

**EXXON VALDEZ OIL SPILL SETTLEMENT
TRUSTEE COUNCIL**

RESTORATION OFFICE
Simpson Building
645 G Street
Anchorage, Alaska

Trustee Council Teleconference Meeting

VOLUME II

(Continuation of April 28, 1994 teleconference)
(Pages 14 through 33, inclusive)

May 2, 1994
2:30 p.m.

TRUSTEE COUNCIL MEMBERS in attendance:

State of Alaska	MR. CRAIG TILLERY Alternate for Bruce Botelho, Attorney General, Alaska Department of Law
State of Alaska Department of Environmental Conservation	MR. JOHN SANDOR , Commissioner
United States Department of the Interior	MS. DEBORAH WILLIAMS , Alternate for GEORGE FRAMPTON , Assistant Secretary
State Department of Fish and Game	MR. CARL ROSIER Commissioner
United States Department of Agriculture - Forest Service	MR. JAMES WOLFE , Alternate for MR. MIKE BARTON , Regional Forester
United States Department of Commerce - NOAA	MR. STEVE PENNOYER Director, Alaska Region

P R O C E E D I N G S

(On Record at 2:45 p.m.)

MR. PENNOYER: Are we on the air? Who is on line?

MR. WOLFE: Roll call.

MR. PENNOYER: Good idea. We are reconvening of the Trustee Council meeting that we recessed here last week. Those that are here in Juneau are Jim Ayers and John Sandor, I'm Steve Pennoyer, and there's Jim Wolfe, and the supporting staff. Could we have a roll call of who is at the other locations?

MS. WILLIAMS: Steve, in Anchorage there is Deborah Williams and Craig Tillery and staff.

MR. PENNOYER: (Inaudible -- simultaneous talking) out there somewhere?

MR. SAKURA: In Washington, Dan Sakura.

MR. ROSIER: Steve, I'm here, as is Jerome.

MR. PENNOYER: Okay. Perhaps we should proceed then and let Mr. Ayers lead us through the document we've just received.

MR. AYERS: Mr. Chairman, just before we recessed our previous meeting, we had -- I was directed to put together a letter with the various parties, including the state representative Mark Broderson, as well as the Attorney General's Office, and the Forest Service as the lead agency. We completed that letter and sent the letter forthwith, which you all have copies of or were copied, basically outlining our basic protective measures proposal. That letter was sent to Eyak -- Eyak and Sherstone Corporation, owner of the timber rights. They acted over the weekend, and I received

several phone calls from them over the weekend regarding the letter, and they felt like it was imperative that they respond immediately. They are putting together and have worked out with their board the details of a proposal which they are sending back to us. However, in order to deal with the immediate concern of Orca Narrows, linking Orca Narrows to that protection of habitat -- those habitat areas that we described -- they have contacted us and asked that we respond -- certainly to this time if they -- if an oral presentation of simply a statement that they are interested in resolving the issue of this year's scheduled harvest, and their attorney assured me some two hours ago that he would have a very brief letter by 2:30. I have not received that letter, but they are not able to get the detailed proposal to us yet, but they wanted to immediately get up a positive response and also offer to us the opportunity to acquire the scheduled harvest for this summer in those areas that we are concerned about and link that to their more detailed proposal by getting up -- I don't want to use the word "option" until we see their detailed proposal -- but giving up a moratorium, so to speak, on those areas, the core lands, the specific biological areas of importance, and Orca Narrows -- they'd give us a moratorium as well. That proposal, however, from them says that they have been informed by Rainier that, based on market conditions, that the timber is worth some two hundred dollars per board feet. We have informed them that that would have to be subject to an appraisal and that we are interested in working with them, but it all has to be subject to an appraisal. Therefore, you

have the best of our thinking to this point, which is the resolution that's in front of you. The time critical element of this is that their board has also agreed to simply recess. They are going to reconvene late this afternoon, subject to our discussion. I got the feeling that the Trustee Council, as a group, wanted to continue to be included in this particular aspect of the negotiations at this point in a very detailed way, and so, they are asking that we respond to their -- their concern at this point about the summer's scheduled harvest. That is what is before you, but then also be clear that this is considered to be a lynch pin to those areas which we outline in our areas, core areas, special biological areas, Orca Narrows.

MR. ROSIER: Mr. Chairman? (Pause) Mr. Chairman?

MR. PENNOYER: Yes.

MR. ROSIER: I hope that Jim was not talking about two hundred -- some two hundred dollars per board foot, and that that was closer to a thousand board feet.

MR. AYERS: Yes, I stand corrected. I had the K in front of the B-F but . . .

MR. PENNOYER: He does that rather frequently on millions and thousands so --

(Laughter)

MR. ROSIER: Okay. I thought the price of timber had really gone through the roof.

(Laughter)

MR. AYERS: Two hundred dollars per thousand is what

they believe they have good information on. We did work with them both Saturday and Sunday. They agreed to send representatives of their organization, including Rainier's representative, to Juneau.

They met with the Forest Service this morning and discussed the appraisal process, including the information that they have available regarding the value of this timber. What obviously I think is at issue for Eyak is they would like -- they have indicated positively -- we should have a letter stating that, but they have definitely indicated through their board of directors to us that they met. They also met with their shareholders and had a lengthy discussion about this issue, and the board has directed them to proceed. The issue at hand is that they would -- they want to make it clear they do not -- they do not want the appearance of inappropriate or even threatened behavior, but they are simply trying to move forward with their corporation, and they have waited, as they stated, some eighteen months to move forward. They regret the timeliness of this, but would like to get an answer if we are interested in doing something this summer with regard to both their proposed scheduled harvest and then, as I say, the lynch pin to their larger, detailed proposal, which they hope to have to us, you know, as soon as possible, and their board did vote to authorize them to move forward with a more detailed proposal that's responsive to our letter. The resolution, Mr. Chairman, that's before you in draft is a variety of conversation, and maybe the thing to do is to take a -- ten minutes or so, and let people have a chance to take a look at that. It is my understanding now that

we have been contacted by the Eyak attorney, and that letter is being faxed from him now.

MR. PENNOYER: So the letter will arrive before we have to make a decision on this then?

MR. AYERS: Yes, sir.

MR. ROSIER: Jim? Mr. Chairman?

MR. PENNOYER: Yes, go ahead, Carl.

MR. ROSIER: We have not received the resolution.

MR. AYERS: Is there -- Molly, are you on line there in Anchorage?

MS. MCCAMMON: I am. We'll check and make sure it gets to the appropriate person.

MR. AYERS: I'll take care of it right now, Carl. Can you give me your fax number?

MR. ROSIER: Three-three-two.

(Aside comments)

MR. AYERS: We have received the letter just now from Eyak, and -- here it is.

(Aside comments)

MR. PENNOYER: Can I ask legal counsel for some advice here. I'm not sure how deep we're going to go into negotiating, discussions, on the record before we go into an executive session. I'm not clear when that should happen or if it should happen.

MR. WOLFE: I'll have to ask Maria that.

MS. LISOWSKI: It seems to me that this document is still in draft, so it's still a privileged document, and if you're going

to be discussing this document in terms of what the offer is from Eyak (indiscernible -- extraneous noise) go into executive session.

MR. AYERS: Mr. Chairman, we were -- we were hoping that we would have the copies of the letter when we -- get the copies of the letter and I would recommend that we move into executive session.

MR. PENNOYER: Well, why don't we do that, and then while you're getting the copies out we can make any hook-ups or any other changes we need to make in the hook-up. Who is going to do that for us? Do I hear a motion -- do I need a motion to go to executive session?

UNIDENTIFIED VOICE: Yes.

MR. PENNOYER: I have a motion

UNIDENTIFIED VOICE: You have the motion, I have the second.

MR. PENNOYER: Okay. It's been moved and seconded. Any objection to going to executive session to discuss the negotiation aspects of this agreement? Hearing none, then, Jim, will you arrange that?

MR. AYERS: Yes.

MR. PENNOYER: And then we will do that and then come back on the public record later this afternoon. So, we'll see you. Do you want to disconnect now and then reconnect, or how do you wish to do it?

MR. AYERS: Yes. Are the LIO's on line?

MS. MCCAMMON: Jim, this is Molly. They are.

(Inaudible-- simultaneous talking) There are Cordova, Valdez and Kodiak LIO's. We'll have to disconnect and then reconnect the Trustees.

MR. AYERS: Was that you, Molly?

MS. MCCAMMON: Yes, it is.

MR. PENNOYER: Molly, you'll have to speak up. We can't hear you.

MS. MCCAMMON: You'll have to disconnect and then we will reconnect you.

MR. AYERS: Right. As discussed, we're going to hang up now, and if you'll reconnect all of the Trustees at their appropriate numbers.

MS. MCCAMMON: That's correct.

MR. AYERS: Thank you.

(Off Record at 2:56 p.m.)

(On Record at 5:04 p.m.)

MR. PENNOYER: Carl are you there?

MR. ROSIER: (Inaudible)

MR. PENNOYER: Carl is that you?

MR. ROSIER: Yes. Okay.

MR. PENNOYER: Your voice is fading at this hour. Okay, well, can we get back and reconvene our meeting now as -- why we recessed for an executive session to discuss Eyak habitat protection offer, and I believe that Executive Director Ayers will lead into a status report of where we are in this matter. Mr. Ayers.

MR. AYERS: Mr. Chairman, on April 28, subsequent to our meeting and direction of the Trustee Council, I sent to the president of Eyak Corporation-Sherstone Corporation, outlining the interest of protective measures that the Trustee Council proposed for lands owned by Eyak Corporation or in control of their Sherstone Corporation. Those included the core lands, the area's special biological areas, and you included in your restoration -- specifically Orca Narrows. In the body of that letter, we requested a detailed proposal from their board of directors that would accommodate our interests in the protection, as well as recognizing that they had interests in development of their lands in the future. We also proposed in that letter an interim measure that they proposed to us that some measure for acquiring protection for corporate lands on which timber harvesting was scheduled prior to April 1995. Through a meeting of their board of directors over the weekend, the Eyak Corporation, Sherstone Corporation board of directors have sent to us a letter in direct response to our proposal. Certainly, they have not had time to prepare a detailed proposal for the acquisition of the larger areas of interest that I outlined, but they did respond to our request for a proposal for an interim measure, inasmuch as we're interested in acquiring protection for the corporation lands on which timber harvesting is scheduled prior to April 1st, and their letter received this afternoon, dated May 2nd, 1994, and signed by John Johnson, chairman of the Eyak board of directors, and Luke Borer, president of Sherstone Corporation, they have outlined to us a proposal for

that interim measure, and essentially that letter proposes that we acquire at fair market value, although they also identify more than two hundred dollars per thousand board feet, some approximate ten million board feet that is scheduled for harvest. The legal description is in the body of that letter. They also proposed a moratorium on the other areas that we have identified as important, at least until -- they've proposed March 1, 1995. They mention a couple of other items that are of consequence to that, including that we provide indemnification, which I've been advised is not possible, but -- we're not within legal jurisdiction, nor do we have the authority to provide full indemnification of Eyak and Sherstone for damages and costs with regard to the transaction. Therefore, Mr. Chairman, I seek guidance and a resolution to specifically respond to their letter and hope that we can do so today.

MR. PENNOYER: Thank you, Mr. Ayers. Could I entertain a motion then from the Trustee Council as to how to proceed, which we could amend as appropriate -- yes, Mr. Wolfe.

MR. WOLFE: Mr. Chairman, while the Forest Service has some concerns about some of the specifics of the proposal prepared -- or submitted -- by Eyak, we would like to make a motion that we prepare a resolution to address the interim protection of the subparcels, Orca Narrows, as described in that offer from the imminent threat of timber harvest and that we do this as quickly as possible, maybe even yet today.

MR. PENNOYER: Do I hear a second for discussion?

MR. ROSIER: Second.

MR. PENNOYER: Okay, could I have then discussion or potential amendments, things of interest to the Trustee Council.

MR. SANDOR: Call for the question.

MR. PENNOYER: I think before calling the question, there are a couple of items that might be of some concern in terms of preparation of the resolution. Maybe we should clarify to Executive Director Ayers before he prepares it. I know that our letter, for example, could clarify the fact that our interests were rather broad in this area, as has occurred in past discussions, but we did solicit an interim proposal to address the short-term concerns of immediate timber harvest in Orca Narrows. I believe that was the nature of the response that we received from Eyak Corporation. Nevertheless, I think, as Eyak points out in the final paragraph of their letter, there is an interest in a broader concern. For example, the (indiscernible) covers only a small part of the items in our letter -- item three, areas contributing to restoration of Orca Narrows. The area's importance, both recreation and tourism, and in fact this interim measure covers even a small part of that total area of concern. So, I guess I would ask in this resolution that the Executive Director addresses a more comprehensive concern expressed both by the Trustee Council and by Eyak Corporation, and they would then in a relatively short period of time, as part of this apparent agreement, we express the need to receive a more detailed proposal addressing other concerns in their April 28th letter. So, if someone wants to move that --

MR. SANDOR: I'll move.

MS. WILLIAMS: Second.

MR. ROSIER: Second.

MR. PENNOYER: Is there any further discussion of that aspect? (No audible response) I know that there's some concern about the court request for funding. Does anybody want to further elaborate on that?

MR. WOLFE: Mr. Chairman? I would propose to include in the resolution the -- that we will go to the court for up to two million dollars of the monies and have them available to demonstrate our good faith in moving forward with this resolution.

MR. PENNOYER: That would be upon acceptance of Eyak -- by Eyak -- of this offer then?

MR. WOLFE: I would presume that would be the case.

MR. PENNOYER: Is there a second to that?

MR. ROSIER: I'll second it.

MR. PENNOYER: Does anyone want to further discuss that aspect of it? (No response) Okay. Is there any discussion about the content of the moratorium and funding offer, or was that covered adequately in the discussion we've had so far? (Pause) Yes, Mr. Sandor?

MR. SANDOR: Mr. Chairman, I just wanted to reiterate our understanding and my understanding of the resolution and the point that what we're really after is the protection of those lands identified in the April 28th letter, which specifically with regard to Orca Narrows, the twenty-six hundred acres of lands that are --

that are in that viewshed. So, I see this as an interim step of what we will ultimately achieve -- achieve is what appears to be apparent in Eyak-Sherstone's letter, last paragraph, of the mutual commitment to achieve total protection of all the areas that are identified in the April 28th letter, and I believe that the resolution can be drawn with that in mind.

MR. PENNOYER: Thank you, Commissioner. Mr. Ayers?

MR. AYERS: Yes, Mr. Chairman. Perhaps in follow-up to Commissioner Sandor's comments that the -- it's my -- I guess it was recommended that we respond specifically to the letter from Eyak with regard to a moratorium, perhaps we would propose that the offer to purchase a moratorium on commercial timber harvest and road development that is scheduled prior to March 1, 1995, on the seller's land that were described in the Trustee Council's letter of April 28th, and that that moratorium be for some four hundred thousand dollars. However, that if the fair market value of that timber, four thousand board feet, exceeds one hundred and sixty dollars, that the price of the moratorium will be reduced by one hundred dollars for each penny the fair market value of the timber is above the one hundred and sixty dollars per thousand board feet, and therein providing them a moratorium -- some compensation for their moratorium -- unless they actually do accomplish a fairly high value for their timber, i.e., a hundred and sixty dollars or more, and then it's reduced accordingly?

MS. WILLIAMS: Mr. Chairman, I so move.

MR. PENNOYER: Deborah -- the second.

UNIDENTIFIED VOICE: I'll second it.

MR. SANDOR: Mr. Chairman.

MR. PENNOYER: Yes, Mr. Sandor.

MR. SANDOR: Just for the benefit of our understanding, this essentially then would achieve the value described in the Eyak-Sherstone proposal, is that not true?

MR. PENNOYER: Mr. Wolfe?

MR. WOLFE: I was just going to elaborate on what Mr. Sandor has said there, and I guess what we're trying to achieve is that if we got to this point, we would accomplish about a two hundred dollar per thousand value for the -- I don't want to get into that.

MR. PENNOYER: Okay. Is there further discussion on any of these items? Does anybody have additional comments to make on the resolution or things that the Executive Director needs to take into account?

MS. WILLIAMS: Mr. Chairman, with respect to the last point though, I would like to mention two things. One is that we believe as a matter of law that we can only pay fair market value for the timber, but we also believe that the moratorium does have value, and we think that the proposal that was just set forth accommodates both facts.

MR. PENNOYER: Thank you. What was the second point, Deborah?

MS. WILLIAMS: Well -- there -- those were the two points together. One, that we can . . .

MR. PENNOYER: Okay.

MS. WILLIAMS: . . . only pay fair market value, and two, that the moratorium does have value.

MR. PENNOYER: Are there other items that we need to bring to the Executive Director's attention in drafting this resolution? (No response) Is there further business now, and since this business item has not been finalized, do we simply want to recess this meeting until we are in receipt of the final offer or something? Is there a need to possibly continue this?

(Aside comments) Well, we might do that too. Okay. Anything further that we need to do on the motion.

MS. WILLIAMS: Mr. Chairman, I do believe it's important in our resolution to note that when it comes to the appraisal, we believe that the appraisers should certainly review or consider the Rainier market and cost information, but that that cannot be, unless the appraiser so determines -- we cannot prejudge whether that is the only information upon which the appraiser will rely.

MR. PENNOYER: I thank you. I think that's understood. Is there anything further? Okay, is there any objection to this motion? (No response) Hearing none, it is passed, and the Executive Director will proceed forthwith with the resolution for transmittal to Eyak. Mr. Ayers.

MR. AYERS: Yes, Mr. Chairman, it is my understanding that we are responding to the Eyak board, that I am able to convey to them that there has been action taken, obviously, to draft this resolution, and the Trustee Council will reconvene at some hour

tomorrow to actually approve the resolution?

MR. PENNOYER: I would assume that would be -- is everybody available tomorrow sometime to approve the resolution in its final form.

MR. SANDOR: Either I or Mark.

MR. PENNOYER: Okay, somebody or the alternates will be available a time tomorrow to review and finally accept that.

MR. AYERS: Is that acceptable in Anchorage there?

MS. WILLIAMS: Yes.

MR. AYERS: I will do so and have a draft of the resolution to you prior to calling the meeting tomorrow.

MR. PENNOYER: Carl, are you going to be here tomorrow too?

MR. ROSIER: Yes, I'll be in tomorrow.

MR. PENNOYER: Okay, fine. I guess the last item I have is where we proceed from here. We're going to meet tomorrow and, I guess, we'll make our decision at that point as to whether to continue the meeting if we're done with that or not. I assume we'll probably have to just recess and reconvene for this one item since we're not going to approve the final answer until we (indecipherable) the resolution.

MR. AYERS: Do you want to set the time for noon tomorrow, Mr. Chairman?

MR. PENNOYER: Er, it's fine by me, if it's fine with everybody else.

MR. ROSIER: Sounds good to me -- noon?

MR. PENNOYER: Commissioner Sandor?

MR. SANDOR: Either before or after.

MR. PENNOYER: After noon -- how about one o'clock?

MS. WILLIAMS: One o'clock would be preferable for me.

MR. PENNOYER: Okay, one o'clock then that we'll reconvene and take a look at the resolution.

MR. SANDOR: Make it 1:10.

MR. PENNOYER: Make it 1:10 for Commissioner Sandor. He's got a longer lunch. (Laughter) Anything else then this evening?

MR. ROSIER: That doesn't work.

MR. PENNOYER: Anchorage?

UNIDENTIFIED VOICE: Carl can't be here at 1:10.

MR. PENNOYER: Oh, you can't be here at one-ten? I thought you meant adjourning didn't work. What time can you make it?

MR. ROSIER: Well . . .

MR. PENNOYER: How about before noon then -- eleven o'clock.

MR. ROSIER: Yeah, eleven o'clock would be fine.

MR. PENNOYER: Commissioner -- (indecipherable) this resolution -- 10:30 or eleven?

(Aside comments)

MS. WILLIAMS: Eleven o'clock is preferable for me.

MR. PENNOYER: Okay, then, is eleven o'clock all right then? Eleven o'clock tomorrow morning then.

MR. ROSIER: All right.

MR. PENNOYER: Thank you.

MR. ROSIER: Thank you.

MR. PENNOYER: We'll see you tomorrow morning then. This meeting is recessed.

(Off Record 5:20 p.m.)

END OF PROCEEDINGS

///

///

///

///

///

///

///

///

///

///

///

///

///

///

///

///

///

///

///

CERTIFICATE

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

I, Linda J. Durr, a notary public in and for the State of Alaska and a Certified Professional Legal Secretary, do hereby certify:

That the foregoing pages numbered 16 through 32 contain a full, true, and correct transcript of the Exxon Valdez Oil Spill Settlement Trustees Council meeting taken electronically by me on the 2nd day of May, 1994, commencing at the hour of 2:30 p.m. at the Restoration Office, 645 G Street, Anchorage, Alaska;

That the transcript is a true and correct transcript requested to be transcribed and thereafter transcribed by me to the best of my knowledge and ability from that electronic recording.

That I am not an employee, attorney or party interested in any way in the proceedings.

DATED at Anchorage, Alaska, this 4th day of May, 1994.

Linda J. Durr, Certified PLS
Notary Public for Alaska
My commission expires: 10/19/97