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VIA E-MAIL

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&

U. S. MAIL

Senator Michael Enzi
Karen McCreary
Field Representative
1285 Sheridan Avenue, Suite 210
Cody, WY 82414

Re: Attorneys Fees Paid for Snowmobile Litigation Cases

Dear Senator Enzi and Karen:

When I visited with Karen in Basin, Wyoming, she asked if I could find the amount of the attorney fees paid thus far in the Yellowstone National Park snowmobile cases. Before I report the numbers there are two observations about these cases that I find disturbing and support the Western Legacy Alliance's contention that the Equal Access to Justice Act and other fee shifting statutes need reform.

First, although numerous cases were filed in both the Federal District Courts for the District of Columbia and the District of Wyoming and in some cases the environmental groups "won," and in some cases, Wyoming small business and the State of Wyoming "won," only the environmental groups recovered attorneys fees. The total amount of attorneys fees recovered by the environmental groups is AT LEAST \$321,996.69¹. The court records do not indicate why Wyoming small businesses and organizations did not recover fees, although as a technical matter, it appears that they would also have been eligible for fee recovery.

Second, although as you know the environmental groups initiating this litigation did so over an alleged concern that snowmobile use in the Park was harming wildlife

¹ As will be explained, the federal government and the Greater Yellowstone Coalition ("GYC") are negotiating the payment of an additional \$254,800 requested by GYC.

and other National Park qualities, none of the litigation dealt with the science related to these claims. Every case filed by any party was over the procedures used by the National Park Service (“NPS”) to decide how many and under what conditions snowmobiles would be used in the Park, not with whether snowmobiles harmed Park value. In my opinion, the environmental groups were using procedural arguments as a guise to force changes in NPS substantive decisions. I do not believe that there is any indication that procedural statutes should be used for a substantive result (i.e. the significant limitation and elimination of snowmobiles in the Park and the related economic harm to winter use businesses in Wyoming and Montana.)

The specific cases are as follows:

- A. Fund for Animals, Biodiversity Legal Foundation, Predator Project, Ecology Center et al. v. Babbitt, 97-cv-1126. This case was filed in the Federal District Court for the District of Columbia and alleged that the NPS failed to comply with the National Environmental Policy Act (“NEPA”), the Endangered Species Act (“ESA”), and other federal laws and regulations in connection with winter use, predominately snowmobiling, in the National Parks. The NPS subsequently settled the suit, in part, by an agreement to prepare a comprehensive environmental impact statement (“EIS”) addressing a full range of alternatives for all types of winter use in the Parks. The federal government paid attorney fees in this case of \$11,000.
- B. International Snowmobile Manufacturers’ Association (“ISMA”) et al. v. Norton, No. 00-cv-0229. This case was filed in the Federal District Court for the District of Wyoming, challenging the decision to ban snowmobiles, as reflected in the 2000 Record of Decision (“ROD”). The 2000 ROD was prepared pursuant to the settlement agreement in 97-cv-1126 described above. The Department of the Interior settled with ISMA on June 29, 2001, with an agreement that the NPS would prepare a Supplemental Environmental Impact Statement (“SEIS”). No attorney fees were paid to the plaintiffs although there were small business and individuals who would have qualified.
- C. Fund for Animals v. Norton, 02-cv-2367. This case was filed in the Federal District Court for the District of Columbia challenging the NPS March 25, 2003 ROD which was the result of the settlement agreement in 00-cv-0229. On December 16, 2003, five days after the Final Rule was promulgated, the D.C. Court vacated the new regulation and effectively reinstated the January 22, 2001 rule phasing out the recreational use of snowmobiles in the Parks. The federal government settled the attorney fees request and paid \$160,000 in attorneys fees to the plaintiffs.

- D. National Parks Conservation Association v. United States Department of the Interior, Civ. No. 07-cv-2112. The case was filed in Washington D.C. in 2007 challenging the National Park Service's 2007 Winter Use Plan for Yellowstone National Park. The District Court for the District of Columbia vacated the NPS Winter Use Plan. The federal government stipulated and settled for payment of \$150,996.00 on April 23, 2010.
- E. Greater Yellowstone Coalition et al. v. Kempthorne, Civ. No. 07-cv-2111. This case was filed in Washington D.C. in 2007 also challenging the National Park Service's 2007 Winter Use Plan for Yellowstone National Park; it was consolidated with case number 07-cv-2112. The GYC has requested an attorney fees payment of \$254,800.69. The parties are currently discussing settlement of the amount of attorney fees that will be paid to the GYC. Final settlement has not occurred at this time.
- F. ISMA v. Norton, 00-cv-229. Following the D.C. District Court's decision, ISMA and the State of Wyoming re-opened their lawsuit against the NPS in the United States District Court for the District of Wyoming. No final ruling has been made in that case, although nothing has been filed in this case since December of 2007.

In addition to these fees paid to environmental groups, small Wyoming and Montana businesses have lost thousands of dollars and invested significant amounts of their own money in litigation and have even prevailed, yet received no attorney fees from the federal government. As stated above, this presents a clear illustration of the reforms that need to be made to "level the playing field" in attorney fees payments.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

/s/ Karen Budd-Falen

Karen Budd-Falen
BUDD-FALEN LAW OFFICES, LLC

KBF:vld