

Taxpayers on hook for environmental lawsuits

By Asher Price, Austin American Statesman

In 2010, having successfully pressed the U.S. Fish and Wildlife Service to consider listing as endangered six colorfully named freshwater mussels, at least one in Central Texas, Houston lawyer Peter Thompson set about getting paid.

Eventually, Thompson and an attorney for WildEarth Guardians, the New Mexico-based environmental group that led the effort and for whom Thompson served as a Texas-based counsel, were paid a total of \$9,549.55 by the federal government for their work, at least 70 hours, government and attorneys' records show.

That amounts to \$136.41 an hour, far less than typical corporate rates.

Attorney pay in endangered species cases recently has come under fire.

Fresh from a successful battle to keep a West Texas lizard from endangered status, Jerry Patterson, Texas' land commissioner, told the American-Statesman that suits under the Endangered Species Act too often "are not driven by science; they're driven by litigation."

Patterson also said as much at a U.S. House Natural Resources Hearing in June titled "Taxpayer-Funded Litigation: Benefiting Lawyers and Harming Species, Jobs and Schools."

Amplifying that position was committee chairman Doc Hastings, R-Wash., who said in an opening statement that the Endangered Species Act was forcing "taxpayers to reward an army of environmental lawyers to exploit vague definitions and

deadlines that realistically cannot be met.”

Hasting’s feelings about the act aside, he’s right about who pays environmental attorneys in successful cases: When lawyers for environmental groups push the federal government to list a species as endangered – and win – the government picks up the tab.

But environmental law experts say working to press the government to list species as endangered is not the way to line one’s pockets.

From 2004 to 2010, the Fish and Wildlife Service paid attorney fees of about \$1.5 million in 26 cases, according to the U.S. Government Accountability Office. The office also found the U.S. Treasury Department paid \$14.2 million from 2003 to 2010 to a range of plaintiffs in environmental cases involving the Environmental Protection Agency.

The government pays attorneys out of a fund at the Treasury Department or from an agency’s appropriations. By statute, the federal government pays attorney fees in a successful suit, the premise being that the cost of litigation should not dissuade potential plaintiffs from righting government action – or a lack thereof.

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