



## *Support "Amending the 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. 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 group prevails on a very limited basis. During the 1990's, the U.S. Treasury paid \$31.6 million in legal fees for environmental cases filed against the government and they continue to escalate.

**Rationale:** Using the EAJA in conjunction with other well-intended legislation 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. In 2007, it was determined that 75% of the allowable harvest volumes on public lands managed by the US Forest Service were currently under litigation. 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.

**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 livelihood. Rural schools are losing the ability to fund their existence and rely on funding from the Secure Rural Schools Act. The U.S. Forest Service is losing its 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 ALC supports amending the Equal access to Justice Act**, along with the following changes to the Act to add accountability without limiting the private individual’s right to protect their individual liberties in court:

- Require the federal government to create a publicly searchable database of all attorney fees awarded under the Equal Access to Justice Act (EAJA) including the total amount of attorney and expert fees paid in each case, the hourly attorney fee charged and who is collecting the money.
- Add a means test for non-profits to meet the same qualifications as individuals or small businesses.
- To ensure meaningful accountability, require plaintiffs to post significant bond to cover loss of the economic value of timber or other resources during the course of court proceedings and other costs should the lawsuit be found to be without merit or frivolous,
- Consider having plaintiffs pay government attorneys’ fees if lawsuit is found to be without merit or frivolous,
- Use the average hourly rate for attorneys in the State in which the case is filed to keep the awards in check,
- Limits on total amounts awarded
- Prorate costs based on claims supported or lost

**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 revisions to the Equal Access to Justice Act that the ALC supports. Don’t limit the right to sue the Federal Government, just the profitability that comes with serial litigation.**