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Federal legislation to curb eco-lawsuits faces uncertainty in U.S. Senate



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Staff / Colorado Public Advocate

A [bill](#) in Congress to rein in the cost of proliferating lawsuits by environmental groups against public agencies in Colorado and across the West likely will pass the GOP-led U.S. House but is being stymied in the Democratic-majority Senate, say friends and foes of the legislation.

Dubbed the Government Litigation [Savings](#) Act, [H.R. 1996](#) plugs what backers say is a loophole in an obscure federal law that lets environmental groups get reimbursed millions of dollars a year in [legal](#) fees. The effort, which was approved by the House Judiciary Committee in November, was introduced in the House last year by U.S. Rep. Cynthia Lummis, R-Wyo., and co-sponsored by Colorado Republican U.S. Reps. Mike Coffman, Doug Lamborn and Scott Tipton.

Related: [Report accuses green group of 'saturation litigation,' serial lawsuits on public's tab](#)

Critics of those groups charge the easy reimbursements are a standing invitation to more lawsuits. Opponents of the legislation, however, argue that the bill's proposed tweaks to the decades-old Equal Access to Justice Act could limit citizen access to the courts to enforce federal environmental [regulations](#).

The issue has come to light again with the [recent release of a report sharply critical of Santa Fe, N.M.-based WildEarth Guardians](#), an environmental group accused in the report of waging a war of “saturation litigation” on a wide range of federal, state and local agencies in Colorado and elsewhere. Among the group’s Colorado targets are entities as small as the state-chartered Arkansas River Power Authority, municipally owned Lamar Light and Power and the tiny mountain town of Ward. WildEarth is rapped in the report for filing some 145 lawsuits since 2008—roughly one every week and a half—and tapping public dollars to help pay the legal bills under the Equal Access to Justice Act.

The report, [“Monkey-Wrenching the Courts,”](#) was released recently as part of a new initiative on environmental issues by the [Colorado arm of the advocacy group Americans for Prosperity](#).

Lummis says her bill aims to restore the Equal Access to Justice Act to its original intent when passed in 1980—enabling individuals and small organizations of modest means that have been harmed by government action to recover their legal costs if they sue and prevail.

“H.R. 1996 improves EAJA for those who need it, like veterans and seniors,” she said. “It also says to those who don’t need it, like deep-pocketed litigation [shops](#), that the days of taxpayer funded, repetitive lawsuits are over.”

Her bill would see to that by prohibiting organizations with a net worth over \$7 million from filing reimbursed legal fees under the act; requiring that filers show a “direct and personal monetary interest in the action to be eligible for payments”; capping the amount of attorney fees sought, and requiring a Government Accountability Office audit over payments through the act over the past 15 years. The net effect of the changes would be to prevent groups like WildEarth Guardians—whose lawsuits don’t actually allege harm to themselves—from collecting legal fees from the government.

While the proposal’s prospects in the House are good, its Senate counterpart, S. 1061, introduced by U.S. Sen. John Barrasso, R-Wyo., as well as an identical version that was amended into another Senate bill by U.S. Sen. John McCain, R-Ariz., face higher hurdles.

“So far, the Democrat-led majority in the Senate has not been willing to hold a hearing on it,” a Barrasso spokeswoman said this week. And assorted groups supporting as well as opposing the legislation don’t give it much chance of passing the upper chamber; one opponent, the [Animal Law Coalition](#), says on its website, “The bill is unlikely to come to a vote by the full Senate.”

Traditional Democratic constituencies pushing back at the reform include assorted environmental groups and lawyers organizations. A coalition whose members range from the American Civil Liberties Union to the Sierra Club [sent a letter to Congress late last month](#) urging a “no” vote on the measure.

Supporters of the effort meanwhile include a host of farming and ranching organizations, sporting groups and energy and other industries.