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Opening Statement of
Chairman Doc Hastings
House Committee on Natural Resources
At the Oversight Hearing on
"Taxpayer-Funded Litigation:
Benefitting Lawyers and Harming Species, Jobs and Schools"
Tuesday, June 19, 2012, at 10:00 a.m.

The Endangered Species Act was last renewed in 1988, when the price of a movie ticket was \$3.50 and a cell phone, if you had one, was the size of a brick. The world has changed a lot since then.

Nearly 25 years later, we have a responsibility to ensure this decades-old, expired law reflects changes and reality so that it can be more effective going forward for both species and people. That's what this hearing and future hearings will be about.

Today, we will more closely look at one of the greatest weaknesses of the ESA – how excessive and costly litigation is distorting the ESA's goals. To quote Jamie Clark, the Clinton government-era Fish and Wildlife Service Director, ESA litigation has become an "industry."

The original purpose of the ESA was to help recover endangered species and remove them from the list, not force taxpayers to reward an army of environmental lawyers to exploit vague definitions and deadlines that realistically cannot be met.

The dramatic proliferation of lawsuits has serious consequences for both species recovery and our economy.

First, endless litigation diverts valuable time and resources away from actual recovery efforts. Agency personnel, states, communities and private enterprise are forced to react to lawsuits, thereby affecting real efforts to conserve and recover species.

Second, these lawsuits, over the past four years numbered more than 500, and cost taxpayers millions of dollars—dollars that go straight to the pockets of special interest lawyers. As an example, the Justice Department (DOJ) noted two lawyers received over \$2 million each in attorney fees from ESA cases.

Third, there's an apparent lack of transparency and accountability to taxpayers when ESA settlements are being negotiated behind closed doors by attorneys that receive taxpayer-funded fees from federal agencies.

According to information the Committee obtained from the Justice Department, over \$21 million has been paid out in attorney fees in recent years. And that's just what we know. As seen on this map, the costs of the ESA litigation are high throughout the country, but much worse in the West.

Not surprisingly, the majority of ESA lawsuits are filed by the same handful of organizations – with the Center for Biological Diversity and WildEarth Guardians leading the pack.

According to the one report, attorneys' fees and federal grants accounted for 41% of WildEarth Guardians's revenue in 2010. Apparently, it "pays to play." It is clearly appropriate to ask in these tight fiscal times, whether taxpayers should subsidize groups that sue taxpayers in return.

While a few environmental lawyers rake in the federal cash at hundreds of dollars per hour, the needs of truly endangered species suffer. More seriously, American jobs are lost and people are hurt.

Today, we will hear how ESA lawsuits have blocked the construction of a San Diego elementary school since 2006. The school district created habitat for fairy shrimp and for the past six years has been caught in endless red tape to complete a school intended to educate hundreds of children. Ironically, another witness here today was himself deeply involved in that litigation-- litigation that paid him attorneys' fees and blocked the school from being built.

Before I conclude—there's been much discussion lately on how best to define success regarding ESA. I've noted that of the 1,391 domestic animal and plant species listed under the Act, only 20 have ever been removed from the list – this represents just a 1 percent recovery rate that no one should be proud of.

A recent Center for Biological Diversity report claims that the ESA is sufficiently recovering species. CBD claimed success by using data for only 110 of the listed species that have federally-approved recovery plans. This "cherry picking" less than 10 percent of the total listed species data seriously diminishes their report's credibility.

We need to move beyond a system where species are added to the list, but never come off. Increasing the number of ESA species shouldn't be the primary goal. It should be to recover species and get them taken off the list. Litigation that blocks economic activity and public needs, such as building schools, not only impedes recovery, it diminishes trust of taxpayers who are subsidizing that litigation.