

You wouldn't think courts would still be deciding, late in 2011, whether actions taken by the Clinton Administration were lawful. But they are. Late last month, [the Tenth Circuit upheld the Roadless Rule](#) for national forests issued at the very end of the Clinton presidency.

The Roadless Rule, which largely prohibited road construction and timber harvest in inventoried roadless areas, has been the subject of a game of judicial and executive ping-pong. Wyoming challenged the rule, and got it invalidated by the District of Wyoming federal court on the grounds that its issuance violated both NEPA and the Wilderness Act. Before the Tenth Circuit heard the government's appeal, the Bush Administration replaced the Roadless Rule with what it called the State Petitions Rule, giving states the first crack at deciding how inventoried roadless areas within their boundaries should be managed. The Tenth Circuit therefore dismissed the appeal as moot and vacated the District Court opinion.

But then the Ninth Circuit struck down the State Petitions Rule, holding that the Bush administration had failed to comply with NEPA and the consultation requirement of the Endangered Species Act. After the Ninth Circuit reinstated the Roadless Rule, Wyoming renewed its challenge to that rule. The District of Wyoming once again ruled for Wyoming, and enjoined implementation of the Roadless Rule nationwide. Environmental groups appealed, and were later joined by the Obama Administration. Now, more than 3 years after the District of Wyoming issued its decision, the Tenth Circuit has finally reversed.

The Circuit Court rejected the claim that the Roadless Rule "created de facto wilderness areas" in violation of the Wilderness Act, which provides that only Congress can designate an area as statutory wilderness. It noted that management of wilderness areas is more restrictive in several respects than management of areas covered by the Roadless Rule. The Tenth Circuit also held that the Roadless Rule is within the broad discretion granted the Forest Service by its governing statutes, and that the Forest Service complied with NEPA in issuing the rule.