

The Equal Access to Justice Act

Anti-agriculture groups are reaping the rewards of a broken piece of legislation; bills introduced to correct problem.

by **KASEY BROWN,**
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Due to a broken piece of legislation, nonprofit anti-agriculture groups are getting funding from the federal government through means of the *Equal Access to Justice Act* (EAJA). Wyoming attorney Karen Budd-Falen explained that the Act was signed into being by Ronald Reagan to protect people from wrongdoing by the government. Through the EAJA, if you sued the government and the government was wrong, then the government would pay the attorney fees.

The senior partner of Budd-Falen Law Offices LLC spoke to attendees of the Property Rights & Environmental Management Committee Business Meeting at the 2015 Cattle Industry Convention & NCBA Trade Show Feb. 4-7 in San Antonio, Texas. Budd-Falen said the cap for attorney fees was \$200 per hour when the piece of legislature was signed. For-profit companies with a net worth of more than \$7 million are ineligible to recoup attorney fees for a suit

against the federal government, she said. However, nonprofit groups, regardless of net worth, have no cap because they are working for the “public interest.”

However, in California, environmental law is considered a specialty, and environmental groups got it through the federal government that they should be allowed to charge California attorney fees (\$775 per hour) anywhere, she said. Several nonprofit groups are gaining a great deal of funding from taxpayer dollars in this way.

“There is something broken with this system,” she asserted. She said there are 6,500 national environmental groups and 20,000 local environmental groups who are claiming that protection of the environment is their primary concern. In the eyes of some of those groups, the alleged protection for this so-called “public interest” goes as far as excusing trespassing onto ranchers’ land and extraneous litigation.

Although Budd-Falen and other groups like the U.S. Chamber of Commerce have been able

to document these outrageous payments, in 21% of the cases, the public will never know how much was spent in a lawsuit, she explained. In those cases, the Justice Department agreed that attorney-fee payments don’t have to be released, so she said these groups don’t have to share how much they make from EAJA cases. Frustratingly, she explained that most of these cases are not litigating scientific practice, but rather litigating the process and procedural hoops.

Most notably, she said that environmental groups litigate on the *Endangered Species Act* (ESA) often because they can get paid if the federal government doesn’t respond to a petition to list a species in 90 days. To clarify, she said they win the case because it was not addressed in time, not because the species listing is valid or warranted.

There are two bills in the House of Representatives working to fix this problem. The first, H.R. 384, sponsored by Cynthia Lummis of Wyoming, would get an accounting of how many taxpayer dollars are spent in these EAJA fees through a

searchable database. It would also require a publicly searchable database related to these payments, including the name of the person or group receiving the fees, the substance of the litigation and the court case number. It would work to increase the transparency of the EAJA fee payments. She hopes it might get the EAJA back to what it was designed to do instead of being exploited. Rep. Lummis is looking for co-sponsors for that bill.

In 2014, Lummis also introduced H.R. 2919, which would set a hard cap on attorney’s fees at \$250 per hour, regardless of specialty. She said this legislation would work to ensure serial litigants would no longer get fees after a certain number of cases in a calendar year. It would also apply the \$7 million cap to for-profit and nonprofit organizations.

“We need to shut off the money supply of these groups to affect change,” she emphasized. “This isn’t just an ag problem. There is money flying out of every taxpayers’ pocket. This is everyone’s problem.”

