

EXXON VALDEZ OIL SPILL TRUSTEE COUNCIL

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TRUSTEE COUNCIL MEETING MAY 28 1996
Monday, April 15, 1996
2:00 o'clock p.m. EXXON VALDEZ OIL SPILL
TRUSTEE COUNCIL
ADMINISTRATIVE RECORD

645 G Street, Fourth Floor
Anchorage, Alaska

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TRUSTEE COUNCIL MEMBERS PRESENT:

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| STATE OF ALASKA - DEPARTMENT
OF FISH AND GAME: | MR. FRANK RUE (Chair)
Commissioner |
| U.S. DEPARTMENT OF THE INTERIOR: | MS. DEBORAH WILLIAMS
Trustee Representative for
the Assistant Secretary |
| STATE OF ALASKA -
DEPARTMENT OF LAW: | MR. CRAIG TILLERY
Trustee Representative
for the Attorney General |
| U.S. DEPARTMENT OF AGRICULTURE -
U.S. FOREST SERVICE: | MR. JIM WOLFE , Alternate
for the Regional Forester |
| U.S. DEPARTMENT OF
COMMERCE - NMFS: | MR. STEVE PENNOYER
Director, Alaska Region |
| STATE OF ALASKA - DEPARTMENT
OF ENVIRONMENTAL CONSERVATION: | MS. MICHELE BROWN
Commissioner |

1 **TRUSTEE COUNCIL STAFF PRESENT:**

2	MS. MOLLY McCAMMON	Executive Director EVOS Trustee Council
3		
4	MS. REBECCA WILLIAMS	Executive Secretary EVOS Trustee Council
5	MR. ERIC MYERS	Director of Operations EVOS Trustee Council
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7	MR. ALEX SWIDERSKI	Alternate, Department of Law

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ANCHORAGE, ALASKA - MONDAY, APRIL 15, 1996

(Tape No. 1 of 1)

(On record at 2:00 p.m.)

CHAIRMAN RUE: I guess I'd like to call to order the Exxon Valdez Oil Spill Trustee Council. And we would like to.....

MS. MCCAMMON: And we have present.....

CHAIRMAN RUE: We have present, go ahead. Michele Brown from DEC. Jim Wolfe for Phil Janik. Craig Tillery for Department of Law. Steve Pennoyer. And who is here for -- oh, we've got the Forest Service. And Deborah Williams is on the teleconference. So all Trustee Council Members are represented here, so we have a quorum and we can conduct business.

Molly, would you like to discuss the agenda with us?

MS. MCCAMMON: Yes. Mr. Chairman, we have two items for action. And I apologize for bringing them to you like this. I had planned on sending this memo all around and getting a time and date later this week, but it was impossible to get everyone together except for today, so we took advantage of this opportunity.

There are two requests for additional authorization today. One is from the Forest Service for an additional authorization of \$478,000 for timber evaluations and appraisals. This is due to the fact that a number of

1 appraisals came in above their estimated costs. This also
2 includes some anticipated work on Eyak this summer, additional
3 appraisals for Horseshoe and Jack Bays, and finalizing the
4 Tatitlek and Chenega appraisals. The total amount, as I said,
5 is \$478,000 in requested authorizations.

6 There is, at the -- a memo that Phil Janik provided
7 that goes through each parcel showing that the total funds that
8 had been authorized to the Forest Service for -- since January
9 31st of '94 have been \$3,061,043. And this would bring the
10 total to basically \$3.5 million.

11 CHAIRMAN RUE: So we need a motion to authorize the
12 additional.....

13 MS. MCCAMMON: That's correct.

14 CHAIRMAN RUE:appraisal?

15 MS. MCCAMMON: That's correct.

16 MR. PENNOYER: So moved.

17 MS. BROWN: Second.

18 CHAIRMAN RUE: Second? Okay. It's been moved by Mr.
19 Pennoyer and seconded by Ms. Brown. Is there any discussion?

20 MR. PENNOYER: I don't think there's any choice but
21 to go ahead and get the process going. It is unfortunate that
22 we've got to spend as much on appraisals as we're spending
23 rather than actually buying land, but I don't know if there's
24 any choice, so reluctantly to support the motion.

25 CHAIRMAN RUE: Okay. Any other comments by Trustee

1 Council members?

2 MR. WOLFE: Mr. Chair?

3 CHAIRMAN RUE: Yeah, Mr. Wolfe.

4 MR. WOLFE: We've had several discussions, and Molly
5 was with us on some of those with Mr. Granville on the amount
6 of overrun on his. And I guess we're somewhat embarrassed that
7 it went over that much. What he points out is the volume of
8 timber, again, was much more than he had anticipated. If we'd
9 have stopped him at any point, it probably would've -- we'd
10 have lost more than we gained at this point.

11 But I think we've got more than enough to cover
12 everything to finish up with Tatitlek, and we've covered that
13 now. We know what the final charges are with the exception of
14 maybe this final review that's going on -- or did go on. So we
15 are through with Granville at this point in time, and after
16 this point, I think we'll have a little better control. And we
17 trust that the State will be able to be more successful in
18 dealing with HAV than we were with the Tatitlek appraisal.

19 CHAIRMAN RUE: Okay. Is there any objection?

20 (No audible response)

21 CHAIRMAN RUE: Hearing none, the motion.....

22 MS. McCAMMON: Okay.

23 CHAIRMAN RUE:is approved.

24 MS. McCAMMON: The second request in the 96-1.6
25 budget, Alaska Department of Natural Resources, would authorize

1 \$300,000 for a timber check cruise and appraisal for the HAV
2 acquisition.

3 At the time when that budget was noted, there was
4 language in the budget that noted that if a full appraisal was
5 needed with a full timber cruise, that the estimated cost was
6 \$700,000, and that we would come back to the Council with a
7 request for additional authorization.

8 At this time, the negotiators are still trying to
9 figure out ways to get by, to make do with the check cruise.
10 However, the clock is ticking, and a decision will be made this
11 week as to whether to go to a complete appraisal. What I'm
12 requesting is the authorization for an additional \$500,000
13 should we have to go to a complete appraisal.

14 You'll notice that it doesn't specify which agency.
15 At this time, we think that DNR will be able to have enough
16 legislative authority to do the full appraisal, but we still
17 have to do some checking on that. So there's -- it's not
18 specified to which agency these \$500,000 would go to. It would
19 be whichever one we end up figuring out has the authorization
20 or the authority to do the appraisal.

21 CHAIRMAN RUE: I have a question before anyone makes
22 a motion maybe. I don't know -- I'm not sure at all -- how
23 does it all add up? I see \$300,000, \$700,000, and \$500,000.
24 How does that work?

25 MS. McCAMMON: Mr. Chairman, the difference between

1 300 and 700 is usually 400,000, but given the way things go
2 here, I just added some additional funds.....

3 (Laughter)

4 MS. McCAMMON:in case it was needed. The
5 problem that we have is that now on the state side, it's so
6 difficult.....

7 CHAIRMAN RUE: I'm getting it.

8 MS. McCAMMON:to get additional authorization.

9 (Side comments)

10 MS. McCAMMON: It's so difficult to get additional
11 authorization because of the legislative process.

12 CHAIRMAN RUE: I see. I understand that.

13 MS. McCAMMON: That it's easier.

14 MS. WILLIAMS: I'll make the motion to authorize
15 \$500,000 for HAV appraisal should the team decide to go forward
16 with a full appraisal. Whose making that decision, Molly?

17 MS. McCAMMON: I would, in consultation with the
18 negotiators.

19 MS. WILLIAMS: Okay.

20 MS. McCAMMON: But they're actively negotiating on
21 the check cruise, and it's getting down to the point, this
22 week, a final decision has to be made. But I think it will be
23 made kind of by consensus from the landowner, the negotiators,
24 and myself.

25 CHAIRMAN RUE: And that would.....

1 MS. McCAMMON: Would that be fair to say?

2 CHAIRMAN RUE:be the negotiators and yourself.
3 The negotiators.....

4 MS. McCAMMON: The negotiators and myself.

5 CHAIRMAN RUE:or Department of Law and
6 Department of the Interior?

7 (No audible response)

8 CHAIRMAN RUE: Okay. There's a motion on the floor.
9 Is there a second?

10 MR. WOLFE: Second.

11 CHAIRMAN RUE: Seconded by Mr. Wolfe. Any further
12 discussion? Mr. Wolfe?

13 MR. WOLFE: Just for clarification, this is \$500,000
14 additional money?

15 MS. McCAMMON: That's correct. It would bring the
16 total to \$800,000 authorization.

17 MR. WOLFE: Okay.

18 CHAIRMAN RUE: Okay. Any further discussion?

19 (No audible response)

20 CHAIRMAN RUE: Any objections?

21 (No audible response)

22 CHAIRMAN RUE: Hearing none, the motion passes.

23 MS. McCAMMON: Okay. The third item is a draft
24 motion concerning the conservation easements for small parcels.
25 If you'll recall, at the last meeting, when the small parcels

1 were originally approved, there was not a requirement included
2 on them that there be a reciprocal conservation easement from
3 the non-acquiring agency.

4 At the last meeting, at the request of Mr. Rue and
5 Ms. Williams, the Council adopted a motion that, in effect,
6 said attempt to pursue a conservation easement, if at all
7 practical, for small parcels. Since that time, the various
8 attorneys have been looking at conservation easements and
9 drafting various scenarios for them. They have circulated
10 them; there has not been a final approval by Department of
11 Justice.

12 There are a number of parcels that there is concern
13 will be lost if action is not taken quickly on them. The
14 request in this motion is to basically exempt the parcels that
15 are listed here from having a conservation easement from the
16 non-acquiring agency if the lead government negotiator for the
17 parcel certifies that execution of a conservation easement
18 would jeopardize completion of the acquisition.

19 It would be only in that case. And I think there are
20 people, representatives here from the various agencies who
21 could speak to each parcel individually if need be.

22 CHAIRMAN RUE: Do I hear a motion? Mr. Pennoyer.

23 MR. PENNOYER: Oh, no. Go ahead and take a motion,
24 and then I'll discuss it.

25 MR. WOLFE: So moved.

1 MR. PENNOYER: Second.

2 CHAIRMAN RUE: Okay. It's been moved and seconded.
3 Moved by Mr. Wolfe, seconded by Mr. Pennoyer, the motion as
4 read by Ms. McCammon. Mr. Pennoyer.

5 MR. PENNOYER: Is there any -- I mean, of these,
6 basically these won't go forward if -- we're ready to move on
7 them. So if we delay any further, we would loose these, and by
8 getting the further approvals on the conservation easement
9 concept would involve an unknown period of time delay. That's
10 the rational for excluding these six?

11 MS. McCAMMON: That's correct.

12 MR. TILLERY: Not exactly, because Horseshoe we're
13 not ready to move forward on because we haven't completed the
14 appraisal on.

15 MS. McCAMMON: Horseshoe has not been authorized by
16 the Council for purchase.

17 MR. TILLERY: Coal Creek is a timing issue because of
18 the bankruptcy it's in, and the fact that a bank may be
19 foreclosing on it at any time and they're having a hard time
20 holding a judge off on it. Ellamar becomes an issue because
21 not -- there's a timing; we have a very eager seller. Same
22 thing with Tulin. But also on Ellamar, there's some third-
23 party interests that the seller has options on, that to require
24 a conservation easement, we think, would require him to go back
25 and renegotiate those, which could jeopardize it. So those

1 have a little bit have a -- there's a little bit of difference.

2 MS. WILLIAMS: Why is Horseshoe on the list then?

3 MR. TILLERY: And the -- I'm sorry. Horseshoe -- why
4 is Horseshoe? Because that's the same seller as is Ellamar,
5 and he's pushing that one on a timely basis.

6 The other thing is that those two -- or those three,
7 Ellamar, Horseshoe, and Tulin, particularly Tulin and Ellamar,
8 are ones -- like Ellamar is a mining location. We're buying a
9 small group of lots inside a subdivision. There's no
10 particular reason to have a conservation easement on it. So
11 the reason for having some kind of a -- for possibly
12 jeopardizing it goes way down. I mean you start kind of
13 balancing that out.

14 Tulin, we're buying that mainly because it's got a
15 road -- we can put a road through it and have a parking lot on
16 it and have access to other areas and route and channel
17 people's access away from other habitat areas. So that one is
18 not one that's of major concern.

19 The one that I would have a conservation easement on,
20 if it wasn't -- if there wasn't a potential issue about timing
21 is Coal Creek because that is a habitat issue. And we're going
22 to try to do a conservation easement, but we need the
23 authority -- if we get a call from the bankruptcy court saying,
24 'I'm tired of waiting. I'm going to authorize NBA to foreclose
25 next week if you can't get it together,' we want to have the

1 authority to go ahead and cut the deal.

2 MR. WOLFE: What was the issue with Three Saints Bay?
3 I didn't.....

4 MR. TILLERY: That's a federal.....

5 MR. WOLFE: Three Saints is.....

6 MR. TILLERY: Deborah, can you speak to that?

7 MS. WILLIAMS: Yeah. That's also -- that's a timing
8 issue. Basically, we're all ready to go on those, and the
9 feeling by the Fish and Wildlife Service is that we'd
10 jeopardize the deals by changing this issue midstream.

11 MS. McCAMMON: It's the Native allotments that
12 they've been negotiating with BIA; they're in-holdings within
13 the refuge.

14 MR. TILLERY: And Grouse Lake, the owners are --
15 they're ready. They're about ready to walk if we don't.....

16 MR. WOLFE: Oh, really?

17 MR. TILLERY: Yeah.

18 MR. WOLFE: Coal Creek was on the Kenai River?

19 MR. TILLERY: No. It's.....

20 MS. McCAMMON: Kasilof.

21 MR. TILLERY:down the Kasilof.

22 (Simultaneous speech)

23 MR. TILLERY: Okay. None of the -- all of -- none of
24 the Kenai Rivers are on this list.

25 MR. WOLFE: And that was where most of the concern,

1 if I remember it right, was along the riparian area for the
2 Kenai.

3 MR. PENNOYER: Well, Coal Creek is a wonderful -- I
4 mean it should have a conservation.....

5 MR. WOLFE: Right. Right.

6 MR. PENNOYER: And a terrific spot.

7 MR. TILLERY: And we intend to try.....

8 (Simultaneous Speech)

9 MR. TILLERY:to do that. Yes.

10 MS. McCAMMON: But your argument is that's the only
11 one we really face the risk on, is we may lose the whole thing
12 if we don't.....

13 MR. TILLERY: If that's -- yeah. If the judge calls
14 and says, 'I'm going to let NBA do it,' and then we've got a
15 problem.

16 CHAIRMAN RUE: Any further discussion on this?

17 MR. TILLERY: One last. Again, Horseshoe is on there
18 simply because it's the same people.

19 MR. SWIDERSKI: It's the same seller as Ellamar.

20 MR. PENNOYER: But it's not ready to go anyway.

21 MR. SWIDERSKI: It will be, we hope, shortly.

22 MS. McCAMMON: But this does not reflect a commitment
23 on the part of the Council to purchase those.....

24 MR. SWIDERSKI: Right, no.

25 MS. McCAMMON:that land there?

1 MR. SWIDERSKI: No. Nor that we won't have a
2 conservation easement. It's only if it jeopardizes the deal.

3 MR. TILLERY: Only if it jeopardizes the deal.

4 MS. McCAMMON: Horseshoe Bay, we could come back when
5 we bring the actual acquisition to the Council, could come back
6 with this.....

7 MR. SWIDERSKI: That's true.

8 MS. McCAMMON:language at that time, also.

9 MR. SWIDERSKI: Yeah, if you prefer. Just drop it
10 off.

11 MR. TILLERY: I don't care.

12 MR. PENNOYER: Maybe it shows the person that
13 we're.....

14 MR. SWIDERSKI: Too anxious.

15 MR. PENNOYER:we're somewhat flexible on it, I
16 think.

17 MR. TILLERY: May be.

18 MR. PENNOYER: I don't have a strong feeling about it
19 being off of there. I was just wondering what the particulars
20 were.

21 MS. WILLIAMS: I think we ought to take Horseshoe
22 off.

23 CHAIRMAN RUE: And you want to -- okay. And it
24 doesn't have to do with these as -- maybe for Craig or Alex.
25 When do we think we'll have the conservation easement language

1 agreed to? I know we have some now. But I'm not sure of the
2 status and I've lost track.

3 MR. SWIDERSKI: There is a proposed easement that's
4 circulating which is very similar to the conservation easement
5 we've used on large parcels. So I don't think there's going to
6 be a lot of objection to it.

7 I talked to the Department of Justice this morning.
8 They hadn't looked at it yet, but they said they would get to
9 it. And I asked them to try to do that within the next ten
10 days to two weeks, and that seemed to be do-able. And I know
11 Barry's comfortable with it, and I'm comfortable with it.

12 CHAIRMAN RUE: Everyone's shaking their head up and
13 down, nodding their heads.

14 MR. TILLERY: Nodding.

15 CHAIRMAN RUE: Nodding. Deborah. Just in case.

16 MS. McCAMMON: Deborah's nodding.

17 CHAIRMAN RUE: I think we're -- okay. Any further
18 discussion on this?

19 (No audible response)

20 CHAIRMAN RUE: Okay. Any objections?

21 (No audible response)

22 CHAIRMAN RUE: Seeing none, the motion passes.
23 Molly, any other business?

24 MS. McCAMMON: I think there's one item that Mr.
25 Tillery wanted to bring up at the request of Barry Roth. You

1 want to bring that up?

2 MR. TILLERY: Well, I haven't looked up this matter.

3 MS. McCAMMON: Okay. I think we should probably wait
4 then.

5 MR. TILLERY: Why don't we just.....

6 MS. McCAMMON: For May 2nd.

7 MR. TILLERY:circulate it because.....

8 MS. McCAMMON: Yeah. That's it.

9 CHAIRMAN RUE: Is there any other business?

10 MR. WOLFE: I move we recess the meeting so we.....

11 CHAIRMAN RUE: No.

12 (Laughter, simultaneous speech)

13 MR. TILLERY: Second.

14 (Laughter, simultaneous speech)

15 CHAIRMAN RUE: It's been moved and seconded.

16 MS. McCAMMON: All in favor.

17 CHAIRMAN RUE: Do I hear a motion to adjourn?

18 MS. McCAMMON: Okay. Recess.

19 MR. TILLERY: It was moved and seconded to recess.

20 I'd like to call the.....

21 (Laughter)

22 CHAIRMAN RUE: All in favor?

23 TRUSTEE COUNCIL MEMBERS COLLECTIVELY: Aye.

24 CHAIRMAN RUE: Opposed?

25 (No audible response)

1 CHAIRMAN RUE: We have recessed.

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3 (Whereupon, the proceedings in the above-entitled
4 matter were adjourned at 2:20 p.m.)
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