

POSITION: Federated Women in Timber (FWIT) urges Congress to make necessary changes to the Equal Access to Justice Act (EAJA). This well intended act, which requires the federal government to pay plaintiffs' court costs incurred in successful lawsuits against federal agencies, has become misused and abused through endless appeals and lawsuits by so-called "non-profit" environmental groups who are, technically, allowed to sue under this act and benefit financially from the results. The actions of groups such as these are holding our rural communities hostage to an uncertain future. FWIT suggests the following changes to the act to add accountability *without* limiting a private individual's right to fairly protect their liberties and lives in court.

- ❖ Consider having plaintiffs pay government attorneys' fees if they lose.
- ❖ Ensure meaningful accountability by requiring litigants to post a significant bond to cover the cost of delaying projects.
- ❖ To reduce legal fees, use the average hourly rate for the state in which the case is filed.
- ❖ Consider limits on total amounts awarded.
- ❖ Consider pro-ratio of costs based on claims supported or lost.
- ❖ Add a means test for non-profits to meet the same qualifications as individuals or small businesses.

BACKGROUND: The Equal Access to Justice Act was passed in 1980 to give ordinary citizens affordable access to the legal system in grievances against the federal government. The Act was amended in 1985 and again in 1996 to allow non-profit 501(c)3 organizations this same access to sue the government. Since then, lawsuits by non-profit organizations have increased substantially. Although the EAJA was designed to protect the ability of ordinary citizens to seek redress for government misconduct, the environmental groups that use the act to their advantage are no ordinary citizens. For example, EarthJustice, the legal arm of the Sierra Club, has \$35,922,744 in net assets, including nearly \$1.2 million invested in an offshore limited partnership and \$26 million in corporate stock. The attorney fee demand seeks between \$500 and \$600 per hour for EarthJustice's in-house attorneys, nearly three times the statutory rate allowed under the Act and in far excess of the prevailing rate for private attorneys doing this work. The issue of abuse of the EAJA by well-heeled environmental organizations using taxpayer dollars to fund lawsuits against the government was the subject of a November 3 letter from the Western Congressional Caucus to U.S. Attorney Eric Holder. Twenty-three Representatives and Senators expressed concern that "organizations with a narrowly focused political agenda regarding the management of public lands in the west are abusing the Congressional intent of the EAJA." The letter stated that since 1995, there has been a lack of Congressional oversight of EAJA expenditures and called on the Department of Justice to develop a central, publicly searchable database of organizations receiving funds and the amount paid out by the government. Furthermore, recent studies by Wyoming attorney Karen Budd-Falen show that Forest Service Regions 1, 5, and 6 paid out over \$1 billion in EAJA funds between 2003 and 2005. Additionally, the federal government between 2003 and 2007 paid more than \$4.7 billion in taxpayer money to environmental law firms -- and that's just in the lawsuits Budd-Falen tracked. Between 2000 and 2009, three tax-exempt, non-profit environmental groups -- Western Watersheds Project, Forest Guardians and Center for Biological Diversity -- filed more than 700 cases

against the federal government. Federated Women in Timber proposes that Congress address this incentive to litigation that has gridlocked management of our nation's natural resources.

RATIONALE: The EAJA has resulted in hundreds of mill closures across the country and a loss of traditional livelihood for thousands of Americans. These lawsuits affect logging levels on federal lands, which has made it difficult for rural school districts to fund their existence. The U.S. Forest Service is losing its ability to actively manage national forest lands, resulting in smaller work forces, shrinking budgets, less work on the ground, increased fuel loading and escalating firefighting costs. Many non-profit environmental organizations simply use serial litigation as a "cash cow" to pad their pockets and halt management of our national forest. Recently, Jack Ward Thomas, Forest Service chief during the Clinton Administration, asked when these groups intend to "*take responsibility for the consequences of their victory.*"

CONCLUSION: Frivolous lawsuits jeopardize vital forest health and fire prevention projects, needed energy production projects and jobs. They also cause rural schools to face a funding crisis and taxpayers get to foot the bill for it all. Ultimately Congress must address the plethora of conflicting and overlapping laws that foster conflict and litigation in resource management. Careful revisions must mesh science-based resource management with direction from local cooperative efforts. Currently, the U.S. Forest Service, U.S. Fish and Wildlife Service and many other government agencies have become ineffective as they are increasingly mired in litigation. Community efforts to find common ground and cooperation in resource issues become pointless when litigation violates the trust participants had established. While working on those solutions, in addition to limiting legal fees, Congress must have the political courage to address the blatant abuse of the judicial system by serial litigants under the guise of 501 (c)3 non-profit organizations. Forests are a miraculous renewable resource. They provide us with beautiful solid wood products capable of storing carbon, bio-fuels for energy, and are fully recyclable and biodegradable. As always, healthy forests are the answer.

EAJA Talking Points

- ◆ In order to prevail, under the act, all a group has to do is show a government body changed some policy or program as a result of the suit.
- ◆ Much of the funds to pay the attorney fees are being pulled from the budgets of cash-strapped regional offices of natural resource agencies, which should instead be used for range improvement projects, trails or campgrounds, timber harvesting, etc.
- ◆ Annual salaries paid to top environmental executives: \$446,072 salary paid to the president of the Environmental Defense Fund, \$439,327 paid the president of the World Wildlife Fund.
- ◆ It is important for the public to realize just how much taxpayer money is being spent on these cases.
- ◆ In just six years, non-profit environmental groups have filed more than 1500 lawsuits.
- ◆ The Federal Government has paid out more than \$4.7 billion in taxpayer dollars in settlements and legal fees in cases where they have been named as the defendant.
- ◆ An example: Between 2000 and 2009, Idaho's Western Watersheds Project alone filed at least 91 lawsuits in federal district court with 31 appeals in federal appellate court. In Federal District Court in Boise, over the last ten years, WWP received a total of \$999,190 in tax dollars for reimbursement of attorney fees and costs. Plainly there is a payday in court, win or lose or draw.
- ◆ ". . . there are organizations out there that are just sitting there scrutinizing, watching every decision an agency makes waiting for that 'low hanging fruit' to jump on—just to get fees," said U.S. Attorney Mark Haws.
- ◆ The federal government is spending billions in taxpayer dollars without any accounting of where the money is going or to whom it is going. There is no oversight in spending this money, especially the money that's coming out of agency budgets that should be funding programs to protect public lands, national forests, ranchers, sportsmen, wildlife and other land uses.
- ◆ "If you just look at the raw number and say 'why in the world is the United States paying a million dollars bankrolling them to sue us,' well that's what congress set up through EAJA. That's the law, we're bound by it."—US Attorney Mark Haws.
- ◆ The main funding source is called the "Judgment Fund." It's a Congressional line-item appropriation that's used for Endangered Species Act cases, Clean Water Act cases, and with other statutes that directly allow plaintiffs like Western Watersheds to recover attorney fees just by filing, even if there's no hope in winning.
- ◆ In fiscal year 2003, the federal government made 10,595 individual payments from the Judgment Fund to federal court plaintiffs for a price tag of \$1,081,328,420.00.
- ◆ In 2004, the federal government made 8,161 payments from the Judgment Fund for \$800,450,029.00.
- ◆ In 2005, 7,794 payments were made from the Judgment Fund for a total of \$1,074,131,007.00.
- ◆ In 2006, the federal government made 8,736 payments from the Judgment Fund for \$697,968,132.00.
- ◆ In *just the first half* of fiscal year 2007, the federal government made 6,595 payments from the Judgment Fund for \$1,062,387,142.00.
- ◆ In total, \$4,716,264,730.00 (that is billion with a "b") in total payments were paid in taxpayer dollars from the Judgment Fund from 2003 through July 2007 for attorney fees and costs in cases against the federal government.
- ◆ Between 2003 to 2005, Region 1 of the Forest Service (Montana, North Dakota, northern Idaho) paid \$383,094 in Equal Access to Judgment fees.
- ◆ Between 2003 to 2005, Region 2 of the Forest Service (Wyoming, South Dakota, Colorado, Nebraska, Oklahoma) paid \$97,750 in EAJA fees.
- ◆ Between 2003 to 2005, Region 3 of the Forest Service (Arizona, New Mexico) paid \$261,289.85 in EAJA fees.
- ◆ Between 2003 to 2005, Region 4 of the Forest Service (southern Idaho, Utah, Nevada) paid \$297,705 in EAJA fees.
- ◆ Between 2003 to 2005, Region 5 (California) of the Forest Service paid \$357, 023 in EAJA fees.
- ◆ Between 2003 to 2005, Region 6 (Washington State, Oregon) of the Forest Service paid \$282,302 in EAJA fees.
- ◆ Out of the 44 total cases in which the Forest Service paid EAJA fees between 2003 and 2005, 35 payments went to 'nonprofit' environmental group plaintiffs.

Our thanks to Karen Budd-Falen for her research on EAJA abuses.