

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ANIMAL WELFARE INSTITUTE, et al.)

Plaintiffs,)

v.)

FELD ENTERTAINMENT, INC.,)

Defendant.)
_____)

Case No: 03-2006 (EGS/JMF)

**DEFENDANT FELD ENTERTAINMENT, INC.'S PETITION FOR
ATTORNEYS' AND EXPERT WITNESS FEES**

**FEE PETITION
EXHIBIT 5**

(Pet., Ex. 5)

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MGC FEE PETITION EXCERPTS

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Attorneys for Plaintiffs

10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**
SAN FRANCISCO DIVISION

12 WILD EQUITY)
INSTITUTE, a non-profit)
13 corporation, *et al.*)

14 Plaintiffs,)

15 v.)

16 CITY AND COUNTY OF)
SAN FRANCISCO, *et al.*,)
17)

18 Defendants.)
19
20

Case No.: 3:11-CV-00958 SI

**PLAINTIFFS' MOTION FOR AN AWARD
OF ATTORNEYS' FEES AND COSTS**

Date: May 10, 2013

Time: 9:00 a.m.

Courtroom: 10, 19th Floor

Judge: Hon. Susan Illston

21 February 8, 2013
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1 Indeed, the Supreme Court has left no doubt that the issuance of an ITS works a
2 fundamental change in the legal status of any entity covered by the Bi-Op. *See Bennett*, 520
3 U.S. at 178 (a Bi-Op and ITS “alter the legal regime to which the action agency is subject,
4 authorizing it to take the endangered species if (but only if) it complies with the prescribed
5 conditions” in the Bi-Op); 16 U.S.C. § 1536(b)(4) (the Bi-Op T&Cs “*must be complied with by*
6 *the Federal agency or applicant . . . or both, to implement the measures*” identified for
7 minimizing the adverse impacts caused by the take.”) (emphasis added). Accordingly, rather
8 than being a “gratuitous act of the defendant,” *Greater LA Council on Deafness*, 813 F.2d at
9 220, the Sharp Park Bi-Op, and the numerous concrete measures the RPD is undertaking to
10 comply with the Bi-Op, are legally binding obligations on the RPD, and this final aspect of the
11 test for entitlement to fee recovery is satisfied here as well.¹⁵

13 **II. PLAINTIFFS’ REQUESTED RECOVERY**

14 **A. Attorneys’ Fees**

15 The appropriate amount of a fee award is established by considering the “product of the
16 hours counsel reasonably spent on the case and a reasonable hourly rate.” *Hamed v. Macy’s*
17 *West Stores, Inc.*, No. 10-2790 JCS, 2011 WL 5183856, at *4 (N.D. Ca. Oct. 31, 2011) (citing
18 *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983)); *see also Resurrection Bay*, 640 F.3d at 1095.
19 Several factors may come into play, including the complexity of the case; the experience of the
20 attorneys; and the results. *Id.* at 1095, n.5.
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25 ¹⁵ Once again, it is Plaintiffs’ position that Sharp Park Bi-Op is not fully effective until the
26 Corps incorporates all of the ITS measures into a Corps permit. In any event, the conditions
27 imposed on RPD itself – and with which it has told the Court it must comply in light of FWS’s
28 finding of ongoing take – are more than sufficient to alter the parties’ legal status in a manner
that entitles Plaintiffs to fees.

1 **1. Plaintiffs’ Attorneys Reasonably Spent A Significant Number**
2 **of Hours On This Matter.**

3 In determining the appropriate hours to include in a fee award the Court considers “the
4 significance of the overall relief obtained by the plaintiff in relations to the hours reasonably
5 expended on the litigation.” *South Yuba River Citizens League v. NMFS*, No. S-06-2845 LKK,
6 2012 WL 1038131, *4 (E.D. Cal. Mar. 27, 2012) (quoting *Hensley*, 461 U.S. at 434). As the
7 Supreme Court explained in *Hensley*, “[w]here a plaintiff has obtained excellent results, his
8 attorney should recover a fully compensatory fee . . . encompass[ing] all hours reasonably
9 expended on the litigation,” and “[i]n these circumstances, the fee award should not be reduced
10 simply because the plaintiff failed to prevail on every contention in the lawsuit.” 461 U.S. at
11 435; *see also, e.g., Cabrales v. Cnty. of Los Angeles*, 935 F.2d 1050, 1053 (9th Cir. 1991) (“If a
12 plaintiff ultimately wins on a particular claim, she is entitled to all attorney’s fees reasonably
13 expended in pursuing that claim – even though she may have suffered some adverse rulings”);
14 *Keeton Corrs., Inc. v. United States*, 62 Fed. Cl. 134, 138 (Fed. Cl. 2004); *Stanford Daily v.*
15 *Zurcher*, 64 F.R.D. 680, 684 (N.D. Cal. 1974), *aff’d*, 550 F.2d 464 (9th Cir. 1977), *rev’d on*
16 *other grounds*, 436 U.S. 547 (awarding fees for time spent on unsuccessful motion that
17 advanced the litigation).

18
19 Plaintiffs are entitled to recover for all the hours reasonably expended in this suit. As
20 discussed, before filing this suit Plaintiffs sent several notice letters as required by the ESA, 16
21 U.S.C. § 1540, requesting that the RPD resolve its ongoing legal violations. Plaintiffs’ March,
22 2011 Complaint then set forth Defendants activities in detail, and the extent of Plaintiffs
23 understanding of the ongoing take occurring in Sharp Park, including CRLF egg mass
24 desiccation that had only recently occurred. Over the following year the case proceeded on
25 numerous tracks, with extensive discovery, several rounds of motions briefing, and multiple
26 efforts at settlement. Just to highlight some of the more extensive tasks, Plaintiffs prepared
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1 extensive Expert Reports, took detailed depositions, reviewed approximately 100,000 pages of
2 discovery, and prepared an extensive Privilege Log. *See* Crystal Decl. ¶ 2; Plater Decl. ¶ 3;
3 Glitzenstein Decl. ¶ 2 (summarizing tasks).¹⁶

4 According to Plaintiffs' counsels' contemporaneously maintained billing records, counsel
5 have thus far spent the following number of hours on this case through January 31, 2013:

6 Brent Plater: 857.7 hours

7 Howard Crystal: 844 hours

8 Eric Glitzenstein: 282.75 hours

9 Shawna Casabier: 47.15 hours

10 Kelli Shields: 217 hours

11 *See* Crystal Decl. ¶ 6 and Ex. A; Plater Decl. ¶¶ 16-18 and Ex. A-C.

12 In addition, paralegals spent 691 hours working on the case. *See* Crystal Decl. ¶ 6 and
13 Ex. A; Plater Decl. ¶ 19 and Ex. D.

14 Given the tasks involved, and that counsel's time is "adequately documented in a manner
15 that can be properly billed directly to clients," *Hamed*, 2011 WL 5183856, at *4 (citing *Hensley*,
16 461 U.S. at 434), all of this time is recoverable. *See, e.g., CBD v. BLM*, No. 06-4884 SI, 2012
17 WL 273604, at *1 (N.D. Cal. Jan. 30, 2012) (rejecting almost all attacks on plaintiffs' billing
18 records, and awarding over \$1 million); *see also* Drury Decl. ¶¶ 40-42 (explaining the
19 reasonableness of the hours spent on the case in light of the tasks involved and the result
20 obtained).
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24 ¹⁶ Plaintiffs are entitled to recover for time spent addressing issues raised by Intervenor,
25 including responding to Intervenor's discovery, since the RPD always supported Intervenor's
26 positions. *See, e.g., EDF v. EPA*, 672 F.2d 42, 56 and n.8 (D.C. Cir. 1982); *Center for Food*
27 *Safety v. Vilsack*, C-08-00484 JSW EDL, 2011 WL 6259891, at *6-7 (N.D. Cal. Oct. 13, 2011)
report and recommendation adopted, C 08-00484 JSW, 2011 WL 6259683 (N.D. Cal. Dec. 15,
2011).

1 **2. Hourly Rates**

2 In an ESA case, appropriate hourly rates are determined “by reference to the fees that
3 private attorneys of an ability and reputation comparable to that of prevailing counsel charge
4 their paying clients for legal work of similar complexity.” *Fed’n of Fly Fishers v. Daley*, 200 F.
5 Supp. 2d 1181, 1193 (N.D. Cal. 2002) (quoting *Davis v. City and County of San Francisco*, 976
6 F.2d 1536, 1545 (9th Cir. 1992)). As explained in the attached declarations of Brent Plater,
7 Howard Crystal, and Eric Glitzenstein, these and other counsel on the case have extensive
8 experience with complex environmental litigation, including in litigating ESA cases, as well as
9 extensive academic and other credentials and other relevant background. Glitzenstein Decl. ¶¶
10 3-7; Crystal Decl. ¶¶ 2-5; Plater Decl. ¶¶ 4-12.

11 In light of that experience and background, Plaintiffs request the following rates for
12 counsel: \$750/hour for Mr. Glitzenstein; \$700/hour for Mr. Crystal; \$550/hour for Mr. Plater;
13 \$295/hour for Ms. Casebier; and \$250/hour for Ms. Shields. *See Drury Decl. ¶¶ 34-37.*

14 To explain the basis for these hourly rates, Plaintiffs attach an extensive declaration from
15 Richard Drury. As Mr. Drury, who has been practicing civil litigation in the San Francisco area
16 for more than 20 years (Drury Decl. ¶¶ 3-5) explains, he is very familiar with market rates in the
17 Bay Area market as a result of obtaining court awarded fees in many cases, obtaining fees
18 through settlement, being involved in attorneys’ fees litigation, discussing fees with other
19 attorneys, studying published surveys of billing rates, reviewing rates awarded by courts in other
20 actions, and by obtaining declarations regarding prevailing market rates in cases where his
21 clients have sought payment of reasonable attorneys’ fees and costs. *Id.* ¶ 8. He is also familiar,
22 through extensive legal experience in environmental cases, with the complexity and difficulty of
23 environmental litigation, and the skill required to successfully litigate cases such as this one.
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27 *Id.*; *see also id.* ¶¶ 40-41.

1 In his declaration, Mr. Drury details rates awarded in other cases, rates at Bay area law
2 firms, and rates as reported in the National Law Journal. *Id.* ¶¶ 9-24. As he explains in
3 summarizing the data, partner rates in the Bay Area market range from approximately \$500 per
4 hour for the most junior partners, to \$980 per hour for those with great experience, *id.* ¶¶ 15-16,
5 while associate rates range from \$245 to \$550 per hour. *Id.* ¶¶ 17-18.

6 Based on this data, Mr. Drury offers his expert opinion as to the hourly rates that are
7 reasonable here in light of counsel's experience. *Id.* ¶¶ 24-38. With regard to Mr. Glitzenstein,
8 Mr. Drury explains Mr. Glitzenstein's vast ESA litigation experience, skill, and reputation, *id.*
9 ¶¶ 26-27, and his review of Mr. Glitzenstein's declaration, *id.* ¶ 25, which further details his
10 experience, specific cases he has litigated, including under ESA Section 9, and his academic
11 credentials. Glitzenstein Decl. ¶¶ 4-7. In light of these facts Mr. Drury explains that Mr.
12 Glitzenstein's requested rate of \$750 per hour is reasonable. Drury Decl. ¶ 34.

13 With regard to Mr. Crystal, Mr. Drury explains Mr. Crystal's extensive ESA litigation
14 experience, *id.* ¶ 28, and review of Mr. Crystal's declaration, *id.* ¶ 25, which details his
15 experience, specific cases he has litigated, including ESA cases and cases in this Circuit, and his
16 additional credentials. Crystal Decl. ¶¶ 3-5. In light of these facts Mr. Drury explains that Mr.
17 Crystal's requested rate of \$700 per hour is reasonable. Drury Decl. ¶ 35.

18 With regard to Mr. Plater, Mr. Drury explains Mr. Plater's extensive ESA litigation
19 experience and other relevant background, *id.* ¶¶ 29-32, and his review of Mr. Plater's
20 declaration, which details his litigation experience as well as his extensive knowledge of Sharp
21 park and the two species at issue in this case. Plater Decl. ¶¶ 4-12. In light of these facts Mr.
22 Drury explains that Mr. Plater's requested rate of \$550 per hour is reasonable. Drury Decl. ¶ 36.

23 With respect to junior attorneys, Mr. Drury explains that the rates sought for Ms.
24 Casebier (\$295 per hour) and Ms. Shields (\$250 per hour) are also reasonable in light of their
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1 levels of experience. Drury Decl. ¶37; *see also* Plater Decl. ¶ 13 (discussing the participation of
2 these attorneys).

3 With regard to paralegals, Mr. Drury explains that \$160 per hour is within the prevailing
4 market rate in the Bay Area. Drury Decl. ¶ 38; *see also, e.g. Richlin Sec. Serv. Co. v. Chertoff*,
5 553 U.S. 571, 588-89 (2008).

6 *****

7 Applying the requested hourly rates to the number of hours for which recovery is sought,
8 Plaintiffs are entitled to a fee award of \$ 1,451,556. *See* Crystal Decl. ¶ 15 (providing
9 calculations). However, to account for any billing discrepancies, Plaintiffs are affirmatively
10 reducing that request by 10%, to \$1,306,400. *Id.*; *see also South Yuba*, 2012 WL at 2 (“A
11 district court may impose a small reduction, no greater than 10 percent – a ‘haircut’ – based on its
12 exercise of discretion and without a more specific explanation”) (citing *Moreno*, 534 F.3d at
13 1112).

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15 **B. Costs**

16 Plaintiffs’ costs for the litigation included, *e.g.*, copy, mailing and electronic research
17 costs, and travel and expert witness costs. Plaintiffs cost records are attached, and total
18 \$ 59,409. *See* Plater Decl. ¶ 20 and Ex. E; Crystal Decl. ¶ 7 and Ex. B and 16 (summarizing
19 costs).
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21 **CONCLUSION**

22 For the foregoing reasons, Plaintiffs respectfully request that the Court grant their fee
23 Petition and award fees in the amount of \$1,306,400 and \$59,409 in costs.
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1 Dated: February 8, 2013

Respectfully submitted,

2 /s/ Howard M. Crystal

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12 **UNITED STATES DISTRICT COURT**
FOR THE NORTHERN DISTRICT OF CALIFORNIA
13 **NORTHERN DIVISION**

14 **WILD EQUITY INSTITUTE**, a non-profit)
15 corporation, *et al.*)

16 Plaintiffs,)

17 v.)

18 **CITY AND COUNTY OF SAN**)
FRANCISCO, *et al.*,)

19 Defendants.)
20)

Case No.: 3:11-CV-00958 SI (JCS)

DECLARATION OF RICHARD DRURY
IN SUPPORT OF PLAINTIFFS'
MOTION FOR ATTORNEYS FEES AND
COSTS

21 I, Richard Drury, declare that the following facts are true and correct:

22 1. I submit this declaration in support of Plaintiffs' Motion for Attorneys' Fees and Costs,
23 in this case, submitted herewith. The matters set forth in this declaration are within my
24 personal knowledge, and if called upon to testify as to these matters, I could and would so
25 testify.

26 2. I am licensed to practice law in the State of California. I am a partner and co-founder
27 of Lozeau Drury LLP, in Oakland, California. I make this declaration in support of Plaintiffs'
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1 Motion under the Endangered Species Act's ("ESA") citizen suit provision. 16 U.S.C. § 1540.

2 3. I am a 1990 graduate of the Yale Law School. I served as a judicial law clerk to Chief
3 Judge Thelton E. Henderson of the United States District Court for the Northern District of
4 California. For a decade I worked as Legal Director and staff attorney for Communities for a
5 Better Environment ("CBE"). While at CBE, I specialized in public interest litigation related
6 to land use law, water and air quality, and public health, and successfully prosecuted over 50
7 environmental lawsuits in both state and federal court, including trials, summary judgments
8 and settlements including actions brought under the Clean Air Act ("CAA"), which has an
9 identical citizen suit provision to the ESA.

10 4. In March, 2003, I moved from CBE to Adams, Broadwell, Joseph & Cardozo, where,
11 as a shareholder, I continued to represent citizen groups, public interest organizations, and
12 workers in cases related to land use, public health and the environment.

13 5. In May 2008, I co-founded Lozeau Drury LLP, an environmental law firm representing
14 non-profit environmental and recreational groups, labor organizations, neighborhood
15 associations, and Indian tribes in their efforts to create and protect livable neighborhoods and
16 cities, clean up air and water pollution, protect endangered species, protect open spaces, reduce
17 exposures to toxic pollutants, and create clean, safe jobs. In April 2011, Lozeau Drury LLP
18 was named by *the Recorder* legal newspaper as one of the ten leading environmental practices
19 in the San Francisco Bay Area.

20 6. I have taught as an adjunct professor of environmental law at the University of
21 California Berkeley School of Law (formerly "Boalt Hall"), Golden Gate University School of
22 Law and the New College School of Law. I have lectured extensively on various topics in land
23 use and environmental law, at several California State Bar mandatory continuing legal
24 education ("MCLE") classes on environmental law, at State Bar Environment Section annual
25 conferences, and at several law schools, including Harvard, Yale, Stanford, and Boalt Hall. I
26 was one of ten young lawyers featured for outstanding work in the field of environmental law
27 by the California Lawyer magazine (November 1997), and I was recipient of the 2002, 2009,
28 and 2011 *California Lawyer Magazine* Attorney of the Year award in the field of

1 environmental law. In 2003, I received the Ecology Law Quarterly Environmental Leadership
2 Award. In 2004 I delivered a keynote speech at the Public Interest Environmental Law
3 Conference at the University of Oregon in Eugene.

4 7. I was a member of the Executive Committee of the Environmental Law Section of the
5 State Bar of California from 2006 – 2009, and am currently an advisor to the committee.

6 8. As a practicing San Francisco Bay Area environmental lawyer for over twenty years, I
7 am very familiar with rates charged by environmental lawyers in San Francisco and the market
8 for services performed by attorneys with the level of experience and competence of the lawyers
9 in this action. My familiarity with rates in the Bay Area market comes from obtaining court-
10 awarded fees in many cases, obtaining fees through settlement, being involved in attorneys'
11 fees litigation, by discussing fees with other attorneys, by studying published surveys of billing
12 rates, reviewing rates awarded by courts in other actions, and by obtaining declarations
13 regarding prevailing market rates in cases where my clients have sought payment of reasonable
14 attorneys' fees and costs. I am also familiar, through my legal experience in environmental
15 cases, with the complexity and difficulty of environmental litigation, and the extraordinary
16 skill required to successfully litigate such cases.

17 9. I was lead counsel in the successful case of *Communities for a Better Environment v.*
18 *South Coast Air Quality Management District (ConocoPhillips Real Part in Interest)*, 48
19 Cal.4th 310 (Cal.S.Ct. 2010) in which my client, Communities for a Better Environment,
20 secured a unanimous victory before the California Supreme Court.

21 10. I have been counsel in numerous cases brought under the Clean Air Act, which has a
22 nearly identical attorney fee provision as the ESA, including, *Communities for a Better*
23 *Environment v. Cenco Refining Co.*, 179 F.Supp.2d 1128 (C.D.Cal. 2001), aff'd, 35 Fed.Appx.
24 508 (9th Cir. 2002); *Bayview Hunters Point Community Adv. v. Metropolitan Transp. Comm'n*,
25 212 F.Supp.2d 1156 (N.D.Cal. 2002); *Coalition for Clean Air v. South Coast Air Quality*
26 *Management Dist.*, 1999 U.S.Dist.LEXIS 16106 (C.D.Cal. 1999); *Coalition for Clean Air v.*
27 *City of Visalia*, 209 Cal. App. 4th 408 (Cal. App. 5th Dist. 2012).

28 11. I was awarded a rate of \$650 per hour in 2009 by Judge Carl J. West of the Los

1 Angeles Superior Court in the case of *Environmental Law Foundation v. Atlantic Express of*
2 *LA, et al.* (Los Angeles Superior Case No. CGC-06-451832). Judge West made an express
3 finding that the rate of \$650 per hour was reasonable. Partner rates in that case ranged from
4 \$600 to \$700 per hour. Associate rates ranged from \$395 to \$575 per hour.

5 12. I was also awarded a rate of \$650 per hour in 2008 by San Francisco Superior Court
6 Judge Ernest Goldsmith in the case of *Environmental Law Foundation et al. v. Laidlaw Transit*
7 *Inc. et al.*, San Francisco Superior Court No. CGC-06-451832. Judge Goldsmith made an
8 express finding that the rate of \$650 per hour was reasonable. Partner rates in that case ranged
9 from \$550 to \$700 per hour. Associate rates ranged from \$375 to \$575 per hour. The San
10 Francisco Superior Court found the following hourly rates reasonable in that action, plus a 1.25
11 multiplier:

Years of Experience	Rate
29	\$750
26	700
24	700
23	650
18	650
16	625
14	600
10	560
9	495-575
8	475
7	450
6	395
4	325
2	300
1	250
Paralegals	145-175
Interns	125

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26 13. I have also reviewed recent surveys of billing rates for partners and associates
27 published annually by *the National Law Journal*, which include rates commonly charged by
28 firms throughout California, including the Bay Area and Los Angeles. A true and

1 correct copy of the 2010 National Law Journal billing rate survey is attached hereto as Exhibit
2 A. A true and correct copy of the 2009 National Law Journal billing rate survey is attached
3 hereto as Exhibit B. A true and correct copy of the 2012 National Law Journal billing rate
4 survey is attached hereto as Exhibit C.

5 14. Courts have often relied upon the *National Law Journal* billing rate survey as
6 instructive in determining appropriate hourly rates. See *Berberena v. Coler*, 753 F.2d 629, 633
7 (7th Cir. 1985) (relying on *National Law Journal* annual survey); *Schwarz v. Secretary of*
8 *HHS*, 73 F.3d 895, 908 (9th Cir. 1995).

9 15. I am familiar with the commercial rates charged by partners in the Bay Area with
10 comparable skill to the attorneys in this action. It is my opinion that such rates are currently in
11 the range of \$500 to \$980 per hour.

12 16. According to recent *National Law Journal* annual billing rate surveys, partners in Bay
13 Area law firms generally bill at rates ranging from \$500 to \$980 per hour. For example,
14 according to that survey, partners at Cooley Godward Kronish, in Palo Alto, California bill at
15 rates ranging from \$525 to \$980 per hour. Partners at Howard Rice Nemerovski Canady Falk
16 & Rabkin, in San Francisco, bill at rates ranging from \$515 to \$795 per hour. Partners at Reed
17 Smith bill at rates ranging from \$375 to \$900, with an average rate of \$626 per hour. Partners
18 at Sheppard, Mullin, Richter & Hampton bill at rates ranging from \$475 to \$795 per hour. The
19 National Law Journal billing rate survey for 2009 cites the following partner rates for Bay Area
20 law firms: Townsend, Townsend & Crew: \$480 to \$750 (median \$560); Sheppard Mullin
21 Richter & Hampton: \$495 to \$715. The National Law Journal billing rate survey for 2012 has
22 very few Bay Area firms, but cites the following rates for firms with offices in the Bay Area:
23 Holland and Knight: \$315 to \$985 (median \$560); DLA Piper: \$550 to \$1200 (median \$775).

24 17. I am familiar with the commercial rates charged by associates in the Bay Area with
25 comparable skill to the attorneys in this action. It is my opinion that such rates are in the range
26 of \$245 to \$550 per hour.

27 18. According to the same *National Law Journal* surveys quoted above, hourly rates for
28 associates in the Bay Area range from approximately \$245 to \$570 per hour, depending on the

1 firm and number of years of experience. For example, according to the 2008 National Law
2 Journal Survey, associates at Cooley Godward Kronish, in Palo Alto, California bill at rates
3 ranging from \$285 to \$570. Associates at Howard Rice Nemerovski Canady Falk & Rabkin in
4 San Francisco bill at rates ranging from \$275 to \$510 per hour. Associates at Reed Smith bill
5 at rates from \$235 to \$580 with an average of \$423 per hour. Associates at Sheppard, Mullin,
6 Richter & Hampton bill at rates from \$275 to \$455 per hour. The *National Law Journal* billing
7 rate survey for 2009 cites the following associate rates for Bay Area law firms: Townsend,
8 Townsend & Crew: \$260 (1st year), \$290 (2nd year), \$325 (3rd year), \$350 (4th year), \$390
9 (5th year), \$420 (6th year), \$450 (7th year), \$470 (8th year). Sheppard Mullin Richter &
10 Hampton: \$285 (1st year), \$320 (2nd year), \$350 (3rd year), \$380 (4th year), \$405 (5th year),
11 \$430 (6th year), \$450 (7th year), \$470 (8th year). The National Law Journal billing rate survey
12 for 2012 contains very few Bay Area firms, but cites the following rates for firms with offices
13 in the Bay Area: DLA Piper: \$370 (1st year), \$555 (5th year), \$625 (8th year); Holland and
14 Knight: \$240 (1st year), \$330 (5th year), \$405 (8th year).

15 19. The hourly rates set forth in the *National Law Journal* survey are representative of rates
16 charged in the Bay Area for high-quality counsel, comparable in skill to the counsel in the
17 instant action.

18 20. I am also familiar with cases awarding attorney fees. In a recent case, the Ninth Circuit
19 Court approved an attorney fee award of \$740 for a partner, and associate rates of \$340 and
20 \$370. *Prison Legal News v. Schwarzenegger*, 608 F.3d 446 (9th Cir. 2010).

21 21. In another recent case, the California Court of Appeals held that “partners at a San
22 Francisco firm [charge] between \$495 and \$775, and associates charge between \$275 and
23 \$485.” *Center for Biological Diversity v. San Bernardino*, 185 Cal. App. 4th 866, 900, 109
24 Cal. Rptr. 3d 484 (2010).

25 22. In *Gardner v. Schwarzenegger*, 2010 Cal. App. Unpub. LEXIS 1240, 5-6 (Cal. App. 1st
26 Dist. Feb. 22, 2010) the California First District Court of Appeals affirmed the Alameda
27 County Superior Court’s decision that the following 2008 rates were reasonable, plus a 1.75
28 multiplier:

	Years of Experience	Rate
1		
2	17	\$640
3	14	590
4	8	445

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6 23. As evidenced by the cases I have handled, I frequently bring cases in California, in the
7 San Francisco Bay Area, Sacramento, Los Angeles, and Fresno and have studied the prevailing
8 market rates for attorneys in these areas. In doing so, I have consulted with colleagues about
9 prevailing market rates for work in these Courts and reviewed rates based on fee awards.

10 24. Over the years I have become familiar with the work of many attorneys who practice
11 environmental law. I am also generally familiar with the billing practices of attorneys in the
12 Eastern and Northern Districts of California both in environmental and non-environmental
13 matters.

14 25. I am familiar with the work of attorneys Eric Glitzenstein, Howard Crystal, and Brent
15 Plater, and I can personally attest to the high quality of their work. I have also reviewed the
16 declarations submitted by them in support of this fee motion; these declarations detail their
17 relevant background and litigation experience.

18 26. Mr. Glitzenstein is a founding partner of the public interest law firm Myer, Glitzenstein
19 & Crystal, and has been lead or co-counsel in hundreds of cases in federal courts throughout
20 the country. The public interest law bar and conservation groups consider him to be among the
21 very best ESA litigators in the country.

22 27. Very few attorneys in the country possess extensive ESA litigation experience, years
23 of teaching these subjects, and natural resource litigation that is the focus of the case at bar.
24 From my understanding of this case, his skill set and willingness to represent Plaintiffs at a
25 significantly reduced public interest rate were necessary for his clients. As such, Mr.
26 Glitzenstein should be compensated at the rate of a specialist.

27 28. Mr. Crystal also has an excellent reputation within the public interest law bar and
28 among conservation groups for his skills in environmental litigation. He has been a litigator at

1 Meyer, Glitzenstein & Crystal for almost seventeen years, and has been the managing partner
2 for the past seven years. Throughout his career Mr. Crystal has focused on environmental law,
3 and particularly ESA litigation. Mr. Crystal's experience in ESA litigation counsels that he
4 should be compensated as a specialist.

5 29. Mr. Plater also has extensive litigation and academic credentials that were crucial to the
6 prosecution of this case. Mr. Plater has served as lead or co-counsel in several successful ESA
7 cases, including cases in the Northern District of California that resulted in ESA protections for
8 Bay Area species such as the North American Green Sturgeon, the North Pacific Right Whale,
9 the California Red-legged Frog, and the Franciscan Manzanita.

10 30. At the Wild Equity Institute, Mr. Plater maintains an active litigation docket while
11 mentoring law school graduates interested in environmental litigation.

12 31. Mr. Plater also has extensive knowledge about the natural history, ecology, and biology
13 of Sharp Park and Mori Point, and the imperiled herptofauna that persist on these lands: the
14 San Francisco Gartersnake and the California Red-legged Frog. He also has extensive
15 knowledge of the activities that harm these species at Sharp Park.

16 32. Because of Mr. Plater's extensive litigation experience under the ESA, as well as his
17 knowledge of the California Red-legged Frog and the San Francisco Gartersnake, their habitats
18 at Sharp Park and Mori Point, and the activities of Sharp Park Golf Course that take both
19 species, Mr. Plater was particularly well suited to litigate this matter, and brought a unique
20 combination of necessary experience and expertise that could not easily be obtained or
21 replicated by other counsel. Because of this, Mr. Plater should be compensated as a specialist.

22 33. I have reviewed this Court's opinions and the principal briefs filed by the Plaintiffs.
23 Based upon this review, and based upon my personal knowledge of attorney's billing practices
24 in the San Francisco, I believe that hourly rates requested by Plaintiffs' counsel are reasonable,
25 and well within the rates charged by attorneys of comparable skill and experience in the San
26 Francisco Bay Area.

27 34. Mr. Glitzenstein's rates are reasonable because (1) he has 30+ years of practice; (2) is
28 specialized in ESA litigation; (3) has extensive ESA litigation experience; and (4) has

1 outstanding credentials as an academic as well. His requested rates of \$750 for the duration of
2 this case are, in my opinion, proper, and consistent with market rates in the San Francisco Bay
3 Area.

4 35. Mr. Crystal's rates are reasonable because (1) he has almost 20 years of practice,
5 seventeen in this specialty; (2) is specialized in ESA litigation; (3) has extensive ESA litigation
6 experience; and (4) has excellent academic and teaching credentials. His requested rates of
7 \$700 for the duration of this case are, in my opinion, proper, and consistent with market rates
8 in the San Francisco Bay Area.

9 36. Mr. Plater's rates are reasonable because (1) he has 13 years of practice; (2) is
10 specialized in ESA litigation; (3) has extensive ESA litigation experience; (4) has excellent
11 academic and teaching credentials; and (5) has specialized knowledge of the California Red-
12 legged Frog, the San Francisco Gartersnake, San Francisco's Public Golf Courses, and Sharp
13 Park. His requested rate of \$550 per hour for the duration of this case are, in my opinion,
14 proper, and consistent with market rates in the San Francisco Bay Area.

15 37. The rates for the other attorneys are also reasonable. Ms. Shawna Casebier, who has
16 three years of litigation experience, seeks compensation at the rate of \$295 per hour, while Ms.
17 Kelly Shields, a first year lawyer, seeks \$250 per hour. These rates are appropriate for new
18 associates with specialized training in environmental law.

19 38. Compensation for law clerks and paralegal assistance is sought at \$160 per hour. This
20 rate is within the prevailing market rates for the Bay Area.

21 39. I provided an expert declaration in *Center for Food Safety v. Vilsack* (2011 U.S. Dist.
22 Lexis 144423) for attorneys of similar experience in this market. My opinions regarding
23 appropriate rates were adopted by the court. The rates awarded in that case, up to \$650 per
24 hour under EAJA, were approved after extensive contested evidence was submitted to U.S.
25 Magistrate Judge LaPorte, and were adopted by the Honorable Jeffrey White. The Court's
26 approval of these rates in the *Center for Food Safety* case not only buttresses my credentials
27 here, but firmly establishes that the rates adopted by that Court, which are consistent with those
28 advocated here, are in fact appropriate prevailing rates for attorneys specializing in public

1 interest environmental law in this market.

2 40. Based on my experience with cases against government agencies and private actors
3 taking actions without proper oversight or permits, it is my opinion that Plaintiffs achieved
4 significant results in this case. Their claim that Defendants were illegally taking listed species
5 without a permit was vindicated by the issuance of a Biological Opinion (“Bi-Op”) that found
6 that the taking is in fact occurring, and provided incidental take authorization conditioned on a
7 host of measures designed to address the impacts of defendants’ activities on the species.
8 Based on my experience in analogous cases, and the chronology in this case – in which the
9 City went from asserting it need not seek incidental take authorization for Sharp Park Golf
10 Course operations until some indeterminate date in the future, to applying for such
11 authorization while this case proceeded to trial – it is my professional opinion that the litigation
12 played a significant role in the City’s efforts to obtain incidental take coverage here.

13 41. The Bi-Op itself contains dozens of legally binding and judicially enforceable terms
14 and conditions that severely constrain Defendants’ activities. The activities required include
15 requirements to construct new breeding habitats for the California Red-legged Frog, activities
16 that were never proposed or contemplated by Defendants, but will now be legally required.

17 42. I have also reviewed the number of hours Plaintiffs’ attorneys spent on the case, and it
18 is my professional opinion that the hours spent were entirely reasonable for a case of this
19 magnitude, complexity, and length. Unlike a typical case on an Administrative Record, a
20 Section 9 ESA case is a particularly complex piece of litigation in which the traditional civil
21 discovery rules apply. Plaintiffs’ counsel faced both the City Attorney’s Office as well as one
22 of the world’s largest law firms. Over 100,000 pages of discovery was collected and reviewed,
23 several depositions conducted, and Expert Reports generated. The magnitude of this case
24 required Mr. Plater, Mr. Glitzenstein, and Mr. Crystal to succinctly convey complex issues and
25 required highly specialized attorneys to handle it. The attorneys were willing to work at
26 reduced rates for the entirety of this matter, a testament to their unique skills in the public
27 interest bar.

28

1 I declare under the penalty of perjury subject to 28 U.S.C. § 1746 that the foregoing is true
2 and correct.

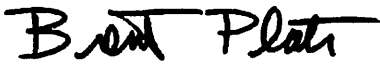
3
4 Executed on this 8th day of February, 2013.

/s/ Richard Drury

Richard Drury

5
6 I, Brent Plater, hereby attest that Richard Drury's concurrence in the e-filing of this document
7 has been obtained.

8
9 Executed on: February 8, 2013



Brent Plater

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WILD EQUITY INSTITUTE
GLITZENSTEIN DECLARATION

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16 Attorneys for Plaintiffs

17 **UNITED STATES DISTRICT COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA**
19 **SAN FRANCISCO DIVISION**

20 WILD EQUITY)
21 INSTITUTE, a non-profit)
22 corporation, *et al.*)
23 Plaintiffs,)
24 v.)
25 CITY AND COUNTY OF)
26 SAN FRANCISCO, *et al.*,)
27 Defendants.)

Case No.: 3:11-CV-00958 SI

DECLARATION OF ERIC R. GLITZENSTEIN IN
SUPPORT OF PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES AND COST RECOVERY

28 I, Eric R. Glitzenstein, hereby declare as follows:

1. I am a member of the bar of the District of Columbia and the bars of the United States
United States Supreme Court and various federal circuits, including the Ninth Circuit. I have
been admitted pro hac vice in this case. If called as a witness, I could and would competently
testify to the matters set forth herein.

2. As co-counsel in this case, I have been principally responsible for reviewing and editing
various briefs filed on Plaintiffs' behalf, as well as drafting some of the briefs and portions of
briefs. From the outset of the case, I have been extensively involved in strategy discussions

1 with Mr. Crystal and Mr. Plater and have reviewed many of the materials filed by Defendants,
2 including all of Defendants' principal briefs. I met with Plaintiffs' experts, accompanied them
3 on a site inspection of the Sharp Park golf course, and reviewed many of the documents
4 produced in discovery in the course of assisting with crafting Plaintiffs' Endangered Species Act
5 ("ESA") claim and devising a strategy for pursuing it to a successful conclusion. I believe that
6 the time I have expended was necessary to the pursuit of this complex, important case, and that
7 it complemented, but did not duplicate, the efforts expended by Mr. Crystal and Mr. Plater.
8

9 3. I am a founding partner of Meyer Glitzenstein & Crystal ("MGC"), a Washington, D.C.-
10 based public-interest law firm that specializes in federal litigation on behalf of non-profit
11 conservation and wildlife protection organizations. In order to pursue public-interest cases the
12 firm charges well below market rates for its services, and it often charges no up-front fees at all.
13 Our ability to maintain such a public-interest practice is dependent on the ability to recover, in
14 cases in which we have obtained relief for our clients and the interests they represent, reasonable
15 fees under the fee-shifting provisions in most federal environmental laws, including the ESA.
16

17 4. I am a 1981 graduate of the Georgetown University Law Center (J.D. 1981, magna cum
18 laude) and a 1978 graduate of Johns Hopkins University. Before co-founding MGC, I clerked
19 for Judge Thomas Flannery of the U.S. District Court for the District of Columbia and served as
20 a staff attorney with the Public Citizen Litigation Group in Washington, D.C. My entire 32-year
21 legal career has been devoted to the practice of public-interest law.
22

23 5. I have been lead or co-counsel in hundreds of cases in federal courts throughout the
24 country. I have successfully litigated many ESA and other wildlife protection cases. A partial
25 list of such cases includes *Center for Biological Diversity v. BLM*, 698 F.3d 1107 (9th Cir.
26 2012) (finding that government's approval of gas pipeline violated section 7 of the ESA);
27 *Anderson v. Evans*, 371 F.3d 475 (9th Cir. 2004) (finding that the government approved a gray
28

1 whale hunt in violation of federal environmental law); *Mount Graham Coalition v. Thomas*, 53
2 F.3d 970 (9th Cir. 1995) (holding that telescope project in habitat of endangered red squirrel
3 violated ESA); *Sierra Club v. Van Antwerp*, 661 F.3d 1147 (D.C. Cir. 2011) (holding that
4 federal agencies' approval of development in Florida violated ESA and NEPA); *Gerber v.*
5 *Norton*, 294 F.3d 173 (D.C. Cir. 2002) (holding that Fish and Wildlife Service's approval of
6 development in endangered fox squirrel habitat violated the ESA); *Sierra Club v. Van Antwerp*,
7 362 Fed. Appx. 100 (11th Cir. 2010) (finding that Corps of Engineers approval of limestone
8 mining near Everglades violated Clean Water Act); *Animal Welfare Institute v. Beech Ridge*
9 *Energy*, 675 F. Supp. 2d 540 (D. Md. 2009) (enjoining wind power project because it would
10 take endangered bats in violation of section 9 of the ESA); *Defenders of Wildlife v. Norton*, 239
11 F. Supp. 2d 9 (D.D.C. 2002) (rejecting FWS's refusal to list the Canada lynx as an endangered
12 species and failure to designate critical habitat); *Fund for Animals v. Babbitt*, 903 F. Supp. 96
13 (D.D.C. 1995) (finding that recovery plan for threatened grizzly bear violated ESA by failing
14 adequately to address habitat impacts); *Save the Manatee Club v. Ballard*, 215 F. Supp. 88
15 (D.D.C. 2002) (finding that federal government had failed to comply with court-ordered
16 settlement to protect Florida manatee); *Center for Biological Diversity v. Evans*, Civ. No. 04-
17 4496, 2005 WL 1514102 (N.D. Cal. 2005) (holding that agency violated ESA by failing to
18 revise the recovery plan for the right whale); *Fund for Animals v. Babbitt*, Civ. No. 92-800
19 (D.D.C.) (settlement expediting the listing of over four hundred species); *Defenders of Wildlife*
20 *v. Salazar*, 842 F. Supp. 2d 181 (D.D.C. 2012) (invalidating regulations allowing Forest Service to
21 avoid section 7 consultation regarding National Fire Plan projects).

22
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24
25 6. I was also lead counsel in an ESA case in the U.S. Supreme Court, *National Ass'n of*
26 *Home Builders v. Defenders of Wildlife*, 551 U.S. 664 (2007). I have also argued two other
27 cases in the Supreme Court, and I have filed many amicus briefs in that Court on behalf of non-
28

1 profit conservation and other public-interest organizations. I am a Vice Chairman of the
2 American Bar Association's Committee on Animal Law and, for a number of years, was an
3 Adjunct Professor of Law at Georgetown University Law Center, where I taught courses on
4 public interest advocacy and civil litigation. I am often a guest lecturer at law schools and a
5 regular participant in bar conferences and panel discussions focusing on the ESA and other
6 wildlife protection issues. I have been invited to testify before Congressional committees
7 concerning implementation of the ESA and other federal conservation statutes, and I have won a
8 number of awards for my wildlife advocacy.
9

10 7. I am a member of the Board of Directors of Defenders of Wildlife, and have served as
11 the Chairman of the Litigation Committee of that organization. Because of my longstanding
12 expertise in litigating ESA cases, the American Bar Association invited me to write the Citizen
13 Suits chapter in the ABA book *Endangered Species Act: Law Policy and Perspectives* (ABA
14 Section of Environment, Energy and Resources) (2010) (edited by Donald C. Baur and Wm.
15 Robert Irvin).
16

17 8. I have reviewed Mr. Crystal's declaration and believe that it sets forth an accurate
18 reflection of the time that attorneys in my firm, including myself, have reasonably expended in
19 pursuing this litigation.
20

21 Pursuant to 28 U.S.C. § 1746, I hereby declare under penalty of perjury that the
22 foregoing is true and correct to the best of my knowledge and belief.
23

24 February 8, 2013

/s/ Eric R. Glitzenstein

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9

Attorneys for Plaintiffs
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11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**
SAN FRANCISCO DIVISION

13 WILD EQUITY)
INSTITUTE, a non-profit)
14 corporation, *et al.*)

15 Plaintiffs,)

16 v.)

17 CITY AND COUNTY OF)
SAN FRANCISCO, *et al.*,)

18 Defendants.)
19

Case No.: 3:11-CV-00958 SI

DECLARATION OF HOWARD M. CRYSTAL IN
SUPPORT OF PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES AND COST RECOVERY

20 I, Howard M. Crystal, hereby declare as follows:

21 1. I am a member of the bars of the District of Columbia and Massachusetts, and am
22 admitted *pro hac vice* as counsel for Plaintiffs in this case. If called as a witness, I could and
23 would competently testify to the matters set forth herein.

24 2. I obtained my B.A. from Northwestern University in 1998, and my J.D., *magna-cum-*
25 *laude*, from Georgetown University Law Center in 1993. Before joining Meyer Glitzenstein &
26 Crystal in 1996, I was a judicial law clerk to the Judge Truman A. Morrison III on the D.C.
27 Superior Court, and was an associate at Crowell and Moring, where I also practiced litigation. I
28

1 also had internships at the Department of Justice, and several non-profit environmental
2 advocacy organizations

3 3. As co-lead counsel for Plaintiffs, I have been principally responsible for many aspects of
4 this complex litigation, including numerous briefs filed on Plaintiffs' behalf; overseeing the
5 discovery process (with the exception of preparation of Expert Reports, which was principally
6 handled by my colleague Brent Plater), which included preparing Plaintiffs' written discovery
7 requests, overseeing review of almost 100,000 of pages of responsive records, and preparing for
8 and taking four depositions¹; responding to discovery, several mediation efforts, and
9 participating in several court hearings. As discussed further below, the hours I have expended
10 on the litigation were all reasonably necessary to prosecute the case on the Court-ordered
11 schedule, and were vital to obtaining the result achieved.

12
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14 4. Plaintiffs hired me and my Firm to pursue this case because of our extensive experience
15 in environmental and administrative litigation in general, and Endangered Species Act (ESA)
16 litigation in particular. I have been practicing litigation since completing my judicial clerkship
17 in 1994, and have litigated dozens of suits in the field since I joined my Firm in 1996. To
18 provide just a few examples of cases that have resulted in judicial decisions, I have litigated
19 cases, like this one, challenging activities being undertaken without the necessary incidental take
20 authorization (*e.g. Defenders of Wildlife v. Gutierrez*, 532 F.3d 913 (D.C. Cir. 2008)
21 (concerning right whale ship strikes); cases challenging Biological Opinions (*e.g., Defenders of*
22 *Wildlife v. Babbitt*, 130 F. Supp. 2d 121 (D.D.C. 2001) (concerning impacts of desert military
23 activities on Sonoran pronghorn); cases challenging the adverse environmental impacts of
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¹ With assistance from Mr. Plater, I deposed Jon Campo, who is responsible for monitoring and trying to relocate Frog egg masses in Sharp Park; John Asceriz, who is responsible for maintaining and adjusting RPD's pump system; Wayne Kappelman, who oversees golf course operations; and Lisa Wayne, the lead RPD biologist responsible for protecting listed species under RPD's jurisdiction. In these depositions we extensively utilized the documents obtained through discovery.

1 activities on national parklands (*e.g.*, *Fund for Animals v. Norton*, 294 F. Supp. 2d 92 (D.D.C.
2 2003) (concerning snowmobiles); *Bluewater Network v. Kempthorne*, 721 F. Supp. 2d 7 (D.D.C.
3 2010) (concerning jetskis); cases over the listing of species under the ESA (*e.g.*, *Maine v.*
4 *Norton*, 257 F. Supp. 2d 357 (D. Me. 2003) (concerning the Atlantic Salmon); and additional
5 cases concerning the protection of both imperilled and more common animals (*e.g.* *In re Polar*
6 *Bear Endangered Species Act Listing and § 4(d) Rule Lit.*, 818 F. Supp. 2d 240 (D.D.C. 2011)
7 (concerning sport-hunting of polar bears); *Hulsizer v. Labor Day Comm.*, 734 A.2d 848 (Pa.
8 1999) (concerning pigeon shoots)). I have also been involved in myriad cases with ESA claims,
9 like this one, that resulted in defendants' taking action to authorize their activities without a final
10 judicial ruling. *E.g.*, *Defenders of Wildlife v. Meissner*, No. 99-2262 (D.D.C., 2000 Settlement)
11 (concerning Border Patrol activities); *Fund for Animals v. Babbitt*, No. 99-1126 (D.D.C, 1997
12 Settlement). I also have previously litigated on these topics within the Ninth Circuit. *E.g.*, *Save*
13 *San Onofre Coalition v. Locke*, No. 08-cv-1470-JAH-RBB (S.D. Cal.) (challenge to another
14 Biological Opinion); *NRDC v. Dept of Energy*, 2007 WL 1302498 (N.D. Cal. 2007) (NEPA
15 challenge).

18 5. In light of the seventeen years of civil litigation experience I had when this case was
19 filed, I have also had the opportunity to teach on these topics. I have taught both a Public
20 Interest Advocacy course at Georgetown University Law Center (in 2000), and more recently,
21 co-teach a course focusing on animal law-related issues at George Washington University
22 School of Law (2009, 2012, and anticipated again in 2013). These courses have had significant
23 ESA components. I also serve on the Surfrider Foundation's Legal Issues Committee.
24

25 6. My Firm's contemporaneously maintained billing records for this matter are attached as
26 Exhibit A. Those records show that through January 31, 2013, Mr. Glitzenstein spent 282.75
27 hours on this matter; I spent 844 hours on this matter; and paralegals spent a total of 656 hours
28 (reflected in the records with initials AB, DL, DF, KN, KT, KS, LL, PH, SH, and SB).

7. My Firm's billing records are attached as Exhibit B. Those records show that my Firm expended \$18,665 in this matter through January, 2013.

8. Attached hereto as Exhibit C is a summary of the measures contained in the FWS's October 2, 2012 Biological Opinion addressing management and operations of Sharp Park.

9. Attached hereto as Exhibit D is a true and correct copy of letters Plaintiffs sent before filing this suit.

10. Attached hereto as Exhibit E is a true and correct copy of RPD's May 10, 2011 letter to the Corps.

11. Attached hereto as Exhibit F is a true and correct copy of RPD's August 24, 2011 letter to the Corps.

12. Attached hereto as Exhibit G is a true and correct copy of RPD's August 25, 2011 letter to the FWS.

13. Attached hereto as Exhibit H is a true and correct copy of the FWS's December 8, 2011 letter to RPD.

14. Attached hereto as Exhibit I is a true and correct copy of the FWS's January 18, 2012 letter to the Corps.

15. I have calculated the total requested fee recovery by multiplying the requested hours for each attorney by the requested hourly rates. My calculations were as follows:

Howard Crystal	844 hours x 700	= 590,800
Eric Glitzenstein	282.75 hours x 750	= 212,062
Brent Plater	857.7 hours x 550	= 471,735
Shawna Casabier	47.15 hours x 295	= 13,909
Kelli Shields	217 hours x 250	= <u>54,250</u>
ATTORNEY TOTAL:		1,342,756

MGC Paralegal	645 hours x 160	= 103,200
WEI Paralegal	35 hours x 160	= <u>56,000</u>
PARALEGAL TOTAL:		108,800

TOTAL FEES: \$1,342,756 + \$108,800 = \$1,451,556 (with 10 % discount = \$1,306,400)

1 16. I have calculated the total requested costs by adding the costs sought in the provided
2 records from my Firm and in Brent Plater's declaration, which total:

3 Plater Decl., Ex. E \$40,744 in costs
4 Crystal Decl., Ex. B \$18,665 in costs

5 **TOTAL COSTS: \$ 59,409**

6 17. In December, 2012 Plaintiffs' counsel and counsel for the City conferred telephonically
7 concerning Plaintiffs' requested fee recovery. In January, 2013 they exchanged letters
8 concerning the requested fee recovery. On February 4, 2013 Plaintiffs' counsel informed the
9 City's counsel that, in light of the exchange of letters, Plaintiffs do not believe there is a basis
10 for further discussion to resolve this dispute at this time, that Plaintiffs intended to file a fee
11 motion with the Court, and that Plaintiffs would represent that the City opposes the motion.
12

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14 Pursuant to 28 U.S.C. § 1746, I hereby declare under penalty of perjury that the
15 foregoing is true and correct to the best of my knowledge and belief.
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17
18 February 8, 2013

/s/ Howard M. Crystal
Howard M. Crystal

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QUEEN ANNE'S CONSERVATION
CRYSTAL DECLARATION

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

QUEEN ANNE'S CONSERVATION ASSOCIATION,)	
)	
Plaintiff,)	Civil Action No. 10-0670 (CKK)
)	
v.)	
)	
UNITED STATES DEPARTMENT OF STATE, <i>et al.</i> ,)	
)	
Defendants.)	

DECLARATION OF HOWARD M. CRYSTAL

I, Howard M. Crystal, declare as follows:

1. I am licensed to practice law in D.C. and am a partner at Meyer Glitzenstein & Crystal ("MGC"). I submit this declaration in support of Plaintiff's Petition for Attorneys' Fees under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552(a)(4)(E).

2. MGC is a small, public-interest law firm that routinely represents non-profit organizations and individuals in public-interest litigation under the FOIA and other open government laws, environmental statutes, and other matters. The Firm routinely charges clients well below market rates for public-spirited and non-economic reasons, including in this case.

See [http:// www.meyerglitz.com](http://www.meyerglitz.com) (firm website).

3. Attorneys at MGC, including attorneys who litigated this case, collectively have extensive experience litigating under the FOIA and the National Environmental Policy Act ("NEPA"). Just a few of the FOIA cases the Firm has handled include: Alliance for the Wild Rockies v. Dep't of the Interior, 53 F. Supp. 2d 32 (D.D.C.); Friends of Blackwater v U.S. Dept.

19 (D.D.C.); Humane Society Of The United States v. Dep't of Agriculture, Civ. No. 05-197 (D.D.C.); In Defense of Animals v. Dep't of Health & Human Services, Civ. No. 99-3024 (D.D.C.); and Showing Animals Respect and Kindness v. Department of the Interior, __ F.Supp.2d __, 2010 WL 3191801 (D.D.C. Aug. 12, 2010). Just a few of the NEPA cases include: NRDC v. DOE, 353 F.3d 40 (D.C. Cir. 2004); Metcalf v. Daley, 214 F.3d 1135 (9th. Cir. 2000); Fund for Animals v. Norton, 281 F. Supp. 2d 209 (D.D.C. 2003); and Humane Soc. of U.S. v. Johanns, 520 F. Supp. 2d 8 (D.D.C. 2007).

4. With respect to the specific attorneys who worked on this case, Eric Glitzenstein is one of the nation's leading experts in open-government litigation. He has litigated – and supervised junior attorneys litigating – dozens of FOIA suits. He has argued and won a FOIA case in the United States Supreme Court, see Dep't of Justice v. Julian, 486 U.S. 1 (1988), and on behalf of non-profit organizations he has successfully litigated many FOIA and other open government cases in this Circuit over the past several decades. See, e.g., Animal Legal Defense Fund v. Shalala, 104 F.3d 424 (D.C. Cir. 1997); Energy Research Foundation v. Def. Nuclear Facilities Safety Bd., 917 F.2d 581 (D.C. Cir. 1990); Lykins v. Dep't of Justice, 752 F.2d 1455 (D.C. Cir. 1984); Better Gov't Ass'n v. Dep't of State, 780 F.2d 86 (D.C. Cir. 1986); Paisley v. CIA, 712 F.2d 686 (D.C. Cir. 1983); Alliance for the Wild Rockies v. Dep't of Interior, 53 F. Supp. 2d 32 (D.D.C. 1999); Citizens for Env't'l Quality v. Dep't of Agric., 602 F. Supp. 534 (D.D.C. 1984). He served as the Director of the Freedom of Information Clearinghouse from 1982-1983, and for more than twenty years he has co-authored the chapter on litigation strategy for the leading open-government litigation manual, "Litigation Under the Federal Open Government Laws," currently published by the Electronic Privacy Information Center. He has

also been asked to testify before Congressional committees on a number of occasions concerning open government issues. In addition to his FOIA expertise, he is also an expert on NEPA policy and litigation – expertise which also played a direct role in the pursuit of this litigation, which specifically involved an effort to obtain government records for use in an ongoing NEPA process. Mr. Glitzenstein received his J.D. from Georgetown University Law Center in 1981, and prior to co-founding his own public-interest law firm in 1993, he clerked for U.S. District Court Judge Thomas Flannery of this Court and was a staff attorney with the Public Citizen Litigation Group; he has also been an adjunct Professor at Georgetown University Law Center, where he has taught classes in civil litigation and public interest advocacy

5. Attorney Joshua Stebbins graduated New York University School of Law in 1997, and prior to joining MGC spent several years as an associate at the Firm now named Wilmer Hale. When he left that Firm as a fifth year associate to join MGC, his typical hourly rate was approximately \$500/hour. Although Mr. Stebbins has recently left MGC, during his years at the Firm he worked on several FOIA and open government projects. He also litigated a host of cases under NEPA, including Sierra Club v. Van Antwerp, _ F. Supp. 2d _, 2010 WL 2600507 (D.D.C. June 30, 2010); Fund for Animals v. Gould, No. 03-677 (RMU) (D.D.C.); and Defenders of Wildlife v. Kempthorne, No. 03-237-JES-SPC (M.D. Fla.).

6. I also have extensive experience litigating – and supervising others litigating – cases under the FOIA and NEPA in my fourteen years of practice at MGC. These cases include Bluewater Network v. Salazar, _ F. Supp. 2d _, 2010 WL 2680823 (D.D.C. July 8, 2010); Judicial Watch v. DOE, 310 F. Supp. 2d 271 (D.D.C. 2003); and Defenders of Wildlife v. Babbitt, 130 F.Supp.2d 121 (D.D.C. 2001). I am a 1993 graduate of Georgetown University Law

Center, where I have taught public interest advocacy, including NEPA and FOIA issues.

7. A true and correct copy of the Updated Laffey Matrix is attached as Attachment A, and is available at <http://www.laffeymatrix.com/see.html>.

8. A true and correct copy of an economist declaration submitted in support of the fee petition in Ricks v. Barnes, No. 05-1756 (D.D.C.) is attached as Attachment B.

9. A true and correct copy of plaintiff's contemporaneous time records are attached as Attachment C. The following initials in the time records refer to the following attorneys:

JS Joshua Stebbins

EG Eric Glitzenstein

HC Howard Crystal

The other initials refer to law clerks or paralegals, for whom plaintiff seeks recovery at para-legal rates.

10. We have added the hours for each attorney (and collectively for the paralegals/lawclerks). The totals, rounded down, are as follows:

	Number of Hours
Joshua Stebbins	172
Eric Glitzenstein	26
Howard Crystal	7
Paralegal	12

11. Applying the hourly rates in the Updated Laffey Matrix to these hours, the attorneys' fees total comes to \$ 121,547.

12. Applying the hourly rates in the U.S. Attorney's Office Laffey Matrix to these hours, the attorneys' fees total comes to \$ 87,040.

13. Attachment D to this declaration are true and correct copies of plaintiff's cost records. The total costs come to \$ 3,260.93.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

/s/ Howard M. Crystal
Howard M. Crystal

Date: November 11, 2010