

**MEMORANDUM**

**TO: INTERESTED PARTIES**

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

**DATE: MAY 26, 2010**

**RE: IT'S NOT ABOUT SAVING SPECIES – IT'S ABOUT SPENDING TAXPAYER MONEY AND MAKING SOME GROUPS WEALTHY**

Below please find some disappointing data regarding Endangered Species Act (“ESA”) and its cost to the American public. ESA process and litigation are NOT about saving species, it is about spending American taxpayer money. In an economic time where American jobs are scarce, private property rights are being taken and the federal deficit is trillions of dollars, certainly the federal government can find a better way to spend American taxpayer dollars than lining the pockets of radical environmental groups and their “pro bono” (i.e. allegedly free) attorneys and spending money on a program that by the federal government’s data is a complete failure.

The ESA was signed into law in 1978 with the best of intentions. However, over the years it has become the battle cry to eliminate private property rights and property use, shut down agriculture and other industries and fund radical environmental groups and their attorneys. There is not a single state within the United States that does not have listed, threatened or endangered species. It would not be so bad if the original intent of the ESA was followed and species were listed, then recovered, then removed from the list—but that is not what is happening.

As of May 17, 2010, there are a total of 1,374 species listed as threatened or endangered. This list includes everything, even bugs, worms, plants, snakes, spiders, bogs, moss, mice, rats and other species. According to a 2009 report by Greenwire citing the U.S. Fish and Wildlife Service, the average cost of listing a single species is \$85,000 and the average cost of designating critical habitat is \$515,000 per species. Thus, the approximate cost to the American taxpayer of listing the 1,374 species is \$116,790,000 and the approximate cost of designating critical habitat for those species is \$707,610,000.

If it weren’t bad enough that America’s taxpayers are spending millions simply listing species, that is not the end of the story. The ESA sets very specific time frames for species listing and critical habitat designation; time frames which the federal government cannot seem to meet. Species are listed by a petition process, which means that anyone can send a letter to the

federal government asking that a species, either plant or animal, be put on the ESA list. The federal government has 90 days to respond to that petition, no matter how frivolous. If the federal government fails to respond in 90 days, the petitioner—in the vast majority of cases, radical environmental groups—can file litigation against the federal government and get its attorneys fees paid. The simple act of filing litigation does not mean the species will get listed or that it is warranted to be protected; this litigation is only over whether the federal government failed to respond to the petition in 90 days. Between 2000 and 2009, in just 12 states and the District of Columbia, 14 environmental groups filed 180 federal court complaints to get species listed under the ESA and were paid \$11,743,287 in attorneys fees and costs. Again, there are listed ESA species in all 50 states, the District of Columbia and the U.S. Territories. Consider how much in attorneys fees have been paid if all litigation in all states is considered.

And it doesn't end there; the federal agencies have placed 341 more species on the candidate species list, meaning that they are under consideration for listing on the ESA threatened or endangered species list. That is 341 species times the average cost of listing of \$85,000 per species and \$515,000 for each critical habitat designation for a total of \$204,600,000—all from America's pocketbooks.

And it still doesn't end there; certain radical environmental groups have petitioned for additional listings of even more species and critical habitat designations. In the last 8 months, the Center for Biological Diversity, the WildEarth Guardians and the Western Watersheds Project have threatened the federal government with litigation if the government fails to list 238 more species. If the federal government does not respond to those listing petitions or Notices of Intent to Sue, federal court complaints will be filed and according to recent history, attorneys fees will be paid.

And with all this money—\$116,790,000 for species listing; \$707,610,000 for critical habitat designation; \$11,743,287 in attorneys fees paid to some radical environmental groups because the federal government simply missed deadlines—only 47 species have been taken off the ESA list and of that 47 only 21 because they were recovered. That is a 1.5% success rate! The other 26 species were taken off the list because they either went extinct (9 species) or should never have been put on the list in the first place (17 species). There is something wrong with this picture.

And while you are thinking about the ESA and its cost versus failure rate, consider the additional individual costs to American taxpayers and small businesses. The California red and yellow-legged frogs have cost the taxpayers \$445,924 just in litigation attorneys fees. Part of the reason that California farmers in the Central Valley have no water for their crops is because of Natural Resources Defense Council litigation over the delta smelt, a 2 to 3 inch long minnow.

Wolf litigation has cost American taxpayers \$436,762 in attorney fees, all paid to environmental groups who sue the federal government. Litigation over the desert tortoise, (a total of 11 cases) – a species that only spends 5% of its life above ground – has cost the American taxpayers \$702,519 just in payment of attorneys fees. In fact, in the last 10 years, the federal government has spent more than \$93 million in taxpayer money on the desert tortoise.

And that is not counting the costs to American business, even “green business.” In California, Brightsource Energy will have to spend \$20 million dollars to relocate 20 tortoises plus create a permanent tortoise trust fund so it can build its solar power plant. That is 1 million dollars plus per tortoise. Other businesses that have been impacted or stopped by the desert tortoise include a wind farm that would supply electricity to Las Vegas. Private landowners who wish to develop their own property are required to pay “mitigation fees” of between \$370 and \$550 per acre to develop private lands designated as desert tortoise critical habitat. Once the money is paid, it does not matter how many desert tortoises are killed. Hyundai car company had to buy 3000 acres of additional land for \$5 million so that it could use its own private property for a car safety test track. In addition to the \$5 million, the company also agreed to pay \$1.5 million into an endowment fund for the desert tortoise. The National Military Training Center at Ft. Irwin has also been negatively impacted, agreeing to pay \$6.9 million to relocate desert tortoises on the base so it can conduct its military training. None of this counts the over 30 family ranches that were eliminated because they used to graze their cattle on desert tortoise critical habitat.

It is clear that the American taxpayers have a tremendous problem. This wouldn't be so hard to take if the ESA was successful or if the radical environmental groups that are getting taxpayer money to litigate over the ESA were spending money on species or their habitats. However, there is no evidence that one single dime of the money the federal government pays to environmental groups to litigate over ESA species is spent on habitat or species research or mitigation projects—the money is just spent to get more taxpayer money and put more small businesses out of business or stop private landowners from using their properties. Even those businesses that supply “green jobs” and “green technology” suffer. This is a maddening state of affairs for America - somewhere the madness must stop!

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