

Congress of the United States
Washington, DC 20515

July 31, 2012

The Honorable John Mica
Chairman
House Committee on Transportation
and Infrastructure
2165 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Nick J. Rahall
Ranking Member
House Committee on Transportation
and Infrastructure
2163 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Mica and Ranking Member Rahall:

We support the Committee on Transportation and Infrastructure's consideration and approval of the bipartisan and bicameral Silviculture Regulatory Consistency Act (H.R. 2541 and S. 1369). The Silviculture Regulatory Consistency Act provides a much-needed permanent and clear legislative fix to preserve EPA's existing regulation of forest roads under the Clean Water Act and prevent burdensome litigation over how "forest roads" should be treated under the Act. H.R. 2541 provides the certainty that job creators in our large and small forestlands have said is needed.

In 1976, four years after the enactment of the Clean Water Act, the Environmental Protection Agency (EPA) adopted a policy whereby forest management activities would be considered "nonpoint sources" under the Clean Water Act. As such, for the past 35 years, the management of roads across 755 million acres of public, private, state and tribal forests in the United States have been guided by State instituted best management practices and as nonpoint sources under the Clean Water Act. This long-standing policy works because it recognizes that the responsible management of a working forest varies widely depending on location and applies a variety of best management practices to maintain water quality. This approach has worked. Today forestry is a practice widely used to maintain clean water and accounts for a very minor impact on water quality overall.

In 2010, the U.S. Court of Appeals for the Ninth Circuit unexpectedly ruled in *NEDC v. Brown* that the measures used to manage storm water runoff from forest roads should be regulated by the EPA as "point sources" under the Clean Water Act, thereby invalidating EPA's 35-year old treatment of forestry operations and roads as nonpoint sources. The effect of this ruling is that large and small forest managers and owners across the country are now susceptible to litigation and future requirements to obtain federal discharge permits for everyday activities on their land just like a factory or waste water treatment plant is required to obtain for its waste discharge. This creates uncertainty not just for forest managers, but also for the manufacturing jobs dependent on reliable, steady sources of forest materials.

Despite some positive news in May from the EPA that it will seek an approach that will not require permits for forest roads, the door is still open to more harmful litigation and future permitting requirements for forest roads as the agency determines how best to regulate forest roads once it removes the mandatory permit requirement applicable to industrial activities. This approach, although well-intended, will not remove the Ninth Circuit's erroneous determination that roads are point sources. On top of that, the current one-year legislative stay—which has prevented the Ninth Circuit's decision from taking effect in fiscal year 2012—goes away at the end of September adding to the mounting legal uncertainty surrounding this issue.

Given the likelihood that the U.S. Supreme Court's decision on this case is nearly one year away, it is imperative that H.R. 2541 be advanced and enacted by any means appropriate to secure bicameral support. H.R. 2541 would preserve EPA's position that forest roads should not be regulated as point sources under the Clean Water Act and would prevent further determinations down the road that Clean Water Act point-source discharge permits would be required for everyday activities, such as reforestation, thinning, and pest and fire control, that occur across the country on public, private, state and tribal forest roads.

Absent this, private and public forest owners and managers across the country will be subjected to an even greater deal of uncertainty about whether they will be sued, forced to stop activities on their lands, or required to obtain complex federal discharge permits.

H.R. 2541 has attracted broad bi-partisan support as well as support from the agricultural and wildlife management communities, state forestry and water pollution control agencies, organized labor, tribes and federal land managers.

Thank you for your willingness to advance this important issue for our forested communities across the United States.

Best regards,



Greg Walden
Member of Congress



Kurt Schrader
Member of Congress



Jaime Herrera Beutler
Member of Congress



Mike Simpson
Member of Congress



Walter B. Jones
Member of Congress



Cathy McMorris Rodgers
Member of Congress



Scott Tipton
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Alan Nunnelee
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John Barrow
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Martha Roby
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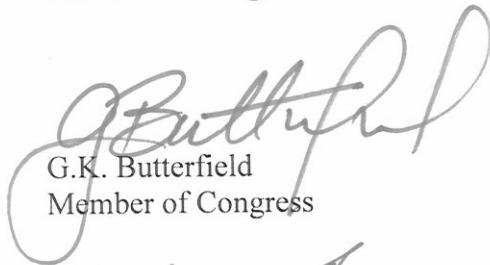
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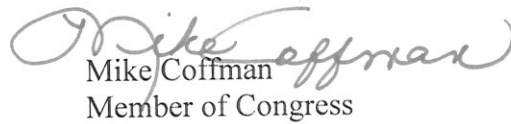
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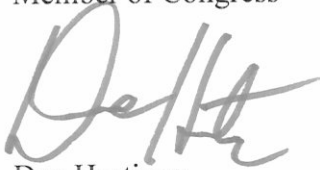
Jo Ann Emerson
Member of Congress



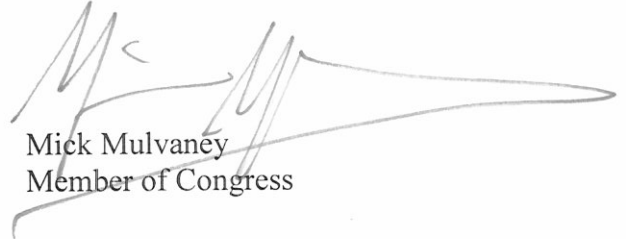
Bill Owens
Member of Congress



Dan Boren
Member of Congress



Doc Hastings
Member of Congress



Mick Mulvaney
Member of Congress



Mike Ross
Member of Congress



Sue Myrick
Member of Congress

Cc: The Honorable John Boehner, Speaker, U.S. House of Representatives
The Honorable Eric Cantor, Majority Leader, U.S. House of Representatives
The Honorable Kevin McCarthy, Majority Whip, U.S. House of Representatives
The Honorable Nancy Pelosi, Minority Leader, U.S. House of Representatives
The Honorable Steny Hoyer, Minority Whip, U.S. House of Representatives