It looks like one of the losers in the budget compromise will be the wolf. The Tester-Simpson rider, attached to the compromise federal budget bill, will delist wolves from the federal endangered species list in Montana, Idaho, Washington, Oregon and Utah. Heather Hansen, at CU Boulder, has a detailed blog post on the wolf.

The bigger loser here is the integrity of our environmental laws. This rider, a joint effort of Senator Jon Tester (D-Mont.) and Rep. Mike Simpson (R-Idaho), is an exercise in arrogance, cowardice and congressional overreach. Oh, and let's not forget hypocrisy: both sides of the political aisle have complained incessantly about the evils of policy riders attached to must-pass appropriations bills, yet both sides continue to attach riders left and right. (If you need examples of congressional hypocrisy, just watch any random episode of The Daily Show.) Expect to hear a lot more about harmful environmental riders in the coming budget showdowns.

I bet you can guess which Democratic Senator faces an upcoming election and low poll numbers in his home state….

To understand how the rider works, you need to first know several pieces of background information. First, the Fish & Wildlife Service issued a decision in 2009 delisting the gray wolf in Idaho and Montana and parts of Washington, Oregon and Utah. Second, in *Defenders of Wildlife v. Salazar*, the District Court for the District of Montana declared that the 2009 delisting wrongfully removed ESA protections for the gray wolf species. And just hours after the agreement to include the rider, the District Court rejected a settlement in the case. That settlement would have delisted the wolf but maintained protections in parts of Washington, Oregon and Utah, as well as requiring independent scientific review.

The text of the compromise federal budget bill is now available online. Here is the text of the rider:

> SEC. 1713. Before the end of the 60-day period beginning on the date of enactment of this Act, the Secretary of the Interior shall reissue the final rule published on April 2, 2009 (74 Fed. Reg. 15123 et seq.) without regard to any other provision of statute or regulation that applies to issuance of such rule. Such reissuance (including this section) shall not be subject to judicial review and shall not abrogate or otherwise have any

> effect on the order and judgment issued by the United States District Court for the District of Wyoming in Case Numbers 09–CV–118J and 09–CV–138J on November 18, 2010.

Attaching this rider to the appropriations bill, instead of debating a separate policy bill, is cowardly. Assuming that Congress knows more about the wolves than all of the participants in the litigation is arrogant. For example, this rider is worse than the rejected settlement, in that it lacks any requirement for independent scientific review. But worst of all, whoever wrote the rider seems to believe that Congress stands above judicial review.

First, this rider would allow Fish & Wildlife to issue a final rule, ignoring any and all procedures under the Endangered Species Act and the Administrative Procedures Act. Because Congress wrote those Acts, it can (unwisely) allow an Executive agency to forgo any further legislative scrutiny. It is less clear, however, that Congress can exempt this final rule from judicial review. Yes, Congress can restrict the jurisdiction of the federal courts. But this rider eliminates all judicial review for this delisting rule.

Second, Congress purports to eliminate judicial review of the rider itself. Typically, when a bill is passed into law, it is subject to judicial review at least as to constitutionality. Congress would be well-advised to consider the ramifications of its actions here: do legislators really want their fellow members to have the ability to pass legislation that is unreviewable by the judiciary?

Third, this rider makes a mess of the Montana litigation. ~~It simultaneously reissues a delisting rule that the District Court held to violate the Endangered Species Act *and* implicitly protects that District Court decision. I am not even sure what to make of that contradiction, but it certainly means more lawyer's fees for the Montana litigation.~~ [Edit: Actually, the rider reissues the delisting rule, which the District Court of Montana held to violate the ESA. The rider protects a District Court of Wyoming decision that remanded the rule choosing to *not* delisting the wolf in Wyoming. Protecting the Wyoming decision, however, will not automatically delist the wolf in Wyoming. Nor will reissuing the rule. The status of the Montana decision is in limbo. See my review of wolf litigation for more.]

Oh, and go buy the book: Of Wolves and Men, by Barry Holstun Lopez.