



Sustainable Forest Action Coalition

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Organization Representatives

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Honorable Congressman and Senators

RE: HR 1996 – Government Litigation Savings Act

The Sustainable Forest Action Coalition (SFAC) wishes to support HR 1996, pending legislation that will revamp the Equal Access to Justice Act (EAJA). The SFAC is a collation of forested rural counties in central and northern California. Our county's land base is dominated by National Forest ownership. As a result of the combination of our county's being dominated by public lands and under the laws and regulations of the Forest Service, we have been devastated by frivolous appeals and lawsuits.

SFAC and our 19 Counties with representation feel strongly that the original intent of the EAJA has been dramatically altered by amendments in 1985 and 1996. The latest amendments changed the original intent of the law that was passed to give ordinary citizens, perhaps those having a once in a lifetime grievance with their government the ability to recover attorneys fees and costs in cases against the federal government. As the 1980 conference committee report for EAJA explains, the Act's premise is that individuals and small businesses did not seek review of unreasonable government actions because of the expense involved, which was compounded by the disparity in expertise and resources between the government and the individual or business involved.

With the amendments made in 1985 and 1996, EAJA now allows non-profit 501 (c)(3) organizations to recover fees under EAJA. Since then, lawsuits by non-profit organizations have proliferated. By June 2004, there were 7100 environmental lawsuits in courts. A well-intended law has now become the primary fundraiser for many organizations as they regularly sue the government, collect taxpayer funds for exorbitant legal fees, even if the organization prevails on a very limited basis. Between 1980 to the mid 1990's, the U.S. Treasury paid \$34 million in legal fees under EAJA for cases filed against the government. In 1995 Congress and the agencies halted tracking and reporting of payments made through EAJA.

Participating Counties:

Amador • Butte • Calaveras • Colusa • Del Norte • El Dorado • Glenn • Inyo • Lassen • Modoc
Nevada • Placer • Plumas • Tehama • Shasta • Siskiyou • Trinity • Tuolumne • Yuba

The EAJA sets eligibility limits on recovery. An individual's net worth must be no more than \$2 million and a business must have less 500 employees and a net worth no more than \$7 million. But 501(c)(3) non-profits are not subject to these income limits and large environmental groups like the Sierra Club and Center for Biological Diversity, with tens of millions of dollars in assets, still can recover EAJA compensation of legal fees and expenses when they prevail in a lawsuit.

Within our SFAC geographic area we have both of these organizations either directly involved or known to assist other environmental groups to file suit against Forest Service projects that are designed to improve forest and watershed health. In the California Region of the Forest Service, the following will illustrate the impacts of the last five years of litigation. The following table will illustrate the impacts to timber sales, with most of them being within the geographic area represented by SFAC.

**Forest Service California Region
Sold Volume, Target, & Litigation for 2000-2010**

| Year | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 |
|---|-------|-------|-------|-------|-------|-------|
| Sold(mmbf) | 451.2 | 339.9 | 349.1 | 203.9 | 321.2 | 347.7 |
| Target(mmbf) | 444.5 | 382.5 | 436.5 | 387.0 | 407.5 | 409 |
| Litigation (mmbf) | 43 | 114 | 213 | 65 | 108 | 94 |
| Potential jobs lost due to litigation * | 490 | 1,300 | 2,428 | 730 | 1,231 | 1,071 |

*1 million board feet of harvest equates to 11.4 new direct and indirect jobs with an average annual wage of \$43,200 per job. Statistics are from Oregon Department of Forestry.

Counties within the SFAC have had their economic and social wellbeing dramatically impacted by these appeals and lawsuits of Forest Service projects that are designed under the guidelines of the Forest Service. All of our counties have lost forest products infrastructure over the last 10-20 years and it is the simple fact that the Forest Service projects have been continually appealed and litigated. The end results have been that it has become overly expensive for the Forest Service to comply with all the federal laws and regulations, and extremely easy for over-zealous environmental groups to find loop holes that can stop or delay almost any forest treatment.

As a result of never ending litigation and lack of firm direction from the Forest Service, our counties forested lands are burning up at an ever increasing scale. Recently the State of California has endured some of the worst fire seasons in recorded history. In addition to watershed impacts, we are losing many thousands of acres of wildlife habitat. The loss of these resource values also significantly affects the economic base for many of those counties, as well as their reliance on recreation and tourism activity. In addition, the decline in the timber industry and the associated infrastructure is at a critical stage and must be maintained to properly treat the National Forests.

It is easy to see why litigation has increased on environmental suits brought against the Forest Service. The statutory attorneys fee rate under EAJA is \$125 per hour as adjusted for inflation which is now about \$180 per hour. However, courts regularly award environmental groups enhanced rates of \$500 per hour or more based on the assumption that environmental attorneys are in short supply and they practice in a specialty field. While environmental law may have been a "specialty" practice justifying enhanced rates three decades ago, it no longer is today, especially in a National Environmental Policy Act case where the claim is simply that an Environmental Impact Statement is required. The hourly rate paid is also based on the prevailing rate in the location of the court, so many non-profits from rural areas will file in larger cities like San Francisco where the hourly rates are the highest. The plaintiffs could not recover these excessive rates in their home markets where they do most of the work.

SFAC not only supports HR 1996, but for all forested counties within our state. Our coalition wants to thank you for your leadership in this effort and other concerns and issues that affect us.

Sincerely,



Bill Wickman and Laurel Brent-Bumb
Representatives for the Sustainable Forest Action Coalition

Cc:

Senator Feinstein

Senator Boxer

Congressman McClintock

Congressman Lundgren

Congressman Denham

Congressman Herger

Congressman Nunes

Congressman Thompson

Congressman McCarthy

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