

December 02, 2016

The Honorable Lisa Murkowski
Chairman
Committee on Energy and Natural Resources
United States Senate
Washington, DC 20510

The Honorable Rob Bishop
Chairman
Committee on Natural Resources
United States House of Representatives
Washington, DC 20515

The Honorable Maria Cantwell
Ranking Member
Committee on Energy and Natural Resources
United States Senate
Washington, DC 20510

The Honorable Raul Grijalva
Ranking Member
Committee on Natural Resources
United States House of Representatives
Washington, DC 20515

Chairman Murkowski and Bishop, Ranking Member Cantwell and Grijalva,

A 2015 Ninth Circuit decision in *Cottonwood Environmental Law Center v. United States Forest Service*, 789 F.3d 1075 (*Cottonwood*), threatens to cripple a wide variety of activities on federal lands across the Western United States, including recreation, forest management projects, and grazing. Following the Supreme Court's recent denial of a request by the Department of Justice (DOJ) to review the case, we respectfully urge Congress to statutorily address this misguided decision.

The Ninth Circuit Court of Appeals ruled in *Cottonwood* that the U.S. Forest Service was required to reinitiate Endangered Species Act (ESA) consultation with the U.S. Fish and Wildlife Service (FWS) on a previously completed forest plan following the designation of critical habitat for Canada lynx, a species listed under the ESA. The DOJ, advocating for both the Forest Service and the USFWS, argued that re-initiation of consultation on completed forest plans was not required because completed forest plans are not ongoing actions. The Tenth Circuit Court agreed with this position in a previous case, increasing the need for the Supreme Court to review *Cottonwood* to address this direct conflict between circuit courts. Unfortunately, the Supreme Court denied DOJ's petition.

In an Amicus brief supporting DOJ's petition to the Supreme Court, our organizations highlighted how - if left to stand - *Cottonwood* would expose the Forest Service and Bureau of Land Management (BLM) to extensive litigation challenging individual projects due to the failure to re-initiate ESA consultation on the applicable forest plan -- even though the individual projects had been subject to extensive ESA consultation with the USFWS. Unfortunately, on November 22 a federal District Court in Montana blocked the Red Lodge Habitat and Vegetation Management Project on Montana's Custer National Forest based on the *Cottonwood* decision in litigation brought by the Alliance for the Wild Rockies. The Ninth Circuit has also temporarily blocked the collaboratively-supported East Reservoir Project on Montana's Kootenai National Forest. This is despite support for the project by environmental advocates such as The Lands Council, Montana Wilderness Association, and Yaak Valley Forest Council, and despite agency findings the project is not likely to adversely affect lynx habitat. With dozens of other copycat lawsuits officially noticed or pending in courts across the Ninth Circuit, *Cottonwood* represents a real and growing threat to critical land management activities across the West.

With more than 850 ESA-listed species in states included in the Ninth Circuit, *Cottonwood's* unnecessary and redundant requirement to re-initiate consultation at the plan-level not only results in a significant

burden on land management agencies, but also represents a massive increased workload for agency personnel at the USFWS and the National Marine Fisheries Service. An enormous amount of time and agency resources will be consumed performing ESA consultations on existing forest plans, rather than reviewing pending projects to reduce the risk of wildfire, improve wildlife habitat, or maintain access to our public lands. This will have a crippling impact on federal land management activities across the West while providing no conservation benefits to listed species.

Cottonwood represents an urgent threat to communities across the West. We respectfully urge you to work with your colleagues in Congress to promptly pass legislation to address the *Cottonwood* decision by codifying the legal position taken by DOJ.

Sincerely,

American Forest Resource Council
Public Lands Council
National Cattlemen's Beef Association
BlueRibbon Coalition
Montana Wood Products Association
Federal Forest Resource Coalition
Associated Logging Contractors – Idaho
Associated Oregon Loggers
Washington Contract Loggers
California Forestry Association
Douglas Timber Operators
Intermountain Forest Association