Testimony
on behalf of the

National Cattlemen's Beef Association and Public Lands Council

with regard to:

"*Abuse of the Equal Access to Justice Act by Environmental NGOs"*

submitted to the House of Representatives Natural Resources Committee
Subcommittee on Oversight and Investigations

Chairman Paul Gosar
Ranking Member Maxine Dexter

submitted by:

Todd Wilkinson
Owner/Operator
Wilkinson Livestock

Wednesday, December 10, 2025
Washington, D.C.

Testimony of Todd Wilkinson, Owner/Operator of Wilkinson Livestock
Wednesday, December 10, 2025
House Natural Resources Subcommittee on Oversight and Investigations

Chairman Gosar, Ranking Member Dexter, and Members of the Subcommittee, thank you for the opportunity to provide testimony on "*Abuse of the Equal Access to Justice Act by Environmental NGOs."* My name is Todd Wilkinson. I am a second-generation rancher and live in De Smet, SD. I own and operate a cow-calf and cattle backgrounding operation with my son, who is the third generation of our family to work the ranch. Additionally, I run a small cattle feeding facility and maintain a law practice, where I assist other farmers and ranchers with estate planning and other agricultural law issues. Today, I offer my testimony as a rancher, past President and current member of the National Cattlemen's Beef Association (NCBA) (partner to the Public Lands Council) and attorney who specializes in assisting farmers and ranchers in legal issues affecting their operations and livelihoods.

I have been involved with NCBA for more than a decade, often participating in discussions about the need to reform the Equal Access to Justice Act (EAJA) to close loopholes that have exploited the well-meaning EAJA framework to the disadvantage of land management. Founded in 1898, NCBA is the American cattle and beef industry's oldest and largest national trade association. NCBA represents forty-four state cattlemen's associations with collective memberships numbering some 178,000 cattle producers, in addition to the nearly 26,000 direct members across all segments of the industry. Each of those members has a voice in our organization's century-old policymaking process, and it is from the resolutions and directives resulting from this process that NCBA takes positions on legislation and proposed regulations. NCBA's policy on EAJA reform is clear. NCBA supports: more stringent oversight of EAJA payments and other fee-shifting statutes; Congressional reform of EAJA and similar tools to limit abuse by those who use EAJA solely to seek profit; Congressional oversight of abuses of EAJA; and annual reporting of expenditures to relevant Congressional committees. Ranchers across the country ask Congress to bring justice back to the Equal Access to Justice Act.

Decades of frivolous litigation have been borne from a system that inadvertently encouraged non-governmental organizations (NGOs) to file litigation and seek attorneys' fees as their primary business model. Well-meaning provisions in underlying statutes requiring federal agencies to act in a timely manner have become cudgels with which to force agencies into settlements when groups target agency weaknesses. It has become common for the organizations who are the worst offenders of EAJA abuse to bury the agency in administrative work, sue when the agency is unable to meet procedural deadlines, and settle with the agency to force the agency into a particular policy action – all while recouping their internal expenses on attorneys' fees from taxpayer dollars. It is not just the abuse of EAJA as a funding mechanism that the agriculture industry finds so offensive, it is the concurrent "policymaking by settlement/consent decree" that forces agencies into unfavorable positions and results in long term regulatory uncertainty. Today, I'll suggest reforms of the Equal Access to Justice Act that would end the wasteful exploitation of taxpayer dollars and empower agencies to do their jobs as Congress intended, not as ill-timed settlements demand.

EAJA Background

Enacted in 1980, EAJA began as a well-intended tool to ensure that costs of litigation did not pose an undue barrier for individuals and small businesses to redress grievances with the federal government[1]. Originally intended as a tool for small businesses, and later for individuals like veterans and those making social security claims, Congress granted permanency to the tool in 1985[2]. Just ten short years later, Congress removed the annual reporting requirements, which has contributed to the abuse we've seen become the norm for EAJA payments over the last three decades.

Payments approved under EAJA come both from the Judgement Fund[3], and from agencies' individual appropriations, depending on the circumstance of the approval of the payment. Originally, payments from the Judgement Fund were limited to those less than $100,000[4]; today, EAJA awards this Subcommittee is considering regularly exceed $100,000.

Both individuals and organizations are eligible for EAJA payments: individuals must have a net worth less than $2 million, businesses or organizations must have a net worth less than $7 million, but tax-exempt organizations are not subject to size or net worth caps. EAJA also establishes a cap on attorneys fees at $125 per hour, but provides exceptions if there are a "limited availability of qualified attorneys for the proceedings involved."[5] Prevailing parties are defied broadly, as any entity who prevails on any claim – not even a central claim – or enters into a judicially enforceable consent decree qualify for EAJA payments.

EAJA Abuse and Need for Transparency, Reform

These broad definitions certainly made it easier for small businesses and veterans to seek compensation, but also are multiple points of exploitation. Several of the most frequent abusers of EAJA in the natural resource space are tax-exempt organizations (not currently subject to financial limitations) who employ attorneys in-house to create the appearance of limited qualified available attorneys and seek repayment from taxpayer dollars, all while their annual budgets radically exceed any reasonable threshold envisioned by EAJA. The vast majority of these claims are procedural, not substantive, alleged violations of the Administrative Procedures Act (APA), Endangered Species Act (ESA), Federal Land Policy and Management Act (FLPMA), National Environmental Policy Act (NEPA), and other statutes that apply to the Department of Agriculture (primarily through the U.S. Forest Service), the Department of the Interior (U.S. Fish and Wildlife Service, Bureau of Land Management, National Park Service), the Department of Commerce (National Marine Fisheries Service), and the Environmental Protection Agency. Examples of some of the most common opponents of the most basic implementation of lawful multiple use:

[1] https://www.acus.gov/eaja/background
[2] https://www.acus.gov/eaja/background
[3] https://www.everycrsreport.com/files/20130307_R42835_59acaf309988cce1bd9542f41e9d8c6981ea752a.pdf
[4] https://www.everycrsreport.com/files/20130307_R42835_59acaf309988cce1bd9542f41e9d8c6981ea752a.pdf
[5] https://www.everycrsreport.com/files/20130307_R42835_59acaf309988cce1bd9542f41e9d8c6981ea752a.pdf

- Center for Biological Diversity (CBD):
  - 501(c)3
  - sole program focus on "petition and litigation" to change policy[6]
  - touts more than 350 "successful" listings under the ESA
  - $1.6 million in EAJA awards since 2020[7]; total revenue of $45.7 million in FY24[8].

- Western Watersheds/Advocates for the West (Lawyers Trust):
  - both 501(c)3
  - sole mission to remove grazing from federal lands through litigation
  - more than $1.6 million in EAJA awards since 2019
  - combined revenue of $5.5 million[9]

- EarthJustice:
  - 501(c)3
  - more than 200 environmental lawyers[10]
  - "represent clients for free"; sole organization action is litigation[11]
  - more than $1.5 million in EAJA awards since 2018
  - total revenue of $207 million in FY25[12]

- WildEarth Guardians:
  - 501(c)3
  - Relies solely on litigation: "The decision stems from a 2019 settlement agreement, following a lawsuit brought by WildEarth Guardians and partner organizations"; "We won a lawsuit in October 2022…"; "We won a lawsuit in October 2022…"; "In October 2022, we won a major appeal.."; "…thanks to an August 2022 legal victory by Guardians and allies a federal judge rejected plans…" [13]
  - More than $600k[14] in direct EAJA awards since 2020, more funneled through outside counsel.

Efforts to restore reporting for transparency began almost immediately following the removal of reporting requirements in 1995. Since then, dozens of bills have sought to restore regular reporting of expenditures from the Judgement Fund and from agencies' appropriated funds; many also sought reforms to EAJA to curb exploitative expenditures. One of the more comprehensive efforts

[6] https://www.biologicaldiversity.org/programs/carnivore-conservation/
[7] https://eaja.acus.gov/?action=search&entity=CaseRecord&sortField=agency&sortDirection=DESC&menuIndex=&submenuIndex=&query=center+for+biological+diversity
[8] https://projects.propublica.org/nonprofits/organizations/273943866
[9] https://westernwatersheds.org/wp-content/uploads/2025/01/WWP-2023-FORM-990-PUBLIC-INSPECTION.pdf; https://westernwatersheds.org/wp-content/uploads/2025/01/WWP-2023-FORM-990-PUBLIC-INSPECTION.pdf
[10] https://earthjustice.org/about/contact
[11] https://earthjustice.org/our-work/victories
[12] https://earthjustice.org/about/financial-statements
[13] https://wildearthguardians.org/about-us/landmark-victories/
[14] https://eaja.acus.gov/?action=search&entity=CaseRecord&sortField=agency&sortDirection=DESC&menuIndex=&submenuIndex=&query=wildearth

in the 112th Congress[15] required the Administrative Conference of the United States (ACUS) to facilitate a report on fees and expenses awarded and publish the information in a public database, audit the implementation of EAJA for the years 1995 (when reporting initially ceased) to the date of enactment, and made a series of reforms to EAJA eligibility to make awards more targeted:

- Limit awards to prevailing parties with direct and personal interest in the adjudication
- Required reduction or denial of an award if the party unduly or unreasonably protracted the final resolution of the matter
- Eliminated the net worth exemption for determining eligibility for tax-exempt organizations and cooperative associations (as defined under the Agricultural Marketing Act)
- Set a cap of $200/hour for attorneys' fees awarded and eliminated special factor considerations that would have facilitated an increase.

That bill was supported by NCBA and received widespread praise from stakeholders who had become well-acquainted with the kind of frivolous, disruptive, and expensive litigation filed by groups whose goal was often only to disrupt policy they found unfavorable to their cause. Their strategy was simple: file a case – or more often, multiple cases – in a single area, make many generalized claims about procedural failures, and engage in protracted arguments or mediation to increase billable hours.

Several concerning trends resulted: radical environmental activists started filing similar cases across multiple jurisdictions with the hope of catching the agency in procedural errors, settlements increasingly sought regulatory remedies that limited agencies' ability to use crucial flexibility in implementation of natural resource statutes, and "prevailing" groups were able to use these "victories" to fuel their fundraising efforts.

The lack of EAJA reporting after 1995 undoubtedly emboldened these efforts, and when the meaningful efforts like the *Government Litigation Savings Act* sought to close the loopholes, some members of Congress remained unconvinced that abuse was actually occurring and ultimately opposed the bill's reform components. Many opponents claimed they would support EAJA reform if indeed abuse was occurring, but stymied progress of reporting requirements at every turn.

It took until early 2019 for modest reforms to be enacted; the President signed the John D. Dingell, Jr. Conservation, Management, and Recreation Act in March 2019 which included a requirement for the ACUS Chairman to prepare an annual report on EAJA awards and publish this report in a searchable online database that would be made available to the public. Complete reporting began in 2020.

Of note, in 2018, then-Interior Deputy Secretary David Bernhardt issued a Secretarial Memorandum promoting accountability and transparency in consent decrees and settlements. The Memorandum required robust reporting mechanisms and directed that the Department would not enter into any consent decree or settlement agreement that would: convert discretionary activity into mandatory obligations, require payment of attorneys' fees, prohibit public disclosure of

[15] https://www.congress.gov/bill/112th-congress/house-bill/1996?q=%7B%22search%22%3A%22Equal+Access+to+Justice+Act%22%7D&s=5&r=99

agreement contents, or require the Department to spend new, unappropriated monies[16]. Stakeholders broadly applauded the Memorandum, which created improved transparency and decreased litigation abuse until it was ultimately reversed by the Biden administration.

ACUS Reporting Gaps

Restoration of reporting requirements under the Dingell Act shed light on some of the most frequent users of EAJA repayment schemes. That information has led us here, where we are able to fully "open the book on the Equal Access to Justice Act" as the provisions in the Dingell Act sought to do. Reporting was always intended to be just a first step in a multi-step process to eliminate waste of taxpayer dollars, and now that the issue is clearly available in public data across multiple years, reform is overdue.

While the ACUS database reports the total award made, awardee and case information, it does not delineate the origin of the funds; because funds can originate from the Judgement Fund or from an agencies' appropriations (since the Judgement Funds allows ACUS to seek repayment from an agency), the impact on the agencies' ability to carry out program functions is unclear.

Opponents of EAJA reform may argue that total payments in suits involving the Departments of Agriculture, Interior, Commerce, and the EPA are rounding errors in the total government budget. However, Congress does not factor in potential (or historic) EAJA funds when setting annual spending levels through the appropriations process, creating an unfunded mandate. Unanticipated expenditures, particularly those in programs with tight budgets like the grazing program, endangered species conservation/recovery, and environmental analysis, mean the agency must pick and choose which program obligations to fulfil in light of the funding shortfall.

Ranching Industry Impacts from Frivolous Litigation

Ranchers, particularly those who graze livestock on federal lands, rely on agencies to be functional partners. The cycle created, or at least perpetuated, by the ability of radical environmentalists to enter a "sue - settle/prevail on limited claims - get paid" rotation is immediately visible. The cases are textbook; look no further than the most contentious issues resulting from repeated court challenges to regulatory action:

- CBD received at least 5 EAJA awards in the last 5 years solely on the basis of the U.S. Fish and Wildlife Service missing a deadline to respond to a petition to act under the ESA.[17]
- Implementation of Bureau of Land Management Land Use Plans were remanded after claims of insufficient NEPA – despite robust NEPA having been done as part of the ESA listing process.
- Two separate awards in cases that undermined U.S. Fish and Wildlife Service's ability to delist the grizzly bear and manage wildlife habitat on U.S. Forest Service ground – despite ongoing delisting efforts.

[16] https://www.doi.gov/sites/doi.gov/files/elips/documents/so_3368_promoting_transparency_and_accountability_in_consent_decrees_and_settlement_agreements_0.pdf

[17] https://eaja.acus.gov/?action=search&entity=CaseRecord&menuIndex=&submenuIndex=&query=deadline

- From 2020-2024, there were 43 EAJA payments made to litigants and federal agencies of concern here (BLM, USFS, EPA, NPS, USFWS) that also resulted in settlements with policy implications for program implementation.

The injury to ranchers, land management stakeholders, and our partners is real: there are groups who exploit processes for the public to engage with the federal government (e.g., ESA petitions) to set the stage for successful litigation or settlement that impinges the agencies' ability to implement the laws Congress established, and then they take taxpayer money to do it all over again.

The issue is not new: a 2013 study by the U.S. Chamber of Commerce highlighted that 71 lawsuits over the 2019 – 2012 period fell into the "sue-and-settle" framework and resulted in more than 100 new regulations. These regulations were estimated to impose "more than $100 million in compliance costs every year".[18] That same study found that the Sierra Club – represented by EarthJustice – was the most frequent user of the "sue-and-settle" approach. Unfortunately, not much has changed in the last 12 years.

In 2011, rancher Jennifer Ellis testified on the need to reform EAJA through passage of the *Government Litigation Savings Act:*

> "As a rancher, I pay for this litigation three times. My tax dollars fund the federal lawyers and agencies to participate in this litigation; I am forced to hire an attorney to protect my own interests; and my tax dollars fund those using the courts to drive my family from the land."[19]

Ranchers do more than litigate. We produce food and fiber, manage hundreds of millions of acres across the country, support biodiversity, create wildlife habitat, preserve open space, and drive local economies. The groups that exploit EAJA attempt to stand in the way of all of these contributions – and all they do is sue, settle, collect.

Reform Priorities

EAJA reform will not only save taxpayer dollars through payments from the Judgement Fund, it will also make agencies able to more fully implement their program obligations without expensive litigation payments, and it will disrupt the business model of organizations who seek solely to obstruct.

Therefore, I offer the following recommendations:

1. Refine reporting requirements to distinguish between funds paid from the Judgement Fund, and those originating from agencies' budgets to determine real impact on agencies' ability to carry out statutory requirements.

[18] https://dailycaller.com/2016/08/23/exclusive-lawyers-win-millions-suing-govt-under-environmental-laws-then-give-it-to-democrats/

[19] https://www.wylr.net/2011/10/22/eaja-bill-has-its-day-in-house-subcommittee/

2. Establish financial limitations on tax-exempt organizations that mirror individuals and businesses. Non-profits with exorbitant budgets should not be allowed to continue to exploit taxpayer funds for ill-motivated purposes.

3. Constrain flexibility in attorneys' fees that allows entities to allege limited attorney expertise; this can be done either by setting a consistent fee cap across all plaintiff types, or establishing an upper fee limit even in legitimate cases of limited expertise.

4. Refine the definition of prevailing parties to plaintiffs who prevail on substantive elements of litigation, rather than procedural. Groups should not be able to obtain hundreds of thousands of dollars in a single payment if the prevailing issue is not substantive.

5. Eliminate the ability of tax-exempt entities to receive EAJA fees if the result of the litigation, settlement agreement, or consent decree results in new policy. Those abusing the system should not be allowed to "double dip".

6. Establish a government-wide policy of opposition to "sue-and-settle".

7. Conduct broad oversight of policies resulting from sue-and-settle activities in the past – including policies resulting from *draft* consent decrees that were never approved by a court, but were represented as though they were legitimate, court-approved actions.

Chairman Gosar, Ranking Member Dexter, I appreciate the opportunity to provide testimony as part of your investigation today and I am happy to answer any of the Subcommittee's questions.