

Mark S. Connell  
Karen P. Kane  
**CONNELL LAW FIRM**  
502 West Spruce  
P.O. Box 9108  
Missoula, Montana 59807  
Telephone: (406) 327-1517  
Facsimile: (406) 327-1518  
[m.sc.clf@bigsky.net](mailto:m.sc.clf@bigsky.net)  
[kpk.clf@bigsky.net](mailto:kpk.clf@bigsky.net)

**FILED**  
JUN 21 2011  
By PATRICK E. DUFFY, CLERK  
DEPUTY CLERK, MISSOULA

Ted B. Lyon (*pro hac vice application pending*)  
**TED B. LYON & ASSOCIATES**  
18601 LBJ Freeway, Suite 525  
Mesquite, Texas 75150  
Telephone: (972) 279-6571  
Facsimile: (972) 279-3021  
[tblyon@tedlyon.com](mailto:tblyon@tedlyon.com)

*Attorneys for Defendants-Intervenor-Applicants  
Rocky Mountain Elk Foundation, Inc., Arizona Sportsmen for Wildlife,  
Big Game Forever, LLC, Idaho Sportsmen for Fish and Wildlife,  
Montana Sportsmen for Fish and Wildlife, the Mule Deer Foundation,  
Sportsmen for Fish and Wildlife, and the Wild Sheep Foundation*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION**

ALLIANCE FOR THE WILD  
ROCKIES, *et al.*,  
Plaintiffs,

v.

§  
§  
§ CV 11-70-M-DWM  
§ CV 11-71-M-DWM  
§



Pursuant to the Court's inherent power to preserve the status quo pending an appeal, and as required under Federal Rule of Appellate Procedure 8(a)(1)(A), the Rocky Mountain Elk Foundation, Inc., Arizona Sportsmen for Wildlife, Big Game Forever, LLC, Idaho Sportsmen for Fish and Wildlife, Montana Sportsmen for Fish and Wildlife, the Mule Deer Foundation, Sportsmen for Fish and Wildlife, and the Wild Sheep Foundation (collectively "Wildlife Conservation Groups") respectfully move for a stay of all proceedings in this matter pending their appeal from the Court's June 1, 2011 Order (Doc. No. 38) denying their motion to intervene.

Prior to filing this motion, counsel for the Wildlife Conservation Groups contacted counsel for Plaintiffs and Defendants. Counsel for Plaintiff Alliance for the Wild Rockies oppose the motion. Counsel for Defendants takes no position on the motion. Counsel for Plaintiff Center for Biological Diversity did not respond to the Wildlife Conservation Groups' inquiry in time to include its position in the filing of this motion.

On June 16, 2011, the Federal Defendants' Consolidated Response to Plaintiffs' Motion for Summary Judgment and Brief in Support of Cross Motion for Summary Judgment (Doc 57) was filed. In their brief, the federal defendants failed to make essential arguments in defense of the constitutionality of Section

1713 that the Wildlife Conservation Groups would make if allowed to intervene, serving to further confirm that the federal defendants do not adequately represent the Wildlife Conservation Groups' interests in this litigation.

The arguments that the federal defendants failed to make and that the Wildlife Conservation Groups would make if allowed to intervene in this action include: (1) when a statute is fairly subject to differing interpretations as to its constitutionality, a Court must choose the constitutional interpretation; (2) a law that is constitutional on its face does not become unconstitutional if drafted or adopted for allegedly unconstitutionally based motives; (3) legislation does not become unconstitutional simply because it renders a pending appeal moot; and (4) Plaintiffs lack and should not be allowed to assert third-party prudential standing.


In further support of Section 1713's constitutionality, the Wildlife Conservation Groups would also present additional arguments related to the legislative history of Section 1713 that the Court needs to consider in reaching its decision.

This case should be stayed pending appeal of the Court's denial of the Wildlife Conservation Groups' Motion to Intervene, as the groups will be denied any meaningful participation in the case, and therefore any ability to defend their legally-protectable interests, in the absence of a stay.

Accordingly, for the foregoing reasons and for the reasons stated in the accompanying memorandum in support of this motion, the Wildlife Conservation Groups respectfully request that this Court stay all further proceedings in this matter pending resolution of the Wildlife Conservation Groups' appeal.

DATED this 21<sup>st</sup> day of June, 2011.

**CONNELL LAW FIRM**



Mark S. Connell

*Attorney for Defendants-Intervenor-Applicants Rocky Mountain Elk Foundation, Inc., Arizona Sportsmen for Wildlife, Big Game Forever, LLC, Idaho Sportsmen for Fish and Wildlife, Montana Sportsmen for Fish and Wildlife, the Mule Deer Foundation, Sportsmen for Fish and Wildlife, and the Wild Sheep Foundation*

**CERTIFICATE OF COMPLIANCE**

Pursuant to L.R. 7.1(d)(2)(A) and (E), I hereby certify that this Wildlife Conservation Groups' Motion for a Stay Pending Appeal is printed with a proportionately-spaced Times New Roman text with a typeface of 14 points, is double spaced, and the word count of the brief is calculated by Microsoft Word to be 460 words.

DATED this 21<sup>st</sup> day of June 2011.



Mark S. Connell

**CERTIFICATE OF SERVICE**

I hereby certify that on June 21, 2011, I filed the foregoing document with the clerk of the U.S. District Court for the District of Montana which will send a Notice of Electronic Filing to all counsel of record.



Mark S. Connell