As the current U.S. Supreme Court term winds down–the justices' final opinions are due next week–attention begins to turn to the Court's next session, scheduled to begin in October 2013. Until this week, the justices had one environmental law case on their docket for next year: *U.S. Forest Service v. Pacific Rivers Council*, No. 12-625. Not anymore.

This week, the Court issued a cryptic order dismissing the *Pacific Rivers* case as moot. But it's the back-story that's interesting–and troubling.

A bit of background: in 2012, the Ninth Circuit Court of Appeals issued its decision in *Pacific Rivers*, upholding environmentalists' claims that the environmental impact statement prepared by the U.S. Forest Service in connection with its Sierra Nevada Forest Plan (encompassing 11 different U.S. forests within the Sierra Nevada range) was defective under the National Environmental Policy Act. As recounted in an earlier Legal Planet post, among the Ninth Circuit's criticisms of the Forest Service's EIS was that the document was replete with obfuscating and Orwellian language that undermined the EIS's value as a source of environmental information for the interested public.

But the environmentalists' victory was short-lived. Once the Supreme Court justices granted certiorari earlier this year, the environmentalists immediately had two strikes against them. First, the Supreme Court had thus granted review in a "pro-environmental" decision from the Ninth Circuit. Recent judicial history demonstrates that such Ninth Circuit rulings have a short shelf life: the Supreme Court already reversed two such Clean Water Act rulings from the Ninth Circuit earlier this year, continuing a strong trend of Supreme Court reversals of the Ninth Circuit in environmental cases over the past several years. Second, and as legal observers including Richard Lazarus have noted, environmentalists have never won a NEPA case in the Supreme Court–not one–over the entire 44-year history of that iconic environmental law.

So Pacific Rivers Council and its environmental allies could perhaps be forgiven for seeing the jurisprudential writing on the wall and (to mix metaphors) folding their hand. They reportedly "killed the case" by abandoning it and agreeing with the federal government to have the prior Ninth Circuit ruling in Pacific Rivers Council's favor vacated and dismissed as moot. The goal, of course, was to avoid a broad, unfavorable NEPA ruling by the Supreme Court. With the justices' agreement to dismiss the case, the environmentalists have achieved that objective.

But the dismissal in *Pacific Rivers Council* raises some difficult questions. First, one must wonder what the judges of the Ninth Circuit, who wrote what this observer believes was a thoughtful and well-reasoned decision, must think of the actions by Pacific Rivers Council to

jettison that decision without so much as a defense on the merits before the Supreme Court? Second, and more broadly, have the results in environmental cases coming before the Supreme Court become so predictable that litigants will effectively confess error and abandon their defense of favorable lower court rulings if and when a case reaches the Supreme Court?

Troubling questions for troubling times…