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Environmentalists against the Environment

By John Gordon

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Following outrage over its Keystone Pipeline decision, the Obama administration faces another choice pitting green activists against American workers. This time, siding with environmental activists would actively hurt the environment.

The case — *Georgia-Pacific West v. Northwest Environmental Defense Center* — challenges long-established Clean Water Act rules about runoff from logging roads. In May, the Ninth Circuit Federal Court of Appeals determined that these roads come under the same section of the law as factories, mines, and chemical plants, not — as had been understood since passage in 1972 and amendment in 1987 — the section governing agriculture. The difference is that industrial facilities must obtain permits, which involve rigid rules and long reviews, and can be challenged in court. Agricultural regulations emphasize results, not lawsuits.

In December, the Supreme Court asked for the Justice Department's opinion on whether to hear the case. Solicitor General Donald B. Verrilli Jr. will file a brief in the next few weeks. If the Supreme Court decides not to hear the case, the interpretation of the Ninth Circuit will become the law throughout California, Oregon, Washington, Idaho, Montana, Nevada, Arizona, Alaska, and Hawaii.

The economic stakes are huge. Industrial facilities must obtain a permit for every pipe that empties into a lake, river, or stream. For a factory or chemical plant it is a relatively simple job to identify these discharge points, impose pollution controls, and measure the quality of water draining from them. Forest roads are different.

Washington State, for example, has 57,000 miles of them, with at least one drain point per mile. But now the Circuit Court panel has decreed that each flow-way must be permitted or shut down. By one estimate, processing a single Clean Water Act approval costs a state $2,800, meaning the decision could saddle Washington alone with a $159.6 million bill.

Worse, if every ditch and drain is a potential cause of action, a paralyzing volume of litigation will follow, bringing the West's logging industry to its knees. In fact, three days after the Ninth Circuit acted, activists announced plans for follow-on suits. Congress has since halted permit processing until the fall, to give the Supreme Court time for review. As Senator Ron Wyden (D., Ore.) has said, allowing the decision to stand would "shut down forestry on private, state, and tribal lands" in the states in which it applies.

Endangered, too, will be thousands of resorts, ranches, and communities scattered amid the circuit's forestlands and dependent on the same roads loggers use. Controlling forest fires will become harder, posing even greater threats to everyone nearby as well as to firefighters. And regional sawmills, paper mills, and all who depend on western wood will suffer. By some estimates as many as a million jobs are in jeopardy.

For what? Not environmental protection.

The current use of "best management practices" is better for minimizing silting of lakes and streams than permitting every ditch and culvert (as the ruling mandates) or shutting down logging roads and reducing vital access to huge forested areas (as it would inevitably do).

"Best management practices" is a term for what in other contexts is called "Continuous Process Improvement." That is, if you can do something better, do it, now.

In the decades since the Clean Water Act became law, we have seen vast improvements in all aspects of forest engineering and research into the cultivation of trees, as well as research on fish and wildlife habitat and protection of riverbanks and the areas around them. Regulators and public and private forest managers have incorporated these findings into their standards.

Some practices sound simple but require sophistication to deploy effectively. They include keeping culverts free of debris, so water flows through unobstructed, and using beds of broken rock at their outlets to prevent erosion. Other practices involve road contours that minimize erosion, planting grass and bushes along roadsides to filter runoff, and changing road surfaces depending on the grade.

Regulators and managers are constantly adjusting such details to diminish the amount of dirt and debris that enters lakes and waterways. Injecting permit requirements into this process will only make the ongoing upgrade of our methods slower and more expensive, diverting resources from reducing sediment to the legal machinery of permit review and litigation.

It is said that if you want less of something, tax it. If implemented, the Ninth Circuit's decision would represent a tax on environmental quality. The solicitor general should tell the Court to hear *Georgia-Pacific West*. In this case, environmental activists are not on the side of the environment.

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