

U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

February 8, 2023

The Honorable Debra Haaland
Secretary
U.S. Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Mr. Randy Moore
Chief
U.S. Forest Service
1400 Independence Avenue, S.W.
Washington, D.C. 20250

Dear Secretary Haaland and Chief Moore:

We write to demand that your agencies work together expeditiously to finalize the proposed rule, “Endangered and Threatened Wildlife and Plants; Regulations for Interagency Cooperation,” published on January 12, 2021.¹ Moving forward with this rulemaking would resolve challenges and uncertainty stemming from the Ninth Circuit’s 2015 *Cottonwood Environmental Law Center v. U.S. Forest Service*, (*Cottonwood*) decision, which created conflicting precedent that requires the U.S. Forest Service (USFS) and Bureau of Land Management (BLM) to reinitiate consultation under the Endangered Species Act (ESA) on previously adopted forest plans and resource management plans (RMPs) under certain conditions.² This decision presents unnecessary, unworkable and costly bureaucratic hurdles that empower environmental litigants with additional weapons to delay or cancel land or forest management projects that are essential to preventing catastrophic wildfires and improving wildlife habitat. Resolving these challenges is paramount to the protection of our nation’s forests and public lands and the prioritization of critical agency resources.

Consultation between the USFS or BLM and the U.S. Fish and Wildlife Service to protect endangered species and their habitat is already an integral part of the permitting process for specific land and forest management projects nationwide. *Cottonwood* unnecessarily lengthens the consultation process and makes active forest management projects virtually impossible to develop and implement by creating limitless opportunities to reinitiate consultation. This diverts finite agency resources from active management in our nation’s forests and public lands to endless planning, regulatory compliance, and responses to litigation.

Failing to act on this rulemaking would put USFS and BLM into a state of paralysis and inaction. This was confirmed in a congressional hearing in October 2021, when USFS Deputy Chief Forester Chris French testified that unless action is taken, USFS 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.”³ Such an undertaking would imperil the success of the agency

¹ U.S. Fish and Wildlife Service and National Oceanic and Atmospheric Administration, “Endangered and Threatened Wildlife and Plants; Regulations for Interagency Cooperation,” published in the Federal Register on August 27, 2019, <https://www.federalregister.gov/documents/2019/08/27/2019-17517/endangered-and-threatened-wildlife-and-plants-regulations-for-interagency-cooperation>.

² *Cottonwood Environmental Law Center v. U.S. Forest Service*, No. 13-35624 (9th Cir. 2015).

³ “Hearing to Consider Pending Legislation.” *U.S. Senate Committee on Energy and Natural Resources*, 21 Oct. 2021, <https://www.energy.senate.gov/hearings/2021/10/hearing-to-consider-pending-legislation>.

“Confronting the Wildfire Crisis” strategy, which set ambitious goals of treating an additional 20 million acres of National Forest System lands over the next ten years.⁴ Similarly, endless consultation would also jeopardize the success of the Department of the Interior’s “Wildfire Risk Five-Year Monitoring, Maintenance, and Treatment Plan”, which calls for reducing wildfire risk on 10 million acres of land.⁵ According to the National Interagency Fire Center, catastrophic wildfires burned nearly 7.5 million acres throughout the U.S. in 2022 and 53.6 million acres since 2016.⁶ Forest management delays created by the fallout from the full implementation of the *Cottonwood* decision would further exacerbate our wildfire crisis and put millions of additional acres of federal lands, including critical habitat for endangered species, at risk.

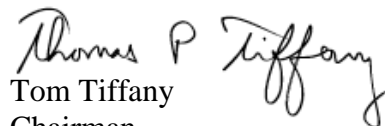
Time is of the essence, as existing reforms to address *Cottonwood* passed by Congress in the Consolidated Appropriations Act of 2018 (P.L. 115-141) are set to expire on March 23, 2023. Resolving the issues and uncertainty stemming from the *Cottonwood* decision is a bipartisan pursuit and has been supported by multiple administrations of both parties. In May of 2016, the Obama administration petitioned the Supreme Court to review and overturn the *Cottonwood* precedent.⁷ The Trump administration supplemented that effort by crafting the draft rule that we call on you to finalize. In addition to this executive action, Congress recently took bipartisan action to reverse *Cottonwood*’s precedent by passing legislation in the Senate Energy and Natural Resources Committee last year by a bipartisan 16-4 vote.⁸ Unfortunately, Congress failed to pass this fix by the end of the 117th Congress.

If your agencies fail to take immediate action to resolve *Cottonwood*’s precedent, nearly every existing federal forest management plan and RMP could be open to litigation and the consultation process required for critical forest management activities would be overly burdensome and painstakingly long. The long-term health of our National Forest System and public lands are in jeopardy if a solution is not reached. We strongly support finalizing the proposed rule without further delay. Ensuring that a solution to the *Cottonwood* problem is long lasting will require extensive interagency cooperation and we stand ready to assist in facilitating that cooperation in any way possible. The stakes could not be higher and it is time for your agencies to rise to the occasion.

Sincerely,



Bruce Westerman
Chairman
House Committee on Natural Resources



Tom Tiffany
Chairman
Subcommittee on Federal Lands

⁴ U.S. Forest Service, “Confronting the Wildfire Crisis,” January 2022, <https://www.fs.usda.gov/sites/default/files/Confronting-Wildfire-Crisis.pdf>.

⁵ Secretaries Deb Haaland and Thomas Vilsack, “Wildfire Risk Five-Year Monitoring, Maintenance, and Treatment Plan”, April 2022, https://www.doi.gov/sites/doi.gov/files/bil-5-year-wildfire-risk-mmt-plan.04.2022.owf_final.pdf.

⁶ National Interagency Fire Center, “Wildfires and Acres,” <https://www.nifc.gov/fire-information/statistics/wildfires>.

⁷ *No. 15-1387 in the Supreme Court of the United States - Scotusblog*, <https://www.scotusblog.com/wp-content/uploads/2016/07/15-1387-cert-petition.pdf>.

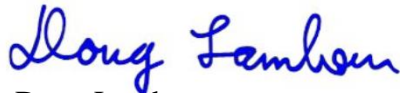
⁸ Lowery, Reilly, “Three Major Daines Bills One Step Closer to Becoming Law.” *Senator Steve Daines*, 14 Sept. 2022, <https://www.daines.senate.gov/2022/07/21/three-major-daines-bills-one-step-closer-to-becoming-law/>.



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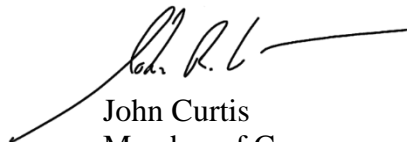
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