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MEMORANDUM

TO: **INTERESTED PARTIES**

FROM: **WESTERN LEGACY ALLIANCE AND KAREN BUDD-FALEN**

DATE: **DECEMBER 23, 2009**

RE: **ATTORNEY FEES TAX DOLLARS HAVE ALREADY DECIDED U.S. IS GLOBALLY WARMING**

Below please find the fifth Op-Ed/Letter to the Editor in this series on the federal government paying environmental groups to sue the federal government. This information focuses on taxpayer funded attorney fees paid to environmental groups by the U.S. government in the name of protecting the planet from global warming.

Although the world's leaders may be in Copenhagen to save the planet from global warming, the United States federal government has paid millions in tax dollars to environmental groups to litigate over global warming already. These cases are NOT about whether global warming is or is not a scientific fact, but over timelines and procedures which seem to be impossible for the federal agencies to comply with. There will never be a scientific answer from the courts that definitively determines if global warming is a well designed hoax to slow the U.S. economy or take private property rights. Rather environmental groups are filing suits over procedural failures in considering whether global warming/climate change exists, and getting paid handsomely to do it.

According to a Climate Change Litigation Survey by the Congressional Research Service published in April, 2009, although the first case related to climate change was filed 19 years ago, the real environmental litigation assuming climate change exists has blossomed in the last six years. Obviously one of the first statutes that shows up on court docket sheets is the Clean Air Act. The seminal case regarding whether the Environmental Protection Agency can regulate carbon dioxide as a greenhouse gas was started as a petition for rulemaking filed by the Center for Biological Diversity and other

environmental groups. Eventually the U.S. Supreme Court ruled that the EPA only had to consider whether greenhouse gases (GHG) such as CO2 were air pollutants; the court did not mandate that they were or were not.

Even though 19 years later the Obama administration still has not issued a final determination with regard to whether GHG are an "endangerment" under the Clean Air Act, environmental groups have been "winning" attorneys fees for litigating over GHG since. In the California litigation regarding the Delta Smelt (the 6-inch minnow that has so adversely impacted California's Central Valley farmers), the federal court rejected a biological opinion because it "failed to consider" climate change data. The environmental groups and the federal government have agreed to "negotiate" how much in tax payer dollars the environmental groups will be paid for those cases. These negotiations with your tax dollars will take place outside of any public process or review and will unlikely be ratified by the federal court. The amount of money requested by the environmental groups and the hourly fees charged by Earthjustice Legal Foundation and Natural Resources Defense Council attorneys will never be revealed to the public. In one of these cases, the federal government simply decided not to fight the merits of the case and the environmental groups will still be paid for suing the government.

According to the Congressional Research Service, the Center for Biological Diversity ("CBD") seems to have "spearheaded" the effort to use the Endangered Species Act ("ESA") to enforce its global warming beliefs. The CBD has a list of 350 species it believes should be listed and critical habitat designated under the ESA to protect them from GHG and global warming. Just between Arizona, California, the District of Columbia, Georgia, New Mexico, and Washington, the CBD has amassed $6,709,467 in attorneys fees all paid by the taxpayers. The vast majority of these cases were suits over the failure of the federal government to "timely" respond to CBD's ESA listing petitions. As with the GHG Clean Air Act litigation, the environmental groups are not asking the federal court to decide whether a species is scientifically threatened or endangered or whether GHG adversely impacts the species; the majority litigation is only over the timing of the federal governments' decisions or the process used to make the decisions.

Once a species is listed under the ESA, the Sierra Club and other environmental groups then use the National Environmental Policy Act ("NEPA") process to further their view of global warming. NEPA is a procedural statute—it does not mandate the outcome of a federal agency's decision. However, environmental groups use litigation under NEPA to claim that the federal agencies are not "considering" things like whether a power plant operating with Wyoming coal in Kentucky would emit GHG that impacts polar bears in Alaska. That is not a far fetched example. Already the CBD, Natural Resources Defense Council and others have mounted this type of litigation in both the California Federal District Court and the District of Columbia Federal District Court. The outcome of these cases, and the attorneys fees that may be awarded or settled by environmental groups and the government, is yet unknown.

Attorney fees awards to environmental groups to continue to sue the federal government is big business and is likely to get bigger with environmental groups fervor to use procedural errors by federal agencies to push the global warming agenda. The manipulation of the federal courts to force federal agencies into "giving up" and making substantive decisions supporting environmental litigation tactics is not new, but it is certainly profitable for environmental groups. According to Western Legacy Alliance's research, in only 18 of the 50 states, 13 environmental groups have amassed total attorney fees payments of 30 million dollars plus extracting another four million dollars from businesses all based upon payments from federal attorney fee-shifting statutes. Additionally these and other environmental groups were "awarded" over $500,000 in "donations" based upon settlement agreements. The vast majority of these cases are ESA cases and there are more of those to come. Recently the WildEarth Guardians filed a single petition to list 206 species under the ESA and the CBD has filed a petition to list 225 more species. According to the CBD's website, this is an exercise in "strategic, creative litigation." There is absolutely no way that the U.S. Fish and Wildlife Service can make a "scientific" finding on all of those 431 species within the 90 day time frame mandated by the ESA, making federal district court litigation (and the payment of attorneys fees) inevitable and profitable.

The world's governments may be discussing global warming in Copenhagen, but it is already being enforced in the United States, not based on scientific discoveries and data, but based upon procedural statutes and payment of millions of dollars in attorney fees. Western Legacy Alliance is poised and prepared to continue to bring these tactics to light. I can feel the cool-down already.

Should you have any questions, please do not hesitate to contact me or Western Legacy Alliance at www.westernlegacyalliance.org.

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