



As expected, the [Ninth Circuit has now upheld](#) the appropriations rider that directed the Fish and Wildlife Service to reissue its rule removing the gray wolf in Montana and Idaho from the list of endangered and threatened species. (Hat tip: [Endangered Species Law and Policy blog](#).) The panel (all drawn from the Ninth Circuit's "liberal wing") ruled that the appropriations rider had changed the underlying law, which is within Congress's constitutional powers, as opposed to directing a decision from the courts under the existing law, which is not.

As I [explained earlier](#), this decision was inevitable. Troubling as the political process of making substantive decisions by appropriations rider is, the Supreme Court has left little room for a judicial role in constraining that process.

Meanwhile, [FWS has indeed formally proposed](#) to delist the gray wolf in Wyoming as well, based on an agreement reached with the state last fall. But Wyoming's attempt to get its own appropriations rider failed, at least for the time being, [failed in December](#). Without that rider, Wyoming delisting is potentially vulnerable to lawsuits. A [peer review commissioned by FWS](#) provides fodder for that inevitable litigation, concluding that Wyoming's plan, as currently written, would leave the state's wolf population at substantial risk.

Stay tuned.