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MEMORANDUM OPINION EDITORIAL

**FROM: KAREN BUDD-FALEN
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**RE: GETTING PAID TO GO AWAY - AND THE TAXPAYER
AND CONSUMER GET TO PAY AGAIN**

It is no surprise that there is a big difference between legal requirements, radical opinion, political power, private extortion . . . and then there is the rest of the story. With regard to the payment of attorneys' fees to radical environmental groups, radical opinion and political power seem to often win and legal requirements are ignored. In fact, political power supporting radical opinions forced payment of at least \$4,697,978 in taxpayer dollars to 14 environmental groups in 19 states and the District of Columbia. Political power payments for radical opinions happens 21% of the time when attorneys' fees are paid.

And then there are the cases where these same radical environmental groups are extorting millions from major corporations and local governments as payment to drop appeals and protests. For example, recently Western Watersheds Project ("WWP") and Oregon Natural Desert Association ("ONDA") extorted \$22 million from El Paso Corporation to drop their protests of the Ruby Pipeline project. In another case, the Center for Biological Diversity ("CBD") extorted almost \$1 million from Alameda County, California to drop its protests to a City's approval of a residential and commercial development project. The general theme is that money changes hands, development moves forward and the taxpayers and consumers get stuck with the bill.

The story goes like this:

Attorney Fees Legal Requirements:

Under the Equal Access to Justice Act ("EAJA"), attorneys are only supposed to be paid if they represent the prevailing parties in a lawsuit against the federal

government. According to EAJA, a prevailing party must achieve a court-sanctioned change in the position of the federal agency through litigation.

Under the Endangered Species Act, Clean Water Act and other fee shifting statutes whose funds come out of the Judgment Fund, attorneys' fees are only supposed to be paid if the attorney achieved some success in the litigation for the plaintiff. Thus, the plaintiffs had to achieve some benefit from the litigation through the courts.

Radical Opinion:

All too often however, radical environmental groups, WWP for example, sue the federal government because they claim the government failed to consider the cumulative impacts of all livestock grazing everywhere in the Western United States on a species that is not even listed as a threatened or endangered species. NEPA is the procedural statute that requires impacts of federally permitted decisions be considered—the Act does not require a particular outcome, just that the government consider all the impacts of its decision.

Quite frankly, I do not believe that the WWP or other radical groups care at all about the NEPA process or wildlife because these groups do not spend any of their money on projects that benefit the land or the animals on it. Rather, the goals of WWP and others are to eliminate livestock grazing under all circumstances in all locations. They even claim that cattle contribute to global warming by “belching carbon,” like the internal gas emissions of livestock are any different from the internal emissions of cats, dogs or other wildlife. This is not about the environment . . . it is about eliminating land use and ownership starting with ranchers and moving to other groups once the ranchers are gone.

Political Power:

The federal government however gets a copy of the WWP suit and instead of defending its NEPA documentation and decision and protecting the ranchers' rights to continue grazing, the government pays WWP our tax dollars just to make the litigation go away. In 21% of the cases – more than \$4.6 million dollars worth – there is no court decision and no determination that the WWP was “prevailing,” just a request to please withdraw the litigation and more taxpayer money is paid to radical groups who use their political power to assert minority radical opinions.

Private Extortion

Getting paid to go away is not just about taking American tax dollars for attorneys' fees; now radical environmental groups are directly extorting money from businesses as well while more costs are passed on to the American consumer. Recently WWP and ONDA announced that it has extorted \$22 million from El Paso Corporation in exchange for dropping their protests to the federal government's permits allowing El Paso to build the 680 mile long natural gas Ruby Pipeline. As part of the deal, El Paso

did not change the route or any other aspect of the pipeline, it just paid ONDA and WWP to go away.

In the California case, CBD extorted almost \$1 million from Alameda County for “habitat acquisition” in exchange for dropping its protest to the development of a residential area. This is just more American taxpayer money going to radical environmental groups.

And the rest of the story. . . .

And the rest of the story is that the American taxpayers across the country are paying more money to a minority of radical causes. Even harder to take is that the ranchers whose cattle grazing were drawn into the WWP litigation because they happened to graze where WWP wanted them eliminated (everywhere) have to now go back to the government to assist with preparing more paperwork, the government has to spend more time writing documents, and there is more pressure to just walk away from another American small business. And the big corporations and counties who are paying extortion dollars are just passing their losses along to the American consumers. It is our dollars that are paying for the destruction. This is not a phenomenon that just happens to Western ranchers, but “getting paid to go away” occurs when roads are widened, bridges are built, water supplies are updated, timber is cut, fishermen are out in their boats, pipelines are built and in all other businesses across this country.

With regard to the attorneys’ fees payments, in more than 21% of its cases, the federal government does not even defend its decisions; it spent more than \$4.6 million to make cases filed by radical environmental groups go away. There is no way to measure the additional money that is being directly extorted from businesses and governments so that radical groups will withdraw appeals and protests. That is a sad story with a very bad ending.

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