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Via Federal eRulemaking Portal
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Docket ID No. EPA-HQ-OW-2015-0668

Joel Beauvais, Deputy Assistant Administrator
Environmental Protection Agency
Office of Water
Mail Code 4101M
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Re: *Opportunity to Provide Information on Existing Programs that Protect Water Quality from Forest Road Discharges*, 80 Fed. Reg. 69,653 (Nov. 20, 2015), 78,728 (Dec. 17, 2015)

Dear Mr. Beauvais:

The American Forest Resource Council (AFRC) appreciates the opportunity to provide comments on the Environmental Protection Agency's (EPA) consideration of existing programs that address potential impacts on water quality from forest roads.

AFRC is a regional trade association whose purpose is to advocate for sustained yield timber harvests on public timberlands throughout the West to enhance forest health and resistance to fire, insects, and disease. We do this by promoting active management to attain productive public forests, protect adjoining private forests, and assure community stability. We work to improve federal and state laws, regulations, policies and decisions regarding access to and management of public forest lands and protection of all forest lands. AFRC members purchase and harvest timber from federal and state timberlands throughout the West.

EPA will be receiving comment letters from state forestry management agencies and the National Council for Air and Stream Improvement as well as private stakeholder groups, including the American Forest & Paper Association and National Alliance of Forest Owners. Because those comments extensively address issues of regulation on private and state timberlands, AFRC's comments focus on water quality on federally managed forestlands. This includes National Forest lands under the jurisdiction of the Department of Agriculture and Bureau of Land Management (BLM) lands under the jurisdiction of the Department of the Interior. AFRC joins the comments of the Federal Forest Resource Coalition, of which it is a member.

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There is no justifiable need for additional regulation of roads on federally managed forestlands for water quality purposes.

Federal agencies currently have well-developed programs for forest road maintenance and improvement. Forest Plans and project decisions are subject to review under the National Environmental Policy Act to assure mitigation of environmental impacts resulting from forest roads. Federal agency standards for road construction are as high, or higher, than private road specifications. Contractors who do road construction and maintenance on federal forest land are governed by strict contractual standards and inspections are done by government personnel to assure compliance.

Because of these comprehensive standards current regulation of forest practices, in certain instances, provide *more than* what is necessary to maintain water quality. For example, in the National Forests and BLM lands covered by the Northwest Forest Plan, the plan's Aquatic Conservation Strategy imposes riparian reserves of at least 150 and 300 feet slope distance, respectively, for non-fish-bearing and fish-bearing streams. United States Forest Service, U.S. Bureau of Land Management, "Standards and Guidelines for Management of Habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl," at C-30 to -38.[1] In designated riparian reserves, road management is highly curtailed. *Id.* at C-32, C-33. These widths have proven to be more than adequate to protect and maintain aquatic resources and water quality. At the same time, the regulatory economic impacts from restrictions on over 2.6 million acres of timberlands have proven to be highly significant.

Further south, Region 5 of the Forest Service, covering California and Hawaii, has adopted a highly detailed Water Quality Management Handbook for forests under its jurisdiction. Region 5 Forest Service Handbook 2509.22 (Dec. 5, 2011).[2] The Regional handbook contains 13 separate road-related best management practices, from travel planning to road maintenance to erosion control. *Id.* at 73-128, §§ 12-12.21. The Forest Service has existing statutory, regulatory, and manual direction to manage roads as part of its land management responsibility. 16 U.S.C. § 1608, 1604(e)(1); 36 C.F.R. § 212.55; FSM 7703.1, FSH 7709.55, 7709.59. Forest Plans are required to guide management of lands so that they "consist of ecosystems and watersheds with ecological integrity * * *." 36 C.F.R. § 219.1(c). EPA intervention would do nothing to strengthen this already complex framework, and likely would be counterproductive to the ultimate goal of improved water quality.

In addition, the Forest Service has proposed comprehensive national standards for water quality protection on National Forest lands. The Forest Service has proposed changes to the Forest Service Manual to incorporate these standards into project and planning activities nationwide. 79 Fed. Reg. 25,824 (May 6, 2014); *see also* http://www.fs.fed.us/biology/ watershed/BMP.html. In themselves, these new standards represent an unwise "one size fits all" approach to forest management and present a regulatory maze to forest users. EPA regulation would short-circuit

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[1] The Standards and Guidelines, which are Attachment A to the Record of Decision for the Northwest Forest Plan, are available at http://www.reo.gov/library/reports/newsandga.pdf.

[2] A copy of the Region 5 Water Quality Handbook is available at http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5399662.pdf.

the Forest Service's ability to tailor its proposed management direction and could intensify an already significant regulatory burden.

By refraining from imposing unnecessary regulation under section 402, EPA will be maintaining regulatory consistency with section 404 of the Clean Water Act (CWA). Section 404 provides that discharge of dredge or fill material into the waters of the United States is not prohibited "for the purpose of construction or maintenance of * * * or forest roads * * * where such roads are constructed and maintained, in accordance with best management practices, to assure that flow and circulation patterns and chemical and biological characteristics of the navigable waters are not impaired, that the reach of the navigable waters is not reduced, and that any adverse effect on the aquatic environment will be otherwise minimized." 33 U.S.C. § 1344(f)(1)(E). Regulations further set forth the highly detailed standards for such best management practices. 40 C.F.R. § 323.4(a)(6).

EPA notes that there is no formal definition of "forest roads" or "logging roads" in either the Clean Water Act or its implementing regulations, and requests comment on whether or how to define these terms. 80 Fed. Reg. at 69,660. In AFRC's view, no definition is necessary or appropriate because phase II regulation of forest or logging roads is unwarranted. To the extent that EPA decides to regulate, a definition would be helpful to establish the scope of the regulation. To the extent EPA determines not to impose additional regulation on public forestlands, the terms "forest roads" and "logging roads" should be explicitly defined to *exclude* any roads on public forestlands. At minimum, any definition should exclude federal timberlands, which, as noted above, are subject to extensive water quality review already.

EPA may decide to define "forest roads" or "logging roads" universally. For ease of implementation, AFRC suggests that EPA follow Forest Service convention and define "forest roads" as "roads on Forest Service land," "roads on BLM land," "roads on state forestlands," and so forth. This is largely consistent with the definition used in EPA's notice, "a road located on forested land," *id.*, but takes out of the equation whether a land is "forested" or not. Land ownership, unlike road use or purpose, is usually unambiguous. Thus a definition based on land ownership will allow stakeholders to quickly and clearly determine whether a particular road is subject to regulation.

EPA states that it uses the term "logging road" to mean "a forest road that is used to support logging activities." *Id.* AFRC discourages EPA from adopting or using a definition of "logging road" separate from "forest road." Parsing out whether a particular road is used to support logging activities, or what extent of use is required before a forest road becomes a logging road, is an untenable exercise which would lead to unnecessary confusion for both regulators and the regulated without resulting in improved water quality. Using only one term also supports regulatory consistency. CWA section 404 refers only to "forest roads." 33 U.S.C. § 404(f)(1)(E). EPA's silvicultural regulations refer only to "road construction and maintenance" which is "in connection with silvicultural activities." 40 C.F.R. § 122.27(b)(1); 40 C.F.R. § 122.26(b)(14)(ii).

AFRC appreciates your attention to these comments and to those of other members of the forest products industry. If you should have any questions about these comments, please contact our office.

Sincerely,

Travis Joseph
President