

**EXXON VALDEZ OIL SPILL SETTLEMENT
TRUSTEE COUNCIL**

RESTORATION OFFICE
Simpson Building
645 G Street
Anchorage, Alaska

Trustee Council Teleconference Meeting

**Anchorage, Alaska
February 22, 1995
11:30 a.m.**

TRUSTEE COUNCIL MEMBERS in attendance:

In Anchorage

STATE OF ALASKA

MR. CRAIG TILLERY
Trustee Representative for
BRUCE BOTELHO, Attorney
General, Alaska Department of
Law

UNITED STATES DEPARTMENT
OF THE INTERIOR

MS. DEBORAH WILLIAMS, Special
Assistant to **MR. GEORGE**
FRAMPTON, Assistant Secretary

STATE OF ALASKA DEPARTMENT
OF FISH AND GAME

MR. FRANK RUE,
Commissioner

In Juneau

UNITED STATES DEPARTMENT OF
AGRICULTURE - FOREST SERVICE

MR. PHIL JANIK,
Regional Forester

UNITED STATES DEPARTMENT OF
COMMERCE - NOAA

MR. STEVE PENNOYER
Director.

STATE OF ALASKA DEPARTMENT
OF ENVIRONMENTAL CONSERVATION

MS. MICHELLE BROWN, Deputy
Commissioner and Trustee
Representative for **MR. GENE**
BURDEN, Commissioner

TRUSTEE COUNCIL STAFF

MS. MOLLY MCCAMMON Executive Director, EVOS Trustees
Council, present in Anchorage

MR. ERIC MYERS Director of Operations, EVOS Trustees
Council, present in Anchorage

OTHERS PRESENT in Anchorage

MR. ALEX SWIDERSKI

DR. DAVE GIBBONS U.S. Forest Service

MS. CATHERINE BERG

OTHERS PRESENT in Juneau

DR. BYRON MORRIS NOAA

MR. JAMES WOLFE

MS. MARIA LISOWSKI

MR. RICH GOSENS

OTHERS PRESENT in Washington, D.C.

MR. BARRY ROTH

MR. DAN SAKURA

P R O C E E D I N G S

(Off record conversation while waiting for Frank Rue to arrive.)

(On Record at 11:39 a.m.)

MS. WILLIAMS: Okay, Frank Rue just joined. Let's begin by congratulating him on his appointment as commissioner. Congratulations, Frank, and I will call this meeting to order. It is February 22nd. This is a meeting of the Exxon Valdez Oil Spill Trustee Council. With me in Anchorage are Commissioner Frank Rue, Craig Tillery, Molly McCammon, Eric Myers, Alex Swiderski, Dave Gibbons, Catherine Berg. Juneau, if you would like to announce who is there, please.

MR. JANIK: Phil Janik.

MS. BROWN: Michelle Brown.

MR. PENNOYER: Steve Pennoyer.

MR. WOLFE: Jim Wolfe.

UNIDENTIFIED VOICE: Jim Wolfe.

MS. LISOWSKI: Maria Lisowski.

MR. GOSENS: Rich Goosens.

MR. PENNOYER: Byron Morris stepped out. He's going to join us in a minute.

MS. WILLIAMS: Thank you very much. Would anyone like to make a motion?

MR. JANIK: Phil Janik moves we go into executive session.

MR. PENNOYER: Second.

MS. WILLIAMS: It's been moved by Phil Janik and seconded by Steve Pennoyer that we go into executive session. Mr. Janik, could you state what you hope to discuss in executive session, please, for the record.

MR. JANIK: The purpose of the executive session would be to discuss the Eyak land negotiations -- land acquisition negotiations.

MS. WILLIAMS: It has been moved and seconded that we move into executive session to discuss Eyak land acquisition measures. All in favor, say aye.

ALL TRUSTEES: Aye.

MS. WILLIAMS: Any opposed? (No objections.) Okay, we will recess our public meeting so as to go into executive session, and I don't believe that we have any members of the public in the teleconference. Do you need a moment, Juneau, to excuse any public members from your meeting?

UNIDENTIFIED VOICE (Juneau): No.

MS. WILLIAMS: Then I think we can go immediately into executive session.

(Off record at 11:40 a.m.)

(Executive session 11:40 a.m. - 2:08 p.m.)

(On record at 2:08 p.m.)

MS. WILLIAMS: Phil, do you have Steve and Michelle present.

MR. JANIK: Yes.

MS. WILLIAMS: Okay, very good. I would like to call

to order this meeting of the Exxon Valdez Oil Spill Trustee Council. It is February 22nd, approximately two o'clock. This meeting is a continuation of our meeting of February 13th. I am Deborah Williams; I represent the Department of the Interior and will be chairing the meeting today. The Trustee members with me in Anchorage are Craig Tillery and Frank Rue. In Juneau are present Michelle Brown, Phil Janik, and Steve Pennoyer. We also have staff present. We thank the public for joining us in our public session today. As most people recall, we did recess from the February 13th meeting so the board could go into executive session to discuss our negotiations with Eyak for the purchase of certain lands in Prince William Sound. Phil, would you like to begin the public session by describing briefly where we are.

MR. JANIK: Yes, and thank you, Deborah. Perhaps it would be a good idea to provide a little bit of background here in terms of some highlights of events that have brought us today.

December 2nd, if I may go back that far, the Trustee Council passed a formal resolution which had three major components that dealt with matters related to land acquisition negotiations with Eyak and the Trustee Council, and that dealt with the so-called core lands to be acquired in fee simple -- those negotiations are continuing and moving along quite well as we see it. The subjects of interest for today's session involve more so the parcels referred to as Orca Revised, and during -- excuse me, in the December 2nd resolution the Trustee Council made a commitment to pursue establishing a conservation easement for Orca Revised,

which included timber rights, development rights, and public access. The third component of that resolution referred to other lands, and that dealt with a timber moratorium on those of some five years, and that involves the parcel dealing with such places as Sheep Bay, Port Gravina, Windy and Simpson bays.

On December 12th, Eyak came back to the Council with a proposal that refers in detail to their position on development rights within Orca Revised, and their offer was found to be unacceptable by the Council and not in the spirit of what the Council basically documented in the resolution on December 2nd. That is one of the primary items we are dealing with here today is a re-evaluation of the components of that December 2nd resolution as it refers to Orca Revised, and I want to get back to that in a second. Also, in May of '94 in the form of a purchase agreement between Eyak and the Trustee Council, there was an agreement on the parcel referred to as Orca Revised. They have a timber moratorium on that parcel that would last until 1 March of '95, and that date is rapidly approaching. In fact, it occurs next week.

In that we have been unable to come to an agreement on the development right features with Eyak on the Orca Revised parcel, and in that there is imminent threat of logging on the Orca Revised parcel, which we have been told by Eyak could commence as soon as March 2nd -- the day after the moratorium expires -- the Trustee Council is very interested in preventing that imminent threat and coming to some resolution with Eyak -- in addition to

that, with regard to the land referred to as "the other lands" -- again, the Sheep Bay, Port Gravina, Windy and Simpson bay complex. So, the resolution that we all have copies of here that we're looking that is designed to modify the December 2nd resolution that we crafted. Perhaps we could consider this a supplement to that -- to remove the imminent threat of logging in Orca Revised, as well as to provide reaffirmation of our strong commitment to establish a deal with Eyak with regard to those other lands as well. I am downplaying the reference to the core land again because that particular negotiation is going well and really not subject for the discussions of today. With that, Deborah, perhaps we could go into maybe some discussion here if needed, and/or the reading of the "Therefore" section of the resolution.

MS. WILLIAMS: Phil, would you like to make a motion about your resolution -- Mr. Janik would like to make a motion about your resolution?

MR. JANIK: I move that the resolution be accepted that's all -- as referenced. And it would go through the section described as the "Therefore". For purposes of expediency, I think it will reveal the substance of what this proposal involves.

MS. WILLIAMS: Is there a second?

MS. BROWN: I second, Madam Chair.

MS. WILLIAMS: Thank you. It has been moved by Mr. Janik and seconded by Ms. Brown that the resolution, as prepared

by Forest Service, be adopted by the Trustee Council. I will be happy for the public to read the most relevant sections of the resolution. The resolution is, for the public's information, approximately six and a half pages long. I will not read the first three pages. Those go into much of the historic detail that Mr. Janik just related. I will, however, read the last two "Whereas" clauses, and then go into the "Therefore" segment of the resolution.

The last two "Whereas" clauses read as follows: " There is widespread public support for the acquisition of interest in the Other Lands and in the Orca Revised lands." And the last paragraph says: "The purchase of the interests in the Other Lands and the Orca Revised lands is an appropriate means to restore a portion of the injured resources and the lost or reduced services in the oil spill area. Acquisition of any interests in these lands is consistent with the Final Restoration Plan." "Therefore, we resolve to authorize funding for an offer to purchase a moratorium in the form of limited conservation easement on a portion of these lands, as detailed below, and to provide the funds, if the offer is accepted, in the amounts set forth below for the United States, acting through the Forest Service, to enter into appropriate agreements in conformity with applicable federal and state law to purchase and acquire these interests in the lands. Such agreements shall contain and are subject to the following conditions and terms: (a) The Trustee Council authorizes an offer to purchase a limited conservation

easement conveying to the United States the rights to the commercial timber located on the Orca Revised lands for a period of seven years. The purchase price for the interests in the Orca Revised lands shall be \$4,130,000. In order to provide an opportunity to negotiate permanent habitat protection with respect to the Other Lands, it is necessary to preserve the status quo of those lands. Accordingly, acceptance of this offer is subject to the donation by Eyak of a seven year conservation easement prohibiting all development, including commercial timber harvest, by Eyak, its agents, successors or assigns, on the Other Lands, except for such homesites under Eyak's Shareholder Land Use Program as may be negotiated with the Forest Service and agreed to by the Trustee Council. The donation of this conservation easement by Eyak shall not be subject to any shareholder approval of the conveyance of fee title in the Core Lands to the United States. (b) The acknowledgement of Eyak that it shall, in good faith, cooperate and negotiate with the Trustee Council to complete an agreement for the acquisition of permanent interests in the Other Lands that will further the purpose of restoration by the protection of the highly important habitat located on the Other Lands. (c) The purchase price for the interests in the Orca Revised lands shall be amortized on an annualized, pro-rata basis; any unamortized portion of that amount remaining at the closing of any subsequent purchase of interests in the Orca Revised lands shall be credited against the purchase price for those interests. (d) Authorization from Eyak

to complete the appraisal of the Other Lands. (e) The disbursement of funds from the Court Registry by the United States District Court for the District of Alaska -- hereafter "District Court". (f) No development inconsistent with the conservation easements proposed to be acquired shall take place on the Orca Revised lands or the Other Lands prior to the conveyance of interests in the Orca Revised lands. (g) A satisfactory hazardous substances survey is completed. (h) Satisfactory compliance with the National Environmental Policy Act and other applicable federal law. And, (i) An appropriate interest in the State of Alaska authorizing the State to enforce in a court of competent jurisdiction the restoration and conservation purposes for which this acquisition is made as set forth in this resolution and in any implementing purchase agreement." And I don't think I have to continue with the detail of the next sentence, but I will go on to the subsequent sentence -- "By unanimous consent, and upon execution of the purchase agreement and written notice from the Forest Service and the State of Alaska that the terms and conditions set forth herein and in the purchase agreement have been satisfied, we request the Alaska Department of Law and the Assistant Attorney General of the Environment and Natural Resources Division of the U.S. Department of Justice to petition the District Court for the withdrawal of the sum of \$4,130,000 to be paid at closing. These amounts represent the only amounts due under this resolution to Eyak by the United States or the State of Alaska from the joint

funds in the District Court Registry, and no additional amounts or interest are herein authorized to be paid to Eyak from such joint funds."

That is what the draft resolution, as presented by Forest Service, says. Is there discussion of the resolution?

MR. PENNOYER: An additional fact to consider, just to clarify that this agreement does not have any influence on current arrangements relative to property management for subsistence hunting and fishing and that type of thing. Perhaps we could include a clause in there to that effect.

MS. WILLIAMS: Yes, Mr. Pennoyer, that's a very good point. I believe we would like to clarify that this will not adversely impact Eyak's access and control of access to the land or their subsistence rights, and I think it is appropriate to include a clause to that effect.

MR. PENNOYER: Thank you.

MR. RUE: Madam Chair, do we need a motion to that effect?

MS. WILLIAMS: Yes. Would you like to move, Mr. Pennoyer, to amend the resolution to reflect that?

MR. PENNOYER: Yes, I move we amend it to retain those rights.

MS. WILLIAMS: Is there a second?

MR. RUE: I second that.

MS. WILLIAMS: Mr. Rue. It has been moved by Mr. Pennoyer and seconded by Mr. Rue that we add to the resolution a

statement saying that subsistence rights and access rights will not be -- of Eyak's -- will not be adversely affected by this offer. Any discussion of that amendment? Is there any opposition to that amendment? Hearing none, the amendment passes.

Further discussion of the resolution?

MR. JANIK: Deborah, this is Phil Janik. Just for those listening for a point of clarification to the Orca Revised parcel.

MS. WILLIAMS: Yes, Mr. Janik.

MR. JANIK: You reference in our resolution of December 2nd to development rights and public access, but as currently in the resolution and we are presently addressing does not in any way deal with any restrictions associated with those two items, but strictly a moratorium in the form of a limited conservation easement with regard to timber rights for a seven year period -- commercial timber rights.

MS. WILLIAMS: Yes. Is that the understanding of the Trustee Council?

MR. JANIK: That was not a suggested amendment, just a point of clarification.

MS. WILLIAMS: Yes, thank you, Mr. Janik. Is there any further discussion of the resolution? If I could, as chair, make a few overall observations, particularly for the benefit of the public that is listening to this Council meeting.

This has been a very challenging negotiation, and the

Trustee Council has tried sincerely to do what we could to facilitate a transaction to protect these lands. We decided upon -- or we may be about to decide upon a moratorium as, what we believe to be a creative way to protect the lands for seven years with, again, the hope and expectation that more permanent protection, particularly of the Other Lands but also the Orca Revised lands, will be forthcoming over those seven years. But our goal with this resolution, at least from my perspective is to provide needed protection for these very important lands, lands important not only for the entire state, but particularly for the people of Cordova. And I can certainly say that I hope that this offer will be agreeable to Eyak, that Eyak will see it as a creative solution to some of the challenges that we have faced in the past, and I believe it is a win-win solution under the circumstances, and one that will allow us to proceed into the future with protecting these lands.

Are there any other discussions concerning the resolution?

Ms. Brown, Mr. Pennoyer?

MR. PENNOYER: No, not from me.

MS. BROWN: No.

MS. WILLIAMS: Okay, Mr. Janik?

MR. JANIK: Not from me.

MS. WILLIAMS: And I see no hands here. All right, I believe then that we are prepared to vote on the motion. All in favor of the motion, as amended, please indicate by saying aye.

ALL TRUSTEES: Aye.

MS. WILLIAMS: All opposed? (No response) The motion has been unanimously adopted. Ms. McCammon would you like to talk about any plans that may be occurring in the next few days.

MS. McCAMMON: Thank you, Madam Chair. The Trustee Council has been invited by the Eyak board to meet with the board in Cordova tomorrow. It is the intent of the Council to send at least a delegation from the Council to meet with the board. Following that, we will be working with the mayor to have some kind of a community meeting or open house to discuss the new offer that the Council has presented today and answer any questions that the community may have on the negotiations.

MS. WILLIAMS: Is there any discussion from the board about the meeting in Cordova tomorrow? Very good. Hearing none, is there any additional discussion that the board would like to present at today's meeting? Hearing none, I will entertain a motion to adjourn.

UNIDENTIFIED VOICE: Recess or adjourn?

MS. WILLIAMS: I believe adjournment is in order.

MR. TILLERY: I move to adjourn.

MS. WILLIAMS: Is there a second?

MR. RUE: Here.

MS. WILLIAMS: Okay. It's been moved by Mr. Tillery and seconded by Mr. Rue to adjourn this meeting of the Exxon Valdez Trustee Council. All in favor?

ALL TRUSTEES: Aye.

MS. WILLIAMS: Any opposed? (No response) Thank you

very much, and again thank you all members of the public who have borne with us in this process, and we'll just hope it will be a successful process. Thank you.

UNIDENTIFIED VOICE: Yes, Deborah, could we get a copy of the resolution faxed to the LIO here in Cordova.

MS. WILLIAMS: You certainly can.

UNIDENTIFIED VOICE: Can we get one in Valdez too please.

MS. WILLIAMS: You certainly can, and let me just note that it will take just a few minutes because of the amendment that we will be adding to the resolution. So, I don't know if Maria is on the line, but it may be ten minutes, if that's all right.

UNIDENTIFIED VOICE: (Indiscernible) Eyak.

MS. WILLIAMS: Thank you.

UNIDENTIFIED VOICE: Could we recommend the Eyak office as well, out of courtesy.

MS. WILLIAMS: Indeed. Any further comments? Well thank you all for joining us.

(Off record at 2:26 p.m.)

E N D O F P R O C E E D I N G S

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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 03 through 15 contain a full, true, and correct transcript of the Exxon Valdez Oil Spill Settlement Trustees Council meeting taken electronically by LTD Court Reporters on February 22, 1995, commencing at the hour of 11:30 a.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 27th day of February, 1995.

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