



## **A Resolution to Overturn a Ninth Circuit Court of Appeals Interpretation of the Clean Water Act**

WHEREAS, on August 17, 2010 the Ninth Circuit Court of Appeals issued a decision in the case of *Northwest Environmental Defense Center (NEDC) v. Brown* that could require the forest products industry to change long established forest management practices and seek permits for the discharge of stormwater runoff associated with the harvest of timber for the first time in the history of the Clean Water Act (CWA), and

WHEREAS, the panel decision overturns a three-decade-plus understanding of the CWA by holding that harvesting timber is an “industrial activity” requiring a National Pollution Discharge Elimination Permit (NPDES) for any stormwater runoff that reaches jurisdictional waters by means of culverts, ditches or similar conveyance structures, and

WHEREAS, by defining stormwater runoff as a “point source” of pollution, the panel decision will create an overwhelming number of permit requests for millions of miles of forest roads and literally hundreds of thousands of culverts, leading to tremendous and burdensome permitting delays, and

WHEREAS, the Environmental Protection Agency (EPA) has no program in place to process the unprecedented number of permits this decision will require, causing devastating delays and costs to forest landowners, loggers and other owners and operators of forest roads throughout the nation, and

WHEREAS, none of this is necessary as stormwater runoff from forest lands and forest roads has been addressed nationwide under the CWA for decades as non-point pollution, minimized through thoughtfully developed and tested “best management practices” (BMPs) at the state level with EPA oversight, and

WHEREAS, the panel decision voids a time-tested system in favor of a wholly unworkable point-by-point federal regulation and undermines three decades of effort invested by forest landowners and operators in an effective non-point source program.

NOW, BE IT RESOLVED that the American Loggers Council (ALC) go on record in support of overturning the Ninth Circuit Court of Appeal’s decision in *NEDC v. Brown* either through the petition for rehearing or rehearing *en banc* filed by the Defendant-Appellees which has been supported with briefs filed by forest industry organizations from throughout the United States.

BE IT FURTHER RESOLVED, that in the event the Ninth Circuit fails to overturn the panel’s decision, the ALC go on record in support of a Supreme Court review of the circuit court’s interpretation of the CWA and, if necessary, support a legislative remedy by clarifying and codifying the three decades old interpretation of the law that stormwater runoff from forest roads is a “non-point” source of pollution.

Adopted this 19<sup>th</sup> day of March, 2011 during the Spring Board of Directors Meeting of the American Loggers Council.