



FEDERAL FOREST RESOURCE COALITION

Policy Position Reforming the Equal Justice Act

FFRC Policy Recommendations

FFRC strongly supports meaningful reforms to the Equal Access to Justice Act that will reduce incentives for litigation and allow badly needed forest management projects to proceed. Specific policy recommendations follow:

- Limit attorney fees to \$125 an hour, and set annual limits on the amount that can be awarded to any one entity;
- Institute limits on the net worth of eligible plaintiffs, including the legal team that represents individuals in cases unrelated to government benefits;
- Reinstate the requirement for annual tracking and reporting on legal fees awarded to plaintiffs; and
- Require the Forest Service to document the acreage and potential board foot production lost to projects on which EAJA awards were made to plaintiffs.

Background

The Equal Access to Justice Act (EAJA) was designed to level the playing field in legal disputes between private citizens and the Federal government. EAJA allows plaintiffs to recover attorney fees and other costs from the federal government when they prevail in a case against the government. Scholarly research and government reviews have found major problems with EAJA, with the Notre Dame Journal of Legislation finding that EAJA allows:

1. The routine evasion of the statutory cap on attorneys' fees in a large number of cases;
2. Abusive litigation engaged in by massive 501(c)(3) organizations not subject to the caps; and
3. Incentive for the government to settle costs disputes, as well as the related ability to turn losing cases into fee-award cases by artful settlement.

When the Government Accountability Office was asked to determine USDA and the Department of Interior's payments of attorney fees under EAJA from 2000 to 2010, they found that there was "no way to readily determine who made claims, the total amount each department paid or awarded in attorney fees, who received the payments, or the statutes under which the cases were brought for the claims".

In fact, the plaintiff need not even win the case — the government also reimburses plaintiffs who settle out of court. Some activist organizations have aggressively used the Citizen Suit provisions

of various environmental laws, such as the Endangered Species Act, and then claimed legal expenses for these efforts under the EAJA. In the last four years alone, the Federal government has helped pay the legal expenses of plaintiffs in more than 570 cases relating to the Endangered Species Act alone, according to data provided to the House of Representatives.

The EAJA was amended in 1995 to remove a requirement that the Federal government track the payments made to plaintiff's lawyers. For more than a decade and a half, there has been no systematic effort to track who receives payments under EAJA. Legislation was introduced in the 112th Congress that would:

1. Enact statutory limits on legal fees awarded under EAJA, both on a per hour basis and a total annual limit on fee awards;
2. Limit EAJA fee awards to plaintiffs with a "direct financial interest" such as medical costs, property damage, denial of benefits, or unpaid disbursements;
3. Limit eligibility for EAJA awards to those organizations with a net worth of less than \$7 million;
4. Reinstates the requirement that the government track EAJA awards annually; and
5. Requires GAO to conduct an audit of government EAJA spending during the years when that requirement was not in force.

Groups, which have received significant funding through EAJA, have routinely filed disruptive litigation against badly needed forest management projects. The Alliance for the Wild Rockies, for instance, has received over half a million in EAJA payments. In June of this year, they filed a lawsuit against a badly needed 2,200 acre thinning project in Montana, where the wood using infrastructure is hanging on by a thread. Thanks to aggressive litigation, this region now spends well more than half their annual land management budget on analysis, rather than on accomplishing badly needed projects.