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U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

September 4, 2026

Abigail Dillen
President
Earthjustice
180 Steuart St., #194330
San Francisco, CA 94105

Dear Ms. Dillen:

The House Committee on Natural Resources (Committee) is conducting oversight related to the outsized influence preservationist environmental nonprofit organizations, like Earthjustice, wield over the federal government, law, and natural resources policy.[1] The Committee is particularly concerned with Earthjustice's coordinated capitalization on misleading and emotive messaging to build powerful and profitable litigation machines funded by taxpayer dollars through the exploitation of statutory fee-shifting provisions.[2] In order to ensure compliance with Congress' legislative intent for statutes with fee-shifting provisions and inform legislative reforms to prevent abuse by radical environmental groups, Congressional oversight of Earthjustice's lawfare campaigns and subsequent fee awards is imperative.[3]

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[1] *See, e.g.*, *Examining the Influence of Extreme Environmental Activist Groups in the Department of the Interior*, Oversight Hearing before the Subcomm. on Oversight and Investigations of the H. Comm. on Natural Resources, 118th Cong. (Apr. 30, 2024) (hearing memorandum), https://naturalresources.house.gov/uploadedfiles/hearing_memo_--_sub_on_oi_ov_hrg_on_nonprofits_influencing_doi_04.30.24.pdf; *The Fish and Wildlife Service Gone Wild: Examining Operation Long Tail Liberation*, Oversight Hearing before the Subcomm. on Oversight and Investigations of the H. Comm. on Natural Resources, 118th Cong. (Sept. 10, 2024) (hearing memorandum), https://naturalresources.house.gov/uploadedfiles/hearing_memo_--_sub_on_oi_ov_hrg_on_operation_longtail_09.10.24.pdf; *Desecrating Old Glory: Investigating How the Pro-Hamas Protests Turned National Park Service Land into a Violent Disgrace*, Oversight Hearing before the Subcomm. on Oversight and Investigations of the H. Comm. on Natural Resources, 118th Cong. (Dec. 10, 2024) (hearing memorandum), https://naturalresources.house.gov/uploadedfiles/hearing_memo_--_sub_on_oi_ov_hrg_on_hamas_protest_12.10.24.pdf; *Abuse of the Equal Access to Justice Act by Environmental NGOs*, Oversight Hearing before the Subcomm. on Oversight and Investigations of the H. Comm. on Natural Resources, 119th Cong. (Dec. 8, 2025) (hearing memorandum), https://docs.house.gov/meetings/II/II15/20251210/118696/HHRG-119-II15-20251210-SD002.pdf; *The Profit Engine Driving Environmental Nonprofits*, Oversight Hearing before the Subcomm. on Oversight and Investigations of the H. Comm. on Natural Resources, 119th Cong. (May 20, 2026) (hearing memorandum), https://docs.house.gov/meetings/II/II15/20260520/119317/HHRG-119-II15-20260520-SD002.pdf.

[2] *See Abuse of the Equal Access to Justice Act by Environmental NGOs*, Oversight Hearing before the Subcomm. on Oversight and Investigations of the H. Comm. on Natural Resources, 119th Cong. (Dec. 8, 2025) (hearing memorandum), https://docs.house.gov/meetings/II/II15/20251210/118696/HHRG-119-II15-20251210-SD002.pdf; *The Profit Engine Driving Environmental Nonprofits*, Oversight Hearing before the Subcomm. on Oversight and Investigations of the H. Comm. on Natural Resources, 119th Cong. (May 20, 2026) (hearing memorandum), https://docs.house.gov/meetings/II/II15/20260520/119317/HHRG-119-II15-20260520-SD002.pdf.

[3] *See Abuse of the Equal Access to Justice Act by Environmental NGOs*, Oversight Hearing before the Subcomm. on Oversight and Investigations of the H. Comm. on Natural Resources, 119th Cong. (Dec. 8, 2025) (hearing memorandum), https://docs.house.gov/meetings/II/II15/20251210/118696/HHRG-119-II15-20251210-SD002.pdf; *The Profit Engine Driving Environmental Nonprofits*, Oversight Hearing before the Subcomm. on Oversight and Investigations of the H. Comm. on Natural Resources, 119th Cong. (May 20, 2026) (hearing memorandum), https://docs.house.gov/meetings/II/II15/20260520/119317/HHRG-119-II15-20260520-SD002.pdf.

U.S. federal courts have historically followed the so-called "American Rule,"[4] which prescribes that litigants generally pay their own litigation costs.[5] Fundamentally, the American Rule aims to prevent "losing litigants [from] being unfairly saddled with exorbitant fees for the victor's attorney[s]," experts, and other litigation costs.[6] However, primarily to "diminish the deterrent effect of seeking review of, or defending against, governmental action,"[7] particularly for those prospective plaintiffs who are indigent or otherwise unable to afford expensive legal representation, Congress enacted fee-shifting statutes allowing the award of attorney's fees and other litigation expenses in several types of judicial and administrative proceedings.[8]

Today, most environmental litigation is brought under statutes with embedded fee-shifting provisions, like the Endangered Species Act (ESA), or statutes covered by the catch-all Equal Access to Justice Act (EAJA), like the National Environmental Policy Act (NEPA), enabling prominent environmental nonprofits already flush with cash to recover the litigation costs of their vexatious lawfare campaigns.[9] As currently written and implemented in legal practice, statutory fee-shifting provisions exempt nonprofit organizations from net-worth and size caps.[10] Within the Committee's jurisdiction, these fee-shifting provisions currently permit Earthjustice and similar organizations to effectively function as law firms funded by taxpayer dollars,[11] employing a simple but lucrative profit model: sue to block federal actions in friendly courts, collect taxpayer-funded attorney's fees and costs whenever prevailing or able to settle in court, and fundraise on the back of courtroom victories.[12]

In many cases, nonprofit plaintiffs do not even need to fully "win" a case to recover fees. For example, under EAJA, "prevailing" plaintiffs can recover attorney's fees with "even a partial victory or procedural settlement . . . regardless of the lawsuit's broader merit or public benefit."[13] Under ESA, the standard is even more ambiguous: courts may award fees and costs "to any party, whenever the court determines such award is appropriate."[14]

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[4] The American Rule stands in contrast with the "English Rule," which is followed in many other jurisdictions around the world and stipulates that losing parties pay prevailing parties' costs, including attorney's fees.

[5] *See, e.g.*, *Alyeska Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S. 240 (1975); JOANNA R. LAMPE, CONG. RSCH. SERV., IF11246, ATTORNEY'S FEES AND THE EQUAL ACCESS TO JUSTICE ACT: LEGAL FRAMEWORK (June 2, 2023), https://www.crs.gov/Reports/IF11246; *Civil Resource Manual: 220. Attorney's Fees*, U.S. DEP'T OF JUST. (1998), https://www.justice.gov/archives/jm/civil-resource-manual-220-attorneys-fees.

[6] *See Alyeska Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S. 240 (1975).

[7] *About the Equal Access to Justice Act (EAJA)*, ADMIN. CONF. OF THE U.S., https://www.acus.gov/eaja/background.

[8] *See* Joanna R. Lampe, Cong. Rsch. Serv., IF11246, Attorney's Fees and the Equal Access to Justice Act: Legal Framework (June 2, 2023), https://www.crs.gov/Reports/IF11246; *see also* 28 U.S.C. § 2412; 5 U.S.C. § 504; *Information Interchange Bulletin No. 013: Equal Access to Justice Act Basics*, Admin. Conf. of the U.S. (2021), https://www.acus.gov/sites/default/files/documents/13%20EAJA%20Basics.pdf.

[9] *See Technical Assistance for the House Committee on Natural Resources – Majority Equal Access to Justice Act*, on file with the Subcomm. on Oversight and Investigations of the H. Comm. on Natural Resources; *see also Equal Access to Justice Act Reform*, PUB. LANDS COUNCIL (Oct. 27, 2025), https://publiclandscouncil.org/what-we-do/policy-issues/equal-access-to-justice-act-reform.

[10] *See, e.g.*, 28 U.S.C. § 2412; 5 U.S.C. § 504.

[11] *See Equal Access to Injustice*, ROCKY MOUNTAIN ELK FOUND. (Sep. 9, 2021), https://rmef.org/media/equal-access-to-injustice/.

[12] *Id.*; *see also Time to Fix the Broken Equal Access to Justice Act*, HEALTHY FORESTS, HEALTHY COMMUNITIES (May 14, 2025), https://healthyforests.org/2025/05/time-to-fix-the-broken-equal-access-to-justice-act/.

[13] *Time to Fix the Broken Equal Access to Justice Act*, HEALTHY FORESTS, HEALTHY COMMUNITIES (May 14, 2025), https://healthyforests.org/2025/05/time-to-fix-the-broken-equal-access-to-justice-act/.

[14] 16 U.S.C. § 1540(g).

Worse yet, fee-shifting provisions within environmental statutes fail to effectively set upper limits on hourly rates. For example, EAJA, which covers statutes like NEPA, the Marine Mammal Protection Act (MMPA), and the Magnuson-Stevens Fishery Conservation and Management Act (MSA), caps reimbursable attorney's fees at a rate of $125 per hour, unless the reviewing court or agency determines that "an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee."[15] EAJA, however, does not sufficiently define "special factor," allowing many environmental lawyers to avoid the $125-per-hour fee cap by claiming that their expertise is "specialized."[16] Consequently, environmental nonprofit organizations have been reimbursed under EAJA for attorney's fees at rates as high as $500 per hour.[17] Other statutes, like ESA, have seen even higher recoveries, exceeding $650 per hour.[18]

Of course, these rates almost always far exceed the value assigned to attorneys working on cases by their own employing nonprofit organizations. In fact, rather than seeking to make a prevailing party whole with an award that compensates for costs incurred, courts award fees and costs in amounts "far more than necessary to reimburse a prevailing plaintiff. When courts award fees, they do not look at the actual amounts paid to the attorneys in the case."[19] Rather, courts "set a hypothetical hourly rate for each attorney and then multiply that rate by the number of hours each attorney reported working on the case."[20] In fact, attorneys from environmental nonprofits, seeking fees and costs, often propose their own "reasonable" rates that courts rubber-stamp.[21]

The federal government also has an incentive to settle disputes, rather than contest the fee award, to reduce the overall attorney's fees that may accrue.[22] This is because settlements often result in somewhat smaller awards and, under most statutory fee-shifting provisions, prevailing parties can recover the fees and costs associated with time spent contesting fees and costs. This allows plaintiffs to "prevail on process instead of substance."[23] And, because the U.S. government often fails to adequately contest fee awards and regularly concedes prevailing party status to nonprofit groups in settlement agreements, taxpayer dollars effectively fund these nonprofits' sue-and-settle tactics.[24]

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[15] 5 U.S.C. § 504(b)(1)(A); 28 U.S.C. § 2412(d)(2)(A).
[16] *See* ENDANGERED SPECIES ACT CONGRESSIONAL WORKING GROUP, REPORT, FINDINGS AND RECOMMENDATIONS (Feb. 4, 2014), https://naturalresources.house.gov/uploadedfiles/esa_working_group_final_report__and_recommendations_02_04_14.pdf.
[17] *See id.*; *see also* Lowell E. Baier, *Reforming the Equal Access to Justice Act*, 38 J. LEGIS. 1 (2012), https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1000&context=jleg.
[18] *See* Jonathan Wood, *Forest Fight: When Litigation Pays Better than Conservation*, PROPERTY AND ENVIRONMENT RESEARCH CENTER (Dec. 19, 2024), https://www.perc.org/2024/12/19/forest-fight/.
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] *See* Lowell E. Baier, *Reforming the Equal Access to Justice Act*, 38 J. LEGIS. 1 (2012), https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1000&context=jleg.
[23] *Id.*
[24] The phrase "sue and settle" typically refers to "when a federal agency agrees to a settlement agreement, in a lawsuit from special interest groups, to create priorities and rules outside of the normal rulemaking process." *Sue and Settle: Regulating Behind Closed Doors*, U.S. CHAMBER OF COMMERCE (Mar. 6, 2018), https://www.uschamber.com/regulations/sue-and-settle-regulating-behind-closed-doors. Here, an "agency intentionally relinquishes statutory discretion by committing to timelines and priorities that often realign agency duties. These settlement agreements are negotiated behind closed doors with no participation from the public or affected parties." *Id.*

One fundamental role of Congressional oversight and investigations is to root out waste, fraud, and abuse of taxpayer dollars. The Committee's work thus far suggests that oversight mechanisms typically built into an attorney-client relationship, like the ability for a client to review and dispute detailed time logs for which they are billed before they pay any invoice, do not exist in adequate form to protect taxpayer dollars awarded to radical nonprofit organizations through litigation.[25]

Moreover, contrary to their original legislative intent, statutory fee-shifting provisions have incentivized radical environmental nonprofits to build a business model focused on siphoning taxpayer dollars by weaponizing litigation awards and settling vexatious lawsuits. As the government's authority to settle in these cases is "unmediated and unreviewable" and can be used to "appease repeat litigants," environmental activists have warped the justice system and burdened agencies with lawsuits that divert personnel and resources from core missions.[26] In fact, agencies are not able to even provide estimates of costs related to litigation reflecting staff time and resources.[27]

As one of the most active litigating environmental nonprofit organizations driving the exploitation of statutory fee-shifting provisions, Earthjustice is uniquely positioned to provide the Committee with information necessary to conduct meaningful Congressional oversight and enact necessary legislative reform to safeguard responsible management of our natural resources, and ensure unscrupulous organizations cannot unjustly continue to implement their litigation-focused business model at the expense of American taxpayers.

Accordingly, the Committee hereby requests that you provide the following documents and information in your possession, custody, or control, in complete, unredacted, and electronic format, as soon as possible but no later than September 18, 2026:

1. Documents, communications, and other information sufficient to demonstrate Earthjustice's decision-making process related to pursuing legal action against federal agencies or personnel related to natural resources policy and law, including but not limited to domestic energy or mining projects, national forest or public land management, species management, NEPA, ESA, the Federal Land Policy Management Act (FLPMA), the Mineral Leasing Act (MLA), the Surface Mining Control and Reclamation Act (SMCRA), the National Forest Management Act (NFMA), MMPA, or MSA.

2. Documents, communications, and other information sufficient to demonstrate Earthjustice's determination of standing to pursue legal action against federal agencies or

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[25] *See Abuse of the Equal Access to Justice Act by Environmental NGOs*, Oversight Hearing before the Subcomm. on Oversight and Investigations of the H. Comm. on Natural Resources, 119th Cong. (Dec. 8, 2025) (hearing memorandum), https://docs.house.gov/meetings/II/II15/20251210/118696/HHRG-119-II15-20251210-SD002.pdf; *The Profit Engine Driving Environmental Nonprofits*, Oversight Hearing before the Subcomm. on Oversight and Investigations of the H. Comm. on Natural Resources, 119th Cong. (May 20, 2026) (hearing memorandum), https://docs.house.gov/meetings/II/II15/20260520/119317/HHRG-119-II15-20260520-SD002.pdf.

[26] *See* Lowell E. Baier, *Reforming the Equal Access to Justice Act*, 38 J. Legis. 1 (2012), https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1000&context=jleg.

[27] *Technical Assistance for the House Committee on Natural Resources – Majority Equal Access to Justice Act*, on file with the Subcomm. on Oversight and Investigations of the H. Comm. on Natural Resources.

personnel—subject to the oversight jurisdiction of the Committee[28]—including but not limited to those related to:

a. establishing associational standing; or
b. searching for and selecting individual members who reasonably have standing to sue in their own right.

3. Documents, communications, and other information sufficient to demonstrate Earthjustice's decision-making process related to intervening in or otherwise participating in lawsuits involving federal agencies or personnel—subject to the oversight jurisdiction of the Committee—not originally brought by Earthjustice.

4. Documents, communications, and other information sufficient to demonstrate Earthjustice's forum shopping process when pursuing legal action involving federal agencies or personnel—subject to the oversight jurisdiction of the Committee—including but not limited to venue or federal judicial district selection.

5. Documents, communications, and other information, including but not limited to emails, recordings, notes, minutes, or transcripts, among or between Earthjustice and other nonprofit organizations participating in lawsuits involving federal agencies or personnel—subject to the oversight jurisdiction of the Committee—sufficient to demonstrate coordination processes among or between Earthjustice and other nonprofit organizations participating in relevant federal litigation related to selecting participants in any given relevant federal lawsuit, determination of named plaintiffs or co-plaintiffs, and determination of labor division throughout the course of a relevant federal lawsuit among or between Earthjustice and other participating organizations.[29]

6. Documents, communications, and other information sufficient to demonstrate Earthjustice's policies and procedures related to staffing relevant federal litigation matters, including but not limited to employing in-house attorneys, retaining outside counsel, or coordinating with other nonprofit organizations employing in-house attorneys or retaining outside counsel for any given relevant federal lawsuit.

7. Documents, communications, and other information sufficient to demonstrate Earthjustice's practices, policies, procedures, or strategies related to the recovery of attorney's fees and other litigation costs under EAJA, SMCRA, ESA, or any other statue including a fee-shifting provision subject to the Committee's jurisdiction, including but not limited to those related to:

a. staffing attorneys or law students of varied experience on relevant federal matters;
b. establishing attorney or law student billing rates;

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[28] Federal agencies, and personnel thereof, subject to the Committee's oversight jurisdiction include, but are not limited to, the Department of the Interior (DOI) and its bureaus—the Bureau of Indian Affairs (BIA), the Bureau of Land Management (BLM), the U.S. Fish and Wildlife Service (FWS), the National Park Service (NPS), the U.S. Geological Survey (USGS), the Bureau of Ocean Energy Management (BOEM), the Bureau of Safety and Environmental Enforcement (BSEE), the Marine Minerals Administration (MMA), the Office of Surface Mining Reclamation and Enforcement (OSMRE), and the Bureau of Reclamation (USBR)—the U.S. Forest Service (USFS), and the National Oceanic and Atmospheric Administration (NOAA).

[29] For these requests, "relevant" relates to the federal agencies, and personnel thereof, subject to the Committee's oversight jurisdiction.

c. retaining experts;
d. establishing expert billing rates;
e. staffing of support personnel on relevant federal matters;
f. establishing support staff billing rates;
g. timekeeping or other billing practices for relevant federal matters;
h. narrative justifications for time billed;
i. timekeeping training, policies, procedures, or best practices for relevant federal matters;
j. negotiating or settling requests for attorney's fees or other litigation costs;
k. writing off time or fees before or after submission to an adjudicatory body for review and award of attorney's fees or other litigation costs;
l. distribution of awarded attorney's fees or other litigation costs among or between Earthjustice and other nonprofit organizations participating in any given relevant federal litigation matter as co-plaintiff(s) or otherwise; or
m. accounting of awarded attorney's fees or other litigation costs paid by any relevant federal agency.

Note that September 18, 2026, is not a deadline to confirm receipt of this letter or inform the Committee that you require additional time to prepare a response. Failure to timely respond to the Committee's letter or otherwise cooperate in good faith with the Committee's oversight investigation will force the Committee to evaluate the use of compulsory process.

An attachment to this letter provides additional instructions for responding to the Committee's requests. Please contact the Majority staff for the Subcommittee on Oversight and Investigations at (202) 225-2761 or HNRR.Oversight@mail.house.gov with any questions. Under House Rule X, the Committee on Natural Resources has "general oversight" authority over any matter relating to its jurisdiction. Thank you for your cooperation and attention to this important matter.

Sincerely,

Bruce Westerman
Chairman
Committee on Natural Resources

Paul A. Gosar, D.D.S.
Chairman
Subcommittee on Oversight and Investigations

Pete Stauber
Chairman
Subcommittee on Energy and Mineral Resources

Tom Tiffany
Chairman
Subcommittee on Federal Lands



Harriet Hageman
Chairwoman
Subcommittee on Water, Wildlife, and Fisheries



Tom McClintock
Member of Congress



Daniel Webster
Member of Congress



Russ Fulcher
Member of Congress



Lauren Boebert
Member of Congress



Cliff Bentz
Member of Congress



Mike Ezell
Member of Congress



Celeste Maloy
Member of Congress



Addison McDowell
Member of Congress



Jeff Crank
Member of Congress



Nick Begich
Member of Congress



Mike Kennedy
Member of Congress



Troy Downing
Member of Congress