

and Affordable Care Act, PPACA, was the ability for participants to use the dollars they set aside in these plans to pay for the cost of over-the-counter medications.

However, under PPACA, plan participants may no longer use funds from these accounts to purchase over-the-counter medications, unless they have a prescription for the medication.

This prohibition takes away choice from individuals about how to manage their health care expenses and adds yet another burden to physicians, as some plan participants will seek a prescription for over-the-counter medications. And, worst of all, it injects increased costs into our health care system.

Rather than promoting cost-effectiveness and accessibility, this provision instead directs participants to potentially more costly, less convenient, and more time-consuming alternatives. Further, it injects unnecessary confusion and complexity into a system that was previously straightforward and easy for consumers to utilize.

This bill repeals Sec. 9003 of the PPACA and restores the ability of plan participants to use the funds in their FSA, HRA, HSA or Archers MSA to purchase OTC medications, allowing them to better manage the cost of their health care expenses.

A family physician from Leawood, Kansas told me, "I am pleased that legislation is being introduced to reverse this policy. Many of my patients face undue burdens purchasing needed medications that are essential to their health maintenance and overall wellbeing. Reversal of this policy will allow my patients to continue to purchase the numerous beneficial over-the-counter products that are so important in our daily lives and will eliminate a substantial administrative burden on my practice."

In Kansas, and throughout the U.S., a broad coalition of groups support this legislation, including the U.S. Chamber, NFIB, pharmacist groups, drug store organizations and consumer groups.

I would invite my colleagues to join me in this effort by cosponsoring this legislation.

By Mr. CRAPO (for himself, Mr. WYDEN, Mr. RISCH, and Mr. BEGICH):

S. 1369. A bill to amend the Federal Water Pollution Control Act to exempt the conduct of silvicultural activities from national pollutant discharge elimination system permitting requirements; to the Committee on Environment and Public Works.

Mr. CRAPO. Mr. President, over the last several months, this body has been focused on issues pertaining to our economy, such as the ailing jobs market and our debt and deficits. That is as it should be. However, while these important issues have commanded most of our attention here in the United States Senate, that is not to say that other matters and conflicts

have suddenly taken a back seat to them. Even as we vigorously debate our economic future, home-state and regional issues continue to command our attention. It is one of those regional issues that brings me to the floor today.

Two months ago, a three judge panel of the U.S. Court of Appeals for the 9th Circuit handed down a final decision that could have far reaching negative impacts on public and private forests, and the communities that rely on them, throughout the United States. In the case of Northwest Environmental Defense Center v. Brown, the Court ruled that logging road runoff when managed with a system of ditches and culverts and deposited into rivers and streams qualifies under the Clean Water Act as point source pollution. This means that storm water when mixed with dirt and rocks will now be subject to some of the most stringent environmental protection laws in the United States. America's Federal forests are already heavily litigated, but with one fell swoop, this decision threw out over 35 years of precedent, opening the door for even more litigation on Federal forest lands, and subjecting private and state forest lands to the same specter.

There was a time when forest jobs supported millions of Americans and their communities. But a lot has changed since then. Endless litigation, cheap imports, disease and a general shift in Federal forest management policy have drastically changed the landscape for forest jobs and the families and communities that rely on them. Working on the forests used to make up a considerable amount of the tax base in many rural communities, particularly in my State of Idaho. However, that has shrunk dramatically in recent decades.

Forest communities that were once prosperous now find themselves in a state of perpetual economic jeopardy, with young people searching for employment elsewhere and tax bases that can barely cover the cost of basic public services. This has become so dire that in 2000, Congress had to pass legislation to provide funding to rural communities with Federal public lands to make up for lost revenues from timber harvests on those lands.

Given all of this, I am disappointed that another impediment is being added to the economic survival of our forest communities.

This decision will impact both public and private forests. In the case of Federal forests, we have millions upon millions of acres that are in need of active management and restoration. Our Federal forests have suffered from under management, disease, wild fires and other factors, and to address these problems, the U.S. Forest Service needs to be able to get to work on much needed fuels reduction, thinning and other forest health projects. But litigation has made that very difficult, and this decision is only going to make it worse.

Then, there are private forests. The people who own, manage and work on these private forests need roads to have access to them. But, this judicially-mandated permit requirement will inevitably lead to increased costs for businesses that are already operating on the margins. Furthermore, this decision will impose the Federal Government into the management of private lands as these permits, even if issued by a State agency, will be subject to Environmental Protection Agency oversight under the Federal Clean Water Act, as well as citizen suits that are intended to further reduce timber harvests.

We need to do something about this unfortunate and unwise decision out of the Ninth Circuit Court of Appeals. As such, I am introducing legislation along with my friends Senator WYDEN, Senator RISCH and Senator BEGICH to overturn it. This legislation is entitled the Silviculture Regulatory Consistency Act of 2011. Our forests and the communities that they have long supported are already in considerable jeopardy, and we need to do everything in our power to help these rural communities. Passing this legislation is only one step in that process, but it is a very necessary one.

I hope that the Senate can pass this bipartisan legislation as soon as possible.

Mr. WYDEN. Mr. President, today I am joining with my colleagues from Idaho, Senator CRAPO and Senator RISCH, and my colleague from Alaska, Senator BEGICH, to correct a regulatory problem that left uncorrected will bury private, State and tribal forest lands in a wave of litigation. If we have learned anything from the court battles that have contributed to the widespread gridlock and mismanagement of our Federal forests, it is that this is not the best path to ensure our forests' future and should be considered only as a last resort. Now those battles threaten to spill over onto private forest lands.

Since the advent of the Clean Water Act, Democratic and Republican administrations have held that most silviculture activities were nonpoint sources for purposes of the act and would be best regulated at the State level, under the States' individual forest practices laws. Under this rule, known as the "silviculture rule," silvicultural activities, such as nursery operations, site preparation, reforestation and subsequent treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance, from which there is natural runoff, were regulated through the Clean Water Act by States best management practices.

This rule for forest roads has now been explicitly invalidated by the Ninth Circuit Court of Appeals, which—in a series of two decisions—implicitly undermined the long-held "silvicultural rule," stemming from

litigation over the use of forest roads in Oregon State-owned forests.

According to the Ninth Circuit, stormwater runoff collected and directed by a system of ditches and culverts creates a discrete point source and therefore, must be regulated as industrial stormwater runoff. This judicial interpretation of the Clean Water Act means that every source of runoff on forest roads will now require an industrial stormwater runoff permit. Not only will new roads need to be permitted, but the hundreds of thousands of miles of existing roads in Oregon and around the country, on both public and private lands, will now need to be reviewed and issued permits.

If this one court's decision to overturn 35 years of widely-accepted, Environmental Protection Agency, EPA, policy is allowed to stand, private, State, and tribal forest owners will also likely be subjected to litigation as part of the permitting process or through lawsuits under the citizen suit provisions of the Clean Water Act. The outcome could well deny States the use of their forests which they depend on to pay for schools and services, while significantly depressing the investment required to sustain private forestry.

If this decision is allowed to stand, every use of forest roads will require permitting and will therefore be subject to challenge by citizen lawsuits. This will not only overburden landowners and managers in the Ninth Circuit states by adding significant compliance and permitting costs, it will create an opportunity for administrative appeal and litigation every time a permit is approved.

Initially, the court's ruling will apply solely to my region of the country, but we can expect lawyers to quickly beat a path to other Federal courts and the EPA itself, seeking to extend the ruling to all other forested regions of the country, and giving an immediate and perhaps permanent competitive advantage to our foreign competitors who have far lesser environmental standards and enforcement.

The fact of the matter is that forests and forest roads—even private ones—have multiple economic and environmental uses and users—from wildlife habitat to recreation to timber production—over decades long growing and harvesting cycles. The “silviculture rule” existed because forestry is different from other industries, even other agricultural production. This is why, in this instance, I believe the courts have gone too far in reinterpreting the law and why legislation is needed to make the long-accepted “silvicultural rule” the legal basis for Clean Water Act regulation of forestry practices.

The Clean Water Act is one of the cornerstones of environmental protection. In the past two Congresses, I co-sponsored the Clean Water Restoration Act because I believed that the U.S. Supreme Court went too far in reinterpreting decades of Clean Water Act law by excluding wetlands and intermittent streams that had long been protected under that law. Here too, I be-

lieve that the courts have gone too far in reinterpreting what has been a long-standing understanding of how silvicultural activities should be regulated. The Ninth Circuit concluded that only Congress can authorize EPA's original reading of the law. Senators CRAPO, RISCH, BEGICH and I are introducing legislation today in response to that conclusion.

That is not to say that the persons who orchestrated this litigation were not well-intentioned in their desire to address the water quality issues that can arise from silviculture, as they can in virtually every other agricultural activity. Rather, I believe they had the best of intentions. In fact, I share their intentions. I have labored for decades and will continue to work to address the poor condition of forest roads on Federal lands. I will also be the first to argue that the Federal Government has much to do in that regard. Efforts can also be made on State and private lands. In many instances, what is needed is simply more technical assistance and financial incentives to help landowners and managers that are seeking to do the right thing. I certainly care about keeping the pristine quality of our streams and the impacts that sediment can have on salmon and aquatic creatures. It is part of the reason why I have championed wilderness and wild and scenic river legislation to protect Oregon's special places, including its beautiful waterways.

But I can't agree with their decision to first fight this out in court. Their litigation tries to impose an outcome on my region without ever attempting to address the concerns and needs of the thousands of people in my State who earn their living as responsible stewards of private forest land. Oregon is still struggling to come back from the economic crisis and many of our forested counties continue to suffer from double digit unemployment. Where will the 120,000 people in Oregon who make their living on private forest land go when private lands experience the same gridlock as their Federal land counterparts? How will small woodlot owners in Oregon—mostly mom and pop investments—survive when subjected to Federal regulation and lawsuits for the first time in our State's history? How many millions of acres of private, shareholder-owned forest land will be converted to nonagricultural purposes when companies are no longer able to carry out needed forest management? To my knowledge, the litigants did not make a meaningful effort to address any of those challenges before initiating the lawsuit that now threatens to throw my State into a dangerous economic trajectory.

I should point out that this issue transcends partisan concerns, as evidenced by the prominent Democrats who have found common ground with Republicans on this issue. Oregon's Governor, John Kitzhaber, one of the most prominent environmental champions in the Nation, has consistently fought against the Northwest Environmental Defense Center ruling and continues to do so. Senator BEGICH, who is known for his thoughtful and balanced

approach to natural resource issues, joins me as an original cosponsor. On the House side, I am joined by Democratic Congressman KURT SCHRADER, who knows better than most the unintended consequences of well-intentioned, but poorly aimed efforts at regulation.

To my friends in the environmental community who raise legitimate concerns about a range of issues surrounding this policy I encourage you to sit down with us in a dialogue, at both the Federal and State levels. Bring your ideas for how we can monitor and protect water without sacrificing what remains of Oregon's forest industry. You will be heard and I stand ready to work with you. But it is not enough to simply dictate outcomes. We have to first look for solutions that avoid the epidemic of litigation and appeals that threaten the sustainability and survival of our timber industry. You are, of course, right to expect that we arrive at those solutions within a reasonable period of time.

By Mrs. BOXER (for herself, Ms. MURKOWSKI, and Mrs. MURRAY):

S. 1370. A bill to reauthorize 21st century community learning centers, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mrs. BOXER. Mr. President, I rise today to urge my colleagues to cosponsor the Afterschool for America's Children Act, which I am introducing today with Senators MURKOWSKI and MURRAY.

Across the country, afterschool programs help keep children safe and help them learn through hands-on academic enrichment activities that are disappearing from the regular school day.

Numerous studies have shown that quality afterschool programs give students the academic, social and professional skills they need to succeed. Students who regularly attend have better grades and behavior in school, and lower incidences of drug use, violence and unintended pregnancy.

Over the past 10 years, the 21st Century Community Learning Centers, CCLC, program has helped support afterschool programs for millions of children from low-income backgrounds, including over 1.6 million children last year.

Unfortunately, the demand for affordable, quality afterschool experiences far exceeds the number of programs available. The 2009 report, America After 3PM, found that while afterschool programs are serving more kids than ever, the number of unsupervised children in the United States has increased. More than 18 million children have parents who would like to enroll their child in an afterschool program but can't find one available.

For over 10 years, federally funded afterschool programs have played an important role in the lives of so many children and families. The Afterschool for America's Children Act, AACA, would strengthen the 21st CCLC program, leaving in place what works and