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DAILY INTER LAKE

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Judge limits late snowmobiling season

By JIM MANN
The Daily Inter Lake

A federal judge has shot down extended-season snowmobiling on the Flathead National Forest, finding that the forest's road-density rules for grizzly bears apply to snowmobiling as well.

U.S. District Judge Donald Molloy found that the U.S. Fish and Wildlife Service's biological opinion for Amendment 24 to the Flathead Forest Plan was flawed. The May 28 ruling backed the main argument in a lawsuit filed by the Swan View Coalition and Friends of the Wild Swan, two local environmental groups.

The judge upheld the Flathead Forest on other claims in the lawsuit. Molloy ruled that Forest Plan Amendment 19, adopted in 1995, includes provisions that restrict motorized activity in grizzly bear habitat when bears are emerging from their dens. The Forest Service had maintained that Amend-

ment 19 was never designed to manage snowmobile use but was intended to reduce road densities to improve grizzly bear habitat security. **AMENDMENT 24** was adopted in 2005 to establish areas and seasons for snowmobiling, with allowances for snowmobiling to

continue as late as May 31 in some areas. Joe Krueger, the Flathead Forest's environmental coordinator, said the amendment was partly intended to separate snowmobiling from Amendment 19, which prohibits motorized activity in

See JUDGE on Page A3

Upsets 'stunned' politicians

Twin shockers mark primaries in Montana

By MATT GOURAS and MARY CLARE JALONICK
The Associated Press

HELENA — This week's spotlight may have been on the presidential primary in Montana — but it was two fringe candidates who stole the show by nabbing major party nominations for Congress.

The biggest shock? The 85-year-old Republican U.S. Senate candidate who has run for political office at least 16 times for three different parties over 40 years. He's also more liberal than the Democratic incumbent when it comes to handgun restrictions and other issues.

For Montana Democrats, the shocker came when a longshot U.S. House candidate — who had vowed not to campaign and not to raise money — beat the better funded, establishment candidate.

"I think everyone is stunned," said political scientist Craig Wilson. "It was extraordinary, for sure." Political observers across the state have been discussing the twin upsets and debating what could have prompted them. Some say it was a combination of turnout because of the historic primary between Barack Obama and Hillary Rodham Clinton and also name recognition.

IN THE Republican Senate primary, Bob Kelleher had no money, no campaign staff and no help from the state party — but he's been running for office for decades. Political observers also say he benefited from a six-way primary where no one raised much money or distinguished themselves.

The best known Republican in the bunch — former state House Majority Leader Mike Lange — had political baggage. He was ousted by his colleagues last year after a profanity-laced speech directed at the governor. The candidate with the strongest financing — Billings businessman Kirk Bushman — finished third.

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Whitefish Lake violations reach critical mass



A MAINTENANCE worker mows the lawn at Bill Foley's residence Wednesday near the north end of Whitefish Lake. The lawn was in violation at the county level because previous owners planted and maintained lawn grass in the lakeshore zone. Although the city later determined it wasn't in violation, Foley has agreed to stop maintaining the lawn once the city passes new lakeshore regulations that will more clearly define the use of grasses in the lakeshore zone, according to Whitefish Lake and Lakeshore Protection Committee chairman Jim Stack.

Stack, Muhlfeld resign from watchdog panel



By LYNNETTE HINTZE
The Daily Inter Lake

Frustration over a record number of Whitefish Lake lakeshore violations and the city's lax approach to prosecuting violators have prompted two key members of the Whitefish Lake and Lakeshore Protection Committee to resign.

Jim Stack, a committee member for 16 years and chairman for the past decade, said he'll serve until revised regulations are adopted, but no longer than the end of September. The resignation of John Muhlfeld, a City Council member and hydrologist, was effective May 29.

"I cannot defend a process

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A STOP-WORK order was issued in October 2007 on the Babiaks' non-conforming covered deck, but construction proceeded to completion this spring. Because more than half of the structure was replaced, conformance would require rebuilding outside the 20-foot protection zone.

Photos by GARRETT CHEEN
The Daily Inter Lake

JIM STACK, who has chaired the Whitefish Lake and Lakeshore Protection Committee for the past 10 years, wants the city of Whitefish to take corrective steps to administer lakeshore protection regulations fairly and take a tougher stand on prosecuting violators.

Clinton to back Obama

N.Y. Democrat to draw curtain on historic candidacy

By BETH FOUHY
The Associated Press

WASHINGTON — Hillary Rodham Clinton has decided to end her historic bid to become the first female president while leaving her options open to retain her delegates and promote her issues, including a signature call for universal health care.



CLINTON

Hours after Barack Obama sealed the nomination, Democrats coalesced around his candidacy, sending a strong signal to Clinton that it was time to bow out. The former first lady told House Democrats during a private conference call Wednesday that she will express support for Obama's candidacy and congratulate him for gathering the necessary delegates to be the party's nominee.

"Senator Clinton will be hosting an event in Washington, D.C., to thank her supporters and express her support for Senator Obama and party unity. This event will be held on Saturday to accommodate more of Senator Clinton's supporters who want to attend," her communications director Howard Wolfson said.

Also in the speech, Clinton will urge Democrats to focus on the general election and defeating Republican presidential candidate John McCain.

THE ANNOUNCEMENT brought to a close a five-month nominating battle pitting the first serious female candidate against the most viable black contender ever.

Obama Tuesday night secured the 2,118 delegates to claim the Democratic nomination, but Clinton stopped short of acknowledging that milestone.

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FROM PAGE ONE

Stack: If there is a no-return point, we're there or past it

RESIGN/From A1

that is not working, and yet I cannot stand idly by and watch it go under," Stack told the council Monday, explaining his desire to see the city adopt procedural changes and a stronger policy for handling lakeshore violations.

Stack pleaded with the council two years ago to take immediate action on the developing crisis regarding lakeshore violations, but he said the city has continued to drag its feet in prosecuting violators.

"If there is a critical no-return point, then we are either there or even past it," Stack said. "Violations have piled up at a record rate this spring, now demanding as much planning-staff time as new lakeshore permits.

"In the meantime, three-year-old violations sit unresolved in apparent legal limbo land. The newest violations are some of the most flagrant and willful in years — by property owners who are fully aware of the regulations," he said.

IRONICALLY, the number of lakeshore violations began to increase three years ago when the city took over planning control of all of Whitefish Lake. Prior to the interlocal agreement that created the two-mile planning "doughnut," Flathead County dealt swiftly and effectively with violators who lived on the outlying two-thirds of the lake.

Muhlfeld has served on the lakeshore committee for 10 years and said in his resignation letter that during the time Flathead County had jurisdiction over two-thirds of the lake, "I never saw a county violation extend beyond three to four months to legal 100 percent resolution.

"In the three years since the city has taken over total jurisdiction of the lake, I cannot say that a single such violation has proceeded to complete legal resolution," Muhlfeld said.

Stack said a "tight link" between the county planning department, county attorney's office and the lakeshore protection committee created an effective system for dealing with violators. Under the city's jurisdiction, however, cases seem to stall when they're turned over to a contracted independent prosecutor, Stack said.

Both Stack and Muhlfeld lauded the efforts of city planner Nikki Bond, who deals administratively with violators, but said she needs more staff support for a growing workload.

THE SUCCESS of the regulatory process has to be judged on whether all property owners are treated alike, and that didn't happen under the administrative oversight of former Whitefish planning director Bob Horne, Stack maintained. He said Horne took a "rogue" approach to administering lakeshore regulations and in doing so, "overrode 20 years of precedence, regulations and interpretation and created problems we're just now addressing."

Horne denied the accusation, saying that sometimes there were discrepancies between the committee's interpretation of the law and what the lakeshore regulations actually said.

"As planning director, I never hesitated to enforce something if it was a violation," Horne said.

While Stack and the lakeshore committee wanted Horne to take a punitive approach to punishment, Horne said he took his direction from the city manager and city attorney to focus on abatement.

Horne agreed that enforcement of lakeshore regulations has become bogged down at the prosecution level.

LAKESHORE REGULATION violators include a mix of longtime residents and newcomers. Affluence is a factor.

"Even a \$1,000 or \$2,500 after-the-fact fine will not

deter a wealthy property owner from an intentional violation any more than a \$100 fee," Muhlfeld said. "... it is well known by property owners around the lake that their best solution to a violation is to hire an attorney and stall the issue until the violation is forgotten, negotiated or settled."

For most violations, Stack said, the city isn't fining property owners but rather giving them a "slap on the wrist."

The only true deterrent is a firm violation policy and a legal commitment to follow through to restoration or removal, Stack said.

He pointed to a violation by wealthy venture capitalist Michael Goguen, who cut down 30 trees in the 20-foot lakeshore protection zone. The county forced Goguen to replace one-and-a-half times the number of trees.

"They dealt with it. Boom, it was done," he said.

Violations run the gamut. Planting and maintaining lawn grass in the protection zone, building decks or other adornments, adding too many dock sections, cutting down trees and constructing vertical retaining walls instead of riprap are among the most common violations.

Enforcement is made more difficult because homes on Whitefish Lake are a blend of old grandfathered structures and newer homes.

One of the latest violations, on the Babiak property, involves the rebuilding of more than 80 percent of a nonconforming structure, Stack said. The law specifies that if more than 50 percent of the structure is replaced, it must be rebuilt outside the protection zone.

Despite a stop-work order placed last fall on the Babiak structure — a covered-deck attachment — the work proceeded to completion.

"This property owner is fully aware of lakeshore regulations, having applied for five previous lakeshore permits," Stack pointed out.

In another case, a 30-foot dock owned by Tom

LaChance, who has an easement on the lake but doesn't own the property, was ordered out of the lake last fall, but on Wednesday, city officials found a 120-foot dock back in the water.

Violations of the Jim Archer home, where new decks and a corner of the house are in the protection zone, remain unresolved. In that case, Archer, an excavator by trade, excavated his own property to create a new high-water mark to give him more building room, Stack said.

"The difficulty in prosecuting that case is how do you determine where the old lakeshore was?" he asked.

Property owned by finance mogul Bill Foley, the majority owner of Whitefish Mountain Resort, was in violation at the county level because previous owners planted and maintained lawn grass in the lakeshore zone.

When the land came under city control, the city attorney decided not to pursue it as a violation because it couldn't be determined whether it was lawn or native grasses, and it appeared to be outside the lakeshore protection zone.

Though Foley continues to maintain the lawn, he has agreed to come into compliance once the city passes new lakeshore regulations that will more clearly define the use of grasses in the lakeshore zone, Stack said.

MUHLFELD said he will continue to contribute to the lakeshore committee by having final review of permits and issues at the council level. Stack hopes the regulatory process can be fixed by the time he leaves the committee in four months.

Mayor Mike Jensen told Stack at Monday's council meeting that he supports his efforts and intends to meet with key city officials to get the ball rolling to correct the enforcement problem.

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2 groups appealed rulings

JUDGE/From A1

bear habitat after March 15.

The Forest Service had argued that Amendment 24 actually benefited bears because it reduced the overall acreage open to snowmobiling.

"We're glad the judge saw through the twisted logic claiming this was a benefit to bears," said Keith Hammer, chairman of the Swan View Coalition. "We hope the Forest Service will now do away with this unprecedented spring snowmobiling permanently so we don't end up right back in court again."

Krueger said the forest and the U.S. Fish and Wildlife Service may develop a procedural remedy to allow the extended seasons to continue.

The service's biological opinion found that the extended seasons have "no discernible effects" on grizzly bears emerging from their dens, Krueger said, and the federal government may have to better demonstrate to the court how that conclusion was reached.

Forest officials have yet to discuss the issue with the U.S. Fish and Wildlife Service, he said.

For now, the court ruling puts an end to extended snowmobiling beyond March 15. It applies to seasons ending May 15 in the Skyland-Challenge area, April 15 in the Canyon Creek area, April 30 in the Sixmile area and May 31 in the Doris and Lost Johnny areas.

This year, the ruling effectively shut down snowmobiling for two days in the Doris and Lost Johnny areas, Krueger said.

THE RULING was the latest in a string of lawsuits filed by the same groups challenging how the Flathead Forest has implemented Amendment 19.

On Monday, Krueger was returning from a hearing before a 9th Circuit Court of Appeals panel in Seattle on an appeal of another Molloy ruling. That case involved a Flathead Forest decision to leave in place 10 culverts to maintain snowmobiling access on roads in the upper Big Creek drainage.

The forest deviated from Amendment 19 standards requiring culvert removal on the roads to reduce road densities following the 2001 Moose Fire.

Forest officials maintain that management flexibility is necessary in applying Amendment 19, while Hammer has sought a strict application of the amendment's road density standards.

Molloy recently upheld the forest's use of "site specific amendments" allowing road density deviations on the Robert-Wedge and the West Side Reservoir post-fire project areas.

THE SWAN VIEW Coalition and Friends of the Wild Swan last week appealed both of those rulings to the 9th Circuit Court of Appeals.

"We feel Judge Molloy is mistaken in letting the government claim it is benefiting bears by reneging on the protections promised in Amendment 19," Hammer said. "We will continue to argue for the bears."

Krueger said the plaintiffs are attempting to compel the Flathead Forest to enforce Amendment 19 as an "inviolable" end-all policy for managing motorized use, despite new bear population information that has developed since the amendment was adopted 13 years ago.

Reporter Jim Mann may be reached at 758-4407 or by e-mail at jmann@dailyinterlake.com

State GOP has not disavowed Kelleher, who faces Baucus

UPSETS/From A1

With Kelleher the victor, Republicans have a candidate who the party faithful will struggle to support come November, a candidate who doesn't even believe in certain GOP principles.

Kelleher has advocated using Iraq war funds on more food stamps and called for the U.S. to adopt a parliamentary form of government. He does oppose abortion rights.

The Republican Party has not disavowed Kelleher, who was the subject of a "Daily Show" segment in 2002 that poked fun at his views. Party Chairman Erik Iverson said

Kelleher will be allowed to speak at the party's state convention.

"We don't need to be discourteous to him. We don't need to shun him. He is our nominee," Iverson said.

To Kelleher, the party's backing means little.

"The party has actually no legal significance," Kelleher said. "The party platforms are unenforceable. It's a lie to voters to give them an impression that any party stands for anything."

Kelleher's opponent in November is the dean of Montana Democrats — U.S. Sen. Max Baucus, who has raised more than \$10 million since being re-elected in 2002.

On Wednesday, Baucus

said he will continue to run his own race. Staffers said Baucus will not debate Kelleher.

"I am not running against anybody. I am seeking just to renew my six-year contract with Montana voters," Baucus said. "I am going to work just as hard as I would ordinarily."

ON THE Democratic side, political observers pointed to high turnout and name recognition as the reasons why former lawmaker John Driscoll — who has been out of the party for years and who said he would be "perfectly happy" if he lost — beat the party's favorite newcomer who was perhaps

the best hope to unseat U.S. Rep. Denny Rehberg.

Driscoll said he was not surprised that he beat Helena lawyer Jim Hunt, who had raised plenty of money and hired professional campaign staff.

Driscoll said he will work to engage voters but won't raise any money. During his primary bid, he said he was running because he feels strongly the federal government is corrupt and that money in politics is one of its worst vices.

"It's up to me to do the best job campaigning I can without any money or raising any money," Driscoll said Wednesday. "I think it will work out fine."

Adviser: Senator, aides discussing ways to end candidacy

CLINTON/From A1

An adviser said Clinton and her lieutenants had discussed various ways a presidential candidacy can end, including suspending the campaign to retain control of her convention delegates and sustain her visibility in an effort to promote her signature issue of health care. This adviser spoke on condition of anonymity because officials were not authorized to discuss the call Clinton held with her supporters.

Other options include freeing her delegates to back Obama and ending her candidacy unconditionally. The official stressed that neither Clinton nor her inner circle had decided specifically what course to take other than

to recognize that the active state of her bid to become the nation's first female president had ended.

On the telephone call with impatient congressional supporters including New York Rep. Charles Rangel, a long-time political patron, Clinton was urged to draw a close to the contentious campaign, or at least express support for Obama. Her decision to acquiesce caught many in the campaign by surprise and left the campaign scrambling to finalize the logistics and specifics behind her departure.

IT WAS an inauspicious end for a candidacy that appeared indestructible when it began 17 months ago.

Armed with celebrity, a prodigious fundraising Rolodex, a battle-tested cam-

paign team and a popular two-term former president as a husband, many observers believed Clinton's victory in the Democratic nomination contest was a sure thing.

But in Obama, the New York senator faced an opponent who appeared perfectly suited to the time — a charismatic newcomer who opposed the Iraq war from

the beginning who offered voters a compelling message of change. Clinton voted for the legislation that authorized military force against Iraq.

After a disastrous showing in the Iowa caucuses Jan. 3, Clinton won New Hampshire's primary Jan. 8, setting off the state-by-state war of attrition with Obama that followed.

The Family of Levi Thompson

Would like to thank everyone who has helped the family from the time he got burned and we had to fly to Seattle for his care. Thank you so much for donations that made it possible for Jami to stay out there with her son and for Tony to fly back and forth and for all the love, prayers and support we have received.

Thank you for all the donation items given by many businesses in the Flathead for Levi's benefit that was a great success. Thanks to all the wonderful people who attended and made it a great success. We can't thank you enough.

Thanks to St. Matthew's Church for allowing the benefit to be held there and for the Flathead Valley Hockey Association for putting on the benefit. Thanks to Bo Carpenter for doing a fabulous job as the auctioneer.

Once again thank you to all the people that have been there for us in every way. We are truly blessed.

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