

May 15, 2023

The Honorable Joe Manchin
Chairman
Senate Energy and Natural Resources Committee

The Honorable Bruce Westerman
Chairman
House Natural Resources Committee

The Honorable John Barrasso
Ranking Member
Senate Energy and Natural Resources Committee

The Honorable Raul Grijalva
Ranking Member
House Natural Resources Committee

Dear Chairman Manchin, Ranking Member Barrasso, Chairman Westerman, and Ranking Member Grijalva,

Thank you for your continued work to improve forest restoration and reduce wildfire risk. We, the undersigned conservation organizations, are writing because of the urgent need for a solution to the *Cottonwood* decision which hampers the ability of federal forest managers to protect and restore our forest ecosystems. Senator Steve Daines’s *Cottonwood* proposal (S. 1540) and Representative Matt Rosendale’s Forest Information Reform Act (H.R. 200) would provide a permanent fix to the problems resulting from the *Cottonwood* decision.

The Obama administration warned that *Cottonwood* could “cripple” the Forest Service’s ability to restore forests and distract the Fish and Wildlife Service from recovering species. Congress heeded this warning by enacting a partial solution in the 2018 Consolidated Appropriations Act, but that fix expired in March. If Congress does not act soon, urgently needed forest restoration efforts could become mired in red tape and lengthy legal challenges. And the timing could not be worse—the Forest Service faces an 80-million-acre backlog in forest restoration projects, which is fueling a wildfire crisis that annually burns millions of acres, scorches wildlife habitat, and threatens Western communities.

When the Forest Service designs and implements a forest restoration project, it carefully considers how that project will affect endangered and threatened species. If a new species is listed, critical habitat is designated, or other new information arises while a project is being developed or implemented, the Service updates the analysis.

However, in the 2015 *Cottonwood v Forest Service* ruling, the Ninth Circuit held that the Endangered Species Act requires federal forest managers to halt projects—even those that might help wildlife—while they reanalyze the general forest plan, a document that remains in place for decades and has no on-the-ground impacts. This has been analogized to redoing a city’s zoning plan every time an issue arises in a single neighborhood, even if that issue could be and has already been dealt with at the neighborhood-level.

In the absence of a legislative fix, the Forest Service estimates that its work to restore and reduce wildfire risk in 87 forests across the West could grind to a halt as federal agencies waste time and money completing unnecessary and duplicative analysis—taking up to ten years and costing tens of millions of dollars. That’s time and money the agencies should be spending on the ground to restore forests and recover endangered species. No one wins if a species’ habitat goes up in smoke while the Forest Service is bogged down in litigation and paperwork.

With broad support for a permanent *Cottonwood* fix and a clear need for immediate action, it’s time for Congress to address this problem. Senator Steve Daines’s *Cottonwood* proposal (S. 1540) and Representative Matt Rosendale’s Forest Information Reform Act (H.R. 200) would allow forest managers to get back to restoring forests and recovering species. They deserve your support. We urge your respective committees to move forward with these important pieces of legislation.

Sincerely,

The Property and Environment Research Center (PERC)
ConservAmerica