

Hon. James L. Robart

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE**

UNITED STATES OF AMERICA,

Plaintiff,

v.

CITY OF RENTON
Renton City Hall
1055 S. Grady Way
Renton, WA 98057

And

CITY OF VANCOUVER
415 W 6th Street
Vancouver, WA 98660

Defendants

Civil Action No. C11-01156

CITY OF VANCOUVER'S
ANSWER, AFFIRMATIVE DEFENSES,
AND COUNTERCLAIMS

ANSWER

COMES NOW defendant, CITY OF VANCOUVER, a Washington municipality,
(hereinafter "Vancouver") and answers plaintiff's Complaint for Declaratory Relief and Refund
as follows:

JURISDICTION

1
2 1. Vancouver admits the allegation in paragraph 1 of the Complaint that this civil
3 action was instituted by plaintiff for the purpose of obtaining a declaratory judgment that the
4 United States is not liable for stormwater management fees imposed by the City of Vancouver
5 and City of Renton (hereinafter "Renton") before January 4, 2011, and that the United States
6 seeks a refund of amounts paid to Vancouver and Renton before the aforesaid date. However,
7 Vancouver denies that the fees paid before January 4, 2011, by plaintiff were "wrongfully paid"
8 by the United States to Vancouver and Renton and denies that the plaintiff is not liable for
9 stormwater management fees imposed by Vancouver and Renton before January 4, 2011.
10

11 2. Vancouver admits the allegations in paragraph 2 of the Complaint that the
12 United States initiated this action. However, the United States of America has expressly
13 waived its sovereign immunity as it relates to defendants' imposition of stormwater
14 management fees, and this action cannot result in the vindication of the sovereign rights and
15 pecuniary interest of the United States as alleged in the Complaint.
16

17 3. Vancouver admits the allegations in paragraphs 3 of the Complaint.

18 4. Vancouver admits the allegation in paragraph 4 of the Complaint that this is an
19 appropriate action for a declaratory judgment as authorized by Title 28 U.S.C. § 2201 because
20 of an actual controversy that has arisen and exists between the United States and Vancouver
21 and Renton concerning their respective rights and obligations. Vancouver denies the remaining
22 allegation in paragraph 4 that the United States is suffering actual and threatened harm by
23 virtue of the actions of defendants.
24
25

PARTIES

5. Vancouver admits the allegation in paragraph 5 of the Complaint.

6. Vancouver admits, as it relates to paragraph 6 of the Complaint, that to the best of its knowledge and belief, Renton is a municipal corporation, created and existing under the laws of the State of Washington and that it is a defendant within the jurisdiction of this court; and that it continues to bill the United States for stormwater services provided before January 4, 2011.

7. Vancouver admits, as it relates to paragraph 7 of the Complaint, that it is a defendant in this matter within the jurisdiction of this Court; that it is a municipal corporation, created and existing under the laws of the State of Washington; and that it continues to bill the United States for stormwater services provided before January 4, 2011.

UNITED STATES COUNT I

**The Stormwater Charges Are a Tax
Against Property of the United States Which the United States
Is Constitutionally Immune from Paying**

8. Vancouver incorporates its admissions and denials, as set forth in paragraphs 1 through 7 of this Answer, in response to paragraph 8 of plaintiff's Complaint.

9. Vancouver admits the allegation in paragraph 9 of the Complaint that it imposes stormwater fees against the owners of real property, but denies that such charges are correctly described as being "for the purpose of building and maintaining stormwater treatment facilities."

10. Vancouver admits the allegation in paragraph 10 of the Complaint that it has adopted a stormwater ordinance that imposes stormwater charges, but denies that such charges

1 are correctly described as being imposed “to enable defendants to treat stormwater and reduce
2 water quality degradation before stormwater is deposited into public waterways.” Vancouver
3 Municipal Code Section 14.09.010 states the purpose of the City of Vancouver stormwater
4 management program as “necessary to protect public and private property, to preserve streams,
5 wetlands and floodways, to minimize water quality degradation from urban runoff and to
6 ensure the sound development of property within the city to the benefit of all citizens.”
7 Pursuant to this ordinance, Vancouver operates a municipal separate storm sewer system that is
8 regulated by a National Pollution Discharge Elimination System (NPDES) permit issued by the
9 Washington State Department of Ecology in accordance with regulations of and pursuant to
10 authority delegated by the United States Environmental Protection Agency (EPA) as required
11 by the federal Clean Water Act. 33 U.S.C. § 1342(p)(3)(B).
12
13

14 11. Vancouver admits the allegation in paragraph 11 of the Complaint that
15 stormwater charges apply to real property within Vancouver’s boundaries, but denies that the
16 stormwater charges are solely based upon the “percentage of developed surface area on the
17 property;” Vancouver’s stormwater charges are assessed based upon the requirements of
18 Vancouver Municipal Code Section 14.09.060. As to the City of Renton, Vancouver lacks
19 knowledge or information sufficient to form a belief about the truth of the allegations in
20 paragraph 11 of the Complaint.
21

22 12. Vancouver admits the allegation in paragraph 12 of the Complaint that
23 “stormwater charges may be calculated at a reduced rate, but not eliminated if the property does
24 not contribute stormwater to defendants’ stormwater system,” but denies the implications that
25 the charges are therefore involuntary; that plaintiff’s real property within Vancouver does not

1 contribute stormwater to Vancouver's stormwater system; and that plaintiff does not receive a
2 service and benefit from the stormwater management system.

3 13. Vancouver admits the allegation in paragraph 13 of the Complaint that "the
4 stormwater charges may be calculated at a reduced rate, but not eliminated," but denies that the
5 reduced rate is allowable solely when "the property owner installs a system to treat stormwater
6 equal to or in excess of legal requirements for treatment of stormwater;" Vancouver's
7 stormwater charge credits are based upon the requirements of Vancouver Municipal Code
8 Section 14.09.100. Vancouver further denies the implication that the charges are therefore
9 involuntary.
10

11 14. Vancouver admits the allegation in paragraph 14 of the Complaint that "funds
12 collected from the charges are used to provide a benefit to the public by maintaining and
13 improving water quality standards," but denies any implication that the United States does not
14 receive a specific service and benefit from Vancouver's drainage systems.
15

16 15. Vancouver lacks knowledge or information sufficient to form a belief about the
17 truth of the allegations in paragraph 15 of the Complaint.

18 16. Vancouver admits the allegation in paragraph 16 of plaintiff's Complaint that
19 the United States is the owner of a number of parcels of real property subject to stormwater
20 fees within the City of Vancouver, all commonly located at 5411 NE Hwy 99, Vancouver,
21 Washington, and commonly known as the Bonneville Power Administration Ross Complex.
22

23 17. Vancouver admits the allegation in the first sentence of paragraph 17 of the
24 Complaint, but lacks knowledge or information sufficient to form a belief about the truth of the
25 rest of the paragraph.

1 18. Vancouver admits the allegations in paragraph 18 of the Complaint that, as a
2 courtesy to plaintiff and without waiving any of Renton's rights or claims against plaintiff,
3 Renton has informally agreed not to shut off municipal water service to the Maple Valley
4 Substation for failure to pay stormwater charges related to periods from June 2009 to December
5 2010, until at least 60 days after the entry of a final judgment in this matter, including any
6 appeals.
7

8 19. Vancouver admits the allegation in the first sentence of paragraph 19 of the
9 Complaint, except that Vancouver's claim for past due billing extended through April 22, 2011.
10 Vancouver lacks knowledge or information sufficient to form a belief about the truth of the rest
11 of the paragraph.
12

13 20. Vancouver admits the allegations in paragraph 20 of the Complaint that, as a
14 courtesy to plaintiff and without waiving any of Vancouver's rights or claims against plaintiff,
15 Vancouver has informally agreed not to shut off municipal water service to the Ross Complex
16 for failure to pay stormwater charges related to periods from January 22, 2010 through January
17 3, 2011, until at least 60 days after the entry of a final judgment in this matter, including any
18 appeals.
19

20 21. Vancouver admits the allegations in paragraph 21 of the Complaint.
21

22 22. Vancouver denies the allegation in paragraph 22 of the Complaint that the
23 United States did not voluntarily seek a benefit or service for the properties before Vancouver
24 billed the stormwater charges. Congress waived the sovereign immunity of the United States
25 of America in the Clean Water Act, 33 U.S.C. §1323(a) and (c), for payment of reasonable
service charges related to local governments' control and abatement of water pollution, and the

1 United States thereby voluntarily sought the benefit of the municipal separate storm sewer
2 system regulating stormwater flow at plaintiff's property located at 5411 NE Hwy 99,
3 commonly known as the Ross Complex. Vancouver further asserts the United States
4 voluntarily agreed to pay Vancouver's stormwater charges on July 17, 1996, based upon
5 discussions documented in a letter between Vancouver and the Bonneville Power
6 Administration.
7

8 23. Vancouver denies the allegations in paragraph 23 of the Complaint.

9 24. Vancouver denies the allegations in paragraph 24 of the Complaint.

10 UNITED STATES COUNT II

11 The United States is Not Liable for Penalties

12 25. In answer to paragraph 25 of plaintiff's Complaint, Vancouver incorporates
13 herein its admissions, denials and lack of knowledge or information sufficient to form a belief
14 as to the truth of the plaintiff's allegations in paragraphs 1 through 24 of the Complaint as
15 previously set forth herein.
16

17 26. Vancouver admits the allegations in paragraph 26 of the Complaint.

18 27. Vancouver denies the allegations in paragraph 27 of the Complaint.

19 UNITED STATES COUNT III

20 The United States Is Entitled to a Refund of Stormwater Charges Paid by its 21 Bonneville Power Administration to the City of Renton

22 28. In answer to paragraph 28 of plaintiff's Complaint, Vancouver incorporates
23 herein its admissions, denials and lack of knowledge or information sufficient to form a belief
24
25

1 as to the truth of plaintiff's allegations in paragraphs 1 through 27 of the Complaint as
2 previously set forth herein.

3 29. Vancouver lacks knowledge or information sufficient to form a belief as to the
4 truth of plaintiff's allegations in paragraph 29 of the Complaint.

5 30. Vancouver denies the allegations in paragraph 30 of the Complaint that
6 Renton's stormwater fees imposed before January 4, 2011, are or were an unconstitutional tax.
7 Vancouver also denies that the United States is entitled to a refund from Renton and denies that
8 plaintiff is entitled to prejudgment interest thereon.
9

10 UNITED STATES COUNT IV

11 **The United States Is Entitled to a Refund of Stormwater Charges Paid by its** 12 **Bonneville Power Administration to the City of Vancouver**

13 31. In answer to paragraph 31 of plaintiff's Complaint, Vancouver incorporates
14 herein its admissions, denials and lack of knowledge or information sufficient to form a belief
15 as to the truth of plaintiff's allegations in paragraphs 1 through 27 of the Complaint as
16 previously set forth herein.
17

18 32. Vancouver denies the allegations in paragraph 32 of the Complaint that the
19 stormwater fees paid to defendant Vancouver were "wrongfully paid" by the United States'
20 Bonneville Power Administration from July 12, 2005 through January 31, 2010; and also
21 denies that the amount paid was \$443,148. Vancouver's records show that the amount paid
22 was \$418,599.04.
23

24 33. Vancouver denies the allegations in paragraph 33 of the Complaint that its
25 stormwater fees imposed before January 4, 2011, are or were an unconstitutional tax.

Vancouver also denies that the United States is entitled to a refund from Vancouver and prejudgment interest thereon.

AFFIRMATIVE DEFENSES

BY WAY OF FURTHER ANSWER, and without admitting any matters previously denied, defendant Vancouver alleges the following affirmative defenses:

34. Sovereign immunity of the United States of America as to its duty to pay Vancouver and Renton reasonable service charges relating to control and abatement of water pollution was specifically waived by Congress in the 1977 amendment of Section 313(a) of the Clean Water Act, 33 U.S.C. §1323(a).

§ 1323. Federal facilities pollution control

(a) Each department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any property or facility, or (2) engaged in any activity resulting, or which may result, in the discharge or runoff of pollutants, and each officer, agent, or employee thereof in the performance of his official duties, shall be subject to, and comply with, all Federal, State, interstate, and local requirements, administrative authority, and process and sanctions respecting the control and abatement of water pollution in the same manner, and to the same extent as any nongovernmental entity including the payment of reasonable service charges. The preceding sentence shall apply (A) to any requirement whether substantive or procedural (including any recordkeeping or reporting requirement, any requirement respecting permits and any other requirement, whatsoever), (B) to the exercise of any Federal, State, or local administrative authority, and (C) to any process and sanction, whether enforced in Federal, State, or local courts or in any other manner. This subsection shall apply notwithstanding any immunity of such agencies, officers, agents, or employees under any law or rule of law. ...

33 U.S.C. § 1323(a) (emphasis added).

35. Congress' unambiguous waiver of the United States of America's sovereign immunity over state and local regulation was clarified effective January 4, 2011, in 33 U.S.C. § 1323(c). As clarifying legislation, the Stormwater Amendment is retroactive in its application

1 to the Clean Water Act, so that the term “reasonable service charges” includes stormwater fees
2 or assessments imposed by local governments.

3 36. Defendants’ stormwater fees and assessments are not a tax.

4 37. The claims of the United States are barred by estoppel. Vancouver asserts that
5 the United States voluntarily agreed to pay Vancouver’s stormwater charges on July 17, 1996,
6 based upon discussions documented in a letter between Vancouver and the Bonneville Power
7 Administration.
8

9 38. The claims of the United States are barred by laches. Vancouver asserts that the
10 United States voluntarily agreed to pay Vancouver’s stormwater charges on July 17, 1996,
11 based upon discussions documented in a letter between Vancouver and the Bonneville Power
12 Administration.
13

14 39. The claims of the United States for refund are barred fully or in part by the
15 statute of limitations.
16

17 **COUNTERCLAIMS FOR DECLARATORY RELIEF**
18 **AND MONEY DUE AND OWING**

19 COMES NOW defendant, CITY OF VANCOUVER, and hereby counterclaims against
20 plaintiff and alleges as follows:
21

22
23 **JURISDICTION**

24 40. Defendant Vancouver states Counterclaims for the purpose of obtaining a
25 declaratory judgment that the United States of America is liable for stormwater fees and

1 assessments imposed by the City of Vancouver before January 4, 2011, and to seek a judgment
2 and payment of monies due and owing for past due and unpaid stormwater fees for parcels of
3 property owned by the United States of America and administered by the Bonneville Power
4 Administration, an entity of the plaintiff, which are located in Vancouver, Washington.
5

6 41. Jurisdiction over this action is conferred upon this Court by 28 U.S.C. §§ 1331
7 and 1345, because this is an action arising under the United States Constitution and is brought
8 by the United States of America in order to obtain a declaratory judgment regarding the
9 liability of the United States for stormwater fees imposed by Vancouver before January 4,
10 2011.

11 42. Vancouver alleges that this is an appropriate action for a declaratory judgment,
12 as authorized by 28 U.S.C. § 2201, because an actual controversy, as more fully described
13 below, has arisen and now exists between defendant Vancouver and the United States of
14 America concerning their respective rights and obligations. Vancouver is suffering actual and
15 continued harm by virtue of the actions of plaintiff.
16

17 43. Jurisdiction over this action is also conferred by the Clean Water Act, 33 U.S.C.
18 § 1323(a)(1) [as it relates to] any department, agency, or instrumentality of the Federal
19 Government that has jurisdiction over the property and facility, at issue in this matter; or 33
20 U.S.C. § 1323 (a)(2) where the department, agency, or instrumentality of the Federal
21 Government, that is subject to local requirements concerning the control and abatement of
22 water pollution, engages in an activity that results or may result in the discharge or runoff of
23 pollutants; and 33 U.S.C. § 1323 (c), all of which provide for waiver of sovereign immunity of
24
25

1 the United States of America for “reasonable service charges,” specifically including
2 stormwater fees.

3 44. This Court also has original jurisdiction under the Tucker Act, 28 U.S.C. §
4 1346(a)(2), for amounts not exceeding \$10,000 as a result of Vancouver’s claims for money
5 due and owing by the United States of America.
6

7 **PARTIES**

8 45. This counterclaim is brought by defendant, City of Vancouver, a municipality
9 organized and existing under the laws of the State of Washington.

10 46. The plaintiff is the United States of America, as the owner of real property
11 located within Vancouver, Washington, and administered by the Bonneville Power
12 Administration.
13

14 **VANCOUVER COUNT I**

15 **Counterclaim for Declaratory Relief that Vancouver’s Stormwater** 16 **Fees are “Reasonable Service Charges” Under the Clean Water Act,** **for which Congress Waived Sovereign Immunity of the United States**

17 47. Vancouver incorporates the allegations set forth in paragraphs 40 through 46 of
18 the Counterclaims.

19 48. Sovereign immunity of the United States of America as to its duty to pay
20 Vancouver and Renton reasonable service charges relating to control and abatement of water
21 pollution was specifically waived by Congress in the 1977 amendment of Section 313(a) of the
22 Clean Water Act, 33 U.S.C. §1323(a).
23

24 **§ 1323. Federal facilities pollution control**

25 (a) Each department, agency, or instrumentality of the executive, legislative, and
judicial branches of the Federal Government (1) having jurisdiction over any

1 property or facility, or (2) engaged in any activity resulting, or which may result,
 2 in the discharge or runoff of pollutants, and each officer, agent, or employee
 3 thereof in the performance of his official duties, shall be subject to, and comply
 4 with, all Federal, State, interstate, and local requirements, administrative
 5 authority, and process and sanctions respecting the control and abatement of water
 6 pollution in the same manner, and to the same extent as any nongovernmental
 7 entity including the payment of reasonable service charges. The preceding
 8 sentence shall apply (A) to any requirement whether substantive or procedural
 9 (including any recordkeeping or reporting requirement, any requirement
 10 respecting permits and any other requirement, whatsoever), (B) to the exercise of
 11 any Federal, State, or local administrative authority, and (C) to any process and
 12 sanction, whether enforced in Federal, State, or local courts or in any other
 13 manner. This subsection shall apply notwithstanding any immunity of such
 14 agencies, officers, agents, or employees under any law or rule of law. ...

15 33 U.S.C. § 1323(a) (emphasis added).

16 49. Congress' unambiguous waiver of the United States of America's sovereign
 17 immunity over state and local regulation was clarified effective January 4, 2011, in 33 U.S.C. §
 18 1323(c). As clarifying legislation, the Stormwater Amendment is retroactive in its application
 19 to the Clean Water Act, so that the term "reasonable service charges" includes stormwater fees
 20 or assessments imposed by local governments.

21 50. Vancouver imposes stormwater fees against the owners of real property located
 22 within the municipal boundaries of the City of Vancouver.

23 51. Vancouver's municipal separate storm sewer system is required to comply with
 24 the mandates of the federal Clean Water Act for the express purpose of minimizing the flow of
 25 pollutants into rivers, streams, lakes and waterways of the United States.

52. The United States is the owner of a number of parcels of real property subject to
 stormwater fees within the City of Vancouver, all commonly located at 5411 NE Hwy 99,

1 Vancouver, Washington, and commonly known as the Ross Complex, which is administered by
2 the Bonneville Power Administration, an entity of the United States.

3 53. Vancouver's stormwater fees imposed before January 4, 2011, upon plaintiff's
4 real property are reasonable service charges payable by the United States in accordance with
5 the 1977 waiver of sovereign immunity by Congress in the Clean Water Act, 33 U.S.C.
6 §1323(a).
7

8 54. Vancouver's stormwater fees imposed before January 4, 2011, pursuant to
9 Congress' waiver of sovereign immunity in the Clean Water Act, 33 U.S.C. § 1323(a), are not a
10 tax.

11 55. Because stormwater runoff collects debris, chemicals, and other pollutants and
12 therefore may be a source of pollution when discharged into the waters of the United States,
13 Vancouver's municipal separate storm sewer system is regulated by a National Pollution
14 Discharge Elimination System (NPDES) permit issued by the Washington State Department of
15 Ecology in accordance with regulations of and pursuant to authority delegated by the United
16 States Environmental Protection Agency (EPA) as required by the Clean Water Act. 33 U.S.C.
17 § 1342(p)(3)(B). Under this federal regulatory scheme, municipalities such as Vancouver that
18 operate municipal separate storm sewer systems are required to undertake costly control efforts
19 to minimize pollution from stormwater discharges into the waters of the United States.
20
21

22 56. Vancouver's stormwater fees are imposed to provide and maintain its municipal
23 separate storm sewer system, which regulates stormwater flow at the Ross Complex located at
24 5411 NE Hwy 99, as a specific and identifiable service and benefit to the United States as a
25

1 property owner within the City, and also benefits the United States by reducing or eliminating
2 pollutants from entering waters of the United States of America.

3
4
5 **VANCOUVER COUNT II**

6 **Counterclaim for Money Due and Owing by the**
7 **United States of America to Defendant Vancouver**

8 57. Vancouver incorporates the allegations set forth in paragraphs 40 through 56 of
9 the Counterclaims.

10 58. The United States of America has failed and/or refused to pay the City of
11 Vancouver for stormwater fees for its real property located in Vancouver, Washington,
12 commonly located at 5411 NE Hwy 99, and commonly known as the Ross Complex, from
13 January 22, 2010, through January 31, 2010, in the total sum of \$2,999.37, including a 10%
14 penalty, which amounts are now due, owing and unpaid to defendant Vancouver.

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17 **VANCOUVER COUNT III**

18 **Counterclaim for Money Due and Owing by the**
19 **United States of America to Defendant Vancouver**

20 59. Vancouver incorporates the allegations set forth in paragraphs 40 through 56 of
21 the Counterclaims.

22 60. The United States of America has failed and/or refused to pay the City of
23 Vancouver for stormwater fees for its real property located in Vancouver, Washington,
24 commonly located at 5411 NE Hwy 99, and commonly known as the Ross Complex, from
25

1 February 1, 2010, through February 28, 2010, in the total sum of \$9,298.06, including a 10%
2 penalty, which amounts are now due, owing and unpaid to defendant Vancouver.

3
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5 **VANCOUVER COUNT IV**

6 **Counterclaim for Money Due and Owing by the**
7 **United States of America to Defendant Vancouver**

8 61. Vancouver incorporates the allegations set forth in paragraphs 40 through 56 of
9 the Counterclaims.

10 62. The United States of America has failed and/or refused to pay the City of
11 Vancouver for stormwater fees for its real property located in Vancouver, Washington,
12 commonly located at 5411 NE Hwy 99, and commonly known as the Ross Complex, from
13 March 1, 2010, through March 31, 2010, in the total sum of \$9,298.06, including a 10%
14 penalty, which amounts are now due, owing and unpaid to defendant Vancouver.

15
16 **VANCOUVER COUNT V**

17 **Counterclaim for Money Due and Owing by the**
18 **United States of America to Defendant Vancouver**

19 63. Vancouver incorporates the allegations set forth in paragraphs 40 through 56 of the
20 Counterclaims.

21 64. The United States of America has failed and/or refused to pay the City of
22 Vancouver for stormwater fees for its real property located in Vancouver, Washington,
23 commonly located at 5411 NE Hwy 99, and commonly known as the Ross Complex, from
24
25

1 April 1, 2010, through April 30, 2010, in the total sum of \$9,298.06, including a 10% penalty,
2 which amounts are now due, owing and unpaid to defendant Vancouver.

3
4
5 **VANCOUVER COUNT VI**

6 **Counterclaim for Money Due and Owing by the**
7 **United States of America to Defendant Renton**

8 65. Vancouver incorporates the allegations set forth in paragraphs 40 through 56 of the
9 Counterclaims.

10 66. The United States of America has failed and/or refused to pay the City of
11 Vancouver for stormwater fees for its real property located in Vancouver, Washington,
12 commonly located at 5411 NE Hwy 99, and commonly known as the Ross Complex, from May
13 1, 2010, through May 31, 2010, in the total sum of \$9,298.06, including a 10% penalty, which
14 amounts are now due, owing and unpaid to defendant Vancouver.

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17 **VANCOUVER COUNT VII**

18 **Counterclaim for Money Due and Owing by the**
19 **United States of America to Defendant Vancouver**

20 67. Vancouver incorporates the allegations set forth in paragraphs 40 through 56 of
21 the Counterclaims.

22 68. The United States of America has failed and/or refused to pay the City of
23 Vancouver for stormwater fees for its real property located in Vancouver, Washington,
24 commonly located at 5411 NE Hwy 99, and commonly known as the Ross Complex, from June
25

1 1, 2010, through June 30, 2010, in the total sum of \$9,298.06, including a 10% penalty, which
 2 amounts are now due, owing and unpaid to defendant Vancouver.

4 **VANCOUVER COUNT VIII**

5 **Counterclaim for Money Due and Owing by the** 6 **United States of America to Defendant Vancouver**

7 69. Vancouver incorporates the allegations set forth in paragraphs 40 through 56 of
 8 the Counterclaims.

9 70. The United States of America has failed and/or refused to pay the City of
 10 Vancouver for stormwater fees for its real property located in Vancouver, Washington,
 11 commonly located at 5411 NE Hwy 99, and commonly known as the Ross Complex, from July
 12 1, 2010, through July 31, 2010, in the total sum of \$9,298.06, including a 10% penalty, which
 13 amounts are now due, owing and unpaid to defendant Vancouver.
 14

15 **VANCOUVER COUNT IX**

16 **Counterclaim for Money Due and Owing by the** 17 **United States of America to Defendant Vancouver**

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 19 71. Vancouver incorporates the allegations set forth in paragraphs 40 through 56 of
 20 the Counterclaims.

21 72. The United States of America has failed and/or refused to pay the City of
 22 Vancouver for stormwater fees for its real property located in Vancouver, Washington,
 23 commonly located at 5411 NE Hwy 99, and commonly known as the Ross Complex, from
 24
 25

1 August 1, 2010, through August 31, 2010, in the total sum of \$9,298.06, including a 10%
2 penalty, which amounts are now due, owing and unpaid to defendant Vancouver.

3
4 **VANCOUVER COUNT X**

5 **Counterclaim for Money Due and Owing by the**
6 **United States of America to Defendant Vancouver**

7 73. Vancouver incorporates the allegations set forth in paragraphs 40 through 56 of
8 the Counterclaims.

9 74. The United States of America has failed and/or refused to pay the City of
10 Vancouver for stormwater fees for its real property located in Vancouver, Washington,
11 commonly located at 5411 NE Hwy 99, and commonly known as the Ross Complex, from
12 September 1, 2010, through September 30, 2010, in the total sum of \$9,298.06, including a
13 10% penalty, which amounts are now due, owing and unpaid to defendant Vancouver.
14

15 **VANCOUVER COUNT XI**

16 **Counterclaim for Money Due and Owing by the**
17 **United States of America to Defendant Vancouver**

18 75. Vancouver incorporates the allegations set forth in paragraphs 40 through 56 of
19 the Counterclaims.

20 76. The United States of America has failed and/or refused to pay the City of
21 Vancouver for stormwater fees for its real property located in Vancouver, Washington,
22 commonly located at 5411 NE Hwy 99, and commonly known as the Ross Complex, from
23 October 1, 2010, through October 31, 2010, in the total sum of \$9,298.06, including a 10%
24 penalty, which amounts are now due, owing and unpaid to defendant Vancouver.
25

COUNT XII

**Counterclaim for Money Due and Owing by the
United States of America to Defendant Vancouver**

77. Vancouver incorporates the allegations set forth in paragraphs 40 through 56 of the Counterclaims.

78. The United States of America has failed and/or refused to pay the City of Vancouver for stormwater fees for its real property located in Vancouver, Washington, commonly located at 5411 NE Hwy 99, and commonly known as the Ross Complex, from November 1, 2010, through November 30, 2010, in the total sum of \$9,298.06, including a 10% penalty, which amounts are now due, owing and unpaid to defendant Vancouver.

COUNT XIII

**Counterclaim for Money Due and Owing by the
United States of America to Defendant Vancouver**

79. Vancouver incorporates the allegations set forth in paragraphs 40 through 56 of the Counterclaims.

80. The United States of America has failed and/or refused to pay the City of Vancouver for stormwater fees for its real property located in Vancouver, Washington, commonly located at 5411 NE Hwy 99, and commonly known as the Ross Complex, from December 1, 2010, through December 31, 2010, in the total sum of \$9,298.06, including a 10% penalty, which amounts are now due, owing and unpaid to defendant Vancouver.

COUNT XIV

**Counterclaim for Money Due and Owing by the
United States of America to Defendant Vancouver**

81. Vancouver incorporates the allegations set forth in paragraphs 40 through 56 of the Counterclaims.

82. The United States of America has failed and/or refused to pay the City of Vancouver for stormwater fees for its real property located in Vancouver, Washington, commonly located at 5411 NE Hwy 99, and commonly known as the Ross Complex, from January 1, 2011, through January 3, 2011, in the total sum of \$899.81, including a 10% penalty, which amounts are now due, owing and unpaid to defendant Vancouver.

RELIEF SOUGHT

WHEREFORE, having fully answered plaintiff's Complaint and having set forth Affirmative Defenses and Counterclaims, Vancouver prays for relief as follows:

A. That the Court enter a judgment declaring that Congress has waived the sovereign immunity of the United States of America in the Clean Water Act, 33 U.S.C. § 1323(a), as it relates to the "reasonable service charges" imposed by Renton and Vancouver through imposition of their respective stormwater fees against plaintiff;

B. That the Court enter a judgment declaring that Congress' waiver of the United States of America's sovereign immunity was clarified in 33 U.S.C. § 1323(c), and that as remedial legislation, the Stormwater Amendment is retroactive in its application to the Clean Water Act such that the term "reasonable service charges" includes stormwater fees or assessments as imposed by Renton and Vancouver upon plaintiff before January 4, 2011;

1 C. That the Court enter a judgment declaring that Renton's and Vancouver's respective
2 stormwater fees are reasonable service charges imposed for the purpose of complying with the
3 Clean Water Act;

4 D. That the Court enter a judgment declaring that Renton's and Vancouver's
5 stormwater fees are not a tax upon the United States of America;

6 E. That the Court enter a judgment in favor of Vancouver and against plaintiff on
7 Vancouver's Counterclaims set forth in Counts II through XIV above, including judgment for
8 past due penalties and interest;

9 F. That the Court award Vancouver such other and further relief as it deems just and
10 proper.

11
12 DATED this 24th day of August, 2011.

13
14 CITY ATTORNEY'S OFFICE
15 CITY OF VANCOUVER, WASHINGTON

16 By:: /s/ Linda A. Marousek
17 Linda A. Marousek, WSBA No. 12045
18 Assistant City Attorney
19 Attorney for Defendant
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CERTIFICATE OF SERVICE

I hereby certify that on the date provided below, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following individual(s):

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