

# Forest Roads and NPDES

Western Forest Economists

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# EPA's Silvicultural Exemption

- The EPA has adopted special regulations to govern NPDES permitting of silvicultural activities
- A silvicultural point source in need of an NPDES permit is “any discernible, confined and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities which are operated in connection with silvicultural activities
- Specifically *excluded* are “non-point source silvicultural activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is natural runoff”

# Silvicultural Exemption Challenged

- The EPA argued in 1999 that certain silvicultural activities, most notably road construction, may result in the discharge of pollutants from a “confined, discernible, and discrete conveyance,” and should be regulated as point sources.
- The EPA proposed changing its regulation, which would have had the effect of making most silvicultural discharges subject to Phase II storm water provisions.
- This proposal, however, was withdrawn in the face of controversy, thus leaving the existing silvicultural regulations in place.

# Silvicultural Exemption Struck Down

- In 2010, the Washington Forest Law Center brought suit in Oregon Federal Court picking up the idea that road runoff discharged through pipes is “point source”
- Lower court upheld EPA exemption
- Three judge panel of 9<sup>th</sup> Circuit reversed holding EPA’s rule invalid and agreeing that NPDES permit required

# 9<sup>th</sup> Circuit Decision Appealed

- Defendants appealed asking for *En Banc* review of 3 judge panel's decision
- Initially, looked good for *En Banc* review, but not looking so good now
- May require congressional action, no telling how long that would take
- Meanwhile, subject to 3<sup>rd</sup> party lawsuit

# WA State BMPs & RMAP

- WA State forest practices rules (BMPs), adopted under the Forests and Fish Agreement would likely be compliant
- Road Maintenance and Abandonment Plans (RMAP) intended to hydraulically disconnect road runoff from streams, maintain roads at higher standards, and abandon legacy road features that are at risk of delivering sediment to streams
- Anti-degradation might be a problem

# Permitting, Commenting, and Monitoring will be a problem

- DOE's Washington Industrial Stormwater General Permit is a poor fit for log haul operation, but the only applicable, currently available permit
- Public commenting could dramatically slow down process of obtaining harvest permits
- With hundreds of pipes on an ownership, it is unclear how one could implement a monitoring program

# WA DOE Likely to be Overwhelmed

- EPA has delegated its Clean Water Act authority to WA Dept of Ecology
- DOE already overwhelmed with implementing NPDES Phase I & II with reported low compliance rates



# WFPA's Campaign to Re-Gain Public Support

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# 1990 Public Opinion

- "If there was an industry that is out of step with public thinking and has lost public confidence, it is the timber industry."
- Conclusion of a 1990 report assessing the industry's future in Washington State

# WFPA Effort to Regain Public Support

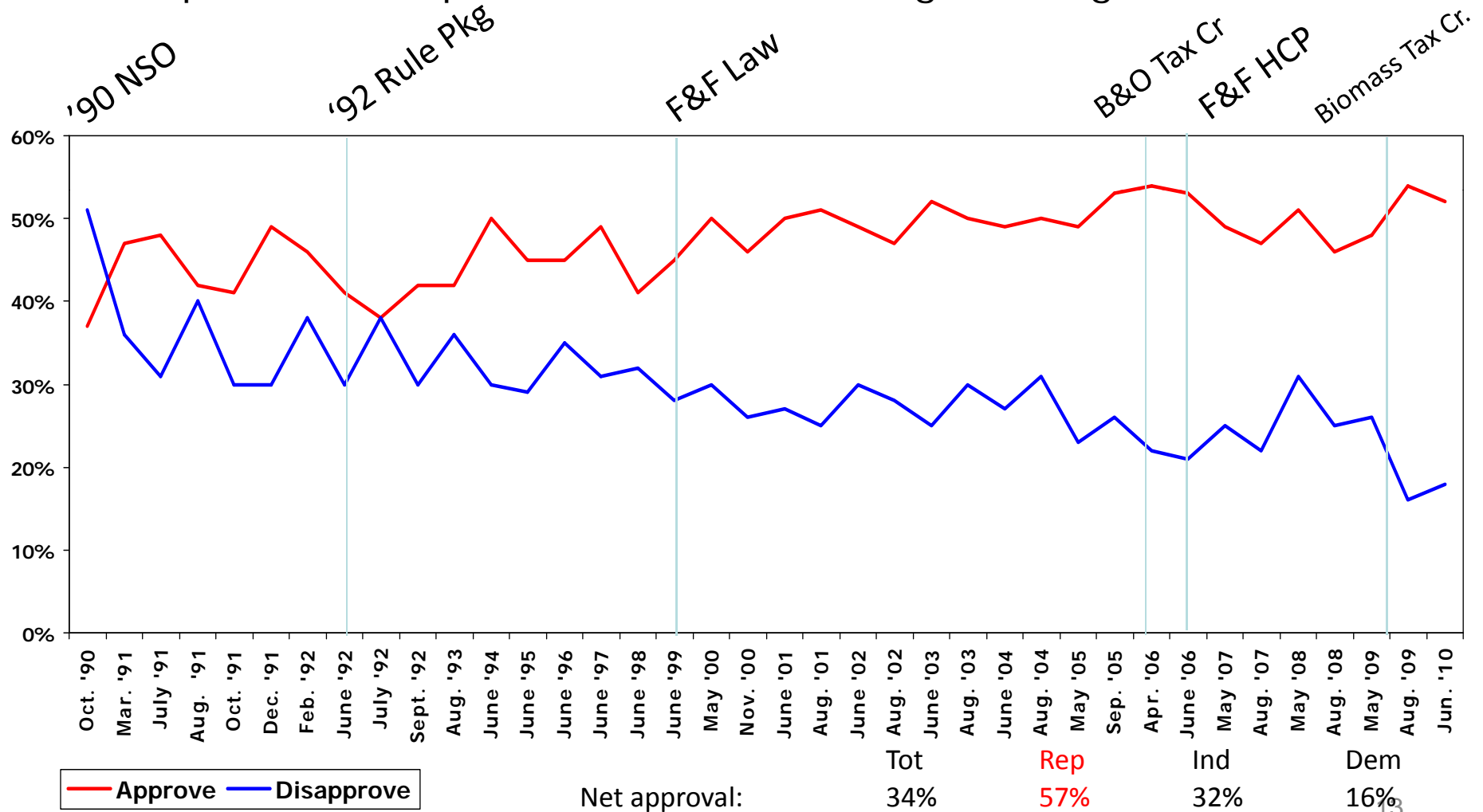
- Recognizing that no industry can operate long w/o public support, Washington's private forestland owners embarked on what is now a 20 year effort to regain public trust and to proactively influence forest policies

# Not just a PR Campaign

- Regaining public acceptance required real reforms and rules such as the Forests and Fish Law passed in 1999, and a
- Consistent, research-based communications effort to inform the public about these changes.
- The results are demonstrated through scientific public opinion polling and policy changes that have been implemented in the last decade.

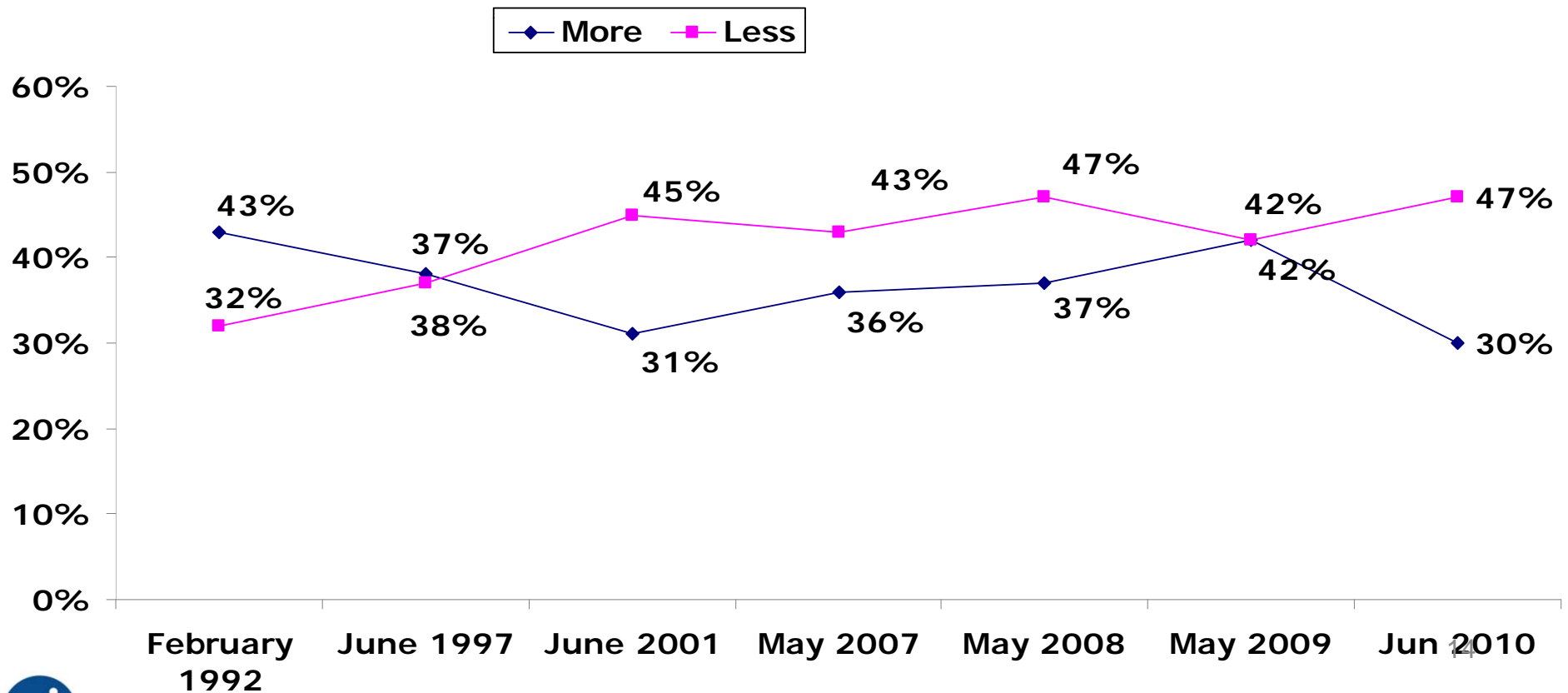
# Forest Products Companies' Actions

"Generally speaking, do you approve or disapprove of the actions of most forest products companies on issues affecting Washington's forests?"



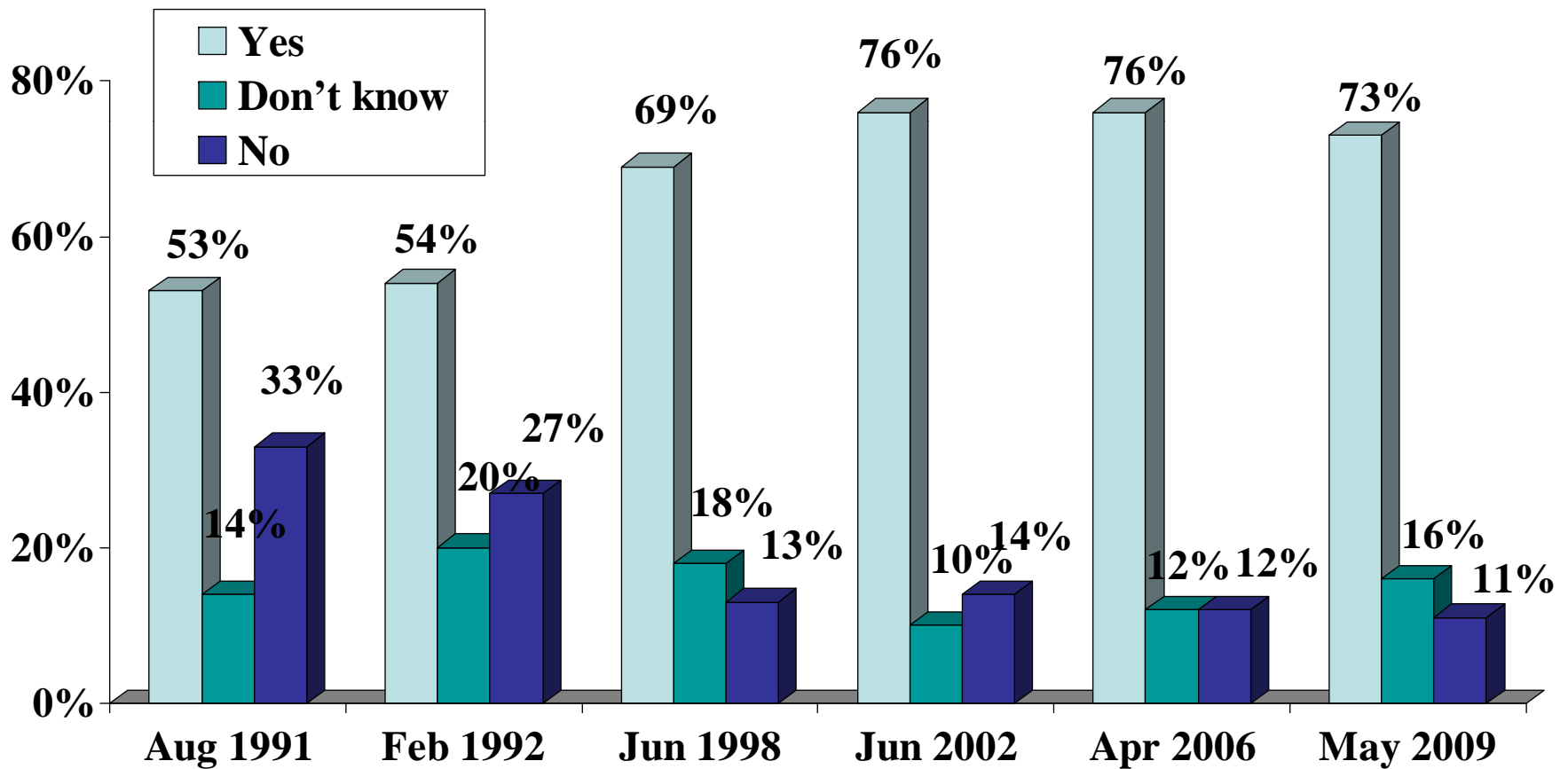
# Regulating Private Forests: *Historic Trends*

"Do you believe there should be more regulation or less regulation of privately owned forest land?"  
(Q14)



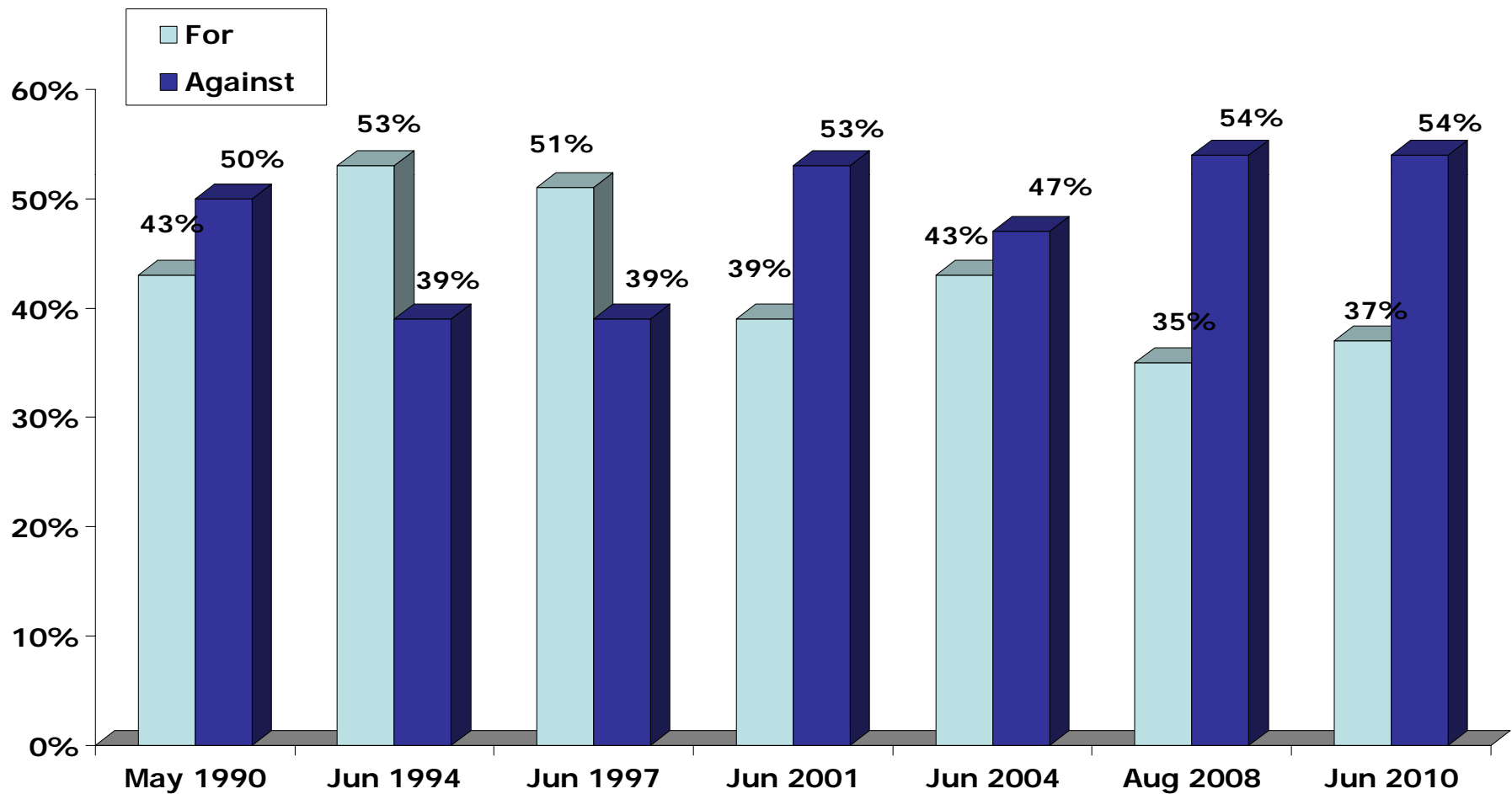
# Awareness of Replanting Remains High

“To the best of your knowledge, are most areas in Washington state where timber has been harvested being reforested, or not?”



# Clearcutting Ban: Historic Trends

“Would you vote for or against a law that prohibited clearcutting on privately owned forest land”





# Conclusion

- It is imperative to communicate with the right target audiences about forest practices and policies to maintain the public support, often called "social-license" to operate

# Mitigation Banking

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# Forestland Conversion a Big Problem

- Loss of Ecological Functions on site
- Cumulative Problems Downstream
- Forestland owners willing to participate in solutions, But
- Not willing to give development value away
- Disconnect between landowners and conservationists

# Not Enough New Money

- Purchase
  - Conservation Easements
  - Development Rights
  - Fee Simple
- Public Budgets Tight
- Taxpayers unwilling to step up and pay more

# “Re-Direct” Existing Pots of Money

- Example, WA Dept of Transportation mitigation dollars
- Wetland mitigation expensive and prone to failure
- Change focus from no-net loss of wetland acreage to overall water quality or environmental quality

# Protect existing forestland in same water basin instead

- Large chunks of forestland can be protected with same amount of money
- Low failure rate because forestland already functioning
- Overall water quality in basin could be higher
- Mitigators like it because of certainty of success

# Some of the Problems

- Requires new thinking wherein we focus on overall water quality or environmental quality in a basin rather than just counting wetland acreage
- May require congressional action
- How do we set exchange rate between lost wetland acreage and protected forestland acreage?