

TRUSTEE COUNCIL
MEETING TRANSCRIPTS
FEBRUARY 24, 1995

EXXON VALDEZ OIL SPILL SETTLEMENT TRUSTEE COUNCIL

RESTORATION OFFICE
Simpson Building
645 G Street
Anchorage, Alaska

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Trustee Council Teleconference Meeting
EXXON VALDEZ OIL SPILL
TRUSTEE COUNCIL
ADMINISTRATIVE RECORD

Anchorage, Alaska
February 24, 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
MS. REBECCA WILLIAMS	
MS. L.J. EVANS	Information Officer, EVOS Trustees Council, present in Anchorage

OTHERS PRESENT in Anchorage

MR. ART WEINER

OTHERS PRESENT in Washington, D.C.

MR. BARRY ROTH

MR. DAN SAKURA

PUBLIC on line at other locations

MR. RICK STEINER	Alaska SEA Grant, Cordova
MR. JAMES MYKLARS	Cordova District Fishermen United, Cordova
MS. ANN BRUNNER	Bogle & Gates, Anchorage
MS. LISA MARIE JACOBS	Cordova District Fishermen United, Cordova
MS. MARIA LISOWSKI	

P R O C E E D I N G S

(Executive Session 11:30 a.m. - 1:22 p.m.)

(On Record at 1:23 p.m.)

MS. WILLIAMS: I would like to call the meeting of the Exxon Valdez Oil Spill Trustee Council back to order. We began this meeting, February 24, 1995 meeting, at approximately 11:30 today and went immediately into executive session to discuss the Eyak negotiations, and we have now concluded our executive session and will resume our public session. On the phone are the following trustees: Steve Pennoyer, representing NOAA; Michelle Brown, representing Alaska Department of Environmental Conservation; Craig Tillery, representing the Attorney General's Office; Frank Rue, representing the Alaska Department of Fish & Game; Phil Janik, representing the U.S. Forest Service; and Deborah Williams, representing the Department of Interior. This is Deborah Williams chairing the meeting. Thank you everyone from the public who is joining us.

Phil, would you like to begin, please.

MR. JANI: Yes. What I'd like to do, Deborah, is maybe just cover the sequence of events, including yesterday's meeting that we had with the Eyak board in Cordova, as well as a public meeting session in Cordova. It lasted about two hours and represented the very passionate interaction among the community with the Trustee members that were there and others. But if I go back at least as far as December 2nd when we had the broad resolution and the offer to Eyak with regard to all of the

1 parcels that are currently being negotiated, which includes the
2 Orca Revised, so-called Other Lands, and the Core Parcel. I'd
3 like to just mention the Core Parcel here quickly so as not to
4 have to come back to it because it is really not under any
5 deliberation at this point in terms of contentious issues. That
6 is moving along and we will continue to do that. The items that
7 were addressed in the resolution on December 2nd with regard to
8 Orca Revised called for pursuing a long-term acquisition of
9 commercial timber rights in the Orca Revised parcel, and also
10 addressed some expectations regarding development rights and
11 public access rights from Eyak. As we have proceeded in
12 negotiations with regard to the Orca Revised parcel, through
13 several pieces of correspondence between Eyak and the Trustees,
14 as well as verbal discussions and negotiations, we have been
15 unable to come to resolution on the development right issue, and
16 that still remains not having been closed in terms of
17 expectations there for the long-term negotiations on Orca
18 Revised. With regard to the Other Lands, there was a five year
19 moratorium on commercial timber rights for the Other Lands -- and
20 I'll save some further comments on those lands for later. But
21 let me focus in still here on the Orca Revised portion, because
22 that is the focus of the current disagreement between Eyak and
23 the Trustee Council. We also were faced with a March 2nd
24 expiration of a moratorium on the harvesting of trees that was
25 negotiated with Eyak last May, and as that date approaches Eyak
26 has made it very clear that they expect to do logging, commence

1 logging, on March 2nd on the Orca Revised parcel. So, in
2 addition to the December 2nd resolution, looking at the longer
3 term arrangement, the Trustee Council tried to respond to the
4 imminent threat of the commencement of logging defined by Eyak on
5 March 2nd, and we supplemented the December 2nd resolution with a
6 more current modified offer than to simply deal with the short
7 term to try to get us past that March 1 deadline and provide the
8 opportunity to continue negotiations on the parcels. What was
9 offered up as in the form of kind of an interim measure was a
10 seven year moratorium on commercial timber activity by Eyak in
11 the Orca Revised parcel and no other restrictions -- meaning, no
12 other restrictions on development rights or any other features.
13 In exchange for that, the Government would receive -- oh, excuse
14 me -- the Government would pay 4.13 million dollars. That number
15 does not, and I repeat, does not represent in technical terms
16 what is referred to as a fair market value in the form that it
17 has been used by the Trustee Council in the appraisal process,
18 but rather an estimate by state and federal government appraisers
19 of what the opportunity costs to Eyak are worth for that seven
20 year period, discounted back in time to the present. So, in
21 exchange for the seven year commercial timber harvest moratorium,
22 Eyak would receive 4.13 million dollars. That was reflected in
23 the most recent offer presented to them by the Trustee Council.

24 Also stated in that supplementary resolution was reference
25 to the Other Lands, the complex that includes Sheep Bay, Port
26 Gravina, Hopkins Island and other areas with interests -- habitat

1 interests and resource interests -- that the Council has. As a
2 condition of the supplementary resolution, there would be a seven
3 year commercial timber harvest moratorium in the form of a
4 limited conservation easement there as well, and there also would
5 be a moratorium on development rights in those Other Lands, with
6 the exception that the Eyak Shareholder Homesite Development
7 proposals that may come forward -- or plans -- would be
8 negotiated with the Council as represented by the Forest Service.
9 So, we recognize the importance of homesite development by the
10 Eyak shareholders. We wanted to provide some flexibility there
11 to make sure those particular kinds of development would be
12 provided for as long as those did not exceed any threshold that
13 would compromise why it is we're interested in those -- also with
14 regard to value to resources -- injured resources.

15 And then, again, the Core Land parcel -- not much said in
16 the resolution regarding that, other than we would continue to
17 pursue negotiations and bring that deal to closure as best
18 possible.

19 That supplementary resolution with those provisions I just
20 stated were considered by the Eyak board. We met with them
21 personally, face-to-face, as I said, in Cordova yesterday, and
22 those provisions were not accepted by the Eyak Corporation as
23 represented by their board. In response to those provisions,
24 Eyak brought forward the following counteroffer, and that
25 represented a price of 15 -- that's one-five -- \$15,000,000 to
26 represent what they place the value on the moratorium suggested

1 by the Trustee Council, as well as a provision that if money was
2 in hand from the Trustee Council by March 1st, the only way that
3 the commencement of harvesting could be delayed any further in
4 the Orca Revised would be to receive a payment from the Council
5 of \$100,000 per day -- and once bankable money, as it was being
6 referred to, and whatever deal could be arranged would be
7 received, then that compensation on a daily basis would then
8 cease. But that was the condition presented by Eyak as a
9 counteroffer. (Aside comments)

10 The other item that Eyak brought forward yesterday in
11 Cordova was to go back to a -- respond -- our December 2nd
12 resolution on our offer, which involved some additional
13 flexibility in development rights as they expressed those as
14 compared to their original position, and that involved just in a
15 general sense, I don't have the figures right in front of me
16 here, but it was during the first 10 years in Orca Revised some
17 652 acres, I believe, would be retained as unrestricted
18 development rights throughout the entire Orca Revised parcel;
19 during the period of 11 to 35 years, an additional 652 acres
20 would be added to the original 652 for unrestricted development
21 rights, and then after 35 years all development restrictions
22 would be moot. That basically was what Eyak was suggesting to
23 the Council as an explanation or a description of what would be
24 acceptable to them with regard to our December 2nd resolution.
25 Again, for emphasis, development rights have proven to be a bone
26 of contention here in the Orca Revised parcel.

1 We are here today now to discuss the counter-proposal that I
2 just described -- counteroffer -- that we were presented in
3 Cordova yesterday from the Eyak board and to decide on what our
4 response should be to that counteroffer. Any discussion on that
5 by any of the members at this point I would encourage.

6 MS. WILLIAMS: Yes, who would like to discuss the --
7 either the counteroffer or what you would propose the Trustee
8 Council do at this point? Mr. Janik, would you like to make your
9 recommendation?

10 MR. JANIK: Yes. In considering all of the events
11 that have taken place and the firmness in which Eyak has
12 presented their counteroffer to us, especially with the
13 commencement of logging on March 2nd with the conditions they've
14 stated as reasons for going forward, as well as the things
15 they've presented as the only means in which they would delay
16 that, also in my mind is left with the following possibility in
17 response. I believe that the Council's December 2nd resolution
18 is still a valid resolution in terms of our long-term interests
19 in all of the parcels involved in the negotiations with Eyak. I
20 think we should re-affirm the importance of that as being our
21 anchoring position, if you will, in terms of our interests in
22 these resources and pursuing negotiations along those lines. I
23 do think we need to reaffirm our strong desire to try to deal
24 with the imminent threat. Second, not only is the Council very
25 much interested in contributing to delaying timber harvesting
26 there in whatever way possible that's acceptable to parties, but

1 I know that many people in the community of Cordova are very
2 concerned about such events commencing, and, in fact, there are
3 interests beyond Cordova and even the State of Alaska on that
4 point, and we would still put forward the mechanisms that we have
5 described in our most recent supplement offer as a means to deal
6 with that should Eyak, upon reconsideration, find those
7 acceptable. I'd also like to emphasize in that we have heard
8 from many people that if we appear to be getting in an impasse
9 with regard to the Orca Revised parcel, and I would suggest we
10 may be approaching that if we're not there already, depending on
11 Eyak's response to what we decide here today, that we certainly
12 demonstrate the Council's willingness and eagerness and full
13 commitment to (indiscernible) any types of mediation sessions.
14 Those should be looked upon as being non-binding of course, but
15 nevertheless enter into those mediation sessions with Eyak to see
16 if these issues that are at contention and that we are in
17 disagreement on can be resolved leading to a mutually agreed upon
18 solution, and I would definitely recommend and move that we
19 include that offer within the context of the other substantive --
20 of our correspondence with Eyak. I would I guess stop there.

21 MS. WILLIAMS: Very good. Would other Council members
22 like to comment on Mr. Janik's statement? (No response) Well,
23 let me comment if I could, just briefly. I do think that it is
24 time to specifically offer to Eyak our willingness to enter into
25 mediation, understanding of course that any mediation result
26 would have to be approved by the boards of Eyak and the Trustee

1 Council. But that to make the Trustee Council available at
2 Eyak's time convenience and place convenience, available to
3 mediation, we would of course have to agree with Eyak on an
4 appropriate mediator or a mediation format, but that I think we
5 have tried very hard to resolve this important issue, that we
6 have as yet unfortunately not succeeded, and that it is time to
7 see if an outside mediator can assist in this process and resolve
8 this important issue. So, I certainly agree, Mr. Janik, with
9 your recommendation in that regard. Mr. Tillery, did I hear your
10 voice?

11 MR. TILLERY: No.

12 MS. WILLIAMS: No.

13 MR. RUE: Deborah, this is Frank Rue.

14 MS. WILLIAMS: Very good, Frank.

15 MR. RUE: I would concur with you that I think we
16 did try hard. I thought it was a good offer for an important
17 parcel that a lot of people in Cordova cared about, and I think
18 mediation maybe a way for the two parties to come to some
19 resolution. I would hope so. So, I think that's a good -- a
20 good idea.

21 MS. WILLIAMS: Okay.

22 MR. JANIK: Deborah, I have another comment -- Phil
23 Janik.

24 MS. WILLIAMS: Yes, Phil.

25 MR. JANIK: In discussion with the Eyak board
26 yesterday on this subject of mediation, we were still faced -- I

1 think we definitely need to go to them with that offer, but the
2 March 2nd date was still one that they were firmly standing on as
3 a date important to them in terms of commencing timber harvests,
4 and I think our offer for mediation needs to carry with it a
5 sense of urgency in time . . .

6 MS. WILLIAMS: Yes.

7 MR. JANIK: . . . or a reconsideration of their part
8 of delaying that commencement of timber harvesting until we have
9 time to work through mediation.

10 MS. WILLIAMS: Yes, indeed. Any other comments?
11 Steve? Michelle?

12 MR. PENNOYER: Deborah, I agree with you. I think we
13 have tried hard, and we have definitely, I think, emphasized the
14 importance of both Orca Narrows and the Other Lands involved on
15 the east side of Prince William Sound, and I think that still
16 remains a very high priority for many of us, and so I agree with
17 you completely that if the next chore is mediation on both Orca
18 Narrows and on the development considerations on Other Lands, I'm
19 all for it.

20 MS. WILLIAMS: Michelle?

21 MS. BROWN: This is Michelle. I concur particularly
22 with Mr. Janik's point on the urgency of beginning mediation. I
23 think we have two offers that have been crafted to be responsive
24 to the concerns that have been raised on the table, and I would
25 hope that Eyak will take these in good faith and begin the
26 negotiations proffered through a mediator with us.

1 MS. WILLIAMS: Thank you. Mr. Tillery?

2 MR. TILLERY: I concur.

3 MS. WILLIAMS: Okay. I would entertain a motion.

4 MR. JANI: This is Phil Janik. I move that the

5 board of Trustees accept the proposal as I described it in terms

6 of what should be the content of our response to Eyak with regard

7 to their counteroffer and the substance of our two earlier

8 offers.

9 MR. RUE: I would second that.

10 MS. WILLIAMS: Seconded -- all the board members feel

11 comfortable with the contents of the motion. I'll briefly I

12 think, if I could, paraphrase. The board moves to recommend or

13 propose to Eyak that we enter into mediation at the earliest

14 available opportunity, being mindful of the March 2nd deadline

15 that they have prescribed; that we are willing to meet them at

16 their time and location of choice; and that we would agree upon -

17 - have to mutually agree upon a mediator; and that the mediation

18 would be subject to each board's approval; that we do reject

19 their counteroffer and that we do reassert our desire to go

20 forward with either of the prior offers that we have made and

21 encourage Eyak to accept either offer. Is there anything else in

22 the motion?

23 MR. TILLERY: There is just a point of minor

24 clarification.

25 MS. WILLIAMS: Yes.

26 MR. TILLERY: Everyone knows that the references to

1 the board, at least on our behalf, means -- is the Trustee
2 Council.

3 MS. WILLIAMS: Yes. Thank you. Okay, any additional
4 discussion regarding the motion? Okay, it's been moved by Mr.
5 Janik and -- was it seconded by Mr. Rue?

6 MR. RUE: Yes.

7 MS. WILLIAMS: Yes. Seconded by Mr. Rue to go forward
8 with the motion as described. All in favor say aye.

9 ALL TRUSTEES: Aye.

10 MS. WILLIAMS: Opposed? (No response) It is
11 unanimously adopted. Is there any further business to bring
12 before the Council today?

13 MS. McCAMMON: Madam Chair, this is Molly McCammon.

14 MS. WILLIAMS: Yes.

15 MS. McCAMMON: Just as a point of follow-up on this, I
16 would assume that -- Phil -- that the Forest Service will take
17 the lead in drafting the response to Eyak, and that then we will
18 prepare some kind of a public announcement to go with that from
19 this office?

20 MR. JANIK: Yes. And we'll prepare that, Molly, if
21 you see that appropriate, in the form of a letter going back to
22 Eyak?

23 MS. McCAMMON: I think a letter to the corporation, and
24 then we can use that as the basis for our statement to the
25 public.

26 MR. JANIK: Very good.

1 MS. McCAMMON: It would be very helpful.

2 MR. RUE: If I may, given the timing of this, how

3 quickly do you think we can let them know?

4 MR. JANIK: This is Phil Janik. Today is our

5 attempt.

6 MR. RUE: Okay.

7 MR. TILLERY: We need signatures.

8 MR. JANIK: Which brings up a point, Molly, again a

9 matter of protocol. Will we need signatures from all the board

10 members on this or did I --.

11 MS. McCAMMON: No. I don't think --.

12 MR. JANIK: . . . (indiscernible) Council members.

13 Thank you, Craig.

14 MS. McCAMMON: I would think that you could reflect the

15 motion that was made at this meeting and just say "on behalf of

16 the Trustee Council, I have been directed to give back to you the

17 contents of the motion or the response from the Trustee Council."

18 Would that be appropriate, Maria?

19 MS. LISOWSKI: Sounds fine to me.

20 MR. JANIK: Thank you.

21 MS. WILLIAMS: Any further business to bring before the

22 Council? Hearing none, I will entertain a motion to adjourn.

23 MR. RUE: So moved.

24 MR. TILLERY: Second.

25 MS. WILLIAMS: It's been moved by Mr. Rue, seconded by

26 Mr. Tillery, that we adjourn. Is there any objection to

1 adjourning at this time? Hearing none, this meeting is
2 adjourned. Thank you very much, Council members, and thank you,
3 public, for joining us.

4 MR. RUE: Thank you, Deborah.

5 MS. WILLIAMS: Good-bye.

6 (Off record 1:46 p.m.)

7 END OF PROCEEDINGS

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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 Trustee Council staff on February 24, 1995, commencing at the hour of approximately 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