

## **Federal Court reinstates the 2001 Roadless Area Conservation Rule**

*By Deb Overn, Wild Connections President*

I hope you read the newspapers reports and our e-news about the important decision issued October 22, 2011, called *Wyoming v. U.S. Forest Service et al.* A unanimous court affirmed the 2001 Roadless Area Conservation Rule (the “2001 Rule”), which prevents road construction in 4 million acres of Forest Service land in Colorado and 58 million acres nationwide. But though it is a great victory for conservation, there is still work to be done to ensure the protections of the 2001 Rule stay in place permanently in Colorado.

Explaining the case and its effect is difficult because it involves many court decisions and administrative actions. It all started in 2001, at the end of the Clinton administration, when the Forest Service enacted the 2001 Rule after a long public process. Soon after, Wyoming sued the Forest Service, claiming that implementation of the 2001 Rule violated NEPA, the Wilderness Act, and other laws. Many environmental groups joined the case to support the Forest Service, arguing that the Forest Service had followed all required processes and the 2001 Rule was valid. However, on July 14, 2003, the U.S. District Court agreed with Wyoming, and invalidated the 2001 Rule.

The Forest Service, by then under the Bush administration, did not appeal this decision. However, the environmental groups did appeal, and the case moved to the Tenth Circuit. Unfortunately, while that appeal was pending, the Bush administration eliminated the 2001 Rule and in May 2005 replaced it with a “State Petitions Rule” that allowed states to “petition” the Forest Service to shift certain management decisions from the federal government to the states. Because this “Petitions Rule” legally superceded (*i.e.*, replaced) the 2001 Rule, the Tenth Circuit court dismissed the appeal of the 2001 Rule as moot.

Several states and environmental groups challenged the Petitions Rule in the U.S. District Court for Northern California. On October 11, 2006, the California court found the Petitions Rule violated NEPA and the Endangered Species Act, invalidated the Petition Rule, and reinstated the 2001 Roadless Rule. Still keeping up?

Because the 2001 Roadless Rule was once again the law of the land, in 2006 Wyoming renewed the challenge it had brought years before claiming implementation of the 2001 Rule violated NEPA and other federal laws. And on August 12, 2008, the Wyoming district court ruled—for the second time—that implementation of the 2001 Roadless Rule violated the Wilderness Act and NEPA. The Wyoming Court issued a permanent, nationwide injunction preventing the Forest Service from following the 2001 Rule. Environmental groups appealed that decision to the Tenth Circuit, and the result of that appeal was the order issued October 22 stating that the 2001 Rule was valid.

Confusing, isn't it? Because of all the conflicting court orders, Colorado opted to create a state-specific program under the Petitions Rule as an “insurance policy.” The concern was

that roadless areas were vulnerable to development since it was not clear which law protected them. The Colorado plan was devised by a legislatively created Roadless Task Force. That Task Force held nine public meetings, reviewed more than 40,000 public comments, and made recommendations to the governor. Wild Connections and other Colorado conservation groups participated in the Colorado rule-making process; since it was unclear what the courts would do, we wanted to advocate for the best Colorado rule possible. We worked hard to get out information and encouraged people to attend the meetings and write comments asking the Task Force to protect all of Colorado remaining roadless areas. You may have attended one of the public meetings or sent written comments.

Our efforts did not produce the results we wanted. The draft Colorado Roadless Rule is much weaker than the 2001 Roadless Rule; among other problems it validates oil and natural gas leases issued in roadless areas since January 2001, allows road-building, installation, and operations related to certain utilities and mines, and allows ski area operation and expansion into certain roadless areas. The Colorado Rule does establish "upper-tier" roadless areas that would receive the same strong protections as the 2001 federal Roadless Rule, but those protections would apply only to 12% of Forest Service roadless areas instead of all of them. Colorado is very close to sending final recommendations on the Colorado Roadless Rule to the Forest Service.

But wait, didn't the Tenth Circuit opinion reinstate the 2001 Rule across the nation, you are asking? Yes it did. But it did not prohibit states from seeking their own roadless area rules. In fact, the Forest Service says the ruling will not affect its review of the Colorado plan, and that it will consider the draft Colorado Roadless Rule and follow through on an implementation decision.

That's where the continued work comes in. Many environmental groups, including Wild Connections, are urging the Forest Service to not consider the draft Colorado Roadless Rule and instead apply the 2001 Roadless Rule as directed by the court. Our position is that the Tenth Circuit's unanimous and clear reinstatement of the 2001 Roadless Rule eliminates any need for a separate Colorado plan. Colorado no longer needs an "insurance policy" to protect its areas from legal uncertainty; the law is now clear, at least in the Tenth Circuit, of which Colorado is a part.

Wild Connections and the conservation community will be strongly advocating that the Colorado Roadless Rule be dropped and the 2001 Roadless Rule be enforced in Colorado just as it is across the rest of the country. The Forest Service has said it could issue a decision on the Colorado Roadless Rule early next year. Check the WC website and watch for our e-news to see how and when you can help. We are so close, and by continuing to work together we can end this decade old issue and ensure that our roadless areas are protected well into the future.