Reform of Equal Access to Justice Act

Background: The Equal Access to Justice Act (EAJA) was passed in 1980 to give ordinary citizens, perhaps those having a once in a lifetime grievance with their government, access to the legal system in which the federal government can be formidable. The Act was amended in 1985 and again in 1996 to allow non-profit 501(c)(3) organizations this same access to sue their government. Since then, lawsuits by non-profit organizations have proliferated. 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 group prevails on a very limited basis. From 2001 to 2011, environmental activist groups, some worth in excess of $50 million, have been awarded an estimated $37 million. During the same time period, more than 3,300 cases have been filed by just 12 groups.

Rationale: Using the EAJA in conjunction with other well-intended federal laws such as the Endangered Species Act (ESA) and the National Environmental Policy Act (NEPA), environmental groups have systematically sued the government on numerous resource management proposals in the last three decades and in some areas brought active management to a halt. The U.S. Fish and Wildlife Service has lost its flexibility with the bottomless pit of litigation driving listings and critical habitat designations.

Frivolous lawsuits jeopardize vital forest health and fire prevention projects, needed energy production projects and jobs while rural communities face an economic crisis and taxpayers foot the bill. Because most environmental groups have acquired 502 (c)(3) status through the IRS, the Equal Access to Justice Act currently allows them to file "risk free" lawsuits and recover attorney fees and expenses at no cost to themselves regardless of the trial or ruling. The EAJA sets net worth parameters of less than $2 million for individuals and under $7 million with fewer than 500 employees for businesses. In other words, organizations like the Sierra Club and Earthjustice Institute, with millions of dollars in assets, still have non-profit status with the IRS and qualify for EAJA compensation of legal fees and expenses when they file a lawsuit.

The Act, as originally passed, required the Department of Justice to report to Congress where and how EAJA funds were being spent. However, in 1995, through passage of the paperwork reduction act, the reporting requirement for EAJA payments was removed. For nearly 20 years the government has not been tracking how much money has been paid out through EAJA. Legislation has been introduced in Congress to restore accountability by requiring an accounting of all attorney fees spent under the Act; an annual report to Congress detailing the use of EAJA funds; and a Government Accountability Office audit of EAJA funding over the past 15 years.

Position: The American Loggers Council (ALC) supports revising the Equal Access to Justice Act to add accountability and consequences. This well intended Act has been misused and abused by environmental groups filing frivolous lawsuits and lawsuits without merit and the resulting impact is the loss of jobs and thousands of Americans who have lost their livelihoods. Our rural schools continue to lose students, and school budgets have faced deep cuts due to the loss of timber receipts. The U.S. Forest Service has lost the ability to actively manage our treasured national forests, resulting in smaller workforces, shrinking budgets, escalating fire suppression costs, and millions of acres of forests destroyed by invasive pests, diseases and

catastrophic wildfires. Many non-profit environmental organizations simply use serial litigation as a "cash cow" to pad their pockets and halt management of our national forests.

The **Federal Forest Resource Coalition (FFRC)**, of which the American Loggers Council is a member, recommends the following EAJA policy reforms:

- 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.
- Require the Forest Service to document the acreage and potential board foot production lost to projects on which EAJA awards were made to plaintiffs.

Further, both ALC and FFRC support the Resilient Federal Forests Act (HR 2647), which protects collaborative projects from unnecessary delay by requiring bonding for legal challenges. This discourages arbitrary and frivolous litigation against the Forest Service that wastes their time and costs taxpayers money

Conclusion: There are a myriad of conflicting and overlapping laws and regulations that foster conflict and litigation in resource management and has led to the "analysis paralysis" of federal land management agencies. Community efforts and collaboration to find common ground and cooperation in resource issues become pointless when litigation violates the trust participants had established. Congress can begin to resolve resource management issues by implementing reasonable reforms to the Equal Access to Justice Act. **Don't limit the right to sue the Federal Government, just the profitability that comes with serial litigation.**