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GIBBONS

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RECEIVED  
JUL 27 1992  
FILED  
BYVALDEZ OIL SPILL  
TRUSTEE COUNCIL  
ADMINISTRATIVE RECORDS  
JUN 18 1992

UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA  
By \_\_\_\_\_ Deputy

UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA

UNITED STATES OF AMERICA,

Plaintiff,

v.

EXXON CORPORATION, EXXON SHIPPING  
COMPANY, and EXXON PIPELINE COMPANY,  
et al., in personam, and the T/V  
EXXON VALDEZ, in rem,

Defendants.

No. A91-082 Civil

JOINT APPLICATION FOR  
FIRST DISBURSEMENT FROM  
SETTLEMENT ACCOUNT

On December 6, 1991 this Court ordered that all money paid into the Court or received by its officers in connection with the Exxon Valdez Oil Spill Settlement in this case and in State of Alaska v. Exxon Corp., A91-083 CIV (D. Alaska) be placed in an interest-bearing account in the Court Registry Investment System ("CRIS") administered through the United States District Court for the Southern District of Texas, and that an account entitled EXXON

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VALDEZ Oil Spill Settlement Account (the "Settlement Account") be established in the CRIS specifically for, and only for, settlement proceeds in this case and in State of Alaska v. Exxon Corp., Civ. No. A91-083 (D. Alaska). The Court further ordered that disbursements of settlement proceeds from the Registry of this Court were to be made upon joint application of counsel for the United States and the State, consistent with the provisions of the Memorandum of Agreement and Consent Decree entered by the Court in United States v. Alaska, No. A91-081 Civ. (D. Alaska), on August 28, 1991.

The State of Alaska and the United States (the "Governments") hereby jointly apply for disbursement of \$12,879,700 from the Settlement Account so that their natural resource trustee agencies might use such funds for the purposes of restoring, replacing, enhancing, rehabilitating or acquiring the equivalent of natural resources injured as a result of the EXXON VALDEZ oil spill and the reduced or lost services provided by such resources, over the seven-month period beginning March 1, 1992 and ending September 30, 1992.

The Trustee Council has concluded that disbursement of funds from the joint trust fund is necessary at this time in order to complete without interruption the damage assessment studies and restoration planning program.<sup>1</sup> Since March 1992, the Federal and

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<sup>1</sup> The Court recently reopened these cases (Nos. A91-082 Civil and A91-083 Civil) for the purpose, inter alia, of considering whether to set aside the consent judgments under Fed. R. Civ. P. 60(b)(3). See Order No. 80 (June 3, 1992). Order No. 80 states that the judgments have not been

State Trustee agencies implementing these programs have been expending, on an interim basis, regular appropriated funds while a long term budget was being prepared and reviewed at the direction of the Trustee Council. In April 1992, the Trustee Council issued for public comment a proposed work plan and budget covering the twelve month period from March 1, 1992 through February 28, 1993. With the commencement of the State's new fiscal year on July 1, 1992, no State appropriated funds are available to implement the proposals. Moreover, regular appropriated funds to continue the federal portion of this program are also limited. Accordingly, the governments request this court to disburse funds from the joint trust fund to cover the work to be performed through the end of September. Without the disbursement of these settlement funds at this time, the necessary contracts for field work cannot be executed and employees of some of the Trustee agencies engaged in this restoration work will have to be dismissed.

Appended to this application as Attachment A is the record of adoption by the Trustee Council of these actions, as well as a list detailing the amounts sought for disbursement to each of the trustee agencies and the use to which those monies will be put.<sup>2</sup>

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vacated. Id. at 13, n. 17. The Governments interpret the Order as allowing them to draw upon the Settlement Account despite the reopening of these cases. Although the Governments are very concerned about the implication of Order No. 80 that the consent decree could be vacated, and the possibility that amounts drawn from the Settlement Account might then need to be repaid, they believe that it is in the public interest to seek this disbursement in order to avoid disruption and delay of the restoration planning process.

<sup>2</sup> For the Court's information, the Governments have appended as Attachment B, a summary of Trustee activities since approval of the settlement.

The intended use of these monies comports with the terms of the Memorandum of Agreement and Consent Decree entered by the Court on August 28, 1991 in settlement of United States v. State of Alaska, A91-081 CIV (D. Alaska).<sup>3</sup>

Accordingly, the Governments request that those sums be withdrawn from the Account maintained by the CRIS and distributed to the accounts named in the proposed order which accompanies this Application.<sup>4</sup>

RESPECTFULLY SUBMITTED this 15<sup>th</sup> day of June, 1992 at Anchorage, Alaska.

ROGER CLEGG  
Acting Assistant Attorney General  
Environment & Natural Resources Division  
WILLIAM D. BRIGHTON  
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ATTORNEYS FOR THE UNITED STATES OF AMERICA

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<sup>3</sup> Section 207 of the Dire Emergency Supplemental Appropriation Act of 1992, P.L. 102-229 (enacted 12/12/92) authorizes the expenditure of and appropriates the Federal interest in the settlement funds for necessary expenses for assessment and restoration.

<sup>4</sup> Distribution should be in accord with the instructions contained in Attachment C.

CHARLES E. COLE  
ATTORNEY GENERAL

  
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ATTORNEYS FOR THE STATE OF ALASKA

CERTIFICATE OF SERVICE

I, Regina R. Belt, hereby certify that I have served a true copy of the foregoing JOINT APPLICATION FOR FIRST DISBURSEMENT FROM SETTLEMENT ACCOUNT and the ORDER REGARDING DISBURSEMENT OF SETTLEMENT PROCEEDS on the following persons this 15<sup>th</sup> day of June, 1992 by placement of the same in United States first class mail, postage prepaid:

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Pouch K  
Juneau, Alaska 99811

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JOINT APPLICATION FOR FIRST DISBURSEMENT  
FROM SETTLEMENT ACCOUNT - 5

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Burr, Pease & Kurtz, P.C.  
810 N Street  
Anchorage, Alaska 99501

Date: June 15, 1992

Regina R. Belt  
Regina R. Belt  
United States Department of Justice  
645 G Street  
Anchorage, Alaska 99501  
(907) 278-8012

# EXXON VALDEZ OIL SPILL SETTLEMENT

## Project Summary by Agency

March 1, 1992 - September 30, 1992

<u>AGENCY</u>	<u>AGENCY TOTAL</u>
1. Alaska Department of Fish & Game	\$4,882,600
2. Alaska Department of Natural Resources	1,100,800
3. Alaska Department of Environmental Conservation	<u>575,800</u>
Subtotal	\$6,559,200
4. U.S. Department of Agriculture	2,739,400
5. U.S. Department of the Interior	1,708,600
6. National Oceanic & Atmospheric Administration	<u>1,872,500</u>
Subtotal	\$6,320,500
Total	\$12,879,700

 Date 6/9/92

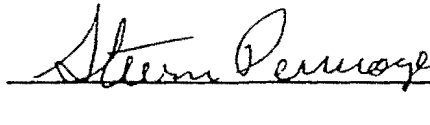
MICHAEL A. BARTON  
Regional Forester,  
Alaska Region  
USDA Forest Service

 Date 6-9-92

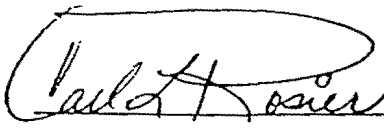
CHARLES E. COLE  
Attorney General  
State of Alaska

 Date 6/12/92

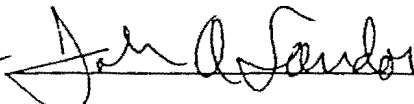
CURTIS V. MCVEE  
Special Assistant to the  
Secretary  
U.S. Department of the Interior

 Date 6/7/92

STEVEN PENNOYER  
Director, Alaska Region  
National Marine  
Fisheries Service

 Date 6/9/92

CARL L. ROSIER  
Commissioner  
Alaska Department of Fish  
and Game

 Date 6/7/92

JOHN A. SANDOR  
Commissioner  
Alaska Department of  
Environmental Conservation



# EXXON VALDEZ TRUSTEE COUNCIL

SEVEN MONTH PROJECT BUDGETS  
MARCH 1, 1992 - SEPTEMBER 30, 1992

Agency	Project Number	Project Title	Seven Month Budget
ADEC	AD	Administrative Director's Office	\$144.8
ADEC	RT	Restoration Team	365.0
ADEC	AW1	Surface Oil Maps	3.0
ADEC	ST1B	Subtidal Microbial	17.1
ADEC	ST3B	Sediment Traps Damage Assessment	45.9
		Subtotal	\$575.8
ADF&G	AD	Administrative Director's Office	\$0.0
ADF&G	RT	Restoration Team	305.6
ADF&G	B11	Harlequin Ducks Damage Assessment Closeout	22.9
ADF&G	FS1	Spawning Area Injury	55.4
ADF&G	FS2	Pre-emergent Fry	25.6
ADF&G	FS3	Coded-Wire Tags Damage Assessment	82.1
ADF&G	FS4A	Early Marine Salmon Damage Assessment	94.1
ADF&G	FS5	Dolly Varden Damage Assessment	21.6
ADF&G	FS11	Herring Injury	219.1
ADF&G	FS13	Clam Injury	64.0
ADF&G	FS27	Sockeye Salmon Overescapement	385.7
ADF&G	FS28	Run Reconstruction	169.4
ADF&G	FS30	Database Management	126.7
ADF&G	R47	Stream Habitat Assessment	251.3
ADF&G	R53	Kenai River Sockeye Salmon Restoration	371.1
ADF&G	R59	Genetic Stock ID	215.3
ADF&G	R60AB	Prince William Sound Pink Salmon	871.9
ADF&G	R60C	Pink Salmon Egg/Fry	228.4
ADF&G	R71	Harlequin Ducks Restoration and Monitoring	281.5
ADF&G	R73	Harbor Seals	12.5
ADF&G	R90	Dolly Varden Char Monitoring	91.5
ADF&G	R102	Coastal Habitat Restoration	375.7
ADF&G/(NOAA/DOI-NPS&FWS)	R103	Oiled Mussels	148.4

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ATTACHMENT A

1992

FORM 1B  
AGENCY SUMMARY

# EXXON VALDEZ TRUSTEE COUNCIL

SEVEN MONTH PROJECT BUDGETS  
MARCH 1, 1992 - SEPTEMBER 30, 1992

Agency	Project Number	Project Title	Seven Month Budget
ADF&G/(USFS)	R105	Instream Survey Restoration Implementation Planning	160.2
ADF&G	R106	Dolly Varden Restoration	34.9
ADF&G	R113	Red Lake Sockeye Salmon Restoration	28.0
ADF&G	ST2A	Shallow Benthic	67.7
ADF&G	ST2B	Deep Water Benthos	44.9
ADF&G	ST5	Shrimp	47.7
ADF&G	ST6	Rockfish Damage Assessment	8.3
ADF&G	TM3	River Otter & Mink Damage Assessment in Pr. Wm. Sound	71.1
		Subtotal	\$4,882.6
ADNR	AD	Administrative Director's Office	\$433.8
ADNR	RT	Restoration Team	283.0
ADNR	ARC1	Archaeological Survey	160.0
ADNR/(DOI-FWS)	R92	GIS Mapping and Analysis; Restoration	35.2
ADNR/(DOI-FWS)	R104A	Site Stewardship	40.0
USFS)			
ADNR/(DOI-FWS)	TS3	GIS Mapping and Analysis; Damage Assessment	148.8
		Subtotal	\$1,100.8
IOAA	AD	Administrative Director's Office	\$231.1
NOAA	RT	Restoration Team	210.6
NOAA	CH1B	Hydrocarbons in Mussels	31.2
NOAA	FS4B	Juvenile Pinks	66.9
NOAA	MM1	Humpback Whales Damage Assessment	5.0
NOAA	MM2	Killer Whales Damage Assessment	4.5
NOAA/(DOI-NPS& FWS/ADF&G)	R103	Oiled Mussels	261.0
NOAA	ST1A	Subtidal Sediments	72.2

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ATTACHMENT A

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FORM 1B  
AGENCY SUMMARY

# EXXON VALDEZ TRUSTEE COUNCIL

SEVEN MONTH PROJECT BUDGETS  
MARCH 1, 1992 - SEPTEMBER 30, 1992

Agency	Project Number	Project Title	Seven Month Budget
NOAA	ST3A	Caged Mussels Damage Assessment	23.3
NOAA	ST4	Fate and Toxicity Damage Assessment	28.2
NOAA	ST7	Demersal Fishes Damage Assessment	39.2
NOAA	ST8	Sediment Data Synthesis	113.1
NOAA/(DOI-FWS)	TS1	Hydrocarbon Analysis	786.2
		Subtotal	\$1,872.5
USFS	AD	Administrative Director's Office	\$718.2
USFS	RT	Restoration Team	473.5
USFS	CH1A	Coastal Habitat Damage Assessment	1,415.0
USFS/(DOI-FWS)	R15	Marbled Murrelet Restoration	60.9
USFS/(DOI-FWS/ADNR)	R104A	Site Stewardship	4.9
USFS	R105	Instream Survey	66.9
		Subtotal	\$2,739.4
DOI	AD	Administrative Director's Office	\$30.8
DOI	RT	Restoration Team	176.0
DOI-NPS/(ADF&G/NOAA/DOI-FWS)	R103	Oiled Mussels	51.9
DOI-FWS	B2	Boat Surveys	48.5
DOI-FWS	B3	Murres Damage Assessment Closeout	75.7
DOI-FWS	B4	Eagles Damage Assessment Closeout	60.6
DOI-FWS	B6	Marbled Murrelets Damage Assessment Closeout	24.8
DOI-FWS	B7	Storm Petrels Damage Assessment Closeout	7.5
DOI-FWS	B8	Kittiwakes Damage Assessment Closeout	7.5
DOI-FWS	B9	Pigeon Guillemots Damage Assessment Closeout	18.0
DOI-FWS	B12	Shorebirds Damage Assessment Closeout	20.7
DOI-FWS	MM6	Sea Otters Damage Assessment	145.8

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ATTACHMENT A

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FORM 1B  
AGENCY SUMMARY

# EXXON VALDEZ TRUSTEE COUNCIL

SEVEN MONTH PROJECT BUDGETS  
MARCH 1, 1992 - SEPTEMBER 30, 1992

Agency	Project Number	Project Title	Seven Month Budget
DOI-FWS	R11	Murre Restoration Recovery Monitoring	260.2
DOI-FWS/(USFS)	R15	Marbled Murrelet Restoration	277.0
DOI-FWS/(ADNR)	R92	GIS Mapping and Analysis Restoration Technical Support	36.0
DOI-FWS/(NOAA/	R103	Oiled Mussels	108.9
DOI-NPS/ADF&G)			
DOI-FWS/(USFS/	R104A	Site Stewardship	62.0
ADNR)			
DOI-FWS/(NOAA)	TS1	Hydrocarbon Analysis	176.6
DOI-FWS/(ADNR)	TS3	GIS Mapping and Analysis Damage Assessment	120.1
		Subtotal	\$1,708.6
		Total	\$12,879.7

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ATTACHMENT A

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FORM 1B  
AGENCY SUMMARY

## SUMMARY OF POST-SETTLEMENT TRUSTEE ACTIVITIES

The Memorandum of Agreement and Consent Decree, approved and entered on August 28, 1991 in United States v. State of Alaska, Civil Action No. A91-081 CV, provides that the Trustees shall: (1) agree to an organizational structure for decision making; (2) establish procedures providing for meaningful public participation which shall include establishment of a public advisory group; and (3) establish standards and procedures governing the joint use and administration of all natural resource damage recoveries. A summary of Trustee activities towards accomplishment of these requirements follows.

### 1. Organizational Structure

Under the Memorandum of Agreement and Consent Decree, the Trustees are responsible for making all decisions regarding injury assessment and restoration activities. The Federal Trustees have designated representatives to an Alaska-based Trustee Council, with the State of Alaska Trustees representing themselves on the Trustee Council. The Trustee Council has approved an organizational structure, which includes the appointment of an interim Administrative Director and a Restoration Team to take on the day-to-day management and administrative functions of the Trustee Council for implementation of the restoration program. The Trustee Council has formed various work-groups from agency staff to work on components of the restoration program, such as restoration planning, finance, public participation, and habitat evaluation and protection.

### 2. Public Participation

The Trustee Council has established procedures providing for meaningful public participation in the injury assessment and restoration process. Public participation in the restoration process has been identified as an integral part of that process. The goals and objectives of the Trustee Council public participation program are to: (1) invite and encourage public review and comment on the development and implementation of restoration programs; (2) provide the public with information and resources to evaluate restoration proposals and programs independently; (3) involve relevant constituencies; (4) disseminate information in a timely manner; (5) help identify the significant restoration issues; and (6) ensure that the Trustee Council receives and understands the advice from the public.

**A. Information availability.** In early April, the Trustee Council released for review and comments by the general public, the 1992 Draft Work Plan which included a proposed budget for assessment and restoration projects for the period March 1, 1992 through February 28, 1993, totalling \$13,890,800, and a proposed Restoration Framework Plan. These documents were made available for inspection at the Oil Spill Public Information Center ("OSPIC") in Anchorage, and more than 2,000 copies were mailed to members of the public who had expressed an interest in reviewing them.

Comments on these materials were due on June 4, 1992. Approximately 240 comments were received, of which approximately 80 related to the work plan/budget. As the comments submitted were not received until the very end of this period, the Trustee Council has divided the budget into two portions, one for the period of March 1 to September 30, 1992, and the other for the period of October 1, 1992 to February 28, 1993.

The Trustee Council is seeking funding only for the earlier period, in order that the public comments can be carefully evaluated and reflected in a second filing to be made for disbursement of Joint Trust Funds. It is anticipated that this second filing would take place no later than September 1, 1992. The Trustee Council has instructed that the budget comments are to be expeditiously summarized and reviewed by the staff, in order that the Trustee Council can consider any necessary changes to the work plan and budget no later than August 1, 1992. Comments on the Restoration Framework document, along with other comments from the public which have been received by the Council and its working groups, will be utilized in preparing a Draft Restoration Plan and a Draft Environmental Impact Statement for the restoration program.

Information on the proposed completion of the damage assessment activities and restoration program has also been available to the public in the course of the meetings of the Trustee Council. Except for certain very limited purposes, e.g., discussion of confidential personnel matters, all meetings of the Council have been conducted before the public, and only after advance notice of the meeting has been published in appropriate Alaska newspapers. A time for public comment on the matters being discussed has and will be set aside at each meeting. These meetings have generally utilized the state's teleconferencing facilities in order that the public located throughout the spill area can listen and participate in them. In addition, transcripts

of the Council's seven public meetings, handout materials used at these meetings, and other planning documents are routinely made available for inspection by the public at OSPIC, as well as mailed to anyone requesting them.

In addition, on June 1, 1992, the Trustee Council made available to the public at OSPIC information immediately available regarding the NRDA scientific studies, including interim and final reports and detailed study plans. The collection and organization of this information continues, and as new information becomes available it will be added to the public collection. These materials will assist the public in evaluating future restoration proposals from the Trustee Council as well as to formulate their own recommendations.

**B. Community Meetings.** Since the settlement agreement, the Trustee Council has conducted two rounds of public meetings. In December of 1991, the Trustee Council initiated a process of public meetings and solicitation of written comments regarding public participation. Public meetings began in January of 1992 and were held in Homer, Seward, Valdez, Tatitlek, Cordova, Chenega Bay, Kodiak, Juneau, Anchorage, and Fairbanks. Comments received were evaluated and recommendations given to the Trustee Council regarding the role, structure, and operating procedures for the Public Advisory Group.

The second round of public meetings has just been completed and has provided the public with an opportunity for review and comment on the Restoration Framework, the 1992 Draft Work Plan and the principal interest composition of the Public Advisory Group. Communities visited included Homer, Seward, Valdez, Cordova, Seldovia, Kodiak, Juneau, Tatitlek, Whittier, Anchorage, Chenega Bay, and Fairbanks.

**C. Public Advisory Group.** In establishing a public advisory group as required by the Memorandum of Agreement and Consent Decree the Trustee Council has decided to follow the Federal Advisory Committee Act. The Public Advisory Group will consist of concerned citizens who are to advise the Trustees on matters specified in the Memorandum of Agreement and Consent Decree. The Trustee Council has identified the following interests and constituencies to be represented on the Public Advisory Group: aquaculture, commercial fishing, commercial tourism, environmentalists, conservationists, forest products, local governments, native landowners, recreational users, sport fishing and hunting, subsistence users, science/academia, and the public-at-large. A large scale mailing,

Federal Register and newspaper notices soliciting public nominations for these interests has been completed with the scheduled formation of the Public Advisory Group proposed before August, 1992.

A charter for the Public Advisory Group has been approved by the Trustee Council and will be filed with the General Services Administration in compliance with the Federal Advisory Committee Act. Additionally, the Trustee Council has approved draft operating procedures for the Public Advisory Group to be used in the solicitation process to help inform the public of the proposed role of the group. The draft operating procedures will be finalized following appointment of members to the Public Advisory Group.

### **3. Financial Procedures.**

The Trustee Council has tentatively approved a set of financial operating procedures to govern the use and administration of the natural resources damage recoveries. The goal of the procedures is to ensure public trust and accountability while maximizing the Trustees' ability to utilize settlement funds for approved restoration activities. General administration expenses by the Trustees will be kept to a minimum, or in some cases foregone altogether, to provide for the largest amount of funds for restoration activities.

### **4. 1992 Work Plan Activities.**

The proposed activities for 1992 fall into two main categories, Damage Assessment and Restoration. Damage assessment projects are those necessary to complete or support the orderly completion of Natural Resources Damage Assessment studies that were begun after the Exxon Valdez oil spill. Most of the proposed damage assessment projects will result in completion of final reports in 1992, which will be used to support future restoration activities. Restoration activities include restoration planning, technical support, recovery monitoring, implementation planning, manipulation/enhancement projects, habitat protection planning and management actions. The costs for damage assessment and restoration, as well as administrative costs including the Administrative Director's office, Restoration Team and Working Groups, for the period March 1 to September 30, 1992, total \$12,879,700. The damage assessment and restoration projects are detailed in the 1992 Draft Work Plan released for public comment in April.



ATTACHMENT C

Payment to the United States

1. Payment should be in the amount of \$6,320,500.
2. The payment instrument should be made payable to the Department of the Interior and must contain the reference: "Exxon Valdez Oil Spill Settlement Funds from Federal/State of Alaska Joint Fund".
3. The check will be picked up at the Clerk's office by a representative of United States Department of Justice.

Payment to the State of Alaska

1. Payment should be in the amount of \$6,559,200.
2. The payment instrument should be made payable to the State of Alaska.
3. The check will be picked up at the clerk's office by a representative of the Department of Law for State of Alaska.