

TRUSTEE COUNCIL
MEETING TRANSCRIPTS
FEBRUARY 22, 1995

EXXON VALDEZ OIL SPILL SETTLEMENT TRUSTEE COUNCIL

RESTORATION OFFICE
Simpson Building
645 G Street
Anchorage, Alaska

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EXXON VALDEZ OIL SPILL
TRUSTEE COUNCIL
ADMINISTRATIVE RECORD

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 GOOSENS

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. GOOSENS: 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.

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

5 MR. JANI: The purpose of the executive session
6 would be to discuss the Eyak land negotiations -- land
7 acquisition negotiations.

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

11 ALL TRUSTEES: Aye.

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

17 UNIDENTIFIED VOICE (Juneau): No.

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

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

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

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

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

25 MR. JANI: Yes.

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

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

14 MR. JANIK: Yes, and thank you, Deborah. Perhaps it
15 would be a good idea to provide a little bit of background here
16 in terms of some highlights of events that have brought us today.
17 December 2nd, if I may go back that far, the Trustee Council
18 passed a formal resolution which had three major components that
19 dealt with matters related to land acquisition negotiations with
20 Eyak and the Trustee Council, and that dealt with the so-called
21 core lands to be acquired in fee simple -- those negotiations are
22 continuing and moving along quite well as we see it. The
23 subjects of interest for today's session involve more so the
24 parcels referred to as Orca Revised, and during -- excuse me, in
25 the December 2nd resolution the Trustee Council made a commitment
26 to pursue establishing a conservation easement for Orca Revised,

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

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

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

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

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

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

23 MS. WILLIAMS: Is there a second?

24 MS. BROWN: I second, Madam Chair.

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

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

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

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

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

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

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

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

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

16 MR. PENNOYER: Thank you.

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

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

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

23 MS. WILLIAMS: Is there a second?

24 MR. RUE: I second that.

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

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

6 Further discussion of the resolution?

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

10 MS. WILLIAMS: Yes, Mr. Janik.

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

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

20 MR. JANI: That was not a suggested amendment, just
21 a point of clarification.

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

26 This has been a very challenging negotiation, and the

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

17 Are there any other discussions concerning the resolution?
18 Ms. Brown, Mr. Pennoyer?

19 MR. PENNOYER: No, not from me.

20 MS. BROWN: No.

21 MS. WILLIAMS: Okay, Mr. Janik?

22 MR. JANIK: Not from me.

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

26 ALL TRUSTEES: Aye.

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

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

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

17 UNIDENTIFIED VOICE: Recess or adjourn?

18 MS. WILLIAMS: I believe adjournment is in order.

19 MR. TILLERY: I move to adjourn.

20 MS. WILLIAMS: Is there a second?

21 MR. RUE: Here.

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

25 ALL TRUSTEES: Aye.

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

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

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

6 MS. WILLIAMS: You certainly can.

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

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

14 UNIDENTIFIED VOICE: (Indiscernible) Eyak.

15 MS. WILLIAMS: Thank you.

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

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

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

21 END OF PROCEEDINGS

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23 ///

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26 ///

CERTIFICATE

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

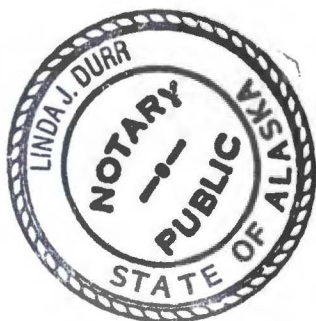
I, Linda J. Durr, a notary public in and for the State of Alaska and a Certified Professional Legal Secretary, do hereby certify:

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

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