

The Honorable Joe Manchin
Chairman, Senate Committee on Energy
& Natural Resources
U.S. Senate
306 Hart Russell Senate Office Building
Washington, DC 20510

The Honorable John Barrasso
Ranking Member, Senate Committee on Energy
& Natural Resources
U.S. Senate
307 Dirksen Senate Office Building
Washington, DC 20510

Re: "*Cottonwood Fix*"

Dear Chairman Manchin and Ranking Member Barrasso:

The undersigned conservation organizations, representing millions of natural resource professionals, sportsmen, and sportswomen are writing today to request that Congress take immediate action to address harmful and unnecessary delays in federal forest management activities caused by the *Cottonwood Environmental Law Center v. United States Forest Service (Cottonwood)* decision.

Since 2015 when the Ninth Circuit Court issued the *Cottonwood* ruling, the Forest Service (USFS) has been required to reinitiate consultation with the Fish and Wildlife Service (USFWS), Bureau of Land Management (BLM), and the National Oceanic and Atmospheric Administration on Land Management and Forest Management Plans at the programmatic level when new Endangered Species Act (ESA) information came to light. This has blocked and slowed many essential USFS forest management, wildlife habitat enhancement and wildfire fuel reduction projects.

There has been bipartisan and widespread support for a "*Cottonwood Fix*." In May of 2016 the Obama administration petitioned the Supreme Court to review and overturn the case, and in January of 2021 the Trump administration initiated a rule to amend Section 7 of the ESA to address the issue. The Supreme court rejected the original petition, and no final rule has been forthcoming from USFWS.

Congress also recognized the critical need to address the *Cottonwood* decision when it included a provision in the Consolidated Appropriations Act of 2018 which adjusted consultation requirements for the USFS and BLM, but with different instructions to each agency. The 2018 provision was only a partial fix providing the USFS an exemption from reinitiation of consultation only for critical habitat designations and species listings and only through March 23, 2023. Regarding BLM, Section 209 of the 2018 Act also provided a partial "*fix*" by exempting only grant lands under the Coos Bay Wagon Road Reconveyed Lands Act and Oregon and California Revested Lands Act from re-initiation of reconsultation for new species listings and critical habitat designations.

Delays in forest management projects caused by "*Cottonwood*" litigation are costly, duplicative and hinder critical forest management activities. Species listed under ESA are already considered when assessing each land management project implemented by the USFS. Agencies undergo review and consultation at the project level where the potential impacts can be best evaluated. Court rulings requiring reconsultation at the plan level are duplicative and unnecessary and injunctions delay good projects from being implemented in a timely manner. Current consultation regulations must be clarified to prevent frivolous lawsuits that seek to block projects that improve habitat for big game and other wildlife and reduces vulnerability of forests to catastrophic wildfire, insects and disease.

According to the National Interagency Fire Center, since 2016 wildfires have burned over 46 million acres throughout the United States, with over 65% of the wildfires impacting federal lands. While a regulatory “fix” may be possible, the federal regulatory process is cumbersome, time consuming and will lead to additional litigation. There is precedent for Congress to address “Cottonwood” and action is urgently needed lest the important management work that will potentially be funded by the Bipartisan Infrastructure Funding bill will be tied up in courts. It is with a sense of urgency to get this important work done on the ground that we support and urge congressional action to provide a “Cottonwood Fix”.

Sincerely,

American Woodcock Society
Archery Trade Association
Backcountry Hunters and Anglers
Boone & Crockett Club
California Waterfowl Association
Camp Fire Club of America
Congressional Sportsmen’s Foundation
Conservation Force
Delta Waterfowl
Houston Safari Club
Mule Deer Foundation
National Bobwhite Conservation Initiative
National Deer Association
National Forest Service Retiree Association
National Rifle Association
National Shooting Sports Foundation
National Wild Turkey Federation

Orion: The Hunter’s Institute
Pheasants Forever
Pope & Young Club
Professional Outfitters and Guides of America
Public Lands Foundation
Quail Forever
Rocky Mountain Elk Foundation
Ruffed Grouse Society
Safari Club International
Sportsmen’s Alliance
The Wildlife Society
Theodore Roosevelt Conservation Partnership
Whitetails Unlimited
Wild Sheep Foundation
Wildlife Management Institute
Wildlife Mississippi

cc: Members of the Senate Committee on Energy & Natural Resources