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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA, Plaintiff, and KUSKOKWIM RIVER INTER-TRIBAL FISH COMMISSION *et al.*, Intervenor-Plaintiffs, v. STATE OF ALASKA *et al.*, Defendants.	Case No. 1:22-cv-00054-SLG **AVCP PLAINTIFFS' REPLY IN SUPPORT OF RENEWED & SUPPLEMENTAL MOTION FOR ATTORNEYS' FEES AND COSTS**

Defendants State of Alaska, Alaska Department of Fish & Game, and Doug Vicent-Lang (together, "the State") are responsible for the both the initiation and length of this litigation. With no jurisdiction to do so, the State made the decision to issue emergency

fishing orders on the Kuskokwim River,[1] orders that all parties have understood for decades to be illegal under the *Katie John* line of cases. After being sued over these illegal actions, the State defended itself by arguing that its orders were "not preempted because the River is not 'public land' under ANILCA[,]"[2] thus revealing that its actions had been a direct attack on the subsistence protections enshrined in Title VIII of the Alaska National Interest Lands Conservation Act ("ANILCA") and *Katie John*, an attack that had dire implications for all rural Alaskans. When this Court confirmed that *Katie John* controlled, the State chose to press its arguments to the United States Court of Appeals for the Ninth Circuit, and then to petition the United States Supreme Court for a writ of certiorari.

The State is thus responsible for the circumstances in which it finds itself. Having unsuccessfully re-ignited a legal battle to strip rural Alaskans of their federally protected subsistence rights, the State now seeks to foist responsibility for the cost of that fight onto the very Alaska Native citizens it has spent decades fighting. That the State may now regret its decisions and its litigation strategy does not alter its obligation to pay attorneys' fees and costs as provided by Congress in ANILCA.

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[1] Dkts. 35; 129, at 18, 27–29.

[2] Dkt. 72, at 34, 38–39.

ARGUMENT[3]

I. AVCP PLAINTIFFS' ATTORNEYS' HOURLY RATES ARE REASONABLE.

The State's argument that the rates for individual attorneys do not reflect the market rate for attorneys in Anchorage, Alaska is without merit. These rates were set based on a 2024 declaration from James Torgerson, a partner at Stoel Rives LLP in the firm's Anchorage office. Based on his 40-plus years of experience practicing law in Alaska, Mr. Torgerson attested that billing rates between $225.00 and $600.00 per hour reflected the market rate in Anchorage for attorneys with the skill and years of experience of the attorneys retained by AVCP Plaintiffs, taking into account the complexity and importance of the issues being litigated. The rates set for each of AVCP Plaintiffs' attorneys are also supported by extensive *curricula vitae*.

Further highlighting the reasonableness of AVCP Plaintiffs' attorneys' rates is the fact that their rates are consistent with the rates charged by the other—private, Anchorage-based—law firms representing the other Intervenor-Plaintiffs in this case. AFN is represented by Cashion Gilmore & Lindemuth, which billed at rates of $525.00 (partner), $495.00 (of counsel), and $285.00 and $265.00 per hour (associates).[4] KRITFC is

[3] In an effort to avoid duplication of arguments, AVCP Plaintiffs incorporate the Intervenor-Plaintiffs Kuskokwim River Inter-Tribal Fish Commission's ("KRITFC") and Alaska Federation of Natives' ("AFN") arguments responding to the State's claim of sovereign immunity, Dkts. 197, at 2–7; 186, at 3–7, and KRITFC's response to the State's argument that Intervenor-Plaintiffs did not expressly state that the suit was brought under Title VIII. Dkt. 197, at 8.

[4] Dkt. 170, at 3. In her declaration, AFN attorney Jahna Lindemuth noted that she is aware of another Anchorage-based law firm charging rates (in a fee application submitted against

represented by Sonosky, Chambers, Sachse, Miller & Monkman, LLP, which billed at rates of $400.00 (partner) and $300.00 per hour (associate).[5] And Intervenor-Plaintiffs Ahtna Tene Nené and Ahtna, Inc., (together, "Ahtna") are represented by Landye Bennett Blumstein LLP, which billed at rates of $525.00 (of counsel), $400.00 (partner), and $325.00 per hour (associate).[6] AVCP Plaintiffs' attorneys' rates are in line with the prevailing market rate for private attorneys in Anchorage and therefore reasonable.

AVCP Plaintiffs' rates are further reasonable because they are comparable with the rates the State agreed to pay its own private attorneys *in this case*. As reflected in its 2022 contract with the State, Consovoy McCarthy charged the State $600.00 per hour for partners and $450.00 per hour for associates, with the understanding that hourly rates could be renegotiated after one year.[7] It is proper for the Court to "consider the rate of opposing counsel when setting reasonable hourly rates."[8] The State cannot justifiably object to AVCP Plaintiffs' attorneys' rates of $600.00, $500.00, and $450.00 per hour, while paying its own attorneys the same.[9]

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the State) of $495.00 to $600.00 per hour for partners and of counsel and $300.00 per hour for associates. *Id*. at 4.

[5] Dkt. 178, at 4. In his declaration, KRITFC attorney Nathaniel Amdur-Clark noted that Sonosky often charges rates between $600.00 and $750.00 per hour. *Id*. at 2.

[6] Dkt. 181-1, at 4–5.

[7] Dkt. 197-1, Ex. A at 6.

[8] *Fox v. Pittsburg State Univ.*, 258 F. Supp. 3d 1243, 1267 (D. Kan. 2017).

[9] Indeed, the State may be paying its attorneys more. Per Article 2.4 of the State's 2022 contract with Consovoy McCarthy, these billing rates were set for only one year from the date of execution of the contract, December 28, 2022. It is thus possible that the State has

The State's objections to the rates sought for Supreme Court specialists are likewise without merit. As described by Supreme Court practitioner Carter Phillips, Supreme Court practice is highly specialized and market rates have dramatically increased over the last three decades.[10] After the State filed its petition for certiorari, Leonard Powell joined the AVCP Plaintiffs' attorney team to provide the necessary expertise in Supreme Court practice.[11] While the State is correct in noting that other members of the AVCP Plaintiffs' attorney team have Supreme Court experience, none has as much experience as Mr. Powell, who has litigated dozens of Supreme Court cases at the certiorari and merits stages and is a nationally recognized expert in federal Indian law appellate and Supreme Court advocacy.[12]

Mr. Powell's hourly rate of $1,305.00 per hour is consistent with the rates charged by the Supreme Court practitioners representing the other Intervenor-Plaintiffs in this case. Prior to joining the Native American Rights Fund in 2024, Mr. Powell practiced in Jenner & Block's Appellate and Supreme Court Practice group in its Washington, D.C., office, alongside the same attorneys who represented AFN in this case. Mr. Powell's rate is

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been paying higher hourly rates since December 29, 2023. In contrast, AVCP Plaintiffs continue to rely on Mr. Torgerson's 2024 declaration and have not claimed higher rates for work done in 2025 and 2026.

[10] Dkt. 197-2, at ¶ ¶ 3–4.

[11] Dkts. 182-2, at ¶ 9; 182-5, at 11.

[12] Dkts. 182-2, at ¶ 9; 182-7; *see, e.g.*, Leonard Powell, The Appellate Project (Nov. 10, 2024), https://theappellateproject.org/news-and-voices/all-posts/leonard-powell.

reasonable in that it is the same rate charged by AFN's attorney Jonathan Marshall,[13] despite the fact that Mr. Powell has been practicing law for three years longer than Mr. Marshall and held the title of Special Counsel before leaving Jenner & Block.

Further, that this case advanced to a stage where specialized Supreme Court counsel was necessary was both foreseen by the State and entirely within its control.[14] The State first engaged its Supreme Court counsel on June 17, 2022, just one month after the case was initiated.[15] Three weeks later, the State issued a Request for Proposals ("RFP") seeking experienced Supreme Court counsel for the remainder of the case. In its RFP, the State described the case as a conflict between the *Katie John* line of cases and *Sturgeon v. Frost*,[16] and was explicit that the minimum prior experience required was that the "[l]ead attorney must have argued before the United States Supreme Court."[17] At the time the State issued

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[13] *See* Dkt. 182-2, at 6 n.7. As set forth in AFN's Reply in Support of Motion for Attorneys' Fees, Jenner & Block's rates are reasonable. Dkt. 186, at 18–20.

[14] *See* Alex DeMarban, *Judge Rules in Favor of Biden Administration in Fight with Alaska Over Rural Priority for Subsistence Fishing*, Anchorage Daily News (Mar. 29, 2024), *available at* https://www.adn.com/alaska-news/rural-alaska/2024/03/29/judge-rules-in-favor-of-biden-administration-in-fight-with-alaska-over-rural-priority-for-subsistence-fishing-on-the-kuskokwim-river/ ("'We were always expecting this case to go up to the highest court in order to get a final decision,' [Alaska Attorney General Treg] Taylor said. 'The state plans to appeal.'").

[15] *See* State of Alaska Standard Agreement Form, Agency Contract No. 22-216-1302, available at: https://www.dermotcole.com/reportingfromalaska/2024/1/8/pbvpuds8rva72n9tetqalxmlvmaq2u (Exhibit A).

[16] 587 U.S. 28 (2019); *see* State of Alaska Request for Proposals, Legal Counsel for Federal Litigation: Kuskowkwim [sic] Subsistence Fishing, RFP 2023-0300-5241, § 2.01, Background Information (Exhibit B).

[17] Ex. B §1.04, Prior Experience.

the RFP, the KRITFC and AVCP Plaintiffs had already been granted party status,[18] and Ahtna had filed its motion to intervene.[19] That Intervenor Plaintiffs each added experienced Supreme Court practitioners to their litigation teams for the final phase of the case should not surprise the State, as the State planned to do the same from the very beginning.

Additionally, the State has a long history of retaining specialized Supreme Court counsel for cases of particular importance. For example, between 1997 and 2003, the State retained Supreme Court expert (and now Chief Justice) John Roberts, then at the law firm of Hogan & Hartson, to represent it in a variety of cases before the Supreme Court, including in *Katie John II*,[20] as well as cases in which the State petitioned for certiorari,[21] cases in which the State opposed certiorari,[22] and cases of original jurisdiction.[23] The

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[18] Dkts. 29; 37.

[19] Dkt. 38

[20] *John v. United States* ("*Katie John II*"), 247 F.3d 1032 (9th Cir. 2001) (en banc) (per curiam) (John Roberts and Gregory Garre represented the State through the course of the Ninth Circuit en banc proceedings, beginning with the Petition for Hearing En Banc (March 13, 2000). John Roberts continued to participate in the case at the Supreme Court by filing an Unopposed Application for Extension of Time to File Petition for Writ of Certiorari (July 18, 2001) and an Opposition to the Alaska Legislature's attempt to intervene in the case and file its own writ of certiorari (November 7, 2001).

[21] *Alaska Dep't of Envtl. Conservation v. U.S. Envtl. Prot. Agency*, 540 U.S. 461 (2004) (certiorari petition at 2002 WL 32101154); *Alaska v. Native Vill. of Venetie Tribal Gov't*, 522 U.S. 520 (1998) (certiorari petition at 1997 WL 33485538); *Alaska v. United States*, 35 Fed. Cl. 685 (1996), *aff'd*, 119 F.3d 16 (Fed. Cir. 1997), *cert. denied*, 118 S.Ct. 1035 (1998) (certiorari petition at 1997 WL 33549527).

[22] *Alaska Civil Liberties Union v. Alaska*, 978 P.2d 597 (Alaska 1999), *cert. denied* 528 U.S. 1153 (2000) (brief in opposition at 1999 WL 33632978).

[23] *Alaska v. United States*, 545 U.S. 75 (2005) (No. 99O128) (original jurisdiction) (motion for leave to file a complaint at https://www.supremecourt.gov/pdfs/recordsandbriefs/

State's payments to their private Supreme Court counsel for this work over a handful of years totaled $1.75 million.[24] The State also retained Supreme Court expert Gregory Garre for its certiorari petition in *Katie John III*.[25]

In sum, given the State's longstanding practice of hiring private, experienced Supreme Court litigators, including at the earliest stages of this case, the State cannot be surprised by Plaintiffs' decision to do the same in a case with such potentially devastating outcomes. The higher fees charged for this level of specialized expertise are reasonable.

II. AVCP PLAINTIFFS' ATTORNEYS' HOURS ARE NOT EXCESSIVE.

"The party opposing the fee bears the burden of rebuttal, including *submitting evidence* to challenge the accuracy and reasonableness of the hours charged."[26] Thus, as the Ninth Circuit has counseled, "[i]f opposing counsel cannot come up with *specific reasons* for reducing the fee request[,]" the Court "should normally grant the award in full[.]"[27] The State fails to meet its burden to reduce AVCP Plaintiffs' award.

1000202712/1000202712_001.pdf); *see also*, *Alaska v. United States*, 144 S. Ct. 546 (2024), No. 22O157 (original jurisdiction) (motion for leave to file bill of complaint at https://sct.narf.org/documents/alaska_v_us_22O157/bill_complaint.pdf).

[24] Jim Adams, *Roberts Invokes Alaska Work to Demonstrate Compassion*, Indian Country Today (Sept. 28, 2005), https://ictnews.org/archive/roberts-invokes-alaska-work-to-demonstrate-compassion.

[25] *Alaska v. Jewell*, 572 U.S. 1042 (2014) (certiorari petition at 2013 WL 5936539).

[26] *McAnally v. Saul*, No. 4:18-cv-00027-TMB, 2019 WL 6179217, at *2 (D. Alaska Nov. 20, 2019) (citing *Gates v. Deukmejian*, 987 F.2d 1392, 1397–98 (9th Cir. 1992) (emphasis added).

[27] *Moreno v. City of Sacramento*, 534 F.3d 1106, 1116 (9th Cir. 2008) (emphasis added).

The State argues that AVCP Plaintiffs' attorneys' work in this case was excessive, but provides no evidence that AVCP Plaintiffs' attorneys billed too much time on this case.[28] Instead, the State proclaims generally that the billed time is "egregious"[29] and "astounding."[30] The State's approach is markedly different from its opposition to Plaintiffs' fee request in the *Katie John* litigation, where it submitted a 160-page exhibit detailing the specific time entries that it found to be excessive, unnecessary, vague, or otherwise objectionable.[31] This specificity made it possible for Plaintiffs to review their time records, make adjustments where they agreed, and provide additional information and context.[32] This specificity likewise made it possible for the Court to identify the specific time entries

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[28] The only "evidence" the State provides is a decades-old affidavit from Mr. Phillips asserting that $150,000.00 in fees to prepare and file an opposition to a petition for writ of certiorari in that particular case was excessive. Dkt. 194, at 499–503. The affidavit is irrelevant in determining what constitutes a reasonable fee award *today* and *in this case*. Mr. Phillips's own participation in this case and his own declarations submitted in support of the fees sought for his and his firm's work in this case provide the better guide. *See* Dkts. 179; 197-2. The State offers no evidence to rebut the fees requested for any other stage of the case or any work by Anchorage-based attorneys.

[29] Dkt. 193, at 14.

[30] *Id*. at 16.

[31] State's Opp'n to App. for Attys.' Fees, *Katie John v. United States*, A90-484-CV (HRH) (Jan. 31, 2002). In *Katie John v. State*, which preceded the three cases that constitute what is known as the *Katie John* trilogy, the State challenged Plaintiffs' counsel's hourly rates but did not challenge the hours that Plaintiffs' counsel spent on the case. Mem. Supporting Opp'n to Attys.' Fees, *Katie John v. State*, No. A85-698 (Oct. 15, 1991).

[32] *See* Order on Renewed & Supplemental App. of Plaintiffs & Intervenor for Award of Costs & Attys.' Fees 46, *Katie John v. United States*, A90-484-CV (HRH) (March 28, 2003) (describing individual time entries that Plaintiffs agreed to withdraw from their fee application.

that were in dispute, which was necessary to reach a final number of attorney hours and a final total of fees owed.[33] While this Court need not "embark on a line-by-line evaluation" of legal invoices,[34] it remains the State's burden to offer more than its opinion that the lawyering in this case should have taken less time.

"[A]ssessing how much time an attorney can reasonably spend on a specific case . . . will always depend on case-specific factors including, among others, the complexity of the legal issues, the procedural history, [and] the size of the record."[35] As AVCP Plaintiffs have made clear, this was no ordinary case. This case was the result of the State's serial and calculated violations of and attacks on Title VIII of ANILCA, and—as the Ninth Circuit observed—of its inconsistent positions about the validity of the *Katie John* cases.[36] The amount of time billed by AVCP Plaintiffs' attorneys reasonably reflects the complexity of the issues raised, the potential consequences for Alaska Native people and rural Alaskans, and the decades-long history of subsistence litigation on the same issues presented in this case—that is, the size not only of the record in this case, but also the *historical* litigation record.

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[33] *Id.* at 39-65.

[34] *Seward Prop., LLC v. Arctic Wolf Marine, Inc.*, 2022 WL 17414964, at *2 (D. Alaska Dec. 5, 2022).

[35] *Costa v. Comm'r of Social Security Admin.*, 690 F.3d 1132, 1136 (9th Cir. 2012).

[36] *See United States v. Alaska*, 151 F.4th 1124, 1127 (9th Cir. 2025).

Indeed, the State was well aware of both the complexity of the issues in ANILCA cases and, relatedly, its potential fee exposure in litigating such cases, when it took the actions that prompted this litigation and pushed to unwind the *Katie John* precedents.[37] Further, the State's own estimates of what the case might cost support the reasonableness of AVCP Plaintiffs' attorney time. "[O]pposing counsel's billing records may be relevant to determining whether the prevailing party spent a reasonable number of hours on the case[.]"[38] The State here did not disclose the number of hours its attorneys have billed to this case or the total amount it paid its own attorneys. But the $250,000.00 the State estimated for the District Court phase and the $750,000.00 the State was willing to pay contract attorneys for their work over the life of the case is a matter of public record. AVCP Plaintiffs seek a total award in the amount of $632,240.56, $117,759.44 less than the cap the State agreed to pay for the same legal services in the same case. The State presumably agreed to that total amount and the rates billed by the State's attorneys because they are

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[37] In 2003, this Court ordered the State to pay Plaintiffs $601,041.88 in attorneys' fees and $33,736.67 in costs for Plaintiffs' role in *Katie John I* and *II*. Dkt. 147-3. at 76–77. This Court also ordered the United States to pay Plaintiffs an additional $49,264.37 in attorneys' fees and $1,135.56 in costs. *Id.* In 1992, Plaintiffs were awarded $174,465.00 in attorneys' fees and $19,535.00 in costs for their role in *Katie John v. State*. Stipulation Regarding Attys.' Fees & Costs, *Katie John v. State*, No. A85-698 (approved March 31, 1992) (Dkt. 147-1) (Exhibit C) (describing a negotiated agreement that resulted in an increase in attorneys' fees and a reduction of costs after this Court's January 1992 Order). AVCP Plaintiffs have been judicious in their request for costs and have not included travel expenses or costs associated with legal research programs even though they would be entitled to these costs. *See, e.g.*, Dkt. 147-3, at 73–74.

[38] *Gonzalez v. City of Maywood*, 729 F.3d 1196, 1202 (9th Cir. 2013).

reasonable,[39] which is confirmed by the total amounts and rates billed by the four Intervenor-Plaintiffs in this case.

Finally, as this Court has observed, "[i]f the prevailing party achieved 'excellent results,' the court may permit a full fee."[40] It cannot be denied that AVCP Plaintiffs achieved excellent results. They successfully defended the *Katie John* cases, obtaining summary judgment against the State from this Court, affirming that victory on appeal before the Ninth Circuit, and, for the third time, successfully opposing the State's petition for writ of certiorari.

III. AVCP PLAINTIFFS' ATTORNEYS' HOURS ARE NOT UNNECESSARILY DUPLICATIVE.

The State also asserts that AVCP Plaintiffs' attorneys' work was duplicative of the other Parties, but whether work was duplicative is not the standard. The State must demonstrate that AVCP Plaintiffs' attorneys' work was *unnecessarily* duplicative.[41] The States has not met its burden.

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[39] *Cf. Democratic Party of Wash. State v. Reed*, 388 F.3d 1281, 1287 (9th Cir. 2004) ("Either they were wasting the taxpayers' money, which neither they nor we suggest, or the Democratic Party lawyers were not wasting the Party's money.").

[40] *Lise T. v. Saul*, No.3:19-CV-00187-TMB, 2020 WL 3065913, at *2 (D. Alaska June 9, 2020) (citation omitted).

[41] *See Moreno*, 534 F.3d at 1112 ("All this is duplication, of course, but it's *necessary* duplication; it is inherent in the process of litigating over time. . . . One certainly expects *some* degree of duplication as an inherent part of the process. There is no reason why the lawyer should perform this necessary work for free." (emphasis in original)).

AVCP Plaintiffs were the second set of parties to move to intervene in this case and intervened as a matter of right.[42] Parties granted intervention as of right "have full party status in the litigation[.]"[43] The State "t[ook] no position on" AVCP Plaintiffs' motion for intervention.[44] The State could have opposed or it could have conditioned its non-opposition on the Court requiring the Intervenors to file joint briefs in order to reduce redundancy and duplication. The State did not ask the Court to impose such limits, and the Court did not impose any limits *sua sponte*. When Ahtna and AFN likewise moved to intervene, the State again did not request that the Court require the Intervenor-Plaintiffs to file consolidated briefs.[45] The Intervenors were each entitled to participate in this case at all stages as full parties, including by filing their own briefs and making arguments on their own behalf.

Accordingly, AVCP Plaintiffs participated fully in this case. AVCP Plaintiffs were entitled to retain the attorneys of their choice, and those attorneys had ethical duties to competently represent their clients—including by researching, drafting, and strategizing throughout the case.[46] At times, this resulted in the AVCP Plaintiffs filing their own briefs.

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[42] Dkt. 19. AVCP Plaintiffs moved to intervene just ten days after the KRITFC first moved to intervene. Dkt. 12.

[43] *United States v. Cal. Mobile Home Park Mgmt. Co.*, 107 F.3d 1374, 1378 (9th Cir. 1997) (citations omitted).

[44] Dkt. 36 at 1.

[45] *See* Dkts. 43; 94.

[46] *See Reed*, 388 F.3d at 1288 ("There is no reason that one party should simply trust the others to take care of its interests."). Indeed, by granting AVCP Plaintiffs and the other

At others, it resulted in the time-consuming task of coordinating, consolidating, streamlining, and finalizing joint briefs, most notably the brief in opposition.[47]

In an attempt to diminish the work of AVCP Plaintiffs' counsel, the State mischaracterizes the 262 hours of work done at the Supreme Court phase as only "tasks involving editing a 32-page brief and coordinating with other Intervenors."[48] Yet the State ignores the time that AVCP Plaintiffs' counsel spent on recusal research—an issue that was potentially relevant to the denial of certiorari and the end of the litigation.[49] Furthermore, although the State later acknowledges the work done to prepare for possible merits briefing, it dismisses such work as "unnecessary."[50] Yet given the timing of the case, it would have been malpractice for AVCP Plaintiffs' counsel to not have been preparing; the Court's conferences in early January, when it considered the State's petition, were the last

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Intervenor-Plaintiffs intervention, the Court necessarily found that none of the parties adequately represented the interests of the others. *See* Fed. R. Civ. P. 24(a)(2).

[47] In addition to reviewing and editing the initial draft briefs in opposition to certiorari, AVCP Plaintiffs' counsel took the lead in finalizing the brief that was ultimately filed, and attorney Heather Kendall Miller was lead counsel on the brief. This finalizing work included reconciling edits, technical editing, cite checking, locating obscure sources, wordsmithing, and all final revisions—not a small task given the number of attorneys who had worked on the brief. This work also included reviewing all proofs from the printer, incorporating final edits, and communicating with each group of Intervenor Plaintiffs for their review and approval at each phase. As this Court noted in its fees order covering *Katie John I* and *II*, Plaintiffs are entitled to fees for attorney time spent revising, editing, and reviewing proofs of briefs in opposition to certiorari. Dkt. 147-3, at 62–63.

[48] Dkt. 193, at 15.

[49] *See Alaska v. United States*, No. 25-320, 2026 WL 79601 (2026).

[50] Dkt. 193, at 16.

conferences at which a grant of certiorari would result in the case being decided this term. Had the Court granted certiorari, Intervenor Plaintiffs would have been in the position of briefing and arguing the case in limited time.[51]

While the State may characterize AVCP Plaintiffs' counsels' work as duplicative, it was not unnecessary, and therefore the AVCP Plaintiffs are entitled to recover attorneys' fees for that work.[52]

IV. AVCP PLAINTIFFS ARE ENTITLED TO RECOVER ATTORNEYS' FEES FOR TIME EXPENDED ON ALTERNATIVE ARGUMENTS NOT ADDRESSED BY THE COURTS.

The State argues that AVCP Plaintiffs are not entitled to recover attorneys' fees for time expended on alternative arguments not addressed by this Court or the Ninth Circuit and thus asked for a reduction in their total award. The State's request is not supported by law and AVCP Plaintiffs' award should not be reduced.

"Litigants in good faith may raise alternative legal grounds for a desired outcome, and the court's rejection of or failure to reach certain grounds is not a sufficient reason for

[51] Of the cases that were considered at the January 9, 2026, conference in which certiorari was granted, all will be argued this week and next. *Compare* Order List, 607 U.S. ___ (U.S. Jan. 9, 2026), https://www.supremecourt.gov/orders/courtorders/010926zr_g2bh.pdf, *with* Case Nos. 24-856, 25-406, 25-429, & 25-466.

[52] *See Pakootas v. Teck Cominco Metals, Ltd.*, No. CV-04-256-LRS, 2009 WL 10671390, at *4 (E.D. Wash. Dec. 21, 2009) ("If the work was 'necessary,' even though duplicative (i.e. State's filing of a complaint in intervention closely mirroring the complaint filed by Pakootas and Michel), reasonable fees should be awarded for that work.").

reducing a fee. The result is what matters."[53] Prevailing parties are generally entitled to recover attorneys' fees for claims not addressed by the court unless those claims are "unrelated to" the claims prevailed upon.[54]

Throughout this case, AVCP Plaintiffs asserted three main arguments in defense of the federal government's authority to manage and enforce Title VIII's rural subsistence priority. AVCP Plaintiffs' primary argument was that *Sturgeon* and *Katie John* are not irreconcilable and that navigable waters running through or appurtenant to conservation system units are public lands for the purposes of Title VIII because the federal government's reserved water right is an interest in water to which the United States holds title. This Court and the Ninth Circuit agreed, and the Supreme Court in denying certiorari upheld these rulings. AVCP Plaintiffs were successful in their primary argument.

The State, however, argued that *Sturgeon* and *Katie John* are irreconcilable. The AVCP Plaintiffs therefore were required to present their alternative arguments; it would have been irresponsible to do otherwise. AVCP Plaintiffs argued in the alternative that if the courts agreed with the State that *Katie John* was no longer good law, the United States holds other powers and retains other interests in waters that allow it to regulate subsistence fishing on navigable waters under Title VIII. Specifically, AVCP Plaintiffs argued that Congress invoked its broad Indian Affairs powers in enacting Title VIII and that the

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[53] *Hensley v. Eckhart*, 460 U.S. 424, 435 (1983) (footnote omitted); *see also Cannon v. Comm'r of Social Security Admin.*, No. 3:18-cv-0127-HRH, 2019 WL 1877284, at *3 (D. Alaska Apr. 26, 2019).

[54] *Gates*, 987 F.2d at 1404.

navigational servitude is both a power and an interest in water that supports the federal government's Title VIII authorities. AVCP Plaintiffs' alternative arguments are related to their successful claim: they offered alternative sources of authority (apart from the reserved water rights doctrine) for the federal government's regulation of subsistence fishing on navigable waters under Title VIII.

Further, these alternative arguments were made in good faith. In enacting Title VIII, Congress explicitly "invoke[d] its constitutional authority over Native affairs . . . to protect and provide the opportunity for continued subsistence uses on the public lands by Native and non-Native rural residents[.]"[55] "Title VIII was adopted to benefit the Natives[,]"[56] and was meant to fulfill Congress's "fiduciary duties . . . to protect the subsistence resources of Indian communities and to preserve such communities as distinct cultural entities against interference by the State[]."[57]

Congress also "invoke[d] . . . its constitutional authority under . . . the commerce clause" in enacting Title VIII.[58] While the *Katie John* cases affirm that the source of the federal government's authority to regulate subsistence fishing rests with the reserved water doctrine, Judge Holland initially held that the navigational servitude formed the basis of

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[55] 16 U.S.C. § 3111(4).

[56] *Vill. of Gambel v. Clark*, 746 F.2d 572, 581 (9th Cir. 1984).

[57] *Togiak v. United States*, 470 F. Supp. 423, 428 (D. Alaska 1979) (citation omitted).

[58] 16 U.S.C. § 3111(4).

the federal government's authority.[59] And over the decades since *Katie John I,* judges with this Court and Justices of the Supreme Court have suggested that the best reading of Title VIII is to define public lands to include all waters subject to the United States's navigational servitude.[60] These arguments were made in good faith.

Moreover, AVCP Plaintiffs were required to brief these arguments at all stages of this litigation in order to preserve the arguments for later arguments, future appeals, and subsequent proceedings (potentially on remand) before this Court and other courts, and to avoid the waiver, estoppel, *res judicata*, or law of the case arguments the State would inevitably have made if the arguments were not initially briefed and preserved.

CONCLUSION

As prevailing parties, AVCP Plaintiffs are entitled to their full award of attorneys' fees and costs under 16 U.S.C. § 3117(a). As set forth herein and in their Renewed & Supplemental Application for Attorneys' Fees and Costs,[61] AVCP Plaintiffs are entitled to an award of attorneys' fees and costs in the amount of $632,240.56, plus reasonable fees incurred in preparing, filing, and defending their Renewed and Supplemental Application. The State's objections to this award are meritless and should be rejected by the Court. In

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[59] *See John v. United States*, No. A90-0484-CV (HRH), 1994 WL 487830, at *14–18 (D. Alaska Mar. 30, 1994).

[60] *See, e.g.*, *Katie John II*, 247 F.3d at 1034–40 (Tallman, J., concurring); *Sturgeon*, 587 U.S. at 63 n.3 (Sotomayor, J., concurring); *Native Vill. of Quinhagak v. United States*, 35 F.3d 388, 392 (9th Cir. 1994); *Sturgeon v. Frost*, 872 F.3d 927, 937–38 (9th Cir. 2017).

[61] *See* Dkt. 182.

addition, the Court should award AVCP Plaintiffs their fees and costs in full as a means of deterrence against future State conduct aimed at dismantling the statutory and regulatory scheme upheld—*for the fourth time*—in this case.[62]

RESPECTFULLY SUBMITTED this 16th day of April, 2026.

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[62] *Compare Alaska*, 151 F.4th at 1124, *cert. denied*, 2026 WL 79601, *with Alaska v. Babbit*, 72 F.3d 68 (9th Cir. 1995), *cert. denied*, 516 U.S. 1036 (1996), *sub nom.*, *Alaska Fed'n of Natives v. United States*, 517 U.S. 1187 (1996), *and Katie John II*, 247 F.3d at 1032, *and John v. United States*, 720 F.3d 1214 (9th Cir. 2013), *cert. denied sub nom.*, *Jewell*, 572 U.S. at 1042.

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of April, 2026, I electronically filed the foregoing document with the Clerk of the Court for the United States District Court for the District of Alaska using the Court's CM/ECF system. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Wesley James Furlong
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