

\* American Woodcock Society \* Archery Trade Association \* Association of Fish and Wildlife Agencies \* Backcountry Hunters & Anglers \* Boone and Crockett Club \* Camp Fire Club of America \* Congressional Sportsmen's Foundation \* Council to Advance Hunting and the Shooting Sports \* Dallas Safari Club \* Delta Waterfowl \* Houston Safari Club \* Mule Deer Foundation \* National Association of Forest Service Retirees \* National Deer Association \* National Shooting Sports Foundation \* National Wild Turkey Federation \* North American Falconers Association \* North American Grouse Partnership \* Orion: The Hunter's Institute \* Pheasants Forever \* 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 Forever \* Wildlife Management Institute \* Wildlife Mississippi \*

May 16, 2023

Senator Joe Manchin, Chair  
Senate Committee on Energy & Natural  
Resources  
306 Hart Senate Office Building  
Washington, DC 20510

Senator John Barrasso, Ranking Member  
Senate Committee on Energy & Natural  
Resources  
307 Dirksen Senate Office Building  
Washington, DC 20510

Re: Sportsman Support for a Bipartisan "Cottonwood Fix"

Dear Chair Manchin and Ranking Member Barrasso:

We write today to urge the Senate Energy and Natural Resources Committee to report out to the Senate floor a "Cottonwood" fix. The undersigned conservation organizations and professional organizations, representing millions of natural resource professionals, sportsmen, and sportswomen sincerely believe that this issue should be resolved in a bipartisan, bicameral fashion, and wish to express our support for Senator Daines' "Cottonwood" bill (S. 2561) of the 117<sup>th</sup> Congress.

Since the Ninth Circuit Court issued the 2015 *Cottonwood Environmental Law Center v. United States Forest Service* ("Cottonwood") decision, the U.S. Forest Service (USFS) and Bureau of Land Management (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. Litigants citing this precedent have blocked and slowed 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 USFS and BLM, but with different instructions to each agency. A provision of that 2018 fix sunset in March 2023, and so today, potentially, many more forest health projects could be litigated and enjoined. The USFS made clear to Congress, in testimony before your committee, that this will have an adverse impact on the agency's ability to manage our forests and make significant strides to improve forest health.

Senator Daines' bill (S.2561) of the 117<sup>th</sup> Congress would return forest project review under the ESA to the status quo before the 9<sup>th</sup> Circuit decision.

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 100 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  
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Backcountry Hunters & Anglers  
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Camp Fire Club of America  
Congressional Sportsmen's Foundation  
Council to Advance Hunting and the Shooting Sports  
Dallas Safari Club  
Delta Waterfowl  
Houston Safari Club  
Mule Deer Foundation  
National Association of Forest Service Retirees  
National Deer Association  
National Shooting Sports Foundation  
National Wild Turkey Federation  
North American Falconers Association

North American Grouse Partnership  
Orion: The Hunter's Institute  
Pheasants Forever  
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  
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Wildlife Mississippi