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

March 19, 2012

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Ignacia S. Moreno
Assistant Attorney General
U.S. Department of Justice
Environment and Natural Resources Division
P.O. Box 7415
Ben Franklin Station
Washington, D.C. 20044

Dear Assistant Attorney General Moreno:

The Committee on Natural Resources (“Committee”) has jurisdiction over matters involving fisheries and wildlife, including the Endangered Species Act of 1973 (“ESA”), 16 U.S.C. §§ 1531-1599. The goal of the ESA was to preserve, protect and recover key domestic species. However, today the law is failing to achieve its primary purpose of species recovery and instead has become a tool for litigation that drains resources away from real recovery efforts and blocks job-creating economic activities.

In May and July 2011, the Obama Administration agreed to two separate litigation settlements involving petitions to list 779 species and 85 lawsuits and legal actions. These settlements mandate that over 250 candidate species must be reviewed for final listing as either threatened or endangered under the ESA by 2016. At the Committee’s February 15, 2012 hearing to consider the Department of the Interior’s (“Department”) FY 2013 budget request, I asked Secretary Ken Salazar how much the Department spends on litigation involving the ESA. Secretary Salazar admitted that he did not know.

In the past ten years, Congress has appropriated \$1.4 billion to the U.S. Fish and Wildlife Service to conduct ESA activities including listing, consultation, and recovery efforts and nearly \$1 billion to the National Marine Fisheries Service over the past five years to undertake ESA related activities. According to the *Washington Post*, “In fiscal 2010, the Fish and Wildlife Service spent so much of its \$21 million listing budget on litigation and responding to petitions that it had almost no money to devote to placing new species under federal protection, according to

agency officials.” The Fish and Wildlife Service’s FY 2013 \$22.4 million budget appears no different—it states the Service’s intention to publish 12 final and proposed critical habitat rules for 112 species, to make 53 final and proposed listings and critical habitat determinations for 135 species, and 8 determinations for 44 foreign species, all presumably forced within deadline requirements set by the two litigation settlements.

More than 20 years has passed since Congress last reauthorized or made any significant, responsible improvements to the ESA to ensure that it works for both species and people. After more than two decades, the ESA should be modernized and updated to once again focus the law on true species recovery.

Given the lack of clarity and transparency over how much taxpayer money is being spent by the federal government in connection with litigation and legal settlements involving the ESA, including the amount of money paid to cover the attorney’s fees and legal costs of activist groups filing these dozens of lawsuits, the Committee is conducting oversight over the implementation of the ESA. We are requesting cooperation from the Department of Justice’s Environment and Natural Resources Division (“ENRD”) in providing the following categories of information. A complete written response to all items should be received by the Committee no later than April 9, 2012.

Information to be Produced

1. Please provide the following information for all litigation where ENRD is the counsel of record that involved a cause of action arising under the ESA. Please include all lawsuits in which ENRD has been involved, regardless of defendant agency. For all requested information, the first information compiled and provided should include cases related to petitions and requests to list a species, designation of critical habitat, and/or development of a recovery plan. Please include the following information from fiscal year (FY) 2009 to present:
 - a. The captioned name and case number of the legal action.
 - b. The court in which the case was brought.
 - c. The names of all parties to the legal action, including the names of any interveners to the action.
 - d. The statute(s) under which the action was brought.
 - e. The date the case was initiated.
 - f. The date the case was closed or settled.
 - g. Any monetary award(s) to parties to the case, or to parties’ attorneys, including: (1) the amount of the award, (2) the nature of the award (i.e. attorney’s fees, expert witness costs, court costs, etc.), and (3) the source of the award (i.e. whether it was paid from the Department of the Treasury’s Judgment Fund or from the defendant’s appropriations).
 - h. Any monetary award(s) that had restrictions or stipulations attached as to use or purpose (i.e. for the benefit of a species or the environment).

- i. Any settlement or consent agreements that included monetary award(s) of attorney's fees or other costs, and the rationale for agreeing to pay each of these costs, including any findings by a court that a party prevailed in such matter.
 - j. Any settlement or consent agreement(s) that occurred before the case was filed in court.
2. Please provide the following information for all litigation related to the ESA where ENRD is counsel of record and where the government is enforcing alleged violations of the ESA. Please include all suits in which ENRD has been involved, regardless of whether the defendant is a nongovernment organization, private company, private individual or state or local government. Please include the following information from fiscal year (FY) 2009 to present:
 - a. The captioned name and case number of the legal action.
 - b. The court in which the case was brought.
 - c. The names of all parties to the legal action, including the names of any interveners to the action.
 - d. The statute(s) under which the action was brought.
 - e. The date the case was initiated.
 - f. The date the case was closed or settled.
 - g. Any monetary fine or penalty that was collected as a result of the legal action, and which government entity collected the fine or penalty

An attachment to this letter provides additional information about responding to the Committee's request, including definitions and instructions for compliance. Please contact Machalagh Carr, Counsel, Office of Oversight and Investigations, at 202-225-2761 with any questions regarding this request, or to make arrangements for the production. Thank you for your prompt attention to this matter.

Sincerely,



Doc Hastings
Chairman

Responding to Committee Document Requests

A. Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, recorded notes, letters, notices, confirmations, receipts, checks, envelopes, presentations, pamphlets, brochures, interoffice and intra office communications, electronic mails (e-mails), notations of any type of conversation, telephone call, voice mail, phone mail, meeting or other communication, diaries, analyses, summaries, messages, correspondence, circulars, opinions, work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and electronic, mechanical, and electric records or representations of any kind, and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, e-mail, discussions, releases, personal delivery, or otherwise.
3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this document request. The singular includes the plural. The masculine includes the feminine.
4. As used herein, “referring” or “relating” means and includes “constituting,” “pertaining,” “evidencing,” “reflecting,” “describing,” or “having anything to do with,” and in each instance, directly or indirectly. These terms mean, without limitation, any reference or relationship which either (a) provides information with respect to the subject of the inquiry, or (b) might lead to individuals who, or documents which, might possess or contain information with respect to the subject of the inquiry.

B. Instructions

1. In complying with this document request, you are required to produce all responsive documents, materials, or items that are in your possession, custody, or control, whether held by you or your past or present agents, employees, representatives, subsidiaries, affiliates, divisions, partnerships, and departments acting on your behalf. You are also required to produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. No records, documents, data or information called for by this request shall be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.

2. In the event that any entity, organization or individual denoted in this document request has been, or is also known by any other name than that herein denoted, the document request shall be read also to include them under that alternative identification.
3. Each document produced shall be produced in a form that renders that document capable of being printed or copied.
4. Documents produced in response to this document request shall be produced together with copies of file labels, dividers, envelopes, or identifying markers with which they were associated when this document request was served. Documents produced to this document request shall also identify to which paragraph from the document request such documents are responsive. Moreover, please include with your response, an index identifying each record and label (preferably by bates stamping) the documents. The Committee prefers, if possible, to receive all documents in electronic format.
5. It shall not be a basis for refusal to produce documents that any other person or entity also possesses documents that are non-identical or identical copies of the same document.
6. If any of the document requested information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, memory stick, or computer back-up tape), state the form in which it is available and provide sufficient detail to allow the information to be copied to a readable format. If the information requested is stored in a computer, indicate whether you have an existing program that will print the records in a readable form.
7. If compliance with the document request cannot be made in full, compliance shall be made to the extent possible and shall include a written explanation of why full compliance is not possible.
8. In the event that a document is withheld, in whole or in part, based on a claim of privilege, provide the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter of the document; (d) the date, author, and any recipients; and (e) the relationship of the author and recipients to each other. Claims of privileges are considered under Committee on Natural Resources Rule 4(h) and, similar to all common-law privileges, are recognized only at the discretion of the Committee.
9. If any document responsive to this document request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances by which the document ceased to be in your possession, custody, or control.
10. If a date or other descriptive detail set forth in this document request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or

is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.

11. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon location or discovery subsequent thereto.
12. Send all responsive documents and records to:
Committee on Natural Resources
U.S. House of Representatives
1324 Longworth House Office Building
Washington, DC 20515.