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**MONTANA NINETEENTH JUDICIAL DISTRICT COURT  
LINCOLN COUNTY**

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MONTANA ENVIRONMENTAL INFORMATION CENTER,  v.  LINCOLN COUNTY,  Defendant	Plaintiffs,  CAUSE NO. _____  <b>COMPLAINT AND APPLICATION FOR WRIT OF MANDATE</b>
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Comes now, the Montana Environmental Information Center (MEIC), through counsel and for its complaint against Lincoln County, Montana, states and alleges as follows:

**INTRODUCTION**

1. This action challenges the failure of Lincoln County, Montana ("Lincoln County") to provide public records to Plaintiff in response to an information request, as required by Montana's fundamental right to examine public documents under Article II, § 9.

2. The records in question center around Lincoln County’s decision to submit a rulemaking petition to the Montana Department of Environmental Quality (“DEQ”) to revise site-specific water quality standards for Lake Koocanusa.

3. For decades, coal mines in Canada’s Elk River Valley have leached harmful selenium into Lake Koocanusa—a 90-mile reservoir that stretches across the Montana-Canada border. Since 1986, selenium levels have more than quadrupled in the Elk River, contributing to more than 95 percent of the selenium pollution in Lake Koocanusa. The pollution in the lake is worsening as coal mining continues to expand.

4. Excessive selenium causes deformities and low reproductive rates in affected aquatic species, specifically threatening Lake Koocanusa’s native West Slope Cutthroat Trout and the already endangered White Sturgeon populations in downstream waters of the Kootenai River in Montana and Idaho.

5. To protect Montana’s water and its aquatic species from selenium pollution, in 2020 the Montana Board of Environmental Review promulgated rules setting a site-specific selenium water quality standard of 0.8 µg/L for Lake Koocanusa.

6. On July 2, 2025, Lincoln County submitted a formal Petition for Rulemaking to DEQ to weaken the water quality standards for Lake Koocanusa.

7. On July 9, MEIC submitted a records request to Lincoln County, requesting the County to provide all documents related to the petition. It has now been over six months since the original request, and Lincoln County’s actions could best be

characterized as “radio silence” – it has not provided the requested information, nor has it provided a reason for its inaction.

## **PARTIES, JURISDICTION, AND VENUE**

8. Plaintiff MEIC is a non-profit organization with over a half-century history of defending the public interest in protecting and restoring Montana’s environment. MEIC has thousands of members across Montana and works to ensure that government and private entities abide by Montana’s clean water laws and regulations, thereby helping to provide cleaner water for all, as guaranteed by Montana’s Constitution. The records sought in this action are requested in direct support of these efforts.

9. Defendant Lincoln County is a local government subject to Montana’s right to know and public information statutes.

10. Jurisdiction is proper in this Court pursuant to §§ 2-6-101, et seq; 27-8-101, et seq., and 27-26-101, et seq., MCA.

11. Venue is also proper pursuant to § 25-2-126, MCA.

## **BACKGROUND**

12. This action challenges the failure of Lincoln County, Montana, to provide public records and an accompanying privilege log to Plaintiffs in response to an information request, as required by Montana’s fundamental constitutional right to examine public documents under Article II, § 9.

13. For several decades, certain coal mines have leached selenium pollution from their operations into adjacent waterways, which travel downstream and into

Montana's Lake Koocanusa and Kootenay River. Over the past 40 years selenium levels have increased dramatically in Canada's Elk River and the downstream waterbodies. In November 2023, the U.S. Geological Survey characterized the pollution from Elk Valley Resource's mining operations as "among the largest documented increases in the primary literature," noting a sixfold increase in Selenium and that water quality standards are "now being regularly exceeded on both sides of the border."<sup>1</sup>

14. Excessive selenium pollution is devastating to aquatic species, causing deformities and extremely low reproductive rates. The pollution is specifically threatening to the native West Slope Cutthroat Trout and the endangered White Sturgeon in the Koocanusa Reservoir and Kootenai River.

15. In response to the well-documented selenium impacts to Montana's waters, the Montana Board of Environmental Review ("Board") promulgated ARM 17.30.632(7)(a) on December 24, 2020, setting a site-specific water quality standard of 0.8 µg/L for Lake Koocanusa. The selenium standard, which was recommended by the Montana Department of Environmental Quality (DEQ) and later approved by the U.S. Environmental Protection Agency (EPA), was scientifically calculated to protect all aquatic species from the harms of selenium pollution.

16. Approximately six months after the rule was adopted, Teck (the predecessor of Elk Valley Resources) and Lincoln County petitioned the Board to review the rule under Montana's "Stringency Statute". Section 75-5-203(4), MCA.

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<sup>1</sup> <https://pubs.acs.org/doi/10.1021/acs.est.3c05090>

17. After a limited review process, the Board issued a Final Order attempting to unlawfully reverse its earlier promulgation of Lake Koocanusa's protective selenium rule and ordered remedies that exceed its statutory authority. The Board's Final Order, which was not based on new facts or science, has generated significant controversy and is now the subject of two lawsuits pending in the First Judicial District regarding the limits of the Board's authority and the final selenium rule. These cases (CDV-2023-21 and CDV-2023-366) have been consolidated.

18. Those cases are ongoing, but in the middle of that process, on or about June 2, 2025, Lincoln County filed a rulemaking petition with the DEQ to increase the limit from 0.8 µg/L to 1.5 µg/L. In the petition, Lincoln County also sought to amend the definition of "steady state."

19. Interestingly, it wasn't until two days later, on June 4, 2025, that Lincoln County Commission approved the filing of the petition. In the meeting minutes from June 4, 2025, the Commission stated that it was approving the petition based "on the documents provided." But those documents are not in the minutes.

20. On July 9, 2025, MEIC submitted a right to know request to Lincoln County seeking information related to the Commission's decision to file the petition. Specifically, MEIC sought "all documents, records, information, and materials in the possession of the Lincoln County related to the Petition." This request was first emailed to the Lincoln County Clerk and Recorder, as well as to Lincoln County's attorneys, who had been identified in the petition.

21. In response, on the same day, the Lincoln County Clerk and Recorder advised MEIC to submit the request using the public information request form.

22. MEIC resubmitted its request using the preferred form, also on July 9, 2025. In the resubmission, MEIC further requested that the Clerk and Recorder let it know if any further documentation was necessary.

23. The Clerk and Recorder never responded.

24. On or about August 28, 2025, MEIC followed up with the Clerk and Recorder and advised her that it had been 50 days since the request was submitted. MEIC further explained that Lincoln County's obligation was to provide, within a timely manner, either the documents or a time estimate for the request.

25. Lincoln County never responded to the August 28, 2025, email.

26. To date, Lincoln County has not provided the requested information, nor an estimate for when the request would be fulfilled.

### **COUNT I – VIOLATION OF RIGHT TO KNOW AND IMPLEMENTING STATUTES**

27. The preceding paragraphs are realleged as though set forth in full hereunder.

28. Article II, Section 9 of the Montana Constitution gives Montana citizens a fundamental right to examine documents in the hands of government agencies.

29. Section 2-6-1006(2)(a), MCA, requires Lincoln County to respond to a request for information in a timely manner, or to provide an estimate of the time it will take to respond and the anticipated cost of the request. Upon the denial of a request, or a

county's failure to comply with the provisions of § 2-6-1006, MCA, the requesting party may bring a suit challenging the denial or failure. Section 2-6-1009, MCA.

30. Pursuant to § 2-6-1009, MCA, Lincoln County's de facto denial, or failure to comply with its constitutional obligation by failing to respond at all, constitutes wrongful withholding of information, and MEIC is entitled to bring this action.

31. These actions violate both §§ 2-6-1001 et seq. MCA, as well as Article II, § 9 of the Montana Constitution.

32. Plaintiff is thus entitled to a declaration that Lincoln County's failure to provide the requested information violates § 2-6-1006, MCA, and Article II, § 9.

33. Plaintiff is also entitled to the requested information.

## **COUNT II –REQUEST FOR WRIT OF MANDAMUS**

34. The preceding paragraphs are realleged as though set forth in full hereunder.

35. Lincoln County has a clear legal duty, pursuant to MCA § 2-6-1006, to provide the requested information to MEIC or provide an estimate of the time it would take to produce the information and the anticipated cost. Lincoln County did neither.

36. Lincoln County has thus failed to comply with its clear legal duty, as required by § 2-6-1006, MCA, and Article II, Section 9, to provide the requested documents.

37. MEIC has no other plain, speedy, or adequate remedy in the course of the law to force Lincoln County to comply with its lawful document request. The requested documents are not otherwise available to petitioners.

38. MEIC is entitled to alternative and peremptory writs of mandate requiring Lincoln County to provide the information set forth in its information request.

## **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for the following:

1. A declaration that Lincoln County violated § 2-6-1006, MCA, by refusing to produce the requested information;
2. An alternative or peremptory writ of mandate requiring Lincoln County to provide the requested information;
3. Attorney fees and costs pursuant to § 2-6-1009(3), MCA; § 27-8-313, MCA; § 2-3-221, MCA; the Private Attorney General Doctrine, or any other basis.
4. Any other relief the Court deems just and proper.

Dated this 23rd day of January 2026.

By /s/Robert Farris-Olsen

Robert Farris-Olsen

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