

March 20, 2023

Representative Bruce Westerman, Chair
House Committee on Natural Resources
202 Cannon House Office Building
Washington, DC 20515

Representative Raul Grijalva, Ranking Member
House Committee on Natural Resources
1203 Longworth House Office Building
Washington, DC 20515

Re: Sportsman Support for a Bipartisan “Cottonwood Fix”

Dear Chair Westerman and Ranking Member Grijalva:

The undersigned conservation organizations and professional organizations, representing millions of natural resource professionals, sportsmen, and sportswomen are writing today to support a fix to the “Cottonwood” issue. We appreciate Representative Rosendale’s leadership on this issue and support his Forest Information Reform (FIR) Act (H.R. 200). We sincerely believe that this issue should be resolved in a bipartisan, bicameral fashion. We also support Senator Daines’ “Cottonwood” bill (S. 2561) of the 117th Congress.

Since the Ninth Circuit Court issued the 2015 *Cottonwood Environmental Law Center v. United States Forest Service* (“Cottonwood”) decision, the USFS and BLM have been required in numerous instances to reinitiate consultation at a forest or land management plan level with the Fish and Wildlife Service and the National Oceanic and Atmospheric Administration even though the “new information” was considered at a project level. This continues to block and slow many essential USFS forest management, wildlife habitat enhancement and wildfire fuel reduction projects.

Congress recognized the critical need to address the “Cottonwood” decision when it included a provision in the Consolidated Appropriations Act of 2018 that adjusted consultation requirements for the U.S. Forest Service (USFS) and Bureau of Land Management (BLM), but with different instructions to each agency. When this provision sunsets this month (March 2023), all forests, potentially, could face frivolous litigation that halt all projects forest-wide until duplicative consultation takes place. The USFS made clear to Congress, in testimony before your Committee and the Senate Energy & Natural Resources Committee, the adverse impact this will have on their ability to manage our forests and make significant strides to improve forest health.

The FIR Act would prevent the burdensome need to reinitiate consultation on a finalized land management plan based on new endangered species information. Senator Daines’ bill (S.2561) of the 117th Congress would prohibit those same plans from being considered a continuing federal agency action or constituting a discretionary federal involvement, while also making some Endangered Species Act (ESA) consultation requirements inapplicable. We support both approaches and appreciate your committee’s timely attention.

On October 21, 2021, the USFS testified before the Committee that unless action is taken to resolve challenges stemming from the 2015 “Cottonwood” decision, the agency will have to go through re-consultation, regardless of the merit, on over one-hundred forest plans that “will take years and cost millions of dollars,” threatening to undermine the Administration’s 10 Year Wildfire Crisis Strategy.

There is 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 issued.

Delays in forest management projects caused by “Cottonwood” litigation are costly and hinder critical forest management activities, including wildfire and climate mitigation. Species listed under ESA are already considered when assessing each land management project implemented by the USFS, which will not be altered by a “Cottonwood” fix. Agencies undergo review and consultation at the project level where the potential impacts can be best evaluated. Court rulings requiring re-consultation at the plan level are duplicative and unnecessary, and injunctions delay good projects from being implemented in a timely manner.

Our organizations urge the Committee to favorably report a bipartisan “Cottonwood fix.”

Sincerely,

American Woodcock Society
Association of Fish and Wildlife Agencies
Archery Trade Association
Backcountry Hunters & Anglers
Bear Trust International
Boone and Crockett Club
Camp Fire Club of America
Congressional Sportsmen’s Foundation
Conservation Force
Dallas Safari Club
Delta Waterfowl
Houston Safari Club
Mule Deer Foundation
National Association of Forest Service
Retirees
National Bobwhite & Grassland Initiative
National Deer Association
National Rifle Association

National Shooting Sports Foundation
National Wild Turkey Federation
North American Grouse Partnership
Orion: The Hunter’s Institute
Pope & Young Club
Public Lands Foundation
Rocky Mountain Elk Foundation
Ruffed Grouse Society
Safari Club International
Sportsmen’s Alliance
Theodore Roosevelt Conservation
Partnership
The Wildlife Society
Whitetails Unlimited
Wildlife Management Institute
Wildlife Mississippi
Wild Sheep Foundation