

Budd-Falen Law Offices, L.L.C.

Karen Budd-Falen¹
Franklin J. Falen¹
Brandon L. Jensen^{1,2}
Kathryn Brack Morrow^{1,2,3}
Laura C. Rowe¹

300 East 18th Street
Post Office Box 346
Cheyenne, Wyoming 82003-0346
Telephone 307/632-5105
Telefax 307/637-3891
main@buddfalen.com
www.buddfalen.com

¹admitted in Wyoming
²admitted in Colorado
³admitted in New Mexico

MEMORANDUM

TO: INTERESTED PARTIES

**FROM: KAREN BUDD-FALEN
BUDD-FALEN LAW OFFICES, LLC**

DATE: NOVEMBER 3, 2009

**RE: FOURTH INSTALLMENT IN THE MULTI-PART SERIES ON
ENVIRONMENTAL GROUP LITIGATION GRAVY TRAIN—THE
DISTINCTION BETWEEN “FOR-PROFIT” AND “NON-PROFIT”
AND IT IS A NATION-WIDE PROBLEM!**

This memorandum represents the fourth installment of a multi-part series of letters to the editor/articles regarding the attorney fees litigation gravy train perpetrated by the environmental groups using taxpayer dollars. In addition to uncovering more fees paid for environmental litigation, this memorandum exposes the fallacy between “non-profit” and “for-profit” attorney fee requesters. Finally, this memorandum lets you know that I have joined forces with Western Legacy Alliance (“WLA”) to continue this research and to find solutions to these astronomical abuses. Western Legacy Alliance can be reached at P.O. Box 162, Moreland, ID 83256, www.westernlegacyalliance.org; e-mail: westernlegacyalliance@gmail.com; phone: 208-206-7309. The research in this and other memorandums is open to publication and forwarding to anyone you think will join us in seeking a solution to this abuse of the system.

It is not only western based environmental groups that have found litigation against the federal government to be a profitable source of funding. Consider that the Friends of the Earth filed 113 district court cases against the federal government in the last approximately ten years and the Environmental Defense Fund filed 67. Even greater is The Wilderness Society with 150 cases, the National Wildlife Federation with 233 cases, the Natural Resources Defense Council with 488 cases and topping the list is the Sierra Club. Between 1989 and 2009, the Sierra Club filed 983 cases against the federal government. All totaled, these five groups have filed 2034 cases. If you add the “western environmental organizations” of Oregon Natural Desert Association, Western Watersheds Project, Center for Biological Diversity, Southern Utah Wilderness Alliance, and Forest (or now WildEarth) Guardians, that number rises to 2875 cases filed against the federal government for “enforcement” of environmental statutes. This does not include appeals to the circuit courts or cases where environmental groups intervene.

The location of the litigation is also interesting. The obvious “winner” in the eastern United States is the Federal District Court for the District of Columbia with 589 cases filed against the federal government by major environmental groups. The next states, in order, are Florida, New York, Texas, Minnesota, Kentucky, Pennsylvania, Michigan, Louisiana, Maine and Illinois.

Even though the state locations are different, the result is still the same. Compare the litigation filed by the Center for Biological Diversity (“CBD”) in the State of Washington Federal District Courts and in the Federal District Court for the District of Columbia in Washington D.C. In the Eastern and Western District Courts in Washington State, CBD has filed 12 cases. These cases include challenges under the ESA for failure to timely respond to petitions to list the giant Palouse earthworm, the killer whale, a butterfly species and the woodland caribou; challenges against the EPA’s ESA section 7 consultation with regard to certain pesticide and fungicide use on crops (although interestingly home lawn use was exempted from the injunction); a challenge to soft wood trade agreement between U.S. and Canada; a challenge for violations of Clean Water Act, specifically to protect ocean waters from threat of acidification, and others. Of the 12 cases filed, four are still pending, and of the completed eight cases, no attorneys fees were paid in two cases. The total amount of attorneys fees paid for the six cases is \$941,332.00.

In the Federal District Court for the District of Columbia, the CBD has filed 50 total cases and has received attorneys fees in 32 of those cases. There was only one case where the federal government opposed the payment of fees—all other fee requests were settled. In five cases, the court documents show that attorneys fees were paid, but no amount was disclosed to the public. In other words, even though taxpayer money was used to pay the CBD’s attorney fees, the taxpayers do not know how much of our money was used. The great majority of these cases dealt with the process required by the Endangered Species Act such as responding to petitions to list or designate critical habitat for a butterfly species in New Mexico, a dragon fly, several plants, some penguin species, polar bears, grey wolves, the Canadian lynx, a Montana bird, a Puerto Rican

frog, and many other species, none of whom reside in Washington D.C. The total attorneys fees paid in the 32 cases was \$1,043,454.00.

Through Western Legacy Alliance, we have been working on other attorneys fees analyses as well. In the Federal District Court for the District of Montana, the Alliance for the Wild Rockies has been awarded \$220,700.00, and the Defenders of Wildlife for that same court has received \$350,164.00. Oregon Natural Desert Association in the Oregon Federal District Court has received \$519,258.00. In the U.S. District Court in Arizona, the CBD has received \$865,015.00. Thus, adding CBD's "winnings" in Washington State, the District of Columbia and Arizona, CBD has been funded at a total of \$2,849,801.00 in those three courts alone.

While the environmental groups are claiming that if the federal government "did its job," there would be less litigation, I do not believe this claim. I believe that environmental litigation is big, profitable business, pure and simple. Consider this: under the Equal Access to Justice Act (one of the favorite fee shifting statutes in these kinds of cases), a for-profit company with a net worth over \$7,000,000 is ineligible to recover attorney fees for litigation against the federal government. However, a group that has been tagged as a "non-profit" by the IRS is not bound by this restriction. Thus, even though tax documents show that these groups are worth far in excess of \$7,000,000, they can receive attorney fees. For example, the IRS 2007 non-profit tax return for the Sierra Club showed its net worth to be \$56,527,055. Yet the Sierra Club, because it is "non-profit" receives attorneys fees from the federal government in environmental cases. That is simply unfair.

The news programs entitled "Fleecing of America," "That's Outrageous" and other programs that expose millions and billions of unaccounted American taxpayer dollars have nothing on the taxpayer dollars being paid by the federal government to environmental groups to sue the federal government. In other memorandums, I have opined that I have only found that an iceberg exists with regard to the payment of litigation fees; but with the most recent research, the size of that iceberg is starting to grow. I hope you will join with Western Legacy Alliance in spreading this research, looking for solutions and in fighting back.

-END-