

Congress of the United States

Washington, DC 20510

February 9, 2022

Ms. Martha Williams
Acting Director
U.S. Fish and Wildlife Service
1849 C St, NW
Washington, DC 20240

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

Dear Acting Director Williams and Chief Moore,

During a congressional hearing on October 2021, the U.S. Forest Service (USFS) testified that unless action is taken to resolve challenges stemming from the 2015 *Cottonwood Environmental Law Center v. U.S. Forest Service, (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. Despite the impending deadline, the U.S. Fish and Wildlife Service’s (USFWS) continues to delay finalizing a rule that would provide immediate relief to the agency. We urge you to work together to finalize the proposed rule, “Endangered and Threatened Wildlife and Plants; Regulations for Interagency Cooperation,” in order to preserve the forest planning process, remove legal ambiguities that obstruct important forest projects, and ensure finite agency resources are no longer diverted from conservation needs for this purely procedural exercise.

As you know, in 2015 the Ninth Circuit Court of Appeals ruled in *Cottonwood* that the USFS must reinitiate consultation on completed forest plans, contradicting the previous 10th Circuit Court ruling. This decision imposed a new, ambiguous standard for consultation on the agency effectively setting a litigation trap for USFS and subjecting the agency to a never-ending analysis loop-hole. Since 2015, there have been dozens of lawsuits and threats of lawsuits in some cases shutting down entire forests. This has blocked, and will continue to block, essential forest projects from moving forward, putting communities and wildlife at risk.

Resolving this issue has strong bipartisan roots—the federal government has maintained that forest plans are a completed federal action since the Clinton Administration and the Obama administration stated that the *Cottonwood* decision “has the potential to cripple forest management.” The partial fix enacted by Congress sunsets in March 2023. At that time, all forests, including those outside of the Ninth Circuit, will be at risk of being subject to this unjustified, ambiguous procedural requirement. The USFS made clear to Congress the impact this will have on their ability to manage the land, but furthermore, this threatens the ability of the Administration to deliver on promises to western communities to make significant strides to improve forest health.

While we strongly support finalizing the proposed rule as drafted, we understand this issue involves many equities and has a long legal history. For that reason we request that you work closely together to find an acceptable and lasting regulatory solution and stand ready to partner with your respective agencies on legislation to achieve this goal.

Sincerely,



Steve Daines
United States Senator



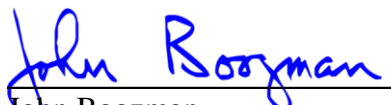
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Member of Congress



John Barrasso, M.D.
Ranking Member




Bruce Westerman
Member of Congress



John Boozman
United States Senator



Doug LaMalfa
Member of Congress



James E. Risch
United States Senator



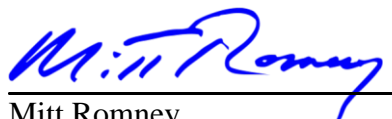
Dan Newhouse
Member of Congress



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United States Senator



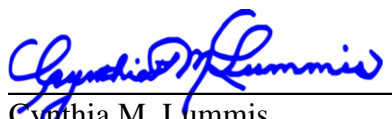
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Member of Congress



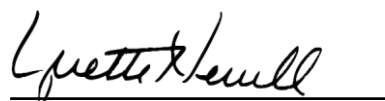
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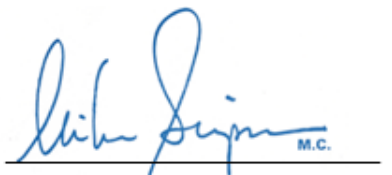
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