21 support of the restoration projects in the Sound?

22 MR. HARUN: I think there is. You know, unfortunately,
23 there weren't a lot of baseline studies in place before the
24 Spill to know what the real impacts were, and I do think
25 science has a role to play. I guess from our membership's
26 perspective, that we would probably rate habitat acquisition as

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probably the highest, but I do think there is a role to play
1 for science as well.

2 MR. McVEE: Any other questions? Juneau, do you have
3 any questions?

4 MR. PENNOYER: Thank you, Mr. Chairman. I don't.

5 MR. McVEE: Thank you, Mr. Harun. Does anyone else
6 have public comment that they would like to make at this time?

7
8 Yes, Mr. Parker.

9 MR. PARKER: Thank you. My name is Jeff Parker,
10 speaking on behalf of the Alaska Sport Fishing Association and
11 Trout Unlimited. I just want to comment briefly upon some of
12 the suggestions for expenditures of restoration monies.

13 I'm not certain that it's in the list, but it may well
14 be that I don't identify it by the project title. But I think
15 it would be useful to have a project that focusses on inventory
16 of replacement lands for services, particularly recreational
17 use.

18 Most of the projects tend to be focussed on habitat --
19 on acquisition of lands or replacement lands of mitigating
20 habitat, and I think what is missed here is recreational
21 services, acquisition of lands for replacement services. What
22 is -- it tends to be along the line of capital improvements,
23 such as camp grounds, that kind of thing.

24 At least from the perspective of the people for whom I
25 work, that is not as desirable an expenditure as it would be to

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acquire or conserve lands that are important for remote
1 wilderness based recreational services, as you have in Prince
2 William Sound.

3 And we think it would be useful to look at the
4 inventory approach because probably a sensible decision making
5 process would depend upon the ability to compare one potential
6 acquisition, whether of title or conservation easement or
7 public access easement or whatever, against another candidate.

8 We look not only within areas proximate to where oil went, but
9 we strongly, and for a long time, urged that the concept of
10 replacement doesn't at all require that you look proximate to
11 the area that was injured.

12 And I think a previous time that I've engaged in a
13 discussion, and will reiterate portions of it here, about
14 whether or not there are lands, for example, outside of the
15 Sound, Kodiak archipelago area that provide services that in
16 some ways are commensurate or comparable with those that were
17 injured.

18 One type of candidate that was not mentioned in the
19 past is lands in the Illiamna region and Bristol Bay region
20 drainages which are very heavily used for remote dispersed
21 wilderness based recreation.

22 I see Attorney General Cole shake his head because he
23 probably thinks

24 MR. COLE: No.

25 MR. PARKER: how is that comparable? I

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1 appreciate and laugh at your own smiles on the issue, but this
2 is the way in which I think, with all due respect to Mr. Cole,
3 that I think it has some comparability. It has comparability
4 in terms of the dispersed nature of the recreational use
5 pattern.

6 The Southwest Alaska drainages are the most intensely
7 used wilderness recreation lands in the state, higher than
8 Denali National Park, for example. When you take off from the
9 fact that on Denali half of your visitor use doesn't go past
10 the gas station and -- I think it's in the low tens of
11 thousands of people who are actually in Denali, are engaged in
12 wild- -- and dispersed recreational use pattern, in that sense
13 Southwestern -- portions of Southwestern Alaska are very
14 comparable to the use pattern that you have in Prince William
15 Sound and in the Kodiak archipelago.

16 What are they focussed on? They're focussed, in large
17 part, on fisheries and game. Just as you have, similarly, in
18 Prince William Sound. What do you have? You have salmon
19 stocks, trout stocks. What did we just injure? We just
20 injured trout. We just closed trout fisheries.

21 You have some rather unique species in the area, too.
22 You have your only harbor seal -- inland harbor seal population
23 in the United States. One of six inland seal populations in
24 the world was harbor seals that we've got problems with.
25 Somewhat analogous to our trout stocks, where we have problems
with western Prince William Sound trout, and we all know that

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the Iliamna drainages are the best trout waters in the world.⁵⁶

1 Similarly, you've got one of your few inland marine
2 birds populations. We've got three in this state.

3 You have, in portions of Southwest, you have a kayak
4 based recreational use pattern, the same as you do in Prince
5 William Sound. In fact, Southwest Alaska is the only, and the
6 most popular -- I shouldn't say it's the only, but it's the
7 most popular place -- inland place for using clipper kayaks.

8 Some people say that ungulate deer were injured out in
9 Prince William Sound. Well, that's obviously of some debate
10 right now in the scientific community.

11 But what do you have? You have the third largest
12 caribou herd in the country in those drain- -- yes, I mean in
13 the country in Alaska in those drainages.

14 You similarly have in the eastern portion of those
15 drainages very good eagle values. Well, we've got some
16 injuries on eagles.

17 You -- obviously I mentioned salmon before. I don't
18 think I need say more about the salmon values in Prince William
19 Sound. We'll admit the species is different, the sockeye
20 mostly, but in Prince William Sound, mostly pink. But you can
21 certainly add a genus level, you've got identity.

22 Now, let me speak, very briefly, about what I think the
23 cost of it would be. In those drainages, you have land rich,
24 cash poor corporations. You have no trees involved, no
25 minerals. Even if you forget minerals and we're just talking

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about conservation easements and non-disposable easements, you
 1 are probably talking about beating the price or the cash inflow
 2 that would occur, say across the next 100 years of selling
 3 incremental recreational tracks, which -- for which anyone can
 4 pick a market or a number as well as I can, but I would say
 5 somewhere in the vicinity of a couple thousand lots that place
 6 would be saturated for that market.

7 What do you have to do to beat that cash flow? My
 8 guess is that on an average, across 100 years in present day
 9 value, those lots will be at the vicinity of \$1,000.00 an acre.
 10 At the front end, they're going to be much higher, but as a
 11 market saturates, they will decline. So you're talking on the
 12 order, on an average five-acre lot, assuming 2,000 lots
 13 throughout that region, you're talking on the order of \$10
 14 million in present dollars. That's a very small amount, and it
 15 shows the efficiency of doing replacement recreation lands in
 16 the Bristol Bay drainages.

17 Now, I would point out that the state has -- and you in
 18 fact acquire a lot of conservation of habitat for species that
 19 are similar to or identical to those that are injured in the
 20 Sound if you do the recreation approach, the service approach.

21 I think I was pointing out the efficiency of that type
 22 of acquisition. What do you accomplish in terms of protecting
 23 that area? You're probably talking -- there are, in private
 24 lands outside of core townships of the four villages involved,
 25 the four villages around Illiamna region are -- have about

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200,000 acres outside of the core townships. If the market
1 that you have to meet is just \$10 million worth of disposal on
2 cash flow, you could effectively -- because of the strength of
3 the state's land use plan in the Bristol Bay area plan which is
4 pretty much non-disposal throughout that whole region. You
5 would effectively create several million acres of land that are
6 conserved. It would be a very powerful acquisition in terms of
7 the benefits in the context of that larger state land use plan.

8

9 Am I being reasonably clear?

10 MR. COLE: No.

11 MR. PARKER: No? Okay. The state land use plan

12 MR. COLE: As long as you asked me, I just wanted
13 to

14 MR. PARKER: Thanks -- thanks. The state land use plan
15 and the Bristol Bay area plan, put out by DNR, is retention of
16 state lands throughout the area. By conserving the Native
17 corporate lands -- village corporate lands surrounding Lake
18 Illiamna and the drainages that feed into it, such as the
19 Copper, Gibraltar, Illiamna River drainage, the Tolerik creeks,
20 those places where corporate land has been selected, you would
21 preserve the character of that land in total, which is about --
22 for the price of conserving 200,000 acres, you would get
23 800,000 -- or eight million conserved. And in so doing, I
24 think, retain for recreational character the land as it
25 presently is.

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I'm advocating that as -- and I do think I disagree here, with all due respect to Attorney General Cole, on the question of whether or not an acquisition has to be proximate to where oil went. Replacement -- acquisitions for replacement purposes -- I say there's no criterion in the law, that I can identify, that says the replacement has to be -- or any acquisition, actually, has to be proximate to where the oil went. It has to relate to an injured service or resource. And I do think you'd agree with me on that.

MR. COLE: Let me ask this question,

MR. PARKER: Sure.

MR. COLE: as long as we're focussing on that subject. Would you say that we should buy lands in the foothills of the Sierras to preserve the services of fly fishermen there? I mean as long as there's no requirement of proximity.

MR. PARKER: I think my gut feeling is no, because the character of the -- but I stated it was a gut feeling, because I think you have to look at to define carefully what service you're talking about was injured in the Sound. I think it's a difficult argument to say that the people who utilize the Prince William Sound area will get a replacement service by buying in the Sierras. But I think it is much easier to say that the people who utilize southern coastal drainages of Alaska, including Prince William Sound and Kodiak archipelago, also utilize -- I'm quite certain of this on Kodiak archipelago

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-- also utilize the Bristol Bay drainages. And I think

1 MR. COLE: Then you would say

2 MR. PARKER: I think

3 MR. COLE: there must be a proximity to the
4 people that use those services?

5 MR. PARKER: I think what you have to do is establish
6 some linkage. I'm not saying that proximity to the people is
7 the only criterion. I think that what we're struggling with is
8 trying to put forward good proposals that bear some
9 relationship to an injury occasioned by the Spill, either to
10 resources or to services that the resources provide. I think
11 that you would probably agree that if there is valuable habitat
12 to be protected in California, for birds that utilize Prince
13 William Sound habitat, that it is reasonable to put forward
14 that acquisition in California as a candidate. My hope is
15

16 MR. COLE: The Justice Department offered that during
17 negotiations, and I said no, never.

18 MR. PARKER: I know. And I have not taken the approach
19 as no, never. I have always taken an approach of spend Alaska
20 -- generally, you'll get better matching if you focus on Alaska
21 expenditures, and I think you get better matching if you focus
22 on southern coastal drainages, because the use pattern across
23 the southern coastal drainages is much different than the use
24 pattern up on -- in the Brooks Range, for example.

25 But what I'm particularly advocating here is that you

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broaden your view within Alaska of where to -- you broaden your
1 view in two respects: One is there should be more focus on
2 acquisition for replacement services, and the other is there
3 should be a broader view as to stepping away or going beyond
4 just areas that are proximate to the Spill, because the notion
5 of replacement in no way implies that acquisition has to be
6 proximate to the Spill -- to where the Spill occurred.

7 If it replaces the service, it's a decent candidate.
8 And I think the problem is, Attorney General Cole, that there
9 are many candidate acquisitions, whether easements or title or
10 whatever, that in terms of service they are just like
11 acquisitions for a resource and a habitat in that you'll have
12 degrees of matching.

13 Nothing is going to be perfect matches. If we hold
14 ourselves to a criterion of a perfect match, we will acquire
15 nothing, either for services or for habitat, because I don't
16 think anyone has come forward with a perfect match. And the
17 reason is because everything below the high tide line, you guys
18 own anyway. But -- so you have to step beyond the high tide
19 line.

20 And I think the question is how do you reasonably
21 evaluate candidates that have varying degrees of match. And
22 what I tried to put forward is that I do encourage you to look
23 beyond just adjacent lands to where the oil went. I think
24 you'll do a much better job for both habitat and services if
25 you give yourselves that flexibility. You'll be in a much

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better negotiating cluster to begin with. I think that's a
1 very fundamental point.

2 MR. McVEE: Comments? Questions from Trustee Council?

3 MR. PARKER: None of my comments say that you shouldn't
4 acquire proximate or oil went. I'm encouraging, again, an
5 inventory of recreational service plans that have varying
6 degrees of comparability on services, whether it's wildlife
7 viewing or activity consumptive use.

8 That's the essence of my remarks.

9 MR. McVEE: I might just mention, Mr. Parker, that as I
10 understand the staff, the Restoration Team is looking at the
11 possibility of a project which would explore recreation damage
12 assessment, so I don't think there's a project yet in the
13 proposals, but

14 MR. PARKER: You may have noted that

15 MR. McVEE: that's being discussed.

16 MR. PARKER: There is a damage assessment out on loss
17 of sport fishing related recreation, and Attorney General Cole
18 may have seen it. It was just published in a treatise on
19 natural resource damages by Kevin Ward and John Duffield.

20 MR. McVEE: Juneau, do you have any questions or
21 comments? I'm not sure they're with us.

22 MR. BARTON: We're with you.

23 MR. McVEE: Okay.

24 MR. PARKER: I'm still not sure they're with us.

25 MR. COLE: With you. With us, but not with you.

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MR. PARKER: That's all right.

1 MR. BARTON: We're listening.

2 MR. McVEE: Pardon? I missed that.

3 MR. BARTON: We'll just leave it at that.

4 MR. McVEE: Okay. Thank you, Mr. Parker.

5 MR. PARKER: Thank you.

6 MR. McVEE: Further -- yes, come forward.

7 MR. TWARDOCK: My name is Paul Twardock. I represent
8 the National Outdoor Leadership School. We've been running
9 wilderness base expeditions in the Sound for over 20 years.
10 I've been out in the Sound all summer, so I'm a little behind
11 on what's going on. My understanding is you're in the process
12 of whittling down this list of possible projects for '93.

13 I guess our concerns mostly center around the
14 acquisition. We are the wilderness value of the Sound and the
15 courses that we're operating are horribly important to our
16 ability to run courses and maintain our operations out there.
17 Things that are incompatible are logging, any sort of resorts,
18 any sort of operation that restricts our use of beaches and
19 such. That's not to say that we need the whole Sound, but the
20 general idea that we like to get across is any sort of
21 acquisition or a project that enhances wilderness values help
22 us run better courses out there, and help us attract people to
23 come to Alaska.

24 I guess the other point that I'd like to make is the
25 perception of this wilderness values in Alaska of Alaska by

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1 people that are thinking about coming up here, I'd hate to see
2 someone going through and decide where they're going to go and
3 all of a sudden decide that well, golly, I heard that they're
4 sort of not doing all they can for Prince William Sound, I'll
5 go somewhere else.

6 That's sort of the wilderness perception out in the
7 Sound of Alaska as a whole. That includes things like logging
8 in a state park. I'd hate to have to defend that when I went
9 Outside to promote our business. Well, I heard you guys did
10 this, what about that. It's something that would be tough to
11 explain.

12 And that's pretty much all I wanted to say for remarks.

13 MR. COLE: Mr. Chairman.

14 MR. McVEE: Yes, Mr. Cole.

15 MR. COLE: Let me ask this question. Here's one of the
16 things that really troubles me.

17 MR. TWARDOCK: Uh-huh (affirmative).

18 MR. COLE: We all know, read and are familiar with the
19 concerns of the environmental groups about logging in Prince
20 William Sound. And we're constantly asked to utilize Exxon
21 Valdez funds to protect the habitat from logging. Right?

22 MR. TWARDOCK: Uh-huh (affirmative).

23 MR. COLE: Now, what troubles me is where were the
24 environmental groups when Congress was enacting legislation to
25 convey these lands to Native corporations, free of restrictions
on logging? I mean, you know, how did this happen that there

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are no restraints in those deeds to preclude the Native
1 organizations from logging those lands. It seems to me that
2 the environmental groups at that time should have raised this
3 human cry and saying don't allow it, these lands to be conveyed
4 free of restrictions, covenants running with the land, if you
5 will, on these lands. That's what troubles me. Do you have an
6 explanation?

7 MR. TWARDOCK: No, I'm not

8 MR. COLE: Who has that explanation?

9 MR. TWARDOCK: I'm not totally familiar with the
10 history of it. I know that they were in there and as can be
11 things in like Denali Lodge (ph) Wilderness Study Area, we
12 still support that kind of thing. And I'm not quite sure -- I
13 know there is quite a few battles fought over Knight Island,
14 and obviously someone lost.

15 MR. COLE: You know, people come to us as Trustees and
16 say, you know, you've got to save these lands. But the time to
17 save those lands from logging was at the time this enabling
18 legislation was passed.

19 MR. TWARDOCK: Well, maybe we're just persistent.

20 MR. COLE: I hope so. Anyway, I just want that -- you
21 know, that's a concern of mine.

22 MR. TWARDOCK: I don't know what happened back there.
23 I know that -- you know, people fought that battle, and for
24 whatever reason it came out the way it was, and here we are
25 again. I mean, I know from our perspective or from those

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perspectives, it's a concern now. I mean, it's a concern for
1 the fact -- and it's not necessarily logging, it's any sort of
2 activity that sort of degrades the wilderness value affects our
3 courses -- affects our ability to run -- affects us to employ
4 people up here. You know, I'm just throwing that out.

5 MR. McVEE: Thank you. I guess I have a question in
6 that the, you know, the Sound is a large area.

7 MR. TWARDOCK: Right.

8 MR. McVEE: Do you -- and I understand what you're
9 saying of the perception, I guess, of the public that it is
10 primary wilderness, a pristine kind of areas is advantageous to
11 your program, but the question is, you know, how much area do
12 you need to have an effective program and do you utilize
13 private lands as well as public lands, federal and state lands
14 within the Sound?

15 MR. TWARDOCK: Yes. We use all three. We pay fees to
16 Chenega Village Corporation and Chugach and to the Forest
17 Service. I think we're actually one of the few people that
18 actually do all that. And, you know, as far as the amount of
19 area, we've talked a lot about this since the Spill, and we're
20 looking at and doing quite a bit of analysis last winter of
21 what areas we've used in the last 22 years. And looking at
22 corridors that we could -- we're going to be very defensive
23 about. And corridors of travel that are very important to
24 destinations, whether it's Icy Bay, whether it's Harriman
25 Fjord, Knight Island, you know, specific destinations, and once

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we get to those destinations then we need an area that's fairly
 1 well preserved. What happens in those corridors, outside of
 2 those corridors, you know, have a lot of flexibility there.
 3 But I think, for instance, right now there's a road being built
 4 on Montague. That's out for us. Quite a bit of the area
 5 between Valdez and Cordova has either been logged or being
 6 logged, so we can't use that area. The areas right around
 7 outside of Whittier, again, you know, that's area we don't have
 8 any qualms with that if the City of Whittier and the state have
 9 plans for, you know, that's also their priority. But the area
 10 is slowly shrinking. That's what we see, that we have the
 11 ability to use. It concerns us. We'd like to be there another
 12 20 years, still using the area.

13 MR. McVEE: I'm sure you have some information, you
 14 know, that you talked about that would be very useful to us in
 15 the development of the Restoration Plan process that now is in
 16 progress. I hope that you would participate in that process
 17 and comment.

18 MR. TWARDOCK: Yeah, it's tough in the summertime,
 19 'cause we're all out making money, but -- as much as I can, you
 20 bet. Love to.

21 MR. McVEE: Any other questions? Juneau folks, do you
 22 have any questions or comments?

23 MR. PENNOYER: No. Thank you, very much for the
 24 testimony.

25 MR. TWARDOCK: All right. Thanks.

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MR. McVEE: Other public comment? Yes. Please come
1 forward.

2 MS. LANE: My name is Dee Lane, and I'm not here
3 representing anyone except myself. And I want to address the
4 17(b) easement identification and marking, because I think if
5 this is done on Native corporation lands, that you will find
6 that some of the problems that some of these people that have
7 just spoken will be resolved.

8 For the most part, these easements, that I know of,
9 none of them are marked in Prince William Sound. But there are
10 a lot of them. And they go from the mean high tide line, up
11 and through various regular corridors that have been used or
12 are needed for use. If these are marked, and I'm sure you've
13 heard a lot of comment about this in the past, then people will
14 know where they can go. At the present time, they can go along
15 the coast and they can't tell what rights they have.

16 Of course, I'm speaking to you, Mr. McVee, because you
17 know all this stuff already. Well, having been with the BLM so
18 long.

19 I also want to address a comment that you asked,
20 Mr. Cole, the original Alaska Native Land Claims Settlement
21 Act, the -- each village corporation had to select a core
22 township. That's where the village was located. They also had
23 rights to a specific amount of land based on the number of
24 people in their population. And because most of the land we're
25 talking about was in the Forest Service, it was in previous

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years logged. I mean, that's what the Forest Service did,
1 right? They logged some of the land in their area. So in the
2 Prince William Sound area, for example, it was -- you know, US
3 forest. So there would be no reason for it to be withheld.
4 Also, the aboriginal rights were considered paramount because
5 they were first. So other rights were not as important.

6 Thank you.

7
8 MR. COLE: Well, I want to say I remain troubled.
9 Congress could well have imposed restrictive covenants and
10 logging of that land. Not only in the regional corporation
11 lands but certainly around villages -- easily could have put
12 those restrictions in. You know, and somehow it almost
13 troubles me that if Congress, as a matter of national policy
14 said these lands may be logged, implicit in the conveyance
15 without restrictions, isn't it? Then why should the Trustee
16 Council, other than to protect habitat or damage to resources
17 caused by the Spill, we should be implicitly or forwarding
18 implicit congressional policy by saving these lands from
19 logging. And that fundamentally troubles me. That doesn't
20 mean that I'm opposed to the acquisition of "habitat," but it
21 does trouble me why this was allowed to happen.

22 MS. LANE: I think if you were here at the time, it was
23 a very propitious time for the Alaska Native, and they -- the
24 rights that they felt were inherent were those without
25 restrictions, for the most part, and a lot of people at the

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time felt that there shouldn't be lots of restrictions on these
1 lands. MR. COLE: Well, then if they thought it at the time,
2 they'd still think it.

3 MS. LANE: Times change. And most of the discussion
4 was in the late '60s on this issue, so we were just at the time
5 of when we discovered oil in Cook Inlet -- I mean, things were
6 entirely different. In those days, people were still kind of
7 hoping people would come up and live here. I mean that's
8 just

9 (Indiscernible - simultaneous speaking)

10 MS. LANE: It's a totally different era, then and now.
11 I won't take any more of your time unless you have questions.

12 MR. COLE: Thank you.

13 MR. McVEE: Do you have any questions from Council?
14 Thank you, very much. Further public comment?

15 MR. PARKER: I'll respond on Attorney General Cole's
16 question, if he wants me to, about the Native Claims Settlement
17 Act, Section 22(k) is what we're talking about.

18 COURT REPORTER: Mr. Parker, would you -- excuse me.
19 Step up to the microphone, please.

20 MR. PARKER: Thank you.

21 MR. COLE: Let me say this. Commissioner Sandor, and I
22 personally, and maybe perhaps (indiscernible) early has another
23 meeting soon, but we would like to hear you talk, if you can
24 keep it to a thousand words, please.

25 MR. McVEE: We need to adjourn at 2:00 o'clock.

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MR. PARKER: That's pretty hard. That's 500 right
1 there. Section 22(k) of the Settlement Act is what you have to
2 talk about, and that provided a restriction on timber lands
3 conveyed from the Forest Service to village and regional
4 corporations. The section provides that the corporations were
5 required to adopt a land -- and as I recall for the Forest
6 Service to approve, I may be wrong on that point, but a timber
7 management plan for a sustained yield purposes.

8 The restriction had a duration of 12 years. There were
9 arguments about whether or not -- and I was involved in some of
10 these arguments and a bit of litigation on it -- Sierra Club,
11 or at least several groups in Southeast Alaska represented by
12 Sierra Club Legal Defense did litigate the 22(k) issue.
13 Primarily, when the restriction -- I expect John Sandor, you
14 probably recall this. The key issue was when it commenced
15 whether at the date of conveyance or at the date of enactment
16 of the Settlement Act, obviously date of conveyance came much
17 later. As I recall, the decision on at least one of the
18 appeals on 22(k), before the Interior Board of Land Appeals --
19 and I don't know whether it went to court or not, but was
20 commenced at the Settlement Act.

21 Hence, very rapidly the effect of 22(k) was exhausted
22 as a 12-year restriction. And pretty much because of the
23 non-enforcement by the federal government -- that's right, that
24 guy -- because of -- nothing there, just responding to Attorney
25 General Cole's pointing of a finger. Because of the

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1 non-enforcement of 22(k), the effect was that the timber was
2 not managed for sustained yield purposes or under that
3 restriction.

4 And we now -- as I'm certain several of you know, we
5 have a number of corporations that have totally logged within a
6 few years of logging off their land. They were under a
7 sustained yield requirement that was of limited duration, and
8 the environmental community did try and pursue the issue.

9 And in final hindsight as to why the environment
10 community wasn't very effective at the time of passage of the
11 Settlement Act, it was really only as a national move --
12 beginning with Earth Day in 1970, it was a very young movement
13 still as a national entity.

14 MR. McVEE: Thank you.

15 MR. COLE: We'll talk more about it later.

16 MR. PARKER: All right. I'm sure.

17 MR. McVEE: I guess I'll make one more call for any
18 other public comment. No other public comment?

19 Two other items that I thought about, and this is maybe
20 primary for the RT and for Dave Gibbons is it would be of
21 interest in some future meeting would be the Coast Guard plans
22 on how they would handle the cleanup operations and the
23 identification of Exxon Valdez Oil, and that would give us a
24 chance to reflect upon how this might impact Trustee Council
25 and the future use of joint funds.

And then, I think, that we probably need a status

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report -- should have a status report at the next meeting,
1 briefly on the process of hiring a -- the executive director or
2 administrative director.

3 Is there any other items that other members have that
4 they want to bring up at this time? Juneau, do you have any
5 other items, any comments?

6 MR. PENNOYER: From Pennoyer. Thank you, very much,
7 and we'll be looking forward to talking to you on the 3rd of
8 August.

9 MR. McVEE: Mike Barton, any additional comments or
10 suggestions or ideas?

11 MR. BARTON: No. I move we adjourn.

12 MR. McVEE: I understand that we will have to recess,
13 and I'll assume that your motion is to recess.

14 MR. BARTON: Do whatever we need to do.

15 MR. McVEE: Okay. Is there a second to the motion to
16 recess?

17 MR. SANDOR: Second.

18 MR. McVEE: We're recessed till August 3rd. Thank you,
19 everyone.

20 (Off record - 2:00 p.m.)
21 (END OF PROCEEDINGS)
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R & R COURT REPORTERS

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1 UNITED STATES OF AMERICA)
2 STATE OF ALASKA) ss.

3 I, Rebecca Nelms, Notary Public in and for the State of
4 Alaska, residing at Anchorage, Alaska, and Reporter for R & R
5 Court Reporters, Inc., do hereby certify:

6 THAT the annexed and foregoing is a Transcript of the
7 Teleconference Meeting of the Exxon Valdez Oil Spill Settlement
8 Trustee Council, taken on the 20th day of July, 1992,
9 commencing at the hour of 10:00 o'clock a.m., at the Simpson
10 Building, 645 G Street Building, Anchorage, Alaska;

11 THAT this Transcript, as heretofore annexed, is a true
12 and correct transcription of the proceedings, taken by Meredith
13 Downing, and thereafter transcribed by Laurel L. Kehler.

14 IN WITNESS WHEREOF, I have hereunto set my hand and
15 affixed my seal this 23rd day of July, 1992.

16
17 REBECCA NELMS
18 Notary in and for Alaska.
19 My commission expires: 10/10/94
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25

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