

From:
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If you live or work in Colorado, I have an assignment for you. We need letters to the Colorado Congressional delegation asking them to co-sponsor S. 1369 or HR 2541, which are companion bills that would amend the Clean Water Act to exempt silvicultural activities, including forest roads, from requirements for National Pollutant Discharge Elimination System (NPDES) permits.

Here's some background – the Clean Water Act recognized that many activities are best regulated as nonpoint sources, outside of permitting programs but within scientifically based guidelines. In 1976, EPA recognized forest management activities as “nonpoint sources” of water pollution most effectively regulated under state-developed Best Management Practices (BMPs).

Colorado adapted Forestry BMPs in 1998. The Colorado Timber Industry Association has been holding continuing education programs for loggers since the mid-1990s, and Forestry BMPs have been a featured component of those courses, with expert instructors such as Dr. John Garland from Oregon State University.

In 2008, the first Colorado Forestry BMP audit was conducted to evaluate Forestry BMP implementation and effectiveness. The audit was led by CSFS, and included a multi-disciplinary team with members from forest industry, state and federal agencies. Following is the key paragraph from the Audit Report:

"The 2008 audit found that BMPs were met or exceeded 87% of the time. Major departures from the BMPs were 3% and no gross neglect of BMPs was found. Both state and federal timber sales had compliance rates of 91%. BMPs were effective in providing adequate resource or improved resource condition 81% of the time. Again, state, and federal effectiveness rates were 90 and 92%, higher than private land effectiveness."

Here's the problem. In 2010, the Ninth Circuit Court of Appeals ruled that forest roads and their stormwater management systems (culverts, ditches, etc.) are “point sources” discharging “pollutants” into the “waters of the United States”, and require NPDES permits. The ultimate effect of the ruling is that NPDES permits would be required for road construction, road reconstruction, culvert installation, and some road maintenance on all forest roads, whether on federal, state, or private lands. Currently, this is applicable only in the Ninth Circuit, but you can bet that the enviros are already working to expand the decision to include the rest of the country. To give you an idea of the magnitude of the issue, the U.S. Forest Service estimated they would have to obtain more than 400,000 permits if they are required to implement this ruling nationwide.

There are several actions taking place in response to this issue – 1) the defendants have requested Supreme Court review, 2) the Congress included language in the FY 12 Appropriations Bill prohibiting the EPA from enforcing the ruling in FY 2012, and 3) S 1369 and HR 2541 have been introduced in the Congress. These bills have good bipartisan support from across the country. Now, it's time to ask the Colorado Congressional delegation to support those bills.

I've tried to make this as user-friendly as possible. Attached are:

- draft letters already addressed to Senators Udall and Bennet, and a third letter for you to address to your Representative.
- a spreadsheet with names and addresses for R2 Congressional delegations, plus the name and email address of the staff person who handles natural resource issues.
- an article from the National Review Online, written by John Gordon, former Dean of the Yale School of Forestry, explaining the issue in more detail.

All you need to do is insert the name of your Representative on the third letter, plus the date, and your name and title on all three letters, then print on your letterhead, sign, and email to the staff person in the spreadsheet. Feel free to add any additional details about your company, number of employees, etc that you think would be helpful.

Feel free to call or email if you have any questions, and please let me know how your Congressional representatives respond.

Thanks.

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