

July 20, 2022

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: Support for the Bipartisan, Manchin/Daines Substitute Amendment to S. 2561 – “*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 the Senate Committee on Energy and Natural Resources favorably report the Bipartisan Manchin/Daines, Amendment in the Nature of a Substitute to S. 2561, the “*Cottonwood Fix*”.

Since the Ninth Circuit Court issued the 2015 *Cottonwood Environmental Law Center v. United States Forest Service (Cottonwood)* decision, the Forest Service (USFS) and Bureau of Land Management (BLM) have been required to reinitiate consultation with the Fish and Wildlife Service (USFWS) 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 continues to block and slow many essential USFS forest management, wildlife habitat enhancement and wildfire fuel reduction projects.

On October 21, 2021, the U.S. Forest Service (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 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 issued.

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. The 2018 provision was only a partial “*fix*” providing the USFS an exemption from re-initiation of consultation only for critical habitat designations and species listings. 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.

When this provision sunsets in March of 2023, all forests, including those outside of the Ninth Circuit, will be subject to this unjustified, ambiguous procedural requirement. The USFS made clear to Congress, in testimony before this Committee, the adverse impact this will have on their ability to manage our forests and make significant strides to improve forest health.

Delays in forest management projects caused by “*Cottonwood*” litigation are costly 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.

According to the National Interagency Fire Center, wildfires have burned nearly 5.5 million acres throughout the U.S. in 2022 and 52 million acres since 2016, with over 65% of the wildfires impacting federal lands. There is precedent for Congress to address “*Cottonwood*” and action is urgently needed end harmful and unnecessary delays in federal forest management activities, including the management work funded by the Bipartisan Infrastructure Investment and Jobs Act.

Our organizations would like to express our gratitude to Senators Daines and Manchin for their leadership in addressing this critical issue and it is with a sense of urgency to adequately manage our federal forests, that we support and urge the Committee to favorably report the bipartisan, Senator Manchin/Daines Substitute Amendment to S. 2561, the “*Cottonwood Fix*”.

Sincerely,

American Woodcock Society
Archery Trade Association
Association of Fish and Wildlife Agencies
Backcountry Hunters & Anglers
Boone & Crockett Club
California Waterfowl Association
Camp Fire Club of America
Congressional Sportsmen’s Foundation
Conservation Force
Council to Advance Hunting and the Shooting Sports
Dallas Safari Club
Delta Waterfowl
Ducks Unlimited
Houston Safari Club
Izaak Walton League of America
Mule Deer Foundation
National Association of Forest Service Retirees
National Bobwhite Conservation Initiative
National Deer Association

National Rifle Association
National Shooting Sports Foundation
National Wild Turkey Federation
North American Grouse Partnership
Orion: The Hunter’s Institute
Pheasants Forever
Pope & Young Club
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