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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

RAY METCALFE and NICK )  
BEGICH, public-minded citizens )  
of the State of Alaska, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
STATE OF ALASKA, )  
 )  
Defendant. )  
\_\_\_\_\_ ) Case No. 3AN-99-\_\_\_\_\_ Civil

Complaint for Declaratory Judgment

COME NOW Plaintiffs Ray Metcalfe and Nick Begich, individually and upon behalf of the citizens of the State of Alaska, by and through counsel of record Jody Patrick Brion, and, pursuant to AS 22.010.020(g), request a declaratory judgment by this court declaring the “Charter for Development of the Alaskan North Slope, ”a proposed oil and gas lease contract entered into as a result of the secretly conducted negotiations between the Knowles administration and BP, to be illegal, being in violation of Article IX, Sec. 13 of the Alaska Constitution (Expenditure Clause), Article II, Sec. 1 of the Alaska Constitution (Legislative Power Clause), Article II, Sec. 7 of the Alaska Constitution (Dedicated Funds Clause) and Article IX, Sec. 17 of the Alaska Constitution (Budget Reserve Fund Clause).

For their complaint, Plaintiffs allege as follows:

### Nature of the Action

1. BP Amoco (hereinafter “BP” and “BP Amoco”) and Atlantic Richfield, Co.(hereinafter “ARCO”), each a multi-national foreign oil company, jointly operate the Prudhoe Bay oil field, and between them own approximately 75% of the known North Slope oil reserves, own approximately 72-75% of the Trans Alaska Pipeline, and comprise 100% of the operators of producing fields on the North Slope.
2. BP, presently the third largest oil company in the world, is attempting to buyout and acquire ARCO, presently the seventh largest oil company in the world.
3. Such acquisition, reportedly for \$26.6 billion dollars in stock, would create the world’s second largest oil company. The merged company will pay taxes totaling almost 75% of Alaska's general state budget.
4. It is a fundamental goal of the State of Alaska’s North Slope development policy to provide access to Alaska’s resources and to ensure maximum revenue by encouraging competition among many firms.
5. The merger of Alaska's two largest oil producers will create a "supermajor" oil company.
6. After this buyout is completed, BP will have created a monopoly in the ownership of, exploration for, recovery of, and transportation of, Alaskan oil and gas; there would be a clear restraint of trade of the foregoing amongst competitors, and reduced competition in all aspects of oil exploration, drilling, recovery, and transportation, all in derogation of Alaska anti trust statutes.

7. After this buyout is completed, BP will be in the position to control and dominate all aspects of state government, because it will in effect have direct control of the bulk of Alaska's revenue; in addition to the antitrust ramifications of this unacceptable scenario, such would egregiously breach provisions of the Alaska constitution that guarantee equal access to and ownership of common resources, and the public trust doctrine. This buyout offers a great threat to the sovereignty and sanctity of Alaska and all Alaskans, because BP will have majority control of Alaska oilfields, will own all production facilities on the North Slope, will be the majority owner of the TAPS, and will be in position to use this monopoly position to kill competition, dictate when and on what terms it produces oil wealth for Alaska, use its production and pipeline control to open and close the spigot on Alaska oil wealth and directly affect Alaska politics, the Alaskan economy, and the permanent fund.
8. In August, 1999, the administration of Governor Knowles publicly announced that the proposed buyout of ARCO by BP would be violative of law unless certain concessions were made by BP.
9. The Knowles administration subsequently entered into private negotiations with BP, which were not open to the public.
10. A result of the secretly conducted negotiations between the Knowles administration and BP is a proposed contract entitled "Charter for Development of the Alaskan North Slope" (hereinafter "Agreement"), a copy of which is attached to this Complaint as Exhibit "1." This Agreement specifies a list of commitments and conditions for BP which BP agrees to, in consideration for the Executive

Branch of the State of Alaska approving of, and not challenging in court, the BP-ARCO merger. Also in exchange for consideration, the Knowles administration has agreed to support BP's application to the Federal Trade Commission.

11. The Knowles administration and BP cooperatively held a series of public meetings at which this agreement is being touted as the solution to the antitrust illegality of the merger; e.g., that this agreement would "save" the buyout from antitrust illegality. There has been a groundswell of public interest shown at this meeting.
12. The Knowles administration is publicly committed to a final decision on the Agreement by the end of 1999, presently 6 weeks away.
13. This Agreement itself derogates from the Alaska Constitution, Alaskan statutes, and appurtenant case law, and Plaintiffs request a judicial Declaratory Judgment that the Agreement is illegal, (or, alternatively, if implemented, would be illegal) and cannot stand.

### Jurisdiction

14. Plaintiffs are citizens and residents of the Third Judicial District of the State of Alaska and are subject to the jurisdiction of this court.
15. Defendant State of Alaska, and the acts of members of its Executive Branch, are subject to the jurisdiction of this court.
16. The situation described above constitutes an actual controversy, susceptible to a declaration of the rights and legal relationships of the parties, pursuant to AS 22.10.020(g).

## Standing

17. Plaintiffs are public interest litigants, and bring this action upon behalf of themselves and other similarly situated citizens of the State of Alaska.
18. In Alaska, public interest litigants have the standing to challenge government actions which are allegedly unconstitutional. *State v. Lewis*, 559 P.2d 630 (Alaska 1977).
19. The action being challenged in this Complaint for Declaratory Judgment is a matter of significant public concern.
20. There are no other plaintiffs more directly affected by the challenged action who have brought suit to challenge it.
21. There are no other plaintiffs more directly affected by the challenged government action who are more likely than the instant plaintiffs to bring suit to challenge it.
22. Plaintiffs are capable of competently advocating the position they assert in this action.
23. Plaintiffs have standing to bring this public interest litigation lawsuit based on their status as taxpayer-citizens in good standing in the State of Alaska.

## First Cause of Action

### Violation of Article IX, Sec. 13 of the Alaska Constitution (Expenditure Clause)

24. Plaintiffs reallege all of the foregoing allegations as if fully set forth herein.
25. The Agreement was negotiated by, and is drafted for the signature of, the Governor of Alaska, Tony Knowles, a member of the Executive Branch of the State of Alaska, and his agents.

26. All moneys which BP has agreed to pay in the Agreement are a “source of public revenue” as defined by Attorney General in May 2, 1975 Op. Atty. Gen. (“The dedication of any source of public revenue: tax, license, rental, sale, bonus-royalty, royalty, or whatever, is limited by the state constitution...)
27. The Agreement specifically provides for the appropriation of public revenues from, or in return for, the lease or sale of natural resources. See Agreement at II.A.1., II.A.5., II.A.7, II.D.
28. The Agreement violates Article IX, Sec.13 of the Alaska Constitution, which reads:
- Section 13. Expenditures.** No money shall be withdrawn from the treasury except in accordance with appropriations made by law. No obligation for the payment of money shall be incurred except as authorized by law. Unobligated appropriations outstanding at the end of the period of time specified by law shall be void.
29. The Agreement violates the rule that in Alaska, all appropriations must be made by legislative act. *Municipality of Anchorage v. Frohne*, 568 P.2d 3 (Alaska 1977).
30. The Agreement violates the rule that in Alaska, blending of governmental powers will not be inferred absent an express constitutional provision. *Bradner v. Hammond*, 553 P.2d 1 (Alaska 1976).
31. The Agreement violates the rule that in Alaska, the delegation of power over appropriations may not be delegated, but rather only exercised by the legislature, in accordance with procedures mandated by the Alaska Constitution, art II. *State v. Fairbanks N. Star Borough*, 736 P.2d 1140 (Alaska 1987).

## Second Cause of Action

### Violation of Article II, Sec. 1 of the Alaska Constitution (Legislative Power Clause)

32. Plaintiffs reallege all of the foregoing allegations as if fully set forth herein.
33. The Agreement violates Article II, Sec.1 of the Alaska Constitution, which reads:
- Section 1. Legislative Power; Membership.** The legislative power of the State is vested in a legislature consisting of a senate with a membership of twenty and a house of representatives.
34. The Agreement violates Alaska Statute 37.07.020, entitled “Responsibilities of the governor” because it was not promulgated in accordance therein. Specifically, the Knowles administration abrogated from AS 37.020.020(a) by not including the proposed expenditures contained in the Agreement in a budget and appropriation bills submitted to the Legislature.
35. The Agreement violates Alaska Statute 37.020.014, entitled “Responsibilities of the legislature” by usurping the power of the legislature under Article II, Section 1 of the Alaska Constitution to review proposed appropriations (AS 37.07.014(b)); to analyze proposed appropriations (AS 37.07.014(c)); and to allocate the state’s resources. (AS 37.07.014(d)).
36. The Agreement also violates Article II, Sec.1 of the Alaska Constitution, because in the Agreement, the consideration proposed for payment of moneys is to be paid to the State of Alaska, or those that designated by the State of Alaska, as a condition of BP's ability to proceed with business in the manner that BP wishes to proceed.

37. Therefore, this obligation to pay is imposed by the state of Alaska and is, by definition, a tax:
- a. annual compensation paid to government for annual protection and for current support of government. *Alabama Power Co. V. FPC*, 134 F.2d 602, 608, *cited in* Black's Law Dictionary, 5<sup>th</sup> Ed. at pg. 1307.
  - b. an enforced contribution of money or other property, assessed in accordance with some reasonable rule or apportionment by authority of a sovereign state on persons or property within its jurisdiction for the purpose of defraying the public expenses. Black's Law Dictionary, 5<sup>th</sup> Ed. at pg. 1307.
  - c. in a general sense, any contribution imposed by government upon individuals, for the use and service of the state, whether under the name of toll, tribute, tallage, gabel, impost, duty, custom, excise, subsidy, aid, supply, or other name. And in its essential characteristics not a debt. *City of Newark v. Jos. Hollander, Inc.*, 136 N.J.Eq. 539, 42 A.2d 872, 875, *cited in* Black's Law Dictionary, 5<sup>th</sup> Ed. at pg. 1307.
38. This particular tax was imposed upon BP by the Executive branch of Alaska's government, in derogation of Alaska's Constitution, which reserves the power to tax to the Alaska's legislative branch of government. Taxation is inherently a function of the legislature, and can be exercised only under its authority. *In re Dissolution of Mountain View Public Utility Dist. No. 1*, 359 P.2d 951 (Alaska 1961).

## Third Cause of Action

### Violation of Article II, Sec. 7 of the Alaska Constitution (Dedicated Funds Clause)

39. Plaintiffs reallege all of the foregoing allegations as if fully set forth herein.
40. The time frame for the disbursement of the monies which BP has agreed to pay in the Agreement is greater than one (1) fiscal year.
41. The Agreement violates Article II, Sec.7 of the Alaska Constitution, which reads:
- Section 7. Dedicated Funds.** The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in section 15 of this article or when required by the federal government for state participation in federal programs. This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska.
42. The Agreement violates the rule that in Alaska, the dedication of the revenues from the lease or sale of state natural resources offends the state constitutional prohibition against dedicated funds. May 2, 1975 Op. Atty.Gen.
43. The Agreement violates the rule that in Alaska, the constitutional clause prohibiting dedicated funds seeks to preserve an annual appropriation model which assumes that the legislature will remain free to appropriate all funds for any purpose on an annual basis. *Sonneman v. Hickel*, 836 P.2d 936 (Alaska 1992).
44. Thus, the proposed Agreement between BP and the Knowles administration, which has directed a tax to be paid directly to the University of Alaska at the rate of 0.06% of oil production or about 2 million dollars per year, not only subverts the Legislature's authority to tax and the legislatures authority to appropriate, but it

additionally attempts to exercise authority to appropriate revenues anticipated to be received in the future over several fiscal years.

45. Therefore, even if the proposed agreement were reviewed and approved by the State Legislature, it would still be unconstitutional as the Legislature itself lacks the authority to bind a future legislature to the currently seated legislatures chosen appropriations. *Sonneman v. Hickel*, 836 P.2d 936 (Alaska 1992).

#### Fourth Cause of Action

##### Violation of Article IX, Sec. 17 of the Alaska Constitution (Budget Reserve Fund Clause)

46. Plaintiffs reallege all of the foregoing allegations as if fully set forth herein.

47. The process of negotiating the Agreement which took place between the Knowles administration and BP was an “administrative proceeding” as defined by Article IX, Sec. 17 of the Alaska Constitution, and *Hickel v. Halford*, 872 P.2d 171 (Alaska 1994), in that:

- a. a dispute existed between the State and BP-ARCO;
- b. a document reflecting the fact of the dispute was produced which served a function similar to that of a complaint in a civil action, or an accusation or statement of issues under the Administrative Procedures Act, AS 44.62.360, 370 was served by the State on BP in the form of a list of demands made by the Governor upon BP (See print out of this document, attached as Exhibit “2”); and
- c. the document set into motion mechanisms prescribed by statute or regulation under which the dispute will ultimately be resolved.

48. All moneys which BP has agreed to pay in the Agreement are a result of the termination, through settlement or otherwise, of an administrative proceeding involving mineral bonuses, rentals, royalties, royalty sale proceeds, or involving taxes imposed on mineral income, production or property.
49. Accordingly, all moneys which BP has agreed to pay in the Agreement would have to be deposited in the Budget Reserve Fund created by Article IX, section 17 of the Alaska Constitution.
50. The Agreement therefore derogates from Article IX, Sec. 17 of the Alaska Constitution.

### Prayer for Relief

Having fully set forth their allegations, Plaintiffs request that this court order the following relief:

1. that this court issue a Declaratory Judgment declaring the proposed contract entitled “Charter for Development of the Alaskan North Slope” to be illegal under the application of the Constitution, statutes and laws of the State of Alaska.
2. Defendants pay public interest litigant attorney fees and costs in this matter; and
3. such and other further relief which this court decides is just and equitable.

DATED THIS \_\_\_\_ day of \_\_\_\_\_, 1999.

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