



LINCOLN COUNTY MONTANA

Resolution 2021-24

RESOLUTION TO JOIN OTHER COUNTIES AND GROUPS IN PROTECTING AND DEFENDING THE DECISIONS OF THE U.S. FISH AND WILDLIFE SERVICE BEING CHALLENGED IN THE LYNX AND THE WOLVERINE CASES

A **RESOLUTION** authorizing and consenting to Lincoln County, State of Montana, to join in and participate in, as part of a class consisting of other counties and recreational interest groups, in certain litigation described herein and for the purposes set forth herein, in order to protect and preserve public access to federal lands, and to protect and preserve economic sustainability for said county and its citizens.

THE BOARD OF COUNTY COMMISSIONERS FOR LINCOLN COUNTY, MONTANA FINDS:

A certain civil action is now pending before the United States District Court for the District of Montana (Missoula Division), Case No. 9:20-cv-00173-DWM, challenging and seeking to reverse that certain decision by the United States Fish and Wildlife Service, dated December 20, 2017, to forego ESA recovery planning for the Canada lynx and determining that Canada lynx have recovered and are not a threatened species under the ESA (hereinafter "the Lynx Case"); and

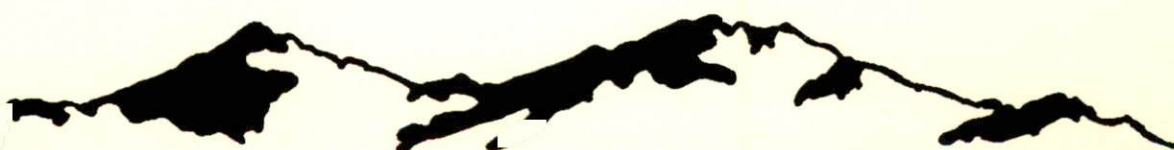
A certain civil action is now pending before the United States District Court for the District of Montana (Missoula Division), Case No. 9:20-cv-00181-DWM, challenging and seeking to reverse that certain decision by the United States Fish and Wildlife Service, dated October 13, 2020, that the North American wolverine is not in need of ESA protection, is not a threatened species, and thereby withdrawing a proposed rule to list said species as threatened under the ESA (hereinafter "the Wolverine Case"); and

The citizens, businesses, property owners and visitors of this county share a common appreciation of and for federally-owned and managed lands within this county, including the geological areas and natural features encompassed thereby, the forestlands encompassed thereby, the river systems encompassed thereby, and the recreational access and opportunity provided thereby; and

This county, citizens, businesses, property owners and visitors, use and enjoy a variety of access, recreational, aesthetic, and commercial activities within the federally-owned and managed lands within this county, which requires continued access and use of federal public lands, including winter motorized recreational use thereof, particularly by snowmobile; and

The local economy of this county is significantly stimulated by winter recreation activity, motorized and non-motorized, as well as non-winter recreation activity, on and about federal public lands; and

Motorized travel on federal lands is a tremendous recreation asset, as well as an increasingly





LINCOLN COUNTY MONTANA

significant economic asset for this county and, accordingly, preserving responsible motorized access to federal lands is an extremely high priority for the county and for stabilization and sustenance of the local economy; and

This county, through its representatives and its citizens, regularly attends public meetings, submits input, and otherwise participates in collaborative groups, planning processes, research projects and study activities of federal agencies, including those initiated by or coordinated by the U.S. Fish and Wildlife Service, and is otherwise actively involved in travel management planning and land use planning activities on lands owned and/or managed by the U.S. Forest Service and the U.S. Bureau of Land Management, which often involves review, comment and analysis upon biological opinions, as well as other NEPA and ESA implications; and

This county has a significant interest in the outcome of the Lynx Case and the Wolverine Case as a decision in favor of the litigating plaintiffs threatens the economic vitality of the local economy and presents the likelihood of loss of winter motorized access for snowmobiling and other recreation, leading inevitably to a decline in the local economy, the loss of recreation and aesthetic enjoyment, including for simple enjoyment of the environment, appreciation of historic and cultural resources, for the intrinsic enjoyment of leisure travel in nature, to sightsee, to hunt, to fish, to camp and adventure, to view wildlife, to view plants, to bird watch, to seek thrill, to engage in photography, and to entertain family and friends; and

Any ESA action with respect to lynx and/or wolverine that is unwarranted or unfounded will likely result in reduced winter motorized recreation opportunity in this county, will harm local economic interests, and will impair the ability of all persons to use and enjoy federal public lands in this county; and

**NOW, THEREFORE, BE IT RESOLVED by THE BOARD OF COUNTY
COMMISSIONERS FOR LINCOLN COUNTY, MONTANA**

that the county desires to protect and defend the decisions of the U.S. Fish and Wildlife Service being challenged in the Lynx Case and the Wolverine Case, and it is in the best interests of the county to participate in the Lynx Case and the Wolverine Case for that purpose and for the purpose of protecting and preserving the interests of the county expressed above, and to do so by intervening in said cases, and if intervention is not possible then by appearing before the court as a friend of the court to express the interests of the county in the litigation and its outcome, and
THEREFORE:

The county is authorized to, and shall take steps to, obtain intervenor status (or alternatively, amicus curiae status) in the Lynx Case; and

The county is authorized to, and shall take steps to, obtain intervenor status (or alternatively, amicus curiae status) in the Wolverine Case; and

Intervention (or alternatively, amicus curiae status) shall be sought in conjunction with, and in common





LINCOLN COUNTY MONTANA

with, as part of a class, similar relief sought by nonprofit motorized recreation groups and interests seeking to achieve the same purposes of the county; and

The county is authorized to direct, employ and engage private legal counsel for the foregoing purposes, and to otherwise represent the county in the proceedings and before the relevant court, and to take all other reasonable and necessary actions to advance and promote the interests of the county in the said proceedings, said legal counsel consisting of Sawtooth Law Offices, PLLC (of Boise, Idaho) as lead counsel, and Monforton Law Offices, PLLC (of Bozeman, Montana) as local counsel, provided that the professional fees of said counsel shall not be the obligation of the county and shall be paid from and by the nonprofit recreation groups with whom the county will seek relief in common; and

That the county designates Jerry Bennett as lead contact for the county in achieving and effectuating the foregoing, who is authorized to bind the county in this regard and who shall regularly report to the county on the course of the relevant proceedings (as litigation proceedings reports are expected to be made in executive session).

END OF RESOLUTION

Approved as to Form:

Marcia Boris
Marcia Boris, County Attorney

Date presented to the Board 7/28/2021 Approved (X) Disapproved () Amended ()

Adopted this 28th day of July 2021.

LINCOLN COUNTY BOARD OF COMMISSIONERS

Jerry Bennett
Jerry Bennett, Chair

ATTEST:

Robin A. Benson
Robin A. Benson, Clerk of the Board

Boise Office

1101 W. River St.
Suite 110
Boise, Idaho 83702
Tel. (208) 629-7447

Challis Office

1301 E. Main Ave.
P.O. Box 36
Challis, Idaho 83226
Tel. (208) 879-4488

Twin Falls Office

236 River Vista Place
Suite 301
Twin Falls, Idaho 83301
Tel. (208) 969-9585

Fax (all offices)
(208) 629-7559



SAWTOOTH LAW

OFFICES, PLLC

Thursday, July 22, 2021

David P. Claiborne *

S. Bryce Farris

Evan T. Roth

Daniel V. Steenson

Andrew J. Waldera **

Brian A. Faria

Patxi Larrocea-Phillips

Matthew A. Sturzen

Katie L. Vandenberg-Van Vliet

James R. Bennetts (retired)

Attorneys licensed in Idaho
** Also licensed in Washington*
*** Also licensed in Oregon*

[Name of County]

[Preferred Contact]

[Mailing Address]

[Contact Email]

[Contact Phone]

The above-identified county hereby engages and employs Sawtooth Law Offices, PLLC ("Lawyers") for the purposes and on the terms expressed herein. The purpose of this engagement is for the Lawyers to represent and advocate for the interests of the county as intervenors (or friends of the court) in cases identified as the **Lynx Case** (United States District Court for the District of Montana (Missoula Division), Case No. 9:20-cv-00173-DWM) and the **Wolverine Case** (United States District Court for the District of Montana (Missoula Division), Case No. 9:20-cv-00181-DWM) for the purpose of defending the federal agency decisions at issue therein, and to prevent ESA listing or other protections with respect to lynx and wolverine based on presently known science, data and federal agency determinations. The county acknowledges said representation will be provided in common with other similarly situated counties and nonprofit motorized recreation groups in order to protect and preserve public access to federal lands, and to protect and preserve economic sustainability for the county and its citizens.

The county retains and employs Lawyers to act as the attorney and counselor at law for the county in the identified lawsuits only. The county acknowledges that Lawyers have made no representations, guarantees, or warranties regarding the results of Lawyers' efforts. The county grants Lawyers the authority to seek intervention, file suit, defend against suit, compromise, or settle all claims in or out of court, if Lawyers deem it advisable, and only with the consent of the county.

www.sawtoothlaw.com

The county designates the preferred contact named above as the point of contact for Lawyers to communicate with, and from whom to receive direction from the county for effecting the purposes of representation. The county authorizes Lawyers to engage local counsel on its behalf to effect the purposes of the representation, namely Monforton Law Offices, PLLC (of Bozeman, Montana). The county acknowledges and agrees that the professional fees of Lawyers, and Lawyers' local counsel, shall not be the obligation of the county and shall be paid from and by the nonprofit motorized recreation groups with whom the county will seek relief in common (e.g., Idaho State Snowmobile Association, Idaho Recreation Council, *et al.*). The county acknowledges and understands that, as in all litigation, there is risk of an unfavorable outcome and that a court may award court costs or attorney fees as a result thereof. To the extent that occurs, and the nonprofit motorized recreation groups with whom the county will seek relief in common are unable to satisfy that liability, there is a possibility of liability to the county.

Although it is not likely, it is possible that there would be a conflict of interest that is not waivable as a result of Lawyers' representation of other clients while serving as the county's *ad hoc* counsel in this engagement, and in such event the county agrees that Lawyers may withdraw from this engagement provided that there is adequate time for the county to obtain replacement counsel, and provided that court approval is obtained (if required).

The terms of the foregoing are acceptable to the county and therefore this engagement letter is accepted by the county and Lawyers this ____ day of July, 2021.

Sawtooth Law Offices, PLLC

County Representatives



by David P. Claiborne

Commissioner

Commissioner

Commissioner



Prosecutor

Clerk

Return by Email to david@sawtoothlaw.com