

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

**EXXON VALDEZ OIL SPILL SETTLEMENT
Trustee Council**

Simpson Building
645 "G" Street
Anchorage, Alaska
September 21, 1992
8:30 o'clock a.m.

IN ATTENDANCE:

- | | |
|--|---|
| United States Forest
Service, Alaska Region | MR. MICHAEL A. BARTON
Regional Forester |
| State of Alaska
Attorney General | MR. CHARLES E. COLE |
| United States Department
of the Interior
Secretary | MR. CURTIS McVEE
Special Assistant to the |
| National Marine
Fishery Service | MR. STEVEN PENNOYER
Director |
| Alaska Department of Fish
and Game | MR. CARL ROSIER
Commissioner |
| State of Alaska Department
of Environmental
Conservation | MR. JOHN SANDOR
Commissioner |

* * * * *

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

P R O C E E D I N G S

1 (On record - 8:37 a.m.)

2 MR. PENNOYER: I'd like to get this started, if you're
3 ready, gentlemen. This is a continuation of the meeting
4 recessed on September 14th of the Exxon Valdez Oil Spill
5 Trustee Council. All Trustee Council members are present, and
6 we have an agenda today that is the '93 Draft Work Plan; the
7 Status Report on the Walcoff EIS Contract; and a Public Comment
8 Session, scheduled for 4:30 to 6:00 this afternoon.

9 I'd like to finish this agenda today, and if we finish
10 early, I'd like to even start the public hearing earlier this
11 afternoon -- we could at least start it here in Anchorage
12 since, I think, the teleconference net won't come on until
13 4:30.

14 So, if anybody has additions to this agenda that they
15 would like to propose at this time? If not, we can start down
16 through it and pick things up during the course of the meeting
17 and add to it, if we feel it's necessary.

18 The first item on the agenda is the '93 Work Plan. At
19 the last meeting we were handed a couple of large notebooks
20 which, because of shortness in time, most of the Trustee
21 Council members have not had a chance to review. For that
22 reason, we recessed the meeting to reconvene today for this
23 specific purpose. I hope you've all had a chance to go through
24 it.

25 At the last meeting Mr. Gibbons presented us some lists

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

of criteria that we used for the Work Plan. Are there any
1 other documents appropriate to that? Mr. McVee, you're passing
2 something out to us.

3 MR. McVEE: That came from Mr. Gibbons, but

4 MR. PENNOYER: Oh, it came from Mr. Gibbons. Okay.

5 MR. McVEE: I'd like to make a comment before we go into
6 the

7 MR. PENNOYER: We're one short, Mr. Gibbons, on that
8 handout.

9 DR. GIBBONS: I'll get some copies made -- an additional
10 copy. I have one.

11 MR. PENNOYER: Okay. Well, we can share. So,
12 Mr. McVee.

13 MR. McVEE: Yes, Mr. Chairman. I'd like to make a
14 comment and then conclude that with a motion.

15 Trustee Council operates under the State of Alaska's
16 Open Meeting Law, and I think we need to build within our
17 schedule or to set deadlines for preparation of submission of
18 material to be considered at our public meeting. If we cannot
19 meet those deadlines, the item can be removed from the agenda.
20 I think the public is entitled when it serves to focus
21 comments to be more useful to the Trustee Council if the
22 materials are available in advance.

23 I think we are all very serious about the public
24 comments that we receive at each meeting, and we as Trustee
25 Council members need this information in advance to prepare for

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

our meetings, and these advance materials should also be on
1 file at OSPIC, and, therefore, I'd like to move that the
2 Trustee Council procedures requires supporting materials for
3 agenda items must be provided to the Trustee Council and made
4 available to the public at least five days in advance.

5 MR. PENNOYER: A second for discussion then?

6 MR. SANDOR: I'll second it.

7 MR. PENNOYER: Any discussion? Mr. McVee, how inclusive
8 is that recommendation? A lot of things -- we get materials
9 on, like a letter or something or a short document at the time
10 of the meeting?

11 MR. McVEE: I mean the basic handout materials that are
12 provided to the Trustee Council prior to their meetings to take
13 action on for information purposes. Granted, there may be
14 correspondence or something of that nature that we can deal
15 with, but maybe there has to be some judgment -- there should
16 be some judgment exhibited, but I feel like the public does not
17 have this information in advance, or if we as members of the
18 Trustee Council do not have it in advance, we cannot do justice
19 and the public cannot have the information they need to make
20 comments on.

21 MR. PENNOYER: Mr. Cole.

22 MR. COLE: I think the thought is salutary, but I wonder
23 if five days is enough. In the first place, we need more time
24 to be able to prepare for these hearings, based upon,
25 particularly, the quantity of materials which we receive, such

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

as this, number one. Number two is I think that the public is⁵
1 in the same fix. They need a little more time than just five
2 days to be able to review these materials and make comments to
3 us, if need be, via telephone call, via fax, as to evaluate it.

4 I would suggest we lengthen the time.

5 MR. PENNOYER: Further comment? Mr. Ros- -- Mr. Sandor
6 first.

7 MR. SANDOR: Well, if Mr. McVee would be agreeable, I
8 would propose that we insert in the motion prior to the word
9 backup materials -- primary backup materials, and then to
10 accommodate last minute materials that might legitimately come
11 along, and then propose the extension of the time period to 10
12 days, as opposed to five.

13 Do you agree?

14 MR. McVEE: I would agree to insert the word primary
15 supporting material for agenda items, and 10 days in lieu of
16 five days.

17 MR. PENNOYER: Mr. Rosier.

18 MR. ROSIER: Thank you, Mr. Chairman. Yeah, I hope that
19 -- I concur with the idea of extending the time for us to
20 prepare, giving the public the opportunity to prepare as well.
21 I certainly hope that this is in no way a criticism of me.
22 Certainly the staff work that we've been doing -- I think the
23 staff has been really doing a tremendous job of putting
24 together a large amount of material in a brief period of time.
25 And I would hope that we would hear when we're making some of

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

the demands on staff during the course of the meetings, that we
1 make that -- that we given them the opportunity to respond in
2 developing the time frames -- the meeting time frames that
3 we're talking about here.

4 MR. PENNOYER: Mr. Gibbons, does the Restoration Team
5 have any comment on this -- on the proposal?

6 DR. GIBBONS: I don't, Mr. Chairman.

7 MR. PENNOYER: Mr. Cole. Well, I agree with you, with
8 the concept. I think being presented with this much material a
9 few days before the meeting is probably not adequate for the
10 public or the Trustee Council to review. Recognizing the
11 pressure we put on the Restoration Team, it's simply not a
12 criticism. We need to schedule our work so that we can
13 accomplish this objective.

14 I guess I would hope that the motion is not an ax edge,
15 because there are times when we've got to take action and we
16 need, I think, to be able, from a policy standpoint, to look at
17 the situation and make a judgment, and that should be our
18 policy, this is what we want. But, hopefully, there are times
19 when we are required to take some kind of action and we'll have
20 to make some judgment calls.

21 Mr. Sandor.

22 MR. SANDOR: That would be accommodated, Mr. Chairman,
23 by the insertion in front of the motion that except under
24 extraordinary circumstances.

25 MR. PENNOYER: I would be agreeable to that. Is that

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

acceptable?

1 MR. ROSIER: Yes.

2 MR. PENNOYER: Are there any objections to the motion?

3 Thank you. Motion carries.

4 Anybody have any additional comments before we start on
5 the '93 Work Plan? Mr. Barton.

6 MR. BARTON: Yes. As we work through the day, I hope
7 that we all keep in mind that we're not taking final action on
8 these proposals today, but really reviewing them in preparation
9 for putting them out to public comment, and we'll, no doubt,
10 have very detailed discussions after we get public comment back
11 on these various proposals.

12 MR. PENNOYER: Very good point. Mr. Sandor.

13 MR. SANDOR: Building on that, Dr. Gibbons, can you
14 outline the projected scenario of what happens with the
15 materials here and when -- or is this part of your
16 presentation?

17 DR. GIBBONS: Yeah, there's one precision point that the
18 Trustee Council has to make that affects what goes to the
19 public. What we propose to do is to go forward to the public
20 with all 64 projects, with a recommended package and then a
21 package that was not recommended but is part of the 64.

22 That's one of the decisions the Trustee Council has to
23 make. And then we're going to go for a 45-day review period
24 and then come back and analyze the public comments, come back
25 in front of the Trustee Council again with the package,

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

incorporating the comments before approval of the package.

1 MR. PENNOYER: Mr. Gibbons, can you give us an idea of
2 the time table; when it will be back before us?

3 DR. GIBBONS: Well, we're trying to shoot for going to
4 the printer around the early part of November, and -- if we can
5 get there, or sooner, and we would like to have it in December.
6 We'd like -- excuse me. The printer is in October; November,
7 a review period; and then December, back in front of the
8 Trustee Council.

9 MR. PENNOYER: Mr. Sandor.

10 MR. SANDOR: The action by the Trustee Council would
11 take place in what month?

12 DR. GIBBONS: December.

13 MR. PENNOYER: December.

14 MR. SANDOR: Thank you.

15 MR. PENNOYER: Mr. Gibbons, in consideration of these
16 projects a lot of the comments have to do with how they will
17 affect restoration of different species. Where will we be on
18 the Restoration Plan at that point? Will the Trustee Council
19 have made initial decisions on the Restoration Plan at that
20 point?

21 DR. GIBBONS: There should be a rough cut of the draft
22 Restoration Plan done in November that will be -- you know, it
23 will not be the draft. The draft is scheduled for completion
24 in February to go to the public, but there will be a rough cut
25 of that done in November.

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

MR. PENNOYER: I guess the question I was asking, at
1 what point will the Trustee Council be making decisions on the
2 restoration criteria to go into that plan before it goes out to
3 the public? So we've got, at least, a first shot at discussing
4 some of those concepts and making some of those decisions maybe
5 before we finalize the '93 Work Plan.

6 DR. GIBBONS: Yes, we hope so. At the next Trustee
7 Council meeting, we should have that available for you to
8 review.

9 MR. PENNOYER: And then while it's going out to the
10 public, we will make some initial decisions as to what we want
11 to go out to the public so we'll at least discuss restoration
12 concepts for that plan at that time, before we do the '93 Work
13 Plan?

14 DR. GIBBONS: That's correct.

15 MR. PENNOYER: Mr. Cole.

16 MR. COLE: I'm not sure I understand the position of the
17 Restoration Team regarding the -- all 64 of these plans. What
18 I thought I heard Dr. Gibbons say is the proposal to send out
19 all 64 of these projects, but I wonder, having looked at them,
20 whether we should send out projects in which the project
21 received less than at least four affirmative votes by the
22 Restoration Team. I have in mind, for example, 1, 10, 14, 19,
23 20, 26, -- et cetera. What is the director's spot in the

24 DR. GIBBONS: That was the question. In the past we've
25 just gone to the public with the recommended work plan. This

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

is a little different this year, and the question to the
1 Trustee Council is do you want to go forward with just the
2 recommended work plan, which would be -- our recommendation
3 presently is all 5-1 and 6-0 votes or do you want it to go
4 forward with an entire package that includes the 4-2 to 3-3 and
5 the rest of the votes as well, but label those as not
6 recommended for work in 1993?

7 MR. PENNOYER: Maybe we'll feel easier on that decision
8 after we talk a little bit about the procedure and why certain
9 votes were reached or what the chief scientist's recommendation
10 is on certain projects in that.

11 MR. COLE: Okay.

12 MR. PENNOYER: Any further comment?

13 MR. SANDOR: Perhaps not right now, but before the
14 conclusion of the meeting, I'd like to know, too, the Public
15 Advisory Group, what sort of time table on its interface in
16 this whole process is.

17 MR. PENNOYER: It might be good to know that now. We
18 have tagged recommendations on the '93 Work Plan as well before
19 we do a final sign-off in December? I assume we would.

20 DR. GIBBONS: We're sure hope so.

21 MR. SANDOR: I think that the term that we need to

22 MR. COLE: That's essential.

23 MR. SANDOR: Yeah, we think we need to actually put that
24 on the action for a specific due date in time as well. And
25 maybe that's an item that we can work toward after lunch and

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

maybe develop a time table action series -- critical paths,
1 target dates or bench marks to reach these decisions, one of
2 which must surely be the recommendations of the Public Advisory
3 Group on the proposals -- no doubt after the general public
4 comment review.

5 And the next question is when is the present target date
6 of getting this out for public review again?

7 DR. GIBBONS: October.

8 MR. SANDOR: October?

9 DR. GIBBONS: Well, it depends on how many changes are
10 made here today. We'll put the package together as soon as
11 possible, give it to the printer for two weeks, and mail to the
12 public for 45 days.

13 MR. SANDOR: Okay, thank you, Mr. Chairman.

14 MR. McVEE: Mr. Chairman.

15 MR. PENNOYER: Yes.

16 MR. McVEE: I'd like to comment on the Public Advisory
17 Group in the sense that the Interior lead agency, that
18 responsibility is that there an amendment to the Charter -- a
19 minor amendment to the Charter to accommodate the change from
20 three to five public at-large members, and then the package of
21 nominees will go forward to the Secretary. Hopefully, that
22 will be done this week, and I'll ask for expedited review and
23 approval of the Charter amendment and approval of the signature
24 on the appointments so we'll have that as soon as possible. I
25 think the only other requirement is that we have to have a

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

notice. I think it's a 15-day notice before a meeting has to
1 be mailed out. So I think within that time frame that Dr.
2 Gibbons described, it will be possible to have the Public
3 Advisory Group appointed in a meeting.

4 MR. PENNOYER: Yeah, I would assume, as Mr. Cole has
5 stated and Mr. Sandor, that that is absolutely essential to get
6 that type of review of the '93 Work Plan. That should probably
7 be one of their first review recommendations to us, so it
8 sounds to me like the time table for getting the group formed
9 and setting up a meeting falls well within the amount of time
10 Mr. Gibbons indicates for public review. So that should not be
11 a problem.

12 In relationship to what Mr. Barton said, we would have
13 that review as well, of the summary of all these projects, by
14 the time we came back and considered final action.

15 We have a considerable body of information in front of
16 us, relative to these projects. We have -- Mr. Gibbons, if you
17 will help me out with this. We have, of course, the
18 Restoration Team's summary of the projects and several
19 different cuts as to their order and selection by species
20 groups, selection by vote category and just generally in order.
21 We have a package of backup; several pages of description of
22 each project; we have a detailed budget that's been developed
23 for each project; we have a series of other ancillary notes and
24 letters from people, including a review of the status of the
25 '92 field projects which will lead into some of these; and we

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

1 have this morning received a memo from Dr. Spies, chief
2 scientist, giving a category recommendation for each of the
3 projects, all 60-whatever there is of them.

4 So, Mr. Gibbons, is there anything else we should be
5 considering as background to these, which is in front of us, as
6 we talk about them?

7 DR. GIBBONS: That being the case, I have more copies of
8 the project on shellfish mariculture. I'll pass these down for
9 those who didn't get one.

10 MR. PENNOYER: Okay. Thank you. We just have -- we
11 probably need four more at this end of the table. That's fine.
12 Okay. So, conceptually, the Restoration Team has asked us
13 whether it's appropriate to send all these out, and I guess in
14 terms of looking at these, perhaps -- how do you want to
15 proceed? Do you want Dr. Spies to outline the criteria?

16 Go ahead, Mr. Barton.

17 MR. BARTON: I would move that we send all 64 projects
18 out for public review, identifying those that are recommended
19 by the Restoration Team for adoption, include with that packet
20 Dr. Spies' letter that we got this morning so the public has
21 that information as well.

22 MR. McVEE: Second it.

23 MR. PENNOYER: Discussions or questions? Mr. Barton,
24 when you say send them out indicating the Restoration Team's
25 recommendation so we would, in essence, send a table out with
the vote without indicating how we feel about them at the time?

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

1 MR. BARTON: I don't know that we need the table with
2 the votes, but I think they could force them into two groups;
3 recommended and not recommended.

4 MR. PENNOYER: By the Restoration Team?

5 MR. BARTON: By the Restoration Team.

6 MR. PENNOYER: Any further discussion on Mr. Barton's
7 motion?

8 DR. MONTAGUE: Mr. Chairman.

9 MR. PENNOYER: Mr. Montague.

10 DR. MONTAGUE: I don't know if it was a misstatement,
11 but it was our intention that the draft '93 Work Plan have the
12 approved projects -- the recommended projects of the Trustee
13 Council, not the Restoration Team's, so we would propose that
14 the list that you all determine at the end of today, as opposed
15 to the one we've given you at the moment.

16 MR. COLE: Mr. Chairman.

17 MR. PENNOYER: Mr. Cole.

18 MR. COLE: As I understand the motion is if we vote
19 affirmatively on it at this stage, there'll be no further
20 discussion today to the individual plan; it will just be
21 wholesale sending out of all 64 proposed budgets, period. Do I
22 understand that correctly?

23 MR. PENNOYER: Mr. Cole, I think that is the motion.

24 MR. COLE: Okay.

25 MR. PENNOYER: Now that doesn't preclude, of course,
further discussion of the concepts or criteria that we're going

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

1 to ultimately use in evaluating them, but there would be no
2 selection other than what's on the list right now and in the
3 order that they're on presented (ph).

4 MR. COLE: Mr. Chairman. In my view, it essentially
5 will -- any further discussion about the criteria today, that
6 we would eventually employ would be essentially meaningless
7 until we receive the Public Advisory Group's comments and the
8 public's comments, and I think it would simply be needlessly
9 stirring the pot. But that would be my reaction to the
10 affirmative vote on the motion.

11 MR. PENNOYER: Mr. Sandor.

12 MR. SANDOR: Mr. Chairman, if that's that restrictive, I
13 would oppose the motion. I had hoped -- if it's that
14 restrictive and if the restrictions are what I think I'm
15 hearing, I think, as a minimum we ought to go through the total
16 projects, not necessarily one by one, but I have questions
17 about certain groups of them, and some specific ones that --
18 some of them relate to policy issues that -- the archaeological
19 project raised, you know, just some questions of some
20 background and rationale. Project 28, 29, I think, on the
21 areas uplifted by earthquakes, not damaged by the Spill, I had
22 some questions certainly about Dr. Spies' memo.

23 Am I to understand that this presentation would not be
24 -- it would be deferred or -- in other words, I want some
25 discussion on this before we abandon ship.

MR. PENNOYER: Mr. Barton, do you want to clarify your

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

motion?

1 MR. BARTON: Well, it was not my intent to restrict
2 discussion. I thought we would probably vote at the end of
3 discussion.

4 MR. COLE: Mr. Chairman.

5 MR. PENNOYER: Mr. Cole, do you have further comment?

6 MR. COLE: Well, if we're going to send them all out,
7 I'm not saying what my reaction is or how I vote, but if we're
8 going to send them out and say, look, here they are to the
9 Public Advisory Group, give us your comments on it; send it out
10 to the public, say give us your comments on it; and we decide
11 to send all 64 out, I mean, it seems to me that we should
12 simply send them all out and that's that. I mean, to sit here
13 and discuss them and then send them all out for comment seems
14 to me is a needless exercise. I mean, we ought to either send
15 them all out or we ought to not send them all out. I
16 personally would have no objection to say, look, send them all
17 out, let the public and Advisory Group give us their comments,
18 and then we'll decide on them. But, anyway, I just raised this
19 to make sure we at least have our theories sort of straight.

20 MR. PENNOYER: Mr. Barton, maybe your motion is
21 premature. Maybe to understand voting on your motion in the
22 affirmative or negative, I need to have a better understanding
23 of what some of the criteria might be or some of the concepts
24 or concerns Mr. Sandor has. Maybe we should defer your motion
25 until we have an initial discussion of the list of projects of

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

the various criteria that seem to have gone into the RT vote
1 and to Mr. Spies' memo, and then as we get into that
2 discussion, a vote on your motion would be more appropriate.
3 I'm afraid I'd have to vote against it right now.

4 MR. BARTON: I agree, that's what I said. That we can
5 vote at the end of the discussion was my basic assumption,
6 whenever that ended.

7 MR. PENNOYER: Okay.

8 MR. SANDOR: I second the motion to table until the
9 discussion is complete.

10 MR. PENNOYER: Well, either way, Mr. Barton's motion was
11 open to discussion. I think his discussion was that discussion
12 would be the very one we're talking about undertaking. So, in
13 any case, we'll defer a vote on that until we have the adequate
14 discussion which we'll incorporate in the discussions by
15 Mr. Gibbons and Mr. Spies -- Dr. Spies, and so forth.

16 So, how do you suggest we approach this discussion?
17 Mr. Gibbons, go ahead.

18 DR. GIBBONS: Yes, Mr. Chairman. I've got a a brief
19 overview here and then I'd suggest that Dr. Spies maybe follow
20 that up with an explanation of his package, to give you an
21 overview of how we got to where we are here.

22 MR. PENNOYER: Why don't you go ahead. Thank you.

23 DR. GIBBONS: Dr. Montague, last week, presented the
24 process for preparing the 1993 Work Plan, the criteria and so
25 forth, and I won't go into that, but I would like to give you a

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

brief overview on how some of the thoughts that the Restoration
1 Team had concerning the package.

2 The basis for the Restoration Team recommendations for
3 the 1993 Work Plan is a balance -- we feel, a balance concerted
4 inter-agency program. Following the assumptions that were
5 presented to the Trustee Council on June 29th, the package is
6 aimed at providing the timely information necessary to support
7 subsequent decisions about future restoration options. The aim
8 was to limit these activities to those that were:

9 One, time critical; would a delay in the project result
10 in further injury to the resource or service or would we forego
11 our restoration opportunity.

12 Two, no long-term commitments until a Restoration Plan
13 is completed, annual restoration activities requiring a
14 long-term commitment should be limited to those projects that
15 do not have irretrievable commitment of funds in the future
16 years.

17 And, three, provide for some small scale restoration
18 manipulation and/or enhancement project that we feel competent
19 that will be supported by the public before a Restoration Plan
20 is completed.

21 And those were the three basic ones that we considered
22 when developing the package. The Restoration Team recommended
23 the 1993 Work Plan is a composite of all the 5-1 votes and 6-0
24 votes by the Restoration Team. It contains 42 projects,
25 comprising two damage assessment continuation studies, and four

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

restoration -- 40 restoration projects covering monitoring,
1 management actions, manipulation and enhancement, habitat
2 protection, and technical support.

3 In addition to the process, the project review,
4 conducted by the Restoration Team, approximately \$2.5 million
5 was reduced from the proposals that you have in front of you at
6 the present time.

7 Supporting the evaluations and documentation of some of
8 the comments by the chief scientist and peer reviews were
9 handed to you in a separate package last week, and it talks
10 about all 64 projects.

11 Last week there was some discussion on project 64, which
12 was the habitat acquisition -- imminent threat to habitat
13 project that had listed \$5 million in it. The habitat
14 planning/working group did a little bit more work on that and
15 we would like to present some more thoughts on that project to
16 you.

17 Marty Rutherford was going to present that, but she is
18 speechless -- yeah, I won't add anymore to that. And
19 Art Weiner will give us a brief overview of project 64, to give
20 you a little bit more feel for what that project is about, our
21 thinking on it.

22 MR. PENNOYER: Okay, do you want to go ahead with that
23 now then?

24 DR. GIBBONS: Sure, and then we can lead -- that will
25 lead into Bob Spies' discussion of the package.

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

MR. PENNOYER: Okay. Mr. Weiner, do you want to go
1 ahead and do that?

2 MR. WEINER: My name is Art Weiner, Department of
3 Natural Resources. I'd like to present for you gentlemen the
4 thinking of the Habitat Section Subgroup in regard to this
5 project, and I'll try to be as brief as possible, because I
6 know most of you are intimately familiar, as is the public,
7 with what we're proposing here. It's an integral part of the
8 overall process of habitat protection that was reprinted in the
9 Restoration Framework Supplement that went out to the public
10 about six weeks ago, and we subsequently received comment on
11 that.

12 What we're asking for here, basically, is the
13 wherewithal to go out and deal with lands that contain habitat
14 that are linked to the injured resources. A number of the
15 resources, marbled murrelet and anadromous fish have --
16 certainly have recognized habitat studies linked to the upland
17 areas in the effected areas.

18 The fact that these habitats were not directly affected
19 or injured by the oil isn't what we're dealing with here. What
20 we're dealing with here is protection of habitats that if
21 injured by other types of activity -- development activities,
22 would exacerbate the injury that was suffered by resources as a
23 result of the Spill.

24 What we're asking for, primarily, is the ability to go
25 out into the community, work with willing land owners, assess

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

21
their land, and to determine whether or not there are on these
1 lands habitats that are linked to these injured resources. If
2 these habitats appear to us, after a threat analysis, to be
3 suffering or will be suffering from development which would
4 result in adverse impacts to these habitats in the immediate
5 future, i.e., imminent threat, then we would like to be able to
6 negotiate with land owners to be able to take options or use
7 other types of stop-gap measures to allow us to go into the
8 field to assess those lands to determine whether or not, one,
9 in fact those habitats occur in those upland properties, and,
10 two, would those habitats be adversely affected by the
11 anticipated activities that are in the process of being
12 conducted or permitted by the agency for the permittee.

13 So, basically, to use a rather banal metaphor, we're
14 asking you for the ability to go play poker with the
15 landowners, but we need the money to ante up. If we don't show
16 a willingness in a forthrightness to the public, I don't
17 believe, and I don't think the Habitat Subgroup believes that
18 we're really going to be able to come to the table and play
19 because we haven't shown them that we have the wherewithal or
20 the willingness to come to the table and be serious about this.
21 I think the community feels that perhaps government hasn't
22 been very serious and forthright in the way they've dealt with
23 property owners. I'm relatively new to this state, so I don't
24 really have the experience to understand those issues. But it
25 seems to me, from my experience in other parts of the country,

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

that if you're talking about land acquisition, you have to give
1 the folks who own the land the feeling that they'd be
2 comfortable with you, that you're serious. And that's,
3 basically, what we're asking for you all is the wherewithal to
4 go out into the community and be a proper link with the
5 landowner.

6 Any questions, gentlemen?

7 MR. PENNOYER: Can you describe what the \$5,125,000.00
8 came from as the appropriate figure? There was some discussion
9 at the last meeting as to why a particular number was
10 appropriate versus sort of a place holder idea -- a concept
11 idea. Why the 5 million?

12 MR. WEINER: The original 5 million was thought to be,
13 you know, on the part of the Habitat Subgroup, a number that
14 would allow us to do some basic work based upon what we
15 perceived as the imminent threat lands. We subsequently felt
16 that this was far inadequate. Once we get a detailed review of
17 the properties in the imminent threat category, the range of
18 values that was provided to us by the folks who did those
19 assessments, I think you were -- that was made available to you
20 at the last meeting, a copy of the values of those lands that
21 were prepared by John Harmony, and the range of values was
22 startling. The range, I forget, I don't have it off the top of
23 my head, but when you start multiplying that range of values by
24 the number of acres that we feel are imminently threatened, the
25 numbers went way beyond the \$5 million figure.

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

It is very difficult to come up with a natural figure
1 because of the variance in the land. There's a great deal of
2 land out there, but we don't know very much about it. We don't
3 know whether we're going to be interested in making an offer to
4 a landowner to ask them to halt their activities to assess the
5 land, nor do we know the value of those lands that we might be
6 able to negotiate with them. What we're looking for is the
7 flexibility to go into negotiations with the landowner feeling
8 comfortable that we're serious negotiators.

9 Five million, we felt, was inadequate after subsequent
10 review to do that in a purposeful manner. We don't really know
11 what the top end would be, however. You know, we have to have
12 enough to negotiate, but we don't know ultimately what we're
13 going to need to consummate this process, especially if we
14 start talking about fee simple acquisition. Right now we're
15 talking about a holding action to do the necessary assessments.
16 Once we start moving into actually making offers on land, then
17 20 million will certainly not be adequate.

18 MR. PENNOYER: So the 5 million was basically to allow
19 you to start to negotiate things like options rather than
20 actual purchase?

21 MR. WEINER: Yes, sir, that's correct.

22 MR. PENNOYER: And you still think the 5 million is
23 adequate for that purpose?

24 MR. WEINER: No, sir, indeed not. Based upon the
25 subsequent review and looking at the values of the lands and

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

the amount of land that we may have to consider, we do not feel
1 5 million is adequate.

2 MR. PENNOYER: But are you proposing a different number
3 then for this '93 Work Plan?

4 MR. WEINER: We prefer not to put a number -- an actual
5 cap on this year's work. We would, basically, look to you to
6 create a mechanism, perhaps a fund, that would allow us to go
7 into the fund and draw on that fund to pull out those monies
8 that we think, on a site specific basis, would be necessary,
9 with your approval, to hold a piece of land for us to conduct
10 the necessary assessments.

11 The top end of the fund, none of us, I think, are
12 prepared to give you that kind of a number. We just don't have
13 the data to even speculate to that. We have to have enough
14 money, and I think we have to have enough money that gives the
15 public the message that we're serious about what we're doing.
16 Habitat protection is a very, very serious restoration
17 strategy. You know, if we don't come to the table with enough
18 money to ante up, I don't think they're going to take us
19 seriously.

20 MR. PENNOYER: Mr. Cole.

21 MR. COLE: I think it's a terrible idea, spin bottling.
22 I think we're getting far ahead of ourselves. I think if we
23 go out there waving a 5, 10, 20, \$30 million check, that, well,
24 we're going to make some terribly improvident decisions. I
25 don't think that I will approve that regardless of public

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

clamor and the public pressure that is descended upon us,
1 particularly me.

2 Let me tell you why. I mean, we have to have some plan,
3 some general plan, overall plan with regard to the acquisition
4 of habitat. We cannot go and just go streambed by streambed
5 and say, well, we'll get this one here, that one there and then
6 the next six months later there'll be another stream over here
7 which is threatened to be lost. You know, we're going to be
8 chasing our tail around Prince William Sound for years. I tell
9 you, it's so clear to me that it's a tragic mistake to proceed
10 in this fashion. And furthermore, I think that before we go to
11 any landowner and say we want to buy the stream or lands around
12 this anadromous stream, we have to have an overall pattern of
13 what we're going to do with that particular landowner's
14 property. And therefore if we don't, I mean, we're just going
15 to lose all our money and wind up what happened to it quickly.

16 We have got to get an overall plan, a solid plan for the
17 acquisition of land or habitat in Prince William Sound and the
18 other affected Oil Spill areas. And I, therefore, would be
19 strongly inclined to vote against 64 for those reasons. We're
20 getting ahead of ourselves.

21 Thank you.

22 MR. PENNOYER: Mr. Sandor.

23 MR. SANDOR: I question the projects 93059 and 060,
24 which went to the Nature Conservancy for the workshops to
25 identify injured species habitat requirements and the rate and

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

degree of recovery, and 60, which was the accelerated data
1 collection. And since from the last meeting I asked the
2 question when will that 59 project be completed, I think I
3 wrote down in my notes mid-December, and for 060 the answer was
4 results over the next six months.

5 Is not this information from 59, 60, essential for the
6 negotiation?

7 MR. WEINER: Absolutely. But what it does do, it
8 provides us with what's already out there and an overview of
9 existing information and from the experts existing opinion.
10 And it's my view, and I think it's a view shared by many of the
11 folks I work with, that this review is going to reveal a great
12 many data gaps in our information base. Even subsequent to
13 this review.

14 The review is basically going to tell us, facilitated by
15 the Conservancy, what we know and what we don't know, and we're
16 anticipating to finding out from this process that we don't
17 know a great deal about what's on these lands.

18 MR. SANDOR: Mr. Chairman.

19 MR. PENNOYER: Mr. Sandor.

20 MR. SANDOR: Doesn't it really follow though that we
21 really shouldn't be negotiating with anybody, the landowners,
22 until we have this information? I'm not sure

23 MR. WEINER: I can answer that question. The answer is
24 no because we do know that their proposed projects are on-line
25 right now that, in our opinion, may -- and that's a very strong

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

word, may have adverse impacts that would result in
1 irretrievable losses to these habitats if in fact they occur on
2 these properties. The problem is we don't know if these
3 habitats, in fact, occur on these properties, so you're taking
4 a gamble. You're spending some money to protect lands that may
5 in fact contain these habitats in the hope that if they're
6 there and the willing seller is willing to negotiate at a
7 reasonable price, you can then go to the next step and
8 negotiate for ultimate protection for your acquisition or
9 something short of fee simple acquisition.

10 Because we don't know what's on the land, we have to
11 purchase a holding action in order to go out and do those
12 assessments that will fill the data gaps that we recognize from
13 those two projects. It's sort of like being grey; we don't
14 know what's out there, but if we don't find out and it is in
15 fact out there and it's adversely impacted by development
16 activities, we lose.

17 MR. PENNOYER: You're not suggesting that we just take a
18 gamble blindly and go out and buy options, are you? You're
19 going to have some idea of what we are looking for

20 MR. WEINER: Absolutely.

21 MR. PENNOYER: you're not going to buy a mountain
22 peak or something.

23 MR. WEINER: No, that's why 59 and 60 are going forward.
24 We have some reasonable amounts of information, you know, in
25 our databases. We just haven't collected them and reviewed

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

them.

1 MR. SANDOR: Mr. Chairman.

2 MR. PENNOYER: Mr. Sandor.

3 MR. SANDOR: I've tried the series of questions, but the
4 next question then is if in fact we're waiving 59 to 60 in
5 mid-December, when during this period of time is this money in
6 this negotiation and discussion with landowners to be
7 conducted; at what period of time?

8 MR. WEINER: It would be my view that during the period
9 of time that 59 and 60 are going on, we will probably enter
10 into negotiations with those landowners that have already come
11 forward. As a matter of fact, we recently have received some
12 correspondence from large landowners in the effected area to
13 indicate a willingness for us to go out and look at their lands
14 and see whether or not these habitats exist there. By the same
15 token, we're going to find out information during the course of
16 this process that would lead us to perhaps look at lands that
17 at this point in time don't contain those affected habitats or
18 those linked habitats.

19 MR. SANDOR: Well, Mr. Chairman, the comment is may be a
20 cart and horse situation/chicken and egg, but I think two
21 things: One, we do need to identify for '93 a period of time
22 this activity -- and I believe we should give some tentative
23 allocation of monies. But I believe it would be premature to
24 enter into negotiations without the 59, 60 project information.
25 That's all -- I would be uncomfortable endorsing this without

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

further discussion, Mr. Chairman.

1 MR. GIBBONS: Mr. Chairman.

2 MR. PENNOYER: Mr. Gibbons.

3 DR. GIBBONS: If I can interject a little bit here. I
4 think what Art's expressing is maybe not entirely flushed out
5 yet. The Habitat Protection Working Group is planning to meet
6 next week to talk about this process, and I'm not sure, you
7 know, that's all been worked out. Another point that I'd like
8 to make is on project 64, we're asking the Trustee Council on
9 funds from zero to 20 million, and it's up to -- we'd like to
10 have the Trustee Council make that decision and not the Habitat
11 Protection Working Group or the Restoration Team. So there's a
12 lot of unknowns here. The negotiations, we haven't flushed
13 that out entirely. We definitely need project 059, we have to
14 have data in front of us before we start doing anything with
15 the landowners, so I just wanted to help clarify that a little
16 bit, if I could.

17 MR. PENNOYER: Mr. Barton.

18 MR. BARTON: Yes. It sounded, from your discussion,
19 Art, that you've already identified the imminent threat lands,
20 and I thought we were establishing the process to do that.

21 MR. WEINER: I think the presentation that was made at
22 the last meeting by Kim Sundberg and Walt Sherrenden explained
23 to you some of those areas that were in fact we have identified
24 imminent threat, but the problem is, however, we don't know --
25 although those lands are threatened, we don't know the nature

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

of the habitats that are on those lands. That would be the
1 next step. In order for the land owners to agree for us to go
2 out and do those assessments, what we're looking for is a
3 mechanism to negotiate with them to get the permission to go
4 out and do those on the ground assessments if necessary, and to
5 ask them to hold up on their proposed development activities
6 until we've conducted those assessments.

7 MR. PENNOYER: So the money is not to do the
8 assessments; the money is to simply buy an option with them to
9 put plans on hold while you do the assessments?

10 MR. WEINER: Right.

11 MR. PENNOYER: Mr. Cole.

12 MR. COLE: It seems to me that we don't need to talk
13 about money to these landowners now. We can move very quickly
14 in the Trustee Council, notwithstanding public observations or
15 comments, but, I mean, I don't foresee anybody in December or
16 January going out and logging these lands. I mean, is that a
17 serious threat, somebody going out and start logging in
18 January, December?

19 MR. WEINER: I couldn't answer that. Dave, have you got
20 any ongoing projects that would actually conduct work in the
21 winter?

22 DR. GIBBONS: You mean as far as harvesting

23 MR. COLE: Yeah. I mean, you know, we're talking about
24 imminent threat. I'm saying what is the imminent threat in
25 December or January, or February, for that matter?

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

DR. GIBBONS: I sincerely doubt that there's any
1 activities going out there in December.

2 COURT REPORTER: Or January?

3 DR. GIBBONS: Or January.

4 MR. COLE: So everybody understands where I'm coming
5 from. I'm not opposed to habitat acquisition. I'm not opposed
6 to even booking broader, but I am concerned about getting the
7 maximum amount of habitat in lands or timber, if you will, for
8 our money, and it seems to me in order to do that, we must very
9 carefully plan our strategy for the acquisition beyond simply
10 going out and saying, look, I've got this checkbook here, and
11 I've thought, and I've said before that I think we need to have
12 a broad plan and seek expert advice and council on how to do
13 that, because I think that we will wind up with acquisition
14 acreage, whatever, far short of what we could get for our money
15 if we don't do it carefully. And I realize that the public
16 says, gee, you people aren't moving fast enough, but I hope
17 they recognize that it's three or four or five months while we
18 think about how we're going to acquire the most for our money
19 is very valuable. I simply foresee ourselves spending money
20 and waving our checkbook, like I say, around and getting
21 battered month after month or meeting after meeting with other
22 threatened habitat. I think we have to go to these landowners
23 and say, you know, what are you going to do with your lands in
24 the next bay or the stream that's a little north or a little
25 south, because we know that we're not going to have enough

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

money to buy it all.

1 So, I think that we should get some of this data before
2 us to see what we can possibly do sooner, and I can't believe
3 that these landowners will say you can't even send a scouting
4 party up there to take a look at what's on this land without
5 giving them several million dollars in the interim. I just
6 have deep reservations about where we're going, and I'm not at
7 all certain how I would vote on 64 until we've given it a lot
8 more thought.

9 MR. PENNOYER: Mr. Barton.

10 MR. BARTON: Yes, I think it's important not to lose
11 sight of the fact that we can amend the budget at any time if a
12 need arises to do that. Secondly, I'm a little troubled by the
13 discussion we're having. It sounds as if we've decided the
14 acquisition of the habitat is the only means of protecting it,
15 and I think we talked earlier that it is not, but in some
16 cases, it may be. And we need to determine that through some
17 very deliberative process. I would support putting a modest
18 amount of money -- or budgeting a modest amount of money for
19 this project, but certainly not something in the neighborhood
20 of \$20 million or \$10 million.

21 MR. PENNOYER: The questions asked at the last meeting,
22 Mr. Gibbons, was problems we run into with the federal OMB
23 process and having our place holder amount of money and
24 amending it later, and Mr. Cole, at the last meeting, suggested
25 perhaps we wanted an open-ended project that had -- so we have

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

1 enough money for data acquisition and surveys and whatever,
2 that it was open-ended in terms of either purchase or other
3 right acquisition. And there was a question of how we would
4 deal in our budgeting process with something that didn't have -
5 - either didn't have any money or had a much lesser amount with
6 a possible expansion later.

7 Can you elaborate on how you would handle that in the
8 budget?

9 DR. GIBBONS: Well, my feeling on that is that we would
10 have to -- on the federal side we would have to notify OMB and
11 notify Congress again and the appropriations committees for an
12 appropriate amount of time before we took any action, in
13 addition to the court petitions and so forth. So there would
14 be some time delay to actually getting the money on the federal
15 side. The state side would be -- the state trustees know
16 better than I do, but it would be a quicker process,

17 MR. PENNOYER: Mr. Sandor.

18 DR. GIBBONS: I would envision.

19 MR. SANDOR: Mr. Chairman, I think that it would be wise
20 to defer action on this till later this morning, particularly
21 till we look at several specific projects. But as Mike Barton
22 points out, we're looking at other things beside acquisition.
23 I think we're not only talking about easements, but we're also
24 talking about moratorium potential. I want to quote imminently
25 threatened area or one of the examples of potential imminently
26 threatened areas is the Katchemak Bay proposal, and the

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

landowners there have asked for some signal, I think, by
1 October 1, and I guess that signal -- whether or not that time
2 is appropriate or not is another question. But at least
3 actions have already been deferred and permits are underway for
4 that and other potential areas, perhaps, for, you know, the
5 option of a moratorium might be explored. Anyway, I would ask
6 that we not take action on this item now until later this
7 morning.

8 MR. PENNOYER: I think that would be fine. Any further
9 comment?

10 MR. COLE: Mr. Chairman.

11 MR. PENNOYER: Mr. Cole.

12 MR. COLE: Here's what I'm sort of getting at, as I
13 think about it. If I want to acquire parcels A and B, owned by
14 the same landowner, and I go to him first and say, let's just
15 make a deal on parcel A. So we agree on \$10,000.00. Then when
16 I go to buy parcel B, you know, he will say, now I know you
17 want both of these parcels, so I can charge and hold you up for
18 more for parcel B than I can for parcel A. It seems to me,
19 that's just in the realm of negotiation. So, I mean, this sort
20 of thing -- as well as we're really interested in parcel A.
21 When we make the deal on parcel A to get an option for a fixed
22 price on parcel B, you see, that's the sort of thing I'm
23 thinking about as we go through this process.

24 And I think that we should have a very deliberate
25 strategy, a strategy formulated by the Trustee Council or by

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

expert consultants on land acquisition. How we're going to
1 make these acquisitions with either fee simple title or either
2 timber rights or view easement, all of those mechanisms we
3 should seriously consider from the standpoint of very large
4 tracks of land, and say this is what we want to do with say
5 Afognak Island or Knight Island or Montague Island and, you
6 know, make a broad policy decision on how we're going to deal
7 with these various very large tracks in strategy.

8 Rather than going out and say, gee, here you're
9 threatened to, you know, log this track -- this 10- or 20-acre
10 track, let's acquire it. See, I think that's a mistake. I
11 think we have to be very careful and very deliberate as we make
12 these decisions.

13 Now, that's my view of how we ought to go about it.
14 That's all I'm saying.

15 MR. PENNOYER: Well, I think we'll make a final decision
16 on this one later in the meeting. That seems to be where we
17 want to go. From my standpoint, we have put in place an
18 imminent threat strategy, and we are looking at something
19 called imminent threat. Now, imminent threat to me means we're
20 identifying things that can't wait until we get all the data
21 and all the plans, but there shouldn't be so many or so large
22 as to preclude our taking considerate action on the balance of
23 this restoration strategy at a later time when we have the
24 Restoration Plan complete and the whole property analysis
25 question done.

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

But I think it would be a shame if we left the stable
1 and for '93 didn't sent out a strong signal that for imminent
2 threat property acquisition or other methods of protecting land
3 that may be valuable or important to the restoration of injured
4 species is not provided for in this plan. So, I don't know how
5 we do that, whether it's an open-ended thing or a particular
6 amount of money for seed money that can be amended later, but I
7 think we need to send a strong signal that we are serious about
8 that threat. So I think I would very much favor doing
9 something along the lines of project 64, although that may not
10 be the right amount of the right configuration.

11 Mr. Gibbons.

12 DR. GIBBONS: Mr. Chairman, yeah, let me clarify that a
13 little bit more, and you hit it right on the head that the
14 Restoration Team is looking at this as seed money. Now, to
15 stop, you know, potential threatening activities in the short
16 term until we can get the work done and get the analysis done
17 and then go

18 MR. PENNOYER: I would anticipate what you're talking
19 about is a selective strategy. You're not talking about large
20 tracks

21 DR. GIBBONS: That's correct.

22 MR. PENNOYER: or large amounts of money. That I
23 would wait till if it was even appropriate -- would wait until
24 a final analysis was done. So, I don't know how we do it, but
25 sometime before the end of the meeting, I hope we can deal with

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

how you do put this place holder and it does send a signal out
1 that we're strongly serious about this strategy, if we are.

2 Okay, thank you, very much, and we'll go on now. And,
3 Dave, do you have a suggestion on how to go further, or should
4 we go right to Dr. Spies and let him explain his categorization
5 of projects?

6 DR. GIBBONS: Mr. Chairman, I think it might be best to
7 go to Dr. Spies now to get his feelings on the projects that
8 are before you. I know he's got a letter dated September 20th
9 that has a comment concerning the projects, so

10 MR. PENNOYER: Dr. Spies, you're on the floor.

11 DR. SPIES: Thank you. And, again, unfortunately, I
12 haven't had as much time as I'd like to prepare this and get it
13 to you with some leeway before the meeting, so I just finished
14 it yesterday and it is before you this morning.

15 What I'd like to do is just go over the criteria that
16 I've developed for evaluation of the '93 Work Plan, and without
17 going into each of the projects, that will take some time, and
18 we've already identified the process for dealing with the
19 package as a whole rather than just my input.

20 For the 56 projects or so that remain in the package
21 after the Restoration Team and with input from myself and the
22 peer viewers, culled through the public and agency projects
23 that were submitted. I assume that the purposes of the -- that
24 you wanted the funds spent for restoration were:

- 25 1. To define the nature of the damage from the Oil

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

Spill and differentiate it from other sources of variability in
1 populations and communities of organisms in the Oil Spill area.

2 2. To document the rate of recovery of populations and
3 communities where measurable damages has been documented.

4 3. To supplement natural recovery processes or prevent
5 further degradation of habitat that would negatively influence
6 recovery of injured resources, or

7 4. Help in the regulation of the harvest of natural
8 resources to contribute to recovery of injured species.

9 I think that we all recognize that natural recovery is a
10 very potent tool in this process and that many times we're
11 really working kind of around the edges of nature here.
12 Nature's really doing most of the job, and I try to make that
13 point in how I've approached this whole package.

14 I've used a scoring system for evaluating the projects,
15 where a "1" is given to -- as a highest score, a project would
16 contribute directly to the restoration of injured species with
17 a high probability of success.

18 "2," the project may help in restoration of the injured
19 species through management actions, or it provides a better
20 understanding of the nature of the injury or is a restoration
21 feasibility study or, finally, documents the course of
22 recovery.

23 "3," the project has a low probability of contributing
24 to recovery.

25 "4," a project is inappropriate for a restoration

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

program as it is not -- as it will not contribute to the
1 recovery of injured resources.

2 And, finally, two designations, an "E," where the
3 project may enhance natural resources, but is unrelated to the
4 recovery of injured resources. That's an enhancement project,
5 as I would interpret it under the terms of a settlement.

6 And, an "S," some kind of special consideration. I
7 thought in several occasions inappropriate for me to try to
8 comment on things like subsistence and damage to recreation or
9 educational activities and so forth, that that was a
10 non-technical issue.

11 So those are the -- that's the kind of approach that
12 I've taken in evaluating the program with input from the peer
13 reviewers. And then the balance of the memo provides each
14 project, how I evaluated it with a score and then some brief
15 comments after each one.

16 MR. PENNOYER: Perhaps it would be best to ask you some
17 questions about your criteria, if we had them, and then proceed
18 to ask you questions maybe, in particular, where you disagreed
19 with the Restoration Team for some elaboration.

20 Would that be a reasonable way to proceed? Do you have
21 questions about Dr. Spies' criteria that he used initially?
22 Mr. Rosier.

23 MR. ROSIER: Thank you, Mr. Chairman. Dr. Spies, the
24 bottom line, I see, in your memo here on this thing is that
25 none of the proposals received a score of "1".

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

MR. SANDOR: Yeah, right.

1 MR. ROSIER: I was interested in that particular comment
2 and was wondering exactly what that, in fact, meant. It's
3 obvious that you subjected all the projects to very severe
4 scrutiny here, and if none of them made the "1" there on that,
5 that kind of dismays me, frankly.

6 DR. SPIES: It's kind of a philosophical point. I
7 suppose that nature is doing most of the work and hasn't put
8 any projects in, really.

9 MR. PENNOYER: Well, Dr. Spies, doesn't item 1 apply
10 more to damage assessment, and since we're phasing it out, it
11 says, -- oh, I see what you're -- contributes directly. I'm
12 sorry. I was in the wrong one.

13 MR. ROSIER: Directly to the restoration, Mr. Chairman.

14 MR. BARTON: Mr. Chairman.

15 MR. PENNOYER: Mr. Barton.

16 MR. BARTON: Did they fail because they don't contribute
17 directly, or do they fail because of the high probability?

18 DR. SPIES: Either one of those, yeah.

19 MR. PENNOYER: Along the same line, do you have a
20 feeling for the direction we're going that we're not? I mean,
21 if in fact all this list of projects, none of them get a 1,
22 what are we missing? I mean, 1 is a criteria that you don't
23 think will ever be fulfilled. You think it's going to be
24 natural restoration is your comment.

25 DR. SPIES: Well, I think nature is doing most of it for

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

us. I mean, there's a couple things we can do; we can document
1 the course of recovery and try to figure out if there's
2 something we can do. If you look at sea otters, we can't make
3 them reproduce any faster. We can't protect habitat, it's kind
4 of an indirect sort of thing. The same with sea birds. We can
5 regulate harvest somewhat, and for some of these species, it's
6 kind of an indirect action.

7

8 MR. PENNOYER: Mr. Sandor.

9 MR. SANDOR: Dr. Spies, this is fairly consistent, I
10 think, with what I heard -- I thought I heard you say in your
11 summary of the relative recovery of species last January and
12 February, or sometime in there, early in the year, in which you
13 outlined what species were recovering naturally, and then most
14 species had lingering recovery problems. I guess I may be
15 misinterpreting this, but I read this as sort of an extension
16 as to what you reported at that time, and I guess the question
17 is -- and I was hoping at some time, maybe not the end of this
18 year, but early next year, we could have a -- sort of an
19 update.

20 But of those species that you identified that there were
21 lingering problems and those that you said natural recovery was
22 occurring -- it appeared to be occurring -- what I'm hearing is
23 that this pattern is, in fact, continuing. And are those
24 species that you identified as lingering problems, isn't there
25 something that we can do to those -- for those lingering

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

1 problem areas that might, you know, go into item 1, or -- I'm
2 thinking of the harlequin -- and of course you mentioned the
3 otters.

4 DR. SPIES: I think there's things that we can do to
5 help those species. Well, first of all, to answer your
6 question, we don't have a lot of new information because we're
7 essentially finishing up the field season. A lot of the data
8 hasn't been processed and so forth, so I don't think that there
9 has been major changes, that I'm aware of, from talking to the
10 principal investigators as far as what species continue to be
11 injured. I think there are things that we can do in terms of
12 regulating harvest and protecting habitat and other sorts of
13 management actions that could assist nature in its recovery
14 certainly.

15 MR. PENNOYER: Mr. Cole.

16 MR. COLE: Mr. Chairman, I find that particularly
17 troubling that none of these projects received a 1. As long as
18 Dr. Spies approves them, recommends them, gives them a 2,
19 that's enough for me. A 1, of course, is a category which
20 contributes directly to the restoration of the injured species
21 with a high probability of success. You know, that's a pretty
22 stringent test.

23 DR. SPIES: That's a tall order.

24 MR. COLE: Pardon me?

25 DR. SPIES: It's a tall order.

MR. COLE: Yeah, having a high probability of success.

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

I think it's difficult to formulate restoration projects with a
1 -- under the circumstances, with a high probability of success.

2 As long as it's a recommendation that we proceed, that's
3 sufficient for me, and I'm comfortable with that.

4 MR. PENNOYER: That's sort of why I asked the question,
5 if we missed something, are we missing a number 1. I think we
6 have not. What Dr. Spies is saying, in his judgment natural
7 recovery is going to be -- either take place or we probably
8 can't do anything about that particular item anyway. Like
9 we're not going to get sea otters to breed faster was your
10 comment, although, in fact, protecting the sea otter habitat
11 might make sense, it might not be terribly direct. So you
12 haven't ruled out restoration, but I think you have maybe put a
13 factor in front of the Trustee Council, we're going to have to
14 deal with the question of equivalent services, resources, and
15 enhancement at some point -- a policy standpoint, because we're
16 not going to plant so much beach grass that we're going to
17 restore beaches in the Sound by doing that in a very meaningful
18 way.

19 So we have services that were damaged, we have people --
20 tourism, persons that were injured, we have things that
21 happened that aren't necessarily equivalent to stocking fish or
22 planting beach grass, and you've written E next to a large
23 number of these projects. I assume that's what you're getting
24 at. It's not necessarily restoration of the directly damaged
25 species, but it may be an enhancement of a service or

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

enhancement of a resource that provides a service.

1 DR. SPIES: Right.

2 MR. PENNOYER: Any other questions on item 1?

3 MR. SANDOR: Item 1 being what?

4 MR. PENNOYER: This contributes directly to Mr. Rosier
5 about the

6 MR. SANDOR: Oh!

7 MR. PENNOYER: question of why there were no item
8 1 factor scores.

9 MR. SANDOR: None on that from here, Mr. Chairman.

10 MR. PENNOYER: Now, the project 4 -- category 4 is
11 projects inappropriate for restoration program as it will not
12 contribute to recovery of injured resources. Inappropriate,
13 in your view, specifically from your evaluation, you don't have
14 some services or enhancement or other restoration items that
15 are

16 DR. SPIES: No, and perhaps some of the other projects
17 could have qualified either for E or 4.

18 MR. PENNOYER: Either way?

19 DR. SPIES: Right, right. And that's a judgment call I
20 made. There may be some differences of opinion on that.

21 MR. PENNOYER: Any other questions about Dr.

22 DR. GIBBONS: Yes.

23 MR. BRODERSEN: Mr. Chairman, I'm a little concerned
24 about getting too far along on this. Unfortunately, I haven't
25 seen it any earlier than you have. I think we need to go back

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

to the four basic things that the chief scientist was saying
1 that the money needs to be spent on, that they strike me as way
2 too narrow, and that we need to be careful about allowing
3 policy to be set by our being silent on speaking to maybe
4 perhaps broadening this out a little bit.

5 The thing that really concerns me is that lacking out of
6 there is monies to be spent on the restoration of services.
7 This seems to be almost entirely devoted restoration of
8 resources. And, quite clearly, the settlement is also to be
9 for the restoration of the service which may or may not be
10 through the direct restoration of resources, that there are
11 other methods to get that, restoring some of these services,
12 replacing them or other things. I'm fearful of us just passing
13 over this and accepting these as what the Trustee Council
14 intends for purposes of restoration. And then if one then
15 looks at that and then goes over to the second page, on the 1,
16 2, 3, 4, E, and S, again with this same idea in mind of the
17 lack of services, but perhaps these categories really need to
18 be broadened out in terms of the Trustee Council application of
19 what the chief scientist is telling us.

20 I'm not trying to change what the chief scientist has
21 down here, but when we review what he has, I think we need to
22 keep in mind this apparent lack of services orientation in his
23 review.

24 DR. SPIES: I was not trying to really establish the
25 criteria for the Trustee Council to act on; I was just trying

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

to present kind of where I'm coming from, the technical point⁴⁶
of view of the injuries to the resources.

MR. PENNOYER: Mr. Sandor.

MR. SANDOR: Well, I think that's very appropriate. I think the services must be kept separate. To me this is very helpful, and I think what we really should do -- and, quite frankly, with respect to these items, 1 through 4, on the first page, it seems to be on target. Perhaps, with one question I had with respect to item 4, help in the regulation of the harvest of natural resources to contribute to recovery -- contribute -- I guess harvest is one form of management of natural resources. There are other ways in which injured resources can be manipulated or modified, and I presume in that term of harvest it is essentially -- it's some other management activity that is actioned by man would contribute and that would meet that test.

So I don't really have a problem with those four items, and I think the Trustee Council needs to either agree with them or at this point in time discuss them and see how we disagree with them.

MR. PENNOYER: Mr. Cole.

MR. COLE: Yes, Mr. Chairman. I want to comment, briefly, on Mr. Brodersen's observation that we have not mentioned services in this work project. Obviously, that's one of the statutory criteria for our assignments as trustees. Although I think that direct restoration probably has the

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

highest of priorities -- direct restoration of the injured
1 resources, certainly the acquisition of alternative services --
2 alternative services is not to be overlooked. And I find -- I
3 don't want to say nothing, but very little, if anything in that
4 category for the 1993 Work Plan, and I wonder whether we should
5 not ask the Restoration Team to take another look at that for
6 '93. You will recall, I mentioned that subject with respect to
7 the contingent valuation studies which were done in support of
8 the settlement of the Exxon litigation. I think we should keep
9 that in mind as we formulate projects for '93, as well as the
10 succeeding years.

11 MR. PENNOYER: Mr. Brodersen was basically not saying
12 that we hadn't done something -- we hadn't thought about that.
13 I think he was saying before we adopt Dr. Spies' criteria as
14 our criteria, they're a rather focused look on the direct
15 action on injured resources, and don't deal very much with
16 services or acquisition of equivalent resources or enhancement,
17 although Dr. Spies does have an enhancement category, it's not
18 in this criteria, he has an enhancement category, and I think
19 enhanced category plus land acquisition questions do deal with,
20 I think, alternative services or enhancing resources. So

21 MR. COLE: Mr. Chairman.

22 MR. PENNOYER: there maybe some in here that do
23 that.

24 MR. COLE: Mr. Chairman, you mean some of the 64 do
25 that? I've looked at the 64 very carefully, word by word, and

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

I don't find it there. And I'm supporting Mr. Brodersen's
1 observation that there seems to be a notable absence of the
2 acquisition of alternative services, and, furthermore, I
3 understand Dr. Spies not addressing it because he's -- as a
4 policy matter, he's not assigned to look at that category of
5 the use of the funds. But when he talks about enhancement,
6 he's talking about enhancement more of direct natural
7 resources, as I read this report.

8 And all I'm saying is that I think -- well, for example,
9 project number 1, recreation damage assessment, and I see the
10 project got zero votes, for reasons I'm not quite sure. But I
11 think that we need to take a little broader look at this. Here
12 we are. I don't see the sportsman, for example, and the
13 recreational user and the one who simply wants to kayak out
14 there and say isn't this one of the worlds great water courses
15 and what are we doing to preserve it as such. I don't see that
16 fellow, he gets much consideration in what we're doing here.
17 And I think he should.

18 DR. SPIES: I was in on some of the meetings where that
19 particular project was discussed, and I think one of the
20 reasons it got a negative vote is people felt that there had
21 been quite a bit of work done under -- in the litigation mode
22 to assess the damage to recreation. All of that information
23 wasn't public, and it was three or four years after the fact
24 now. It would be very difficult in some ways to go back and
25 reconstruct what the damage was to recreation by way of

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

interviews and so on and so forth, that kind of approach. But,⁴⁹
1 perhaps, there's a lot of sympathy in the Restoration Team for
2 maybe just taking -- spending some money directly on doing
3 something; building a cabin or trails or whatever could be
4 done.

5 MR. COLE: It's not in here, that's the point.

6 DR. SPIES: Yes.

7 MR. PENNOYER: Wasn't one of the comments we got back on
8 project one that it was duplicative of the studies done under
9 damage assessment and that we were still seeking a release of
10 the damage assessment information; until that happened, until
11 this evaluator has been (indiscernible - coughing) fund a
12 project of that nature?

13 DR. SPIES: We've heard that expressed, yes.

14 MR. PENNOYER: The property acquisition, for example,
15 and boat launch ramps or trails, or whatever, we've only dealt
16 with them in the threat, but I assume under property
17 acquisition we'd deal with not just for easements or whatever,
18 we would deal not just with threat but also with opportunity,
19 and I presume our plan is going to look at that, although I've
20 heard no discussion of it.

21 MR. COLE: Well, I'd just mention that we should keep
22 that in mind.

23 MR. PENNOYER: Further comment? Yes, Dr. Gibbons.

24 DR. GIBBONS: Mr. Chair, yeah. The Restoration Team had
25 quite a discussion on this, and along with the legal team it's

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

the opinion of the Restoration Team that we know enough
1 concerning recreation that we should move forward with projects
2 rather than a damage assessment study, and while trying to get
3 a hold of the studies concerning recreation to verify that, and
4 we today have not received those yet, we're still trying to get
5 those. But the intent of the Restoration Team would be to go
6 do direct restoration projects rather than trying to study it
7 at this point.

8 MR. PENNOYER: What's the holdup on getting information?

9 DR. GIBBONS: We're trying to get the federal economic
10 studies -- we're trying to get them.

11 MR. PENNOYER: What is the barrier to getting those?

12 DR. GIBBONS: I'm not quite sure. We've requested them,
13 so we'll keep on that trail.

14 MR. COLE: Maybe I could ask, do we have a problem?

15 MR. TILLERY: Justice has the studies.

16 MR. COLE: What about our study?

17 MR. TILLERY: We don't have a recreation study.

18 MR. SWIDERSKI: Tourism would be the closest.

19 MR. COLE: Pardon me?

20 MR. SWIDERSKI: We have a sports fishing study and a
21 tourism study that are the closest thing to recreation. But
22 Justice did a recreation.

23 MR. PENNOYER: Dr. Gibbons, would you inform the Trustee
24 Council members at some point if there is a hang-up, and
25 perhaps we can find a way to pursue that?

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

DR. GIBBONS: Okay.

1 MR. PENNOYER: In terms of the property acquisition,
2 Dr. Gibbons, or some type of equivalent service property
3 procedure, are we looking at things like recreation; is that in
4 the -- is that in the Restoration Plan to look at that type or
5 property acquisition of land?

6 DR. GIBBONS: Yes, we would look at all types of
7 property.

8 MR. PENNOYER: Were there public proposals at this time
9 that fit what Mr. Cole is talking about, specific things like
10 boat launch ramps or whatever?

11 DR. GIBBONS: I'd have to get into the projects that the
12 public has submitted. We haven't done that, you know, in
13 detail yet, and analyzing first available habitat information,
14 the links, and to determine that, but -- so I can't answer that
15 question at the present.

16 MR. COLE: Mr. Chairman.

17 MR. PENNOYER: Mr. Cole.

18 MR. COLE: Before I get accused of wanting to build boat
19 ramps before we acquire habitat, I want to say I'm not
20 necessarily in favor of that; I'm simply saying that's
21 something that we ought to study, because it's one of the
22 direct categories of restoration.

23 MR. PENNOYER: Clearly understood, and I was not
24 proposing boat ramps specifically.

25 MR. COLE: I know. I have to be careful; this is a

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

ticklish area, you know.

1 MR. PENNOYER: There are ideas, and ideas for it.
2 Anyway, that aspect of property acquisition should be certainly
3 be worked on.

4 Mr. Rosier.

5 MR. ROSIER: Thank you, Mr. Chairman. A couple of
6 things, I guess. I think Mr. Cole had indicated earlier that
7 we should look seriously at anything that didn't have at least
8 four votes within the RT. Reviewing the materials that have
9 been put before us here on this, it looks like the services
10 area is one of the areas where we really begin to get
11 divergences of opinion in the voting structure. And I notice
12 that even in the case of Dr. Spies, for instance, the pipeline
13 project here, which is definitely one of a project that named
14 lost services on this, Dr. Spies gave it a special connotation
15 rather than dealing with it as a project -- well, excuse me, he
16 gave it a special connotation here on this rather than giving
17 it some other rating here.

18 MR. PENNOYER: Somewhat negative special connotation
19 here in the comments.

20 MR. ROSIER: Yes.

21 MR. McVEE: What number?

22 MR. PENNOYER: Number 26.

23 MR. ROSIER: 26.

24 DR. MONTAGUE: Mr. Chairman.

25 MR. PENNOYER: Mr. Montague.

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

DR. MONTAGUE: For the purpose of the record, there are
1 seven projects in there that deal with replacing services, and
2 those are 16, 17, 18

3 MR. McVEE: Wait a minute, please.

4 DR. MONTAGUE: 16, 17, 18, 19, 20, 24, 26, and 31.

5
6 MR. COLE: Well, Mr. Chairman, I would say that that
7 unnecessarily was in my understanding of the term services, but
8 be that as it may. Thank you.

9 MR. McVEE: Mr. Chairman.

10 MR. PENNOYER: Mr. McVee.

11 MR. McVEE: I find the information that Dr. Spies has
12 given us to be quite useful, from the perspective of a
13 technical, scientific review of the projects, and particularly
14 as his comments relate to the linkage to injured resources.

15 I guess one thing I believe we should keep in mind is
16 that we are operating without the final Restoration Plan, and
17 we have not gone through that process, the public review
18 process that will be incorporated into the Restoration Plan.
19 So we should be dealing, it seems to me, like with projects
20 that are somewhat emergency in nature, that we need to
21 implement them in order to prevent further damage to resources
22 or services, and that, you know, there is some threat of
23 happening unless we take that action, and that those things
24 that we don't have to do immediately, we could postpone until
25 we actually go through the Restoration Plan and have that

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

behind us to support -- further support our actions. Thank
1 you.

2 MR. PENNOYER: Further comment? Maybe it would be
3 helpful if we went through these and if not a project at the
4 time, certainly any Council member can bring up any particular
5 project they have a question on, but I noticed there are some
6 in here that you did disagree rather directly with the
7 Restoration Team, and specifically, apparently, not on matters
8 of alternative services, enhancement or what you call special
9 considerations, but actually the rating relative to a vote they
10 took on a project dealing, supposedly, with direct restoration
11 of a injured species. And that would be useful to go through
12 and let you express your disagreement on those.

13 Anybody object to doing that, on seven or eight of them?

14 MR. COLE: I object to it because I think we ought to
15 just take a vote now and send out all 64 and get on with
16 business of the day, because what are we going to accomplish?
17 At the end of the day we're going to mull these over, talk
18 about it, and at the end we'll take a vote and probably send
19 out all 64. So why don't we just get it done now and be done
20 with this and get on with the rest of business? Do this
21 discussion later when we have public comment.

22 MR. PENNOYER: I think that the problem is if we send
23 this out, are we indicating that this is just our Restoration
24 Team's viewpoint? Is there anything in here that we strongly
25 disagree with or have a problem with, do we want to send it out

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

and simply say, look, we haven't looked at these, but here's
1 the next?

2 MR. COLE: I strongly disagree with music out there for
3 birds on these cliffs. I think that's the sort of plan that
4 those who award the golden fleece are going to say, see, I told
5 you those guys were loco up there, sending music out so the
6 birds can mate. But outside of that one, I think we ought to
7 send 'em all out and be done with it.

8 MR. PENNOYER: You've identified one so far and others
9 may have others. I don't know that

10 MR. COLE: Can't you just see those people back in
11 Congress saying, I told you so, you know? We really need to
12 pass this one. I mean, that really bothers me, but it's
13 recommended by the Restoration Team, so

14 MR. PENNOYER: Mr. Rosier.

15 MR. ROSIER: Thank you, Mr. Chairman. I would -- I tend
16 to agree with Mr. Cole at this point in terms of moving ahead
17 with the original motion. It seems to me that at this point
18 we've gone through the process of looking at roughly 468
19 proposals, I believe, was the total number. Out of the 468,
20 we've now narrowed it down to 64, some of which are still
21 somewhat in the air in terms of total support, one way or the
22 other. But it seems to me, from my standpoint, that I would
23 much prefer to have, you know, the input from the Public
24 Advisory Group as well as the general public comments on these
25 things before further narrowing this. I think we've got a good

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

1 selection of -- cross-section of projects here at the present
2 time, and I would certainly like to move ahead with putting
3 those 64 out to the public.

4 MR. PENNOYER: So you would characterize these as not
5 Trustee Council projects at this time, it's just a list that
6 you do embrace the narrowing from 468 down to 64 without any
7 Trustee Council discussion?

8 MR. ROSIER: That's correct.

9 DR. MONTAGUE: Mr. Chairman.

10 MR. PENNOYER: Mr. Montague.

11 DR. MONTAGUE: Dave, maybe you can correct me if I'm
12 wrong, but I do believe that for the matters of preparing our
13 budget we need a recommendation of projects. Am I wrong on
14 that?

15 DR. GIBBONS: We need some kind of an estimate to give
16 to the various -- to the state and federal OMB office.

17 MR. PENNOYER: Now before public review?

18 DR. GIBBONS: To give some kind of ballpark figure
19 there, yes.

20 MR. McVEE: What time?

21 MR. PENNOYER: We need it before the public --
22 Mr. Barton.

23 MR. BARTON: I think the original date was September 1.

24 MR. PENNOYER: We missed that one. Well, what's the
25 preference of the group? We've heard some comments that maybe
26 some of these aren't -- do we want to send something out as --

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

1 this is not a Trustee Council proposal; this is a Restoration
2 Team plan proposal with the chief scientist's recommendations
3 attached to it. That was the original motion. Do you wish to
4 do that with all 64 of these without any further discussion?

5 MR. COLE: Mr. Chairman.

6 MR. PENNOYER: Mr. Barton was first, I think.

7 MR. COLE: Sure.

8 MR. BARTON: I think we could send these out and
9 characterize them as windowing (ph) from the original 400-plus
10 proposals that we are seeking public comment on, not
11 necessarily that we endorse them or don't endorse them, but
12 we'll make that decision after hearing from the public. That
13 is one approach to it.

14 In terms of the budget number, it may be possible to
15 approach that, as I understand it, the federal OMB, at least,
16 is not seeking precision down to the last decimal point. We
17 could provide our best estimate by using those projects -- the
18 bottom line for those projects which the RT has recommended go
19 forward. That might satisfy that requirement.

20 MR. PENNOYER: For the whole 34 million, including the
21 projects that got zero votes?

22 MR. BARTON: No, no. The ones that the RT recommended
23 go forward, which is what six 0s and five 1s.

24 MR. PENNOYER: I have a problem with that. I'll discuss
25 at least one project before we get out of here, if that's the
case. Any other comments?

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

MR. McVEE: Mr. Chairman.

1 MR. PENNOYER: Mr.

2 MR. COLE: No, I have nothing. Thank you. Mr. Barton
3 said what I was about to say.

4 MR. PENNOYER: Mr. McVee.

5 MR. McVEE: Yes. In going forward with public review, I
6 think that it would be important to kind of do something more
7 than we've done in the past, instead of just saying here's our
8 proposal, tell us what you think, but that we should provide a
9 focus, maybe through a series of issues or questions. This is
10 not unusual to give the public some questions to respond to,
11 and I think that that would help us, you know, focus the public
12 comment in such a way that would be extremely useful. I don't
13 want to limit, you know the areas that the public can comment
14 on, but I think it would be very useful to provide that kind of
15 a target for the public to shoot at.

16 MR. COLE: Mr. Chairman.

17 MR. PENNOYER: Mr. Cole.

18 MR. COLE: You know, I think the text of what we say
19 when we send this out for public comment is very important, and
20 I think each member of the Trustee Council should have an
21 opportunity to review that before it's sent out. I think we
22 should make clear that these have not been approved by the
23 Trustee Council, they've been submitted to us, there may be
24 strong objection to some of these projects by members of the
25 Trustee Council, but nevertheless, we'd like, you know, public

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

comment. I think that's important as to what we say -- very
1 important.

2 MR. PENNOYER: Mr. Sandor.

3 MR. SANDOR: And the public has got to be informed of
4 the role of the Public Advisory Group, the way in which that
5 information be obtained and the process by which ultimate
6 decisions will be reached. So I would want to see that
7 statement that goes out as well.

8 MR. PENNOYER: Well, I think the statement of what we
9 intend to get comment on is important. I guess I'm still
10 having a little trouble with the public commenting meaningfully
11 on these things without knowing which of them the Trustee
12 Council has problems with. And maybe -- and if we sort of
13 divorce ourselves from the Restoration Team vote and an
14 evaluation of Dr. Spies's comments, we're sending out, in some
15 cases, a conflicting message, and I don't know how we get
16 around that. I thought at the end of all this we would end up
17 sending all 64, maybe minus one or two, out, but I thought we
18 might have at least highlighted some of our concerns or areas
19 of concern for public input. They don't know for sure which of
20 these we're serious about or which ones we might have problems
21 with. We're not sending a message that they need to help our
22 thinking in an area or might not agree with our thinking in an
23 area, so I'm having a little trouble with the idea that, as Mr.
24 Cole's identified, there may be a few projects in here some of
25 us might have problems with, and others we may think are not

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

necessarily appropriately right. And I don't know exactly how
1 the Restoration Team is going to word this except just as a
2 Restoration Team project -- product.

3 Mr. Cole.

4 MR. COLE: I have the same general concerns as you, but
5 I see no way around it. I mean, other than to go through them
6 project by project and sort of take a non-binding sense of the
7 Council vote, but that's the reason I say we just as well send
8 them all out at this stage, because I don't think there's much
9 of a way around that unless we give each one a principal focus,
10 and furthermore, I think that maybe I, for one, have missed
11 something in evaluating -- formulating my views on some of
12 these projects, and I would like to hear what others say,
13 starting and taking each one with an open mind and responding
14 to the public comment. I don't see any way around it. That's
15 what troubles me.

16 MR. SANDOR: Mr. Chairman.

17 MR. PENNOYER: Mr. Sandor, then Mr. McVee.

18 MR. SANDOR: I hope we have yet time today to either
19 consider dropping or adding one or two items. I have a major
20 modification of one specific project or perhaps the addition of
21 one for consideration before this goes out. But I don't see
22 anything wrong with the track we're on. In fact, I think it's
23 -- I think we have to be careful of trying to reach a prejudged
24 conclusions on any of these projects before we have the Public
25 Advisory Group's comments, before we have the public's

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

61
comments. I think there's also going to be an opportunity, you
1 know, for a a discussion on the total Trustee Council, each
2 project after we get the Public Advisory Group, then the public
3 comments at-large.

4 What I want to specifically suggest, Mr. Chairman, is
5 that prior to our public hearing thing which begins either at
6 3:30 or 4:00 -- we're going to try to move that up and at least
7 get some of the comments here. I wish we could, perhaps, have
8 a draft of the statement that is going to go out.

9 Is it possible, if that hasn't -- that surely must have
10 been thought about. Could we at least have a draft or an
11 outline of what it is to be covered that we can discuss and
12 give tentative approval say by 3:00 o'clock?

13 MR. PENNOYER: Dr. Gibbons. If we take about a two-hour
14 break? I think what we're going to do now, before we vote,
15 Mr. Sandor has brought up and I have concerns, too, -- there
16 might be additional projects or additional changes individual
17 Trustee Council members may like to see, even if we don't
18 review the individual projects, and I think we'll do that
19 before we decide to vote on the total package -- then we'll
20 have the total package in front of us when we're done with
21 that. But if we do end up with a couple hour break between the
22 public hearing and the recess of this meeting, would you be
23 able to produce a that for the Trustee Council to look at and
24 decide on before we get into the public hearing process?

25 DR. GIBBONS: Mr. Chairman, we'll sure give it a whirl.

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

MR. PENNOYER: Okay. Well, then, I take it, we'll --
1 there's no -- Mr. McVee. I'm sorry, I forgot you.

2 MR. McVEE: I think we're on the right track here.
3 There are some really major inconsistencies, I think, within
4 the budget, and I assume we're talking about just the project
5 budget this time. We're going to deal with the administrative
6 budget as a separate discussion. But in the project budget, I
7 think there are inconsistencies between the attention that
8 we're giving to damaged resources, and I was hopeful that the
9 Restoration Plan will help balance that out. It seems to me
10 like, for example, that the inventory of anadromous streams,
11 we're walking on streams, identifying habitat, and not
12 providing that same level of attention in terms of inventory of
13 habitat to some of the other damaged resources. It seems like
14 that maybe is the kind of an issue that gets flagged for the
15 public to look at. We ask them to look at the consistency of
16 the program as we don't have the Restoration Plan to guide us,
17 that maybe that is where we get the balancing effects, from the
18 public review.

19 MR. PENNOYER: Is there further comment on the general
20 approach?

21 MR. COLE: Mr. Chairman.

22 MR. PENNOYER: Mr. Cole.

23 MR. COLE: Yeah, I would like also to, as we prepare
24 this draft, that we say, look, don't just say, you know, you
25 approve of the various groups, favor them all, for example,

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

unless they do. The problem is our hard decisions is achieving
1 the balance. I mean, you can't buy all the habitat, and we
2 can't do all the studies, so we need some form of, I think, to
3 ask the people to give us a sense of your priorities. I mean,
4 the hard decisions are do you spend money recognizing that if
5 you spend money studying the killer whales, that takes away
6 from the acquisition of habitat. I know -- I know, you want
7 killer whales. We go through this every month. Eventually,
8 they'll get it.

9 MR. PENNOYER: We have to reach a successful conclusion
10 and I'll quit talking about it.

11 MR. COLE: But, you know, it's hard to say. I would
12 like to see some requests put out for that. Also, I would
13 really think if we're dealing with individual ones, we should
14 eliminate number 48, that's the \$10 million for a
15 communications system in the Sound. The Department of Law is
16 looking at that very carefully in connection with other issues,
17 and we find that it's simply not feasible, I think, even to the
18 extent of \$10 million. So,

19 MR. PENNOYER: But you're going to leave it in for this
20 round?

21 MR. COLE: I think we really ought to take it out
22 because we've studied it very carefully. A lot of money has
23 been spent on that, number 48.

24 MR. PENNOYER: Well, you're down to the stage of
25 individual Trustee Council members

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

MR. COLE: Well, I just mentioned that as an aside. I
1 have -- get to be inconsistent once in a while.

MR. PENNOYER: I think also when we did the statement on
2 program review, we need to somehow put in context for the
3 public, Mr. Gibbons, where we are in the process. I mean, a
4 lot of projects proposed originally to us are things that
5 presumably might fit very well under Restoration Plan or a '94
6 Work Plan or some subsequent action, and somehow rather than
7 just go out and indicate to people of the 64 where we are and
8 the other 400 don't have merit, in our view, we should indicate
9 where we are in the process. And some how -- you don't have to
10 do that this afternoon, but characterize where we are in the
11 process and the fact that we just aren't to the stage yet of
12 making some of these decisions.

DR. SPIES: Mr. Chairman, I think it might also be
14 helpful for the public to focus public input to restate the
15 terms of the settlement in very simple terms, what the
16 allowable expenditures really are.

MR. PENNOYER: Mr. Barton.

MR. BARTON: I think Dr. Spies's advice is very sound
19 and we should adopt that.

MR. PENNOYER: Okay. Do the individual Trustee Council
21 members have problems or suggestions or additions to this list
22 that they need -- would like to bring out? Mr. Cole, you
23 brought up the \$10 million project. Do you wish to elaborate
24 on that and decide whether we want to take that out or does the
25

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

0-6 vote from the Restoration Team represent the bottom part of
1 the list?

2 MR. COLE: For that reason, I would. Like I say, in
3 connection with that other matter, we had a lot of money spent
4 on study of an establishment of a communication system in
5 Prince William Sound, and first I don't think \$10 million would
6 come close to achieving any sort of reliable system there,
7 number one. And number two, we also learned that we run into
8 conflict with the holders for FCC permits to provide that
9 service, and it just creates a lot of problems. We, at one
10 time, thought that that would be desirable, and sought to do
11 that, but we've, after considerable study, effort, concluded
12 that it's simply not feasible. So, I would say we shouldn't
13 seek additional comments on that.

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

15 MR. PENNOYER: I would note that it's about 80% of that
16 category -- 3 project categories that got three or less votes.

17 Any further discussion on that item? Is there any
18 objection to dropping project 48 from the list of those that
19 are sent out? Okay.

20 Next. Mr. Sandor.

21 MR. SANDOR: I just had a question, a follow-up to
22 Dr. Spies. He indicated that the evaluation on these various
23 species that have lingering recovery problems, the data
24 collected for this field year has not been analyzed. When
25 might that be available and when might you be able to update

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

the Trustee Council on the results of the field work that's
1 gone to the Council and then to you -- something comparable to
2 your report that you made, I think, in January or February of
3 this year?

4 DR. SPIES: I think December sometime would be
5 appropriate, maybe December -- yeah, sometime after December
6 1st.

7 MR. SANDOR: It would really be helpful, Mr. Chairman,
8 to have that -- you know, just before our decision making
9 meeting.

10 MR. PENNOYER: Mr. Gibbons, specifically, when do you
11 think we'll be making the decision on the '93 Work Plan now?

12 DR. GIBBONS: The schedule is in December.

13 DR. MONTAGUE: Mr. Chairman.

14 MR. PENNOYER: Mr. Montague.

15 DR. MONTAGUE: The projected due date for public comment
16 is currently December 5th, so it would be, presumably, a week
17 after that before we would have all the comments, and then a
18 week after that before you could hold the meeting, so it would
19 be on the order of December 20th.

20 MR. PENNOYER: Just in time for Christmas.

21 MR. SANDOR: So 10 days preparation of the supporting
22 documents and 10 days beyond that.

23 MR. PENNOYER: Just in time for New Year's.

24 DR. MONTAGUE: Mr. Chairman, one thing we might offer
25 for the Trustee Council would be that's assuming a 45-day

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

review, and as you've indicated, it's approaching the holidays.

1 Should we consider a 30-day review and have comments back more
2 like November 20th instead of December 5th?

3 MR. PENNOYER: Comment by the Trustee Council? Do you
4 wish a shorter public comment review? Shall we, perhaps, leave
5 that decision until we see how long it takes to get the package
6 together?

7 MR. COLE: Well, let's just decide it.

8 MR. PENNOYER: Okay. Anybody interested in a 30-day
9 public review period on the package so we can get this -- that
10 would get it to us by about December 15th or so. Does anybody
11 want to propose it? Mr. Montague, I don't think your
12 suggestion was

13 MR. COLE: Well, I'll propose it. Like I say, get it on
14 the table.

15 MR. PENNOYER: Does anyone want to second it for
16 discussion purposes?

17 MR. BARTON: I'll second it.

18 MR. PENNOYER: Okay. It's been proposed and seconded
19 that the comment period be reduced from 45 to 30 days to enable
20 the Trustee Council to get the package and be able to deal with
21 our conflicting time schedules in advance of the holidays. Any
22 further comment?

23 MR. SANDOR: Question. When would that 30- or 45-day
24 period actually be? Would it encompass a major holiday or
25 something that might diminish the opportunity for public

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

comment? What would it be, late November, early December or
1 November totally or

2 DR. MONTAGUE: Mr. Chairman, with a 45-day review, it
3 would be projected October 20th to December 5th; the 30-day
4 would be October 20th to November 20th.

5 MR. PENNOYER: Thanksgiving.

6 MR. SANDOR: Thanksgiving is the 26th of November.

7 MR. PENNOYER: Oh, okay. So it doesn't encompass any
8 holiday period?

9 MR. SANDOR: That's probably not too bad.

10 MR. McVEE: Mr. Chairman.

11 MR. PENNOYER: Mr. McVee.

12 MR. McVEE: It seems to me like -- and maybe the staff
13 can correct me or comment on this, that by the action that
14 we're basically, I guess, deliberating on here, proposing to
15 take, that the package will not look a great deal different
16 than what we have been given, so that there doesn't seem to me
17 like a lot of rewrite or a lot of modification that's going to
18 be necessary and it's primarily one of -- the problem of
19 getting that package ready for the public is the printing time
20 that's required. Will that shorten -- will that period be able
21 to be shortened because of the action we're taking today?

22 DR. MONTAGUE: Mr. Chairman, currently we were scheduled
23 to have everything print ready by October 6th and assume about
24 two weeks, or the 20th, to get sent out. It's possible that we
25 could improve upon that, you know, getting the document fully

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

edited, which is ongoing now and everything. We were hoping to
1 have it essentially ready by the 29th of September, and we had
2 about four or five days there to insure that there weren't
3 other delays or unsure of what kind of changes we would make
4 today, so it's possible we could cut four or five days off of
5 it, but still the 6th is probably the most likely delivery
6 time.

7 MR. PENNOYER: You're not going to pick up a full two
8 weeks though anyway. Mr. Cole.

9 MR. COLE: One comment and one question. Obviously, our
10 limits are not necessarily 30 days or simply 45. You know, we
11 could get something in between. How about proposing November
12 25th, that's the Wednesday before Thanksgiving on the 26th?
13 And that would allow us a few more days and maybe be ample
14 time. That's the comment.

15 The question is, by the way, what is going out to the
16 public? All this?

17 MR. PENNOYER: Mr. Gibbons.

18 MR. GIBBONS: Yes, Mr. Chairman. We envision the
19 package with -- not the detailed budgets, but the budgets
20 explaining personnel costs, commodities, contractals,
21 equipment, an explanation of the administrative budget, and
22 supporting documentation. We would have the budgets -- the
23 detailed budgets found in 14 library locations across the state
24 and also at the teleconference sites as well as OSPIC here.

25 MR. COLE: Mr. Chairman.

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

MR. PENNOYER: Mr. Cole.

1 MR. COLE: For example, like project number 22, which I
2 happen to have here, entitled Exxon Valdez Oil Spill Project
3 Description, consisting of three pages. Now, will all that be
4 sent out?

5 DR. GIBBONS: That's correct.

6 MR. COLE: So, essentially, you'll have a package at
7 least as thick as these materials here. That's what we're
8 doing, isn't it?

9 DR. MONTAGUE: Double-sided.

10 MR. COLE: Maybe not as thick; half as thick but as many
11 pages of written material.

12 DR. MONTAGUE: Mr. Chairman, indeed, it will be thicker
13 than any other draft that we've prepared.

14 MR. PENNOYER: Yes, Dr. Gibbons.

15 DR. GIBBONS: Mr. Chairman, I have been sitting here
16 thinking, and I've been thinking about the process we went to
17 to develop this, and we're throwing dates out in December, and
18 then I remember back on the 10-day review period for the
19 public. I'm getting very uneasy about December. Perhaps, a
20 better approach might be to get this thing printed, get the 45
21 or 30-day period or whatever that is, have us -- the
22 Restoration Team prepare that, have the public review it over
23 the holidays, getting it to 'em for at least a two-week period,
24 maybe a little longer, and then meeting in early January on
25 this package, after some review. That's maybe another

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

approach, because I'm looking at these deadlines and the 10
1 days, and I'm not sure we can turn around all the public
2 comments in a week or two. There may be a whole lot of public
3 comment on this package.

4 MR. COLE: Pamela has a comment.

5 MS. BERGMANN: Mr. Chairman, I think that a concern with
6 that kind of schedule, when we talked about it originally is
7 that some of the projects need to get people out into the
8 field. You need to get contracts in place like in January or
9 February at the latest. There's some field studies that need
10 to start in March. And so if we wait until January, it's going
11 to preclude our options on a number of studies. That happened
12 to us this year when we were trying to schedule it so that that
13 would not happen to us next year, and that's my concern with
14 letting everything slide to January.

15 MR. PENNOYER: Mr. McVee.

16 MR. McVEE: I would like to see a schedule, and I don't
17 know whether it's possible or not, but that we take a break
18 over the noon break, if we could work up a schedule to take a
19 look at how this thing might develop over the next three or
20 four months.

21 MR. PENNOYER: Well, let's defer the vote on the 30 days
22 until after we take a coffee break and Mr. Gibbons, do you want
23 to take a 10-minute coffee break and give us the schedule, or
24 would you rather do it after lunch?

25 DR. GIBBONS: I think we can do that in 10 minutes.

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

MR. PENNOYER: Okay, let's take a 10 or 15-minute coffee
1 break. Mr. Rosier, do you have a comment before we take a
2 break?

3 MR. ROSIER: Well, that's all right. I'll wait until
4 after the break.

5 MR. PENNOYER: Thank you.

6 (Off record - 10:34 a.m.)

7 (On record - 10:52 a.m.)

8 MR. PENNOYER: Shall we go ahead with another item then
9 and wait for you to -- until you get the schedule to us?

10 DR. GIBBONS: Yes, it should be ready just anytime now.

11 MR. PENNOYER: Okay. Mr. McVee.

12 MR. McVEE: I'd like to make a motion that -- and I
13 discussed this a little bit before about some major
14 inconsistencies in the budget, both within the project budgets,
15 and also there's the detailed budget information, the
16 administrative budget reflects inconsistencies. For example,
17 the cost of travel to Juneau, from Juneau to Anchorage, it
18 ranges in that budget from \$700.00 to \$2,000.00. Some of that
19 would depend upon, of course, the term the person would be
20 staying in Anchorage if they were traveling from Juneau or vice
21 versa. Also the cost and amount to support items, in terms of
22 services, supplies, equipment and training. It appears to me
23 that in reviewing the administrative budget there is not a set
24 standard of assumptions within the working groups or at the RT
25 level to be used as a basis for those budget estimates. I

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

realize we're just approving for public review, and then just
1 the '93 -- March 1 to September 30th component, not the '94,
2 the out-year, but I'd like to move that the RT, with the input
3 from the Finance Committee, during the public comment period
4 step back and kind of make a broad overall review of the budget
5 document give specific attention to this inconsistency issue,
6 and also the overall strategy of the program proposed for the
7 last seven months of '93, and for particularly projects to be
8 implemented prior to the Restoration Plan, and resolve to work
9 out any discrepancies that they identify or the Trustee Council
10 to consider at our follow-up meeting on the budget.

11 MR. PENNOYER: Is there a second?

12 MR. ROSIER: Second.

13 MR. COLE: Mr. Chairman.

14 MR. PENNOYER: Mr. Cole.

15 MR. COLE: Isn't that a function of the Finance
16 Committee, too, to review that sort of thing?

17 MR. PENNOYER: I believe the motion included the Finance
18 Committee.

19 MR. McVEE: I wanted to include the Finance Committee,
20 yes.

21 MR. PENNOYER: Mr. McVee, would you elaborate on what
22 you mean by consistency; consistency with what, just
23 consistency in numbers for costs of items or consistency in
24 approach or

25 MR. McVEE: I think both. There is cost

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

inconsistencies, and without assumptions various working
1 budgets look different. I guess I assume that they're
2 inconsistencies. Maybe there's a reason for it, but -- and
3 then I think that the second part of the motion is to also look
4 at the overall -- the overall project program, and I feel like
5 there's some inconsistencies in that and the way that we're
6 dealing with, for example, habitat inventories, that we've got
7 differing levels of effort going into inventories for some of
8 the species involved.

9 MR. PENNOYER: Are we providing the RT with instructions
10 about what to look for; how do you mean different levels of
11 detail for different species? Are you making reasons for that
12 or are you just looking to see if there are reasons for why
13 we're not?

14 MR. McVEE: There may be reasons for that, but I think
15 we should have reasons of what those reasons are. There are
16 inconsistencies in the projects about the level of detail that
17 we're proposing for inventories for habitat.

18 MR. PENNOYER: Where does such a review get us in terms
19 of the '93 Work Plan, public review process and so forth; are
20 you suggesting this be done before it goes out to public review
21 with changes or

22 MR. McVEE: No, I don't want to delay the public review.
23 I'm suggesting that it be done before the Trustee Council
24 takes final action. And it seems to me like that is an
25 important step because we do not have a Restoration Plan, so at

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

some point we need to step back and look at the package we
1 have, which is kind of, you might say, piecemeal, as opposed to
2 restoration program for the remainder of '93. We have to step
3 back and see if this is accomplishing it in the priority
4 context in a consistent way, the restoration of resources and
5 services.

6 MR. PENNOYER: Mr. Gibbons, are you clear what the
7 request says and how you carry it out?

8 DR. GIBBONS: Yeah, I think I'm pretty clear with the --
9 to review the inconsistencies in the budget and if they are
10 deemed, explain inconsistencies, if they can be explained, if
11 not, correct them.

12 MR. PENNOYER: The second part -- I guess I was more
13 concerned with the second part of the proposal, which is look
14 at the whole plan for its consistency with our time table, our
15 criteria, and their Restoration Plan. In other words, are we
16 ahead of ourselves in some of these projects, are they really
17 necessary, or should we be waiting until the Restoration -- I
18 thought that was one of the criteria you actually used in your
19 project review to start with, so I'm not clear how you do that.

20 DR. GIBBONS: That's correct. In the book that was
21 passed out last week, it explains the -- all the projects. One
22 of the criteria was time critical, does it need to be done this
23 year, and if it didn't need to be done this year, it was
24 deferred. So that's been used as a criteria. And if it didn't
25 meet that criteria, like I said, it was deferred until -- if

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

possible, you know, completion next year.

1 MR. PENNOYER: Mr. McVee can elaborate and explain his
2 motion. Do you want to explain to Mr. Gibbons a little bit
3 more?

4 MR. McVEE: I guess my point there was -- is that we've
5 given a lot of time to discussion on this issue of habitat
6 acquisition and habitat protection, and that, I guess, I want
7 to be sure that we are giving equal attention to the inventory
8 or to the information we need concerning all damage resources
9 before we -- you know, before we take final action on the
10 protection of habitat or the acquisition through some
11 management of protection, and I guess I feel like the program
12 we have is not smooth in that regard, that we are providing
13 more attention to some habitats than we are to others, and I
14 think we should step back and take a look at that. That could
15 be done between now and when we take final action.

16 MR. PENNOYER: Yeah, you have in mind that we're looking
17 at anadromous streams too much as opposed to sea otter kelp
18 beds or

19 MR. McVEE: We're walking every -- what I heard last
20 evening, we're walking every mile of anadromous streams to
21 identify specific habitats, and I don't think -- my feeling is
22 in reviewing the package that we aren't giving that same kind
23 of attention to the other damaged resources. If that's not the
24 case, you know, if we've got enough information on the other
25 damaged resources to go ahead and make habitat determinations,

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

that's fine. Also the process that we're going through, which
1 is very supportive with the Nature Conservancy, is certainly
2 going to help us in a timely manner to take a cut in this final
3 package, and we will have some final identification,
4 hopefully, in that time where there are gaps or information
5 needs.

6 MR. PENNOYER: Mr. Cole.

7 MR. BRODERSEN: Mr. McVee, move your mike closer,
8 please. You're getting feedback.

9 MR. PENNOYER: Mr. Gibbons, do you want to comment?

10 DR. GIBBONS: Yes, I'd like to comment on that. We
11 looked at that as there's two more steps to come about. The
12 State's got an excellent anadromous fish catalog, and we looked
13 at that to determine what kind of information we needed on fish
14 streams, and we had very little information on fish streams in
15 private lands, so we knew there was a need there. And the next
16 step, as far as we can see, is to bring these habitat focus
17 groups, or whatever we want to call them, together and with the
18 Nature Conservancy contract to look at the habitat and data we
19 have for a lot of the other species, also including anadromous
20 fish, and then look at the package -- do we have everything
21 covered, do we have all the data that we need to move forward
22 in a logical step.

23 We've looked at the habitat package. We're going out
24 and collecting information on harlequin ducks, on marbled
25 murrelets, that's proposed in here. We know we need those

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

needs, you know. This is our best shot at it right now, and
1 we're going to refine it as we go. I guess that's what I'm
2 trying to get at.

3 MR. PENNOYER: Mr. McVee.

4 MR. McVEE: It would help, you know, with the
5 concurrence with whoever did the second on the motion -- I
6 guess I would change the motion to ask for just review on the
7 budget information, the inconsistencies in the budget
8 information, if that's acceptable.

9 MR. PENNOYER: Mr. Sandor.

10 MR. SANDOR: That's acceptable.

11 MR. PENNOYER: It's been moved and seconded that the RT
12 undertake a review of the budget information, both the
13 administrative and project budgets to look at inconsistency
14 between projects and programs in terms of administrative --
15 primarily administrative costs. Any objection to that motion?
16 And they do it by the December meeting before we vote on the
17 '93 Work Plan. Okay. I would assume it still goes without
18 saying, that we are interested in the consistency of the plan,
19 the Restoration Plan process and the rest of it.

20 We now have in front of us the '93 Work Plan schedule
21 that I believe Mr. Sandor, you requested. This is relative to
22 the amount of time we're going to allow for public review, and
23 when we have to -- or try to make a decision on it, and this
24 has the final decision on the '93 Work Plan being January 4th,
25 that's with a 45-day period, Mr. Gibbons?

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

DR. GIBBONS: That's with a 35-day period.

1 MR. PENNOYER: 35-day

2 DR. GIBBONS: October 20th to November 24th.

3 MR. BRODERSEN: Mr. Chairman.

4 MR. PENNOYER: Mr. Brodersen.

5 MR. BRODERSEN: If I may, I'd like to suggest that we
6 move the date for public comments due back from the public to
7 November 30th. That's the Monday after Thanksgiving weekend.
8 I would hope we weren't going to have staff in here over the
9 Thanksgiving weekend looking at these comments and preparing
10 them, and that does give the public more time to get their
11 comments in, probably working over the Thanksgiving day weekend
12 to accommodate us.

13 MR. PENNOYER: That makes for a 40-day review period.

14 MR. BRODERSEN: Yeah, much closer to the 45, and it
15 doesn't really affect our getting the information to you on
16 December 21st.

17 MR. COLE: Mr. Chairman.

18 MR. PENNOYER: Mr. Cole.

19 MR. COLE: I think we should work back on the date in
20 which we think the Trustee Council can meet, too, to get this
21 done. Do we really want to accept the January 4 as the date?
22 Is that the proposed date for a Trustee Council meeting,
23 January 4th?

24 MR. PENNOYER: I think that was the earliest date
25 Mr. Gibbons would be able to get it to us and we would meet as

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

soon after that as we could get everybody together. Is that
1 right, Mr. Gibbons?

2 DR. GIBBONS: That's correct. This is a draft. That's
3 what we figured. We moved from today's date forward with a
4 time schedule. I'm not implying that the Trustee Council
5 should meet on January 4th, but that's the earliest we can
6 probably get it there. That's Monday after the New Year.

7 MR. PENNOYER: We had quite a bit of comment previously
8 about January being too late to approve this plan, but even
9 with a 40-day, instead of 45, we're still into January. And,
10 frankly, if you back it up a week, you're into the Christmas
11 holidays anyway. So cutting it back to 30 or 35 days probably
12 means you'd get it about Christmas Day. So it looks like we're
13 stuck with January.

14 Ms. Bergmann, do you want to comment on that?

15 MR. COLE: Are you cold?

16 MS. BERGMANN: Yes, it's freezing in here. I don't see,
17 you know, what we can do about that. The most we could do is
18 cut it back to a 30-day review period which isn't idea, by any
19 stretch of the imagination. We'd rather have a 45-day review
20 comment period, but unless there's some way to speed up the
21 printing process, I don't know what else we can do.

22 MR. PENNOYER: Well, even cutting it back to a 30-day
23 review period, you still would be getting it Christmas week,
24 December 21st, correct? On the schedule you've got here, if
25 you cut it back -- your's is 40 days, you cut it back to 30

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

days, only 10 days, that get's it to you on Christmas Day, so

1 you haven't done much with the 30-day either.

2 MR. COLE: Mr. Chairman. It's just another illustration
3 of us taking much too long to get our business done. I mean,
4 look, you know what will happen. People will say pretty soon,
5 well, gee, we can't get back in January 4th, people are taking
6 Christmas vacations over the New Year's, they won't be right
7 back, furthermore they're Outside, can't get on a plane to get
8 back. I've been through this, so we can't do it that week.
9 What we'll have to do is -- well, we'll have to put it back at
10 least to the 11th or 12th, you know. I mean it just goes on
11 and on every meeting. I just think we have to get things done
12 more rapidly.

13 MR. PENNOYER: Mr. Cole, I agree with you.

14 MR. COLE: We complain about saying, well, we don't it,
15 we don't get this thing done, and one of the reasons is we just
16 don't get our business done. I mean, we're talking about
17 October, November, December, half a day in January, that's 30,
18 60, 90, 100 days. They fought the war in the Middle East and
19 got it over in 100 days. I mean it just takes us -- I mean,
20 here it is four months. It's just too long. We've got to get
21 things done.

22 MR. PENNOYER: Mr. Cole, I'm very willing to meet the
23 week of December 21st or the week of December 28th if
24 Mr. Gibbons can rearrange his schedule, maybe including a
25 shorter public review period to get it to us one of those two

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

weeks.

1 I haven't -- I guess, Mr. Gibbons, I'm asking for some
2 help here. If you go out September 21st, we make the decision
3 today, we've got to go into the printer October 6th, Mr.
4 Montague said that might be moved up three or four days, but
5 not much, and then you've got two weeks to get it printed. I
6 guess we can't do much about that. And then you've got 40 days
7 here for public comment. You have 30 days for public comment,
8 you get it back November 20th. Could you get it to us by the
9 week of December 21st?

10 DR. GIBBONS: What we could do is

11 MR. PENNOYER: That still leaves somebody working over
12 the holidays.

13 DR. GIBBONS: Excuse me, Mr. Chairman.

14 MR. PENNOYER: Go ahead. I'm sorry.

15 DR. GIBBONS: If we limit it to a 30-day period, that
16 would push it to November 20th. For the '92 Work Plan, the
17 Restoration Team worked almost night and day to analyze the
18 comments over the weekends and stuff to get that collated for
19 the '92. Three weeks is minimum. That pushes us, perhaps, to
20 the 11th of December. Using the direction for a 10-day public
21 comment period, we could meet December 21st or 22nd.

22 MR. COLE: Mr. Chairman.

23 MR. PENNOYER: Mr. Cole.

24

25 MR. COLE: Let's talk about when we get the public

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

comments back. I mean, how many public comments do you expect
1 we would receive, and how many pages -- pieces of paper do you
2 expect that it would include?

3 DR. GIBBONS: Mr. Chairman, I can relate to that. Last
4 year, I think, we had over 90 comments that were about two or
5 three inches of material. We wanted first to synthesize them,
6 summarize them and categorize them and then in regards to the
7 studies, they come in -- they tend to come in on the last day
8 or two days after the closing period, so it doesn't allow us to
9 analyze them during the period. And so it's just extremely
10 difficult. If it came in over the period, it would be much
11 easier, but if we set the date for November 20th, they'll be
12 coming in on the 18th, 19th and 20th, 21st, 22nd, and 23rd.

13 MR. COLE: Mr. Chairman.

14 MR. PENNOYER: Mr. Cole.

15 MR. COLE: Here's my thought. I mean, if each Trustee
16 member got a set of the whole package, two inches, we could
17 take it on a Saturday morning and Sunday evening, we could have
18 it all read, each one of us, individually, you know. But what
19 we had for this meeting, you know, take two days, take a
20 weekend, get it all done. Why do we need three weeks to a
21 month reading this? Let's get the real flavor itself. So you
22 don't get it synthesized and you see just what people are
23 doing, how they're doing it, you understand it. I'm prepared
24 to read it all over the weekend and meet on it the following
25 Monday. That's the way I think we should be doing this. I

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

84
I'm appreciate the staff review, and they do an excellent job. I'm
1 not being over-critical, but I mean, I just don't think we have
2 the luxury of all these times to do these things. Just read it
3 and decide.

4 MR. PENNOYER: Well, I'm not sure which part of this
5 process we can cut back. You're talking about not having a
6 written response to public comments by the administration team?

7 MR. COLE: See, my view is if we got comments on the
8 21st -- 25th, okay, here they are, a little late, but all the
9 pieces of paper come in prior to that date, Xerox 'em and send
10 'em out. Thanksgiving day, Friday, Saturday, Sunday, by the
11 following Monday, we get them all read. That's not
12 particularly difficult. A little bit of work but just have it
13 all done. Be prepared to vote on November 30th. That's they
14 way I would do it, but

15 MR. PENNOYER: Do we have some legal requirement to have
16 written response to public comments or do we?

17 DR. GIBBONS: I'm not sure. We responded to the other
18 work plans with response to the public comments, but I'm not
19 sure of the legal requirement.

20 MR. PENNOYER: Mr. Sandor.

21 MR. SANDOR: Mr. Chairman, I think there's an
22 obligation, it might not be legal, but to demonstrate or
23 illustrate how, in fact, the public comments were dealt with
24 here. We do have a Public Advisory Group that's, you know,
25 willing to be more responsive to the public-at-large.

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

It occurs to me that most of the material that we're
1 sending to the printers is not going to change, and some of
2 that actually -- I don't know why it couldn't go to the printer
3 this week, with a smaller package going -- you know, that's
4 added. I would have hoped, as well, that we might have, quote,
5 a working session on the Trustee Council with Restoration Team
6 at some point in this calendar such as we talked about last
7 meeting, you know, and that can be accommodated. I would
8 remind ourselves that we, at the beginning of this meeting,
9 passed a motion that we would try to have these supplemental
10 materials give 10 days in advance, so we've got that -- we
11 can't have it both ways. You can't impose these deadlines on
12 the Restoration Team and staff and not incorporate them in the
13 guidelines. I think, one, we ought to get this Work Plan to
14 the printer -- perhaps the bulk of it earlier than October 6th,
15 and maybe we can get this out to public review even before
16 that, but I'm in favor of a shorter period of time for public
17 comments because we've got the Public Advisory Group in place,
18 and that's helpful. I have no problem meeting your -- meet
19 December 21 -- the 22nd is my birthday, so I can have a cake.

20 MR. ROSIER: We will even sing.

21 MR. SANDOR: But anyway, I share this thing. We really
22 want to have this before Christmas. Santa Claus should bring
23 us this package.

24 MR. BARTON: Mr. Chairman.

25 MR. PENNOYER: Mr. Barton.

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

MR. BARTON: Yes. I think that we could speed this up,
1 in terms of the analysis of the public comments. By not having
2 as much analysis and synthesis on the part of the RT as we've
3 normally enjoyed, and I'd suggest we set a date that we want to
4 meet on and adjust the schedule according to that.

5 MR. PENNOYER: Within what range?

6 MR. BARTON: Well, December 10th, for example, that
7 would give the RT time to just compile the comments and get
8 them out to us for the 10-day period, which we just requested
9 from them.

10 The further thought that occurs to me is that in order
11 to bring this thing into sync with the federal budget cycle,
12 which we've been asked to do, you know, we have three of these
13 work plans to do in a two-year period, and if we continue to
14 take a year and a half to do each one, we'll never make it.

15 MR. COLE: Mr. Chairman.

16 MR. PENNOYER: Mr. Cole.

17 MR. COLE: Take Mr. Rosier.

18 MR. PENNOYER: Mr. Rosier.

19 MR. ROSIER: Thank you, Mr. Chairman. I would like to
20 say one thing here in terms of shortening the period. I like
21 the idea of a work session here, and perhaps being able to
22 curtail something between this November 25th and December 21st,
23 but I'd like to say this: I don't think that in terms of
24 public comment we should cut it any finer than what's provided
25 for in this schedule. The reason being a lot of the user

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

groups that are in fact associated with the projects and so
1 forth, they've got other things to do as well. We've got
2 almost -- on the State side we've got almost continuous Board
3 of Fisheries and Game meetings, starting the 27th of October
4 and running through essentially the entire month of November.
5 Many of the user groups are going to have an interest in these,
6 are going to be effected if we -- in fact, we do set some. We
7 can reduce something in there after the 25th, I would strongly
8 support that, but not the public comment period.

9 MR. PENNOYER: Mr. Gibbons.

10 DR. GIBBONS: Well, I heard something very encouraging.
11 It was a compilation of the comments rather than an analysis,
12 and that will speed the process up quite a bit. To give you a
13 table of contents and some thoughts on what's there and then
14 give you the packages would greatly speed that process up.

15 MR. PENNOYER: Mr. McVee.

16 MR. McVEE: Mr. Chairman, I guess this was what I was --
17 some of what I was getting at in earlier comments. I was
18 talking about of having questions, you know, so the public
19 comment would come in somewhat structured. It would be easier
20 to analyze, and if there were some specific questions that were
21 asked in areas that we wanted the public to address, not of
22 course restricting them to -- in any way to what they want to
23 respond, but it probably would help speed up this review.

24 MR. PENNOYER: Well, let's take a previous suggestion
25 and see when we could meet or we set this deadline and we can't

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

show up, that's not going to help much either. Can we set the
1 date of the meeting sometime after the 1st of December? I hear
2 we're probably talking about the 10th, at least.

3 Mr. Gibbons, a compilation, would you have that
4 available for us if the public comment process ended on the --
5 I think the 25th was the date you had in there, which is 35
6 days, a compromise. When could we have the package at the
7 earliest to go?

8 MR. COLE: Could we have until after lunch to fix that
9 date? I know there's some things out there that I have
10 scheduled in December, and I don't know the exact date, and I
11 would like to have the opportunity to just verify those dates
12 that I'm committed to.

13 MR. PENNOYER: That's a good idea.

14 MR. COLE: I don't know about other members in the
15 Council, but they might like that opportunity as well.

16 MR. PENNOYER: Why don't we finish this topic after
17 lunch and if you'll come back with your calendars looked at and
18 figure out when we can have that meeting so we can set the
19 schedule for the staff.

20 MR. COLE: I'd like to say that, you know, I think that
21 the public would like us to individually read their comments in
22 the package without synthesization. You know, they may feel
23 that the Trustees or the Restoration Team, you know, has some
24 particular bias towards some of the various plans being
25 proposed by the state and federal agencies. If we could make

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

1 the general commitment to read those comments ourselves, I
2 think that the public would feel that this process is more
3 wholesome.

4 MR. PENNOYER: Further comment? Okay, let's leave that
5 one till after lunch. Can we come back to the list of projects
6 and see if there are further projects that individual Trustee
7 Council members want to discuss on this list?

8 Mr. Sandor, you had a request for one.

9 MR. SANDOR: Yes, Mr. Chairman. Actually, this relates
10 to this whole area of habitat protection and, frankly, covers
11 59, 60, 64, 51 and -- projects. And I might ask Mr. Weiner if
12 he'd join us at the table 'cause this relates to some
13 activities.

14 I'd like to distribute to the Trustees and the
15 Restoration Team members this summary of spruce bark beetle
16 infestation, and I'd requested this information in August --
17 late August, actually for a different purpose, and only going
18 through these projects that came to mind that this is very
19 relevant to this whole question of habitat protection, and
20 we've not addressed -- and this is not an original idea with
21 me. The Kenai Peninsula Borough, and specifically the Mayor
22 Don Gilman and the assembly have formally asked the State of
23 Alaska and the federal agencies to deal with this serious
24 spruce bark beetle infestation, and actually about August the
25 23rd or so attended a meeting which this information from Kenai
26 Peninsula Borough came to our attention.

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

So, I'd ask specifically in follow-up to that meeting
1 what is the extent of infestation on the Kenai Peninsula and
2 particularly the infestation that was detected in the Katchemak
3 Bay State Park in the area, and was the spruce bark beetle
4 migrating into the hybrid spruce areas in the Sitka spruce
5 areas as opposed to the bulk of the infestation taking place in
6 the white spruce areas.

7 In summary, item one points out that indeed the
8 infestation has substantially increased over the last three
9 years and specifically in the northern Kenai Peninsula to
10 Katchemak Bay to the south, excluding the Chugach National
11 Forest. The infestation has -- that has increased to 300,000
12 acres, up from 187,000 in 1991. Specifically, in the area of
13 the Lute spruce forest north of Homer, that has increased from
14 108 to 284,000, compared to 101,000 in 1991 and 39,000 in 1990,
15 and it wasn't presumed that this infestation would actually be
16 in that area several years ago.

17 With respect to Katchemak Bay, specifically, the
18 infestation has doubled from 6,800 to 12,400 in just this one
19 year. The relevance, I believe, to habitat protection can be
20 considered just in the relative acreage that's infested versus
21 the acreage being harvested, and it's clear that many, many
22 more times -- and I don't know specifically how much more. I
23 would suspect that if my proposal to expand this -- these
24 projects to include this activity is covered, that we will find
25 many, many more times the acreage of habitat threatened and

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

that threatened by the current rate of timber harvesting.

1 The question is does the infestation of the forest pose
2 a threat to habitat of species injured in the Spill, and as in
3 the case of timber harvesting, I think that a case can be made.
4 And there's also a threat beyond the destruction of the forest
5 itself, now 300,000 infestation, and that is the threat of fire
6 that's associated with this. And the Kenai Peninsula Borough
7 and its assembly has voted recently to develop a forest health
8 plan that will take action to eliminate this threat from forest
9 fires and actually a reduction of property values of the
10 property, but also the spread of the infestation itself.

11 And so, Mr. Chairman, it seems to me that although the
12 projects 59, 60, 64, 51, 61 do not address this issue of the
13 destruction of these forests and the potential for even more
14 massive destruction than fires that stem from it, ought to be
15 enveloped and considered in this.

16 And, I guess, Mr. Chairman, I'd like to ask Mr. Weiner
17 for his views on this problem, and the DNR, I think is the lead
18 agency, insofar as the State has responded in the Kenai
19 Peninsula Borough's request.

20 MR. PENNOYER: Mr. Weiner.

21 MR. WEINER: That's correct. I certainly caveat my
22 response by saying that I am not a forester, and I'm going to
23 make a few remarks and then turn it over to Dave, who has an
24 awful lot more professional experience than I do.

25 But my response would be that if the upland link

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

habitats to the Oil Spill injured resources were placed at risk
1 by the infestation of the consequences of the infestation, we
2 certainly should take this into consideration. The downstream
3 effects of fire in these kinds of forest systems would
4 certainly have serious consequences on anadromous fish habitat.

5 I mean, that's pretty obvious to me. So I would certainly
6 think that this particular idea of Mr. Sandor's is particularly
7 worthy of consideration because I think there is potential
8 impact on those upland linked habitats, and I'd certainly turn
9 it over to Dave how has much more expertise than I have.

10 DR. GIBBONS: Mr. Chairman, I think that would fall
11 right into project number 60, which is a data collection.
12 We're looking at layers of data, forested types, those types of
13 things, and we could have another layer on infestation, and lay
14 it over with the critical habitat types, and that would give us
15 that information so we could incorporate the beetle information
16 into that analysis.

17 MR. WEINER: One thing that is programmed into our
18 thinking though is that if in fact we did exercise a habitat
19 protection or acquisition option, part of the downstream work
20 would be to develop a management plan that would reflect our
21 knowledge of the condition of the land, i.e., beetle
22 infestation, and a management plan for any lands that we did
23 acquire would have built into it a management plan for
24 management of this type of need. It's certainly something we
25 had contemplated before recommending to you all to go ahead and

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982
ANCHORAGE, ALASKA 99501

purchase land. But we're going to have to have some downstream
1 controls over how that land is managed.

2 MR. SANDOR: Mr. Chairman, I think that this is another
3 relevant point in that the way in which these forested areas
4 are treated or managed -- you know, is going to be different
5 than -- there may actually have to be removal of these infested
6 trees, which will require, I think, management as opposed to
7 controls on, you know, just proposed harvest.

8 The other thing, Mr. Chairman, I guess, Dr. Gibbons --
9 I'd like to see in this data compilation really, you know, a
10 comparison, I guess, of placing of this problem in perspective.
11 This 300,000 acres just in this Kenai Peninsula area doesn't
12 cover the infestations in some of the other areas, and I don't
13 know what the timber harvest is in the areas, but I suspect
14 this is many more times. Perhaps the areas that are planned
15 for timber harvest in the entire spilled area, as much stated
16 about the concerns of timber harvesting on both public lands
17 and private lands, and what's imminently threatened, why I
18 suspect this has a potentially greater impact -- adverse impact
19 on the habitat than timber harvesting itself. I don't know,
20 just on nation forest lands, but lands for harvest or what
21 hasn't been harvested.

22 MR. PENNOYER: Mr. Barton.

23 MR. BARTON: On the Kenai Peninsula, within the Chugach
24 National Forest, there's been a very minor amount of harvest,
25 in the neighborhood of 600 acres. You know, a considerably

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

greater acreage is involved in this insect infestation that
1 need to be harvested.

2 MR. SANDOR: Well, Mr. Chairman, if the Trustee Council
3 would agree just to have these projects that deal with data
4 acquisition and imminent threat, to incorporate this activity,
5 that would -- and have that reflected in the package that goes
6 out, that would meet what I'm trying to achieve.

7 So, I guess, I would formally move that that project or
8 projects be modified to also include the habitat damage that is
9 occurring as a result of the infestation.

10 Thank you, Mr. Chairman.

11 MR. PENNOYER: Is there a second? Do we need to move
12 that or

13 MR. BARTON: I'll second it.

14 MR. PENNOYER: Is there any objection to that? Mr.
15 Cole. Discussion.

16 MR. COLE: It seems to me that this is an explosive
17 proposition here that's now being presented. It would, I
18 think, dealing with Katchemak Bay itself, affect all of the
19 ongoing -- if that's the proper term, negotiations for the
20 acquisition at Katchemak Bay State Park, would it not?

21 MR. SANDOR: Indeed it would, Mr. Chairman. And I think
22 that's why I believe that it would be appropriate if these
23 various projects dealt with that additional factor. It
24 certainly has the potential of not only the value of the lands
25 involved but in effect what would be necessary to correct the

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

infestation as it continues to spread, if it does.

1 MR. COLE: Let me see if I understand where you're
2 coming from, as they say. Such being the case, would you think
3 that that would cut more toward the acquisition of the state
4 park or less toward the acquisition of state park property?

5 MR. SANDOR: I think it may be either, and I don't mean
6 to be evasive. I think what it will require is that we not
7 only look at timber harvesting's impact on the habitat, but
8 also the infestations on habitat and what it's going to
9 require. I think, Mr. Cole, it's going to require a management
10 plan, whether it's on lands that are retained by the private
11 sector or in state ownership or not, and an alternative of
12 harvesting the areas that are infested, because it's my
13 understanding that the control mechanisms for dealing with this
14 is the actual removal of the trees. And so to consider
15 acquisition for prohibition of timber cutting of any kind, even
16 for forest health purposes, would be a serious mistake. And as
17 a consequence, this has to be a factor that's consi- -- must be
18 considered, one, the evaluation of the lands and, two, the
19 potentials for management. Under no circumstances should
20 options for no sanitation cuttings or health cuttings be
21 prohibited, from my judgment.

22 (Indiscernible - mike cut-out)

23 MR. COLE: Is the intent of the motion to do this with
24 all of the potential endangered or threatened habitat?

25 MR. SANDOR: For the imminently threatened categories.

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

It will be a guide, of course, for other areas as well.

1 MR. COLE: Have we given any thought to the control of
2 the spruce bark beetle and the regulation of logging even on
3 private lands in light of the infestation of the spruce bark
4 beetle?

5 MR. SANDOR: I believe that's just being considered.
6 And this proposal from the Kenai Peninsula Borough is very
7 recent. In fact, it comes after, I think, the closing date of
8 project proposals. But the DNR is evaluating that very matter.

9
10 Is that not right?

11 MR. WEINER: That's correct. Also DNR has generated
12 some maps, probably from remote sense data, that indicate the
13 extent of the infestation on the Kenai Peninsula, and that's a
14 data layer that's readily accessible from remotely sensed data
15 that we can incorporate into our data layers, too. So we -- at
16 least identifying -- quantify the extent of the infestation in
17 any language that we're proposing for protection or
18 acquisition.

19 MR. COLE: Have any potential control mechanisms been
20 generated in DNR?

21 MR. WEINER: I can't answer that. I'm not privy to the
22 information. What I was made privy to was just the extent of
23 the infestation from maps.

24 MR. PENNOYER: Is the remedy working or the selective
25 cuts slowing down the infestation any? Have they been tried?

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

MR. SANDOR: Mr. Chairman, from my perspective and Mike
 1 Barton and others, the assumption was made that these
 2 populations would increase in tracks. And an assumption, some
 3 years ago was that this would not migrate into the hybrid Lute
 4 spruce or the Sitka spruce, but that would essentially be
 5 confined to the white spruce. This has proven not to be the
 6 case. And while the propensity for vulnerability to
 7 infestation by the spruce bark beetle is greater in white
 8 versus Lute spruce and less vulnerable in Sitka spruce, the
 9 spruce infestation is now, you know, to the extent that defined
 10 in this analysis in the Lute forest, and is now also in the
 11 Haines area.

12 So, part of this is a factor of climate -- climactic
 13 conditions, particularly the dryness. But the technology of
 14 the past or the scientific knowledge in the past suggested this
 15 thing would die out of its own accord, that has not proven to
 16 be the case.

17 Mike, you might have something to add.

18 MR. PENNOYER: Mr. Barton.

19 MR. BARTON: That's essentially correct. There was sort
 20 of a hiatus, I think, in the late '80s and around 1990, and it
 21 accelerated again.

22 MR. COLE: Mr. Chairman.

23 MR. PENNOYER: Mr. Cole.

24 MR. COLE: Maybe could you spray for this beetle?

25 MR. PENNOYER: Mr. Barton.

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
 277-0572 272-7515 272-3022
 FAX 274-8982

ANCHORAGE, ALASKA 99501

MR. BARTON: There are a number of control mechanisms.
1 Spraying is one of them, either chemical spray or a biological
2 spray. Ideally, maintaining a thrifty, healthy young forest --
3 managed forest is the best way to prevent this sort of
4 outbreak. We're past that point.

5 MR. PENNOYER: Maintaining a healthy, young forest will
6 control spruce beetles, with the rotation time for growth?
7 What are you saying?

8 MR. BARTON: I'm saying that a young, thrifty tree is
9 much more able to withstand a spruce beetle attack than some of
10 the grey beards out there.

11 MR. PENNOYER: I don't see any problem with looking at
12 all aspects of what's going to happen in habitat before you
13 jump in and decide whether you want to control an activity,
14 however, I don't know that I've heard that if we have something
15 that looks imminently threatened by a practice that could
16 threaten a particular habitat or an area of concern, that the
17 possibility that it might be eaten by beetles, too, should stop
18 us from going ahead and taking an action, so in concluding to
19 this, -- agreeing that this is part of the motion, I'm not
20 implying that I agree that we, therefore, shouldn't buy any
21 land because a beetle might eat it some day. So,

22 MR. SANDOR: Mr. Chairman, that's

23 MR. COLE: It's not the land, it's the trees.

24 (Indiscernible - simultaneous speech)

25 MR. SANDOR: Mr. Chairman, it's just that what has

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

happened, especially over the last two-year period, as Mike
1 pointed out, there was an apparent lull, and there was a belief
2 there, you know, that the problem wouldn't occur in the
3 Peninsula. Well, it has, and for us to evaluate this
4 imminently threatened habitat from a potential of logging
5 without looking at the impact of this infestation greatly
6 exceeds the acreage, at least currently planned for harvest.
7 You know, it just ought to be looked at together. And that's
8 all that's intended in this proposal.

9 MR. PENNOYER: Mr. McVee.

10 MR. McVEE: Yes, Mr. Chairman. I guess I can follow
11 that logic if timber harvesting destroys habitat. Because it
12 removes trees, I guess I can accept the fact that beetles,
13 since they destroy trees can also destroy habitat. I guess the
14 question I have is are we adding something to these projects,
15 is there a cost increase associated with this in these projects
16 that we should recognize?

17 MR. SANDOR: There could well be an impact -- a
18 financial impact, but I don't know what it is. But it --
19 insofar as the Kenai Peninsula Borough's recent action does
20 have financial implications, and it may or may not most greatly
21 affect what we're doing, but certainly could.

22 MR. WEINER: I would interject that it's going to cost a
23 little bit more money to add a precise data layer to that that
24 depicts the degree of the infestation. I don't think it's all
25 that costly because it can be detected from remotely sensed

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

information which we already have in hand. It's the question
1 of processing it. But, perhaps, the additional cost, in terms
2 of appraising a parcel of land that's infested, that's probably
3 going to affect the land value considerably. And, again, I
4 don't have expertise in that area, but common sense tells me
5 that kind of appraisal you do on land that's either infested or
6 potentially infested could be quite different from a nominal
7 appraisal, considering the costs of the remedies that are
8 available to us to deal with infestation.

9 MR. COLE: Mr. Chairman.

10 MR. PENNOYER: Mr. Cole.

11 MR. COLE: Commissioner Sandor, could you give me any
12 sense of the degree of infestation of the Katchemak Bay State
13 Park? I mean, is it just a few beetles there in a few trees or
14 is it widespread and intense? So I have a sense of what the
15 magnitude of the problem is?

16 MR. SANDOR: Well, this partially does this. I think
17 the third paragraph of the summary that I passed out that says
18 with respect to Katchemak Bay area itself the increase has
19 doubled from 6,800 acres to 12,400 in '90, from one year to the
20 next. And these are preliminary estimates. The ongoing
21 analysis that DNR has done, particularly by remote sensing, is
22 very easy to spot in the satellite views, so I cannot give you
23 the specific answer to your question other than that that's
24 incorporated in the second and third paragraph of the summary.

25 MR. COLE: Mr. Chairman.

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

MR. PENNOYER: Mr. Cole.

1 MR. COLE: It speaks of levels detected, increase in
2 over levels detected from 12 -- 6,000 to 12,000, but, I mean,
3 is that just one beetle per acre or what? That's what I'm
4 trying to see if I can get a sense of.

5 MR. SANDOR: Well, the map sort of shows it's spotty in
6 places, like there and there.

7 MR. COLE: If you can understand this map, you're better
8 than I, but it doesn't seem to show Katchemak Bay.

9 MR. SANDOR: The patterns of the infestation are both;
10 they're spotted but they've spread, and this shows the
11 infestation of '92, and it -- a year or two ago, it looked like
12 this, and it migrates into this kind of a pattern. And I
13 cannot answer the potential threat to Katchemak Bay State Park
14 other than it is there. And the relative threat, I think,
15 needs to be determined by forest entomologists who are,
16 incidently, ready to provide additional information to the
17 Kenai Borough and the state and federal agencies on the whole.

18

19 Thank you, Mr. Chairman. That's all I have.

20 MR. PENNOYER: Further discussion? We have a motion on
21 the floor that we try and incorporate, in particular, the
22 spruce beetle infestation, but I suppose anything else that
23 might affect habitat use too into the formula of looking at
24 imminent threat in the day to day and surrounding area. I
25 think I heard something about increase in cost. I don't know

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

1 how we'd handle that. I guess we'll just go ahead and get
2 started and come back and ask for more if we need it.

3 MR. SANDOR: The budget can always be amended.

4 MR. PENNOYER: Is there any objection to this being
5 included in the work assignment? Okay.

6 It's now five minutes to 12:00. What's your pleasure,
7 gentlemen? Break for lunch and then come back? Let's break
8 for lunch and then come back.

9 MR. SANDOR: 1:15?

10 MR. PENNOYER: At 1:15.

11 (Off record - 11:55 a.m.)

12 (On record - 1:20 p.m.)

13 MR. PENNOYER: I think I'd like to go ahead and get
14 started, if we can, and continue to work on the '93 Work Plan
15 document, and before lunch we agreed to go back and look at our
16 calendars and try and pick a date when we could meet to review
17 the public comments on the draft Work Plan and make a final
18 decision as to what it should look like, and it sort of came
19 down to

20 MR. COLE: I need a few more minutes on that.

21 MR. PENNOYER: Give you a few more minutes?

22 MR. COLE: My agent is coming back with that
23 information.

24 MR. PENNOYER: Okay, we will hold that for a moment
25 then. Mr. Cole is getting some information relative to his
26 schedule, so we'll hold that for a moment and go back to the

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

process of the Trustee Council members pointing out or
1 questioning or discussing individual projects, if they so wish.

2 Do any of the other Trustee Council members have any
3 additional projects? We've had a couple of discussions so far,
4 one on the communications plan of Prince William Sound, we
5 voted to drop that from the list; another adding to the habitat
6 imminent threat discussion, and the question of looking at
7 other alternative impacts on the environment, including spruce
8 beetle infestation. Are there others that we wish to discuss?
9 Other Trustee Council members wish to bring any up?

10 I'll bring one up then.

11 MR. BARTON: Well, we have not talked about killer
12 whales.

13 MR. PENNOYER: Thank you, Mr. Barton. Would you proceed
14 to discuss killer whales?

15 I have a problem with the only 4-2 vote on the
16 Restoration Team and therefore dropped off the list of projects
17 or dollar amounts sent to OMB as to the killer whale recovery
18 monitoring project, and let me tell you a little bit about why
19 I have a problem with that.

20 First of all, last year we dropped it because with some
21 other projects it was determined that we didn't need to do an
22 annual monitoring or recovery, that we could in fact come back
23 in future time and periodically reassess what's happening with
24 the resource. I don't think there's any disagreement that at
25 least in AB pod, which was in the vicinity of the Spill,

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

there's been a drastic and unexplained, so far, reduction in
1 the productivity of that stock and a direct mortality of that
2 stock. It's actually a rather unheard of level of mortality,
3 20-some percent, compared to a normal background level in
4 killer whales of two or three or four percent or something like
5 that on an annual basis. There may be other causes, and I know
6 there's some disagreement in the scientific community as to the
7 cause of that decline in killer whales.

8 I think Dr. Spies has recommended it be an enhancement
9 project. He doesn't see the direct tie. Other peer reviewers
10 and scientists are not so sure or have come out and said there
11 probably is a direct tie. So it's a mixed bag of understanding
12 why something has happened, but in fact something has happened
13 in that particular pod in Prince William Sound does not seem to
14 be a real issue.

15 It has gone down. I think there are a large number of
16 people that are interested in the fate of orcas, and if you
17 walk around town and look at the various tour boat operations,
18 about half the time you'll see an orca on the cover of their
19 brochure or the window of the place that they do business in.
20 I think we've got a responsibility to monitor the recovery of
21 the effected spill area, and that includes the environment in
22 that spill area, and certainly one of the major top levels of
23 animals in that environment are killer whales.

24 So, another whole list of 4-2 items that our RT came
25 back and re-voted on, and all but one of them came up with 5-1,

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

and this is still at a 4-2. I have a problem with that. I
 1 think we should, this year, go back out again and look at
 2 killer whales. I think to have not done it and see if that
 3 level of decline continues would be a mistake. I don't know
 4 how we're going to -- how or what we're going to evaluate the
 5 cause of that but certainly it's a major resource in an area
 6 that's providing a service that did decline directly at the
 7 time of the Spill. So, I guess my pitch is that we ought to
 8 include that one 4-2 project above the line in the total we
 9 send to OMB and then evaluate that based on public comment with
 10 the rest of comments that come back after we approve all these
 11 other projects to go out to public review.

12 So I would move that killer whales be included in the
 13 initial package that we send back and the total dollar amounts
 14 that go to -- the initial package that goes to OMB and that we
 15 then, as with all other projects, evaluate it finally in
 16 December, whenever we get the public review.

17
 18
 19
 20
 21
 22
 23
 24
 25

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
 277-0572 272-7515 272-3022
 FAX 274-8982

ANCHORAGE, ALASKA 99501

MR. McVEE: Second that motion.

1 MR. PENNOYER: Is there further discussion?

2 MR. BARTON: Mr. Chair.

3 MR. PENNOYER: Mr. Barton.

4 MR. BARTON: How much money is involved?

5 MR. PENNOYER: 127,000.

6 MR. COLE: Mr. Chairman.

7 MR. PENNOYER: Mr. Cole.

8 MR. COLE: Are we going to face this periodically until
9 we say it's all right or, you know, we just as well do it this
10 time so we won't have to face it again in three more months.
11 So, I would say let's vote for it now and placate Mr. Pennoyer
12 and get it behind us.

13 MR. PENNOYER: Well, I think we're going to face all
14 these projects in three more months one more time. The problem
15 is I would at least like to see it on the list at the first
16 level it goes to OMB so it's not sort of precluded from
17 happening by us not delivering that initial estimate, if even a
18 lot of these projects could change in three months, depending
19 on public review and input we get.

20 Is there further discussion? Mr. McVee.

21 MR. McVEE: Yes. I think it's a question, I guess, in
22 looking at some of these projects, I thought maybe killer
23 whales fit into that, that when a damage assessment was going
24 on and, I guess, Steve you'd have the background on this, the
25 question, I guess, was there a focus at that time to

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

identifying damages that could readily be established because
1 we were in the litigation mode, we were trying to identify
2 damages that we could take before the court that were clear-cut
3 and doing work on those kinds of resources where that was
4 established, and maybe some of the other resources because
5 there was great difficulty in establishing the relationships
6 between the Spill and what happened to a particular species
7 where it dropped off. And I wonder if killer whales fit into
8 that category.

9 MR. PENNOYER: I guess probably somewhere in between.
10 We didn't find too many dead killer whales. It was a little
11 hard to autopsy them or see directly what had happened to them.
12 Last year, I think, we dropped them out of the process. There
13 was a disagreement, and I think there still is a disagreement
14 in the linkage, however, we decided that last year it was
15 appropriate simply to write the report of what we found out in
16 damage assessment and then we could wait a year before going
17 back and reassessing what was happening with the population. I
18 think the reports I've seen are a mixed bag, or there certainly
19 is a direct coincidental tie with the Spill, particularly with
20 this one pod. And so, yeah, I'd say we may be in a different
21 mode now than we were, if that's your point.

22 Mr. Cole.

23 MR. COLE: One of the problems I've had with the study
24 is what can we do about it if it's true? You know, we lost one
25 whale or two whales. I mean, what do we do about it? I don't

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

see much of a restoration project that we could adopt if we
1 were to approve the study but, nonetheless, your eloquence has
2 persuaded me.

3 MR. PENNOYER: Maybe I should leave well enough alone on
4 that. I guess

5 MR. COLE: I was thinking about that, yes.

6 MR. PENNOYER: I think that's what you were saying.
7 Well, there may be restoration things that will present
8 themselves, more protection to those animals, and a particular
9 pod from other incidental human interactions. There may be
10 things we can do the particular area that they occupy, and if
11 they are an important service that has been lost, for some
12 reason, and coincidentally with the Spill, and there may be
13 actions we can take. Other resources, including, in some
14 cases, murre and sea otters, who we're not sure yet what
15 restoration we're going to take -- activity, however, there was
16 damage.

17 So is there any objection to the motion? Thank you. I
18 appreciate that. Carried.

19 Are there other individual projects people wish to
20 discuss at this time?

21 MR. COLE: Mr. Chairman.

22 MR. PENNOYER: Mr. Cole.

23 MR. COLE: I just would like a little information. Why,
24 for example, on the bald eagle study, number 52, where it gets
25 zero votes, would we send that out?

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

1 MR. PENNOYER: Mr. Cole, there are a number of zero
2 votes. Do you wish a review of the RT why the zero votes
3 occurred on the last seven projects?

4 MR. COLE: Well, it's no votes in favor of it and six
5 votes against it, and I would just like a statement of the
6 policy. I've said I would support sending all of these out,
7 but nonetheless, it would be comforting to know why I'm doing
8 it.

9 MR. PENNOYER: Mr. Cole, I very much agree with you, and
10 I think that we haven't reviewed any of the Restoration Team's
11 rationale on the individual projects, but those certainly do
12 stand out. And, perhaps, Mr. Gibbons, would you like to
13 comment on the zero votes; can you give us a generic thing or
14 do we have to discuss the individual projects?

15 MR. COLE: I just want to know why we would send out a
16 project that had no favorable votes and six opposition votes.
17 That's what I want to know, in case somebody asks me that
18 question, why we're doing it. I mean, you've talked about four
19 favorable votes and two negative votes in your situation, yet
20 we're sending out at least one, there may be another

21 MR. PENNOYER: Five.

22 MR. COLE: some of these with zero favorable
23 votes. There must -- if that's the theory, then these other
24 200 of 350 would seem to qualify. I'd just like to know the
25 answer.

MR. PENNOYER: I was sort of asking Mr. Gibbons if he

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

could give me a reason why there was zero, because I don't know
1 the answer to that. I'm not sure exactly why we send out 1-5s
2 either. For that matter, there were a lot of them that had one
3 vote, and I'm not clear yet why one person voted for it. I'm
4 at a loss for

5 MR. COLE: I don't

6 MR. PENNOYER: discuss.

7 MR. COLE: I think I saw only one 1-5.

8 MR. PENNOYER: Was there only one? You're correct.

9 DR. GIBBONS: Mr. Chairman.

10 MR. PENNOYER: Five 3-3s and one 1-5 -- only one 1-5.

11 DR. GIBBONS: Mr. Chairman.

12 MR. PENNOYER: Mr. Gibbons.

13 DR. GIBBONS: Yeah, some of the explanations vary. Some
14 of them are legal. We got legal opinions from the attorneys
15 that said this was not legally possible, so basically we voted
16 0-6 on that. In particular, the bald eagle, both the chief
17 scientist and the Restoration Team found recovery has occurred,
18 and so no further action was needed on that. So, it kind of
19 varies by project.

20 MR. COLE: Mr. Chairman.

21 MR. PENNOYER: Yes, Mr. Cole.

22 MR. COLE: Or are we being candid with the public if
23 we're saying that restoration has occurred, no need to do
24 anything in sending it out to the public?

25 MR. PENNOYER: Mr. Cole, I agree with you. I don't

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

111
think we are, and there's only one, two, three, four -- four 0-
1 6s and one -- five 0-6s left and one 1-5. It might not take
2 over 15 minutes for Mr. Gibbons to explain the reasons on those
3 and we can decide if we want to send them out or not.

4 MR. COLE: Whatever the Council would like in that
5 regard.

6 MR. PENNOYER: Would the Council like to hear that type
7 of review and then decide whether we send out the 0-6s and the
8 1-5? Mr. Sandor.

9 MR. SANDOR: Project 019 has six negative votes, but I
10 think it should be sent out because -- and maybe we're going to
11 get into this in project by project review, but that's the
12 Chugach region mariculture project. But the reason why or at
13 least the evaluation comments as a consistency with laws and
14 policies are unknown and approved for economic feasibility
15 studies only.

16 I'll call Trustees attention to Chenega Corporation's
17 memo which -- letter which was given to us this morning and
18 deals with these two projects. I would not want to see that
19 project not sent out or if it in fact is not going to be sent
20 out, we need to, I think, deal with this unknown legal and
21 policy question, why it's an unknown or legality other than a
22 policy question, and that ought to be resolved. But perhaps
23 rather than doing it, we ought to just send it out earmarked
24 that way. But the point is I don't think we ought not to send
25 that one out, at least; I think we ought to send it out. I

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

think it depends on the reason for the no vote.

1 MR. PENNOYER: Maybe we should just do those. Let's
2 take about 15 minutes or so to do the five of 'em. Are you
3 interested in doing that? Mr. Barton. Mr. McVee.

4 MR. BARTON: Sure.

5 MR. PENNOYER: Okay. Starting with the mariculture --
6 do you want to do the 1-5 of just the 0-6s?

7 MR. BARTON: Why don't we do

8 MR. PENNOYER: Let's do it. The first project

9 MR. MORRIS: I'm sorry. I just want to point out that I
10 think there are no 2-4s even to worry about.

11 MR. PENNOYER: There's a 3-3, the then drops to 1-5 and
12 then 06s. So the first project on the list

13 MR. COLE: We should start with number one, shouldn't
14 we? 01 doesn't have any

15 MS. BERGMANN: 0-6.

16 MR. PENNOYER: Oh, I see, you want to start

17 MR. COLE: That's a 0-6. Let's go down the line.

18 MR. PENNOYER: 01?

19 MS. BERGMANN: 93001.

20 MR. PENNOYER: Okay, I see your point. Gotcha'. I was
21 looking for the list in the back that had them in order that
22 were 1-5s and 0-6s. Let's start at the top then. I was
23 working from a different table.

24 MR. COLE: I was wondering where you've been.

25 MR. PENNOYER: I happen to have been presented with a

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

lot of material and I've been through it all.

1 (Indiscernible - simultaneous speech)

2 MR. PENNOYER: Okay.

3 MS. BERGMANN: Mr. Chairman.

4 MR. PENNOYER: Yes.

5 MS. BERGMANN: If I could speak to 93001. We talked
6 about it a little bit this morning, but I think one of the
7 important points that was left out on this, and it doesn't
8 appear anywhere in the text, is that the Restoration Team felt
9 that there was sufficient information to indicate that
10 recreation resources in fact were injured, and what we would
11 like to do is have the Trustee Council agree that that's the
12 case. That the Trustee Council agree that there's sufficient
13 information out there to state that recreation resources were
14 injured by the Spill, then in fact we need to go ahead and do a
15 study that would be similar to the one that received a 0-6
16 vote.

17 MR. PENNOYER: Ms. Bergmann, the problem I've got is
18 that we heard this morning that we haven't been able to get the
19 information back from Justice. I don't think the Trustee
20 Council has got any idea how much information is out there, do
21 we?

22 MS. BERGMANN: Well, I think we have presentation --
23 you're correct, we don't have the specific information from
24 them, but we have all spoken with some of our attorneys who
25 have had the opportunity to look at that information and it's

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

their opinion that there is sufficient information within that
1 -- those documents to indicate that there was in fact injury to
2 recreation.

3 Our feeling was that rather than spend half a million
4 dollars or \$609,000.00 to document that again, it would be
5 better to go ahead and use that money to actually do direct
6 restoration, like building trails or building cabins or
7 whatever. The reason you don't see any of those proposals in
8 here this year is because we felt those were not time critical
9 projects.

10 So the text doesn't demonstrate that if the Trustee
11 Council does not believe that there is or was an impact to
12 recreation sources then, in fact, we do need to go back and
13 demonstrate that. And there are varying opinions among the
14 Restoration Team members about whether or not you can actually
15 do that four years after the fact.

16 As a social scientist and someone who is pretty familiar
17 with survey research, I think it is possible to do that. It
18 would take a lot of money, and it would take a project that is
19 more focused than the one you see actually in the text in front
20 of you.

21 So that's why we gave the existing project, as written,
22 six no votes.

23 MR. PENNOYER: Further questions? Mr. Sandor.

24 MR. SANDOR: The comment under the evaluation says the
25 link to oil spill is -- the oil spill is unknown. Is that the

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

case then or not?

1 MR. PENNOYER: It's in the blue section? Well, it's a
2 blue

3 MR. SANDOR: But it says EVOS-linked impact unknown.
4 Tailor study to determine whether injury has occurred to
5 recreational services. I kind of question -- it seemed to me
6 that there would be linkage. But is that determination -- has
7 that -- I, perhaps, erroneously jumped to the conclusion that
8 those evaluation comments explained the yes and no votes.

9 MS. BERGMANN: The yes and no votes, you were provided a
10 package at the last meeting, and another black binder, and
11 there were statements that supported the different votes, and
12 those would be the more appropriate statements to look at
13 rather than that documentation you have in front of you.

14 MR. SANDOR: Excuse me. Then conversely, are we saying
15 that the linkage is known or not?

16 MS. BERGMANN: We're saying that we believe, based on
17 our discussions with the -- our attorneys, that the information
18 that was developed but never completed through the Department
19 of Justice studies would allow us to say that recreation
20 resources were injured and that the Trustee Council, if they
21 agreed with that, rather than spend additional money trying to
22 document that injury, we can just go ahead and get on with
23 restoration.

24 So it's a real unique situation. We weren't quite sure
25 how to handle it.

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

MR. COLE: Mr. Chairman.

1 MR. PENNOYER: Mr. Cole.

2 MR. COLE: I move we delete project number 1, on the
3 ground that we know there was damage to recreational resources,
4 i.e., services, and that we should make a concentrated effort
5 to get that information from the Department of Justice, and not
6 spend the \$600,000.00 that's called for by this study.

7 MR. SANDOR: I'll second that.

8 MR. PENNOYER: It's moved and seconded that we drop
9 project number 1 from the list going out to public review. Is
10 there any further discussion? Is there any objection to that?
11 Mr. McVee, is there discussion?

12 MR. McVEE: Yes, a question. This would not preclude in
13 any way from this project reappearing in '94?

14 MR. PENNOYER: It's a sensitive motion, that we're going
15 to get the other information and look at it. (Indiscernible)
16 if it's still identified, we could proceed with another project
17 that's equivalent.

18 MR. McVEE: No objection.

19 MR. PENNOYER: Okay. Going down this list, our next
20 project is number 19, a 0-6 vote; Chugach region village
21 mariculture project. Who wants to try that one?

22 DR. GIBBONS: Mr. Chairman.

23 MR. PENNOYER: Mr. Gibbons.

24 DR. GIBBONS: Last week I passed out a memo from the
25 federal attorneys, dated August 27th, and there's a discussion

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

of this project on that list, and the Restoration Team took
1 their advice in regards to the project.

2 MR. PENNOYER: I guess I don't understand the comments
3 in the blue section

4 DR. GIBBONS: Let me summarize that the Restoration Team
5 commented on -- based upon legal opinion, injuries to Native
6 economic well-being and self-sufficiency are not injuries for
7 which the natural resource trustees could seek damages. It is
8 a private cause of action for which the Native interests are
9 seeking damages from Exxon. Use of joint trustee fund monies
10 to restore injuries does appear appropriate.

11 MR. COLE: Mr. Chairman.

12 MR. PENNOYER: Mr. Cole.

13 MR. COLE: Are those comments from the state attorneys
14 or the federal attorneys?

15 DR. GIBBONS: This is from the federal attorneys,
16 Mr. Cole.

17 MR. COLE: I'm much relieved.

18 MR. PENNOYER: Do you wish to elaborate on that or is
19 anybody willing to make a motion on this project?

20 MR. COLE: Well, I move to send it out for public
21 comment and we can deal with the legalities as they surface
22 (ph) later.

23 MR. SANDOR: I second that. Especially with Chenega
24 Corp.'s memo and comments.

25 MR. McVEE: Mr. Chairman.

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

MR. PENNOYER: Mr. McVee.

1 MR. McVEE: Yes. Since we probably would not have had
2 legal review of -- collective legal review, at least, of all of
3 the projects on this list, I would propose that we do this and
4 include a statement in the cover letter to -- you know, to that
5 effect, that legal review may result in some of the projects
6 that are being submitted for public review being deleted, or
7 something to that.

8 MR. PENNOYER: Is there a second to that?

9 MR. SANDOR: Second.

10 MR. PENNOYER: It's been moved and seconded that we
11 include Mr. McVee's language, that joint legal review of all
12 these projects has not been possible and may result in some
13 changes to the final approved list, or words to that effect.

14 Mr. Brodersen.

15 MR. BRODERSEN: We might want to reword that slightly
16 and say it's not completed, because the Restoration Team did
17 request that, and the legal people from both sides have been
18 working on this. I'm just not sure that it's completely
19 finished yet. So there's a slight difference in wording that I
20 think is fairly important.

21 MR. McVEE: Whatever is appropriate.

22 MR. PENNOYER: Any objection to the motion? Motion
23 passes. 19 goes out to public review, caveats included in the
24 total package about legal review.

25 The next 0-6 is restoration of murre by way of

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

transplantation of chicks -- feasibility study, number 21.

1 wants to do that one? Dave.

2 MS. BERGMANN: Mr. Chairman.

3 MR. PENNOYER: Did I miss one?

4 MR. COLE: No.

5 MR. PENNOYER: Ms. Bergmann.

6 MS. BERGMANN: That particular project, as we -- it
7 ended up that there was not a brief project description written
8 about that, and we went back and took a look at it and decided
9 that it was a project that was not time critical and that
10 should have been eliminated at -- during the first round of our
11 discussions, and so I think it may have been inconsistently
12 presented in the text that we had. We basically ended up doing
13 a 0-6. It shouldn't have even been voted on in this round
14 because it should have been eliminated in the first round
15 because it is not a time critical project.

16 MR. COLE: I move we delete it.

17 MR. SANDOR: Second.

18 MR. PENNOYER: In the way of discussion, I note that
19 Dr. Spies says it's not likely to directly relate to
20 restoration of the species.

21 MR. SANDOR: Mr. Chairman.

22 MR. PENNOYER: Mr. Sandor.

23 MR. SANDOR: Yeah. I note Dr. Spies' ranked it --
24 scored it a 3, not likely to be directly affected. Is there
25 any problem in not sending it out?

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

MR. PENNOYER: Any further discussion on that, on
1 project number 21? Is there any objection to the motion?
2 Project 21 will not go out for public review.

3 The next one is 37/55, intertidal and sub-tidal
4 communities, experimental evaluation of oiled/control paired
5 design, 0-6. Dave.

6 DR. GIBBONS: Yes, Mr. Chair. The Restoration Team
7 thought there was no link to restoration. What this is is
8 validating existing designs that were used in the damage
9 assessment study, and was not truly a restoration project, and
10 was not needed for damage assessment.

11 MR. COLE: Which number is it?

12 MR. PENNOYER: 37/55. Anything from Dr. Spies?

13 MR. COLE: I move we delete it.

14 MR. PENNOYER: I know Dr. Spies said that would not
15 provide the baseline data needed for determining with more
16 certainty the extent of sub-tidal injury.

17 MR. SANDOR: Mr. Chairman, I

18 MR. PENNOYER: He gave it a number 4, which was
19 inappropriate for restoration and would not contribute to the
20 recovery of injured resources.

21 MR. SANDOR: I guess, Mr. Chairman, the first sentence
22 of Dr. Spies' comments is: This project has merit mainly for
23 assessment of future spills. And part of our charge, is it
24 not, to look at future spills and how we respond to them? Is
25 it not?

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

MR. COLE: I don't think so. I mean, our charge is to
1 restore, replace, enhance and require.

2 MR. SANDOR: The Prince William Sound Science Center and
3 for other purposes, we are to also conduct studies and take
4 action which will better enable us to respond to the next
5 spill. Have I missed the boat? Yes, I have?

6 MR. COLE: Well, I'm taking the Fifth.

7 MR. SANDOR: Anyway, that's something then to deal with
8 with regard to the question of -- that basic question. But for
9 this one, everybody agrees it ought to be -- Dr. Spies says
10 sub-tidal injury will not provide the baseline data, and
11 the

12 MR. COLE: Mr. Chairman.

13 MR. PENNOYER: Mr. Cole.

14 MR. COLE: This project gets zero votes in the
15 Restoration Team, and Dr. Spies labels it number 4. What
16 justification is there for sending it out? I mean, if there's
17 some, I'll favor it.

18 MR. PENNOYER: I'm not clear that the question of
19 whether we -- some of our work has the effect of better
20 preparing us to deal with evaluation of future spills is not
21 something we should look at but doesn't seem to be time
22 critical in this case anyhow. I would assume there's no need
23 to do it this year.

24 Mr. Sandor.

25 MR. SANDOR: I agree with that, but can someone just

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

1 explain this blue comment, careful attention to what is an
2 oiled area and what is a control area in the technical
3 approach. What does that mean?

4 MR. PENNOYER: This is one of our projects. Everybody
5 voted against it. Can you tell me about that one?

6 MR. MORRIS: It was a public idea that was assigned to
7 us to denote the project description. I'm not sure what you
8 are looking at there.

9 MR. PENNOYER: This is a blue table comment that is a
10 reflection of evaluation comments. It says: Careful attention
11 to what is an oiled area and what is a control area in the
12 technical approach. It's an ambiguous statement.

13 MR. SANDOR: I'm trying to figure out what it means.

14 MR. MORRIS: Mr. Chairman, the assumption of the
15 proposal was that you could have differences in control areas
16 regardless of whether they were oiled or not. In the design of
17 the Coastal Habitat Damage Assessment Study looked to control
18 theirs versus those that were oiled. And this project would
19 just look at randomly picked control areas and see what changes
20 occur in the intertidal fauna and flora of them, independent of
21 any oil effect.

22 MR. PENNOYER: Dr. Spies, you have a comment?

23 DR. SPIES: I was going to say, yeah, Byron is
24 essentially correct. They're trying to sort out differences
25 that may occur between areas that were subsequently oiled and
26 natural differences. For instance, if oil was to hit the

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

coastline of an island, mainly just hit the points and not the
1 back bays, there might be some natural differences in the
2 communities of organisms that live on the points in the back
3 bays. One could misinterpret, based on a study that had no
4 baseline data, one could misinterpret the injury as being due
5 to oil -- or differences being due to oil. I think that's one
6 of the basic ideas involved here.

7 MR. SANDOR: Thank you.

8 MR. PENNOYER: I'm still not totally sure of what this
9 -- I don't know what the words in there mean. Is someone
10 totally sure about the 0-6 vote?

11 MR. MORRIS: They further felt in the vote that the
12 design of coastal habitat study was heavily involved with peer
13 review and was a satisfactory design, and we didn't need a
14 further study to verify that design.

15 MR. PENNOYER: Again, this is something that should be
16 done in the future if we change our view on that? Is this an
17 analysis of past data?

18 MR. MORRIS: This it wouldn't involve an actual field
19 project.

20 MR. PENNOYER: But it's still a field project,
21 differences that could be looked at later?

22 MR. MORRIS: Yes.

23 MR. PENNOYER: It's been moved and seconded that we drop
24 project 37/55 from the list to go out for public review. It's
25 \$201,700.00. Is there any objection to that? The project is

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

dropped from the package.

1 The next one is a 1-5 project, 40/54, long-term
2 ecological recovery monitoring program, what was 1-5,
3 \$234,000.00. Dave.

4 DR. GIBBONS: Yes. This is a continuation of the
5 response study initiated in 1989 by Exxon and then continued on
6 by the HAZMAT group in 1990, and it looks at the effects of
7 cleaning on the natural recovery, and the Restoration Team
8 thought it was more appropriate to fund this out of restitution
9 funds rather than the joint funds, or another option would be
10 to include it in project 41, which is a development of a long-
11 term -- or a monitoring program. And if needed, it would fit
12 there, but not a stand-alone program.

13 MR. PENNOYER: Maybe I'm confused. If it was melted
14 into 41 would 41 still be \$237,900.00?

15 DR. GIBBONS: Yeah, 41 is a development of a monitoring
16 program plan to tell us that, yes, we need to monitor murre
17 every year, every other year or ever third year, whatever it
18 is. And the monitoring plan would be part of the Restoration
19 Plan. It will lay out a monitoring program, and if it's deemed
20 necessary that the project 040/054 be done, it would be more
21 appropriately included in that. At a later time, after the
22 Restoration Plan is finalized.

23 MR. PENNOYER: So you're asking to do planning under 41
24 first before you do the project that might result from the
25 planning?

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

DR. GIBBONS: That's correct.

1 MR. PENNOYER: Do I have a motion on that one?

2 MR. SANDOR: Move to delete.

3 MR. PENNOYER: It's been moved to delete projects
4 040/054. Is there any further discussion?

5 COURT REPORTER: Mr. Chairman.

6 MR. PENNOYER: Mr. Cole.

7 MR. COLE: I would just like to observe that in the
8 restoration monitoring comments on project evaluation factors,
9 it says the in-point -- I think it's supposed to be is
10 information that helps determine type and cleanup of future
11 spills. So I think we will want to look at that in the future,
12 from that standpoint as well.

13 MR. PENNOYER: Is there a significant loss in
14 information to be acquired by waiting until 041 is completed
15 before we decide what (indiscernible) we might want to do?

16 MR. MORRIS: Let me speak to that a moment. The focus
17 of this study is the -- basically the effect of the hot water
18 treatment to some of the shorelines had in addition to just the
19 fact that they were oiled, and there seems to be a significant
20 slower recovery of the beach segments that were treated with
21 hot water washing than just the ones that were oiled and either
22 cleaned with cold water wash or left to clean themselves.

23 Depending on the rate at which this depression and
24 recovery continues at these hot water washed sites, you could
25 maybe skip a year and take it out, or it could catch up with

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

the other shorelines segments. In a year, you'd miss that
1 information if you didn't go out there.

2 MR. PENNOYER: Dr. Spies.

3 DR. SPIES: Mr. Chairman, there are other sponsors for
4 this research, so some of it will be carried forward then. I
5 think the Marine Spill Response Corporation, among others, is
6 sponsoring ongoing studies. Am I clear?

7 MR. MORRIS: That was the information we had a month
8 ago. The latest information is there is no funding for this
9 project beyond this year.

10 MR. PENNOYER: The motion seconded, I believe, to delete
11 this project, pending a conclusion of 041. Is there any
12 further discussion? Is there any objection to it? 040 is
13 deleted from this package.

14 The next project that I have on the list is
15 communications, we already dealt with that one, and then bald
16 eagle habitat, identification and protection, 0-6 vote,
17 188,000. Mr. Gibbons.

18 DR. GIBBONS: Yes, just briefly, the Restoration Team
19 felt that bald eagles seem to have fully recovered, and the
20 chief scientist also indicates that there's no continuing
21 injury there.

22 MS. BERGMANN: Mr. Chairman.

23 MR. PENNOYER: Ms. Bergmann.

24 MS. BERGMANN: I would like to have this particular
25 project go forward for public review because there is a peer

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

reviewer who does not agree necessarily with that assessment.

1 We've been having trouble getting -- he's been doing field work
2 this summer and we've had trouble getting him together with the
3 chief scientist to have a discussion about that. And so before
4 we eliminate this one for any further consideration, I would
5 like to see it go forward so we have a chance to have that
6 discussion received, if there's additional information we need
7 to take into account for bald eagles, before we shut the door.

8 MR. PENNOYER: One question. Would the difference of a
9 year make a difference or is this a time -- it might be time
10 critical?

11 MS. BERGMANN: Yeah, there's some folks who are saying
12 that we wouldn't start seeing impacts to bald eagles from the
13 nest -- from the failure of reproduction in the Sound until
14 this year or next year, so I would safely like to see this go
15 forward to the public and so we can have some additional
16 discussions of chief scientist and the peer reviewer who holds
17 that opinion.

18 MR. PENNOYER: Dr. Spies.

19 DR. SPIES: I just want to comment on Dave's
20 characterization. One of the principles I've tried to use is
21 we can't measure a population level effect, particularly on the
22 adults of the species. I'm not sure we should be engaging in a
23 recovery type program where we can't measure the effects of
24 what we're doing. One of the principles I've tried to use in
25 the guidelines of the projects, and the bald eagle studies that

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

1 have been going on are quite good, it's just that there are a
2 lot of variance in the data and it's very difficult to see
3 significant change. But within my judgment, based on the
4 comments of some peer reviewers and my own evaluation, it's
5 going to be very difficult to detect the sort of change that
6 one might hypothesize could have taken place as a result of the
7 reduced reproduction in '89 and '90, and that success
8 particularly from bald eagles, and that's my recommendation.

9 MR. COLE: Mr. Chairman.

10 MR. PENNOYER: Mr. Cole.

11 MR. COLE: I move, in view of the comments from
12 Ms. Bergmann, that we leave it in, subject to further review.
13 Another reason for that is also the bald eagle is a species, if
14 that's the term, for which the public, I think, has a
15 particular interest, and it would, therefore, be well to have
16 public comment on that.

17 MR. PENNOYER: Mr. McVee.

18 MR. McVEE: I'll second that. My understanding, or one
19 of the problems is that the census is run on birds which have
20 developed the white heads, and that it takes five years or five
21 plus years before they reach that age of maturity, and
22 therefore, you know, we still have this question concerning
23 injury or damage. But I believe the rationale that Attorney
24 General added to the motion, I believe, is apropos, and that,
25 you know, this is a species which has a great deal of public
interest.

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

MR. COLE: Yeah, like killer whale?

1 MR. PENNOYER: Well, since you put it that way, how
2 could I object.

3 Any further discussion of this project? Is there any
4 objection to retaining it in the list that goes out to public
5 review? 052 has been retained, \$188,000.00 to go out in the
6 public review package.

7 I think that's the last of the 0-6 and 1-5 projects, and
8 also I missed one here.

9 MR. COLE: Mr. Chairman.

10 MR. PENNOYER: Mr. Cole.

11 MR. COLE: Having completed that satisfactorily, I hope
12-- I would like to have a -- since we're in this maelstrom, a
13 review or comments on project number 28. I have a lot of
14 difficulty with the theory underlying 28, and 29, for that
15 matter, but let's start with 28.

16 MR. PENNOYER: Mr. Gibbons.

17 DR. GIBBONS: I defer that discussion to Ray Thompson,
18 Forest Service.

19 MR. COLE: Excuse me. Let me just comment on this, if
20 you don't mind. Here's what underlies my concern about it. As
21 I looked at the supportive data, this is a project which deals
22 with lands uplifted by the earthquake, and as a result of the
23 uplift from the earthquake, these lands are no longer
24 essentially wetlands, but the normal ecological processes are
25 operating so as to cause a growth of plants and young forest in

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

the uplifted areas. And the issue that I see presented by this
1 study to the Trustee Council is whether we should seek, by
2 virtue of the expenditures of funds here, to reverse that
3 process and to reverse the natural process caused by the
4 earthquake and cause these lands to be -- to revert to
5 wetlands.

6 Have I analyzed the project accurately? That's what I
7 understand it to be. That gives me some concern of why we're
8 interfering with the natural results of the earthquake as part
9 of the study. I would like to

10 MR. THOMPSON: Mr. Chairman.

11 MR. PENNOYER: Yes.

12 MR. THOMPSON: Is this thing on?

13 MR. PENNOYER: Yes.

14 MR. THOMPSON: I'm just generally familiar with this, in
15 sitting in for Ken Rice today, but I think there is some
16 opportunity to maintain what is disappearing out there as a
17 result of an uplifting, and one of the ways that we can do that
18 is through the Oil Spill funding. And without going through
19 here, Mr. Chairman, and reading some of this, I'm not extremely
20 familiar with the details of this project to argue against
21 Mr. Cole's.

22 I guess, Dave, if you have something that's come out in
23 your arguments with the RT that I haven't been privy to, I'd
24 appreciate you filling in on those, 'cause I'm only generally
25 familiar with this concept.

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

DR. GIBBONS: The thinking -- Mr. Chairman, the thinking
1 behind the Restoration Team, I believe, was a replacement
2 action for oiled wetlands. An opportunity was there that we
3 create 60-plus acres of wetlands, and that was just a
4 replacement action for oiled wetlands.

5 MR. PENNOYER: This is to study that feasibility; this
6 isn't actually doing it.

7 DR. GIBBONS: That's correct. Any other comments on
8 that, Mr. Cole?

9 MR. PENNOYER: It's characterized by Dr. Spies as a
10 enhancement opportunity. It's not a direct oiled wetland
11 improvement, but it's a creation of wetlands which may -- to
12 balance other wetlands which may have been lost, and I guess
13 the whole question on enhancement is one which we're having to
14 wrestle with, but this is a study to look at the opportunity to
15 do that, even though it was caused by the earthquake.

16 MR. COLE: That I understand. It's the theory of
17 whether we should be out saying let's reverse in the nature of
18 -- under the mantle of restoration. We're really restoring
19 damage caused by the earthquake, actual uplands. I mean,
20 that's what we're doing. We're not restoring the effects of
21 damage to the natural resource from the Oil Spill, we're
22 restoring lands from damage caused by the earthquake. You
23 know, if Council wants to say that that's one of the functions,
24 what we ought to be doing, I'm not going to say no and vote
25 against it. But it seems to me that we should recognize

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

plainly what we're doing.

1 MR. PENNOYER: Mr. Cole, whether it was damage caused by
2 the earthquake or just an opportunity out there that didn't
3 exist before, if creation of wetlands for waterfowl and
4 anadromous fish is a replacement service to something that
5 might have been lost in the Spill, just because it was the
6 earthquake or maybe was just the way the land happened to be
7 configured at the present time wouldn't make any difference.

8 I don't know that we've made the judgment that we're
9 replacing wetlands yet. But if the opportunity was there and
10 available, whatever the cause originally was, and we could
11 replace the service lost due to the Spill, or enhance a service
12 done in the Spill; is that the issue?

13 MR. COLE: Well, I think the issue is -- the basic issue
14 is can we spend this money more fruitfully, restoring damage to
15 resources from the Oil Spill rather restoring damage to
16 resources from the earthquake. I mean,

17 MR. BRODERSEN: Mr. Chairman.

18 MR. PENNOYER: Mr. Brodersen.

19 MR. BRODERSEN: On this issue of oiled wetlands, it's a
20 very limited habitat in the Spill area, and, therefore, one
21 could either argue that it's very, very important in its
22 limited aspects or else it's unimportant because it is limited,
23 but either way, the wetlands that were oiled, from what I've
24 been able to gather from talking to peer reviewers, technical
25 experts, et cetera, that the best thing we can do for those

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

oiled wetlands is to leave them alone. So as a replacement
1 action, in the meantime, for those oiled wetlands, this was one
2 possibility we wanted to look at on a feasibility basis to see
3 if we wanted to do a replacement action for those wetlands that
4 are probably best left to Mother Nature, in terms of repair.

5 MR. PENNOYER: Mr. McVee.

6 MR. McVEE: I don't have any problem with the
7 replacement concept. I guess I had some problem with these two
8 projects, 28 and 29, from the standpoint of being, you know,
9 time critical, but if they were something that needed to be
10 done now this year, '93, or lose an opportunity, I didn't see
11 that in those projects. That's another major question, but
12 something that I think could be resolved from the public
13 comment process. We have to revisit it again. Thank you.

14 DR. MONTAGUE: Mr. Chairman.

15 MR. PENNOYER: Mr. Montague.

16 DR. MONTAGUE: There are a few points, I guess, that we
17 might have overlooked on -- particularly on the wetlands
18 project. River routers were damaged, sea ducks were damaged,
19 anadromous fish were damaged, and a natural loss of this
20 wetland will indeed be an additional vertivation (ph) to all
21 those species that were injured.

22 So, I guess, we thought about the relationship to the
23 earthquake but we just looked at it purely in terms of its
24 restorative value, and it seemed quite -- you know, without a
25 formal cost benefit analysis it seems quite cost effective,

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

say, compared to acquisition of habitats with -- we are
1 proposing to do to prevent further damage. And this prevents
2 further damage from nature to habitat that's useful to injured
3 species.

4 And in terms of its time criticalness, I know there was
5 an effort on our part, with very great sensitivity, that
6 projects that really did something, as opposed to further
7 study. So the fact that these projects are really doing
8 something was something that we looked at favorably.

9 MR. COLE: Mr. Chairman.

10 MR. PENNOYER: Mr. Cole.

11 MR. COLE: Well, this natural process has been going on
12 what now, 30 years. To say we ought to jump in and maybe do it
13 right away doesn't follow, number one, and number two, if you
14 look at it, this project isn't supposed to be completed until
15 1998, as I read the supporting data. That's a six-year
16 project. That's getting out there a bit, and how much money are
17 we going to spend on this project in the interim if it's really
18 going for six years, if you look at the backup materials.

19 MR. PENNOYER: I believe that's in fact if we decide to
20 go ahead with it. The study, to start with, is just to look at
21 the feasibility of doing this. Is that correct, the technical
22 feasibility of doing it? Anybody have any idea if we're buying
23 into a \$30 million project here or what are we buying into?

24 MR. SANDOR: I can't answer that. I have another
25 question.

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

MR. PENNOYER: I think the first year was the study, and
1 the long-term buying into it is only if we decide to go ahead,
2 based on evaluation.

MR. COLE: Well, but here, unless we have the sense that
3 we're going to go ahead with it, in my view, we shouldn't be
4 spending money to start it, number one, or think about doing
5 it, the feasibility. And number two is the implementation of
6 the project construction is planned for four years. Do we have
7 any sense of how much it's going to cost us over to divert in
8 this area the effects of the earthquake?
9

DR. MONTAGUE: Mr. Chairman, yes, we do, in the budget
10 document.
11

MR. COLE: It's \$4 million.
12

DR. MONTAGUE: We're talking about project 28?
13

MR. PENNOYER: Yes, project 28.
14

DR. MONTAGUE: Mr. Chairman, it will be 82,000 in '93,
15 16135 in '94, 195 in '96 and '97, and that's the total.

MR. PENNOYER: That includes implementation?
17

DR. MONTAGUE: Yes.
18

MR. PENNOYER: How much total?
19

MR. BRODERSEN: About 425,000.
20

MR. PENNOYER: That's half a million. So the evaluation
21 part of it is 82,000, and then the implementation part of it is
22 23350 or something?
23

DR. MONTAGUE: Roughly.
24

MR. PENNOYER: If we decide to do it.
25

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

DR. MONTAGUE: Mr. Chairman, I think it's also important
1 to note, I believe, on this project that logging operation are
2 going to be constructing a road near that site, and I think a
3 lot of the heavy equipment might have been -- this budget
4 reflects some heavy equipment would not be charged to the
5 Council.

6 Is that correct, David?

7 DR. GIBBONS: Mr. Chairman, yeah, there's an opportunity
8 there that perhaps we can use the equipment that's building the
9 Montague Road presently as we speak. The logging operation --
10 future logging operations to cut the -- reduce the costs down.

11 MR. PENNOYER: Mr. Barton.

12 MR. BARTON: Yes, I think it's a mistake to look at this
13 from the standpoint of correcting some damage from the
14 earthquake. It's rather taking advantage of an opportunity to
15 replace a resource that was damaged as a result of the Oil
16 Spill.

17 MR. PENNOYER: Do we have a motion on the floor? We're
18 just looking at the project.

19 Mr. Cole, do you have anything else you want to mention
20 about that project, a motion you wish to make?

21 MR. SANDOR: I have a comment, Mr. Chairman.

22 MR. PENNOYER: Mr. Sandor.

23 MR. SANDOR: I think the project ought to go forward for
24 public comment, but in addition to the concerns already for us,
25 I think that the question that's got to be answered is the 28

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

years of succession, moving in the direction it's moving, which
1 is away from habitat or trying to recreate. What would we
2 expect to be able to maintain? Continual re-flooding of the
3 uplifted lakebed, and if we're doing that, where are we
4 diverting water from and what are the impacts of the diversion
5 of water? So, there's a lot of far-reaching questions
6 associated with trying to manipulate this major succession and
7 process that we would hope to -- I can't believe we can hope to
8 divert that major successional change with \$400,000.00, and I
9 think that's just the beginning. When we come back to this in
10 December, or whenever, maybe that would be a question to try to
11 answer. I have problems with it. I don't have any problems
12 with it going out.

13 DR. GIBBONS: Mr. Chairman.

14 MR. PENNOYER: Mr. Gibbons.

15 DR. GIBBONS: Mr. Chairman, the way I understand the
16 project is the uplift changed the hydrology of the 60-plus
17 acres. They're starting to define channels now, it's draining
18 the wetlands in the channels and small conifers, four to six
19 feet high, are starting to grow now. That's what I understand
20 the project to be.

21 So what the project proposal might be would be to put
22 some check dams in to re-flood the wetland area, put some check
23 dams into the channels.

24 MR. PENNOYER: Mr. Cole.

25 MR. COLE: Well, like I say, I'm not going to vote

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

against it now, but I agree with Commissioner Sandor, it's a
1 project which I have some concern, and one of the concerns is
2 can we spend this prospective \$400,000.00 more effectively on
3 other restoration or acquisition proposals than try to
4 interfere with the natural processes of nature rebuilding from
5 the earthquake. So, let's just leave it in there.

6 MR. PENNOYER: Any objection to sending it out to public
7 review? There's no motion on the floor, so lacking a motion, I
8 think project 28 will go out to public review, with the caveat
9 that further explanation in December, whenever, on the
10 opportunities and value of habitats we're trying to create,
11 recreate, whatever, might be appropriate.

12 MR. SANDOR: And maintain.

13 MR. PENNOYER: Recreate and maintain. A dike -- it
14 doesn't say a dike over. This isn't very helpful.

15 MR. COLE: Mr. Chairman, just bringing in those
16 bulldozers and belly dumps and everything else into to this
17 nicely developing 60 acres out there just gives me the willies,
18 I can tell you. We may wind up with something far worse than
19 that -- than we started with, but let's take a look at it in
20 December.

21 MR. PENNOYER: We have to make sure we didn't classify
22 that logging show as an imminent threat though.

23 Okay, next, any further questions on projects?

24 Mr. McVee.

25 MR. McVEE: I have a question on 33; 93003, which was

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

how to conduct restoration monitoring.

1 MR. PENNOYER: Okay, go ahead.

2 MR. McVEE: And this project is limited to Prince
3 William Sound and Afognak. I guess the question was, since
4 there is other harlequin duck habitat on the Kenai, in between
5 Prince William Sound and Afognak, was there some reason why
6 that wouldn't be included or wasn't included; can someone
7 answer that?

8 DR. MONTAGUE: Mr. Chairman.

9 MR. PENNOYER: Mr. Montague.

10 DR. MONTAGUE: This project was presented in three
11 options. The one that you see here, two was the addition of
12 work on the Kenai Peninsula, and three was addition of work on
13 the Kenai Peninsula and the Alaska Peninsula. And I think
14 primarily, just in terms of cost considerations, the least
15 expensive and most focused project was the one that was passed.
16 Now, certainly we think that that is a poor decision. We
17 addressed that, and we considered it.

18 MS. BERGMANN: Mr. Chairman.

19 MR. PENNOYER: Ms. Bergmann.

20 MS. BERGMANN: I want to make one correction to that
21 statement that Jerome made. The options that we were given
22 included looking at the determination of injury on the Kenai
23 Peninsula and Katmai Coast rather than looking at habitat and
24 trying to characterize the habitat. So we were not really
25 given an option of looking at doing habitat characterization on

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

the Kenai Coast, which is something that Mr. McVee was
1 referring to and in which, as the Restoration Team
2 representative of DOI discussed and did support at the
3 Restoration Team level.

4 DR. MONTAGUE: Mr. Chairman, to further elucidate Pam's
5 comment, Afognak was viewed -- let me back-off a little bit on
6 that -- habitat characteristics for nesting and so on, the peer
7 reviewers and the Restoration Team wanted harlequin habitat
8 information that was in areas that were viewed to be
9 considerably different than what had already been studied in
10 western Prince William Sound, and Afognak, we viewed it as
11 being a fair amount more different than Prince William Sound
12 that say the Kenai Peninsula. So the ability to extrapolate
13 Prince William Sound information to the Kenai Peninsula, we
14 deemed a lot more plausible than extrapolating Prince William
15 Sound information to Afognak. And it was just a slight
16 difference in priority, I believe, that the group and chief
17 scientist felt that if you're only going to look at habitat in
18 one area -- one new area other than western Prince William
19 Sound, Afognak would be the highest priority. Not that it
20 wouldn't be important elsewhere, but it would be the highest.

21 MR. McVEE: Mr. Chairman.

22 MR. PENNOYER: Mr. McVee.

23 MR. McVEE: I guess this bothers me in that these
24 habitat studies, as I mentioned before today, will be the basis
25 for designing a habitat protection program, which could be

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

acquisition, too. And this would bother me -- it would bother
1 me that we may have a gap here in terms of harlequin duck
2 habitat, which has not been looked at or inventoried because
3 the project has been restricted to exclude the Kenai.

4 MR. PENNOYER: Mr. McVee, what are you suggesting, an
5 expansion of the project?

6 MR. McVEE: Yes. I'm suggesting and I'm not quite sure
7 how to do that now other than we can let the project go forward
8 for public review with the kind of comment we have on it, but
9 when we come down to the December date, whenever that is, I
10 guess I will again be on the subject, and I think it should be
11 given some thought as to what kind of additional costs that's
12 going to be and where it should stand in the priority system,
13 and -- maybe I'm getting my comments in before the public is,
14 that's what I'm doing, I guess.

15 MR. PENNOYER: In terms of doing something, was there a
16 proposal that was turned down by the RT -- I mean was there
17 anything on the table with a dollar amount attached to it that
18 included the Kenai?

19 DR. MONTAGUE: Mr. Chairman, there was. It included the
20 Kenai, but it was a damage assessment component. Habitat
21 component has not been presented, but, I believe, speaking for
22 staff, we could revise that -- the current one that you have in
23 front of you to include a habitat evaluation on the Kenai
24 Peninsula, and

25 MR. PENNOYER: Is there a

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

DR. MONTAGUE: shooting from the hip, I would say
1 on the order of about 250 to \$300,000.00 addition.

2 MR. PENNOYER: Additional?

3 DR. MONTAGUE: Yes. The damage assessment project was
4 about a \$200,000.00 additional, and habitat work is more
5 expensive in the damage assessment.

6 MR. COLE: Mr. Chairman.

7 MR. PENNOYER: Mr. Cole

8 MR. COLE: I move to expand it, but to extend no more
9 than \$100,000.00.

10 MR. PENNOYER: Any project design in mind?

11 MR. COLE: Well, yeah, I mean, you know

12 MR. PENNOYER: I'm being facetious.

13 MR. COLE: I think a lot of these things

14 MR. PENNOYER: I haven't seen a project out here and I
15 don't know what

16 MR. COLE: Well, they know what we're talking about.

17 MR. PENNOYER: off-hand \$200,000.00

18 MR. COLE: Just -- you know, we just don't need, you
19 know, somebody getting a doctorate degree in this project. You
20 know, just give us a real good sense for \$100,000.00 what it --
21 you know, so we can make some decisions on it. I think that
22 ought to be enough. Maybe I'm off the track, but 100,000
23 should be enough to send somebody out there to take a look for
24 a couple weeks.

25 MR. PENNOYER: The project is currently at \$506,000.00,

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

including Afognak and Prince William Sound, so is that about a
1 quarter-million each or something? Am I in the right

2 DR. MONTAGUE: Mr. Chairman, no. Most of 75% of the
3 cost is for Afognak because the habitat work is more expensive
4 than the damage assessment. Most of the Prince William Sound
5 work is directed at further evaluating linkages to oiled mussel
6 beds and so on and so forth, with a minor component to damage
7 assessment. Most of this project is the habitat work, and the
8 reason -- one of the reasons or the primary reason for the
9 increased cost, compared to Prince William Sound, is in Prince
10 William Sound small boats were used, and the investigators and
11 most of those familiar with the area felt that the outer Kenai
12 coast and Afognak cannot be adequately supported out of a 20'
13 Boston Whalers, that it would need a sizable vessel, and that's
14 where most of the cost additions were associated with 'em.

15 MR. COLE: You don't need the QE-2 either.

16 MR. PENNOYER: Mr. McVee, did you have something
17 additional?

18 MR. McVEE: No.

19 MR. PENNOYER: Mr. Sandor.

20 MR. SANDOR: Well, in reviewing the project description
21 in the blue sheet project description in the evaluation
22 comments and Dr. Spies' comments, I had, I guess, a erroneously
23 concluded that the description in the blue that this was at
24 least to be related and integrated with the previous
25 information gathered in 1992, and there is a sentence in this

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

that says field evidence collected in 1992 has shown additional
1 previously unreported oiled mussel beds in Prince William Sound
2 and on the Kenai coast and I know that the oiled mussel bed
3 studies covers harlequin ducks. In fact a intensive study of
4 that this year, and aside from not knowing what that evaluation
5 comment is, I'm persuaded by Dr. Spies' comments, the comment
6 that this is a worthwhile project on an injured species.

7 Before laying out another one or \$200,000.00 on this,
8 maybe if the descriptions of the projects were incomplete or if
9 in fact I guess Dr. Spies and the peer review group provided
10 some information that the project ought to be rewritten, it
11 seems to me, I guess, that if we're talking about jumping this
12 up from 500,000 to 700,000, that's a major project change. I
13 guess it's surprising to me that this comes up at this point.
14 I hate putting Dr. Spies on the spot but say the project is
15 very worthwhile, it ranks 2, do you see the need for additional
16 investment of \$200,000.00?

17 MR. PENNOYER: Dr. Spies, would you comment on the need
18 to do Kenai habitat as well as Afognak habitat and Prince
19 William Sound restoration monitoring?

20 DR. SPIES: It arises out of more of a concern, as
21 Jerome said, as the -- to what extent you can extrapolate the
22 findings of Prince William Sound. There's just a lot of
23 uncertainty as to -- if you're going to be making a potentially
24 multi-million dollar decisions on habitat acquisition on the
25 Kenai based on projections of habitat information developed in

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

Prince William Sound, well, (indiscernible - away from
1 microphone - coughing) sound thing to do or perhaps we should
2 invest some more money covering that base to make sure that we
3 understand the habitat would be (indiscernible) ducks on the
4 Kenai Peninsula.

5 MR. PENNOYER: Could be reach a compromise here,
6 perhaps, gentlemen, and ask the Restoration Team to design a
7 project, even make it a second one, 33-A? We can't do that,
8 okay.

9 MR. BRODERSEN: A new number, but not an A.

10 MR. PENNOYER: Okay, let's forget the A and give it some
11 other number, to include expansion, research of the Kenai
12 Peninsula and send that out to public review and we will review
13 it when it comes back, and that it is their best estimate of
14 \$200,000.00. Then we certainly could review that comment and
15 drop it or modify it in December based on public comment, if so
16 wished.

17 Is that what you had in mind, Mr. McVee?

18 MR. McVEE: That's fine with me. It might be that a
19 sampling -- a sample technique of some sort without a
20 full-blown inventory of all habitats might fit the bill, but I
21 think that without some information there, we've got a gap, and
22 this is kind of part of the problem I had talked about before,
23 I guess, in terms of inconsistencies, the way we approach
24 various resources. But I would think your suggestion would do
25 it.

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

MR. PENNOYER: Do you want to put a bounds on that since
1 we're not going to come back and revisit it, it's going to go
2 out under our letterhead, a hundred to 200 or something, to
3 keep it -- try and get a sampling technique to keep the price
4 down as much as possible? See if answers from Afognak couldn't
5 be connected to the Kenai -- a sub-sampling on the Kenai or
6 something?

MR. COLE: Mr. Chairman, you know, we should point out
8 so everyone knows this project is to be \$506,000.00 in '93, and
9 another \$500,000.00 in '94, and that the project will not be
10 completed until we get results back in '95. So we're making a
11 multi-year commitment for this project. We should be aware of
12 that when we vote on this, and I personally feel that a million
13 dollars or more for this study is a lot of money for this
14 particular study, and I think that we could achieve the type of
15 information required for us to make decisions on restoration
16 for the harlequin duck for less money. I don't think we need
17 these definitive studies. I think that we would -- could make
18 more of a sampling type studies so as to furnish us with the
19 requisite information. That's my only thought.

MR. PENNOYER: Do you want to highlight this particular
21 study and ask in December after the public review of this plus
22 the non-sub-A alternation that we get back some rather
23 highlighted discussions on why this level of sampling is
24 required and why in fact we couldn't do it for a lower price?

MR. COLE: Mr. Chairman, you know, we get criticized for

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

1 spending too much money on studies that are out there in the
2 public -- too much money on studies, and I think that we have
3 to be cognizant of that criticism. I think it's a legitimate
4 comment. I do think we need these studies, but we must keep
5 the study in balances so it provides us only the information
6 that we essentially need to make decisions for restoration.

7 MR. PENNOYER: Any further comment? Is there any
8 objection to the non-sub-A modification going out to public
9 review, as inexpensive as possible, adding the Kenai Peninsula
10 on the samplings (indiscernible) or something to the Afognak
11 part of the study? Is that okay, Dave, from a Restoration Team
12 standpoint?

13 DR. GIBBONS: (Nods head affirmatively)

14 MR. PENNOYER: Is there any objection to that? Was
15 there a motion that was seconded? It's done, okay.

16 MR. COLE: Mr. Chairman.

17 MR. PENNOYER: Okay, next project.

18 MR. COLE: I move we delete project number 29.

19 MR. PENNOYER: Is there a second to that.

20 MR. SANDOR: Yes, I'll second that.

21 MR. PENNOYER: It's been moved and seconded that we
22 delete project number 29, Prince William Sound second growth
23 management, which was a 5-1 vote of \$62,000.00.

24 Mr. Cole, do you want to speak to your motion?

25 MR. COLE: Well, the introduction on the project number
comment reads as follows: Prince William Sound area has

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

several watersheds on national forest lands for timber.

1 Harvest occurred in the early '70s. These cuts were made
2 without an understanding of an optimum stand structures for
3 wildlife populations. As a result of these harvest practices,
4 succession to old growth will be delayed as much as 75 years.
5 Old growth dependent species such as river otter, marbled
6 murrelet, harlequin duck, involve the eagle are therefore being
7 negatively impacted. Managing second growth in Alaska's
8 coastal rain forest with emphasis for fish and wildlife has
9 been a documented practice -- and so forth. But as I
10 understand this project, we are undertaking to manage the
11 second growth on national forest land -- for what, thinning
12 process? I think that's inappropriate for a Trustee Council
13 expenditure of funds. I think that management of national
14 forest lands is a function of the Department of Agriculture,
15 and it's their responsibility to manage those lands in the
16 public interest.

17 MR. PENNOYER: Mr. Barton.

18 MR. COLE: I had to say that.

19 MR. THOMPSON: Mr. Chairman.

20 MR. PENNOYER: Yes.

21 MR. THOMPSON: Yes, I'd just like to respond to that. I
22 think that there is an opportunity here to, you know, write
23 some wrongs possibly, but these stands, they are in the
24 proximity of the Oil Spill, adjacent coastlines and so forth,
25 and they very likely are habitat for a species that were

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

injured in the Oil Spill, and through this, you know, cultural
1 treatment, thinning or the like, there is a possibility of
2 improving that habitat for those species that might have been
3 injured. And we need to go out there and take a look at those
4 and, you know, design a particular stand structure which will,
5 you know, permit more rapid restoration of those injured
6 species if, in fact, they do exist out there.

7 Now, I think there's another side-light to this
8 particular project. There is a strong interest by Native
9 corporations in the area to perform this kind of work, and that
10 way there is a significant opportunity for the, you know, to be
11 a part of this restoration activity.

12 And if there's other arguments on this, Dr. Gibbons, I'd
13 prefer you'd put those out.

14 MR. PENNOYER: Excuse me. Let me get this clear. This
15 is actually sort of a logging show where you eventually sell
16 the thinned logs to a corporation to come in and do the work?

17 MR. THOMPSON: Well, I would expect, not being on the
18 ground in those particular stands, that those trees are not of
19 a commercial size, and they would probably be removed, you
20 know, from the growing stock there and probably left on
21 location or something of that nature, and it wouldn't be part
22 of an economic product.

23 MR. PENNOYER: Oh, I see, they're only 20 years old.

24 MR. COLE: Mr. Chairman.

25 MR. PENNOYER: Mr. Cole.

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

1 MR. COLE: For the purpose of this expenditure of these
2 monies to just design a program to enhance the habitat? I mean
3 cutting is part of this project, for example?

4 MR. THOMPSON: Again, I'd like to defer that question to
5 Dr. Gibbons. I'm unfamiliar with what the process needs to be.
6 I've only recently reviewed this and I can't remember, right
7 off the top of my head.

8 MR. PENNOYER: Mr. Barton or Dr. Gibbons.

9 DR. GIBBONS: It's my understanding of this project,
10 this year would be to design, make the link to the possible
11 injured resources, identifying the critical habitats that make
12 that link, do the necessary environmental documents, make the
13 documents to get ready for possible implementation activities
14 next year.

15 MR. PENNOYER: Mr. Barton.

16 MR. BARTON: I'm a little puzzled. I really don't see a
17 lot of difference between this type of work and some of the
18 fisheries enhancement projects that we've agreed to undertake.
19 It seems like one is one form of habitat enhancement, this is
20 another form of habitat enhancement.

21 MR. PENNOYER: Anybody want to start on the fisheries
22 enhancement project?

23 MR. BARTON: I support those, too.

24 MR. PENNOYER: Okay. Mr. Sandor.

25 MR. SANDOR: Well, I seconded the motion, and I did so
not for the reason that I didn't think the activity wouldn't

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

benefit the habitat which may include the habitat of species
1 injured in the Spill, but rather I thought it was an obligation
2 of the Forest Service or private land owner or whoever was
3 doing the timber harvesting to assure one regeneration --
4 adequate regeneration, and then, two, to assure the proper
5 fitting to allow the stand to develop into an optimum
6 productive forest of stand.

7 I mean, so I thought that this activity -- these two
8 activities, reforestation and thinning, are part of a
9 commitment to timber harvesting to begin with, and that
10 activity not be undertaken without the assumption of a
11 responsibility of doing both; assuring regeneration and
12 assuring thinning.

13 In the case of Alaska as a whole, the Congress has not
14 funded the activities and I understand the time table for
15 thinning activities is greatly lagging from what is needed. I
16 guess I'd hate to see the restoration funds be used for this
17 purpose and believe, one, that the thinning should certainly
18 take place or else the stand will be permanently damaged, and
19 will be detrimental to species using that habitat, but it's the
20 Congress under the appropriations for measures of the
21 Department of Agriculture that should fund it. That's the
22 difficulty I have with that.

23 I think the project ought to go out, but I think maybe
24 between now and December when we evaluate it, maybe determine
25 whether or not that and other areas that have been harvested

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

1 which will similarly develop into the thick stand that need
2 thinning. It seems to me that ought to be funded by other
3 sources. But maybe we can explore that between now and
4 December.

5 MR. PENNOYER: In looking at this budget, it's a
6 feasibility study for \$62,000.00, and do you project out-year
7 costs or are they going to be born by the agency if the project
8 looks feasible or not? This is just a study, for the money to
9 do it here; is that correct?

10 MR. BARTON: No, as I understand it, it would actually
11 deal with 2,500 acres.

12 MR. PENNOYER: Oh, so it's actually cutting

13 MR. BARTON: (Indiscernible - simultaneous speech) 2,500
14 acres. The process would be to expand that in the future then
15 potentially, which would be the agency's responsibility?

16 MR. BARTON: If there were identified critical habitat,
17 then it would be an option, certainly.

18 MR. PENNOYER: Is there more than the 2,500 acres in the
19 Spill area where oil might be -- this technique might be
20 usefully employed on if it works out?

21 MR. BARTON: I don't know. Do you know, Ray?

22 MR. THOMPSON: I'm not sure on that, Mike. I'd like to
23 respond to a little bit earlier comment though that Mr. Sandor,
24 you know, kind of took the view that most of the work that
25 would be done out here would be a standard preparatory work for
future stand which would be logged for its commercial benefit,

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

and I think there's some secondary benefits there to the
1 economy. I think the primary focus of this particular project
2 is to try to look at stands, try to design the habitat there to
3 take care, enhance injured species, you know, from this oil
4 spill, and that would take a different angle -- focus than we
5 might ordinarily take on some of these stands. So, just a
6 different perspective on there, Mr. Sandor.

7 MR. COLE: Mr. Chairman.

8 MR. PENNOYER: Mr. Cole.

9 MR. COLE: I would think that before we even do the
10 study we should first determine that this is habitat or injured
11 species, number one. And, you know, number two, I think one
12 should comment on the fact that we ought not let our views on
13 restoration replacement, et cetera, be colored in any fashion
14 with furthering economic activity in the area. We just must
15 not do that, i.e., that it's apt to provide, for example,
16 employment in the area. We just can't do that.

17 MR. THOMPSON: Mr. Chairman, the reason I made that
18 comment was not specifically to entertain economic activity in
19 the area but that could be a side-light from doing the work at
20 some future time. You know, I don't have any control over
21 that, but I think the primary purpose of this project is not
22 for economic purposes.

23 MR. COLE: No, Mr. Chair, I just wanted to make sure
24 that no one was able or did say, well, this was a factor in the
25 decision to adopt this program. We must be very, very careful

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

about that, and make certain that it is not a consideration of
1 any kind.

2 And I would like to say one other thing. That if we do
3 this, talk about thinning, well, then we're apt to get
4 pressured by the private landowners who say, what about our
5 lands, maybe we should go in and approve them for habitat, too,
6 as long as we're dealing with national forest lands, from that
7 standpoint. It's a position, I think, we should be careful to
8 get in.

9 But I will not move to delete it, and I agree that it's
10 proper to go out, but in view of the discussion.

11 MR. PENNOYER: Mr. Barton, further comment.

12 MR. BARTON: The only other comment I was going to make
13 in response to Mr. Cole's second question, inventorying the
14 habitat is part of the project.

15 MR. PENNOYER: Further discussion on this item? With no
16 motion then, this project, number 29, will go out to public
17 review.

18 Any other projects that the Trustee Council members wish
19 to review or comment on?

20 MR. SANDOR: Mr. Chairman.

21 MR. PENNOYER: Yes.

22 MR. SANDOR: This is re-visitation of project 64, and I
23 guess a question. As that is defined, the price tag on that, I
24 found, was zero to 20 million. The question is -- it's been
25 partially answered, I think, but I guess to understand where

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

we're going and what's going out, and someone summarized the
1 rationale for that zero to 20 million, and does that really
2 mean up to 20 million? That's one of the ways I read that, up
3 to 20 million.

4 MR. PENNOYER: If I could

5 MR. SANDOR: I'm looking at this continued
6 discussion -- go ahead.

7 MR. COLE: I move we delete all the references to zero
8 to 20 million, but let me say why, before the wrath of the
9 environmentalist lobby comes down on me.

10 You know, I think we're getting a little ahead of
11 ourselves, as I said earlier today. We have several months
12 here to plan our decisions in this area, and I don't think -- I
13 think it's premature to talk about extending specific sums of
14 money at this stage. I thought we could do that in December
15 when we would have a better sense of the information we get
16 from the study and what should be doing, generally, and I also
17 think -- it would be my thought that we should expand maybe 64
18 or maybe one of these other projects to get professional advice
19 on how we should go about acquiring threatened habitat.

20 You know, I just think we're going to get this
21 information come December and then we're going to be in a
22 position to say -- I mean, but what do we do now? I think we
23 should be formulating our acquisition strategies at the same
24 time we're collecting this information, otherwise we'll have
25 the information and then we'll be somewhat bewildered or non-

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

plussed (ph) about what we do with it. I think we've got to
1 just keep all these things moving along sort of at the same
2 time. So, that's my thought.

3 MR. PENNOYER: There's a motion on the floor. Is there
4 a second to delete the project 64?

5 MR. COLE: No, it's to delete

6 MR. PENNOYER: The dollar amount.

7 MR. COLE: The dollar amounts in there and leave that
8 open and continue with the project. Then we don't have to face
9 this decision on how much money we're going to spend. It's
10 just getting ahead of ourselves.

11 MR. PENNOYER: Is there a second? Is there further
12 discussion or further amendment? Mr. Sandor?

13 MR. SANDOR: Yeah, I don't feel it appropriate to second
14 them motion because -- or speak in opposition to not
15 identifying some value because, as I understand it, and I guess
16 this is a thing that needs to be discussed as a significant
17 issue by the Trustees, and I'm reading from this 9/18/92 draft
18 of the project description of 93064, on the last page, which
19 says: Trustee Council to determine appropriate allocation
20 between state and federal agencies. Money will be allocated by
21 the Trustee Council to a lead federal agency when a willing
22 seller with lands linked to a recovery of injured species
23 and/or services identified.

24 Well, maybe I'm -- but then I'm also referring, as you
25 recall, to the comprehensive habitat protection strategy which

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

was passed out at the last meeting, and specifically item
1 three, which was listed under 93064, that this project sets
2 (indiscernible) in. It was my understanding, perhaps
3 incorrectly, that the position of the Restoration Team since
4 our last meeting of identifying this five million was to
5 essentially propose a range of up to 20 million -- zero to 20
6 million.

7 Is that valid? Can you explain that rationale in that
8 this is not a commitment to spend 20 million -- up to 20
9 million. It's a commitment to have a signal -- a policy
10 provision to the Trustees that indeed the Trustees would be
11 willing to spend up to 20 million or up to five or whatever if
12 the critical habitat provided -- that in these individual
13 projects would have to come forward to the Trustee Council for
14 approval.

15 Can you reaffirm that or say what was intended?

16 DR. GIBBONS: Mr. Chairman. That's what was intended.

17 MR. SANDOR: See, if that's what is intended, Mr. Cole,
18 I don't see any problem with saying that, hey, if critical
19 habitat is identified, and if specific projects are proposed,
20 if the Restoration Team believe they merit approval by the
21 Trustee Council, why not let them move forward?

22 Not doing that -- and I guess the other thing that I
23 assume is that we have to or are supposed to, in the
24 preparation of our budget -- in the submission of our budget to
25 the court judge, that we really should have an item in the

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

budget if, in fact, we expect to be able to spend something in
1 that item. And I think we will be spending something in that
2 item. I don't know how much. Therefore, we need something in
3 there to send out a message. That was part of the rationale,
4 Mr. Cole, that prompted me to support some level of funding.

5 MR. PENNOYER: What would show, Mr. Gibbons, in the OMB
6 budget on our zero to 20 configuration; what would you put
7 there to OMB to indicating what levels we might expect to spend
8 in '93?

9 DR. GIBBONS: Well, we put the range there, hopefully,
10 that the Trustee Council would pick a figure between zero and
11 20 to put in there.

12 MR. PENNOYER: We're faced with the same original
13 problem. I want to send a strong message to the public that we
14 are seriously considering habitat acquisition modification or
15 whatever as a restoration strategy, but we don't know, because
16 we don't have the data back, how much we want to spend on it.
17 At the same time, if we don't put anything in there, it sends
18 the message that we may not be seriously considering this
19 strategy and OMB requirements aren't satisfied.

20 Mr. Rosier.

21 MR. ROSIER: Mr. Chairman, I want to give my compliments
22 to the staff on this. I believe on the 14th when we met, I
23 think that the Trustee Council kind of raised hell with them
24 for putting aside a \$20 million figure in there, so now we've
25 got a range where we get to figure it out.

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

MR. PENNOYER: Very true. Mr. McVee.

1 MR. McVEE: Yes. Mr. Chairman, there's another approach
2 to this that just dawned on me because looking at the Habitat
3 Protection Work Group there are two -- two of the agencies have
4 plugged in \$100,000.00 for land appraisals. So there would be
5 \$200,000.00 in the budget -- administrative budget for land
6 appraisal. I'm not sure it belongs in the administrative
7 budget, it seems to me like that's very project specific, but
8 maybe that's another matter, but maybe what we deal with or the
9 way we reflect this to the public is show a number there that
10 deals with the processing costs -- you know, the staffing costs
11 at this stage, that the unknown -- the acquisition is unknown.
12 Until we have gone through the processing, including the
13 appraisals, it's still an unknown, and, you know, we can
14 express in our cover memorandum to the public that when we have
15 that number it is our intent, you know, to respond to it. That
16 the Trustee Council is committed to look at acquisition, but we
17 don't have any idea what it is at this point.

18 MR. PENNOYER: Further comment?

19 MR. BARTON: Mr. Chairman.

20 MR. PENNOYER: Mr. Barton.

21 MR. BARTON: I think Mr. McVee's proposal has some
22 merit. I worry, too, a little about the pig in the poke
23 syndrome. I would support, however, as I said earlier, a
24 modest amount of money in lieu of Mr. McVee's proposal to be
25 shown in this item. I would support \$2 million, \$5 million.

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

MR. PENNOYER: What was the feeling -- we had a
1 \$5 million in front of us at one time. I think we all agreed
2 that that would be too little, too much, nobody knew. Why from
3 zero to 20, I guess, why -- what -- between five and 20
4 million, what did you think we were going to do in terms of
5 making a decision here? Just a general feeling you had amongst
6 us that some might go higher and some might go lower?

DR. GIBBONS: Yes, Mr. Chair. The 20 million figure
8 came from -- we did a quick analysis of how much money we'd
9 have remaining in 1991, approximately 17-1/2 million,
10 projections from expenditures from this year's payment, and
11 said, perhaps half of that might be an upper figure for
12 activities in this type of arena for this year, and that's
13 where the 20 million came from. It's just that. We did look
14 at a fixed formula for determining how much money, and we
15 talked to the Nature Conservancy a little bit, but the problem
16 with that is it doesn't provide us the flexibility and the
17 options that might be available to us. If we take 10% of the
18 yearly value or something and use that, it doesn't give you the
19 flexibility of perhaps land banks or a lot of these other
20 things that may cost us nothing to do some activities.

MR. PENNOYER: Except if we pick a number, it doesn't
22 give us flexibility either. It's high enough that you'd go
23 within it.

DR. GIBBONS: Well, the number depends on what the
25 intent of the number is. I know the first thoughts on the 5

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

161
million was not to acquire but was for imminent threat, perhaps
1 moratorium type activities, and that's when we came up with the
2 \$5 million for. If, you know, you choose to do more -- it's an
3 option, but that's what that number was geared at. It's not
4 for actually going out and buying public parcels.

5 MR. COLE: Mr. Chairman.

6 MR. PENNOYER: Mr. Cole.

7 MR. COLE: See, the discussion simply highlights the
8 fact that we need a fundamental plan of what we're going to do.
9 Here we are trying to -- talking about some money, how much
10 we're going to allocate, and we don't know whether we're
11 addressing this at this stage from the standpoint of acquiring
12 options or moratoriums. We don't know whether we're talking
13 about the acquisition of timber or land at fee. We don't know
14 whether we're talking about, with respect to particular areas
15 only habitat along anadromous streams or where we're going
16 right now, and I think that we -- or what our acquisition
17 strategy is.

18 I guarantee you that if we put a \$20 million figure in
19 there and we approach some landowner and say we'd like to
20 acquire this critical habitat, we will get numbers that are off
21 the chart. We'll go to Judge Holland and -- so we'll have to
22 formulate in the next 60, 90 days a strategy of what we're
23 going to do when and why. And I say again we get all this data
24 in December without having formulated a general plan, we're
25 going to be in a position where we're buying, seeking to

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

negotiate for specific tracks, and -- in response to pressure,
1 and we're going to have to make some tragic mistakes with
2 respect to our acquisition strategy.

3 MR. PENNOYER: Mr. Sandor.

4 MR. SANDOR: The description of a project activity
5 includes both this activity of moratorium and other temporary
6 measures -- I guess short-term protection measures to allocate
7 the Trustee Council specific parcels of land as well as the
8 other option of protecting critical habitat.

9 I think the plan's in place to -- well, I know the plan
10 is in place to identify the identify the habitat. We've got
11 approved already projects, 50 million and 60, with respect to
12 identifying the habitat and getting the associated data. What
13 would be troubling to me is that we go out to the public
14 without -- and then not meet again on this until December
15 something, and then at that time the question we face is how
16 much, and that wasn't even discussed.

17 It seems to me we should -- well, Curt McVee's
18 suggestion is just saying that something -- that we'd be better
19 off putting even what the Restoration Team set up some amount,
20 or saying some amount like 5 million plus or minus or 5 million
21 to be qualified by -- but again reiterating the specific
22 projects have to come to the Trustee Council. What that would
23 say to me, if I was getting this package, at least the Trustee
24 Council recognizes that there's a likelihood of spending 5
25 million plus or minus in this 20 million -- up to 20 million

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

and I think not doing that may be incorrectly -- would be
1 incorrectly interpreted as an uncertainty that we'll be
2 spending any money, and I think that would be troubling.
3 Because I don't think that's the intention of the Trustees.

4 MR. PENNOYER: Mr. Sandor, your recommendation is then
5 to send out a range?

6 MR. SANDOR: I guess I move that we attach -- we fix a
7 five million plus/minus estimate and that the text specifically
8 say that the plan is in place to look at proposals and funds
9 will be spent -- will be considered for expenditure on a case
10 by case basis.

11 MR. COLE: Mr. Chairman.

12 MR. PENNOYER: Mr. Cole. Well, is there a second to
13 that motion?

14 MR. BARTON: Second.

15 MR. PENNOYER: It's been moved and seconded that we send
16 out a proposal with \$5 million with a plus or minus attached to
17 it indicating the uncertainty attached to it how much we want
18 to spend until we get back the appropriate background work and
19 make a final decision on a project by project basis.

20 Mr. Cole.

21 MR. COLE: I speak in opposition to that for the same
22 reasons I said the other day. We put in \$5 million, I know
23 that we will get an immediate response that said: but you're
24 only going to spend \$5 million out of this \$100 million that's
25 coming in, what's the matter with those yahoos there?

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

You know, we're going to get incredible criticism, and
 1 furthermore, I don't think that that's what you plan on doing
 2 anyway. At least it's not what I plan on doing. To spend only
 3 \$5 million? I think what we should be prepared to say is we
 4 will spend whatever amount of money is necessary to protect
 5 threatened habitat, and just put it right in there. You know,
 6 with contingent liability and footnote it and be done with it.
 7 Otherwise, that will be viewed as a limiting factor.

8 I don't think it is a limiting factor, and my position
 9 is, while I'm accused of being a foot dragger, I think we ought
 10 to move a little faster, and during this next 90 days instead
 11 of formulating simply a plan for the acquisition of threatened
 12 habitat, I think we should be formulating a broader plan that
 13 will address not only threatened habitat but for the
 14 acquisition of, you know, resources beyond that so that we're
 15 not boxed in. At least we should be looking at a broader
 16 overall plan. And having something along those lines available
 17 for us in December, because we may wind up in December, as I
 18 foresee it with proposals for the acquisition of threatened
 19 habitat which, you know, may be fairly confined, I don't know.
 20 And then we're going to be in a position where we say to
 21 ourselves, well, what do we do now, guys? Sorry, I can't
 22 (indiscernible - trailing off).

23 But, I mean, that's what troubles me. I think we should
 24 be moving along in a broader front than we're moving along, and
 25 we can also back-off of that, if need be or that's our

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
 277-0572 272-7515 272-3022
 FAX 274-8982

ANCHORAGE, ALASKA 99501

1 decision, but we don't need to be quite so narrow in our
2 approach is troubling.

3 MR. PENNOYER: Perhaps somebody could answer on where
4 we're going with this. 64 is for the '93 budget, starting
5 March 1, 1993, correct? All these things that were discussed
6 in Mr. Weiner's presentation on negotiation and coming to us
7 about parcels and so forth, the money wouldn't be available for
8 any of that actual work until after March 1, 1993. So all
9 these negotiations and studies and so forth we're doing now are
10 under another category. They're the two Nature Conservancy
11 budgets plus something in the administrative process, I guess.

12 So, I guess, I agree with Mr. Cole, and I don't want to
13 limit ourselves to 5 million. At the same time I'd like to
14 give -- let the public know that this is a strategy we're
15 seriously considering for restoration of injured resources in
16 Prince William -- or services in Prince William Sound.

17 I also am bothered then, having said that, with what we
18 do with OMB and the permission to spend these funds, or any
19 funds, starting March 1st, unless we indicate some type of a
20 number. We don't indicate a number until whenever these
21 studies are done, let's say January 1st or late December or
22 whenever, what -- we would be any more prepared to indicate a
23 number that ought to be in this budget on December 1, 2, 3, 4,
24 whatever we decide to pick here is the day of our next meeting.

25

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

Are we going to know it by then, and if it's something
1 different, can we then propose it and get something through OMB
2 in time to put in place in the start of the next fiscal year or
3 the next second half of this fiscal year?

4 Dave, do you have any idea of the timing on all that?

5 DR. GIBBONS: Well, Mr. Chair, the only way you're going
6 to get that answer is you run it through the imminent threat
7 process, and you're going to have some kind of number then that
8 says X amount will be needed for these types of activities.
9 Then there'll be, yeah, negotiation with the land owner at that
10 time.

11 MR. PENNOYER: So, we're not going to know this number
12 then until sometime next spring anyway; is that correct?

13 MS. RUTHERFORD: In December, we'll know. We'll
14 probably know parcel acreages, but until we actually start
15 talking to land owners, the actual dollar figures,

16 MR. PENNOYER: So, even in December, we won't be in a
17 position to put a number in here that we're going to be finally
18 happy with, and we're still faced with somehow acquiring the
19 money both through the court and with OMB.

20 MR. COLE: Mr. Chairman.

21 MR. PENNOYER: Mr. Cole.

22 MR. COLE: Why don't you just ask OMB how to handle it?
23 Say, here's our problem, guys, what do you want us to do; how
24 do we handle it?

25 MR. PENNOYER: We also have to go forward with the court

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

sometime before March and

1 MR. COLE: Well, we can do that

2 MR. PENNOYER: it looks like we can do that in
3 successive stages, I suppose. Mr. Sandor.

4 MR. SANDOR: It may be that the restoration team wasn't
5 really passing the buck. Maybe they knew exactly what they
6 were doing in saying 0 to 20. That 0 to 20 seems really more
7 in line with what Attorney General Cole is saying, that it
8 could be as much as 20, and I guess as a matter of procedure,
9 if the project package is given to us by the Restoration Team
10 is 0 to 20, and that if no motion is passed to change it, be it
11 15 million, plus or minus, or zero, that's what will go out for
12 the public discussion. And is it correct that what will go out
13 for public discussion, barring any action by this Trustee
14 Council, for project 64 is in fact 0 to 20.

15 DR. GIBBONS: That's what we'd go out to the public
16 with, Mr. Chairman.

17 MR. SANDOR: Well, then, Mr. Chairman, I withdraw my
18 motion to 5, plus or minus, and essentially agree with the
19 package as going out as described.

20 MR. PENNOYER: You know, I think I agree with -- I'm
21 just troubled by what the Restoration Team and the federal side
22 is going to do with OMB at this stage. Maybe Mr. Cole is
23 right, we ought to ask OMB what they want us to do with it.
24 Maybe we pick the higher number for OMB purposes and then make
25 it's clear it's going to go under it, but that's going to send

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

one type of budget to Congress. I'm still not sure what we do
1 in that case. I guess we're going to have to discuss it.

2 Mike, do you have any idea what we do with OMB?

3 MR. BARTON: No.

4 MR. PENNOYER: You don't have a particular number?

5 MR. BARTON: The best thing to do is ask them. If it
6 were later in the year, we could go through the supplemental
7 process, but that won't be till mid-year

8 MR. PENNOYER: We might not have the money until then.

9 MR. BARTON: or later.

10 MR. PENNOYER: Particularly in this scene we're in right
11 now it would be better to get authorization at the start to
12 spend up to whatever we want to spend up to from them. I think
13 maybe we ought to ask them. And, Mike, we'll have to somehow
14 take it upon ourselves to find out that answer.

15 Curt, any further discussion on the zero to 20?

16 Mr. McVee.

17 MR. McVEE: Yes, Mr. Chairman. At this point, where
18 we're considering projects of budget to go out for public
19 review, maybe it over-simplifies it, but it seems to me like we
20 can say that will that budget, basically it reflects the intent
21 of the Trustee Council; the whole budget reflects the intent of
22 the Trustee Council for the remaining portion of -- the
23 settlement portion of fiscal year '93. This seems to me it
24 might be appropriate to say that we don't have a number at this
25 time, and maybe that's what the 0 to 20 reflects, we don't have

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

a number, but our intent is then, you know, -- and it would be
1 appropriate to add some footnote language that would convey
2 that, that our intent is to go forward with the habitat
3 protection program. But we do not have a number at this time.
4 That is the fact as illustrated by the conversation here for
5 the last hour.

6 MR. PENNOYER: Are you speaking in favor, Mr. McVee, of
7 sending out the 0 to 20 with that very statement in it, that we
8 don't know what the true number should be?

9 MR. McVEE: I guess -- or even no number, just a
10 statement.

11 MR. COLE: Mr. Chairman.

12 MR. PENNOYER: Mr. Cole.

13 MR. COLE: Now, I can tell you, as soon as you put that
14 zero -- I mean, if people aren't going to function on 20,
15 they're
16 going to function -- you know, fasten on zero, you know,
17 they're talking about spending zero money, and then we'll have
18 big trouble, you know. That's why I think if we put a footnote
19 in there, just write in the proposed budget that we will spend
20 whatever amount of money, in our judgment, is necessary to
21 protect imminently threatened habitat, even if it should be as
22 much as 20 million, we're prepared to do that. Let it be. But
23 that zero is a huge red flag.

24 MR. PENNOYER: Well, then, instead of zero, we'd say up
25 to 20 million?

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

MR. COLE: I'd say that's a better approach.

1 MR. PENNOYER: Mr. Sandor, does that meet with your
2 approval as a concept?

3 MR. SANDOR: Yes.

4 MR. PENNOYER: Then that will go to OMB and figure out
5 what they want us to do.

6 Is there further discussion on project 64 going out with
7 the appropriate language about studies and the need for further
8 data and so forth, and up to \$20 million?

9 MR. SANDOR: Mr. Chairman, that would mean that it's
10 modified to be up to 20 million with that proposal.

11 MR. PENNOYER: With the footnote.

12 MR. SANDOR: With the footnote that we've been
13 discussing.

14 MR. PENNOYER: The caveats on

15 MR. SANDOR: Yes.

16 MR. PENNOYER: the data and not really knowing
17 what the numbers should be, yes.

18 MR. SANDOR: Yes,

19 MR. PENNOYER: All right.

20 MR. SANDOR: that's fine.

21 MR. PENNOYER: Mr. Rosier.

22 MR. ROSIER: Mr. Chairman, I guess I'm satisfied with
23 the up to 20 million approach on this, but, I guess, one of the
24 things, I think, that we're ignoring in this entire discussion
25 has been the fact that we've heard during the public hearing

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

process an awful lot of people that in terms of land owners
1 that we're, in fact, dealing with, they're planning for their
2 actions on lands that may, in fact, be available. That
3 generally starts right after the first of the year, in terms of
4 making commitments for contracts or whatever use they intend to
5 make of that land.

6 I'm not sure at this point -- I was under the impression
7 that we would, in fact, come out of the December meeting with
8 some understanding of what those critical -- or at least some
9 of the critical pieces of habitat were, in fact, going to be,
10 and based on that, then we would, in fact, in the proposal
11 here, we would in fact be in a position to begin to make some
12 kind of commitment in terms of some of those critical areas,
13 the ones that we judged to be the critical areas by the Trustee
14 Council.

15 You know, Charlie was right this morning when he said
16 that, hey, we're not going to be logging these things in
17 December and January, but there may be opportunities that we're
18 in fact missing here as a result of land owners in fact moving
19 ahead with plans of their own on critical habitat that we've
20 missed the opportunity for.

21 MR. PENNOYER: Mr. Rosier, my assumption, from the
22 presentation we had this morning, is that negotiations -- well,
23 actual purchase couldn't -- or rights or whatever couldn't be
24 acquired until the money became available, the actual
25 negotiations with the knowledge that that money is sitting out

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

there would proceed, so we wouldn't be waiting until people
1 permits and bought their equipment or were ready to go. At
2 least that's my assumption. Does that answer your question?

3 MR. ROSIER: Well, that helps, in terms of the question,
4 but I just don't want us to feel that fine, there may be other
5 threats other than logging, but certainly the presentation this
6 morning, at least in my view, really spoke primarily to the
7 logging operations in terms of imminent threat. Because of the
8 conversation about well, they're not going to be cutting in
9 December and January anyway, so, I just feel that, you know,
10 when the opportunity is in fact there, we should in fact be in
11 a position to in fact move ahead as soon as possible.

12 We've been around and around on this subject for the
13 last several months, and so I would like to see that
14 flexibility there and a system where we can in fact move when
15 the opportunity is in fact there.

16 MR. COLE: Mr. Chairman.

17 MR. PENNOYER: Mr. Cole.

18 MR. COLE: See, that was one of the reasons I thought we
19 should do this in December rather than not spill over to
20 January and then the Legislature and

21 MR. PENNOYER: Speaking thereof The next item on
22 the agenda, after we finish this, we'll be back to that

23 MR. COLE: Can I stay on this just a little more?

24 MR. PENNOYER: Sure.

25 MR. COLE: I would really like to make one more pass at

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

persuading the Council to adopt or consider adopting a project
1 which would formulate for us strategies for the acquisition of
2 lands or interest in lands. And I say that -- again, I keep
3 trying to make this point, but it's pretty hard to get it done,
4 but I'll take one more pass at it.

5 Gentlemen, thank you, if you'll allow me the privilege.
6 But it's this: I mean, suppose we get all this data and we --
7 Commissioner Rosier says, all right, now, we're ready to move,
8 and we want to acquire this threatened habitat from private
9 landowner A, and we have some description of the threatened
10 habitat within this land description. Are we simply going to
11 say okay, let's go acquire that, without any reference to
12 contiguous lands? Are we going to simply say, all right, we'll
13 just buy the lands within one mile of a anadromous stream,
14 Annie Laurie, and then not worry about the consequences as we
15 have with that particular say section of land next year.

16 Those are the things that are bothering me. And I think
17 that when we go out to talk to these landowners, we should have
18 in mind a broader perspective, because we're going to have only
19 about 10% of the loaf. We are not thinking simultaneously
20 about what we're doing in this land area. Like I say, some
21 particular island or something. I think we should be moving
22 along with a general acquisition strategy. That's my thinking.

23 MR. PENNOYER: Mr. Barton.

24 MR. BARTON: Yes. I thought that was what the
25 Restoration Plan was going to provide us, in terms of those

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

properties -- those habitats that are not imminently
1 threatened. And as far as the imminently threatened habitats,
2 I really don't see any other way to deal with those but on a
3 case by case basis in considering those factors that you
4 raised, Mr. Cole. But I think the global look really comes
5 through the Restoration Plan, which we're also developing, and
6 we haven't talked much about.

7 MR. PENNOYER: I would presume, from the presentation we
8 got, that even the imminent threat part has to at least take
9 into account subsequent threats. I mean, you know, then the
10 threat is going to cost more than all the money you have or
11 something. Obviously, you need to tell us on those imminent
12 threats whether there's another imminent threat, whether it's
13 right around the corner, whether it's going to be the same
14 imminent threat if we don't take it into account. So, I mean,
15 they can't do all of that at once, but the imminent threat
16 ones, I think, are going to highlight a case by case basis
17 real, quote, imminent threats, and then we'll have to judge
18 each one of them as it comes along.

19 MR. WEINER: I might be able to shed some light on that.

20 MR. PENNOYER: If you would.

21 MR. WEINER: I started this this morning.

22 MR. PENNOYER: Well, why don't you try and finish it.
23 We started with you and we'll finish with you here on this
24 project.

25 MR. WEINER: I'll stick my neck out a little bit

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

further. What we contemplate and what we put before you in the
1 supplement was a two-pronged strategy for habitat
2 protection/land acquisition.

3 The evaluation process is the long-term approach to
4 evaluating those lands that are thought to contain linked
5 habitats. In the short term, the second strategy was to try to
6 address those lands that are identified through the threat
7 analysis as being imminently threatened. So, you basically
8 have a short-term and concurrently a long-term process running
9 at the same time. And this is, you know, where I think that
10 the strength in the strategy is, is that we're letting the
11 public know that we're attempting to address those lands that
12 are imminently threatened, but we're not trying to create the
13 impression that if somebody calls us on the phone and puts a
14 chainsaw in the background, we're going to immediately dedicate
15 -- identify their lands as being imminently threatened and move
16 the into that category.

17 We're trying to develop a way in which we can identify
18 lands that are legitimately imminently threatened, and that's
19 what I think that Mr. Sundberg and Mr. Sheridan explained last
20 time was that we had, through looking at the permitting
21 process, identified those lands that already were within the
22 process of working towards development. Those are in the
23 category now of imminent threat.

24 At the same time, once we begin to develop a better
25 database, we'll be able to look at all lands in the affected

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

area and determine which of those lands -- private lands
1 particularly, contain habitats that are linked to the injured
2 resources.

3 So, we really do have a strategy in place that attempts
4 to address the imminent threat and on imminent threat lands.

5 MR. COLE: Mr. Chairman.

6 MR. PENNOYER: Mr. Cole.

7 MR. COLE: I don't think we can so discreetly make those
8 acquisitions. That's what troubles me, number one. And number
9 two is when we go to taking these acquisitions, we're going to
10 be, I suspect, dealing with very skilled, able people, and I
11 think we need expert advice on how -- our our strategy for, you
12 know, negotiation strategy and acquisition strategy. I don't
13 think we can simply say gee, -- I don't think we have the
14 luxury of saying, as it were, look, we just just want to look
15 at this stream A and acquire the imminently threatened habitat
16 around it, and not simultaneously deal with the lands that are
17 in the same general region. I don't think we have that luxury.

18 So, that's why I'm urging us to sort of move along and
19 formulate a broader strategy at the same time, because when we
20 go out, as Commissioner Rosier says, and if we do move to make
21 acquisitions in January and February, with indifference to
22 these landowners and their future plans, I think we have to be
23 prepared to say what is our general plan for this -- what I
24 call a region or general

25 MR. ROSIER: Geographic area.

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

MR. COLE: Pardon me?

1 MR. ROSIER: Geographic area.

2 MR. COLE: Yeah, geographic area. Fine, thanks. I was
3 looking for a more scientific term, but I don't have it.

4 MR. WEINER: But the project, as currently conceived,
5 doesn't anticipate -- unless there's an emergency here of some
6 sort, of actually acquiring fee simple title to anything. What
7 I think we're trying to get across to you all is that we're
8 looking for funds to enable us to buy the time to go out next
9 field season, in the summer, and those lands that presumptively
10 contain habitat federal link to the resource, go out and do
11 some ground truthing on those lands. We need to walk the land.
12 And it would be very nice if the landowners would stop their
13 proposed activities and say we'll wait and give you a field
14 season to go out and walk upon those lands. But it's unlikely
15 that that will happen. I think, as Mr. Rosier pointed out,
16 they have some pretty major investments out there in equipment
17 and personnel, and it's unlikely they'll put all that on hold
18 to give us the time to go out and do the ground truthing on
19 those lands to make the necessary assessments. I think, in
20 good faith to those folks, we're going to have to indicate to
21 them that we might be willing to spend some money to ask them
22 to hold up their activities to give us the time to make those
23 assessments on the ground.

24 MR. COLE: All I said is the theory is that this money,
25 this up to 20 million, is essentially, singularly for, you

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

might say, options?

1 MR. WEINER: I would think options is a little
2 restrictive, but the short answer would be yes.

3 MR. PENNOYER: Well, you might not preclude, however, a
4 purchase or something if we came upon one jewel upon which the
5 whole harlequin duck population hinged on

6 MR. WEINER: Right, exactly.

7 MR. COLE: Well, that, Mr. Chairman, puts a different
8 light on things to me. Spending up to \$20 million for options
9 for the next summer and to expire a year from now is maybe a
10 little farther than I would be prepared to go.

11 MR. PENNOYER: Well, I'm not clear that it was just
12 options.

13 MR. COLE: Well, you know, that's just not options. We
14 made that clear. But principally options. I mean, the central
15 focus to be options. Isn't that what we're talking about?

16 MR. WEINER: Yeah, I think what we're trying to do is
17 buy time, and whether you call it an option or a moratorium or
18 whatever

19 MR. COLE: Well, whatever.

20 MR. WEINER: Yeah, it's buying the time for us to do the
21 detailed assessment so we're not buying the pig in the poke.
22 We need to find out, you know, what's on that land, and remote
23 sensing and other techniques are helpful, but until you
24 actually walk some of these parcels, walk the streams and look
25 for the murrelet habitat, we're not going to be able to provide

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

you with good

1 MR. PENNOYER: Why did you think up to 20 million is
2 appropriate for options?

3 MR. WEINER: Again, we looked at the numbers of
4 imminently threatened lands that are out there, and we looked
5 at the range of values that was quite broad, all be it, and
6 decided that this would at least be a start. And we're looking
7 -- I hate to use the term seed money, but we're trying, I
8 think, to encapsulate a concept of a fund -- a revolving fund,
9 whereby we would have enough money to show good faith to the
10 public but not tell the public that this is the cat, this is
11 all that we're going to spend. I mean, in one year we'll spend
12 perhaps less, and in another year we'll spend more.

13 MR. PENNOYER: But, hopefully, we won't just spend money
14 on options for the next 10 years.

15 MR. WEINER: Hopefully, not.

16 MR. PENNOYER: Otherwise, we'll end up with nothing when
17 we're done except for a 10-year delay. Mark, would you

18 MR. BRODERSEN: I need to chime in here, too. I can't
19 stand it any longer, to keep quiet. I think it's real
20 important that we get to where the Attorney General's
21 requesting us to get to, which is a comprehensive plan for
22 everything before we start doing major acquisitions out there.
23 But to get to that comprehensive plan, I think, is going to
24 take us a little bit more than 60 to 90 days. It's much more
25 in line of what Mr. Barton was talking about is we need a

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

Restoration Plan, and that's more or less a generic plan, and
 1 then you've got to get into specific parcels from your
 2 Restoration Plan. I cur a horrible thought, and the last time
 3 I said this I got beat up, because we're looking at a year to
 4 two years out to have a comprehensive plan in place. We need
 5 to buy time to be able to do that year to two years worth of
 6 planning, and that's what we're looking for to do right now is
 7 that year to two years.

8 We will have for you, hopefully, some time in December,
 9 a look at the imminently threatened lands, as determined from
 10 permits that we have right now. We'll attempt to overlay that
 11 with critical habitat to the best we can. Given those parcels,
 12 we then see which of the landowners are amenable to delaying
 13 their actions on those lands and which ones aren't. Once we've
 14 had discussions with the landowners, and some of them,
 15 hopefully, will stop their actions, we would probably, in a
 16 year from now, be able to shuck most of those options, the ones
 17 that still look good, you keep until you can actually get the
 18 comprehensive plan done.

19 I think it's just essential that we don't go out there
 20 willi-nilly, as the Attorney General was being fearful, and
 21 start buying up parcels. But to not do that, we also have to
 22 make sure we don't lose opportunity. We don't want to end up
 23 finding out that the parcel we really would have wanted was cut
 24 in the meantime, and that's what we're trying to get to is to
 25 get us time to be able to do a good job of this and be proud of

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
 277-0572 272-7515 272-3022
 FAX 274-8982

ANCHORAGE, ALASKA 99501

it when we're done.

1 MR. PENNOYER: Mr. Cole.

2 MR. COLE: I have trouble seeing why it would take us
3 two years to develop a plan. If that's the case, then we're
4 going to have to have moratorium options, whatever, if you
5 will, next year, and then the same the next year. That's two
6 years out that we're going to be spending money for moratoria,
7 or whatever that word is. And I just have trouble why we can't
8 look at -- why we have to watch every stream in Prince William
9 Sound to figure out whether we can find a murrelet nest in
10 there. I mean, can't we just look at some aerial photographs
11 of the Sound in these areas and say -- you know, let's take a
12 look at Sheep Bay and say, well, we should really acquire the
13 lands in there and get it done? I don't think we can wait till
14 we walk every foot of every stream in Prince William Sound.

15 Now, maybe I'm off the wall, but that would be my sense.
16 That's the way I'd do it.

17 MR. PENNOYER: Mark, tell us you'll do it as fast as you
18 can.

19 MR. BRODERSEN: Well, much more important is is it your
20 call as to what level of confidence you feel comfortable in
21 making decisions about what parcels you want to protect and
22 what parcels you don't. We could have a plan to you tomorrow
23 if you were comfortable with the reasonableness of the plan we
24 presented you. It's really where is your comfort level, and we
25 are attempting to divine that from these wonderful meetings

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

where we get this input.

1 And judged on the input so far, my guess is that on
2 specific parcels in a comprehensive plan to spend \$600 million
3 over 10 years, we're going to need 18 months. We're looking at
4 the Restoration Plan being out, what, February, a draft --
5 well, the final won't be out until June, July, August,
6 somewhere in there, and sometime after that you actually
7 determine the specific parcels you want to buy. That says to
8 me you're looking at 12 to 18 months. So I said two years
9 earlier, 'cause I was trying to get a little pad time in there
10 because it seems like when we do these things, we always end up
11 using the pad time.

12 But in actuality, I think, to get down to specifics, to
13 know each parcel that we want to procure, and also other
14 actions -- as we're doing this, we're losing sight that this is
15 not the only thing we want to do in restoration. We're going
16 to have staff, I hope, thoroughly involved in doing a whole
17 number of other actions for restoration in the meantime. If we
18 want to throw three, 400 people at this, we could probably have
19 a plan for you much sooner also. It's a mix. How many people
20 do you want to put on this and how long do you want to take and
21 what's your level of confidence in making decisions for this
22 comprehensive plan.

23 We need to get a Restoration Plan in place, and from
24 that you develop your comprehensive plan of what the individual
25 parcels are. And in the meantime, we need to have some of

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

these lands protected temporarily while we're doing this
1 comprehensive plan.

2 I think the way this will work, that in actuality in the
3 second year, you will need many fewer options than you would
4 need this year because you would have been able to shed a whole
5 large amount of the acreage that you protected with options
6 this year, after you've done your preliminary work on it.

7 But you really aren't going to need very many options in
8 future years. As we go through this, it's not the kind of
9 thing where we need to wait to the very end to know what we're
10 going to do. We can be shucking off lands as we go along that
11 need to get back into the economy and need to be logged. We
12 can't stop all logging. We don't want to stop all logging out
13 there. We don't want to destroy the economy of the area. We
14 will have some idea of where we're going as we go along. It's
15 not a wait till we're done to be able to know what to do type
16 of situation.

17 MR. PENNOYER: I think you've heard the expression, of
18 course, that was expressed in the two projects we funded with
19 the Nature Conservancy, if we can speed things up, we would
20 like to. And that habitat acquisition end of it is going to be
21 ongoing and gathering data even while we are still working on
22 the Restoration Plan. So while that's -- that is going to be
23 broad, to start with.

24 I think it's a narrow focus on this issue, but it's
25 resulting in some day to being an acquired -- before you have

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

the final Restoration Plan. So I would hope that helps speed
1 the process up. But, I guess, I won't know how long it's going
2 to take until I have an idea of what type of product we're
3 going to have in December in this initial go around.

4 The presentation the other day was pretty much of a
5 generic overview, and still doesn't give me a large feeling of
6 all the things that I need to make that decision, 'cause I'm
7 not a land expert, and I don't know that much about land
8 acquisition. So, I don't know all the things that I need. I
9 just know that I don't want -- like the Attorney General, don't
10 want to go down a blind alley and spend a whole lot of money on
11 something that turns out to be not very valuable.

12 MR. BRODERSEN: One of the other things that -- well,
13 I'm going to come up to my soapbox here, that I want to bring
14 up is that we definitely want to stay away from the standpoint
15 of trying to identify the 10 ideal parcels that we have to have
16 for restoration, 'cause we can get killed in negotiations.
17 Now, we've actually thought about this quite a bit. We've
18 dealt quite a bit with both the state and federal people that
19 do this for a living. We've dealt quite a bit with T & C about
20 how you go about negotiating for these kinds of things. And it
21 seems quite clearly that what we want to do is get a suite of
22 lands that would be conducive to restoration.

23 As a case in -- a generic example, say that we identify
24 20 parcels and we tell folks that we want 10 of them. Then as
25 a negotiating stance, you go out and you say the first five

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

that give us the best deal, which in this case has to be fair
1 market value, we're not allowed to go up, we're not allowed to
2 go down, the first 10 folks who give us fair market value, we
3 pick up their lands, and the other 10, well, too bad. But in
4 the meantime, we've identified enough parcels that restoration
5 can go ahead and proceed. You don't want to get into the
6 situation where you're just identifying the exact parcels you
7 want and then having the price jacked way up on you.

8 So, this is something that we have been dealing with,
9 and we have been trying to deal with folks who are much better
10 at negotiating this kind of stuff than we are, and also how the
11 process is carried out. This has been something we have been
12 already looking at.

13 MR. PENNOYER: Is there further comment on project 64?
14 Mr. Rosier.

15 MR. ROSIER: Mr. Chairman, I have a question for Art.
16 Art, would you refresh my memory, please, on this imminently
17 threatened parcels that are out there? We talked about the
18 imminent threat as being those that have -- that are in the
19 permitting process at the present time, whether the
20 identification of those that go beyond that, only those that
21 there was a permitting process on, I guess, is one part of the
22 question. The other part of the question is -- is -- well,
23 I've forgotten the second part of the question, but

24 MR. WEINER: I can answer the first part.

25 MR. ROSIER: Yes.

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

MR. WEINER: Kenny Sundberg did the detailed analysis of
1 the permit applications and the status of permits, and what we
2 identified as imminent threat were those parcels wherein
3 permits were either -- actively had been applied for or were in
4 hand.

MR. ROSIER: Okay. The second -- Mr. Chairman, the
5 second part of the question was was that applied only to those
6 proposals that come before the Trustee Council to date or was
7 the list larger than that?
8

MR. WEINER: I really can't answer that. My gut feeling
9
10 is that Mr. Sundberg did go beyond what was proposed to us.

DR. GIBBONS: That's correct. There were two lists.
11
12 One list was submitted as project ideas, and then the list that
13 Ken Sundberg was put together as a complete composite of all
14 lands.

MR. ROSIER: Thank you.
15

MR. PENNOYER: Further comment on project 64? Let's
16
17 see, I already asked that. Is there objection to sending it
18 out with the 20 million and the appropriated caveat and
19 footnotes and future data needs and so forth? Okay. Thank
20 you.

Are there other projects the Trustee Council wishes to
21
22 take up individually before we pass on this total package for
23 public review?

Well, I'll just mention one then. And we have to get on
24
25 with things.

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

MR. COLE: Oh, no, not the killer whales.

1 MR. PENNOYER: No, I'll skip the killer whales. I'm not
2 going to get into this one now, but I think come December, I'm
3 going to be interested in the differences between the
4 Restoration Team and the chief scientist, item number 51. It's
5 1.6 million, and I think the chief scientist's recommendation
6 is that half of it falls below the 3 or below level, and that
7 taking that out would move the rest of it up to 2. So when we
8 send this out, we're going to send the chief scientist's
9 comments out as well as the Restoration Teams recommendations,
10 so I think we'll get public comment back on it, and I don't
11 need to delve into the -- particularly in our waning half-hour
12 before the public hearing -- delve into it in detail now, but
13 it's a very expensive project, and I am going to be interested
14 in comment from the RT and the chief scientist on the
15 difference -- well, in fact, they are two-fold in the estimated
16 required cost.

17 MR. COLE: That and 64.

18 MR. PENNOYER: That and 64? 64 is actually a project to
19 put aside money to negotiate. This is going to be, actually,
20 part of the study to determine what streams -- this is part of
21 an ongoing background study into the habitats that we might
22 want to acquire with 64. We've got an option with 64. There
23 are several habitat studies in here that relate to defining the
24 habitat requirements of different resources.

25 Mr. Barton, I think we're all going to take a break here

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

because the next item is the calendar. So why don't we take a
1 10-minute break and then come back and do the calendar, and
2 rather than take a break just before the public hearing.

3 (Off record - 3:44 p.m.)

4 (On record - 4:00 p.m.)

5 MR. PENNOYER: We have the public hearing scheduled in
6 half an hour, and we have several items to cover before we get
7 to that. I know Mr. McVee had some other suggestions on the
8 document going out to public review. We finished with the
9 project section. Before we get into that, Mr. McVee, I'd like
10 to try and settle on the date of our decision process meeting
11 on the '93 Work Plan.

12 Mr. Gibbons, did you -- are we all going to just give
13 dates or -- I forget, what was the date that you might have it
14 available by?

15 DR. GIBBONS: A

16 MR. PENNOYER: Anytime from December 1st on or something
17 like that?

18 DR. GIBBONS: Mr. Chair, yeah. If we use the 35-day
19 review period or 37-day review period, and have the package
20 ready for comment by the 10th of December, we could hold the
21 meeting on the 20th of December.

22 MR. PENNOYER: I thought that -- or I had the impression
23 we might get to it by the 1st of December. I think some people
24 are keying in on that week of the 1st.

25 DR. GIBBONS: Well, if we go to a 30-day comment period,

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

making that November 20th, we could probably have that ready by
1 the 1st of December, and then hold the meeting on the 10th. We
2 could do that. That's an option.

3 MR. PENNOYER: I like to get out of a North Pacific
4 Council meetings anyway, but the week of the 1st -- of November
5 30th to December 4th is just out though.

6 MR. BRODERSEN: Mr. Chairman, what I heard earlier was
7 that if you all want no staff work whatsoever, and if we just
8 give you what comes in from the public, then that could be
9 moved into that week. If you want some compilation or
10 synthesis or anything, then it moves back a week, and so it's
11 kind of up to the Trustee Council as to what they want, in
12 terms of work by the staff.

13 MR. PENNOYER: We asked for just a compilation. Could
14 the compilation include grouping of comments by appropriate
15 proposals so we don't have to kind of leaf back and forth
16 through several hundred; would you at least for each proposal
17 have them clumped?

18 DR. GIBBONS: Mr. Chair, yeah, I envision organizing
19 that so it's just not a bunch of comments. We'll organize that
20 for you into groups and then let you deal with it that way.

21 MR. PENNOYER: If you did that could you have something
22 to us sometime during the week of November 30th, December 1st?

23 DR. GIBBONS: Yes, we could.

24 MR. PENNOYER: 'Cause you can give the 10-day notice on
25 the meeting. You don't have to wait until the end of the

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

public comment period to give the 10-day notice on our meeting.

1 MR. BRODERSEN: The 10 days if for you per your
2 request

3 MR. PENNOYER: That's right.

4 MR. BRODERSEN: for 10 days in advance.

5 MR. PENNOYER: Thank you for reminding me. That's
6 correct. Any feeling from the Trustee Council as to -- first
7 of all, do you accept the idea of the compilation of public
8 comments by category rather than have them all summarized by
9 staff?

10 MR. BARTON: I thought we decided that earlier.

11 MR. PENNOYER: I was reconfirming it.

12 MR. COLE: What did we decide earlier?

13 MR. BARTON: That we were going to have a compilation
14 instead of analysis and synthesis.

15 COURT REPORTER: You mean compilation means they'll just
16 send them all to us?

17 MR. BARTON: They'll group them.

18 MR. COLE: Yes, that was my understanding. Thanks.

19 MR. PENNOYER: They'll group the comments by proposal.

20 Can I ask the Trustee Council, are you available the week of
21 November 30th, December 1st, any time during that week?

22 MR. COLE: We can try.

23 MR. PENNOYER: I would appreciate that because I have a
24 North Pacific Council meeting that starts -- goes for about 10
25 days, starting on December 7th, so it's hard for me to get out

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

of. Well, I could though. Which days then? Can we do it on

1 December 3rd -- is everybody free on December 3rd?

2 MR. COLE: No, sorry. I'm not December 2nd through the
3 5th, that's when I'm not available.

4 MR. PENNOYER: You're not available. How about the 1st?

5 MR. COLE: I may have to travel. That's the trouble.

6 MR. PENNOYER: You have to travel on the 1st?

7 DR. GIBBONS: Mr. Chair. I think you'll have to set it
8 back a little bit. If you have a 30-day comment period, that
9 closes on the 20th, and we are obligated to accept comments
10 that are postmarked on the 20th, so that will set it back to,
11 perhaps, the 23rd or 24th, and if you have a 10-day comment
12 period, that puts you right back into like December 3rd or 4th.
13 Is December 7th or 8th possible?

14 MR. SANDOR: This may be one of the extraordinary
15 circumstances where we can -- since we can accept 5 days or
16 something. You have a meeting from 7 to 11, right?

17 MR. PENNOYER: Yes. I mean, I'd have to -- the Council
18 could let -- I could let my alternate sit in if he's available
19 to, but there's a continual flow of stuff that happens and
20 sitting out for a day is difficult. Yeah, he's gone from the
21 1st to the 5th.

22 MR. SANDOR: You're going from 7 to 11?

23 MR. PENNOYER: He's going.

24 MR. SANDOR: No, you from 7 to 11?

25 MR. PENNOYER: Well, I don't know. The North Pacific

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

Council meeting starts that week, and I haven't announced the
1 starting date, it's either Monday or Tuesday. How about doing
2 the 10th, and I'll just walk out of the meeting for the day --
3 half a day. Is that okay, the 10th? What day can you do it,
4 only the 7th or 8th?

5 MR. McVEE: The 7th and the 11th.

6 MR. PENNOYER: How about the 11th?

7 MR. SANDOR: 11th and 12th.

8 MR. PENNOYER: I won't be able to do two days, but I can
9 do one. I can't walk out on the council for two days.

10 MR. SANDOR: It will run two weeks. The 14th is out,
11 too, then.

12 MR. PENNOYER: I'm back in DC. Those are my worst two
13 weeks in all of November and December. I have North Pacific
14 Council from the 7th through the 12th, leave for DC on the
15 13th.

16 MR. SANDOR: Let's do the 11th.

17 MR. PENNOYER: Can we do December 11th? Try it for one
18 day, start early and go late?

19 MR. BRODERSEN: Can this be done in one day, judging by
20 discussions we've had today, where we weren't trying to make
21 decisions?

22 MR. PENNOYER: I don't know. I have no idea. I'm
23 willing to try for the 11th. If I can't do it, then I'll get
24 an alternate.

25 MR. COLE: Pardon me?

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

MR. PENNOYER: Got to get it done.

1 MR. COLE: Let's try to do it in one day.

2 MR. PENNOYER: Let's start early, 8:00 o'clock on the
3 11th, 8:00 a.m. We're going to try and do it in one day. Will
4 we have a public hearing associated with that? I might have to
5 excuse myself in the latter part of that if it spills over in
6 to Saturday.

7 MR. COLE: I move we do not have a public hearing that
8 day -- at the conclusion of that day. Commissioner Sandor,
9 that may shock you, but here's the reason: We may, at 5:00
10 o'clock, still have a lot of work to do in order to finish the
11 agenda, and I would say we should want to be in a position that
12 we can go right through till 10 or 12 or midnight, if need be,
13 to get our work done that day. And it's nice to have a clear
14 head when we do that. I wouldn't want to do that following it,
15 and recess for a public hearing.

16 MR. SANDOR: Second that motion.

17 MR. PENNOYER: It's been moved and seconded that we not
18 have a public hearing on the 11th, we will receive public
19 comment, of course, when we send the Plan out, and that's the
20 main focus of this meeting. Is there any further discussion of
21 that? Is there any objection to that? That motion passes.

22 Do I have a motion for December 11th or is that part of
23 your motion?

24 MR. COLE: That's fine with me.

25 MR. PENNOYER: Is December 11th fine with everybody?

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

Okay, December 11th, 8:00 a.m. will be our meeting to finalize
1 the '93 Work Plan.

2 MR. COLE: Mr. Chairman.

3 MR. PENNOYER: Mr. Cole.

4 MR. COLE: Have we taken care of the Public Advisory
5 Group's scheduling sufficiently, if indeed we have anything to
6 do in that regard at this meeting?

7 MR. PENNOYER: I think we asked for a report on that,
8 and we were assured it would happen as soon as possible.
9 Mr. McVee gave a report in terms of what the Secretary of
10 Interior is doing for approval, and I assume that we have
11 nothing else to handle here on the urgency that was made
12 apparent.

13 MR. McVEE: Well, I guess we can see what kind of a
14 schedule that will be required if we get the final appointments
15 cut, but as soon as we can get a fix on that, I think that at
16 that point -- and some commitment, at that point we could
17 probably go ahead and issue a notice and schedule a first
18 meeting. As lead agency, we'll try to expedite that
19 appointment process as rapidly as possible so that we will have
20 time to have a Public Advisory Group meeting before December
21 11th so we can have that input.

22 MR. COLE: Mr. Chairman.

23 MR. PENNOYER: Mr. Cole.

24 MR. PENNOYER: I would say, Mr. McVee, that if there
25 appears to be any delay in getting them certified or approved

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

or whatever, that we schedule a meeting with them in any event
1 before that. I should think we need to have at least two
2 meetings of that group before December 11th; one, the general
3 organization meeting, and, secondly, a meeting to consider
4 these proposals.

5 MR. PENNOYER: Mr. McVee.

6 MR. McVEE: I'm trying to move it as fast as possible.
7 I guess a organizational meeting -- I think there's some
8 preliminary things we need to do with the Public Advisory
9 Group, although it doesn't seem to like it will take a great
10 deal of time. They need to select officers. The charter calls
11 for a chairman and vice chairman and they'll have to go through
12 that process. Also, they need some briefings on the whole
13 ethics, conflict of interest issue, and they may want some
14 discussion on that, but that should not take a great deal of
15 time. It seems to me like the high priority is the budget,
16 which we would require some background. That will take some
17 time to background this group on so they can adequately address
18 issues.

19 MR. PENNOYER: And maybe prepped with the materials and
20 so forth ahead of the meeting and maybe combine the two
21 sections?

22 MR. McVEE: It possibly could be.

23 MS. BERGMANN: If I could just add to that. The
24 Department of Interior, federal representative to the PAG is
25 working today on putting together a schedule, which he will be

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

presenting to the Restoration Team tomorrow, for their
1 consideration, and he's looking at all the things that
2 Mr. McVee talked about, as well as putting together a draft
3 agenda for their first couple of meetings and what needs to be
4 done. Restoration Team members can share that draft schedule
5 with you all as soon as we take a look at it tomorrow. So, as
6 Mr. McVee said, we are working toward getting that group
7 together as soon as possible.

8 MR. PENNOYER: If you'll send that out to the Trustee
9 Council members, I think that would be appropriate. They may
10 with to comment.

11 We have a very short time before we go to the public
12 hearing. I know Mr. McVee has some suggestions for the
13 packages going out to public review on the '93 Work Plan. Mr.
14 McVee, maybe you should go with those right now.

15 MR. McVEE: Yes. Thank you, very much. This should be
16 fairly brief. But it's against my thinking that again the
17 public -- we're asking the public to evaluate the package, and
18 a fairly complex package, and I think there's a couple
19 documents that should accompany that so that the general public
20 would get some knowledge of what all this means, but I'd like
21 to move that a narrative -- brief narrative for each working
22 group accompany the working group budgets, as they are released
23 for public review and comment, and also the second part of that
24 motion would be to include the latest injury assessment with
25 that package. On the working group narrative some rationale

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

for that is that those budgets represent a sizeable chunk of
1 funds out of the account, and I believe that a description of
2 the working group and of what the working group is responsible
3 to produce the deliverables and some such schedule for
4 completing that task will provide a better basis for public
5 comment. And I think the Council for part of Agriculture,
6 Forest Service, Marial Kowski (ph), and her initial draft of
7 the program status report did a brief description on the
8 working groups, and I think this would be used as a starting
9 point. I think it needs a little bit more added to it. Maybe
10 there's another document, too, but just to summarize the motion
11 again: A narrative that describes the working groups and what
12 they are responsible to produce in the schedule and in the
13 whole, so a document -- or updating the injury assessment would
14 be added to the public document.

15 MR. SANDOR: Second.

16 MR. PENNOYER: It's been seconded. Adequate descriptive
17 materials of working groups go out to -- with the public review
18 document on the '93 budget. Is there any further discussion?

19 DR. MONTAGUE: Mr. Chairman.

20 MR. PENNOYER: Mr. Montague.

21 DR. MONTAGUE: I can see that these are valuable and you
22 need to include them, but I would like to point out that it
23 will be very difficult to have anything before October 6th with
24 the addition of these new documents that need editing and
25 everything else.

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

MR. PENNOYER: Mr. Gibbons.

1 DR. GIBBONS: Mr. Chair, maybe a couple of
2 clarifications on this. Is the latest injury assessment, is
3 that the assessment from the restoration framework released in
4 April, or would that be an update to that? It would be very
5 difficult to update that when everybody is still in the field.
6 That would be my point there.

7 I've already got a cut on the paragraphs describing the
8 working groups; it's already done. So that's not a problem. I
9 completed that last week.

10 DR. MONTAGUE: Mr. Chairman, they have schedules in
11 those. That's a significant addition to all those work groups.

12 DR. GIBBONS: The deliverables, we can meet tomorrow on
13 and we can finalize those a little bit, those deliverables, I
14 think, like the GIS or Restoration Plan.

15 MR. PENNOYER: Is it adequate, Mr. McVee, to include a
16 motion to do as much as possible without fowling up the time
17 schedule that we've set for the process?

18 MR. McVEE: Yes, I appreciate Dr. Gibbons' comment on --
19 I'd agree we don't have time to do another update at this time
20 point and meet our schedule for getting it out. Maybe April is
21 the latest and the best we've got, but I think it should be
22 included, the injury assessment information.

23 MR. PENNOYER: Okay. Further comments on the '93 Work
24 Plan package that's going out to public review? Mr. McVee, did
25 that cover all your comments?

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

MR. McVEE: It covered it.

1 MR. PENNOYER: Does anyone else have anything further on
2 that document?

3 DR. MONTAGUE: Mr. Chairman.

4 MR. PENNOYER: Mr. Montague.

5 DR. MONTAGUE: These additional documents, would you
6 intend that they be bound and printed along with the Work Plan
7 or they be an attachment to them? It doesn't matter.

8 MR. PENNOYER: Whatever fits in the time schedule the
9 best.

10 DR. MONTAGUE: There was one more point that I think we
11 need to discuss relative to the '93 Work Plan, and that is we
12 have mentioned previously, but I'd like to point out again that
13 what our original intent was that at this meeting we would
14 approve a draft budget, and that would go to the state and
15 federal OMBs, and between now and the finalization of the Work
16 Plan in December it was our intent that a request for proposals
17 be prepared and detailed project plans be prepared and that
18 these be reviewed by the chief scientist and the peer
19 reviewers.

20 So there is some effort and cost associated with doing
21 this, and what I'd like some guidance on from the Council,
22 should we begin this type of work on all the projects in the
23 plan or just those with the five and six votes?

24 And the one additional bit of information, I believe,
25 there was only -- now that a number of projects have been

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

removed, there's only seven projects left in there that aren't
 1 in the 5-6 vote category, and the cost of preparing these are
 2 generally in the projects themselves, the overhead costs and
 3 the program manager's costs, but should these RFPs and detailed
 4 work plans -- project plans be prepared and then if the project
 5 was not funded in December, there would be a shortfall within
 6 the agencies for -- I don't know if anybody could give an
 7 estimate, probably at a minimum of two or three weeks of staff
 8 time per project plus a fair amount of costs from the chief
 9 scientist and peer reviewers.

10 MR. PENNOYER: Well, I guess the question I'd ask,
 11 Mr. Montague, is are all those projects required to have the
 12 RFP and so forth prepared between now and December, are some
 13 not starting till next summer or late next spring?

14 DR. MONTAGUE: I haven't reviewed the time limits on all
 15 those. A number that are continuations of one sort of another
 16 of last year's projects will not need anything until March 1st.
 17 Any project that's going to be beginning, you know, in say at
 18 least by April, and it was going out by RFP, we would need to
 19 have the RFP out sometime in late December, early January with
 20 a month or so out for preparation of proposals, and another
 21 month or so to review them. So they're probably just guessing
 22 60 or 70% of those here would need to have this done -- at
 23 least 60% between now and December.

24 MR. PENNOYER: We weren't going to make any final
 25 decision on the project anyhow, regardless of what happens at

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
 277-0572 272-7515 272-3022
 FAX 274-8982

ANCHORAGE, ALASKA 99501

this meeting, until after the December session and public
1 comment. What were you going to do?

2 DR. MONTAGUE: In the event that a project was canceled.

3 MR. PENNOYER: I mean now, no matter what we did at this
4 meeting, we were not going to take a final decision on any
5 project until after we got public comment, PAG committee review
6 and that's in December. So you're faced with the same dilemma
7 that you have right now. Before this meeting you must have had
8 a plan for action of some kind.

9 DR. MONTAGUE: That's somewhat true, it's just there's
10 an addition of projects that in previous years we would have
11 had a recommendation by now, which ones the Trustee Council
12 favored, and we do not have that now. So, I guess, the
13 probability of projects not going forward may be higher now
14 than we had originally anticipated.

15 MR. PENNOYER: But it still could have happened to any
16 project based on public review and public comment

17 DR. MONTAGUE: Absolutely.

18 MR. PENNOYER: in December. So you're still faced
19 with that uncertainty. I guess you're going to have to make a
20 choice. If you have some project that does not require start-
21 up, you could act on it -- on getting an RFP and so forth
22 together after a December decision. If you have some that
23 would start in January or February, you're probably in the
24 position of having to put something together, otherwise you'll
25 lose a year.

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

MR. PENNOYER: Well, I mainly just wanted to make sure
1 the Council was aware of this so that, you know, if we did have
2 some shortfalls that we'd be forewarned of it.

3 MR. COLE: Mr. Chairman.

4 MR. PENNOYER: Mr. Cole.

5 MR. COLE: Are we never going to get ahead of this
6 process? I mean, I thought we had this problem last spring,
7 and now we have it again, seemingly, this fall. I hope that
8 before the end of my term, we eventually get ahead of this. I
9 don't say this by way of criticism of the Restoration Team,
10 but, you know, it was understandable that for this season's
11 projects, because we just started in December and started
12 getting underway, that we were behind schedule for '92, but now
13 to be told that we're essentially in some ways behind schedule
14 for the '93 is

15 MR. PENNOYER: I think by the '94 budget, we should be
16 back on track, should we not?

17 DR. MONTAGUE: That's correct, Mr. Chairman, and this
18 year, as opposed to '92, we're not talking about any real
19 project field costs, we're only talking about minor cost in
20 comparison to what we approved preliminarily in '92.

21 MR. PENNOYER: Ms. Bergmann.

22 MS. BERGMANN: Mr. Chair, I'm not sure that -- it was
23 not my understanding as a Restoration Team member, that we
24 would be asking the Trustee Council to go ahead and approve
25 agencies to develop detailed project budgets and descriptions

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

and RFPs at this point in time. We are in a bind because of
 1 the schedule, and my understanding of the process was that when
 2 this package goes out to the public for review, that if
 3 agencies would like to, at their own expense, take a risk on
 4 those projects where if they receive approval -- support from
 5 the public and support from the Trustee Council, and need to
 6 move forward quickly in January, that they could go ahead and
 7 begin developing those documents. But I think it's unwise to
 8 put ourselves in a position where we look like we're already
 9 making a decision about what's going forward. So I think it's
 10 a little -- it's a subtle difference, but it's an important
 11 difference. And my understanding was that agencies would just
 12 be doing that if they so chose to do that at their own expense.

13 MR. PENNOYER: Comment? I guess the answer still
 14 stands. You'll have to look at the schedule and judge what you
 15 need to do, and you have all those 6-0, 5-1s and 4-2 projects
 16 that you're going to have to take a close look at.

17 MS. BERGMANN: But if that project doesn't go forward,
 18 the agencies wouldn't be reimbursed for putting together those
 19 budgets, RFPs and detailed budget descriptions.

20 MR. PENNOYER: Comment? Well, I'm not sure how those
 21 are funded now, and I'm not sure how many people already on
 22 staff are working on these things. I don't know how they're
 23 prepared, agency by agency; I don't know how to comment on
 24 that. I don't know which staff is doing it, but in any case,
 25 I'm certainly not going to tell you to -- that we've approved

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
 277-0572 272-7515 272-3022
 FAX 274-8982

ANCHORAGE, ALASKA 99501

1 something and give you the impression that it's got tentative
2 approval when we're holding approval until after the public
3 review process. So that's where we stand.

4 Further comments on the '93 package?

5 MR. McVEE: Mr. Chairman.

6 MR. PENNOYER: Mr. McVee.

7 MR. McVEE: I think there was an earlier request from
8 Trustee Council that they wanted to see at least some part of
9 the Work Plan. Was that just the cover memorandum that you
10 wanted to review or was that the transmittal?

11 MR. BARTON: I believe. That's my recollection.

12 MR. PENNOYER: And that will be mailed out individually
13 for comment. Any further questions or comments on the '93 Work
14 Plan?

15 Mr. Gibbons, anything else?

16 DR. GIBBONS: I have one item here. Following up on
17 Mr. Cole's comments last week about a work session with the
18 Trustee Council and Restoration Team, I'd like to propose such
19 a work session before the December meeting, and discuss some
20 items such as the 1993 Work Plan project legal review; draft
21 Restoration Plan, it's issues; habitat protection criteria, the
22 supplement document; alternative formulation, and some other
23 items. But if we're in a work session than full public

24 MR. PENNOYER: When were you going to suggest that,
25 judging the last process we went through on the December 11th
meeting. That only took us about 15 minutes in going through

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

the calendar. Did you have a date in mind?

1 DR. GIBBONS: I was hoping somewhere around late October
2 might work.

3 MR. PENNOYER: Anybody care to try for a date in late
4 October, or why don't you -- maybe we'll leave that up to you
5 to try and set up by phone and mail. I don't think we've got
6 much more time right now.

7 DR. GIBBONS: I can do that.

8 MR. PENNOYER: Do you agree with the concept of trying
9 to set up a work session for some time in late October?

10 MR. COLE: Yes.

11 MR. McVEE: Yes.

12 MR. PENNOYER: Any objection to that? We'll leave it to
13 Mr. Gibbons to try and contact each of us and find out when
14 we're available.

15 I believe we had one more item on the agenda before the
16 public hearing, a review and update on the Walcoff contract?

17 DR. GIBBONS: Yes. Ray Thompson will handle this.

18 MR. PENNOYER: Then we need to take about a five-minute
19 break so you can set up the telephone conference, or are you
20 doing that already?

21 MR. BRODERSEN: We're doing it already.

22 MR. PENNOYER: Oh, good.

23 MR. THOMPSON: Mr. Chairman.

24 MR. PENNOYER: Yes.

25 MR. THOMPSON: Very briefly, the Walcoff contract, there

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

has been an agreement reached with the Department of Justice to
 1 amend the contract to have Walcoff Associates do the EIS for
 2 the restoration process, and the negotiated cost on that was
 3 \$298,000.00. Currently available to meet that end is
 4 \$100,000.00. And as I understand it right now, there's only
 5 one person on the Walcoff staff that still needs to be on their
 6 contract -- sub-contract negotiated, and then they'll have a
 7 complete team and they'll be ready to go to work.

8 And their schedule -- I'm assuming, I haven't seen the
 9 contract, Ken Rice has that -- will pretty much follow that
 10 that's been set up for the Restoration Plan, which means that
 11 they'll be working with us on the restoration planning working
 12 group to have a final EIS in late May, early June.

13 MR. PENNOYER: Are there any questions? Any action
 14 required?

15 MR. THOMPSON: I'll refer that, again, to Dave. I'm not
 16 sure if any action needs to be taken on the 198,000 for the
 17 additional part of that contract, or if that's, you know, part
 18 of other money that's been approved.

19 MR. PENNOYER: Dr. Gibbons, would you tell us what we
 20 need to do, please?

21 DR. GIBBONS: Yeah, Mr. Chair, I believe that's
 22 programmed in the budget for 1993.

23 MR. PENNOYER: So this is simply an update; no action is
 24 required?

25 DR. GIBBONS: That's correct.

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
 277-0572 272-7515 272-3022
 FAX 274-8982

ANCHORAGE, ALASKA 99501

MR. PENNOYER: Thank you. Is there any other action
1 coming before the Trustee Council before we start the public
2 hearing? Okay, well, then we won't adjourn. Do we need to
3 recess for five minutes? Okay, five minutes, and let's try and
4 limit it to that, if we could.

5 (Off record - 4:27 p.m.)

6 (On record - 4:35 p.m.)

7 MR. PENNOYER: Trustee Council meeting at this
8 time. We've advertised a public hearing on our agenda to go
9 from 4:30 to 6:00 o'clock. I'm afraid we're going to have to
10 adjourn the meeting at 6:00, we have a number of members who
11 have other commitments. But I'd like to emphasize this is a
12 continuation of the meeting that started on September 14th, and
13 at that meeting, we took about three and a half hours of public
14 testimony on this same topic. I would appreciate it,
15 therefore, if at the network here in Anchorage that, one,
16 people would limit their comments and try and be as brief as
17 possible so we can fit in as many folks as we can; and second,
18 that those that testified on the 14th give preference to those
19 who did not, so we can take those who didn't get a chance to
20 testify on the 14th. I know some people were cut off, even
21 though we went till, what, after 8:30 at night. So, I'd like
22 to do it that fashion, if I could. The conference operator
23 reminds me that those who testify need to state their name and
24 spell their last name.

25 To start with, first of all, this is a meeting of the

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

Trustee Council; the primary purpose of the meeting today was
1 to approve the '93 Work Plan to go for public review. I think,
2 at this stage, I'd ask Mr. Gibbons to give a brief review of
3 the actions taken at this meeting, so those of you who were not
4 here and didn't get a chance to hear it can hear what we've
5 done today so far before you testify. After that, we will go
6 out on the net and here in Anchorage and start taking
7 testimony. Dr. Gibbons.

8 DR. GIBBONS: Thank you, Mr. Chair. The first motion
9 passed was to revise the operating procedures of the
10 Restoration Team to reflect a review of the Trustee Council and
11 public of materials to be extended from the comment period from
12 five day -- a review period from five days to 10 days, except
13 in cases of extraordinary circumstances. This relates to the
14 materials before the Trustee Council meeting.

15 The Public Advisory Group recommendation on the 1993
16 Work Plan is essential; before finalization, the Restoration
17 Team is to build that process into the 1993 Work Plan schedule.

18 There was a motion to drop Project Number 48, entitled
19 Communications from the Review Package Going to the Public.

20 The motion to the Restoration Team and the Financial
21 Committee is be to review the budget inconsistencies, primarily
22 with administrative costs, by the December 11th meeting.

23 There was a motion to incorporate a bark beetle
24 infestation data layer into Projects Number 60 and 59. This
25 would add an overlay of beetle infestation areas to the Oil

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

Spill area.

1 There's a motion to include killer whales, Project
2 Number 42, into the recommended draft 1993 Work Plan, package
3 for public review and budget projections to OMB.

4 The following motions relate to specific projects. The
5 Trustee Council moved to delete Project Number 1, Recreational
6 Resources, and get all possible information from the Department
7 of Justice to review to see if there is adequate information to
8 document injury to recreational resources.

9 Project Number 19, Mariculture, is to be included in the
10 package for public review, but it's subject to a legal review
11 by the State and Federal attorneys.

12 Project Number 21, remove Project Number 21 from public
13 -- from the public review package; that is the Murre Chick
14 Transplant project.

15 The Trustee Council moved to remove Project 37 from the
16 public review package, that's the Intertidal Control Project
17 looking at unoiled sites.

18 The Trustee Council moved to remove Project 40/54 from
19 the public review package, this is the Intertidal Ecology
20 Monitoring Project.

21 Project Number 52 concerning bald eagles was retained
22 for public review.

23 There was a motion to amend Project 33, the Harlequin
24 Ducks; the amendment to include a design, a new portion for
25 expansion of the Harlequin habitat work to the Kenai Peninsula,

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

and send out in the public review package. It was stated,

1 perhaps, a sub-sample of the Kenai area do this, but include
2 this expansion in the most cost effective manner as possible.

3 There was a discussion on Project 064 which is Habitat
4 Protection Fund, wording will be added to the project to
5 reflect all potential projects will be approved by the Trustee
6 Council for expenditure of funds on a case by case basis. The
7 budget reflects the intent of the Trustee Council up to 20
8 million dollars. But at this time, we do not know the exact
9 number until the imminent threat analysis is completed.

10 The next meeting of the Trustee Council on the 1993 Work
11 Plan is December 11th, starting at 8:00 a.m., and there will be
12 no public comment period at this meeting since public comments
13 have been received on September 14th and again on -- tonight.

14 The Trustee Council moved to add two accompanying
15 documents to the 1993 Work Plan. The first would be a
16 narrative of each working group with deliverables (ph) and time
17 frames, what products each working group intends to provide in
18 1993. And the second document would be a copy of the injury
19 assessment that was contained in the restoration -- April
20 Restoration Framework document.

21 MS. EVANS: Mr. Chair, I'd just like to check and see
22 who's on line on the net and make sure that you all are hearing
23 us well.

24 MR. PENNOYER: Fine, why don't you go ahead.

25 MS. EVANS: Barbara?

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

BARBARA: Yes. Okay.

1 MS. EVANS: Would you let us know who's on line?

2 BARBARA: At this time, we have Cordova, Kodiak, Homer
3 and Valdez.

4 MS. EVANS: Thank you. And everyone is receiving us
5 okay?

6 BARBARA: Homer, could you answer that question?

7 HOMER: Yes, we're hearing you fine.

8 BARBARA: Thank you.

9 MS. EVANS: Thank you.

10 MR. PENNOYER: Dave, is that the total report, then?

11 DR. GIBBONS: Yes.

12 MR. PENNOYER: Okay. Thank you very much. I was remiss
13 in not identifying the fact that the full Trustee Council is
14 here and has been here for the meeting today. We have Mr. Carl
15 Rosier, Commissioner, Alaska Department of Fish & Game; Mr.
16 Curt McVee from the Department of the Interior; Mr. Mike Barton
17 from the U.S. Forest Service, Department of Agriculture; John
18 Sandor, Commissioner of the Alaska Department of Environmental
19 Conservation; Mr. Charlie Cole, Attorney General for the State
20 of Alaska; and I'm Steve Pennoyer with the National Marine
21 Fisheries Service.

22 I think we'll go ahead and start the public hearing
23 there. And again, I would like you to limit your testimony and
24 to give preference to those who did not get a chance to testify
25 at the meeting on September 14th; this is a continuation of

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

that meeting, and we had some three and a half hours of public²¹²
1 testimony at that session. Our time is limited tonight, so I'd
2 like to give preference to those who did not get a chance to
3 address us on the topic of the '93 Work Plan or other things
4 that were the subject of this meeting.

5 So, I think I'll go ahead and start with somebody from
6 Anchorage and alternate between Anchorage and the field. Who
7 in Anchorage would like to go first? Senator Sturgulewski,
8 please.

9 SENATOR STURGULEWSKI: My name is Senator Arliss
10 Sturgulewski, that's S-T-U-R-G-U-L-E-W-S-K-I. Mr. Chairman,
11 members of the Council, I'll be very brief. I would like to
12 appear once again to ask for your support for the establishment
13 of the Exxon Valdez Marine Sciences Endowment, and bring you up
14 to date on a couple of things.

15 First of all, we -- and that's kind of a royal we, but
16 we did revise the proposal on August 24th, '92; rather minor
17 changes. The major goal, certainly, remained the same, and I
18 won't take your time by going over those. We did change a
19 little bit the coordination portion with other groups, and I'll
20 explain well, as well as to bring just a little information on
21 some questions that there might be with the State law regarding
22 the proposal.

23 What I particularly wanted to tell you about was a
24 meeting, I did appear before the Arctic Research Commission at
25 their Nome meeting. The proposal that I made to them was that

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

they convene a group of major interests that are handling
1 science along Alaskan marine waters, and think about the
2 possibility of how we coordinate those various groups. I won't
3 mention all of them, but we have a new international
4 organization that some of you may have heard of Pisces; we have
5 the North Pacific University's Fisheries Research Consortium
6 which I'm very excited about that's looking at coordinating
7 marine science; and we have the Pacific States Marine Fisheries
8 Commission, and there are certainly others.

9 But as a result of that meeting, at the December meeting
10 of the Arctic Research Commission in December in Seattle,
11 they're going to bring together a number of the various groups
12 that are dealing with science to talk about how we can maximize
13 both marine and ocean science. And so, I think that's
14 something to keep in mind as we look at this proposal of how it
15 ties in. As you know, the Arctic Research Commission
16 recommends to the interagency group of the National Science
17 Foundation, and they have been -- it's interesting in their
18 report that they have showing the coordinated projects that are
19 being done in Alaska. Now, that takes in more than just marine
20 science, it also takes in atmospheric and oceanic; but I think
21 any kind of a foundation or trust that would come out needs to
22 be aware of those other agencies so that we maximize what we
23 have.

24 In addition to that, I brought together a group of
25 scientists, many of them doing work in a number of areas, but

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

all of them involved in science in the Prince William Sound.

1 At that meeting, we also had some members of the environmental
2 community. Really, what I'd wanted to do was to present the
3 proposal and get their suggestions on this; it was a very
4 positive meeting, a lot of positive report (ph) information.
5 We'll be looking at that to see if it would mean some possible
6 changes in what we've gotten to you.

7 One of the things I wanted to be very sure about is that
8 we did not get into a conflict situation with the environmental
9 community. They have been very interested, of course,
10 acquiring trees, and that certainly is a worthy project. I
11 would hope that there is certainly room for major approaches,
12 both acquisition of trees and the idea of a science -- some
13 kind of a foundation.

14 My reason fro appearing before you today, there's -- you
15 really have a tremendous workload before you, and I realize
16 your concentrating on fiscal year '93. But there are some very
17 complicated issues, as you well know, with setting up a
18 foundation. And I would just -- am here to encourage you to
19 fully explore the -- both the legal and the structural issues
20 surrounding the idea of putting dollars aside. I -- in some
21 ways, I represent no constituency, I have no government body
22 behind me, all I have is some ideas and would certainly want to
23 enter into any possible helpful discussions, but I simply don't
24 have the ability to find out how those are dealt with; whether
25 it means going back to the Court, whether it means you'd have

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

to go to Congress or what the other impediments would be. So, ²¹⁵
1 I just hope that's a part of what you are doing. And again, I
2 appreciate the hard work you're doing and thank you for the
3 opportunity to appear.

4 Thank you.

5 MR. PENNOYER: Thank you, Senator. Any questions of the
6 Senator? Okay. Mr. McVee.

7 MR. McVEE: Yes. We've had the members of the
8 Restoration Team here today, and usually have them at our
9 meetings. And I guess my hopes are that -- is this working?

10 (Off record comments)

11 MR. McVEE: I guess my interest is seeing that all these
12 proposals are giving -- given full coverage in the Restoration
13 Plan and are analyzed in the options. And you know, I would
14 certainly encourage, you know, keeping this proposal that the
15 Senator has been working on before the Restoration Team, and
16 having it presented in the Restoration Plan and discussed as
17 part of the total package and part of all of the options that
18 we will consider in the final Plan.

19 MR. PENNOYER: Thank you, Senator. Next, I'll go to
20 Cordova. Is there anyone in Cordova who wishes to testify?

21 MR. STEINER: Yeah. Can you hear us here in Cordova?

22 MR. PENNOYER: Yes, we can. Go ahead, please.

23 MR. STEINER: It's a lovely fall afternoon down here, I
24 wish you were here having fun. This is Rick Steiner, I'm just
25 testifying on my own behalf this afternoon. And very quickly,

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

I think the main problem I see with the '93 Work Plan is that
1 it completely excludes work on identifying damage to resource
2 services, and therefore, how to replace those damaged resource
3 services. And that that is, perhaps, the largest category of
4 damage as far as was identified in the economic studies that
5 the Government's paid a pretty penny for. I think it's sort of
6 a glaring hole in the '93 Work Plan. And I would very much
7 like to have a project in there that identifies the lost
8 resource services, and therefore, how to replace and/or acquire
9 equivalent such services.

10 And this project needs to be more of the contingent
11 valuation nature rather than just the direct uses of resources
12 that were lost. I spent a couple of hours this afternoon on
13 the telephone with a number of the academic community
14 throughout the nation who participated in the economic studies
15 discussing this very thing. And I think the largest category
16 of economic damages was those -- the contingent value, I think
17 the Attorney General has mentioned that many times before, such
18 as existence value and bequest value, such like that.

19 For those of you who are unfamiliar with the jargon and
20 the terminology and the lexicon here, the existence value is
21 the value derived from simply knowing that something exists;
22 for instance, the pristine Prince William Sound or Afognak
23 Island or something like that. Bequest value is the
24 willingness to pay for the economic benefits of saving a
25 particular resource or service for future generations. And

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

1 this really cuts to the core, I think, of what we need to be
2 doing in the Restoration Plan. Even in the '93 Plan, the fact
3 that we haven't even begun to identify what these are, it sort
4 of tips the hand to a number of us in the region that there is
5 no intention, no genuine, sincere intention of doing so.

6 The -- so, anyway, a study needs to be done. I don't
7 know how much it would cost. I got a fair range of dollar
8 values from a number of people, all the way from \$200,000.00 up
9 to a million dollars. What's important is a study done for the
10 purposes of restoration, identifying restoration options, would
11 be about a fifth the dollar value -- or the cost of one that is
12 done for litigation, and I think the attorneys very clearly
13 understand why. This doesn't have to be as detailed a
14 resolution that litigation product would be. So, if a
15 project could be put in there to do this, it would signal to
16 the public that there is some serious intention of doing that.

17 And the other thing is I'd like to ask the Trustees
18 Council on the record here, now that we're altogether, two
19 questions. And the first is: Is there anybody amongst the
20 Council that disagrees with the statement that the overwhelming
21 public input and comments to date has favored habitat and/or
22 resource service acquisition? So, I guess the question would
23 be is there anyone there that disagrees that that is the case?

24 MR. PENNOYER: Mr. Steiner, I'm not clear, you're asking
25 us if we disagree that the public input has been heavily in
that area? I don't think anybody can disagree with that, I'm

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

not sure where you're leading.

1 MR. STEINER: That's the first step. And therefore, the
2 second step is: Is there any disagreement that habitat
3 acquisition should be a significant component of the final --
4 the 1993 Restoration Plan?

5 MR. COLE: Well, I'd like to respond to that,
6 Mr. Chairman.

7 MR. PENNOYER: Mr. Cole.

8 MR. COLE: You know, first, I don't my silence to be
9 construed as agreeing or denying with Question Number 1, that's
10 the first element of my response. The second element of my
11 response is that it should be only to the extent that we can
12 find the essential link between restoration, replacement,
13 enhancement, or the acquisition of equivalent resources and
14 services. And I think we want to have to continually make that
15 clear. And to the extent that that essential link is
16 established, in the sound judgment of the Trustee Council, I,
17 for one on the Council, believe that we should make the
18 requisite acquisitions of habitat. Thank you.

19 MR. PENNOYER: Mr. Steiner, you, unfortunately, couldn't
20 be hear to hear the deliberations today, but I think there's a
21 lot of discussion of the habitat acquisition, or easements or
22 whatever action might be taken relative to habitat at this
23 meeting. And I think we have a placeholder project proposals
24 for up to 20 million dollars going out to public review. We
25 have already approved it. At the last meeting we were at some

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

heard -- some speeded up data acquisition projects on habitat.

1 We have a number of habitat studies related to various
2 resources in the '93 Work Plan. And I think the Trustee
3 Council is indicating that they're very interested in this as a
4 restoration strategy.

5 I hope that that comes across clearly in the packets
6 that we sent out. And as Mr. Cole has said, we're trying our
7 best to find out what the key elements are, recognizing we
8 can't deal with all of them. So, hopefully, the plan that you
9 see will help address that concern. And we are moving as
10 quickly as we can get the information to try and deal with this
11 strategy.

12 MR. COLE: Mr. Chairman?

13 MR. PENNOYER: Mr. Cole.

14 MR. COLE: Yes.

15 MR. STEINER: Thanks, Mr. Pennoyer. Can I close out
16 with one quick one, then? And that is if -- the question was
17 put before at the meeting I was a week ago whether to have the
18 public comment specifically on how to accomplish habitat
19 acquisition. And I think the reason the public has been a
20 little reticent to do that is because the question has not been
21 how to do it, it's been whether to do it or not. And so, once
22 we've established that yes, the public is overwhelmingly in
23 favor of this, although, there's a lot of money to do other
24 good things with. Once we've established that the Trustees
25 Council is genuinely in favor of this, then there -- the

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

mechanisms for doing it are actually quite straightforward, and
1 there's a number of options around for that.

2 And lastly, I think the indication by the '93 Work Plan
3 that there is no -- this question that the Attorney General
4 raised about linkage, that there is no program or project in
5 the '93 Work Plan that addresses services lost, and therefore,
6 how we're going to replace them, really tells us that there is
7 less than a genuine, sincere intention of going ahead with
8 this. And that's the concern, because if -- with the
9 aesthetic, and intrinsic and existence and bequest values that
10 were lost in the Spill, we can easily link places such as Cape
11 Suckling, which I'm sure the Attorney General knows and doesn't
12 quite like. But that can easily be linked in the idea of
13 offsetting the lost wilderness value of Prince William Sound,
14 for instance, by the commensurate acquisition of another area.

15 So, at any rate, I'd ask, with all due respect, that
16 such a project get proposed, and there are economists around
17 that can do it, and that it be fast-tracked. Thank you.

18 MR. PENNOYER: Mr. Cole.

19 MR. COLE: I want to comment on, Mr. Steiner, your gen-
20 -- your comment that because there's nothing in this '93 Work
21 Plan dealing with services that, therefore, you legitimately
22 draw the conclusion that the Council has no interest in that
23 subject. I mean that doesn't follow, and it doesn't follow at
24 all. As a matter of fact, if you -- unfortunately -- I'm
25 certain you couldn't have been here today, but that was a

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

subject of discussion here today, about how we should look into
1 the acquisition of equivalent services. It was a discussion,
2 we haven't developed on it.

3 But I think it's an unfair comment to the Council to
4 jump to the conclusion that we aren't interested in that, we
5 are interested in that. However, I think we properly have a
6 mandate to first direct our attention to the restoration of
7 injured natural resources where our restoration efforts can
8 effectively support restoration, and that we should, initially,
9 direct our efforts there. And that doesn't mean that you can
10 jump to the conclusion that we have no interest in the
11 acquisition of equivalent services, 'cause we int- -- I, for
12 one, and I'm certain that others on the Council view that as
13 one of the direct provisions of the decree.

14 I also would like to see you furnish us with a written
15 proposal of what services you think have been lost, and what
16 equivalent services you think that we should acquire. If you
17 would be good enough to do that, I'm certain that the members
18 of the Trustee Council will view them with interest.

19 MR. PENNOYER: Any other questions of Mr. Steiner by the
20 Trustee Council or comments? Thank you very much, Rick. I'd
21 like to now come back to Anchorage and take another witness
22 here in Anchorage, somebody who didn't get to testify on the
23 14th, if possible. Is there anybody here that didn't testify
24 on the 14th that would like to testify? Okay. We'll go back
25 out to the net then. Kodiak? Is there anybody in Kodiak that

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

wishes to testify?

1 MAYOR SELBY: Yes, Mr. Chairman. This is Jerome Selby,
2 Mayor of the Kodiak Island Borough. I appreciate the
3 opportunity to testify. I assume since there was no mention
4 made of it that our request to deal with the pink salmon
5 projects has been ignored. I guess I have a hard time
6 understanding that when we have a fishery where it was clearly
7 impacted by Exxon Valdez Oil Spill in terms of both year (ph)
8 classes of pink salmon had to swim through the Oil Spill in
9 order to -- in the case of the fry going out, they were leaving
10 to go to the ocean, and in terms of the adults that were
11 returning in 1989, had to swim through the Spill before they
12 spawned. What the impact that had on the eggs and the
13 subsequent fry, I have no idea; no one's done any research on
14 that to date. But we are quite concerned, because we had a
15 drastic crash of the pink salmon return this year, as I'd
16 indicated last week, from some 12 to 15 million projected
17 return to three million.

18 And I'm having a hard time understanding why we wouldn't
19 fund something for \$150,000.00, the four projects on pink
20 salmon that I had named last week; Horse Marine, Waterfall,
21 Uganik and Katoi (ph); and we do fund things where we're
22 stretching to tie it clearly to the Oil Spill, such as the
23 Kenai River sockeye run which was clearly in trouble before the
24 Oil Spill ever occurred; the Fort Richardson Pipeline for 3.7
25 million, it had absolutely nothing to do with the Oil Spill

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

except to put some red salmon back into the Kenai system for
1 the sports fishermen. And here, we have a commercial fishery
2 that's worth millions of dollars to the State of Alaska that
3 has clearly been impacted by the Exxon Valdez Oil Spill.

4 We're asking for a measly \$154,000.00 to try to put it
5 back on track, and I don't understand why it's not funded.

6 MR. PENNOYER: Trustee Council members, anybody wish to
7 comment or further questions? Mr. Selby, of course, we're
8 putting a package out to public review. And the project you
9 mentioned, the Fort Richardson hatchery water pipeline, no
10 action formally was taken on it. The Restoration Team
11 recommendations are going to be included in that package, as
12 well as will Dr. Spies. So, of the projects going out, you'll
13 have the benefit of the Restoration Team recommendation and
14 Dr. Spies' comments. We will not make a final decision on the
15 project complexes (ph) until the December meeting. Mr. Cole --
16 Mr. Rosier.

17 MR. ROSIER: Thank you. I'd like to clear the air on
18 something. I know that Mayor Selby has spoken about this
19 project with the water line here at Fort Rich on at least a
20 couple of occasions. And really, that project has nothing to
21 do with production of red salmon. Basically, we're talking
22 about the replacement of the red salmon fishery with other
23 species as a replacement for those fishermen that would be
24 displaced out of the Kenai River. So, it really doesn't have
25 anything to do with red salmon production.

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

MR. PENNOYER: Mr. Cole.

1 MR. COLE: Mr. Chairman. I overlooked it, during the
2 course of the discussions today, of asking a question about
3 these projects that Mayor Selby mentioned at the public hearing
4 last week. I had intended to ask for an explanation or at
5 least an answer as to why those projects were not included.
6 And I think that Mayor Selby deserves a response, so I would
7 like to hear it, and I'm sure he would, too.

8 DR. GIBBONS: Mr. Chair?

9 MR. PENNOYER: Mr. -- Dr. Gibbons.

10 DR. GIBBONS: Yes. Last week, I pulled those projects,
11 the ideas, and I pulled the evaluation sheets that the
12 Restoration Team evaluated those on and mailed those to Mayor
13 Selby, I think on Wednesday.

14 MR. PENNOYER: Did you provide the Trustee Council with
15 a copy of

16 DR. GIBBONS: I can provide you with a copy, yeah. He
17 gave me a list and asked me, you know, to please send that to
18 him. The package of 1993 ideas and the evaluation sheets are
19 over in OSPIC, and they're out, so they're available to the
20 public. But I did mail those to Mayor Selby.

21 MR. PENNOYER: Do you have a copy of that package?
22 Could you get somebody on the Staff to make it available for
23 the Trustee Council, maybe even pass it out now, if possible;
24 is there anybody here who could do that?

25 DR. GIBBONS: Sure. I

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

MR. PENNOYER: It's easily accessible?

1 DR. GIBBONS: If I can disappear for two minutes, I'll
2 have it.

3 DR. MONTAGUE: Mr. Chair?

4 MR. PENNOYER: Dr. Montague.

5 DR. MONTAGUE: Mr. Chairman, I can answer somewhat on
6 these. On the Waterfall Creek and the Horse Marine Creek
7 projects, these were two of four that were submitted out of a
8 project we had last year that was looking at various creeks
9 around the damaged area to see which ones would benefit from
10 enhancement action such as fish passes (ph). And these four
11 were put forward to the Restoration Team for review. And of
12 those four, two were approved as being time critical, and these
13 two were deemed to be good projects to do, but if they waited
14 till next year, it wasn't particularly -- you know, there
15 wasn't the real lost opportunity.

16 And on some of the other projects, I believe one of the
17 areas was not injured by the Spill, and another project dealt
18 with being prepared for future spills, which we felt wasn't
19 part of restoration relative to the civil settlement. That's
20 just from memory, I'm sure Dave will have a little bit more
21 specifics.

22 MR. PENNOYER: Mayor Selby, we've requested the package
23 that was sent to you, we'll look at it. Did you have further
24 comment at this time? Did we lose Kodiak?

25 MAYOR SELBY: projects, one was \$45,000.00 to work

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

on the pink salmon right now, and the other one was the Spill
1 preparedness thing that had been mentioned. They're actually
2 two separate projects, and what we were interested in is the
3 \$45,000.00 project that would let us do some work with Kato
4 right this next year to try to get our pink salmon production
5 up. And the same thing with those other two projects, granted,
6 I mean, I suppose you can go work on those cricks (ph) any
7 time, but the fact is is we have a fishery that's in trouble,
8 and we need to do some enhancement now. And we would like to
9 request you folks to fund or, at least, put those four
10 projects; Horse Marine, Waterfall and the Uganik fish weir and
11 the Kato project; at least, put them on the list for public
12 comment.

13 MR. PENNOYER: Further Trustee Council comment? We will
14 get copies of the package sent to you and take a look at it.
15 Anybody else want to make a comment or ask a question at this
16 time? Thank you, Mayor Selby. Is there anything else?

17 OPERATOR: Was anyone else in Kodiak?

18 MR. PENNOYER: I'm sorry. I'm going to Homer next, do
19 you have somebody? I'm trying to do the stations in rotation,
20 so somebody from each place gets a chance to comment and then
21 cover as much as possible. Homer, are you on the line?

22 MS. POST: This is Joy Post, it's spelt
23 P-O-S-T. And I think you've heard from many people, they all
24 favor land acquisition, and many of those many have said they
25 favor land acquisition in the Kachemak Bay State Park. I

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

believe in the case of the Park, it would an injustice to clear
1 cut the forest. It would be an injustice to destroy the
2 renewable tourism industry that's centered around this Park.
3 And at this point, it is imminent that this is dealt with
4 immediately. The Seldovia Native Association has set a date
5 for the beginning of October. By that time, they want earnest
6 money on the land. And I believe you people have five million
7 set aside for short-term protection measures, some of which
8 could be used today as a down payment that the Native
9 Association wants.

10 You have reams of information in your possession. I
11 know of the importance of this land to birds and mammals, and
12 the importance of protecting the marine environment. Many
13 agencies and experts have testified to this. I don't think for
14 a minute that you will allow this land to be ruined by a clear
15 cut logging operation. However, the clock is ticking away, and
16 I feel it's urgent that you act upon this quickly. My thinking
17 is that the voices of the public that you have heard will
18 become one with your voice and with your action. Thank you for
19 your time.

20 MR. PENNOYER: Thank you. Public -- or comment from the
21 Trustee Council or questions? Thank you very much. We sent
22 the package out for public review, we have tried to address
23 imminent threat. And the money you referred to in the package
24 proposal would not actually come available until March -- the
25 end of March of next year as part of the '93 Work Plan that was

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

specified as 0 to 20 million, and that will be for the very
1 type of thing you're talking about; defining imminent threat
2 and, perhaps, negotiating either delays or moratorium or
3 whatever. In the meantime, we have people looking at various
4 habitat, trying to classify those imminent threats; we hope to
5 have a report on that sometime later this fall. But you will
6 see that package when it goes out to public review in a week or
7 two.

8 Are there further comments? Okay. I'd like to go on to
9 Valdez, anybody in Valdez want to testify?

10 MS. FISCHER: Hello, this is Donna Fischer,
11 F-I-S-C-H-E-R, and I am just listening. Thank you.

12 MR. PENNOYER: Thank you, Ms. Fischer. By the way, I
13 think you (indiscernible) on the Public Advisory Group
14 discussion. Dave, you reported that, didn't you,
15 (indiscernible)

16 DR. GIBBONS: Um-hum.

17 MS. FISCHER: Yes, I am, I have been appointed. I just
18 haven't received anything yet, that's all.

19 MR. PENNOYER: Well, I think the point is that we're
20 moving as fast as we can on that process, and hopefully within
21 the next few weeks, you will start to receive something. And
22 we're certainly looking forward to your comments as a group on
23 the '93 Work Plan.

24 MS. FISCHER: Thank you.

25 MR. PENNOYER: Let's go back to Cordova. Cordova,

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

anybody else want to testify?

1 MS. MCBURNEY: Yes. This is Mary McBurney. And I would
2 like to testify or offer testimony on behalf of Jerry McCune,
3 M-c-C-U-N-E, with Cordova District Fishermen United. And the
4 following will be written comments on behalf of Jerry McCune.

5 I regret not being able to personally attend today's
6 teleconference but I'm out fishing. As you well know, the
7 Public Advisory Group is not yet in place and hasn't had an
8 opportunity to review and make recommendations on the projects
9 you considered earlier today. I realize that the Trustee
10 Council is under deadline to approve the proposed project list
11 for 1993. However, the project review process seems to be
12 backward.

13 First, I received no information from the Council
14 regarding what was to be on the agenda for today's meeting,
15 which makes it extremely difficult to offer constructive
16 comment. Secondly, when I found out that the projects proposed
17 for 1993 were to be discussed and/or approved during today's
18 meeting, I had to wonder what will be the purpose of the Public
19 Advisory Group.

20 The list of projects proposed for 1993 represents a wide
21 variety of proposals. As a perspective member of the Public
22 Advisory Group, I would have appreciated an opportunity to
23 review the project proposals and offer my comments and
24 recommendations on those projects dealing with Prince William
25 Sound and commercially harvested fish. For example, Project

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

93014, a study dealing with quality assurance for coded wire
1 tag application for pink, chum and sockeye salmon, received
2 lukewarm support from the Resource Restoration Coordination
3 Group. Why? This project may be a very valuable tool for
4 evaluating the effectiveness of studies dependent on coded wire
5 tags. However, I don't have the information to evaluate the
6 merits of this project, and I certainly haven't heard the
7 Restoration Team's reasons for not giving this project a higher
8 rating. If nothing else, this example clearly points out the
9 necessity for having a Public Advisory Group.

10 It's important to allow the public an opportunity to
11 comment publicly on proposed restoration projects. It provides
12 an important avenue for people impacted by the Exxon Valdez Oil
13 Spill to participate and help direct the rebuilding efforts. I
14 appreciate having my comments entered into the record today,
15 and I look forward to participating in the next Trustee Council
16 meeting in person. Thank you.

17 MR. PENNOYER: Ms. McBurney, I hope you would pass on to
18 Mr. McCune that the actions taken today were not final actions.
19 We passed -- we voted rather broadly to send the package out
20 to public review, and that will certainly include the Public
21 Advisory Group who will be, hopefully, formed and have their
22 formative meeting, get a chance to look at the projects in some
23 detail. We'll probably have a separate presentation on the
24 projects on the Restoration Team. And at the same time, the
25 comments from the Chief Scientist will go out with this

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

package. So, we're assuming there will be ample opportunity
1 for a extended public review period, and we will not actually
2 take action on the '93 package until December.

3 Are there other comments or questions from the Trustee
4 Council members? Mr. Rosier.

5 MR. ROSIER: Just speaking specifically to the example
6 that was used, that is part of the package that will be going
7 out, so Mr. McCune will have the opportunity to look at that.

8 MR. PENNOYER: I might also mention, as far as the
9 notice of this meeting goes and the agenda, it is simply a
10 continuation of the meeting that was on September 14th, with
11 the primary purpose of looking at what we started on the 14th
12 but were unable to complete, the '93 Work Plan. So, any other
13 comments, questions. Thank you very much for your testimony.

14 MS. MCBURNEY: Excuse me. This is Mary McBurney again.
15 And I entered into the conversation here a little bit late,
16 you were going through the proposed projects for 1993. We'd
17 like to get a copy, perhaps, faxed to my office of the list of
18 projects that were approved for public review. I understand
19 that there were several projects that were struck from the
20 list.

21 MR. PENNOYER: That is correct. And Dr. Gibbons, how
22 will you report the results of this meeting?

23 DR. GIBBONS: I can fax that list to her.

24 MR. COLE: Well, Mr. Chairman?

25 MR. PENNOYER: Mr. Cole.

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

1 MR. COLE: Does she have a list there of the proposed
2 projects, from 1 to 64?

3 MS. MCBURNEY: Yes, I do.

4 MR. COLE: Can't we just tell her now which projects
5 were deleted. Other than the few which were deleted,
6 Ms. McBurney, we are sending them all out. And I think now we
7 can furnish you with a list of the projects which were deleted,
8 and we not?

9 MR. PENNOYER: Dr. Gibbons, would you do that, please?

10 DR. GIBBONS: Yes, I can do that, they're easy. Delete
11 Project Number 1. Delete Project Number 21. Delete Project
12 Number 37. Delete Project 40/54. And delete Project Number
13 48.

14 MS. MCBURNEY: Thank you very much.

15 MR. PENNOYER: Okay. Thank you. Do you have anything
16 further?

17 MR. COLE: Mr. Chairman?

18 MR. PENNOYER: Mr. Cole.

19 MR. COLE: I would like to say when Mr. McCune gets the
20 detailed backup of all of these projects, he will have plenty
21 of reading to do. It consists of about three or four inches of
22 typewritten material. And we will be sending all of this
23 material to each of the Public Advisory Group members well in
24 advance of the deadline for public comment. We've proposed
25 that the Public Advisory Group meet at least once or twice
before the time for furnishing final comments to the Trustee

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

Council. And no action will be taken on any of these proposed
1 projects until the Trustee Council meeting on December 11th.
2 And furthermore, all public comment will be furnished verbatim
3 to each of the Trustee Council members by the latter part of
4 November. So, I think that there will be full opportunity for
5 the Trustee Coun- -- for the Public Advisory Group and for the
6 public itself to comment on each of these projects.

7 MR. PENNOYER: Thank you, Mr. Cole. Shall we proceed
8 then and go on? Is there anybody in Anchorage that didn't
9 testify on the 14th? Sir, if you would hold your testimony
10 until -- I believe you did testify on the 14th, see if we can
11 get done with the people that did not get an opportunity to do
12 that. Kodiak? Anybody else from Kodiak?

13 MS. STAHL-JOHNSON: Yes, this is Kristin Stahl-Johnson,
14 I'm speaking as the Coordinator for the Kodiak Conservation
15 Network. And I did -- was not able to speak on the 14th, so I
16 appreciate the opportunity to speak today. I want to make my
17 comments brief, I don't want to reiterate too much of the
18 details that other people have said but would like to add my
19 voice and the voice of the Network, again, to the call for
20 habitat acquisition, and to comment briefly on Attorney General
21 Cole's process of determining direct links between acquisition
22 and habitat -- and damage or loss of habitat when the
23 Settlement pure- -- clearly allows for replacement habitat.
24 And that doesn't -- it's not required to make very specific
25 links between the two when we are talking about habitat in our

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

1 areas that clearly can't be -- the damaged habitat can't be
2 replaced by acquisition of anything exactly the same.

3 We'd like to look, more specifically -- we would like
4 for you to take the approach that you have on Figure 7 in
5 evaluating your -- in evaluating the restoration options,
6 Figure 7 in the Restoration Framework Supplement. That is a
7 much more clear and fair way of looking at the different
8 options you have for the proposed Work Plan.

9 I'd also like to reiterate what Rick Steiner said about
10 looking at contingent valuation and not at the actual value of
11 the actual use of the property or lands. It's been really
12 clear from the coastal communities that were affected by the
13 Oil Spill that we all, in a democratic way, have said we would
14 like to see habitat acquisition. And we have identified those
15 areas that we want to see preserved, and there are some really
16 good reasons connected with those, that preservation. We can't
17 look at isolated areas and not look at the areas around them
18 for the impact.

19 And anyway, I guess I lost track of my thought there.
20 So, just to reiterate, again, the public in the impacted areas
21 wants habitat acquisition. And I think that the Trustee
22 Council needs to be more sensitive to that desire. Thank you.

23 MR. PENNOYER: Thank you, Ms. Johnson. Would you mind
24 repeating your name for the record, please? First name, we got
25 the last name.

MS. JOHNSON: Okay. Kristin Stahl-Johnson,

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

K-R-I-S-T-I-N, S-T-A-H-L-Johnson, J-O-H-N-S-O-N.

1 MR. PENNOYER: Thank you very much. Are there questions
2 or comments from the Trustee Council? Thank you very much.
3 Let's go on and try Homer. Anybody else from Homer wish to
4 testify?

5 MS. KABISCH: Yes. My name is Sally Kabisch,
6 K-A-B-I-S-C-H, and I'm a resident of Homer. And I just wanted
7 to testify in support of what a lot of other people have
8 testified in support of, and that is habitat acquisition and
9 spending the significant portion of the Oil Spill settlement on
10 habitat acquisition. Of most immediate concern is, of course,
11 Kachemak State Park because of the deadline set by Seldovia
12 Native Association, as well as the plans by Timber Trading
13 Company to move ahead with their permits for logging. So, I
14 urge the Council to take whatever action they can to begin the
15 process of purchasing those lands.

16 In addition, I haven't been following this process as
17 closely as most people in terms of the money and where it's
18 going. But just from sitting here while I was waiting to
19 testify, I was looking through the proposed fiscal year '93, I
20 guess it's new project, and I noticed that only five million
21 dollars out of a proposed total of 34 million dollars for new
22 projects, only five million is proposed for land acquisition
23 and only for imminent threat. And while that is good, and I'd
24 like to see imminently threatened lands protected using some of
25 this Oil Spill money, I just think that the five million is a

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

fraction; it's insignificant, it's not enough. I can't think
1 of the many different ways to say that and to urge you to
2 allocate more money to habitat acquisition, because I think
3 it's the most meaningful and the most long-term way of
4 restoring, not only the land but peoples' spirits that were
5 affected by the Oil Spill. Thank you very much.

6 MR. PENNOYER: Thank you, Ms. Kabisch. For your
7 information, the project that's going out to public review is
8 up to 20 million dollars, and the primary thrust of the issue
9 (ph) would be imminent threat because our plan for restoration
10 and our more comprehensive look at the properties that are
11 going to be available and the possible restoration value of
12 acquiring those won't be ready in the short-term. We do have
13 studies ongoing to look at that and identify imminent threat,
14 maybe not with the idea of purchase at that stage, but at
15 least, the idea of options on moratoria or something to put off
16 possible damage to those lands that are identified as, perhaps,
17 being under imminent threat. So, the number there is not --
18 the final number, we don't know what the final number should be
19 and don't have an estimate yet of where that process will take
20 us.

21 Other comments from the Trustee Council members? Thank
22 you very much. Anybody else at Valdez yet that wants to
23 testify? Okay. Going on to -- back to Cordova. Anybody else
24 from Cordova that wishes to testify?

25 MR. McMULLEN: Yeah, Mr. Chairman. This is John

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

McMullen, spelled M-c-M-U-L-L-E-N; I'm president of Prince
1 William Sound Aquaculture Corporation.

2 MR. PENNOYER: Good afternoon, John. Go ahead.

3 MR. McMULLEN: Regarding the 1993 EVOS Project Work
4 Plans, this past weekend, we received an update of this list of
5 projects, and we've been discussing it since that time. I
6 recognize that I'm somewhat behind the times in my response to
7 these project proposals, but it is sometimes difficult to keep
8 up with the planning process and the timelines of the EVOS
9 restoration program.

10 I think -- I wish to read into the record I letter I
11 sent to the Trustees at mid-morning today. Here goes. Dear
12 Chairman Cole. I recently received a copy of the EVOS 1993
13 proposed projects as will, apparently, be presented today to
14 the Trustees Council by the Restoration Work Group. I note
15 with great disappointment that most proposed salmon projects
16 received a split vote with the working group, which unanimously
17 recommended a number of expensive monitoring projects which
18 seem not to address the application of needed restoration
19 enhancement procedures.

20 More disturbing yet is the absence of applied projects
21 needed to further evaluate affects of EVOS on migratory
22 behavior and stock interactions of wild and hatchery salmon in
23 the impact region. I believe studies conducted since EVOS have
24 demon- -- documented some strain of fish between streams and
25 between hatcheries and streams. Is this a common occurrence or

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

is it EVOS related? Follow-up information is required.

1 So, for this and other reasons, it is inappropriate to
2 admit -- omit salmon tagging studies from your list of approved
3 projects. The Restoration Working Group cannot agree that
4 salmon stocks of the EVOS impact region should be identified
5 and described through genetic differentiation. This type of
6 study must be funded because the restoration, management and
7 future utilization of these stocks by salmon producers,
8 fisheries managers and fisheries users will depend upon an
9 understanding of these stocks so that programs can be avoided
10 which might inadvisably mix stocks or result in over-
11 exploitation of stocks.

12 The meaningful studies which I've briefly described in
13 this letter represent a beginning necessary to a plan for the
14 long-range, optimum production and utilization of the salmon
15 resources of the EVOS impact region. Pathways to progress need
16 to be defined. I am not sure that is evidenced in the
17 particular mix of EVOS 1993 projects prepared by the
18 Restoration Working Group. Thank you for considering these
19 comments as you approve the 1993 proposed EVOS restoration
20 projects. Sincerely, John McMullen.

21 MR. PENNOYER: Thank you, John. I assume you heard the
22 earlier remarks on the Public Advisory Group and the fact that
23 this is going out to public review, including those projects
24 you said got a less than favorable rating. In addition to
25 that, will be comments from the Chief Scientist, and in

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

1 addition to that, the Public Advisory Group will get a more
2 detailed briefing, question and answer type briefing, before
3 they make recommendations back to the Trustee Council. We
4 won't be acting on the package until December 11th. So, while
5 there were, certainly, some discussions today and concerns
6 expressed, modifications made and some things omitted, broadly,
7 this whole package is going out to public review.

8 Anybody from the Trustee Council have further comment or
9 questions? Thank you very much.

10 MR. COLE: Would you ask him if that satisfies his
11 concerns as expressed today?

12 MR. PENNOYER: Mr. McMullen, Attorney General Cole asked
13 me to ask you if that satisfies your concerns? Or I would
14 expect you'll express those same concerns on the Public
15 Advisory Group.

16 MR. McMULLEN: Mr. Chairman, that's correct. I'll be
17 most happy to have that opportunity to deal with those through
18 the Public Advisory Group, and I thank you very much for the
19 appointment.

20 MR. PENNOYER: Thank you. Let's see, Kodiak. Anybody
21 else from Kodiak wish to testify? Kodiak? Anybody wish to
22 testify in Kodiak?

23 KODIAK OPERATOR: No, that completes the testimony in
24 Kodiak.

25 MR. PENNOYER: Okay. Thank you. Homer? Anybody
additional who wishes to testify in Homer?

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

MR. TYLER: Yes, there's one diehard left here.

1 MR. PENNOYER: Okay. Go for it.

2 MR. TYLER: My name is Richard Tyler. And I was here at
3 the last one, and I sent you a letter, but in the meantime,
4 I've excerpted a section of it that I'll read into this. And
5 of course, I'm talking about right here at home in our Kachemak
6 Bay State Park.

7 The Kachemak Bay State Park is surely one of the prime
8 areas where the Trustees are in a position to correct an
9 ongoing and everyday more imminent threat to a very important
10 and highly productive habitat. There can be no doubt that any
11 sort of timber harvest, no matter how carefully done and how
12 carefully regulated, will cause untold destruction to local
13 fisheries and recreational opportunities in this very popular
14 and production region. Erosion into the critical habitat
15 region of Kachemak Bay, blow down of remaining trees, many of
16 which will be left vulnerable on other bordering private land,
17 damage to spawning streams and lakes, and the obvious fact that
18 no timber will grow back at this latitude for several
19 generations are a very important reasons which cry out for the
20 protection of this habitat now.

21 I should also point out that the dip net fishery in
22 China Poot (ph) Bay, which the State has been stocking on
23 private lands, the SNA lands, for all these years has now shut
24 down, will remain so until the buy-back is completed. The
25 State has fumbled so many times on this that it may well be

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

left to the Trustees to recover the ball and run with it.

1 Thank you.

2 MR. PENNOYER: Thank you. Comments or questions from
3 the Trustee Council? Thank you very much. Let's see. Was
4 anyone left in Cordova that wished to testify? Cordova?

5 CORDOVA OPERATOR: I think we had one, hold on.

6 MR. PENNOYER: Okay. Thank you.

7 MS. MCBURNEY: Yeah. This is Mary McBurney again and
8 I'm testifying on my own behalf. I just had a quick question.
9 Why doesn't the list of proposed projects include any private,
10 non-agency proposals? Right now, I'm kind of concerned that
11 the absence of non-agency proposed projects points out the
12 shortcomings of having a Restoration Team that's made up 100%
13 of agency personnel. And I kind of wonder how objective the
14 recommendations are that are coming out of this Restoration
15 Team. Is there a platform and a process for reviewing non-
16 agency proposals, and if so, what is it? I'd just be real
17 curious to find out.

18 MR. PENNOYER: Dr. Gibbons, do you care to answer on the
19 mix in this package?

20 DR. GIBBONS: Dr. Montague, do you want to handle that?
21 I can do it.

22 DR. MONTAGUE: Mr. Chairman. Yes. I think there may be
23 some confusion in looking at the draft notebook of the project
24 in that an agency is listed on there. And as you know, the
25 Council's operating procedures are that one of the six Trustee

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

agencies must be the lead on the project, but that statement
1 does not mean that it was agency idea. In fact, this -- what's
2 in this notebook is made up about 110 agency ideas and about 31
3 public ideas, and this similar in the ratio to the incoming
4 ideas; meaning there was about one-third of the ideas from the
5 public and two-thirds from the Agency. Does that answer the
6 question?

7 MR. PENNOYER: I'm not sure whether ideas are equivalent
8 of projects that we've approved.

9 DR. MONTAGUE: Okay. Well, the ideas and many projects
10 being that there's about 110 agency ideas and 31 private ideas
11 about 50 projects means there's a lot of these ideas are
12 combined, and there's some projects that are all agency and
13 some originated from an agency and a public idea, and so on and
14 so forth.

15 MR. PENNOYER: Would you clarify originate versus
16 actually get funded for?

17 DR. MONTAGUE: Well, I mean if those that are in this
18 plan get funded, then that idea got funded, it just didn't get
19 funded as an individual project.

20 MR. PENNOYER: And it would go to the originator of the
21 idea?

22 DR. MONTAGUE: You mean would the project go to the
23 originator of the idea?

24 MR. PENNOYER: I think the question was how many are --
25 I think the question had to do with where the funding's going

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

to go, as well as where the ideas came from. Maybe I'm

1 MR. COLE: Maybe I can answer that.

2 MR. PENNOYER: Mr. Cole.

3 MR. COLE: Well, Ms. McBurney, let me say that in
4 legislation enacted by the last session of the Legislature, a
5 provision was inserted somewhat over my objection, but in order
6 to get the legislation enacted, I acquiesced, which provided
7 that these contracts be made between the Trustee Council and
8 State and Federal agencies only, except for administrative
9 expenses. So, I think that's the fundamental reason that the
10 State and Federal agencies as listed as the responsible
11 principle for these projects; that was -- that's Number 2.

12 And Number 2 is I think we on the Trustee Council are
13 cognizant of the often expressed view of the public as to
14 whether there is sufficient safeguards in these projects for
15 this not being a repository for the receipt of funds by the
16 State and Federal agencies. And for that reason, in part, we
17 have contracted with a Chief Scientist and peer reviewers
18 retained by him to review each of these projects and to furnish
19 us with his comments on them. So, we have that mechanism to,
20 in part, guard against the possibility that these projects are
21 being only proposed, enacted up to sweeten the State and
22 Federal agencies' treasury. I think we're looking at that very
23 carefully.

24 MR. PENNOYER: Thank you, Mr. Cole. Any further
25 comments? Mr. Gibbons?

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

DR. GIBBONS: Yes. Previously sent to you is our series
1 of spreadsheets that track the 1993 ideas received, both agency
2 and public, and what occurred to those ideas. So, you can go
3 back to that package, if you would like, and track an idea
4 submitted, either by an agency or public, and where it ended up
5 into this package here. So, you have that capability of
6 tracking that, in Cordova.

7 MR. PENNOYER: Thank you. Any further comment? Ms.
8 McBurney, do you have any further testimony?

9 MS. MCBURNEY: No, thank you, not at this time.
10 Although, I just would like to mention that I haven't seen any
11 of those spreadsheets.

12 DR. GIBBONS: They were mailed, they were there last
13 week at the office where the teleconference is.

14 MR. PENNOYER: If you can't get them there, we certainly
15 you send you a copy.

16 MR. COLE: They're in the notebook. Sometimes, I find
17 the spreadsheet terminology a little confusing. Are they not
18 in the notebook?

19 MR. PENNOYER: Can you specify where those spreadsheets
20 occur?

21 DR. GIBBONS: Yes. Yeah. In the package that was
22 mailed to you, they're the last part of the package, and
23 they're clear in the back; and there's a set of four of these
24 spreadsheets that track the idea, number, the name, the topic,
25 and you can move through that. So, they're in the last part of

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

that package that was DHL'd out to Cordova last week.

1 MR. PENNOYER: Okay. Thank you very much. Homer?
2 Anybody further in Homer?

3 HOMER OPERATOR: That's all in Homer at this time.

4 MR. PENNOYER: Okay. Thank you very much. Cordova?
5 Anybody further in Cordova? Do we have anybody on the line
6 besides Cordova, Kodiak, Homer and Valdez that wasn't signed in
7 before?

8 KODIAK OPERATOR: Kodiak does have more participation.

9 MR. PENNOYER: Okay. Kodiak, please go ahead.

10 DR. MICKLESON: Hi, my name is Lynne Mickleson; last
11 name, M as in Mary I-C-K-L-E-S-O-N. I'm a physician here in
12 Kodiak. I have been doing a recent project, I've been -- well,
13 I've been looking into a new form of tourism down here, it's
14 called eco-tourism, and I wanted to make a few comments here.

15 One of the -- as I review this list of what's going to
16 be done, potentially, with the money, I see here that there's
17 basically nothing set aside for direct habitat acquisition.
18 There's a lot of proposed studies and things, but I think that
19 we really need to concentrate our efforts on buying habitat,
20 and the sooner the better.

21 Eco-tourism is a new form of tourism that is kind of a
22 subset of general nature tourism. Since we, here in Alaska,
23 are grappling with continuing economic woes and declining oil
24 revenues, especially as the North Slope production drops off,
25 we need to turn our attention to the future and to new sources

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

of long-term, sustainable income. Eco-tourism is one such
1 alternative. Worldwide, it is big business, amounting to 19.5
2 billion dollar annually, that's billion not million, and it's
3 increasing by 30% each year.

4 Eco-tourism is different from nature tour- -- general
5 nature tourism where many of the operating costs get spent
6 elsewhere and profits go back to firms in cities far away.
7 Eco-tourism works to keep profits and spending locally, promote
8 conservation, employ local people and make the conservation of
9 local natural resources the most economically beneficial of all
10 options. Eco-tourism promotes economic growth while protecting
11 the environment. Let me repeat that. Eco-tourism promotes
12 economic growth while protecting the environment. Any
13 questions about the loss of jobs in logging, for example, in
14 some of the proposed protected area can be countered with the
15 realization that just as many, if not more, jobs can be created
16 through a program of eco-tourism.

17 A few comments on how these programs work. Studies by
18 the World Wildlife Fund have shown that eco-tourists like
19 things simple; small groups of four to eighteen people with
20 local guides through local terrain showing the plants, animals
21 and natural human history unique to the area. There is no need
22 for big hotels or fancy hunting lodges. Traditional local
23 cooking and bed and breakfast accommodations suit the eco-
24 tourist just fine. Eco-tourists want a glimpse of undisturbed
25 nature and the lifestyles and people that make Alaska special,

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

they do not want to simply observe Alaska, they want to live
1 it, not through the windows of the tour bus, not in large
2 groups and not from the protected decks of a cruise ship. They
3 need to escape urban and suburban life, change their routines,
4 experience untamed wilderness and enjoy physical activity.

5 This is the key point. Our nature beauty, our land is
6 our biggest resource and can provide us with years of income
7 and prosperity if managed properly. The world is looking for
8 clean, untouched areas to visit. We have what other people
9 want. Eco-tourism is lucrative, it is growing, it is non-
10 destructive, and it is sustainable; that's a key word,
11 sustainable for the long-term. Let's act before it's too late
12 and develop a statewide eco-tourism program run by and for the
13 benefit of Alaskans.

14 The money from the Exxon settlement could be used to set
15 up a great local tourism -- eco-tourism activity and programs,
16 and I think it would be the best spending of the money for the
17 long-term. Again, the key word is sustainable; we need to
18 create economies that will -- that we can do for the long-term.
19 So, I would ask that you consider that the monies be spent to
20 develop such programs. Thank you very much.

21 MR. PENNOYER: Thank you, Mr. Mickleson. Any comments
22 or questions from the Trustee Council? Okay. Kodiak, I think
23 you're the only one on line left with people that want to
24 testify, why don't you go ahead.

25 MR. PETRICH: One more to testify from Kodiak.

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

MR. PENNOYER: Thank you. Proceed.

1 MR. PETRICH: My name is Greg Petrich, the last name is
2 P-E-T-R-I-C-H. And I'd like to comment, also, on what
3 Dr. Mickleson was -- his observations. One thing that gets
4 overlooked in this program, I think, from several people who
5 are on the Council who are -- show a past history or pro-
6 development orientation is that the money from any kind of land
7 acquisition is going into local economies through these
8 acquisitions. Local Native corporations would prosper, they'd
9 be able to invest locally, and continue to build sustainable
10 income ventures.

11 And I just don't understand, some people on the Council
12 get stuck in this mode where the only thing that they seem to
13 know is resource extraction. Well, why destroy a resource, in
14 this case, just say timber land, when you could reap all the
15 benefits from that coming into a public holding and promote
16 recreational use on that land, and promote access and general
17 use, while at the same time, have that money going into local
18 economies. I don't understand why people seem to overlook this
19 aspect.

20 Also, I have one question for the Council. I see that
21 the Habitat Division of ADF&G has merged with the Oil Spill
22 Damage Assessment Group, and I'd like to know how their input
23 is going to be monitored by the Council? And does the public
24 -- is the public going to have free and clear access to this
25 information? Okay.

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

MR. PENNOYER: Trustee Council, comment or question?

1 Mr. Rosier?

2 MR. ROSIER: Mr. Chairman, I'll speak to the combination
3 there on that. Basically, the Habitat Group will be working
4 pretty much as it currently is structured here. The
5 Restoration Team that's been with ADF&G will be advising me and
6 providing as support for the Council just as they have been
7 under the original division structure. So, there'll be very
8 little change.

9 MR. PENNOYER: Thank you. Any further comments or
10 questions from the Trustee Council? Okay. Thank you. Does
11 that complete the people that want to testify in Kodiak?
12 Anybody else on the net wish to testify? Thank you very much.
13 Anchorage, I believe we have one person that wanted here that
14 testified before?

15 MR. O'CALLAGHAN: Yes.

16 MR. PENNOYER: Sir.

17 MR. O'CALLAGHAN: Yeah. My name is Mike O'Callaghan,
18 spelled C-A-L-L-A-G-H-A-N. I came in to testify to you before,
19 I'd like to just limit my testimony to the three people here
20 who work for the State of Alaska. All three of you were sworn
21 to uphold the Constitution of the State of Alaska. Okay.
22 Quote from the Constitution of the State of Alaska: "The
23 purpose of any state tax or license shall not be dedicated to
24 any special purpose."

25 It was an Attorney General's opinion early in the

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

administration when we had our oil royalty that oil royalty
1 doesn't fall into this. A later opinion reversed this. In
2 '82, the State Supreme Court held the phrase "proceeds from any
3 state tax or license" should be construed broadly to include
4 all sources of public revenue. We made a settlement with Exxon
5 for their Oil Spill. This is income that should be deposited,
6 as our Constitution says, in the State Treasury. It has not
7 been. It should be.

8 Also, the budget. The Governor shall submit to the
9 Legislature at a time fixed by law a budget for the next fiscal
10 year setting forth all proposed expenditures; all proposed
11 expenditures; and anticipated income of all departments,
12 offices and agencies of the State. I would submit that you
13 three are definitely from departments, offices and agencies of
14 the State. This has not been budgeted.

15 Expenditure. No money shall be withdrawn from the
16 Treasury except in accordance with appropriation made by law.
17 This section of the Constitution makes it clear no money may be
18 spent unless there is an appropriation that authorizes that
19 expenditure. You guys are circumventing our Constitution. You
20 do not have that authority. You were sworn to uphold the
21 Constitution, please do that. This is inappropriate behavior
22 on our public officials part.

23 MR. COLE: We have a statute enacted by the last
24 Legislature dealing with this very appropriations problem.

25 MR. O'CALLAGHAN: As you well know, statutes do not

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

supersede the Constitution.

1 MR. COLE: And the statute makes provisions for
2 appropriation of these funds, and they've also been

3 MR. O'CALLAGHAN: These funds were dedicated and they
4 have gone into the Treasury?

5 MR. COLE: And they have not gone into Treasury because
6 this is proceeding under the Federal Statute, the Clean Water
7 Act and the Comprehensive Response Statute; and therefore, we
8 have statutory proceeding provisions dealing with the very
9 problem which you're addressing here today.

10 MR. O'CALLAGHAN: You can't supersede the Constitution,
11 you know that.

12 MR. COLE: I know that.

13 MR. O'CALLAGHAN: Yeah. It's inappropriate behavior.
14 Thank you.

15 MR. PENNOYER: Okay. Thank you. I believe that
16 concludes the public hearing. Are there further actions to
17 bring before this body before we adjourn?

18 MR. SANDOR: I move we adjourn.

19 MR. PENNOYER: Let's wait, that's a further action.

20 MR. COLE: Should we tell --

21 MR. PENNOYER: Mr. Cole.

22 MR. COLE: should we tell Mayor Selby that we've
23 been furnished with these materials?

24 MR. PENNOYER: Yes, we have.

25 MR. SANDOR: And Department's appreciation to the public

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

and to the Staff.

1 MR. PENNOYER: Okay. We will stand adjourned until
2 December 11th or earlier date if the Executive Director finds
3 one convenient to all parties. Thank you.

4 (Off record - 5:50 p.m.)

5 (END OF PROCEEDINGS)

6 * * * * *

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501

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 21st day of September, 1992,
9 commencing at the hour of 8:30 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 Laurel
13 L. Kehler and thereafter transcribed by Laurel L. Kehler and
14 Karen E. Squiers.

15 IN WITNESS WHEREOF, I have hereunto set my hand and
16 affixed my seal this 24th day of September, 1992.

17
18 REBECCA NELMS
19 Notary in and for Alaska.
20 My commission expires: 10/10/94
21
22
23
24
25

R & R COURT REPORTERS

810 N STREET 1007 WEST THIRD AVENUE 1135 WEST EIGHTH AVENUE
277-0572 272-7515 272-3022
FAX 274-8982

ANCHORAGE, ALASKA 99501