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**SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT BETHEL**

ERIC FORRER)
Plaintiff,)
)
vs.)
)
STATE OF ALASKA, the)
ALASKA BOARD of FISH,)
DOUGLAS VINCENT-LANG,)
Commissioner of the Alaska)
Department of Fish & Game,)
in his capacity as an official of)
the State of Alaska, and,)
MICHAEL J. DUNLEAVY, in)
his official capacity as an)
official of the State of Alaska.)
Defendants.)
_____)

4BE-22- 00324 Civil

**AMENDED VERIFIED COMPLAINT FOR DECLARATORY RELIEF AND
POTENTIAL EQUITABLE RELIEF**

Plaintiff, Eric Forrer ("Forrer"), for his cause of amended causes of action alleges as follows:

INTRODUCTION

1. This lawsuit is brought in the public interest by Forrer seeking to illuminate and correct a failure of the government of the State of Alaska, which has fallen into an unconstitutional condition that developed without apparent concern over decades. That this situation does not leap out in the minds of concerned state officials and the body politic is a puzzle. The situation may have been the *status quo* for so long that familiarity could well have glossed over the

reality. A darker probability is that politics played a roll. The citizens of the state who are most directly affected are largely the villagers of the Yukon, Kuskokwim, and other rivers. This cohort typically does not have notable political clout, and their entire voting bloc could not, in all probability, change the outcome of a statewide political race. So as far as policy corrections are concerned, they are not the first among equals. Forrer seeks relief for himself and the public in bringing the authority of the court to compel forceful, and effective change in state management of renewable resources, change required by the Alaska Constitution. The people of the state and the underlying and life-supporting biosphere (most obviously salmon that have sustained human life and been a vital part of the natural existence in Alaska and which are required to be maintained according to sustained yield principles), have run out of time. Action to interpret and enforce Alaska's constitutional mandate requiring sustained yield management is required.

NATURE OF THE CASE

2. This lawsuit is brought by Forrer in the interest of the public to enforce the obvious and express provisions of the Alaska Constitution, including the provisions related to mandate that the natural resources of the State of Alaska shall be governed by and administered according to sustained yield principles.

PARTIES

3. Eric Forrer, is a citizen and registered voter of Alaska who made his home in the State since 1962, living in Alakanuk, St. Michael, Kodiak, Kasilof, Fairbanks and Juneau, while engaged in personal-use and commercial fishing, engaged as a self-employed wood worker, and engaged as a construction contractor. During this period of some 60 years he married, raised a child, and among other tasks served as a Regent of the University of Alaska, and as a

member and president of the Post-Secondary Education Commission. Forrer resides in Juneau, Alaska.

4. The State of Alaska is a sovereign state within the republic of the United States of America and governed according to the Alaska Constitution.

5. The Alaska Board of Fish is an entity of the State of Alaska established by statute. The Alaska Board of Fish has some responsibility to set policy in regard to the maintenance, utilization and development of Alaska's renewable fish resources.

6. Douglas Vincent-Lang is currently the Commissioner of the Alaska Department of Fish & Game, an exempt position appointed by the Governor of the State of Alaska and confirmed by the Alaska Legislature. Mr. Vincent-Lang is sued in his official capacity as Commissioner of the Alaska Department of Fish & Game in order to obtain injunctive relief, as necessary.

7. Michael J. Dunleavy is currently the Governor of the State of Alaska. Governor Dunleavy is sued in his official capacity in order to obtain injunctive relief, as necessary.

JURISDICTION

8. The Superior Court has jurisdiction to hear this dispute according to AS 22.10.020.

SPECIFIC CONSTITUTIONAL PROVISIONS AT ISSUE

9. Article VIII, Sec. 4 of the Alaska Constitution provides:

Sustained Yield - Fish, forests, wildlife, grasslands and all other replenishable resources belonging to the state shall be utilized, developed, and maintained on the sustained yield principal, subject to preferences among beneficial uses.

10. Article VIII, Sec. 3 of the Alaska Constitution provides:

Common Use – Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.

SCOPE OF THE DISPUTE

11. The substance of this suit will confine itself to two species of salmon historically found in abundance in all major and most minor river systems in the State of Alaska and the watersheds of the Yukon Territory and northern British Columbia.

12. The two species of salmon that are the source of contention in this dispute are Chinook Salmon, *Oncorhynchus tshawytscha*, (a/k/a “King” salmon), and Chum Salmon, *Oncorhynchus keta*, (a/k/a “Dog” or “Keta” salmon).

FACTS

13. The Yukon River alone is a continent-sized riverine ecosystem with more than 150 listed tributaries, some of them major rivers in their own right, each hosting salmon runs dependent on the source of the main stem Yukon.

14. There are large lakes in Canada that drain to the Yukon and that hosted significant salmon populations in the past.

15. The size and multifaceted importance of this ecology is sufficient to act as a symbol, a stand-in for the broad subject of sustained yield.

16. Sustained yield, as a concept, applied to renewable resources is wide ranging and complex.

17. In terms of constitutional application, the sustained yield mandate commenced at statehood.

18. Since statehood, the government of Alaska has been required to maintain renewable resources, including Chinook Salmon and Chum Salmon in the Yukon and Kuskokwim Rivers, according to the sustained yield principle.

19. The application of the sustained yield principles by the State of Alaska to date is based on sixty-four years of data, management decisions, a pattern of conversations, negotiations, political conflicts, and legal decisions, often made more complex by federal involvement and law.

20. Forrer believes the management decisions made by the State of Alaska in regard to the Chinook and Chum salmon that have historically made their home in the Kuskokwim and Yukon Rivers during the last sixty-four years illustrate a failure to adhere to the constitutional directive regarding sustained yield.

21. Based on the available data and other obvious indicators, it is evident that the Kuskokwim and Yukon Rivers and their myriad tributaries are suffering fisheries degradation or collapse in terms of maintenance of Chinook and Chum Salmon.

22. Various acts and activities that have impacted the habitat of the Chinook and Chum Salmon utilizing the Yukon and Kuskokwim Rivers, including degradation of entire river valleys reduced to plains of washed-out broken rock, called tailings.

23. Mining activities in the Kuskokwim and Yukon River drainages have resulted in washed-out overburden that impacts salmon habitat that will not be renewed or replaced except on a geologic time scale.

24. Extensive industrial scale capture of pelagic fish species utilizing techniques long-acknowledged to cause significant harm to other fisheries like the Yukon and Kuskokwim River fisheries and the destruction of habitat worldwide.¹

¹ *The End of the Line*, C. Clover, 2004, pages 3, 11

25. Water pollution issues, likely accelerated by increased human habitation in the Kuskokwim and Yukon River watershed have caused habitat degradation that impacts the maintenance of Chinook and Chum salmon.

26. Climate changes and alteration of ocean temperature and pH levels since statehood have likely had an impact on the maintenance of Chum and Chinook salmon in the Yukon and Kuskokwim River.

27. Regardless of the “cause” for the diminishment of Chinook and Chum salmon in the Kuskokwim and Yukon River systems, it is obvious the historic runs of Chum and Chinook salmon in the Yukon and Kuskokwim Rivers are massively depleted.

28. No genuine baseline data exists illustrating the majesty and scope of the historic run of Chinook and Chum salmon on the Kuskokwim and Yukon Rivers.

29. Stories advanced by indigenous people living in the Yukon and Kuskokwim River drainages describing historic fish populations in the rivers are dismissed as anecdotal tales or as examples of cultural hyperbole.

30. Testimony from Native Alaskans about big runs on the Kuskokwim and Yukon Rivers in the past is dismissed as hearsay.

31. The manner by which contemporary managers of the fisheries in the Yukon and Kuskokwim Rivers use recent data ignores the testimony of indigenous people from the decades and centuries prior to use of sonar and other modern sampling techniques for counting fish.

32. Contemporary management of fish in the Kuskokwim and Yukon Rivers by the State of Alaska largely depends on data derived from sonar technology of the last 40 years.

33. The State of Alaska's use of sonar and other so-called modern means of measuring Chum and Chinook salmon populations in the Yukon and Kuskokwim Rivers ignores the abundant evidence that these rivers were once hugely productive.

34. The State of Alaska's failure to incorporate historic reality of immense and abundant fish runs of Chum and Chinook salmon in the Kuskokwim and Yukon Rivers underscores the obvious fact that maintenance of the fish stocks has failed.

35. Any sound establishment of a genuine baseline for Chinook and Chum salmon in the Yukon and Kuskokwim Rivers must commence with acknowledgement of actual history embodied in oral history.

36. In 1965 when Forrer was a teenager in Alakanuk on the Lower Yukon, he was instructed by two local Native set-netters in the art of fishing for Chinook salmon.

37. There once was a phenomenon in the Yukon River Chinook salmon fishery called "the big run."

38. This big run event was where an enormous body of Chinook salmon would school in the ocean, off-shore from the mouth of the Yukon River, waiting for some biological or environmental tipping point.

39. At the right time and based on factors obvious to the Chinook salmon, the entire school of fish would start into the river, usually in conjunction with an on-shore wind and a rising tide.

40. Subsequently, regardless of tides and conditions, this run of Chinook salmon would not hesitate until all the fish were in the Yukon River and headed up to their many respective tributary spawning grounds.

41. Forrer's two Yukon River teachers' observation about the Yukon River Chinook salmon fish runs was that this "big run" phenomenon had lasted eleven days when they were youngsters fishing with their father in the 1940s.

42. In the 1960's when Forrer was learning from his teachers' how to fish for Chinook salmon, the "big run" was on the order of eleven hours.

43. The reduction of "big run" of Chinook salmon from the 1940's to the mid-1960's was obvious -- a reduction by a factor of 24 over roughly 25 years.²

44. Thus, within the living memory of local people who had lifetimes of experience and a critical reason to be paying attention, the knowledge and the concern about failing runs on the Yukon River was obvious.

45. If one were to consider the streams and rivers over the entire Yukon drainage basin, all dependent on the main stem Yukon River for fish, a reduction in Chinook salmon by a factor of 24 in the 1960s compared to one generation previous is not an unreasonable number.

46. In comparison to modern documented salmon runs in other river systems like those entering Bristol Bay, the multiple of 24 is likely too low, an indication of the scale of what's been lost in the Chum and Chinook fisheries in the Yukon River.

47. In 1989 Governor Steve Cowper appointed John Hanson of Alakanuk to the Board of Fish.

48. At that time John Hanson was appointed to the Alaska Board of Fish, it was 26 years since Forrer had engaged in the King salmon fishery on the Yukon.

49. John Hanson had engaged in various leadership positions in his village and the lower Yukon River region.

² Personal conversations over two commercial salmon seasons, 1964, 1965.

50. John Hanson was one of the two individuals who introduced Forrer to the Yukon River fishery in 1964 and 1965.

51. As a member of the Alaska Fish Board John emphasized, and engaged in political confrontations based on the concept of intercept fisheries, that is, the various fisheries that intercepted Chinook, Chum and other salmon before the fish returned to the Yukon River.

52. John Hanson and many other citizens, especially those living along the Yukon River, believed there was a very high probability that Yukon River Chinook salmon were being caught in the False Pass area between the North Pacific Ocean and the Bering Sea.

53. The point here is not whether or not John Hanson or anyone else paying attention to the significant decrease in Chinook salmon returns to the Yukon River actually knew where the fish were being caught, but that the Yukon River Chinook runs were rapidly declining.

54. John Hanson and the Alaska Board of Fish had data in the early 1990's that illustrated the Chinook salmon were declining on the Yukon River.

55. As a matter of fact, the Alaska Board of Fish did not take steps to actively stop the diminished return of Chinook salmon to the Yukon River based on the data showing diminished Chum and Chinook returns in the 1990's.

56. These declines in Chinook salmon to the Yukon River were discussed but never corrected by the Alaska Board of Fish.

57. The lack of action by the Alaska Board of Fish to correct or address in a meaningful way the decline of Chinook salmon returning to the Yukon River was a source of bitter frustration for John Hanson as he was unable to influence and correct fishery numbers that been declining since his youth.

58. Those obvious and significant diminishment of Chinook salmon returns to the Yukon River witnessed by John Hanson and other observers were an obvious signal that a renewable resource belonging to the citizens of Alaska were not being utilized or maintained in accord with the sustained yield principle in the Alaska Constitution.

59. In addition to anecdotal information supporting the contention that Chinook and Chum salmon have been decimated on the Yukon and Kuskokwim Rivers since Alaska became a state, a number of scientific papers and peer-reviewed articles establish a factual basis for concluding that the Chinook and Chum salmon on both rivers are not being maintained or utilized on a sustained yield basis.

60. A preliminary search of open-source information and data illustrates that a cohort of researchers ranging from graduate students to Ph.D. professors in biology and chemistry have been conducting research, studying and evaluating the enormous decrease in Chinook and Chum salmon returns to the Yukon and Kuskokwim Rivers for decades.

61. A portion of this research and evaluation related to the diminished Chinook and Chum salmon returns on the Kuskokwim and Yukon Rivers was facilitated or originated through research grants provided by the State of Alaska, Department of Fish & Game.

62. The archives of the State of Alaska and the Department of Fish & Game are replete with data and conclusions showing the Chum and Chinook salmon returns to the Yukon and Kuskokwim Rivers have eroded over time and are not being maintained or utilized according to sustained yield principles.

63. Examples of the completed scientific literature illustrating the utilization and diminishment of salmon include the following:

2015 Early Human Use of an Anadromous Salmon in North America at 11,500 y ago. Halffman, C.M., Potter, B.A., McKinney, H.J., Finney, B.P, Rodrigues, A.T.,

Yang, D. and Kemp, B.M. Proceedings of the National Academy of Sciences 112: 12344-12348.

2013 *Centennial-scale Fluctuations and Regional Complexity Characterize Pacific Salmon Population Dynamics Over the Last Five Centuries*. Rogers, L.A., Schindler, D.E., Lisi, P.J., Holtgrieve, G.W., Leavitt, P.R., Bunting, L., Finney, B.P., Selbie, D.T., Chen, G., Gregory-Eaves, I., Lisac, M.J. and Walsh, P.B. Proceedings of the National Academy of Sciences 110: 1750–1755.

2012 *1500-year Quantitative Reconstruction of Winter Precipitation in the Pacific Northwest*. Steinman, B.A., Abbott, M.B., Mann, M.E., Stansell, N.D. and Finney, B.P. Proceedings of the National Academy of Sciences 109: 11619-11623.

2011 *A Coherent Signature of Anthropogenic Nitrogen Deposition to Remote Watersheds of the Northern Hemisphere*. Holtgrieve, G.W., Schindler, D.E., Hobbs, W.O., Leavitt, P.R., Ward, E.J., Bunting, L., Chen, G., Finney, B.P., Gregory-Eaves, I., Holmgren, S., Lisac, M.J., Lisi, P.J., Nydick, K., Rogers, L.A., Saros, J.E., Selbie, D.T., Shapley, M.D., Walsh, P.B., and Wolfe, A.P. Science 334: 1545-1548.

2002 *Fisheries Productivity in the Northeastern Pacific Ocean Over the Past 2,200 years*. Finney, B.P., Gregory-Eaves, I., Douglas, M.S.V. and Smol, J.P. Nature 416: 729-733.

2000 *Impacts of Climatic Change and Fishing on Pacific Salmon Abundance Over the Past 300 Years*. Finney, B.P., Gregory-Eaves, I., Sweetman, J., Douglas, M.S.V.

The Long-Term Outlook for Salmon Returns to Alaska. Milo D. Adkison and Bruce P. Finney. Reprinted from the Alaska Fishery Research Bulletin Vol. 10 No. 2, Winter 2003.

Long-term Perspectives on Salmon Abundance: Evidence from Lake Sediments and Tree Rings. Deanne Drake and Robert J. Naiman School of Aquatic and Fisheries Sciences University of Washington, Seattle, Washington 98195.

64. As a matter of fact, based on abundant scientific studies, common sense and credible anecdotal stories from individuals who have lived along the Kuskokwim and Yukon Rivers for much of their lives, the Chinook and Chum salmon have been in decline for much of the twentieth century through the present.

65. While it is self-evidently obvious that a precise year-by-year count for Chum and Chinook salmon on the Yukon and Kuskokwim Rivers is not possible, the abundant body of research regarding the history and chemistry of the fish (principally of nitrogen isotopes in lake sediments and in tree rings found in the salmon-run, riverine environment), provide an obvious scientific basis that supports the rich and varied oral histories describing historic salmon abundance.

66. To an extent that is evident to anyone with an objective orientation, the Chinook and Chum salmon that return to the Yukon and Kuskokwim Rivers in the present day are a tiny fraction of their historic numbers.

67. In 2022, the count of Chinook salmon returning to the fish counting post on the Yukon River in Whitehorse, Yukon Territory barely exceeded 100 fish, a number that is a pathetic ghost of fish returns a hundred years previous.

68. As a matter of fact, the State of Alaska has routinely discounted anecdotal stories about historic runs of Chum and Chinook salmon on the Kuskokwim and Yukon Rivers, largely dismissing all of it as hearsay or wishful story-telling with no scientific underpinnings.

69. The State of Alaska's long-standing decision to ignore the obvious cultural and anthropological basis that emphasize Chinook and Chum salmon abundance on the Yukon and Kuskokwim Rivers is archaic in light of developments in the field of education, language, and cultural health.

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70. Significant funding in the development of curriculum in regard to the nature and oral history, utilization of oral history and the degree by which oral history is reliable is increasingly being pursued.³

71. As a result of inquiry and study into the nature and reliability of oral history and traditions and, as a matter of fact, it is more and more apparent that those old stories from the past often contain much truth.

72. If one were, as a matter of fact, to meaningfully engage and study the oral history passed down from generation-to-generation by the actual individuals and societies who have dwelled along the Kuskokwim and Yukon Rivers, a story of abundance, continued utilization, development and maintenance of salmon is apparent.

73. Building on the truth in these ancient oral histories, imagine Alaska before it was “Alaska” (the State, Territory or otherwise), before introduction of a single fathom of gill net had been strung in any river; the population of salmon in just about any river would be orders of magnitude different and higher than it is today.

74. This older Alaska, this time before the plastic gill nets, the murderous trawlers and other advanced forms of exploitation was a time of fish abundance where the vast stocks of fish renewed themselves and were maintained sustainably. This was the time when the old people used to say: “We were walking on fish, them days.”

75. It follows from this older perspective that from day-one of the contacts by a society with a desire to exploit a resource with rapidly advancing technology would start harvesting fish by the thousands and then the millions without a second thought.

³ Juneau Empire, *State Awards 35 Million to Native Education Projects*, Clarise Larson, Sept 5, 2022

ALLEGATIONS

76. The State of Alaska has not utilized, developed, and maintained the Chinook and Chum salmon runs in the Yukon and Kuskokwim Rivers that are located in the State of Alaska according to the sustained yield principle mandated by the Alaska Constitution.

77. The State of Alaska has failed to maintain and protect the Chinook and Chum salmon runs in the Yukon and Kuskokwim Rivers that are located in the State of Alaska in in accord with the trust principles required for a common use resource mandated by the Alaska Constitution.

78. The principles of fishery management used by the State of Alaska for the utilization of Chum and Chinook salmon in the Kuskokwim and Yukon Rivers are being exploited by individuals and entities driven by self-serving economic considerations that are inconsistent with the sustained yield requirements in the Alaska Constitution.

79. The State of Alaska purports to engage in science-guided management of the Yukon and Kuskokwim Chinook and Chum salmon fisheries but the obvious results of this management regime are that the biggest fish in the biggest numbers on the biggest river systems in Alaska are reduced and gone or nearly gone.

80. The State of Alaska has adopted a management system that has systematically reduced the number of Kuskokwim and Yukon River Chum and Chinook salmon, a reduction of fish that disproportionately harms individuals and communities living along the Yukon and Kuskokwim Rivers.

81. The Alaska Constitution requires that the Kuskokwim and Yukon River Chinook and Chum salmon be utilized and maintained on sustained yield principles.

82. The Alaska Constitution requires that the Kuskokwim and Yukon River Chinook and Chum salmon be utilized and maintained according to trust principles for the common good of Alaska and Alaskan residents.

83. The State of Alaska, including the Department of Fish & Game and the Alaska Board of Fish have failed to maintain and utilize Kuskokwim and Yukon River Chinook and Chum salmon according to constitutional mandates contained in the Alaska Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests the following relief:

A. Declaratory relief recognizing, and informing the defendants, that the State of Alaska has been and continues to engage in unconstitutional management of the Yukon and Kuskokwim River Chinook and Chum salmon fisheries, and has done so for decades as demonstrated by the failure of mandatory sustained yield policies and outcomes, and;

B. Entry of a mutually agreeable consent decree designed to develop a plan to utilize and maintain the Kuskokwim and Yukon River Chum and Chinook salmon in a manner consistent with the Alaska Constitution, and

C. Injunctive relief, if necessary, designed to fulfill the sustained yield mandate and public trust doctrine for the management and maintenance of the Kuskokwim and Yukon River Chinook and Chum salmon as required by Article VIII, Section 4 and Article VIII, Section 3 of the Alaska Constitution.

D. An award of costs and reasonable fees associated with maintaining this public interest lawsuit, and;

E. Any other relief necessary to protect the rights of the Plaintiff and the citizens of Alaska under the Alaska Constitution.

VERIFICATION OF FACTS & PLEADINGS

On my Oath, having read and reviewed this document, I swear the facts contained in this Complaint are true to the best of my knowledge.

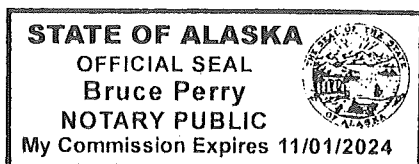
DATED this 30th day of November, 2022 at Juneau, Alaska.

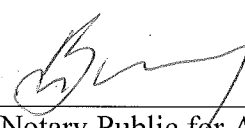

Eric Forrer,
Plaintiff

STATE OF ALASKA)
) ss
FIRST JUDICIAL DISTRICT)

THIS CERTIFIES that on this 30th day of November, 2022, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared **Eric Forrer**, known to me to be the person named in and who executed this document, and he acknowledged that he executed the same freely and voluntarily, for the uses and purposes specified in the document.


GIVEN under my hand and official seal the day and year first above written.




Notary Public for Alaska
My Commission Expires: 11/01/2024

DATED this 30th day of November, 2022 at Juneau, Alaska.

**LAW OFFICE OF
JOSEPH W. GELDHOF**


Joseph W. Geldhof
Alaska Bar # 8111097

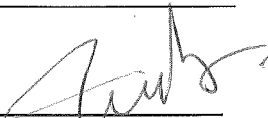
CERTIFICATION of SERVICE

I certify that on this date, this document was sent by e-mail to:

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Date: November 30, 2022



Joseph W. Geldhof