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Official Publication  
of the Idaho State Bar  
Volume 60, No. 8  
August 2017



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**Parsons Behle & Latimer** is pleased to announce the firm's new location in Idaho Falls, expanding our presence in the state of Idaho.

Attorneys joining Parsons Behle & Latimer as shareholders are **C. Edward Cather III, Lee Radford, Jon A. Stenquist** and **Bradley J. Williams**.



Ed Cather's practice focuses primarily in the areas of banking and finance, estate planning, probate, tax, and business law. Ed practiced as a certified public accountant with one of the world's

largest professional service firms for several years prior to beginning his law practice.



Jon Stenquist has experience representing clients in a variety of financial, banking, corporate, construction and real estate matters. He began his career working on complex transactional

and litigation disputes. He understands the law and the economics of litigation, providing both value and security to his clients.



Lee Radford's practice focuses on growing successful business enterprises. This includes experience in corporate formation and organization, real estate development, land use planning

and permitting, mergers and acquisitions, commercial leasing, health law, and property tax issues.



Bradley Williams has represented individuals and companies for over 25 years. He has extensive litigation and trial experience, having tried 23 jury trials and four bench trials. He is a passionate

and zealous representative for his clients, but is also recognized for his civility and professionalism.

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Barker Rosholt & Simpson LLP is pleased to announce that Jonas A. Reagan has joined the firm as an associate attorney in the Twin Falls office. Mr. Reagan will join the firm in August 2017. He has completed his Juris Doctor from Vermont Law School with an emphasis in Environmental Law and Water Resources Law. Prior to graduating law school, he served as a legal intern for Culp and Kelly, LLP in Phoenix, Arizona. He holds an undergraduate degree from Hendrix College with a BA in Environmental Economics and a minor in Biology.

When not working, Mr. Reagan enjoys road biking, canoeing, climbing, backpacking, traveling and ultimate Frisbee. He is thrilled to be out West and in Idaho.



After eleven years as an attorney with Barker Rosholt & Simpson LLP, on May 1, 2017, Paul L. Arrington became the Idaho Water Users Association's Executive Director and General Counsel. Mr. Arrington's practice focused primarily on water and environmental issues and his experience will greatly benefit the Water Users and the IWUA.

Mr. Arrington graduated from Gonzaga University School of Law in 2005, and joined Barker Rosholt & Simpson, LLP, in 2006.

We congratulate Paul on his new role with the Water Users and are grateful for the value he provided the firm and our clients over the years.

# The Advocate

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*The Advocate* is pleased to present your announcement of honors, awards, career moves, etc. in the "Of Interest" column. Simply send a short announcement to the Managing Editor: [dblack@isb.idaho.gov](mailto:dblack@isb.idaho.gov) and include a digital photo..



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### On the Cover:

Pocatello attorney Nolan E. Wittrock took this picture during his vacation to Glacier Park. This image was taken near the top of Going-to-the-Sun Road. He recalled the scene: "I hiked to an area populated by a group of friendly mountain goats. I began photographing this particular goat from a ways off, but as I did he began walking straight toward me, lining up for some great shots. He ended up passing within a few feet of me while I stood still taking pictures the entire time. Glacier is a wonderful park for viewing and photographing wildlife, and I can't wait to go there again to see more friendly goats!"

### Section Sponsor:

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### Editors:

Special thanks to the August editorial team: Tayler Wayne Tibbitts, Michelle Vos, Angela Schaer Kaufmann.

### September issue sponsor:

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**ADVOCATE STAFF**

Dan Black

Managing Editor

[dblack@isb.idaho.gov](mailto:dblack@isb.idaho.gov)

Bob Strauser

Senior Production Editor

Advertising Coordinator

[rstrouser@isb.idaho.gov](mailto:rstrouser@isb.idaho.gov)

Kyme Graziano

Member Services Assistant

LRS Coordinator

[kgraziano@isb.idaho.gov](mailto:kgraziano@isb.idaho.gov)

[www.idaho.gov/isb](http://www.idaho.gov/isb)

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We are pleased to announce that the  
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has merged with Moscow, ID-based  
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Ellis Eifert

Now operating as Broyles & Eifert PLLC, the firm is one of the largest in the Clarkston area and offers a second office in Moscow, ID. Expanded legal services now offered include: Estate Planning and Probate; Business

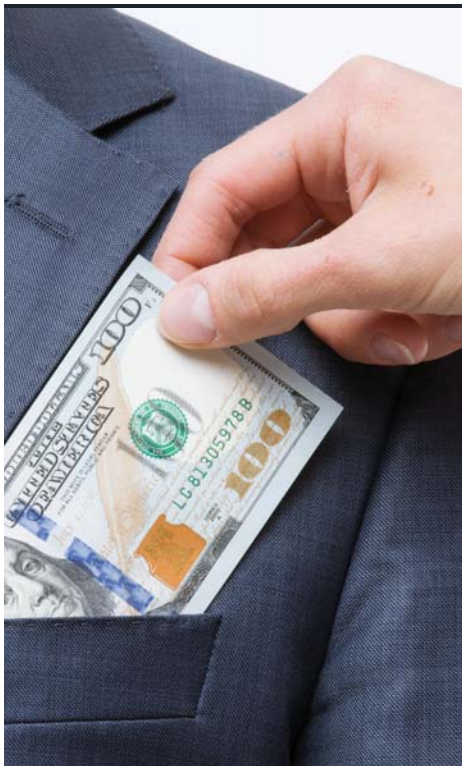
Law; Real Estate; Family Law; Civil Litigation; and Nonprofit Formation.

The merger was filed with the assistance of Justin D. Farmer, of Private Practice Transitions.

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Mr. Sherlock is uniquely qualified to evaluate and litigate Qui Tam cases. A former Editor in Chief of the Utah Law Review, Mr. Sherlock spent 18 years in the health care industry before joining EGC.

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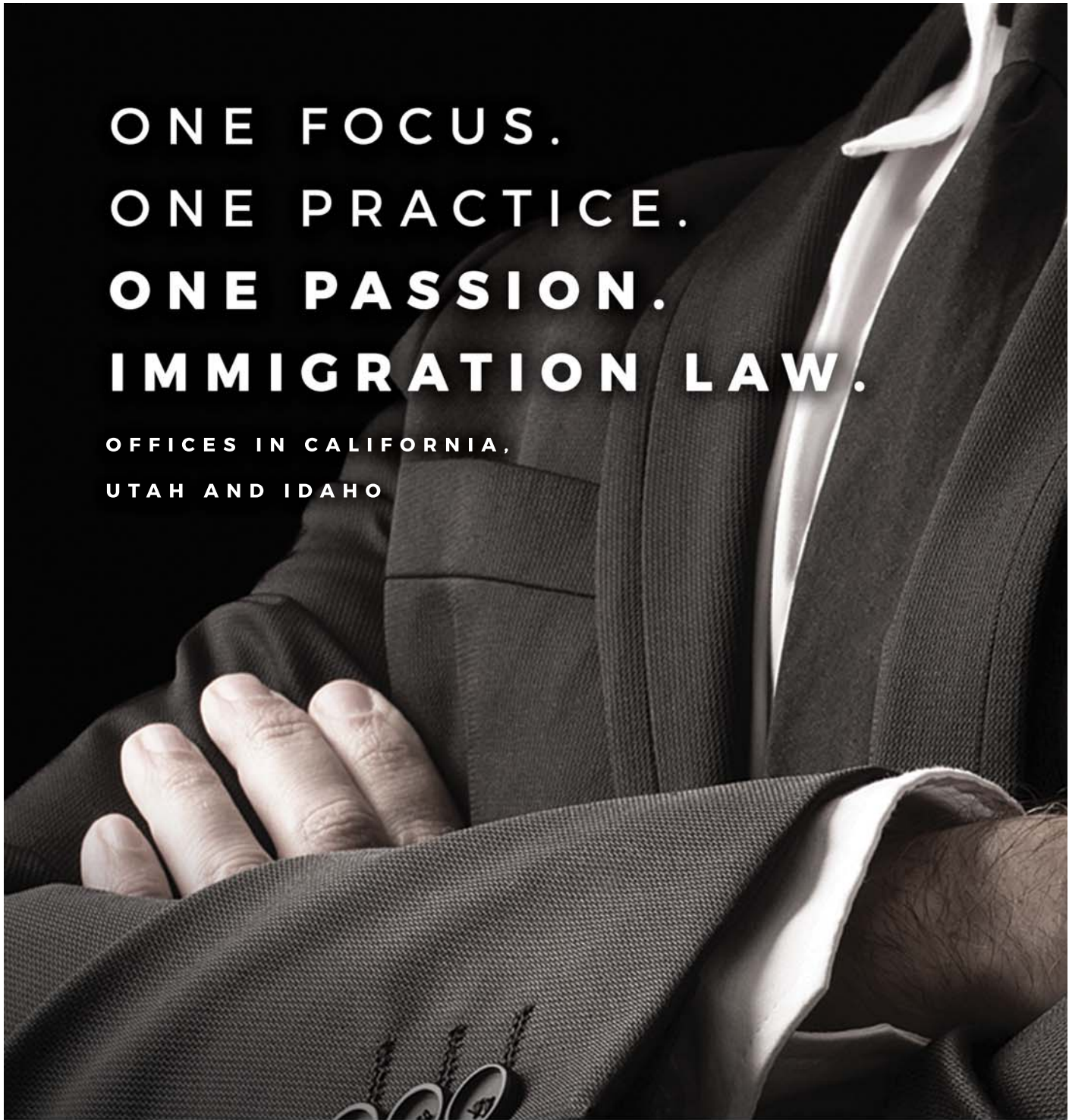
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## Upcoming CLEs

### September

**September 13:** *Handling Your First or Next Workers Compensation Case*, The Law Center, 525 W. Jefferson Street – Boise / Webcast, 9:00 a.m. (MDT), 2.0 CLE credits – **NAC** ~ Sponsored by the Idaho Law Foundation.

**September 22-23:** *2017 Estate Planning Conference*, Boise Centre, 850 W. Front Street – Boise, 10.5 CLE credits of which .5 is Ethics ~ Sponsored by the Taxation, Probate & Trust Law Section.

### October

**October 5:** *New Attorney Program*, Boise Centre, 850 W. Front Street – Boise, 8:00 a.m. (MDT), 4.0 CLE credits of which 1.0 is Ethics **NAC** ~ Sponsored by the Idaho Law Foundation, Inc.

### - Save the Date -

#### *Annual Family Law Section CLE Series*

**October 13:** *The Red Lion Downtowner*, 1800 W. Fairview Avenue – Boise.

**October 20:** *The Red Lion Pocatello*, 1555 Pocatello Creek Road – Pocatello.

**October 27:** *Hampton Inn & Suites Coeur d'Alene*, 1500 W. Riverstone Drive – Coeur d'Alene.

**October 20:** *Ethics and Client Money: Trust Funds, Setoffs and Retainers*, Audio Stream, 11:00 a.m. (MDT), 1.0 Ethics credit ~ Sponsored by the Idaho Law Foundation, Inc. in partnership with Abila and WebCredenza, Inc.

\*\*Dates, times, locations and CLE credits are subject to change. The ISB website contains current information on CLEs.

\***NAC** — These programs are approved for New Admittee Credit pursuant to Idaho Bar Commission Rule 402(f).

### Live Seminars

Throughout the year, live seminars on a variety of legal topics are sponsored by the Idaho State Bar Practice Sections and by the Continuing Legal Education Committee of the Idaho Law Foundation. The seminars range from one hour to multi-day events.

### Webcast Seminars

Many of our seminars are also available to view as a live webcast. Pre-registration is required.

Upcoming seminar information and registration forms are posted on the ISB website at: [isb.idaho.gov](http://isb.idaho.gov). To learn more contact Dayna Ferrero at (208) 334-4500 or [dferrero@isb.idaho.gov](mailto:dferrero@isb.idaho.gov). For information around the clock visit [isb.fastcle.com](http://isb.fastcle.com).

### Online On-Demand Seminars

Pre-recorded seminars are available on demand through our online CLE program. You can view these seminars at your convenience. To check out the catalog or purchase a program go to [isb.fastcle.com](http://isb.fastcle.com).





## Wrapping it Up: Some Thoughts on the Profession

Michelle Points  
President, Idaho State Bar  
Board of Commissioners

My previous articles have promoted the importance of a lawyers' role in society and their profound impacts, both past and present. In my past three years as a Commissioner, we have focused on different ways to improve the practice for lawyers in Idaho, ranging from how to get a job out of law school, how to mentor, how to improve your practice, how to improve access to legal services, and how to prepare for transitions — to name a few.

The Commissioners, through bar staff, try to keep up on pressing issues and find the best solutions. We work hard. But, like everything, there is a lot of running uphill. And as a Commission, it is impossible to reach every lawyer or have an impact on their practice.

I will say that personally, I have days that I am completely disillusioned by the practice of law. Then there are days when I have what my family refers to as a "good lawyer day" — days when I get a good result for my client and feel good about being a lawyer. I want more "good lawyer" days. Everybody does.

This is a hard job. Not one for the faint of heart, if you really care about it, which I think most of us do. We don't need to make it harder on each other by being bad lawyers. "Bad" in my experience ranges from rude and unprofessional to making things really difficult for the sake of it.

Concluding my work on the Commission and President brings this into focus. Our work cannot be all for naught. We need meaning, purpose, civility and fairness.



These individuals do not reflect well on our profession. If you know one of these individuals, I challenge you to reach out to them, to the extent you can, and bring them away from the dark side. We work too hard to be good lawyers to have our reputations tainted by those who don't follow the oath they swore to follow.

Concluding my work on the Commission and President brings this into focus. Our work cannot be all for naught. We need meaning, purpose, civility and fairness.

I have enjoyed my time on the

Commission and thank everyone who has made it such a worthwhile experience. If you are not involved in ISB activities or sections, I encourage you to get involved. It takes a village. Thanks again.

### Kent Higgins is new ISB President

Michelle Points' term as Bar President ended at the conclusion of the Idaho State Bar Annual Meeting on July 14. Kent A. Higgins of Pocatello is now President and will begin sharing his message in the September 2017 issue.

Michelle Points graduated from Gonzaga Law School and clerked for Justice Gerald Schroeder at the Idaho Supreme Court. She has had a solo litigation practice for the past four years. Michelle also serves as President of Idaho Women Lawyers. Michelle lives in Star with her husband Todd. They have two daughters and three grandsons.



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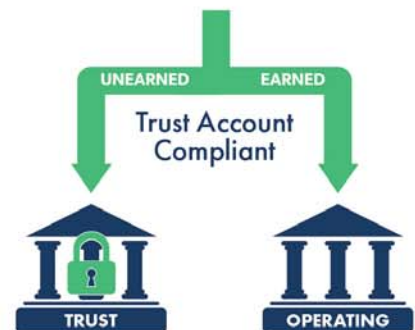
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Photo by Stephanie Rose

Abdul Majidy offers a high five to one of his three children. Mr. Majidy was among the 211 participants who ran or walked in the Fourth Access to Justice FUND Run/Walk in Boise in June.

### Access to Justice event another success

BOISE - The Fourth Annual Access to Justice FUND Run/Walk on Saturday, June 3 was a huge success. The family-friendly 5K, held at Fort Boise Park, drew more than 200 participants and raised more than \$8,200 for the Access to Justice Idaho Campaign. The campaign's fundraising mission is to support the three main providers of free, civil legal services in Idaho — Idaho Legal Aid Services, Inc., the Idaho Volunteer Lawyers Program and DisAbility Rights Idaho. Runners, walkers, and pups alike had a great time on the sunny Satur-

day morning, all while supporting a great cause.

While funding for these local legal service nonprofits has decreased in recent years, the need for these critical legal services is ever growing. The Access to Justice FUND Run/Walk was created in 2014 as a Legacy Project stemming from the Idaho Academy of Leadership for Lawyers. Since its inaugural year, this event has raised more than \$22,500 for the Access to Justice Idaho campaign — funds that have continued to provide a legal safety net for Idaho's low-income population.

This year, there were 211 total participants and 12 sponsors, which provided \$5,950 in sponsor contributions. In-kind donors included BizPrint, Blue Sky Bagels, Rail Tees, and Western Trophy & Engraving.

### Documentary explores Idaho Trial Lawyers Association

MOSCOW - Attorney Tim Gresback is pleased to announce the release of a documentary chronicling the history of the Idaho Trial Lawyers Association (ITLA).

The movie, entitled *A Bunch of Prima Donnas*, was made in celebration of ITLA's 50th Anniversary. Told through the Moscow attorney's interviews of ITLA's past presidents, the film chronicles the evolution of Idaho's legal culture, which as recently as 50 years ago had no organized trial bar to advocate for consumers.

*A Bunch of Prima Donnas* explains the devastating effects of ill-conceived legislative reform efforts in 1987 and 2002 that crippled the rights of those injured by the negligence or wrongdoing of others.

"At the beginning of my career 30 years ago," Gresback explains, "trial lawyers were often vilified. Today, thanks to the efforts of ITLA, we've earned a seat at the social table. When citizens are harmed by a preventable catastrophe, they need a skilled advocate to stand up to insurance companies and corporations."

The film explains how ITLA brought nationally preeminent trial attorneys to Idaho for seminars to energize and inspire a generation of Idaho trial lawyers. Their common effort to provide justice to the powerless forged life-long friendships of



members scattered across the state.

*A Bunch of Prima Donnas* was edited and produced by Michael Louis Huffstutler II, a University of Idaho graduate in Broadcasting and Digital Media, <http://www.mlh-films.com>. The 50-minute documentary can be viewed at <https://youtu.be/pGvQ8208f7M>.

**Idaho Legal Aid seeks Sixth District attorneys**

POCATELLO - Idaho Legal Aid Services, Inc. is seeking attorneys in the Sixth District who would like to be on their office’s referral list. Currently, Idaho Legal Aid is unable to assist all potential clients due to caseload and the limited number of attorneys in their office. Idaho Legal Aid compiles a list of attorneys in the area to which they will refer clients who meet their low-income guidelines on an as-needed basis. This is strictly

voluntary. If you have any questions, please contact Holly Arzola via email at [hollyarzola@idaholegalaid.org](mailto:hollyarzola@idaholegalaid.org) or via phone at (208) 233-0079 ext. 1701.

**Judicial Conduct rule amended**

BOISE - The Idaho Supreme Court approved the new Code of Judicial Conduct by an order dated on June 22, 2017. The order notes that the amendments were recommended by the Idaho Judicial Council and were approved by the ISC in a unanimous vote. The amendment strikes Canon 3.13(11) in its entirety. The subsection was created though a clerical error. The rest of Rule 3.13 “Acceptance of Gifts, Loans, Bequests, Benefits, or Other Things of Value” remains unchanged.

**Revamped web site for state’s lawyers**

The Idaho State Bar ([\[idaho.gov\]\(http://idaho.gov\)\) and Idaho Law Foundation \(\[www.isb.idaho.gov/ilf\]\(http://www.isb.idaho.gov/ilf\)\) launched two, newly revamped websites earlier this summer. The new websites conform to the design templates used by other Idaho governmental affiliates.](http://www.isb.</a></p>
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This highly anticipated project provides a clean, uncluttered website design that incorporates improved functionality and enhanced content. Communications Coordinator Lindsey Welfley commented, “Our goal was to provide a more streamlined web experience for our end-users, whether they are attorneys or members of the public. By refining the structure of our webpages and highlighting our most popular content, we hope to offer a more easily accessible web-based resource – as it is a vital service in the current digital age.”

Feedback on the websites can be directed to Ms. Welfley at (208) 334-4500.

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**ALLEN H. BROWNING**  
**(Public Reprimand)**

On May 22, 2017, the Professional Conduct Board of the Idaho State Bar issued a Public Reprimand to Idaho Falls lawyer Allen. H. Browning, based on professional misconduct.

The Professional Conduct Board's Order followed a stipulated resolution of an Idaho State Bar disciplinary proceeding in which Mr. Browning admitted that he violated Idaho Rules of Professional Conduct 1.3 [Diligence] and 1.4 [Communication].

This disciplinary action related to Mr. Browning's representation of a client in a personal injury case and on a worker's compensation claim. After filing the personal injury complaint, Mr. Browning instructed his assistant to arrange for service of process. His assistant gave the summonses and complaints to a process server who failed to locate the defendants and advised Mr. Browning's assistant that service was not completed. Mr. Browning's assistant did not inform him about that failure to effect service until approximately seven months later.

Mr. Browning then filed a motion seeking to serve the defendants by publication because their current addresses were unknown and it was impossible to obtain personal service. The court granted that motion. Approximately five months later Respondent received a letter from defendants' counsel requesting a three-day notice of default which Mr. Browning promptly provided. Thereafter, defendants filed a motion to dismiss based upon the failure to complete service of process within

six months of filing the complaint. Mr. Browning did not inform his client about the motion to dismiss or the hearing on that motion.

The Court granted the motion to dismiss, concluding that the mere inability to personally serve a party does not constitute good cause, particularly when other avenues of service were available. Mr. Browning did not inform his client about the dismissal of the personal injury case until nearly 10 months after the case was dismissed. Mr. Browning's client filed a malpractice case against Mr. Browning which his malpractice carrier settled.

The public reprimand does not limit Mr. Browning's eligibility to practice law.

Inquiries about this matter may be directed to: Bar Counsel, Idaho State Bar, P.O. Box 895, Boise, Idaho 83701, (208) 334-4500.

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**JEREMY P. FEATHERSTON**  
**(Suspension/Withheld  
 Suspension/Probation)**

On May 30, 2017, the Idaho Supreme Court issued a Disciplinary Order suspending Sandpoint attorney Jeremy P. Featherston from the practice of law for one (1) year, with all but ninety (90) days of that suspension withheld. The Disciplinary Order provides that upon reinstatement, Mr. Featherston will be placed on probation for one (1) year. Mr. Featherston's ninety (90) day suspension will start June 16, 2017.

The Idaho Supreme Court found that Mr. Featherston violated I.R.P.C. 8.4(b) [Commission of a criminal act that reflects adversely on a lawyer's honesty, trustworthiness or fitness

as a lawyer in other respects] and I.R.P.C. 8.4(d) [Engaging in conduct that is prejudicial to the administration of justice]. The Idaho Supreme Court's Disciplinary Order followed a stipulated resolution of an Idaho State Bar disciplinary proceeding and related to the following circumstances.

In July 2014, Mr. Featherston's former brother-in-law, S.B., was arrested in Alaska on drug charges. S.B. called Mr. Featherston's wife from jail and instructed her to erase the data on his two cell phones. Mr. Featherston erased the data on S.B.'s two cell phones, which at that time were in the custody of Alaska law enforcement. The data erased from the cell phones was accessible on other electronic devices. In September 2016, Mr. Featherston pleaded guilty in Alaska to a misdemeanor charge of attempting to destroy or conceal evidence by erasing the data on S.B.'s cell phones. He was sentenced to 80 hours of community service, ordered to pay fines and costs, and placed on a one (1) year criminal probation.

Following reinstatement, Mr. Featherston will serve a one (1) year probation upon the terms of probation specified in the Disciplinary Order. Those terms include that Mr. Featherston will serve the nine (9) month withheld suspension if he admits or is found to have violated any of the Idaho Rules of Professional Conduct for which a public sanction is imposed for conduct occurring during the period of probation.

Inquiries about this matter may be directed to: Bar Counsel, Idaho State Bar, P.O. Box 895, Boise, Idaho 83701, (208) 334-4500.

**BRYAN S. STORER**  
**(Suspension, Withheld**  
**Suspension, Probation)**

On June 15, 2017, the Idaho Supreme Court issued a Disciplinary Order suspending Boise attorney Bryan S. Storer for one year, with 6 months withheld, and a one-year probation upon reinstatement. The Idaho Supreme Court's Order followed a Professional Conduct Board recommendation and stipulated resolution of an Idaho State Bar disciplinary proceeding.

The Idaho Supreme Court found that Mr. Storer violated a number of Idaho Rules of Professional Conduct with respect to five different client matters that constituted the five counts in the Amended Complaint. With respect to three client matters, Mr. Storer failed to respond to discovery and motions which resulted in each of those three plaintiff clients' cases eventually being dismissed. Those three clients filed malpractice cases against Mr. Storer and co-counsel, which were each settled with their insurance carrier. The Idaho Supreme Court found that Mr. Storer violated I.R.P.C. 1.2 [Scope of Representation]; 1.3 [Diligence]; 1.4 [Communication]; 1.16(a) [Failure to Withdraw Based on Impairment]; and 5.3 [Responsibilities Regarding Non-lawyer Assistants] with respect to the three counts relating to those three clients and that he violated I.R.P.C. 3.4(d) [Failure to Make a Reasonably Diligent Effort to Comply with Discovery], and 5.1 [Responsibilities of Partners, Managers, and Supervisory Lawyers] with respect to two counts, and I.R.P.C. 3.4(c) [Disobey a Rule of the

Tribunal] with respect to one count.

In the other two client matters, the clients experienced irregularities in Mr. Storer's accounting for fees and costs following resolution of their cases. The clients disputed the amount of fees and costs accounted for by Mr. Storer and claimed additional monies were owed to them. Mr. Storer adjusted the amounts due to these two clients to account for their appropriate shares of their recoveries. The Idaho Supreme Court found that Mr. Storer violated I.R.P.C. 1.3 [Diligence], 1.4 [Communication], and 5.3 [Responsibilities Regarding Non-lawyer Assistants] with respect to the two counts relating to those clients and one violation of I.R.P.C. 1.2 [Scope of Representation] and 1.16(a) [Failure to Withdraw Based on Impairment] with respect to one count. A number of those violations related to circumstances where Mr. Storer's health issues impaired his representation of clients and ability to adequately supervise his office and personnel from late 2006 to early 2009.

The Disciplinary Order provided that 6 months of the one-year suspension will be withheld and that Mr. Storer will serve a one-year probation, subject to the conditions of probation specified in the Order. Those conditions include that Mr. Storer will serve 6 months of suspension if he admits or is found to have violated any of the Idaho Rules of Professional Conduct for which a public sanction is imposed for any conduct during Mr. Storer's period of probation. In addition, if Mr. Storer admits or is found to have violated any of the Idaho Rules

of Professional Conduct for which a private sanction is imposed for any conduct during his period of probation, he will serve 60 days of suspension for the first such private sanction, and 120 days for any subsequent one.

Inquiries about this matter may be directed to: Bar Counsel, Idaho State Bar, P.O. Box 895, Boise, Idaho 83701, (208) 334-4500.

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**PAUL E. REMY**  
**(Public Reprimand)**

On June 22, 2017, the Professional Conduct Board of the Idaho State Bar issued a Public Reprimand to attorney Paul E. Remy, based on professional misconduct. The public reprimand followed a stipulated resolution of an Idaho State Bar reciprocal disciplinary proceeding.

Mr. Remy was admitted to practice law in Utah and Idaho. On February 28, 2017, the Ethics and Discipline Committee of the Utah Supreme Court entered an order publicly reprimanding Mr. Remy for violating Utah Rules of Professional Conduct 1.3 [Diligence], 1.4(a) [Communication] and 5.3(b) [Responsibilities Regarding Nonlawyer Assistance]. Those rules correspond to the same rules of the Idaho Rules of Professional Conduct.

The Utah disciplinary case related to Mr. Remy's representation of client in a civil suit involving the purchase of a car. In September 2013, Mr. Remy filed a Complaint and the Defendant filed its Answer. The client had difficulties contacting Mr. Remy for a status update on his case and in November 2014, Mr. Remy and the client agreed to file an Amended



## DISCIPLINE

Complaint. The motion to amend the complaint was not filed until March 2015. In December 2015, the court sent notice that due to inactivity, the case would be dismissed for lack of prosecution. During this time, Mr. Remy had a paralegal whom he relied upon to complete some of the work, but after she was terminated, he discovered she had not performed all of the work. In addition, Mr. Remy relied on his paralegal to send out billings and statements without his prior review and approval.

The public reprimand does not limit Mr. Remy's eligibility to practice law.

Inquiries about this matter may be directed to: Bar Counsel, Idaho State Bar, P.O. Box 895, Boise, ID 83701, 208-334-4500.

### **JACOB D. DEATON**

#### **(Resignation in Lieu of Disciplinary Proceedings)**

On July 10, 2017, the Idaho Supreme Court entered an Order accepting the Resignation in Lieu of Disciplinary Proceedings of Boise attorney Jacob D. Deaton. The Idaho Supreme Court's Order followed a stipulated resolution of a disciplinary proceeding that related to the following conduct.

The Idaho Supreme Court found that Mr. Deaton violated a number of Idaho Rules of Professional Conduct related to eight different client matters which constituted the eight counts of the Complaint. With respect to three client matters, Mr. Deaton failed to appear or inform his clients about court hearings in their criminal cases. When those clients were unable to contact Mr. Deaton about their cases,

other attorneys concluded their cases. The Idaho Supreme Court found that Mr. Deaton violated I.R.P.C. 1.2(a) [Failure to Abide by Client Objectives]; 1.3 [Failure to Act with Reasonable Diligence and Promptness]; and 1.4 [Failure to Reasonably Communicate with Client] with respect to those three clients.

With respect to two client matters, Mr. Deaton failed to appear at the time originally scheduled for his clients' sentencing hearings and did not advise those clients of the scheduled hearing dates. However, Mr. Deaton and his clients appeared at the rescheduled sentencing hearings. The Idaho Supreme Court found that Mr. Deaton violated I.R.P.C. 1.3 [Failure to Act with Reasonable Diligence and Promptness], and 1.4 [Failure to Reasonably Communicate with Client] with respect to those two clients.

With respect to two civil client matters, Mr. Deaton represented personal injury clients and failed to advise his clients in a timely manner of settlement offers and counteroffers. The Idaho Supreme Court found that Mr. Deaton violated I.R.P.C. 1.4 [Failure to Reasonably Communicate with Client] with respect to those two clients.

With respect to the final civil matter, Mr. Deaton failed to complete the client's case and did not reasonably communicate the status of his work to the client. That client hired substitute counsel who completed the case. The Idaho Supreme Court found that Mr. Deaton violated I.R.P.C. 1.4 [Failure to Reasonably Communicate with Client] with respect to that client.

The Idaho Supreme Court accepted Mr. Deaton's Resignation in Lieu of Disciplinary Proceedings. By the

terms of the Order, Mr. Deaton may not make application for admission to the Idaho State Bar sooner than five (5) years from the date of his resignation. If he does make such application for admission, he will be required to comply with all bar admission requirements in Section II of the Idaho Bar Commission Rules and will have the burden of overcoming the rebuttable presumption of the "unfitness to practice law."

By the terms of the Idaho Supreme Court's Order, Mr. Deaton's name was stricken from the records of the Idaho Supreme Court and his right to practice law before the courts in Idaho was terminated.

Inquiries about this matter may be directed to: Bar Counsel, Idaho State Bar, P.O. Box 895, Boise, Idaho 83701, (208) 334-4500.

## REINSTATEMENTS

### **TYLER J. LARSEN**

#### **(Reinstatement to Inactive Status)**

On May 18, 2017, the Idaho Supreme Court entered an Order reinstating Tyler J. Larsen to inactive status in Idaho. Inquiries about this matter may be directed to: Bar Counsel, Idaho State Bar, P.O. Box 895, Boise, Idaho 83701, (208) 334-4500.

#### **Notice of Public Discipline**

The rules for discipline of Idaho lawyers are established by the Idaho Supreme Court, through Section V of the Idaho Bar Commission Rules. IBCR 521 provides for two types of disciplinary sanctions: private discipline (for less serious violations) and public discipline (for more serious violations). Only public discipline sanctions are posted.

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**Cathy R. Silak**

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Cathy was the founding dean of Concordia University School of Law and most recently the Vice President of Community

Engagement of Concordia University. Governor Cecil D. Andrus appointed Cathy as the first woman appellate judge in Idaho's history, serving on the Idaho Court of Appeals. She was subsequently appointed by Governor Andrus to the Idaho Supreme Court and became the Court's Vice-Chief Justice.



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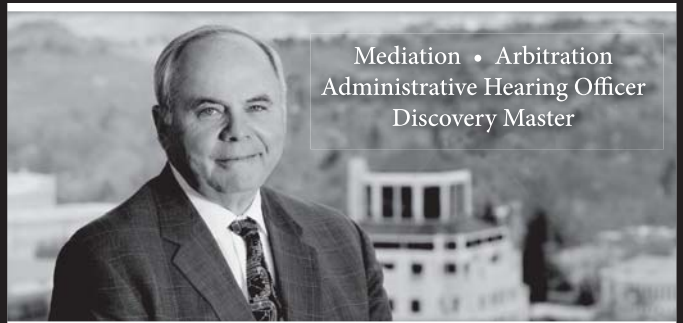


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## Executive Director's Report

### Proposed Resolutions — Deadline September 25

Diane K. Minnich  
Executive Director, Idaho State Bar

**D**o you, your district bar association, practice section or committee have a proposed rule revision, law related issue, or legislative matter that you think should be supported by the Idaho State Bar membership? If so, the fall resolution process, or “roadshow” is the opportunity to propose issues for consideration by members of the bar.



Unlike most state bars, the Idaho State Bar cannot take positions on legislative matters, or propose changes to rules of the Court, or substantive rules governing the bar, by act of its bar commissioners, or at its Annual Meeting. Matters referenced above must be submitted to the membership for a vote through the resolution process.

Idaho Bar Commission Rule 906 governs the resolution process. Resolutions for the 2017 resolution process must be submitted to the bar office by the close of business on September 25, 2017. If you have questions about the process or how to submit a resolution, please contact me at [dminnich@isb.idaho.gov](mailto:dminnich@isb.idaho.gov) or (208)-334-4500.

#### Thank you

Michelle Points, Boise, and Dennis Voorhees, Twin Falls, completed their service as Idaho State Bar Commissioners at the close of the 2016 Annual Meeting.

Special thanks to Dennis and Michelle for their service to the bar and the profession. Michelle served as a bar commissioner and as President of the Idaho Women Lawyers at the same time, an incredible commitment of time and energy. Her dual roles highlight Michelle’s commitment to improving the profession. She works hard for her clients as well as the lawyers of Idaho.

Dennis is committed to improving the profession and access to justice. We appreciate his efforts to continue the discussion on these important issues.

For the coming year, Kent Higgins, Pocatello, will serve as President. Kent will begin his term as President at the conclusion of the Idaho State Bar Annual Meeting. We welcome recently elected Commissioners Judge Mike Oths, Boise, and David Kerrick, Caldwell, who join Kent, Mike Howard, Coeur d’Alene, and David Cooper, Boise.

As I have said many times, serving as a Commissioner is extremely time consuming. The lawyers that are elected as Commissioners are truly dedicated – my sincere thanks for their service!

#### Malpractice insurance coverage requirement

As you may know, with 2018 licensing, attorneys who represent private clients will be required to

2017 District Bar Association Resolution Meetings		
District	Date	Time
First Judicial District	Thursday, November 2	Noon
Second Judicial District	Thursday, November 2	6:00 p.m.
Third Judicial District	Wednesday, November 15	6:00 p.m.
Fourth Judicial District	Wednesday, November 15	Noon
Fifth Judicial District	Tuesday, November 14	6:00 p.m.
Sixth Judicial District	Tuesday, November 14	Noon
Seventh Judicial District	Monday, November 13	Noon



have malpractice coverage. The resolution recommending this requirement was passed by the bar membership in 2016 and the rule change was adopted by the Idaho Supreme Court in April 2017, effective with 2018 licensing. The Idaho Bar Commission Rule states:

**RULE 302. Licensing Requirements**

Following admission as a member of the Bar, an attorney may maintain membership as follows:

(a) Active or House Counsel Member. An Active or House Counsel Member shall:


(5) Certify to the Bar (A) whether the attorney represents private clients; and (B) if the attorney represents private clients, submit proof of current professional liability insurance coverage at the minimum limit of \$100,000 per occurrence/\$300,000 annual ag-

gregate. Each attorney admitted to the active practice of law in this jurisdiction who is required to have professional liability insurance shall identify the primary carrier and shall notify the Bar in writing within thirty (30) days if the professional liability insurance policy providing coverage lapses, is no longer in effect, or terminates for any reason, unless the policy is renewed or replaced without substantial interruption.


For the past 10 years, attorneys have reported to the Bar, as part of licensing, whether or not they had malpractice coverage. The records indicate that at least 75 percent of attorneys who will be subject to the new rule already have malpractice coverage. We will send letters to those active attorneys who indicated they did not have coverage explaining the new requirement.

Special thanks to Dennis and Michelle for their service to the bar and the profession.

If you have questions about the malpractice coverage requirement, please contact me at 208-334-4500 or [dminnich@isb.idaho.gov](mailto:dminnich@isb.idaho.gov).



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# Water Law Section Offers Interesting Updates

Candice McHugh

**T**he Water Law Section is happy to be sponsoring this issue of *The Advocate*. While practicing water law is a specialty in Idaho that has personally brought me a rich and rewarding career, as the articles in this issue demonstrate, water law touches on many aspects of interesting public policy and legal debate. From the weather, to the practical, to international issues, the articles in this issue of *The Advocate* promise to be informative and thought provoking.

Marie Kellner's article, *The Climate is Changing, Is Idaho Ready?* touches on the question of climate, Idaho's temporary water rights and the balance of use and environmental considerations.

With the new federal administration comes new priorities for natural resource related issues. Norman Semanko's article *Trump Rules: Additional Changes to Clean Water Act Jurisdiction on the Horizon*, discusses what changes may be expected regarding what constitutes "the water of the United States."

After the departure of Norman Semanko from the Idaho Water Users Association to pursue private practice full-time, the Idaho Water Users Association hired a new executive director, Paul Arrington. Dylan Lawrence interviewed Mr. Arrington



and provides some interesting and helpful insight into his vision for the organization.

It is not often that Idaho attorneys in water law are involved in international affairs. However, the re-negotiation of the Columbia River Treaty with Canada proves the exception. Barbara Cosens' article *Modernization of the Columbia River Treaty: an Opportunity for Idaho*, provides some excellent food for thought as these negotiations between the Northwestern states, the United States and Canada occur.

In addition to the topics addressed by the articles in this issue, other matters regarding water law are occurring around the state with the Coeur d'Alene Spokane River Adjudication in full swing and the Palouse River Basin Adjudication initiated and claims taking to start in the next several months.

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It is not often that Idaho attorneys in water law are involved in international affairs.

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The future of how water is accounted for in the Boise River basin is an ongoing question with the state and private parties advocating for their respective positions before the Idaho Supreme Court. The health of Idaho's aquifers is on the public and policy maker's minds with the Idaho Water Resource Board having recharged over 300,000 acre-feet of water on Idaho's Eastern Snake Plain in southern Idaho. There's never a dull moment when examining what's happening in Idaho water law.

I hope you find the articles informative and enjoyable.

## Water Law Section

### Chairperson

Candice M. McHugh  
McHugh Bromley, PLLC  
380 S. 4th, Ste. 103  
Boise, ID 83702  
Phone: (208) 287-0991  
Fax: (208) 287-0864  
cmchugh@mchughbromley.com

### Vice Chairperson

Andrew J. Waldera  
Sawtooth Law Offices, PLLC  
PO Box 7985  
Boise, ID 83707  
Phone: (208) 629-7447  
Fax: (208) 629-7559  
andy@sawtoothlaw.com

### Secretary / Treasurer

Sarah A. McCormack  
Moffatt Thomas  
PO Box 829  
Boise, ID 83701  
Phone: (208) 385-5474  
Fax: (208) 385-5384  
sam@moffatt.com

# The Climate is Changing. Is Idaho Ready?

Marie Callaway Kellner

I waited two years after I took the LSAT before I applied to law school. I knew I wanted to take my life in a new direction that involved my love of rivers, but I was reluctant to leave a fantastic life as a river guide in southeastern Alaska. However, in the summer of 2006, I guided my first river trips through the Tatshenshini-Alesek Wilderness, and the magnificence of that particular place struck something deep inside me. The effect was strong enough for me to give up my river guide lifestyle and dedicate my professional life to advocating for such places.

The Tat-Alesek, as this wilderness is known, is a UNESCO World Heritage site that spans the border of the Yukon Territory and Alaska, a little west and north of Glacier Bay National Park. It's a land of mile-wide glaciers; wolf, moose and bear; mountains rising more than 15,000 feet from sea level; and massive glacially fed rivers. The Alesek River<sup>1</sup> boasts the biggest flows of any river I have boated—routinely more than 100,000 cubic feet per second and with a bed often several miles wide. At times you can hear rocks and small boulders moving on the river bottom as you float over them.

Places like the Tat-Alesek stick with you, which is one reason a recent article jumped out at me: *Climate Change Reroutes a Yukon River in a Geologic Instant*.<sup>2</sup> The topic caught my attention, but as I read the article, I was surprised to discover that the story involved the Alesek River.

We hear about climate change causing rising sea levels, flooding and extreme weather patterns—like the epic water year Idaho is experiencing in contrast to our recent, more frequent drought years. But rivers rerouting themselves?



Photo by Marie Callaway Kellner

The view looking over the Alesek River at Turnback Canyon, Alaska inspires the author, Marie Callaway Kellner, who was a river guide in the Tatshenshini-Alesek Wilderness.

One of the many glaciers feeding the Alesek is the Kaskawulsh. It's huge by any standard, stretching up to four miles across. For eons, the glacier primarily drained into the Slims River, which flows north to the Yukon River and on to the Bering Sea. Small communities and cabins dot the banks along the river. These cabins are lakeside vacation cottages in Canada's Kluane National Park, where the Slims temporarily pools.

Or perhaps I should say communities and cabins *used to* dot the river's course. Last May, in just four days, an epic event—never before documented in modern times—occurred. River piracy! The Kaskawulsh Glacier receded so much and so quickly that the flow created by its melt rerouted from the Slims into one of the glacier's southern tributaries: the Alesek. In short, the Alesek pirated the Slims.

And all those lakeside cabins? Their docks now sit high and dry, looking out over a silt-filled landscape, complete with dust storms and the associated poor air quality.

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The Kaskawulsh Glacier receded so much and so quickly that the flow created by its melt rerouted from the Slims into one of the glacier's southern tributaries: the Alesek.

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## But what about Idaho?

The geologic record contains evidence of river piracy that historically would have taken place over hundreds or even thousands of years. But in 2016, due to rapidly warming polar regions, humans saw a huge river change direction in front of their eyes over the equivalent of a long weekend.



I tried to translate this to something I could understand on a more local, Idaho-based scale, but I couldn't come up with an apt analogy. The Slims is a gigantic river, but very few people live there and it is unlikely that anyone holds a water right on it. But just because the Snake River is not going to reverse course or disappear over Labor Day weekend, doesn't mean Idaho's water is not vulnerable to climate change.

Changes in our climate make it more difficult to manage water in myriad ways. This article discusses some of the ways Idaho water law does—and does not—have the flexibility necessary to address climate change, and suggests several things Idaho could do to address these issues.<sup>3</sup>

### **The Basics: Water law**

Water is a public resource. It is held in trust for the people by the state, and the state has the authority to issue the right to use it for certain reasons. Every water right has specific elements that dictate where, when and why the person or entity that holds it can use the water.<sup>4</sup> In Idaho, irrigated agriculture holds the majority of consumptive<sup>5</sup> water rights. In fact, Idaho irrigators divert and consume the second largest volume of water of any state in the country.<sup>6</sup>

If you know nothing else about water law, you likely know that in Idaho, like most western states, seniority matters. Said another way, the Prior Appropriation Doctrine (our form of water law) can be distilled to the following phrase: first in time is first in right, so long as water is being put to a beneficial use. The recently completed Snake River Basin Adjudication cataloged and settled disputes related to more than 158,000 water rights in southern and central Idaho.<sup>7</sup> As a result, water right holders know where they stand in relation to others during times of

water shortage, which is when seniority arguably matters most.<sup>8</sup>

In the context of climate change, the “when” element of a water right becomes particularly important. While most domestic, commercial, industrial and municipal water rights are used year-round, irrigation water rights are attached to a specific span of dates called a “season of use.”<sup>9</sup> For the most part, seasons of use align with the growing season in specific areas.

### **The Basics: Climate and change**

Air temperature and precipitation are the primary components of

The Prior Appropriation Doctrine (our form of water law) can be distilled to the following phrase:

first in time is first in right,  
so long as water is being put  
to a beneficial use.

weather and climate. Weather is the short-term (meaning, seasonal or annual) variability in these two factors, while climate views these factors over longer periods of time.

Idaho is vast and we have significant climatic variability within our borders, especially when it comes to precipitation. Boise's average annual precipitation is 11.5 inches and Rexburg averages 13 inches, while up north St. Maries averages 30.5 inches.<sup>10</sup>

Temperature is the other primary component of climate. The planet's

average surface temperature has risen about 2.0 Fahrenheit in approximately 100 years, with most of the warming in the last 35 years.<sup>11</sup> Sixteen of the seventeen warmest years on record have occurred since 2001.<sup>12</sup> While the earth's climate has changed throughout history, the rate at which the climate is changing now is unprecedented. Notably, air temperatures in the Rocky Mountains are warming on par with, and in some locales even more than, the rest of the world.<sup>13</sup>

In the face of climate change, we may not see *average* precipitation change dramatically; but we can expect bigger annual precipitation swings in the coming decades as a result of more extreme weather events—droughts and floods—that stem from warming temperatures.

### **Water Law, meet climate change**

Government agencies, irrigation entities and other water users and managers have spent more than a century building Idaho's water infrastructure (both physical and administrative), and for the majority of water rights to be met as currently issued, this system relies on minimal variations in temperatures and precipitation. However, these are the very elements that are directly impacted by our changing climate, and this is going to throw complicated wrenches in Idaho's water management framework.

For example, first and last frost dates are already creeping later and earlier, respectively, in the year—a reflection of warming temperatures. Even small increases in temperature lead to dramatic changes in the timing of water availability. While many of Idaho's rivers and streams are dammed to create water storage, those dams and their attendant reservoirs were built to compliment Idaho's primary water storage: snowpack.

Historically, Idaho's snowpack peaks in early spring and melts slowly, providing consistent flows for Idaho's rivers throughout summer. This is good for both human water users and aquatic species. However, that norm is changing. A recent Oregon State University study found that in Idaho's Wood River Valley, where snowpack historically peaks about April 1, the peak is anticipated to shift as much as six weeks earlier over the next 50 years.<sup>14</sup> And the Wood River will not be alone in that department.

Recall that irrigation water rights have a specific season of use that allows water use only between certain dates each year. What happens when seasons of use don't represent the same water conditions they used to? When farmers have fewer irrigation days than are needed to grow certain crops? Idaho's water rights do not accommodate these changes. And short of an unprecedented (not to mention unlikely) reinterpretation and implementation of the Prior Appropriation Doctrine, this is not likely to change. Even if water right administration allowed for seasons of use to be shifted earlier in the year to accommodate water availability, in many instances the days are too short and nights are too long to support certain crops.

In short, we have built a water management system that did not anticipate and does not readily accommodate climate change.

### What to do?

Some states approach climatic changes via drought planning. State drought plans typically fall into two categories: response or mitigation.<sup>15</sup> Response plans focus on short-term actions and guidelines that may reduce the immediate threats of drought. Mitigation plans are based on a philosophy that drought should be addressed before it occurs to bet-



Photo by Jeff Kellner  
Marie Tellner looks across the Tweedsmuir Glacier on the Alsek River. Recent news stories have detailed the loss of glaciers and rerouting of rivers in Alaska.

ter tackle it and some of its long-term impacts.

Idaho has a response drought management plan.<sup>16</sup> It provides a framework for the Idaho Department of Water Resources (IDWR) and the Governor's Office to follow once Idaho is amidst a drought. Idaho's water managers utilize the drought plan, however, it has not been updated since 2001. And because it is a response plan as opposed to a mitigation plan, it does not help Idaho move in the direction of adapting to long-term climate change impacts.

Water managers and the legal community do not have to venture far, though, for an example of proactive drought management. Authorized by the Fremont-Madison Conveyance Act of 2003<sup>17</sup>, the Henry's Fork Drought Management Plan<sup>18</sup> calls for collaborative water management by irrigation districts, a federal agency, and NGOs. These entities meet regularly in an attempt to manage Island Park Reservoir and the Henry's Fork of the Snake River for the benefit of water right holders, recreationists, and the world-class fishery. This in-state example pro-

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In short, we have built a water management system that did not anticipate and does not readily accommodate climate change.

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vides an excellent template for other Idaho watersheds and communities.

In a different vein, just this year the Idaho Legislature adopted a bill amending the conditions necessary for temporary water rights. Historically, temporary water rights could be issued only for short-term water uses (less than a year) of no more than five acre-feet.<sup>19</sup> The amendment

allows temporary water rights to be issued for prevention of flood damage and for ground water recharge.<sup>20</sup> Like all water rights, temporary water rights are subject to IDWR analysis regarding the availability of water as well as the when, where and why mentioned previously in this article.

The bill was introduced late in the session, as snowmelt began and rivers were flooding, and it went into effect upon adoption. It provides more flexibility regarding safety and water storage during times of abnormally high water. Because availability of water under the seniority system is still applied to the issuance of temporary water rights, the flexibility created by this amendment should not come at the expense of a river's ecological health or other already established rights and values. This seemingly small amendment provides the kind of flexibility necessary to adapt to the anticipated changing water availability patterns.

Though it is easy to feel discouraged in the face of such a colossal issue, it's not all doom and gloom. This past legislative session a member of Idaho's House Environment, Energy and Technology Committee asked that committee's chairman to hold a climate change hearing. He declined under the auspices that climate change was not important enough to warrant committee time.<sup>21</sup> Nevertheless, the committee member persisted, and hosted a separate climate change informational hearing that garnered more than 650 attendees.<sup>22</sup> It was the largest crowd for a legislative hearing this year.<sup>23</sup>

### Be the salmon

In times like this, it helps to think of Idaho's salmon, fish that undertake among the longest and highest altitude migrations of any salmon on earth, not to mention they swim against the current every bit of the way. They have endured by adapting

to change. Humans will have to do the same.

The Prior Appropriation Doctrine is said to be amoral: its winners are those who were at the table first, no matter why they were there. Much of my practice involves advocating for fish and other non-human uses of water that are finding their voice in a century old system that did not initially take them into account.

Climate change will increasingly level the playing field and place more kinds of water use in the realm

Though it is easy to feel discouraged in the face of such a colossal issue, it's not all doom and gloom.



that fisheries have always been: trying to play catch up, and with time of the essence. Temporary solutions indicative of Idaho's Drought Plan will no longer be enough.

Change is hard, and the status quo is comfortable. And endangered species aside (and that's a *big* aside), Idaho has been able to build and manage its way out of its water growing pains without catastrophic effect. But as the Slims/Alsek River piracy illustrates, climate change is bigger than the law, any of us, or our historic practices, no matter how much power such practices have traditionally held. It behooves all of us who

love water and those of us who need it (in other words, all of us) to actively develop long-term legal and administrative responses to climate change.

### Endnotes

1. Idaho whitewater enthusiasts might know the Alsek River because of its connection to the late Dr. Walt Blackadar of Salmon, Idaho. Blackadar was the first person known to kayak the Alsek's Turnback Canyon, "turnback" being his advice for anyone who thought they might want to follow in his footsteps. Named in his honor, Mt. Blackadar rises high above the Alsek River. Blackadar's life is chronicled in the book *Never Turn Back* (Ron Watters, *Never Turn Back*, Pocatello, Idaho: The Great Rift Press, 1994).

2. John Schwartz, *Climate Change Re-routes a Yukon River in a Geological Instant*, NEW YORK TIMES (April 17, 2017), [https://www.nytimes.com/2017/04/17/science/climate-change-glacier-yukon-river.html?\\_r=0](https://www.nytimes.com/2017/04/17/science/climate-change-glacier-yukon-river.html?_r=0).

3. I would be remiss if I did not acknowledge several things this article does not address such as the impacts of climate change on water quality, as well as the potential for water marketing, incentivized conservation, and tiered pricing to lessen water demand. Each of these could be the subject of its own *Advocate* article.

4. Water right elements are identified in numerous sections of Idaho Code. See IDAHO CODE §§ 42-203A, 42-217, 42-222, 42-1411.

5. Water use may be consumptive or non-consumptive. Consumptive means it is consumed and lost to the system as a result of its use (e.g., growing crops). Non-consumptive means it is used, but not lost to the system (e.g., flushing a toilet).

6. Maupin, M.A., et al., *Estimated use of water in the United States in 2010*, U.S. GEOLOGICAL SURVEY CIRCULAR 1405, <https://pubs.usgs.gov/circ/1405/>.

7. Ann Y. Vonde et al., *Understanding the Snake River Basin Adjudication*, 52 IDAHO L. REV. 53, 56 (2016).

8. Notably, in many parts of Idaho, water



is fully appropriated, meaning there is a moratorium on new consumptive rights. See <https://www.idwr.idaho.gov/legal-actions/orders/moratorium-orders.html>.

9. IDAHO ADMIN. CODE r. 37.03.08.055 (Appendix B)(2017).

10. U.S. CLIMATE DATA, [www.usclimatedata.com/climate/idaho/united-states/3182](http://www.usclimatedata.com/climate/idaho/united-states/3182) (last visited June 30, 2017).

11. NASA, GLOBAL CLIMATE CHANGE, <https://climate.nasa.gov/evidence/> (last visited June 30, 2017). See also <https://www.ncdc.noaa.gov/indicators/>, <http://www.cru.uea.ac.uk/cru/data/temperature>, <http://data.giss.nasa.gov/gistemp>.

12. NASA, GLOBAL CLIMATE CHANGE, <https://climate.nasa.gov/evidence/> (last visited June 30, 2017). See also <https://www.giss.nasa.gov/research/news/20170118/>.

13. Rieman, Bruce E.; Isaak, Daniel J. 2010. *Climate change, aquatic ecosystems, and fishes in the Rocky Mountain West: implications and alternatives for management*. GEN. TECH. REP. RMRS-GTR-250. Fort Collins, CO: U.S. Department of Agriculture, Forest Service, Rocky Mountain Research Station at 3-5.

14. Inouye, Allison et al. *Participatory Modeling to Assess Climate Impacts on Water Resources in the Big Wood Basin, Idaho* in ENVIRONMENTAL MODELING WITH STAKEHOLDERS: THEORY, METHODS, AND APPLICATIONS (S. Gray, M. Paolisso, R. Jordan, and S. Gray, eds. Switzerland: Springer International Publishing 2016).

15. THE NATIONAL DROUGHT MITIGATION CENTER, <http://drought.unl.edu/Planning/DroughtPlans/StateDroughtPlans/Types.aspx> (last visited June 30, 2017).

16. Idaho Drought Management Plan, 2001, <https://www.idwr.idaho.gov/files/>

Named in his honor, Mt. Blackadar rises high above the Alsek River. Blackadar's life is chronicled in the book *Never Turn Back*.

[water-data/Idaho-Drought-Plan.pdf](https://www.idwr.idaho.gov/files/water-data/Idaho-Drought-Plan.pdf).

17. Fremont-Madison Conveyance Act of 2003, Pub. L. No. 108-85, 117 Stat.1049.

18. Henry's Fork Drought Management Plan, [https://henrysfork.org/files/Protecting%20Trout/henrysforkdrought-plan-final5\\_0.pdf](https://henrysfork.org/files/Protecting%20Trout/henrysforkdrought-plan-final5_0.pdf).

19. IDAHO CODE § 42-202A.

20. *Id.* at § 42-202A(5)(a)-(b).

21. Rocky Barker, *'It's about crops and jobs in Idaho.' Hear Climate Change Experts Speak Wednesday*, IDAHO STATESMAN

(March 14, 2017, <http://www.idahostatesman.com/news/local/news-columns-blogs/letters-from-the-west/article138434268.html>).

22. Betsy Z. Russell, *Big Crowd Turns Out for Informational Hearing on Climate Change*, SPOKESMAN-REVIEW

(March 15, 2017, <http://www.spokesman.com/blogs/boise/2017/mar/15/big-crowd-turns-out-informational-hearing-climate-change/>).

23. *Id.*

Marie Callaway Kellner is the Idaho Conservation League's Water Associate. Previously, she clerked in the U.S. District Court of Idaho and in Idaho's Fourth District Court. Prior to that, she was a professional river guide for 18 years. She doesn't hold water rights, but she does hold a J.D. from the University of Idaho, and a B.A. and M.Ed. from the University of Tennessee.



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# Trump Rules: Additional Changes to Clean Water Act Jurisdiction

Norman M. Semanko

In concept, the Clean Water Act<sup>1</sup> seems fairly simple: It prohibits unpermitted discharges of pollutants into navigable waters, with the goal of making them fishable and swimmable. This general, laudatory aim can hardly be criticized, as evidenced by the overwhelming majority of members of Congress and U.S. Senators who voted for the Act, leading to its enactment almost 45 years ago.

However, by defining “navigable waters” as “the waters of the United States,”<sup>2</sup> Congress rendered the basic jurisdictional inquiry — what “waters” are subject to the Act’s coverage — anything but simple. These broad statutory terms invited rulemaking by the two federal agencies charged with administering the Act, the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers. Rulemaking efforts abounded throughout the 1970’s and 1980’s, but then came to a halt just over 30 years ago.<sup>3</sup>

The U.S. Supreme Court has attempted to provide some clarity, without much success. After some initial guidance from the Bush Administration, the Obama Administration adopted the first new rule on this topic in a generation. Now, the Trump Administration is in the process of weighing in with its own rulemaking effort. Each of these developments are discussed here.

## The U.S. Supreme Court sets the stage

Three major cases decided by the U.S. Supreme Court have addressed the question of what constitutes “the waters of the United States.” In the first, the Court upheld an interpretation by the federal agencies that the

The Court, however, rejected the agencies’ expansive view that the term “waters of the United States” embraced isolated waters that serve as habitat for migratory birds.<sup>5</sup>

definition includes wetlands which are immediately adjacent to, or abut, a traditional navigable-in-fact water.<sup>4</sup> The Court, however, rejected the agencies’ expansive view that the term “waters of the United States” embraced isolated waters that serve as habitat for migratory birds.<sup>5</sup>

The Court last attempted to tackle the jurisdictional question a little over a decade ago.<sup>6</sup> Unfortunately, the Court was unable to muster a majority for any single opinion. What resulted was a four-person plurality, in which Justice Scalia rejected the expansive “Land Is Waters” approach to federal jurisdiction by the federal agencies. Scalia proclaimed that “the waters of the United States” includes only relatively permanent, standing or flowing bodies of water, such as “streams,” “oceans,” “rivers,” “lakes,” and “bodies” of water “forming geographical features.” The term does not include channels through which water flows intermittently or ephemerally.<sup>7</sup>

Joining in the result with Scalia’s plurality, but for a different reason, Justice Kennedy concluded that the Act’s jurisdiction extends to waters with a “significant nexus” to traditional navigable-in-fact waters. This determination was to be made by

calculating whether there was a significant effect on the chemical, physical and biological integrity of the navigable-in-fact water.<sup>8</sup>

## Bush’s belated guidance

Participating in his first case on the Court, Chief Justice Roberts noted in his own concurring opinion in *Rapanos* that the definitional problem could have been solved if the federal agencies had exercised their rulemaking authority before the issue got to the Court.<sup>9</sup> While the Bush Administration initiated a rulemaking process in 2003<sup>10</sup> in the aftermath of the Court’s earlier “waters of the U.S.” decision in *Solid Waste Agency of Northern Cook County*, the effort was ultimately abandoned in favor of an agency guidance memo from the Corps and EPA more than five years later, only after the *Rapanos* decision and just before President Obama took office.<sup>11</sup>

The Bush guidance stopped short of fully embracing Scalia’s plurality decision in *Rapanos*, but did seek to narrow the category of waters covered by the Act. However, the fact that the existing, expansive rule from the 1970’s and 1980’s was left in place, left a great deal of uncertainty and unease for the regulated

community. Given the fact that the two U.S. Supreme Court cases which sought to rein-in the federal agencies' were issued during the Bush years, many viewed the lack of rule-making during this time period as a lost opportunity.

### President Obama steps up to the plate

A more determined attempt to clarify the meaning of "waters of the United States" came during the Obama Administration, with a final rule adopted during 2015.<sup>12</sup> The new rule has proven controversial, with a number of challenges filed in federal court, claiming that the rule is broader in scope than the U.S. Supreme Court opinions allow.<sup>13</sup> The Obama rule asserts jurisdiction over all tributaries, without regard to the quantity of flowing water. It also claims jurisdiction over all waters adjacent to traditional navigable-in-fact waters, including "neighboring" waters that are within 100 feet of the ordinary high water mark of a traditional navigable water, or within the 100-year floodplain. These arguably arbitrary delineations have invited much of the litigation.

A stay of the rule was granted by the U.S. District Court in North Dakota, in an action which the State of Idaho participated in. This was followed by the Sixth Circuit Court of Appeals granting a stay and subsequently determining that the courts of appeal, not the district courts, have jurisdiction to decide the question.<sup>14</sup> The U.S. Supreme Court announced on January 13, 2017 that it will be taking up the issue of which federal courts are proper to hear the matter.

### The Trump two-step

On February 28 of this year, President Trump signed an Execu-



tive Order requiring that the federal agencies review and reconsider the Obama-era "waters of the United States" rule. The Executive Order includes a policy that it is "in the national interest to ensure that the Nation's navigable waters are kept free from pollution, while at the same time promoting economic growth, minimizing regulatory uncertainty, and showing due regard for the roles played by Congress and the States under the Constitution."

It also mandates that the agencies "publish for notice and comment a proposed rule rescinding or revising the rule, as appropriate and consistent with the law." On the substantive side, the President's Order directs the agencies to "consider interpreting the term 'navigable waters' . . . in a manner consistent with the opinion of Justice Scalia in *Rapanos*"<sup>15</sup>, bringing the jurisdictional issue full circle back to the plurality decision of the Court in 2008.

Taken as a whole, this Executive Order seems to signal a clear intent by the Trump Administration to replace the more expansive Obama

definition of "waters of the United States" with one that adheres more closely to Justice Scalia's conclusion that such waters include only relatively permanent, standing or flowing bodies of water.

The agencies have announced that the rulemaking will be a two-step process to first repeal and then replace the existing rule. First, it is expected that the agencies will simply repeal the 2015 Obama rule, relying upon the Bush Administration's 2008 guidance memo in the interim. Once that is accomplished, a new rule will be promulgated, consistent with the Executive Order. All of this will of course be done under the notice and comment provisions of the federal Administrative Procedure Act. These proposed regulatory changes will no doubt attract substantial public debate.

### Conclusion

The Clean Water Act has had a long and controversial history, beginning with its unorthodox enactment through a Congressional override of President Nixon's veto in 1972. The



Trump Administration's changes to the Act's regulatory scheme, once completed, are sure to usher in yet another flurry of legal challenges, perhaps providing another opportunity for the U.S. Supreme Court to determine what Congress meant when it penned the terms "navigable waters" and "the waters of the United States" into statute. It seems anything but simple now.

7. *Id.* at 739-42
8. *Id.* at 779-80
9. *Id.* at 758
10. 68 Fed. Reg. 1991 (2003)
11. Clean Water Act Jurisdiction (December 2, 2008) (available at <https://www.epa.gov/cwa-404/2008-rapanos-guidance>)
12. 80 Fed. Reg. 37054 (2015)
13. This "waters of the United States" rule is commonly referred to by the acronym "WOTUS". In a play on words, it has also been referred to by at least one Idaho ir-

- rigation water manager as "woe to us".
14. *In re EPA*, 803 F.3d 804, 807 (6th Cir. 2015); *In re U.S. Dep't of Defense, EPA Final Rule: Clean Water Rule Definition of Waters of U.S.*, 817 F.3d 261 (6th Cir. 2016).
15. Presidential Executive Order on Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the "Waters of the United States" Rule (Feb. 28, 2017) (available at <https://www.whitehouse.gov/the-press-office/2017/02/28/presidential-executive-order-restoring-rule-law-federalism-and-economic>)

## Endnotes

1. 33 U.S.C. Secs. 1251-1387, Pub. L. No. 92-500, 86 Stat. 816 (Oct. 18, 1972)
2. 33 U.S.C. Sec. 1362(7)
3. See e.g., 38 Fed. Reg. 13528 (May 22, 1973); 51 Fed. Reg. 41206 (Nov. 13, 1986)
4. *United States v. Riverside Bayview Homes*, 474 U.S. 121 (1985)
5. *Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers*, 531 U.S. 159 (2001)
6. *Rapanos v. United States*, 547 U.S. 715 (2006)

Norman M. Semanko is a Partner with Moffatt Thomas in Boise, where he manages the firm's Water, Environment and Natural Resource Practice Groups. Norm previously served as Executive Director & General Counsel for the Idaho Water Users Association, promoting the legislative and regulatory agenda of the organization in the Idaho State Legislature and state agency rulemakings.



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# Meet the New Executive Director of the Idaho Water Users Association

Dylan B. Lawrence

**O**n May 1, 2017, Paul Arrington was hired as Executive Director and General Counsel for the Idaho Water Users Association (IWUA). He replaces Norm Semanko, who served in that role since 2000. Given its important role in Idaho and how infrequently its leadership changes, I thought this would be a good opportunity to introduce Paul to members of the Bar who may not already be familiar with him and the IWUA. Below is my conversation with Paul.

**DL:** First off, please explain what IWUA is, what it does, and its importance to Idaho.

**PA:** IWUA is a nonprofit corporation representing irrigation districts, canal companies, ground water districts, water districts, public water suppliers, municipalities, hydro-electric companies, aquaculture interests, agri-businesses, professional firms and individuals throughout Idaho. Our members provide water to nearly 2.5 million acres of irrigated farmland throughout the state.

IWUA was formed to be a resource for its members, in a variety of ways—from interfacing with legislators and administrative agencies, to coordinating training sessions, workshops, and conferences regarding water resource issues. I like to say our role is to “educate and advocate” for water users in Idaho.

**DL:** Why is such a group important to Idaho’s water users?

**PA:** Idaho has long valued the important role that agriculture plays in its economy. From farming, milk, cattle and crop production – and all that supports those efforts – our state is significantly impacted by agriculture. This agriculture relies on water. There are constantly new demands and pressures on Idaho’s water resources. IWUA was estab-

From farming, dairying and ranching to milk, cattle and crop production – and all that supports those efforts – our state is significantly impacted by agriculture. This agriculture relies on water.

lished to give Idaho’s water users the ability to monitor and protect their interests in the use of water.

IWUA has various committees who focus on issues such as legislative matters, education, water quality, and rural/urban affairs. These committees provide a forum for our members to be active in protecting their interests in the use of water.

**DL:** What, specifically, does the IWUA executive director do?

**PA:** IWUA is governed by elected directors who represent eighteen different geographic districts throughout the state. As executive director, I do whatever the directors and committee chairs I previously mentioned tell me to do. In all seriousness, as executive director, I wear a variety of hats, from coordinating the various conferences and training sessions, to representing Idaho’s interests in various national water resource organizations, to testifying before the legislature regarding bills related to water resources. Just last week, I participated in a meeting of agricultural groups from around the state as we met with several candidates for state and federal offices to discuss agricultural issues (including water issues) that they should be aware of as they seek elected office.

**DL:** Please tell us a little bit about your background. What were you

doing prior to accepting the executive director position, and how did you first get interested in water resource issues?

**PA:** I grew up in Twin Falls, then attended Boise State for undergrad and Gonzaga for law school. Since graduating from law school in 2005, I have worked in the Twin Falls office of Barker, Rosholt & Simpson, a firm specializing in water resource issues. So, for the past 12 years, I have been representing clients in various water-related matters, including the Snake River Basin Adjudication, the delivery calls involving the Eastern Snake Plain Aquifer, and other administrative and judicial proceedings. I guess you can say that I’ve long had an interest in water-related issues. Becoming the executive director of IWUA is a natural progression.

**DL:** So, will you be moving from Twin Falls to Boise?

**PA:** Yes. I love Twin Falls, it is home. But this job requires a move to Boise – the political hub of the state. Plus, Twin is less than a two-hour drive, so it is pretty easy to get back to see friends and family.

**DL:** Before we get too far down the road, you are replacing Norm Semanko, who stepped down as executive director after serving in that

role for 17 years. Perhaps you can briefly comment on the job Norm did as executive director, and what he has meant for IWUA, Idaho, and its water users?

**PA:** Norm did an incredible job as executive director. Through his leadership, IWUA has become a strong force of support for Idaho's water users. Norm has represented Idaho's water users on State, regional and federal matters affecting Idaho. He is a strong advocate for Idaho water users. On an operational level, he helped to coordinate conferences and training sessions, bringing in regulators, legislators, and subject matter experts from around the country. He has been an incredible resource for the Idaho water user community, and I have really big shoes to fill. But, Norm isn't going too far away. He is going back into private practice and will continue to provide legal services to Idaho's water users.

**DL:** Are there any other IWUA employees?

**PA:** Karen Edwards has been with IWUA for 41 years. I like to tease her by reminding her that she started working for IWUA before I was born! But, in all seriousness, much of the growth and success of IWUA is directly attributable to Karen. The various conferences, trainings, and workshops that IWUA hosts throughout the year take a tremendous amount of planning and coordination, and Karen handles most of that. Every year, our membership and attendance numbers increase, and that is due in large part to Karen.

**DL:** Transitioning to some substantive questions, what types of issues has IWUA gotten involved in in the past, and how does it typically make its voice heard?

**PA:** It would be difficult to list all of the issues IWUA has been involved in over the years. Really, we keep our eyes on anything with a potential impact to Idaho's water resources, and the systems that have been developed to divert, deliver, and transport that water. And how we choose to deliver our message depends on the issue. For example, IWUA reviews all of the bills in the legislature with any connection to the use and/or management of Idaho's water resources. We are proud to say that, over the last 5 years, IWUA has a 100 percent success rate

Such legislation may include matters relating to the operations of water delivery entities and the protection of Idaho's waters from invasive species, such as quagga muscles.

on all legislation we have supported – no small feat. Such legislation may include matters relating to the operations of water delivery entities and the protection of Idaho's waters from invasive species, such as quagga muscles.

Most don't realize the demands placed on Idaho's water resources. We monitor those demands and take steps to protect our member's interests. We are involved, literally "at the table," on regional issues that threaten the availability and use of Idaho's water. We meet frequently with Idaho's state and federal leg-

islators and resource agencies so that we can be up to date on issues. IWUA will also occasionally intervene or appear as amicus curiae in judicial proceedings.

**DL:** Which issues is IWUA currently tracking? What sorts of demands and pressures are there currently on Idaho's water resources?

**PA:** Within the state of Idaho, of course, IWUA has a huge interest in monitoring and facilitating the implementation of the settlement of one of the large water delivery call disputes on the Eastern Snake Plain Aquifer. Anytime Idaho's water users can sit at a table and resolve such a contentious dispute, that is a win for Idaho.

One big issue facing Idaho's agricultural water users is the ag-urban interface. The state is growing – it's booming! Fields that once grew crops are now multi-home subdivisions. One need only look at Meridian, Post Falls or Lewiston to see examples of areas that were once agricultural and now are busy communities. This development creates new challenges for Idaho's water users. Rights of way, maintenance and flood control issues all change as urban development overtakes agriculture. Thankfully, our water users are up to the challenge and have developed great relationships with their neighboring communities.

There are also a lot of issues outside of Idaho that directly affect our water resources and delivery systems. Certainly, we will be keeping a close eye on the continuing saga involving EPA's "Waters of the United States" rule, as that can greatly affect the regulation and operation of the vast and complex irrigation delivery systems that are so important to Idaho's economy. With the change in administration, the EPA recently invited comments from the various governors regard-



ing the rule, and we participated in a national group of water users to provide input in that regard. [Author's note: Under the federal Clean Water Act, the federal government has the authority to regulate bodies of water that constitute "waters of the United States," the definition of which has been the subject of much judicial and administrative activity for more than 20 years. The most recent effort to define that phrase, EPA's "Waters of the United States" rule, has been the subject of ongoing litigation.] We are also keeping a close eye on the Endangered Species Act litigation involving anadromous fish, as that could greatly affect the water supply available from Idaho's extensive reservoir system.

**DL:** What about in the future? Are there any issues you see materializing in the medium to long-term that are perhaps not on the average Idahoan's radar screen right now?

**PA:** Idaho's water users need to plan for the future. Most Idahoans don't think about water resource issues day-in and day-out. They don't realize that there are real and evolving demands being placed on Idaho's water resources – demands that may impact our water uses. In the past, there have been real proposals to pipe Idaho water and take it out of state. Currently, the state of Oregon and others would like to force the re-introduction of anadromous fish in Idaho, upstream of the Hells Canyon complex. If they are successful, the management of Idaho's water resources could be dramatically altered. While it's difficult to predict exactly where they will come from, I suspect that as time goes on, the interest in and pressures on Idaho's water resources from external sources will only increase. It is my job as IWUA Executive Director to monitor these issues and provide a means whereby Idaho's water users can protect their interests.

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Currently, the state of Oregon and others would like to force the re-introduction of anadromous fish in Idaho, upstream of the Hells Canyon complex.

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**DL:** As we know, Idaho is a relatively small state population-wise. How does this affect Idaho's position on these regional and federal issues, and does it accentuate IWUA's importance within Idaho?

**PA:** Norm [Semanko] has done a great job of keeping Idaho's interests at the forefront. IWUA has provided a voice to Idaho's water users. When we attend meetings on federal and regional issues, Idaho's water users are represented. People come to IWUA to discuss their interests. They recognize and respect the importance of IWUA on these matters. We may be a small state, but IWUA's voice is loud.

In addition, we are active partners with other Western state, national water resource organizations, and our delegation in Congress. Together with these partners, we

have an even more powerful voice in Washington.

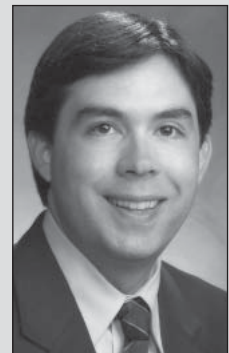
**DL:** How about we end on more of a personal note. What do you do for fun, when you're not out there championing Idaho water resources?

**PA:** Well, my wife Michelle and I have four children (ages 9 to 16). Right now, we are essentially taxi drivers. Whether it be dance competitions, lacrosse tournaments or band concerts, we don't have much extra time. When I do have free time, however, I enjoy cycling and running, and I dabble in triathlons.

**DL:** Interesting. I wouldn't normally think of triathlons as something one "dabbles" in.

**PA:** It'll make more sense when you see me do it.

**Dylan B. Lawrence** is a partner with Varin Wardwell, specializing in water rights, environmental, and natural resources law. He regularly handles water right matters for clients in both the administrative and transactional settings. Dylan achieved his B.B.A. and J.D. from the University of Texas. You can reach him at [dylanlawrence@varinwardwell.com](mailto:dylanlawrence@varinwardwell.com).



# Modernization of the Columbia River Treaty: An Opportunity for Idaho

Barbara Cosens

With the expiration of certain flood control provisions in the Columbia River Treaty between the United States and Canada in 2024, considerable regional and federal resources have been devoted to its review and analysis of the need for modernization. Ninety eight percent of Idaho lies within the basin with much of that on the main tributary to the Columbia—the Snake River. While the Snake River joins the Columbia River downstream of the international border, the physical, legal and economic connectivity of the basin make changes to the Columbia River Treaty of interest to the future of Idaho. The following paragraphs describe the setting of the Columbia River Basin and why it is important to Idaho; the Columbia River Treaty and why it is under review; and concludes with the opportunity the review presents for Idaho, including possibilities for aquifer recharge, storage and improved flood management.

## The Columbia River Basin and its importance to Idaho

With its headwaters in the Rocky Mountains of Idaho, Montana and British Columbia, the Columbia River's main stem flows 1,243 miles crossing the U.S.-Canada border before it empties into the Pacific Ocean along the border between Oregon and Washington (figure 1). The Columbia River Basin covers 671,000 square 259,500 square miles, with 85 percent in the United States.<sup>1</sup> The Basin is jurisdictionally complex with 15 Native American Tribes, 15 First Nations, seven states, two countries, one province, and numerous local governments sharing interests in its water resource.<sup>2</sup>

Salmon and steelhead have a 10 million-year history in the Basin,<sup>15</sup> and were a central feature of Native American and First Nation livelihood, culture, and spiritual life.<sup>16</sup>

The small portion of the basin within British Columbia generates high spring runoff and contributes approximately 38 percent of the average annual flow and 50 percent of the peak flow measured at The Dalles, (located between Oregon and Washington downstream of the confluence with the largest tributary – the Snake River),<sup>3</sup> and up to half of the critical late summer flow.<sup>4</sup> It would be misleading to measure the Columbia River Basin by its average annual flow of 200 Million Acre Feet (MAF), because it experiences a seasonal variability of 1:34.<sup>5</sup> Storage capacity within the basin of 40 percent of the average annual flow allows a degree of control over flow timing, with the result being that the Columbia River produces more hydroelectric power than any other river on the continent.<sup>6</sup>

The largest tributary to the Columbia River is the Snake River<sup>7</sup> and 85 percent of Idaho lies within the Snake River Basin. Tributaries draining another 13 percent of Idaho join the Columbia River via the Spokane, Pend 'Oreille, and Kootenai Rivers.<sup>8</sup> The Snake River is more heavily dammed than any other tributary to the Columbia,<sup>9</sup> with major storage in the upper Snake built primarily for irrigation but with the added benefit of hydropower,<sup>10</sup> flood con-

trol,<sup>11</sup> and navigation.<sup>12</sup> Along with groundwater, this storage system provides a degree of certainty to the farmers of Idaho's 3.6 million acres of irrigated lands—lands representing 60 percent of Idaho's \$3 billion agricultural industry.<sup>13</sup>

While tourism in general brings \$3.4 billion to Idaho annually,<sup>14</sup> the exact value of the sport fishing and white water industry is more difficult to tease out and generally reported by those with interests in the industry. Nevertheless, it is clear that much of Idaho's tourism and quality of life is focused on outdoor recreation and much of that recreation from skiing to angling to rafting to hot springs, focuses on water in all its various forms.

Salmon and steelhead have a 10 million-year history in the Basin,<sup>15</sup> and were a central feature of Native American and First Nation livelihood, culture, and spiritual life.<sup>16</sup> Today, 13 populations of Columbia River salmon and steelhead are listed as either threatened or endangered under the Endangered Species Act (ESA).<sup>17</sup> One hundred seventy-eight salmon hatcheries support the fishery,<sup>18</sup> and hatchery fish make up 80-90 percent of the anadromous fish runs.<sup>19</sup> Dams constructed in the U.S. without fish passage, including Grand Coulee, Chief Joseph, Dwor-

shak, and the Hells Canyon Complex, block salmon from 37 percent of their former habitat.<sup>20</sup> Coordinated operation of the river across the international border altered the hydrograph to correspond with energy demand.<sup>21</sup> Fisheries within the basin were engineered through the development of hatcheries s.<sup>22</sup>

Through judicial recognition of Treaty fishing rights in the 1970's, certain tribal nations are entitled to 50 percent of the harvest that pass or would pass their usual and accustomed fishing grounds.<sup>23</sup> The governance and fisheries science capacity building of Native American Tribes following these rulings is evident in the review of the Columbia River Treaty.

### **The Columbia River Treaty: What's all this talk of review?**

The United States and Canada have operated the main stem of the Columbia River jointly since the Columbia River Treaty entered into force in 1964.<sup>24</sup> Under the Treaty, Canada agreed to build three new dams to provide 15.5 MAF of storage.<sup>25</sup> The United States agreed to pay Canada \$64.4 million for dedication of 8.45 MAF of that storage to assure flood control for 60 years<sup>26</sup> and to share the added benefits from hydropower generation in the United States, resulting from the release of water from three reservoirs (referred to as the "Canadian Entitlement").<sup>27</sup>

The U.S. Congress authorized construction of the Pacific Northwest-Pacific Southwest Intertie,<sup>28</sup> which led to an interconnected North American electric grid. The provincial utility, BC Hydro, entered into 30-year contracts for sale of the Canadian electricity to utilities in the U.S. Southwest. BC Hydro continues to sell that power on the U.S. market following expiration of the

contracts.<sup>29</sup> The Treaty also allowed, but did not require, the United States to build a dam on the Kootenai River (spelled Kootenay in Canada) that would back water up into Canada.<sup>30</sup> The United States exercised this option when it built Libby Dam.

The U.S. and Canada could, at any time since the Treaty entered into force, mutually agree to modify or terminate the Treaty. It is the expiration of the 60-year period of assured flood control on September 16, 2024, combined with a Treaty provision allowing either country to unilaterally walk away from the

In a remarkable act of intertribal diplomacy, the 15 Native American tribes in the Basin came together to develop a set of "Common Views" on the future of the Columbia River and continued to work in concert throughout the process.<sup>36</sup>



Treaty beginning on that same date, given 10 years' notice, has triggered broad review.

The U.S. Army Corps of Engineers and the Bonneville Power Administration led the regional review in the United States,<sup>31</sup> and British Columbia led the review in Canada.<sup>32</sup> The U.S. review included the establishment of a sovereign review team, composed of one representative from each of the four main states in the Basin, five representatives of the 15 Native American tribes, and representatives of the 11 federal agencies with interest in the

Basin.<sup>33</sup> The sovereign review team also had comparable representation on a technical advisory body.<sup>34</sup> Listening sessions were held throughout the Basin to obtain input from other interest groups and the general public.<sup>35</sup>

In a remarkable act of intertribal diplomacy, the 15 Native American tribes in the Basin came together to develop a set of "Common Views" on the future of the Columbia River and continued to work in concert throughout the process.<sup>36</sup> This sophisticated act of diplomacy influenced the outcome of the review process and was not matched by the states. The British Columbia review process included extensive public engagement and consultation with the First Nations claiming resources in the Basin.<sup>37</sup> On December 13, 2013, the U.S. entity transmitted the Regional Recommendation to the U.S. Department of State,<sup>38</sup> and on March 13, 2014, British Columbia announced its position on the future of the Treaty.<sup>39</sup>

The United States Entity Regional Recommendation outlines three primary goals for modernizing the Treaty:

1. Elevate ecosystem function to a third primary purpose of international cooperation, along with hydropower and flood control;
2. Amend the formula for sharing of power benefits to more closely reflect actual operations;<sup>40</sup> and
3. Continue to cooperate on the development of a flood risk management plan that reflects, among other things, the implications of climate change.

Although the Treaty currently does not address apportionment of water supply or navigation, the recommendation calls for acknowledgement of the importance of each. It also calls for the flexibility to seek mutual benefits in use and development of storage for out of stream



use. The recommendation responds to the call for greater public and sovereign participation by recommending the formation of an advisory body for negotiations and reconsideration of the composition of the U.S. entity for implementation of the modernized treaty. The U.S. Department of State has appointed Brian Doherty to lead negotiations.

The provincial government of British Columbia seeks to “[c]ontinue the Columbia River Treaty and seek improvements within the existing Treaty framework,” and sets forth 14 principles including:

1. Recognition that shared benefits go beyond hydropower production and that British Columbia should be compensated accordingly;
2. Recognition that the impacts of the treaty dams on Canada are ongoing and should be compensated; and;
3. a greater use of U.S. storage for flood control and thus a reduced reliance on Canada. While the Province supports continued efforts to cooperate on ecosystem function, it does not view this as a component that requires change to the Treaty. Canada has yet to appoint a lead for new Columbia River Treaty negotiations.

### **The Negotiations: An opportunity for Idaho**

In 2014 the Idaho Legislature passed a resolution opposing the addition of ecosystem function as a third prong of the Treaty and opposing any additional use of reservoirs in Idaho for flood control.<sup>41</sup> The following paragraphs present reasons why it may be prudent for Idaho to do a full analysis of opportunities for Idaho to benefit from a more distributed approach to flood control and to reconsider this ideological reaction against ecosystem function. While full analysis may reveal that

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the benefits are limited, it may not, and it is certainly worth exploring.

### **Flood Control: Opportunities for storage and aquifer recharge**

The difference in positions represented by the U.S. Regional Recommendation and the BC decision on flood control are related to the degree to which the Treaty reservoirs in Canada are operated to assure a low level of flood risk downstream. The United States seeks continuation of the low level of risk enjoyed since the dams were built; British Columbia would like the United States to rely on its own reservoirs first as is already provided in the CRT for emergency high flow situations. Even under the existing Treaty language, the United States takes the position that U.S. storage refers to only those federal dams authorized for flood control whereas BC takes the position that it refers to any dam in the U.S.

Idaho’s 2014 Resolution is consistent with the U.S. Regional Recommendation’s position in seeking continuation of the current reliance on Treaty dams in Canada to reduce flood risk downstream and in its opposition to use of other dams in the U.S. for flood control. What is at risk for Idaho is whether Reclamation dams in the United States might be targeted for increased contribution to flood control. While it is understandable that both Idaho and the

larger region would oppose this on its face, consider whether this might also present an opportunity to solve other issues. For example, no one has studied this with the following goals in mind:

1. Does this present an opportunity for federal assistance for improvement of aging water storage infrastructure including increasing storage at existing sites; and
2. Does this present an opportunity to develop new storage through dedication of a flood control pool in existing reservoirs that could be used for aquifer recharge and through identification of any opportunities for new off-stream storage?

### **Potential for a shared burden on salmon recovery**

In 2015, the Columbia River basin’s waters experienced temperatures lethal to salmon. As we enter a period of increasing temperature and higher variability, cold water refugia are of heightened importance to the recovery of listed species in the Columbia River Basin. Currently the primary location of cold water refugia is in the Salmon and Clearwater tributaries to the Snake River in Idaho. While Idaho has a history of opposing all things related to the Endangered Species Act, the hope that listings without recovery will simply end is unlikely to come

to pass. The main stem of the Columbia in Canada is the other possible cold water refugia for these species. By opposing discussion of fish passage and ecosystem function in CRT negotiations, Idaho has placed a recovery target on itself.

A wise person once told me, the first rule of negotiations is to show up. While it has always been tempting for Idaho to think of the Snake River as its own, it is both physically and legally part of the Columbia River Basin. In the context of a shared watercourse, diplomacy is an exercise of sovereignty. The leadership shown by the Idaho agricultural and timber communities in bringing the State to the table in the Nez Perce water settlement negotiations with the hope of identifying means to resolve instream flow claims while addressing potential issues under the Endangered Species Act need to once more step up. Failure to do so may mean missed opportunities for the future of Idaho. In short, Idaho – show up!

## Endnotes

1. James Barton and Kelvin Ketchum, *Columbia River Treaty: Managing for Uncertainty* in *THE COLUMBIA RIVER TREATY REVISITED: TRANSBOUNDARY RIVER GOVERNANCE IN THE FACE OF UNCERTAINTY* at 43 (Barbara Cosens ed., 2012);

2. Richard Kyle Paisley and Matthew McKinney, Universities consortium on Columbia River Governance, *A Sacred Responsibility: Governing the Use of Water and Related Resources in the International Columbia Basin Through the Prism of Tribes and First Nations* (2015), available at: [http://www.columbiariver-governance.org/A\\_Shared\\_Responsibility\\_2015\\_FINAL.pdf](http://www.columbiariver-governance.org/A_Shared_Responsibility_2015_FINAL.pdf).

3. Barton and Ketchum *supra* note 1.

4. Alan F. Hamlet, *The Role of Transboundary Agreements in the Columbia River Basin: An Integrated Assessment in the Context of Historic Development, Climate, and Evolving Water Policy*, in *CLIMATE AND WATER: TRANSBOUNDARY CHALLENGES IN THE AMERICAS*

263, 267 (Henry F. Diaz and Barbara J. Morehouse eds., 2003).

5. U.S. Bureau of Reclamation, U.S. Army Corps of Engineers and Bonneville Power Administration. *THE COLUMBIA RIVER SYSTEM INSIDE STORY* at 5 (2001) [https://www.bpa.gov/power/pg/columbia\\_river\\_inside\\_story.pdf](https://www.bpa.gov/power/pg/columbia_river_inside_story.pdf). The year to year variability of unregulated peak flow on the Columbia is 1:34, compared to a mere 1:2 on the Saint Lawrence River or 1:25 on the Mississippi River.

6. The hydroelectric generation in the basin is 38,670 megawatts, amounting to roughly 2/3 of the demand in the Pacific Northwest. Northwest Power and Conservation Council (NWPCC). 2013. *A Guide to Major Hydropower Dams of the Columbia River Basin*. URL: <https://www.nwcouncil.org/energy/powersupply/dam-guide>

7. The Snake River discharges on average 27.5 million acre-feet to the Columbia or 14% of the Columbia's average annual flow. NWPCC. 2008. *Columbia River History Project: Snake River*. URL: <https://www.nwcouncil.org/history/SnakeRiver>

8. The Bear River Basin which drains toward Utah from south eastern Idaho makes up 2% of Idaho's land mass. See Bear River Water Information System URL: <http://www.bearriverinfo.org/html/bear-river-watershed-description>

9. NWPCC *supra* note 6.

10. US Bureau of Reclamation, Pacific Northwest Region, Snake River Area Office. *Dams, Projects, and Powerplants*. URL: <https://www.usbr.gov/pn/snakeriver/dams/>

11. US Army Corps of Engineers, Walla Walla District, Dworshak Dam and Reservoir. URL: <http://www.nww.usace.army.mil/Locations/District-Locks-and-Dams/Dworshak-Dam-and-Reservoir/>

12. US Army Corps of Engineers, Walla Walla District, Lower Snake River Dams. URL: <http://www.nww.usace.army.mil/Missions/Lower-Snake-River-Dams/>

13. USDA, 2016 State Agricultural Overview: Idaho. URL: [https://www.nass.usda.gov/Quick\\_Stats/Ag\\_Overview/stateOverview.php?state=IDAHO](https://www.nass.usda.gov/Quick_Stats/Ag_Overview/stateOverview.php?state=IDAHO)

14. Idaho Department of Commerce, Tourism Resources. URL: <http://commerce.idaho.gov/tourism-resources/>

15. Michael C. Healey, *Resilient Salmon, Resilient Fisheries for British Columbia,*

*Canada*, 14 No. 1 *ECOLOGY AND SOCIETY* Art. 2 (2009), available at <http://www.ecologyandsociety.org/vol14/iss1/art2/>; see also Paul W. Hirt, *Developing a Plentiful Resource: Transboundary Rivers in the Pacific Northwest*, in *WATER, PLACE, AND EQUITY* 147, 155 (John M. Whiteley et al. eds., 2008) (noting that pre-European settlement salmon runs were estimated at 12–15 million salmon).

16. Mary L. Pearson, *The River People and the Importance of Salmon*, in *THE COLUMBIA RIVER TREATY REVISITED: TRANSBOUNDARY RIVER GOVERNANCE IN THE FACE OF UNCERTAINTY* at 77 (Barbara Cosens ed., 2012); *United States v. Washington*, 384 F.Supp. 312, 350 (W.D. Wash., 1974), *aff'd*, 520 F.2d 676 (9th Cir. 1975);

17. Current listings of salmon species found in the Columbia Basin: Snake River Sockeye (endangered), Upper Willamette River Chinook (threatened), Lower Columbia River Chinook (threatened), Upper Columbia River spring-run Chinook (endangered), Snake River fall-run Chinook (threatened), Snake River spring/summer-run Chinook (threatened), Lower Columbia River Coho (threatened), Columbia River Chum (threatened). Final Listing Determinations for 16 ESUs of West Coast Salmon, 70 Fed. Reg. 37,160, 37,193 (June 28, 2005). Note that four ESU's of steelhead are also currently listed: 69 Fed. Reg. 33,105 (June 14, 2004) and 71 Fed. Reg. 5,178 (Feb. 1, 2006); see also *Species Lists*, NOAA FISHERIES, WEST COAST REGION, [HTTP://WWW.WESTCOAST.FISHERIES.NOAA.GOV/PROTECTED-SPECIES/SPECIES\\_LIST/SPECIES\\_LISTS.HTML](http://www.westcoast.fisheries.noaa.gov/protected-species/species_list/species_lists.html).

18. Hatchery Scientific Review Group, *COLUMBIA RIVER SYSTEM-WIDE REPORT 9* (2009) [http://www.hatcheryreform.us/hrp\\_downloads/reports/columbia\\_river\\_system-wide/1\\_introduction.pdf](http://www.hatcheryreform.us/hrp_downloads/reports/columbia_river_system-wide/1_introduction.pdf).

19. Chris Peery, *The Effects of Dams and Flow Management on Columbia River Ecosystem Processes*, at 138, in Cosens, B. editor. *The Columbia River Treaty Revisited* in *THE COLUMBIA RIVER TREATY REVISITED: TRANSBOUNDARY RIVER GOVERNANCE IN THE FACE OF UNCERTAINTY* at 43 (Barbara Cosens ed., 2012).

20. John Harrison, *Northwest Power and Conservation Council, Fish Passage at Dams* (2008) [online] URL: <http://www.nwcouncil.org/history/fishpassage>

21. Barton and Ketchum *supra* note 1.

22. See generally, Perry *supra* note 19;

Goble and Hirt *supra* note 19.

23. *United States v. Washington (Boldt Decision)*, 384 F. Supp. 312, 332 (W. D. Wash. 1974), *aff'd* 525 F.2d. 676 (9th Cir. 1975), *cert. denied*, 423 U.S. 1086 (1975) (affirming treaty fishing rights associated with language found in the 1855 treaties of the tribes now organized as the Columbia River Inter-Tribal Fish Commission); *see also* *Washington v. Washington State Commercial Passenger Fishing Vessel Ass.*, 443 U.S. 658, 685 (1979) (responding to litigation involving implementation of the *Boldt* decision, the Court stated: “[A]n equitable measure of the common right should initially divide the harvestable portion of each run that passes through a ‘usual and accustomed’ place into approximately equal treaty and nontreaty shares, and should then reduce the Treaty share if tribal needs may be satisfied by a lesser amount.”).

24. Treaty Between the United States of America and Canada Relating to Co-operative Development of the Water Resources of The Columbia River Basin, U.S.-Can., Jan. 17, 1961, 15.2 U.S.T 1555 [hereinafter CRT].

25. *Id.* at Article II.

26. *Id.* at Article IV(2).

27. *Id.* at Article V.

28. Pacific Northwest Consumer Power Preference Act, 16 U.S.C. § 837 (2012).

29. John Shurts, *Rethinking the Columbia River Treaty*, in *TRANSBOUNDARY RIVER GOVERNANCE IN THE FACE OF UNCERTAINTY: THE COLUMBIA RIVER TREATY* at 195 (Barbara Cosens ed., 2012).

30. CRT at Article XII, The Kootenai River is a tributary to the Columbia River that has its headwaters in Canada, flows into the United States, then back into Canada before it joins the Columbia River. Libby Dam is on the U.S. section of the river.

31. U.S. Army Corps of Engineers and Bonneville Power Administration, Columbia River Treaty: 2012/2024 Review, Process, Sovereign Review Team (May 17, 2015), <http://www.crt2014-2024review.gov/Files//SRT%20Roster%20Update%2005172013.pdf>.

32. British Columbia, COLUMBIA RIVER TREATY REVIEW, <http://blog.gov.bc.ca/columbiarivertreaty/>

33. U.S. Army Corps of Engineers and Bonneville Power Administration, Columbia River Treaty: 2012/2024 Review,

Process, Sovereign Review Team (May 17, 2015), <http://www.crt2014-2024review.gov/Files//SRT%20Roster%20Update%2005172013.pdf>.

34. U.S. Army Corps of Engineers and Bonneville Power Administration, Columbia River Treaty: 2012/2024 Review, Process, Sovereign Technical Team, [http://www.crt2014-2024review.gov/Files/STT\\_and\\_STT\\_Work%20Group%20Contact%20List\\_07222013.pdf](http://www.crt2014-2024review.gov/Files/STT_and_STT_Work%20Group%20Contact%20List_07222013.pdf).

35. U.S. Army Corps of Engineers and Bonneville Power Administration, *supra* note 29.

36. Columbia Basin Tribes, *Common Views on the Future of the Columbia River Treaty* (2010), <http://www.usea.org/sites/default/files/event-/Common%20Views%20statement%20NQ.pdf>.

37. COLUMBIA RIVER TREATY REVIEW, *FAQs*, <http://blog.gov.bc.ca/columbiarivertreaty/faqs/> (last visited Oct. 11, 2015). Although the federal government of Canada remains the final decision maker on international treaties, the provincial government implements and receives the benefits between the United States and the Province. *See generally* Jeremy Mouat *The Columbia Exchange: A Canadian Perspective on the Negotiation of the Columbia River Treaty 1944-1964*, in *The Columbia River Treaty Revisited: Transboundary River Governance in the Face of Uncertainty*, at 22-33 (Barbara Cosens ed., 2012); Shurts 2012, *supra* note 27 192, 192-199, 222-235; Paul Hirt and Adam Sowards, *The Past and Future of the Columbia River*, in *Transboundary River Governance in the Face of Uncertainty: The Columbia River Treaty* at 115, 123-131 (Barbara Cosens ed., 2012).

38. U.S. ENTITY, REGIONAL RECOMMENDATION

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Although the federal government of Canada remains the final decision maker on international treaties, the provincial government implements and receives the benefits between the United States and the Province.

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FOR THE FUTURE OF THE COLUMBIA RIVER TREATY AFTER 2024 (Dec. 13, 2013), <http://www.crt2014-2024review.gov/Files/Regional%20Recommendation%20Final,%2013%20DEC%202013.pdf>.

39. *Government of British Columbia Decision on the Future of the Columbia River Treaty*, COLUMBIA RIVER TREATY REVIEW (May 13, 2014), [http://www.enewletters.gov.bc.ca/Columbia\\_River\\_Treaty\\_Review\\_eNewsletter/May\\_2014/Government\\_of\\_British\\_Columbia\\_Decision\\_on\\_the\\_Future\\_of\\_the\\_Columbia\\_River\\_Treaty\\_Review/article](http://www.enewletters.gov.bc.ca/Columbia_River_Treaty_Review_eNewsletter/May_2014/Government_of_British_Columbia_Decision_on_the_Future_of_the_Columbia_River_Treaty_Review/article).

40. Under the CRT, changes to operations in the U.S. to satisfy the ESA that result in reduced hydropower production are not reflected in the calculation of the Canadian Entitlement. Instead, the Entitlement is calculated under the Annual Operating Plan developed by the entities. Shurts *supra* note 27 at 192-248.

41. Idaho House Joint Memorial 10. 2014.

Professor Barbara Cosens of the University of Idaho, College of Law, teaches and does research in water law. Her outreach focuses on western water law and its reform in the face of extended drought and climate change and the Columbia River Treaty. She has been appointed by the Governor of Idaho as Advisor to Pacific NorthWest Economic Region Idaho Council.





**COURT INFORMATION**

**OFFICIAL NOTICE  
SUPREME COURT OF IDAHO**

Chief Justice  
Roger S. Burdick

Justices  
Daniel T. Eismann  
Warren E. Jones  
Joel D. Horton  
Robyn Brody

**Regular Fall Term for 2017**  
3<sup>rd</sup> Amended 6/6/17

Boise ..... July 7  
Boise ..... August 4, 11, 16 and 17  
Boise ..... September 18, 20 and 22  
Pocatello ..... September 28 and 29  
Boise ..... November 1, 3, 6 and 9  
Twin Falls ..... November 8  
Boise ..... December 4, 6, 8, 11 and 13

By Order of the Court  
Stephen W. Kenyon, Clerk

**NOTE:** The above is the official notice of the 2017 Fall Term for the Supreme Court of the State of Idaho, and should be preserved. A formal notice of the setting of oral argument in each case will be sent to counsel prior to each term.

**OFFICIAL NOTICE  
COURT OF APPEALS OF IDAHO**

Chief Judge  
David W. Grätton

Judges  
Sergio A. Gutierrez  
John M. Melanson  
Molly J. Huskey

**Regular Fall Term for 2017**  
4/13/17

Boise ..... August 8 and 24  
Boise ..... September 14 and 19  
Boise ..... October 10, 12, 24 and 26  
Boise ..... November 9, 14 and 16  
Boise ..... December 7

By Order of the Court  
Stephen W. Kenyon, Clerk

**NOTE:** The above is the official notice of the 2017 Fall Term for the Court of Appeals of the State of Idaho, and should be preserved. A formal notice of the setting of oral argument in each case will be sent to counsel prior to each term.

**Idaho Court of Appeals  
Oral Arguments for August 8 and 24, 2017**

**Tuesday, August 8, 2017 – BOISE**

9:00 a.m. *Boswell v. Steele* ..... #44093  
10:30 a.m. *State v. Erlebach* ..... #44468/69/70  
1:30 p.m. *Hermann v. Idaho Trans. Dept.* ..... #44379

**Thursday, August 24, 2017 – BOISE**

9:00 a.m. *Carver v. State* ..... #44164  
10:30 a.m. *Thompson v. Thompson* ..... #44522

**Idaho Supreme Court  
Oral Arguments for August 2017**

7/14/17

**Monday, July 31, 2017 – NO COURT**

**Tuesday, August 1, 2017 – NO COURT**

**Wednesday, August 2, 2017 – NO COURT**

**Thursday, August 3, 2017 – NO COURT**

**Friday, August 4, 2017 – BOISE**

8:50 a.m. OPEN

10:00 a.m. *State v. Hall* ..... #31528

11:10 a.m. OPEN

**Monday, August 7, 2017 – NO COURT**

**Tuesday, August 8, 2017 – NO COURT**

**Wednesday, August 9, 2017 – NO COURT**

**Thursday, August 10, 2017 – NO COURT**

**Friday, August 11, 2017 – BOISE**

8:50 a.m. *State v. Gibbs* ..... #44299

10:00 a.m. *Barrios v. Zing* ..... #44554

11:10 a.m. *Clark v. Jones, Gledhill, Furhman, Gourley* ..... #44477

**Monday, August 14, 2017 – NO COURT**

**Tuesday, August 15, 2017 – NO COURT**

**Wednesday, August 16, 2017 – BOISE**

8:50 a.m. *Jane Doe and John Doe II v. John Doe I* (2017-15) #44997

10:00 a.m. *Employers Resource Management v. Ronk* ..... #44511

11:10 a.m. *State v. Lee* ..... #44932

**Thursday, August 17, 2017 – BOISE**

8:50 a.m. *Coeur d'Alene Tribe v. Johnson* ..... #44478

10:00 a.m. *Taylor v. Riley* ..... #43686

11:10 a.m. *Dunn v. Idaho State Tax Commission* ..... #44378

**Friday, August 18, 2017 – NO COURT**

**Idaho Court of Appeals  
Oral Arguments for September 14 and 19, 2017**

**Thursday, September 14, 2017 – BOISE**

9:00 a.m. *State v. Leveque* ..... #43877

10:30 a.m. *State v. Pettit* ..... #44198

1:30 p.m. *State v. Hernandez* ..... #43901

**Tuesday, September 19, 2017 – BOISE**

9:00 a.m. *State v. Fenton* ..... #44546

10:30 a.m. *State v. Stell* ..... #43967

1:30 p.m. *State v. Chavez* ..... #44504

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William K. Smith

**Hawley Troxell welcomes William K. Smith to the firm's Boise office.** William is a litigation associate attorney focusing on representing clients in business and employment-related disputes. William served as a law clerk to Chief Justice Roger S. Burdick of the Idaho Supreme Court and is a graduate of the University of North Carolina School of Law.



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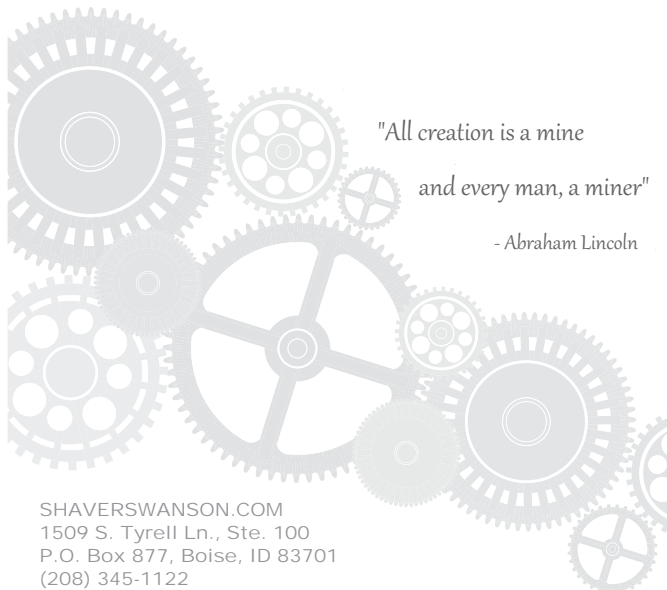
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## CIVIL APPEALS

### Post-conviction relief

1. Whether the district court erred by failing to make specific findings of fact, and by failing to state expressly its conclusions of law, relating to each issue presented by Jones at his evidentiary hearing.

*Jones v. State*  
S.Ct. No. 44529  
Court of Appeals

2. Did the district court err in concluding that a prisoner is not entitled to the benefit of the mailbox rule when he addresses the envelope containing his post-conviction petition to the correct court, but uses the prosecuting attorney's address instead of the court's address?

*Larson v. State*  
S.Ct. No. 44363  
Court of Appeals

3. Did the district court err in summarily dismissing the claim of ineffective assistance of counsel in failing to request proximate and intervening cause instructions?

*Thompson v. State*  
S.Ct. No. 44542  
Court of Appeals

### Settlement agreement

1. Whether the district court erred in holding there was a final enforceable oral agreement made between the parties in the absence of an actual recording of the terms and conditions read into the court record.

*Seward v. Musick Auction, LLC*  
S.Ct. No. 44543  
Supreme Court

### Writ of prohibition

1. Did the district court err in granting the SBWC's petition for a writ of prohibition and in finding the Fire District did not have jurisdiction to order SBWC to comply with the International Fire Code?

*Schweitzer Basin Water Co. v. Schweitzer Fire District*  
S.Ct. 44249  
Supreme Court

## CRIMINAL APPEALS

### Due process

1. Whether the prosecutor committed misconduct amounting to fundamental error by eliciting impermissible testimony from two officers.

*State v. Diaz*  
S.Ct. No. 43870  
Court of Appeals

2. Did the district court's instruction informing the jury pool that a prior trial had occurred in 2006 and that, following an appeal, the Idaho Supreme Court had reversed and remanded the case for a new trial, violate Johnson's constitutional right to a fair trial before an impartial jury?

*State v. Johnson*  
S.Ct. No. 43822  
Supreme Court

### Evidence

1. Did the district court err in finding the videos of the CARES interviews of Transue's victims were admissible under I.R.E. 703 and I.R.E. 801(d)(1)(B)?

*State v. Transue*  
S.Ct. No. 43777  
Court of Appeals

2. Whether there was sufficient evidence that Hernandez seized and/or detained either alleged victim to support his convictions for second-degree kidnapping.

*State v. Hernandez Jr.*  
S.Ct. No. 43901  
Court of Appeals

3. Did the district court err by admitting hearsay evidence because it erroneously concluded that Cleveland had opened the door to its admission?

*State v. Cleveland*  
S.Ct. No. 44275  
Court of Appeals

4. Did the district court err when it reversed the magistrate court's ruling that a transcript of a witness's testimony at Chavez's Administrative License Suspension hearing was not admissible at Chavez's criminal trial because it was inadmissible hearsay?

*State v. Gustavo Chavez 2<sup>nd</sup>*  
S.Ct. No. 44504  
Court of Appeals

5. Did the district court abuse its discretion when, pursuant to I.R.E. 803(4), it admitted statements the victim made to the forensic nurse during a medical examination?

*State v. Hilterbran*  
S.Ct. No. 44463  
Court of Appeals

### Search and seizure – suppression of evidence

1. Did the district court err in granting Fenton's motion to suppress by failing to correctly apply the doctrine of attenuation?

*State v. Fenton*  
S.Ct. No. 44546  
Court of Appeals

2. Did the district court err when it determined that Davis did not unequivocally request a lawyer and that Davis' confession was voluntary?

*State v. Davis*  
S.Ct. No. 44476  
Court of Appeals

3. Did the court err in finding that Greub's act of grabbing her purse as she exited the car did not revoke her consent to search the car as it related to her purse?

*State v. Greub*  
S.Ct. No. 44747  
Court of Appeals

**Summarized by:**  
**Cathy Derden**  
**Supreme Court Staff Attorney**  
**(208) 334-3868**



# New Corporate Form Provides More Options for Social Enterprises

Kelsey Jae Nunez  
Mark A. Buchanan

**T**he Idaho Benefit Corporation Act establishes a new corporate form available to social enterprises. The Act is based upon model legislation created by B-Lab, a nonprofit organization that certifies companies as “B-Corps” and “serves a global movement of people using business as a force for good™.”<sup>1</sup>

While the terms “B-Corp” and “benefit corporation” are related and often used interchangeably, they have different standards and legal effects. To assist Idaho attorneys in counseling the growing number of socially conscious businesses, this article provides an overview of important terminology and legal requirements.

## Third party certification and a new corporate form

B-Corps and benefit corporations were created in response to years of academic debate and litigation over shareholder primacy, the business judgement rule, and the propriety of considering non-shareholder interests (like environmental protection or community building) when making business decisions. Under the prevailing interpretation of general corporate law, the definition and scope of directors’ and officers’ fiduciary duties (and therefore standards of liability) require the maximization of shareholder value. Social entrepreneurs were making progress in arguing that it is in the best interests of the corporation to focus on the “triple bottom line” of people, planet *and* profits. However, the risk of shareholder lawsuits kept conservative boards and officers from venturing too far into this new realm of

In 2006, the “Certified B-Corp” program was launched. This is a third-party certification process that grades a company based on a comprehensive assessment of governance and social and environmental impacts.<sup>2</sup>

applying for-profit models to goals that were more commonly associated with non-profit organizations. The risk of litigation was especially high in times of transition, such as leadership succession, capital raises, and mergers/acquisitions.

As the social expectations of business continued to shift, a community of social entrepreneurs sought to manage expectations and reduce the ambiguities between legal obligations to shareholders and ethical responsibilities to social and environmental stakeholders. In 2006, the “Certified B-Corp” program was launched. This is a third-party certification process that grades a company based on a comprehensive assessment of governance and social and environmental impacts.<sup>2</sup>

Any entity form can apply for certification as a way to solidify their commitment to a social mission and inform investors, owners, and customers of these priorities. However, the legal issues associated with shareholder primacy remain for entities organized under the general corporate form. Thus, the leaders of the B-Corp movement developed model legislation to create a new business form that explicitly *requires* consideration of other stakeholders and the

creation of public benefit. Maryland was the first state to adopt this benefit corporation legislation in 2010, and Idaho joined the club in 2015 thanks to a legislative effort led by a group of Idaho B-Corps.<sup>3</sup>

Now, a socially focused Idaho company can choose to incorporate as a benefit corporation, seek B-Corp status, or both.<sup>4</sup> As the business of social good continues to grow, more certification programs are entering the scene. For example, entrepreneurs in Boise recently launched GoodWell, Inc., a globally focused program that is “empowering employers to act with humanity.”<sup>5</sup>

## The Idaho Benefit Corporation Act

Idaho benefit corporations are governed by both the Idaho Benefit Corporation Act at Idaho Code §§ 30-2001 et seq. and the Idaho Business Corporation Act at Idaho Code § 30-29-101 et. seq. Chapter 20 provides requirements that are in addition to or in lieu of the general business corporations laws in Chapter 29.<sup>6</sup> The following is an overview of some key distinctions.

### Formation

Benefit corporations follow the same incorporation procedures, but

the Articles of Incorporation must state that it is a benefit corporation subject to Chapter 20.<sup>7</sup> Currently, the standard form provided by the Idaho Secretary of State has a box at the top of the page allowing a company to elect status as a benefit corporation.<sup>8</sup> Attorneys should ensure that their clients do not inadvertently check this box and subject themselves to additional requirements without being prepared for the responsibilities. Existing general corporations can become benefit corporations by amending their articles of incorporation by a two-thirds vote.<sup>9</sup> An existing entity that is not a corporation (i.e. an LLC) can convert to a benefit corporation according to the provisions in the Idaho Entity Transactions Act, Idaho Code §§ 30-2201 et. seq.

### Purpose

The Act declares that the purpose of a benefit corporation is to create general public benefit.<sup>10</sup> “General public benefit’ means a material positive impact on society and the environment, taken as a whole, as assessed under a third-party standard, resulting from the business and operations of a benefit corporation.”<sup>11</sup> The company can state a “specific public benefit” if it chooses.<sup>12</sup> “Specific public benefit’ includes:

- (a) providing low-income or underserved individuals or communities with beneficial products or services;
- (b) promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business;
- (c) protecting or restoring the environment;
- (d) Improving human health;
- (e) promoting the arts, sciences or advancement of knowledge;
- (f) increasing the flow of capital to entities with a purpose to benefit society or the environment; or

(g) conferring any other particular benefit on society or the environment.<sup>13</sup>

### Director duties and liability<sup>14</sup>

This is a critical difference between a general corporation and a benefit corporation. Directors *must* consider the effects of any action or inaction on the:

- (a) shareholders; employees, subsidiaries and suppliers;
- (b) customers as beneficiaries of the public benefit;

“General public benefit’ means a material positive impact on society and the environment, taken as a whole, as assessed under a third-party standard, resulting from the business and operations of a benefit corporation.”<sup>11</sup>

— *Idaho Entity Transactions Act*

- (c) community and social factors (including each community the company and suppliers operate in);
- (d) the local and global environment;
- (e) the short and long term interests of the benefit corporation; and
- (f) the ability of the benefit corporation to accomplish its public benefit purpose.

Directors may also consider any other pertinent factors or the interests of any group they deem appropriate. The Act doesn’t assign any certain priority to the above interests.

Unless the Articles of Incorporation provide otherwise, a director is not personally liable for money damages for actions taken as required by this section or for failure to achieve the public benefit. Directors do not have a duty to a person who is a beneficiary of the public benefit arising from their status as a beneficiary (i.e. no third party beneficiary can sue a director).

### Benefit directors

A “benefit director” is required for publicly traded benefit corporations but optional otherwise. The benefit director is in charge of monitoring progress towards the public benefit and preparing the annual benefit report.<sup>15</sup> The benefit director (if there is one) must be “independent,” which means that the person has no “material relationship” with the benefit corporation (i.e. has been an employee within the last three years, is an immediate family member of someone who has been an executive officer within the last three years, or someone who owns at least 5 percent of the shares).<sup>16</sup>

### Officers

Officers have standards of conduct similar to the directors.<sup>17</sup> A benefit corporation may have a “benefit officer,” with essentially the same duties as the benefit director.<sup>18</sup>

### Annual benefit report<sup>19</sup>

This report communicates the activities of the benefit corporation and is a valuable tool for distinguishing a benefit corporation from non-benefit corporations. It must contain:

- (a) a narrative description of:
  - (i) the ways the company pursued the general public benefit and the extent to which it was created;

(ii) the ways the company pursued the specific public benefit and the extent to which it was created;

(iii) any circumstances that hindered the company in those pursuits; and

(iv) the process and rationale for selecting or changing the third-party standard used to prepare the benefit report;

(b) an assessment of the overall social and environmental performance of the benefit corporation under a third-party standard selected by the benefit corporation;

(c) the name and address of benefit director and benefit officer, if any;

(d) compensation paid by the benefit corporation during the year to each director;

(e) the opinion of the benefit director as to whether the benefit corporation acted in accordance with its public benefit and whether the directors and officers complied with their duties (and if not, how they failed);

(f) a statement of any connection between the organization that established the third-party standard and anyone in the benefit corporation;

(g) if the benefit corporation has dispensed with or restricted the discretion or powers of the board of directors, a description of the persons who are exercising those powers instead; and

(h) if any benefit director resigned, refused to serve, or was removed from the position, any correspondence relating to that decision.

The Annual Benefit Report does not have to be verified or audited by any third party or shared with the Secretary of State (the original statute required this but it was quickly amended given that no other busi-

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A benefit enforcement proceeding is the only way to sue the company for failure to pursue or create the general or specific public benefit.

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ness forms are required to submit such reports and the SOS does not have the resources to review them). This report must be sent to each shareholder within 120 days of the end of the fiscal year or with the regular annual report. It must be posted online if there is a website, but compensation paid to directors and any financial or proprietary information may be omitted from the posting. If there is no website, the benefit corporation must provide the report that would have been posted to anyone who asks free of charge.

### **Benefit enforcement proceeding<sup>20</sup>**

A benefit enforcement proceeding is the only way to sue the company for failure to pursue or create the general or specific public benefit or for violating the standards of conduct. A benefit enforcement proceeding can only be brought:

- (i) by the company itself; or
- (ii) (ii) derivatively by shareholders owning at least 2 percent of the shares, a director, a group owning at least 5 percent of the equity of a subsidiary, or anyone else listed in the articles of incorporation or bylaws. No monetary damages are allowed against the company or any director or officer. Presumably, this means that the outcome of the proceeding

will be compelling or restricting actions (this is a presumption, as no such actions have been brought to an Idaho court yet).

Given that B-Corps and benefit corporations are relatively new, there is potential for conflict as shareholders, managers, and customers figure out the details. In these early stages, a key responsibility of attorneys is making sure their clients know what they are committing to when choosing to hold themselves out publicly as a for-profit entity dedicated to creating public benefit. The market is changing, and the law is evolving with it. These are interesting and exciting times for social entrepreneurs and the people who support them.

### **Endnotes**

1. <https://www.bcorporation.net/what-are-b-corps/about-b-lab>. As of the date of this writing, 31 states have passed similar legislation and 8 are in the process. <http://benefitcorp.net/policymakers/state-by-state-status>.
2. Learn more about the assessment here: <http://bimpactassessment.net/>.
3. A list of Idaho B-Corps is available here: <https://www.bcorporation.net/community/find-a-b-corp>.
4. While B-Lab encourages certified B-Corps to organize under their state benefit corporation statute, it is not required if the company's management and tax needs are better served by another entity structure.



5. <http://www.goodwellworld.com/>. The City of Boise and the Boise-based company, Retrolux, become GoodWell Certified in the spring of 2017.
6. Idaho Code § 30-2001(4).
7. Idaho Code § 30-2003.
8. [http://www.sos.idaho.gov/corp/corp\\_form.html](http://www.sos.idaho.gov/corp/corp_form.html). Look for an updated form after July 1.
9. Idaho Code § 30-2004.
10. Idaho Code § 30-2006.
11. Idaho Code § 30-2002(5).
12. Idaho Code § 30-2006.
13. Idaho Code § 30-2002(9).
14. Idaho Code § 30-2007.
15. Idaho Code § 30-2008.
16. Idaho Code § 30-2002(6).
17. Idaho Code § 30-2009.
18. Idaho Code § 30-2010.
19. Idaho Code §§ 30-2012 to 2013.
20. Idaho Code § 30-2011.

*Kelsey Jae Nunez is a Boise attorney with a boutique practice that supports social enterprise, cooperative culture and the sharing economy.*



*Mark A. Buchanan is a Minnesota attorney and a professor in the College of Business and Economics at Boise State University. Both enjoy collaborative opportunities to grow our community of purpose driven organizations and work with BSU's Responsible Business Initiative. RBI's mission is to catalyze leaders to create sustainable value for business and society, by teaching the talk, walking the talk and joining with the Idaho business community to expand sustainable business practices.*



**UNITED STATES DISTRICT AND BANKRUPTCY COURTS  
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The Judges of the United States District and Bankruptcy Courts for the District of Idaho intend to appoint a Lawyer Representative to serve on the Ninth Circuit Conference of the United States Courts for a three-year term to replace Lori Nakaoka. Besides Lori Nakaoka, the District of Idaho's current Lawyer Representatives are Nicole Hancock, April Linscott and Howard Burnett (emeritus).

Effective November 1999, the Board of Judges adopted a Lawyer Representative Selection Plan, based upon current bar membership, which ensures state-wide representation. This plan calls for selection of lawyer representatives: 2017 – 1<sup>st</sup> and 2<sup>nd</sup> District; 2018 – 4<sup>th</sup> District; 2019 – 6<sup>th</sup> and 7<sup>th</sup> District; 2020 – 3<sup>rd</sup> and 5<sup>th</sup> District; 2021 – 4<sup>th</sup> District, and 2022 repeat above.

Based upon the Plan, this year's lawyer representative must come from the 4<sup>th</sup> District.

Applicants are required to:

1. Be a member in good standing of the Idaho State Bar and be involved in active trial and appellate practice for not less than 10 years, a substantial portion of which has been in the federal court system;
2. Be interested in the purpose and work of the Conference, which improves the administration of the federal courts, and be willing and able to actively contribute;
3. Be willing to assist in implementing Conference programs with the local Bar; and
4. Be willing to attend committee meetings and the annual Ninth Circuit Judicial Conference.

Typical duties include: serving on court committees, making recommendations on the Court's non-appropriated fund, developing curriculum for the District conference, serving as the representative of the Bar to advance opinions and suggestions for improvement, and assisting the Court in implementing new programs or procedures. Any persons interested in such an appointment should submit a letter setting forth their experience and qualifications, no later than September 15, 2017: Stephen W. Kenyon, Clerk of Court, [stephen\\_kenyon@id.uscourts.gov](mailto:stephen_kenyon@id.uscourts.gov)

The Commission will then select three applicants for referral to the Idaho State Bar Commissioners, who will make the final selection by October 5, 2017, or as soon as possible.

# Connections Count Part I: Generic Transitions

Tenielle Fordyce-Ruff

In a recent class one of my students challenged me to explain why transitions are so important to the reader. Hmmmm, I thought—desperately trying to think of an explanation that would be short and sweet. Well.... I began.

And then I struck on this idea: asking a reader to go through a brief that didn't contain any transitions would be like me asking you to drive me through a large city without voice navigation. Very frustrating!

Transitions serve an important function in any piece of writing: they connect the ideas in sentences and paragraphs and show the reader how lines of reasoning are advancing. These simple words let the reader know when to expect more detail or when to expect a different topic or when to expect a counter-point.

There are three basic types of transitions: generic, orienting, and substantive. We will look at generic transitions this month. Next month we will turn to orienting and substantive transitions, and then finish with a few editing tips to help make your transitions even more effective.

## Generic transitions

Generic transitions are used in every type of writing. They serve many functions, but each function tells the reader how to link the ideas in the sentences connected by the generic transitions. The following chart categorizes the most common generic transitions by function.

## Placement

Using generic transitions should be simple as they signal shifts inherent in our thoughts. So all a writer should have to do is insert the appropriate transitions every time the writer has a shift in thought.

Generic Transitions					
For Contrast					
However On the other hand	In contrast On the contrary Unlike Despite	Nevertheless Conversely Notwithstanding	Nonetheless Alternatively Even so Rather	But Still yet Instead	Though Although Even though That Being Said
For Comparison					
Similarly Likewise	Analogously In the same way For the same reason	In like manner By the same token			
For Cause and Effect					
Therefore Consequently As a result	Accordingly Thus Because	Hence Since	So For		
For What Is True In Most Cases					
Generally	In general	Generally speaking			
For Addition					
Also Further In addition	Moreover Too Additionally	Besides And Furthermore			
For Examples					
For example For instance	To illustrate Namely	Specifically That is			
For Emphasis					
In fact Above all	Certainly Indeed	Still Clearly			
For Evaluation					
More important Unfortunately Fortunately	Surprisingly Allegedly	Arguably Unquestioningly			
For Restatement					
In other words That is	More simply Simply put	To put it differently			
For Concession					
Granted	Of course	To be sure			
For Resumption After Concession					
Still Nevertheless	Nonetheless Even so	All the same That being said			
For Time					
Subsequently Recently Meanwhile	Initially Formerly	Later Eventually Shortly there- after	Simultaneously At the time	Earlier Afterwards Until now	Since By the time
For Place					
Adjacent to Next to	Here Beyond	Nearby Opposite to			
For Sequence					
First, second, third Former, latter In the first place	Next Final Finally	Then Later Primary, secondary			
For Conclusion					
In summary In sum	To sum up Finally	In brief In short	To conclude In conclusion	Thus Therefore	Consequently To review

Even so, placement is not so easy. Remember that as the writer you know when there is a shift in thought (these are, after all, your thoughts), but the reader doesn't just know. So it's important to place the transitions before the shift in thought; that way, the reader can anticipate and better absorb the shift.

Compare these:

*Many of Idaho's neighboring states have a law respecting a potential employer's access to a job applicant's social media accounts. Idaho does not have such a law, however. It is possible that because its neighboring states all have such laws that Idaho will soon have such a law, though.*

*Many of Idaho's neighboring states have a law respecting a potential employer's access to a job applicant's social media accounts. Idaho does not, however, have such a law. Though it is possible that because its neighboring states all have such laws that Idaho will soon have such a law.<sup>1</sup>*

The placement of the transitions *however* and *though* near the beginning of the sentences with the shift in thought allows the reader to more quickly understand that the second sentence will contrast with the first and the third with contrast with the first two. Simply put, the second example is easier for an unfamiliar reader to understand.

### When to use

I wish that there were some magic wand that writers could use to know exactly when and where to place a transition. Unfortunately, no such wand exists. Indeed, there isn't even a foolproof formula that tells us when and where to use transitions. Instead, each writer must make his own decision.

I will, however, offer some helpful guidance to use when making those decisions. First, remember that using transitions is a matter of style and preference. Each writer will develop

her own ear for when and where to use one, and each writer can observe when and where other legal writers use transitions. Generally, though, writers don't omit transitions that show contrast or help the reader understand how two seemingly dissimilar facts are similar.

Second, you can read your writing aloud. Your ear will pick up on when a sentence jolts the reader versus when it eases the reader into an idea. Likewise, you can ask someone else to read your writing aloud to you. Then you can stop that reader as she is reading to ask how the ideas are connected or what should come next. If she can't tell you or guess the next sentence, you can add transitions to help.

No matter which technique you might use, always keep the reader in mind.

### Precision matters

Finally, don't forget about the difference in meaning between transitions. While none of us is likely to confuse transitions in different categories, there are differences in meaning between the transitions within categories. For instance, I began this paragraph with *finally* because it contains the last topic I will address this month. Using *consequently* (a transition that also signals a conclusion) wouldn't have had the same meaning and would likely have confused you.

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Generally, though, writers don't omit transitions that show contrast or help the reader understand how two seemingly dissimilar facts are similar.

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Subtle differences in meaning also exist between transitions in the same category. *For example* suggests that the material is typical. In contrast, *specifically* suggests the material is precise and exact. Thus, while both tell the reader that you are providing an example, the reader would expect a different type of example depending on which transition you use.

Stay tuned for more exciting tips on transitions!

### Source

• Anne Enquist & Laurel Currie Oates, *Just Writing: Grammar, Punctuation, and Style for the Legal Writer*, chpt. 4 (2009).

### Endnotes

1. Some grammarians still insist that a sentence should never begin with *however*.

Tenielle Fordyce-Ruff is an Assistant Professor of Law and the Director of the Legal Research and Writing Program at Concordia University School of Law in Boise. She is also Of Counsel at Fisher Rainey Hudson. You can reach her at [tfordyce@cu-portland.edu](mailto:tfordyce@cu-portland.edu) or <http://cu-portland.lice.com>.





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Andy is a member of the Idaho, Washington, Oregon, Montana and Wyoming State Bars.



JONES · GLEDHILL · FUHRMAN · GOURLEY, P.A.  
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### **Upcoming Seminars:**

**Coeur d'Alene, September 23, Kroc Center**

**Jackpot, October 21, Cactus Pete's**

**The Big Island Hawaii, November 11,  
Mauna Lani Bay Resort**

**Sun Valley, April 20-21, 2018**

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### **More Information:**

**Contact IACDL**

**Executive Director Debi Presher  
(208) 343-1000 or [dpresher@nbmlaw.com](mailto:dpresher@nbmlaw.com)**

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**Wayne C. MacGregor, Jr.**  
**1925 - 2017**

GRANGEVILLE - Wayne C. MacGregor Jr., 91, a longtime resident of Grangeville, passed away May 21, 2017. Wayne was born to Wayne and Estella Smith MacGregor and was raised in Spokane. After graduation in 1943, he enlisted in the United States Army, where he distinguished himself in battle.



Wayne C.  
 MacGregor, Jr.

He was wounded and was awarded two Purple Hearts, the Combat Infantryman's Badge; two Bronze Stars for combat bravery; the Bronze Arrowhead (for five combat beachhead assaults); Five Campaign Battle Stars.

After returning to civilian life, Wayne attended the University of Idaho, where he earned a Bachelor's in Accounting and a Juris Doctorate. Shortly after graduating Wayne met his lifelong love, Nancy Walenta, the daughter of his favorite law professor, Dr. Thomas Rex Walenta. As a special deputy to the Idaho Attorney General, Wayne represented the State of Idaho in appellate cases set before the Idaho Supreme Court.

From 1957-1964 Wayne served as a Municipal City Judge for the City of Grangeville. He was president of the Idaho Prosecuting Attorneys Association in 1959, and President of the District Bar Association from 1953-1957. Wayne was the Idaho County Public Defender from 1985-1991. Wayne was an active trial attorney and argued 32 cases in the Idaho Supreme Court.

In 1977, Wayne and William J. Dee formed the law partnership of "Dee and MacGregor." They continued a very successful law practice up until Dee's untimely death in 1996. Thereafter, Wayne formed a partnership with his son, Kirk A. MacGregor and was an active partner until his death.

In June 2003 the Idaho State Bar Association awarded Wayne the Professionalism Award, which expressed respect and commendation from his professional peers. Wayne loved the practice of law and continued his practice well into what most attorneys consider their retirement years.

Wayne was an active member of the Grangeville Elks Lodge; Grangeville Jaycees; Grangeville Gun Club; Grangeville Country Club; St.'s Peter and Paul Catholic Church; Wayne was a 4<sup>th</sup> Degree Knight and active in the Knights of Columbus; American Legion; Veterans of Foreign Wars and also served on the Board of Advisors to St. Gertrude's College.

In 2001 and 2002 Wayne wrote his personal memoir, describing his early life growing up in Spokane during the Depression, and also his experiences as a soldier in the U.S. Army during World War II. In 2002 Washington State University Press published his memoir titled "Through These Portals, a Pacific War Saga."

In 2004, Time-Warner offered Wayne's book as the "Military Book of the Month." For several years Wayne's book was a required text book for a class titled "World War II in the Pacific" offered at Washington State University and Gonzaga University. Wayne was also asked to lecture at both universities. Wayne's

book was video transcribed and broadcast on the Idaho and Washington Public television stations.

In 2009 Wayne was named to a "List of 50" prestigious attorneys who were to be interviewed to gather "their thoughts and memories" through "oral histories of the most prominent lawyers and judges in Idaho." Wayne's oral history interview, and his book are both at the Idaho Historical Society's Public Archives and Research Library in Boise.

Wayne's greatest joy came from his children which he also considered to be his highest achievement. Wayne loved the outdoors, and in his younger years took many back-country horseback trips, usually to the Bob Marshall Wilderness in Montana. Wayne was an avid collector of Western Art and loved traveling with his wife and children to art shows in Montana.

He is survived by his sister, Norma Dahlgren of Lewiston, sister-in-law, Donna Jo Fitzgerald of Nampa; his children, Shawna Stockton of Boise; Molly (Roger) Cole of Moscow; Bridget Baker of Marlton, New Jersey; Kirk (Beth) MacGregor of Grangeville; Cathleen (Jon) Irby and Leslie (Dean) Diffin both of Meridian. He also leaves numerous grandchildren and great-grandchildren.

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**Hon. James (Jim) J. May**  
**1925 - 2017**

TWIN FALLS - James (Jim) J. May, a founding president of the Idaho Trial Lawyers Association, passed away June 11, 2017 at the age of 91 in Twin Falls, Idaho. Jim was born December



16, 1925 in American Falls, to J. Alfred and Naomi (Tolman) May.

Jim married Barbara (Bobbie) Egbert on October 21, 1945. Jim and Bobbie both attended the University of Idaho where Jim received his bachelors and law degree. Jim graduated from law school about the same time his father, J. Alfred May, obtained his law degree from Gonzaga University. So they opened the law firm of May & May Law Offices in 1951 in Twin Falls. That law firm still exists, being operated by a third and fourth generation of lawyers.

During his early career, he served as prosecuting attorney of Twin Falls County followed by private practice for more than 20 years as a trial attorney. Jim also served as the District Judge in the Fifth Judicial District chambered in Blaine County until he retired at the age of 78. After retirement, he and Bobbie moved back to Twin Falls.

Service to others was something that guided Jim's choices throughout his life. While managing his busy judicial career, Jim found time to serve as President of many civil, legal and religious organizations including the Twin Falls Chamber of Commerce, Exchange Club, Idaho State Bar, Western Trial Lawyers and was the founding President of the Idaho Trial Lawyers Association.

Jim loved to work and loved the outdoors. He especially enjoyed working on his small farm in Bellevue with his children and grand-



Hon. James (Jim)  
J. May

children. He liked to hunt with his family and his friend, George Haney and especially liked to ride his horse "Otis" with his grandchildren.

Jim was a lifetime member of the Church of Jesus Christ of Latter Day Saints where he served in various callings including Bishop of the Twin Falls Seventh Ward, Twin Falls Idaho Stake. At the time of his death, Jim was a member of the High Priests Quorum of the Twin Falls Idaho West Stake.

Funeral services were conducted by Jim's son in law, Bishop L. Michael Barney. Jim is survived by Bobbie, his wife of 71 years, his three children, Monte (L. Michael) Barney, J. Dee (Janet) May and Shawno (Carol) May. Jim is also survived by 10 grandchildren, 24 great grandchildren and 2 great great grandchildren.

---

**Andrew (Andy) C. Thomas**  
**1949 - 2017**

CALDWELL - Andrew C. Thomas was born in 1949 in Kansas City. He graduated from Wesleyan University in 1972, where he participated on the Debate Council and the varsity swim team. He then went on to the University of Idaho, College of Law, and graduated in 1975. During law school Andy interned at Idaho Legal Aid Services, and then joined the ILAS Caldwell office upon graduation. Andy worked at ILAS for 42 years, devoting his entire professional career to providing free legal services to low income people in housing, family, public benefits and senior law cases.

Andy appeared before the Ninth Circuit Court of Appeals and the Idaho Supreme Court. He was a leader in his community and served in many community organizations, including the Idaho Region III Mental Health Advisory Board, the Idaho Housing Coalition, the Intermountain Fair Housing Council, and the Idaho Homeless Coalition.

He served as President of the Third District Bar Association and was held in high esteem by his fellow attorneys in the Third District. In some respects, Idaho Legal Aid was Andy's family, and his colleagues loved him dearly and will miss him immensely.

His compassion for his low-income clients was boundless. Every work day for 42 years he sat down with people in difficult situations and helped them through it, patiently explaining options and strategies and advocating for them in court.

Andy is survived by his brother, John Thomas, and his nephew, Miles Thomas. Andy was preceded in death by his mother and father, Margaret and Miles Thomas, his sister, Francis Thomas, and his brother Chris Thomas. For the past year Andy was cared for by his good friend, Kathy Farber.

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**Keeping track**

Despite our best efforts, there are times when a member's death remains undocumented. So upon learning of a fellow attorney's death, please feel free to contact Dan Black with the information at [dblack@isb.idaho.gov](mailto:dblack@isb.idaho.gov). This will allow us to honor the individual with details "In Memoriam."

**Katie R. Franklin joins firm in Ketchum**

KETCHUM – The firm of Lawson Laski Clark & Pogue, PLLC, in Ketchum announced that attorney Katie Franklin has joined the firm as an associate. Katie is a graduate of the University of Idaho College of Law with her Juris Doctor and admission to the Idaho State Bar in 2015.



Katie R. Franklin

**Lara Anderson joins Andrade Law**

ONTARIO - Attorney Lara Anderson has joined the staff at Andrade Legal. Ms. Anderson brings several years of experience in criminal defense and a passion for immigration law. She will work primarily in the Ontario, Ore., office.



Lara Anderson

**Concordia announces new hire**

BOISE - Katharine Van Tassel has joined the Concordia University School of Law as Associate Dean of Academics and Professor of Law. Ms. Van Tassel has a B.S.N. and J.D. degree from Case Western Reserve University, has an M.P.H. in Law and Public Health Policy from Harvard University,



Katharine Van Tassel

and is currently completing an M.S. in Food Safety from Johns Hopkins University. She was previously with Creighton University School of Law as Professor of Law and Director of Health Law Programs.

**Erika Birch receives Walter H. Bithell Professionalism Award**

SUN VALLEY - Erika Birch was honored at the Idaho Trial Lawyers Association’s 45th annual meeting and convention in Sun Valley on June 16, 2017. Birch is a partner in the law firm Strindberg & Scholnick, and was the founding partner in the firm’s Boise office which opened in 2007.

Birch is a past Chair of the Employment & Labor Law Section of the Idaho State Bar, (ISB). She is also a member of the National Employment Lawyers’ Association, a board member for the Idaho Trial Lawyers’ Association, Idaho Women Lawyers, Inc., and the Federal Bar Association. Birch is also a recipient of the ISB Denise O’Donnel Day Pro Bono Award (2013), ISB Service Award (2014), and the ISB Diversity Section’s Justice For All Award (2015).

The ITLA Professionalism Award is named after highly-esteemed Idaho plaintiff’s lawyer Walter H. Bithell of Boise.

**Christian Brown joins firm Of Counsel**

BOISE - Christian Brown has joined the Shane Bengoechea firm,

Of Counsel, in Boise after actively practicing law in Idaho for the last 28 years. Mr. Brown will reside in Washington, (his home state), as he continues to practice law in Idaho. His phone number (208) 336-4477 rings in the Bengoechea office, and Mr. Brown will assist attorneys and former clients primarily via email, phone and mail.

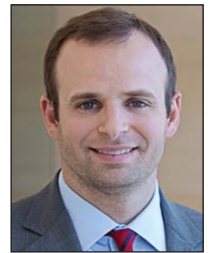


Christian Brown

**Patent attorney joins Holland & Hart**

BOISE – Holland & Hart welcomes Matt Harvey into the firm’s Intellectual Property practice in the firm’s Boise office. Mr. Harvey is a registered patent attorney and focuses on patent prosecution, patent analysis, and IP due diligence matters across electrical engineering and standards-essential technologies.

Prior to joining Holland & Hart, Matt practiced as a litigator with Gibson, Dunn & Crutcher LLP in Denver and as a patent agent with Fenwick & West LLP in Silicon Valley. He also worked as an electrical engineer for the U.S. Department of Energy at Sandia National Laboratories. Matt is licensed to practice in Colorado and before the U.S. Patent Office; he is not yet admitted to practice in Idaho.



Matt Harvey

**Cathy Silak joins Hawley Troxell**

BOISE - Concordia Law School's founding dean, Cathy Silak, has left her position as vice president for community engagement at the law school to rejoin Hawley Troxell in Boise. Silak has had two previous tenures at Hawley Troxell. Her previous positions include Assistant U.S. Attorney for the Southern District of New York, Special Assistant United States Attorney for the District of Idaho, and associate attorney at Morrison & Foerster. She also served on both the Idaho Court of Appeals and as a justice on the Idaho Supreme Court.



Cathy Silak

**Kaleena Bluemer joins Angstman Johnson**

BOISE - Attorney Kaleena Bluemer has joined the Angstman Johnson law firm in Boise. Her practice is focused on commercial and civil litigation, probate, real estate and bankruptcy. Bluemer was a member of the Business Law Association and Women's Law Caucus and continues her membership with the Idaho Women Lawyers and Boise Young Professionals.



Kaleena Bluemer

**Parsons Behle & Latimer opens office in Idaho Falls**

BOISE - Parsons Behle & Latimer



C. Edward Cather III



Lee Radford



Jon A. Stenquist



Bradley J. Williams

president Hal J. Pos announced that the Salt Lake City-based law firm is opening a law office in Idaho Falls. On June 1, four attorneys from the Idaho Falls office of Moffatt Thomas became part of the Parsons Behle & Latimer firm. The move was approved by Parsons Behle & Latimer shareholders in a meeting May 24.

Attorneys joining Parsons Behle & Latimer as shareholders are C. Edward Cather III, Lee Radford, Jon A. Stenquist and Bradley J. Williams. They will continue to practice in their offices at Snake River Landing, 900 Pier View Drive, Suite 206, in Idaho Falls. According to Lee Radford, "Combining with Parsons Behle & Latimer provides our clients with the deep resources of a regional firm."

**Matt Christensen promoted to manager**

BOISE - Angstman Johnson announced that Matthew T. Chris-

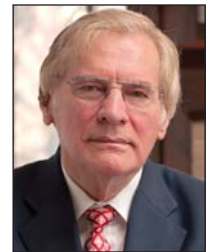
tensen is its new managing member. He succeeds T.J. Angstman, who had the management and leadership responsibility of the firm. Christensen will manage and lead the firm's day-to-day operations and strategic planning, as well as continue to practice law. Christensen maintains a civil litigation practice involving commercial law, bankruptcy, real property, and business matters. In addition to practicing law, Christensen is an adjunct professor at the University of Idaho College of Law.



Matthew T. Christensen

**Huntley named Trial Lawyer of the Year**

BOISE - Robert C. Huntley was named Idaho's 2017 James J. May Trial Lawyer of the Year. Huntley was honored by the Idaho Trial Lawyers Association for his dedication to the practice of law, his active community involvement, and his commitment to the preservation of the civil justice system.



Robert C. Huntley

Mr. Huntley was a justice of the Idaho Supreme Court from 1982-1989. In recent years, his practice has been primarily devoted to the work of a trial and appellate lawyer. He was a member and Vice Chair of the Idaho Judicial Council from 1967-1991; a Commissioner of the Idaho



## OF INTEREST

State Bar (ISB) in 1982; chair of the ISB CLE Committee in 1964-1966; and chair of the ISB Professional Conduct Board in 1993-1994.

The award was presented to Huntley at the Idaho Trial Lawyers Association's 50<sup>th</sup> annual meeting and convention on June 16, 2017, in Sun Valley.

### **R. Bruce Owens appointed to Idaho Judicial Council**

BOISE – The Idaho State Bar Board of Commissioners has selected trial attorney R. Bruce Owens of Hayden to serve a six-year term on the Idaho Judicial Council to replace Joel Hazel of Coeur d'Alene. The appointment is subject to consent of the Ida-

ho State Senate.

In its disciplinary capacity, the Council may investigate complaints against justices, court of appeals judges or judges of the district courts or magistrate divisions, and members of the Industrial Commission, and in appropriate cases it may recommend to the Supreme Court the removal, discipline or retirement of a justice, judge, or magistrate judge.

The Idaho Judicial Council also nominates persons for appointments to vacancies in the Idaho Supreme Court, Idaho Court of Appeals, and



R. Bruce Owens

district courts. It may make recommendations to the Idaho Supreme Court for the removal, discipline and retirement of judicial officers who have violated the Code of Judicial Conduct.

Mr. Owens practices law at Owens, McCrea & Linscott, PLLC in Hayden, and has a specialization certificate in civil litigation from the Idaho Trial Lawyers Association and the Idaho State Bar. He has tried cases in all seven judicial districts. Owens has served as president of both the Idaho Law Foundation, Inc. and the Idaho Trial Lawyers Association. Mr. Owens has also served as a member of the American Association of Justice and the Washington State Trial Lawyers Association.

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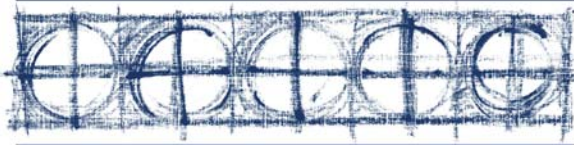


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## Volunteering Your Services Is No Small Matter in Idaho

Sue Pierson

**A**t the Idaho Volunteer Lawyers Program, (IVLP), we spend a lot of time thinking about volunteering—who does it, why they do it, how to get more people to do more of it. Accordingly, we were not surprised to learn that Idaho is a leader in volunteering, ranking fifth in the nation with roughly one in three residents donating time to charity.<sup>1</sup>

Idaho lawyers play a significant role in Idaho's impressive volunteerism. In 2016, 741 Idaho lawyers provided over 7,750 hours of pro bono services to Idaho residents. While this level of participation is encouraging, IVLP, along with Idaho Legal Aid Services, Inc. (ILAS) and other partners are working to engage more attorneys in pro bono work so that a greater number of Idahoans receive the civil legal services they desperately need.

We know that most lawyers volunteer because giving makes them feel good. An IVLP volunteer attorney recently wrote to tell us about the joy his entire office experienced after they successfully appealed a denial of disability benefits for a disabled client. We also know that most lawyers cite a lack of time as the primary reason they do not engage in pro bono service. We want all Idaho lawyers to experience the happiness derived from contributing to the greater good but we understand that taking on an open-ended case assignment is simply not doable for many of you. We think one answer is limited scope representation! This representation can be provided through participation in the myriad of legal clinics operated by IVLP and

various partners such as Idaho Trial Lawyers Association, the Idaho Military Legal Alliance and the Court Assistance Office.

In addition, the Idaho Rule of Professional Conduct and Civil Procedures specifically encourage attorneys to assist clients on a limited basis. Idaho Rule of Professional Conduct 1.2(c) expressly allows lawyers to limit the scope of their representation, provided "the limitation is reasonable under the circumstances and the client gives informed consent." In addition, Idaho Rule of Civil Procedure 11.4, Limited Pro Bono Appearance, creates a procedure that allows volunteer attorneys to step into a case for a limited purpose and withdraw, without seeking court permission, when the limited representation is complete. All that is required is an initial notice detailing the scope of the representation and, the filing of a Notice of Completion of Limited Pro Bono Appearance when the tasks are concluded.

By relying on these rules, attorneys can limit their assistance to providing advice on a certain matter, preparing a pleading, handling a hearing, drafting discovery or any other specific task. Moreover, to

make limited scope representation as easy as possible, IVLP enlisted the assistance of retired Supreme Court Chief Justice Jim Jones. He drafted forms for a Notice of Limited Pro Bono Appearance, a Notice of Completion of Limited Pro Bono Appearance, as well as a limited representation engagement letter, all of which are available on the Idaho Volunteer Lawyers Program website.

IVLP currently has many clients who would benefit from a few hours of legal assistance. And because of a new pro bono opportunities website, [idahoprobono.org](http://idahoprobono.org), recently launched by IVLP and ILAS, attorneys can find and accept these opportunities anytime, anywhere and from any device whenever they want to feel the joy of public service. Don't wait another minute to reap the rewards of giving back, log on to [idahoprobono.org](http://idahoprobono.org), and chose an opportunity that matches your interests and availability. You won't regret it!

### Endnotes

1. <http://www.idahostatesman.com/news/local/news-columns-blogs/helping-works/article115110588.html>

*Sue Pierson has been the Legal Director of the Idaho Volunteer Lawyers Program since February of 2016. Prior to joining IVLP she was in private practice focusing on commercial litigation and employment law. Sue earned her bachelor's degree from Princeton University and obtained her Juris Doctorate from the University of Maryland School of Law.*



## 2017 Idaho State Bar Distinguished Lawyer

# Darrel W. Aherin Cultivates His Legal Practice in Lewiston

Dan Black

**Y**ou might expect to find the founder of a long-established law firm stuck in the office, busy with research, lost in his thoughts. Darrel Aherin is just as likely found feeding horses or helping organize community events. Aherin grew up in the picturesque rolling hills of the Palouse in north central Idaho where he rode horses and knew all his neighbors. Throughout his career, he followed his heart and stayed close to home.

Aherin feels a connection to the land and its people that many attorneys might not understand.

“When I interact with attorneys from metropolitan areas, they want to know what it’s like to practice here,” Aherin said. “They ask, but they can’t conceive that all the lawyers talk - we know each other. It’s a great place to practice law.”

Aherin has deep roots in the area. Grandparents on both sides of his family settled land in Idaho’s north central region. His wife, Michelle, has similar ties. Together they raise Arabian horses and enjoy camping in the Northwest, and travelling to conferences. They love visiting Hawaii and, of course, horseback riding. The couple has three grown children and two grandchildren.

Aherin enjoys living in two worlds - the laidback country life contrasted by a legal career with varying intellectual challenges.

When Aherin was a child, a local attorney, Paul Keeton, used to visit each year to ask permission to hunt on the family ranch. Over casual conversation, Keeton gave a good



impression of the legal profession. While later attending the University of Idaho College of Law, Aherin worked an internship with Keeton, who was, at the time, a state legislator.

Aherin attended Lewis Clark State College in Lewiston on an athletic scholarship. After receiving his degree and teaching certificate, Aherin taught school for one year in Lewiston before attending law school in Moscow.

Aherin knows just about everyone in his hometown of Genesee. His connection to small town life makes perfect sense considering he attended school for two years in Genesee and 10 years in Culdesac, both small towns near Lewiston. Naturally, Aherin’s early life affects the way he practices law.

“Early on I developed a view that along with a license to practice law comes an obligation to the community. An attorney must be careful with clients’ privacy,” Aherin said. “I learned you should never

bring up past encounters with former clients. The very first thing to do is a conflict check, because everyone’s lives are so interwoven in smaller communities.”

As senior partner at Aherin, Rice and Anegon in Lewiston, Aherin handles personal injury, insurance claims, probate, wills, estates, property, and contracts.

“Historically, I did divorces, but those were so hard,” he said. “You have this love/hate relationship – and then there are the kids. I took the cases, but they are difficult because they are dealing with strong emotions. The [cases] I find the most satisfying are the personal injury cases,” Aherin said. “The client is in a bad situation, injured, and it is very satisfying to see the company held responsible.”

Aherin was inspired to develop his personal injury practice after learning of legendary attorney Harry Philo. “I got to know who he was and attended his seminars,” Aherin said. This brought Aherin’s



focus to personal injury cases. Aherin tried a case with Philo in Lewiston in the late 1970s representing a man who lost his leg in industrial equipment.

Licensed to also practice in Washington and Oregon, Aherin has enjoyed developing connections with lawyers around the United States and even abroad – particularly in Australia as a representative from Idaho to the American Association for Justice.

One of his more memorable cases was one in which he represented a claimant in a property damage case brought against Lloyd's of London. Because of the case, the international insurance giant set up an office in the United States for handling claims. The case settled during the trial in Lewiston.

Aherin currently serves with civic groups such as the Lewiston

Aherin has enjoyed developing connections with lawyers around the United States and even abroad – particularly in Australia as a representative from Idaho to the American Association for Justice.

Clarkston Chamber of Commerce and as a Planning and Zoning Commissioner for Genesee. He also served a term as a bar representative to the Idaho Judicial Council from 1997 to 2003.

For an additional challenge, Aherin channels his enthusiasm for the courtroom into professional development. Aherin is a past

president of the Idaho Trial Lawyers Association (ITLA) and remains active, serving as one of the Idaho representatives to the Board of Governors of the American Association for Justice since 1996. Aherin was awarded the James J. May Trial Lawyer of the Year award in 2005 by the ITLA.

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## 2017 Idaho State Bar Distinguished Lawyer

### Karen E. Gowland: Exploring Leadership at Boise Cascade

Dan Black

**K**aren Gowland spent her entire career as corporate counsel with Boise Cascade and its affiliates. During her 30-year tenure, corporate structures changed dramatically. Gowland helped to create these new structures as general counsel. The impressions she left during those years were of a competent, trustworthy and talented leader. Now retired, Gowland currently serves on Boise Cascade Company's Board of Directors.

Gowland grew up as an Air Force brat in a time when few extra curricular activities were offered. "Especially if you were a girl in the 1970s," she said. "There were few sports – not even soccer. But debate competition was intriguing."

At the University of Idaho, Gowland entertained the thought of law school while taking undergraduate classes for a degree in accounting. After earning her bachelor's degree, she passed the CPA exam but never entered the world of bookkeeping and spreadsheets. During her senior year of college, she applied to the University of Idaho College of Law.

Once in law school, Gowland worked a summer internship as a clerk in Boise Cascade's corporate counsel office. There were about 20 lawyers on staff at the time. "They introduced me to the company and the different areas of law that were involved. Right away, I thought, 'this is where I want to be.'"

Part of the allure was the company's culture, which Gowland said emphasized personal and professional ethics. "They would



hire people not for their skills, but for their values." The company also had a rotation program in which junior attorneys spent 12 to 18 months in a certain area of law. They would practice litigation, contracts, environmental law, employment law, and securities. After several rotations, every attorney would understand the complexities of the company's legal department. These rotations helped Gowland gain confidence that corporate counsel was the right place for her.

Gowland also enjoyed the variety her job provided. "You have to be a liaison between management, the board and the legal department," she said. "You try to never tell your client 'no,' but try to see another way. To me, that's what's so fascinating. I enjoy the business aspect."

"My law practice has been fulfilling," she summarized, adding that she had several mentors, including John Holleran, a former general counsel at Boise Cascade.

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Part of the allure was the company's culture, which Gowland said emphasized personal and professional ethics. "They would hire people not for their skills, but for their values."

"He didn't just teach how to practice law," said Karen, "but he taught me how to be a leader, which is much more challenging. He taught me how to run a department and manage people. I credit him with grooming me to be general counsel. As corporate counsel, our job is to make sure everyone is pulling in the same direction. The key is communication. How do we

help the client get to where they want to be?”

How did the male-dominated corporate environment accept a strong woman in a leadership role? “I never experienced discrimination at work,” Gowland said. “In court, from a judge, yes. But [at Boise Cascade] it was nearly all men and they treated me with respect. It wasn’t like I was the only girl on a wrestling team. Working at Boise Cascade was more like joining the Boy Scouts. I didn’t have to change my behavior.”

Gowland credits her husband of 37 years, Kimbal, for her success: “I really could not have done this without my husband and his amazing support. He’s my partner. We raised two sons, one an actor in New York City and the other a salesman in Salt Lake City. They never gave us a lick of trouble.”

Kimbal, also an attorney, did not leave Boise for work, which allowed Gowland to travel. “He was the home base,” she said. The

It wasn’t like I was the only girl on a wrestling team.  
Working at Boise Cascade was more like joining the Boy Scouts.  
I didn’t have to change my behavior.”

— Karen E. Gowland

two retired in 2014. These days they enjoy travel, golf, bridge and spending time in McCall.

Shortly after her retirement, Gowland was asked to join the Boise Cascade Board of Directors. Due in part to her insight and background, she now serves as the chair of the Compensation Committee and is a member of the Governance Committee. She continues to do pro bono work from time to time.

Gowland serves as the chair of the University of Idaho Foundation

Board, which manages a fund of more than \$300 million – the largest public foundation in Idaho. As chair, she provides oversight for the Foundation’s governance.

Gowland has served on the Idaho State Bar Professional Conduct Board for 21 years and has been its chair for the past 15 years. She has earned several Idaho State Bar awards including the Denise O’Donnell Day Pro Bono Award in 1991, the Service Award in 2003 and the Professionalism Award in 2008.

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## 2017 Idaho State Bar Distinguished Lawyer

# Jack S. Gjording: A Persuasive Story Rules the Day

Dan Black

**J**ack S. Gjording of Boise thrives on competition. Having grown his legal practice with mostly medical malpractice defense cases, he enjoys researching and preparing, no matter how complicated the case.

“Most important,” Gjording said, “and probably the most fun, is crafting a way to tell the clients’ side of the story in a persuasive and effective manner.”

With a buoyant disposition, Gjording enjoys being a trial lawyer. “I like that you learn a variety of topics,” including medical concepts and intricate details about product safety.

A principal at the Boise office of Gjording Fouser, Jack Gjording reflected on his work with a strong sense of gratitude.

“I consider myself extremely fortunate to have had a long career that I enjoyed. I suppose that’s a benefit of being an older trial lawyer, because from when I started I have enjoyed an incredibly collegial group of attorneys. We can compete with each other, but in an amicable and civil way.”

Gjording grew up in Glens Ferry, a small town in south central Idaho, where his parents were business people. “I had no idea what a lawyer really did,” Gjording said. When he went to the University of Idaho, he saw the College of Law recruiting from the general student population to serve as jurors for the Moot Court competition. He signed up and was fascinated by the debate.

Later, Gjording said one of his economic professors, Dr. Erwin Graue, suggested he should consider



a career in law. Such a career, Gjording figured, would give him control over how he spent his time. After law school, he got his first job with the firm Clemons Skiles & Green, which later became Cosho, Humprey, Greener and Welsh.

Among his early trial work, Gjording did prosecutions for the City of Boise. After three years he joined another firm and eventually evolved his practice to include product liability and medical malpractice.

“You come to a place where you appreciate a sophisticated means to resolve disputes between people and companies,” he said.

“I have always represented defendants. It just worked out that way.”

Gjording’s practice took a leap when he joined Elam, Burke, Jeppesen, Evans and Boyd in the 1970s – a firm now known as Elam & Burke. “Peter Boyd hired me to be an understudy. With him as a mentor, I learned a ton. He was the premier trial attorney in Idaho,”

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Gjording said, adding that “even a loss is sometimes a win, if you can hold down the damages.”

“Most cases that go to trial are decided by a jury. So the lawyer’s job is one of persuasion and reaching the jurors. There are memorable cases. Some were hard, some disappointing. I enjoy just being in the process.”

One case stuck out – a case in Hailey. Gjording recounts:

“It was the dead of winter when we started. After 13 weeks, we finished in the spring. We prevailed but lost at the Idaho Supreme Court.”

Gjording added that even when it takes excruciating effort, a trial can be still worth the effort.

After so many cases, Gjording said, “I have never tired of the process. It’s an important part of

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— Jack S. Gjording

our society, our civilization. Any system that resolves disputes in a peaceful way,” he said, is virtuous.

“You do your best to win. But to this day it is my experience that at the conclusion of trial, the lawyers all shake hands. That’s certainly the

case in Idaho. People who know me will say I am a genuine optimist. The purpose of the whole process is to find justice for your client. That’s something that takes some optimism. Doing this work, yes, it’s going to get you high on life!”

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## 2017 Idaho State Bar Distinguished Jurist

### Judge Stegner, Distinguished Jurist

Dan Black

**B**orn in Grangeville, Judge John R. Stegner enjoys the camaraderie known throughout the Second District. But he typically limits his contact with attorneys to business hours. A judge in rural Idaho, he must be mindful about letting friends and colleagues appear before his court.

“It’s an isolating profession,” he said, adding that he tries to socialize with non-lawyers so as to avoid the appearance of partiality.

Judge Stegner serves as a District Judge with chambers at the Latah County Courthouse in Lewiston. He was appointed to the bench in November 1996 by then-Governor Phil Batt.

#### The making of a judge

While in law school, Judge Stegner was the managing editor of the *Idaho Law Review*. Following graduation, he clerked for U.S. District Judge Harold L. Ryan, in Boise. After clerking, he joined the law firm Clements, Brown & McNichols in Lewiston, where he practiced until taking the bench.

Judge Stegner said he has been influenced by several great lawyers, starting in the second year of law school at the University of Idaho College of Law. Judge Stegner took an externship clerking for U.S. District Judge Blaine Anderson. “I got to see the best lawyers in the state,” he said. He said he gained a deep respect for civility and candor from attorneys such as Mike McNichols, Hal Ryan, Judge Ron Schilling and others.



#### Improving the system

Not one to rest on his laurels, Judge Stegner has been a member of the statewide Drug Court and Mental Health Court Coordinating Committee since 2001. He helped create Latah County’s Drug Court in 2002 and Latah County’s Mental Health Court in 2012. He has continuously presided over both courts since their founding. He is also a member of the Idaho Criminal Justice Commission, where he chairs the subcommittee on Mental Health and Substance Abuse.

Judge Stegner is a past president of both the Idaho District Judges Association and the Ray McNichols Inn of Court. In 2012, in recognition of his performance as a District Judge, the Idaho Judiciary presented him with the George G. Granata Jr. Award.

Judge Stegner has yet another claim to fame; that is as author of “Ten Things to Do in My

Courtroom,” a 10-page summary that would help any attorney revisit tenets of the profession. For instance, he urges lawyers to be prepared:

“The most impressive lawyers I see are those who are well-prepared. They understand the facts better than I ever will because they have lived with their case from its inception. They have anticipated legal issues that will arise and have dealt with them through motions in limine. They know every evidentiary hurdle they face and have authority ready at their fingertips to persuade me that the evidence will either be admitted or rejected based on their argument. It is a pleasure to preside in a case such as this.”

Judge Stegner and his wife Laurie, who is an English teacher at Pullman High School, have three daughters: Sarah; Elizabeth; and Katherine. They welcomed a son-in-law, Mathew Purdy, to their family in 2016, and a grandson, George, in 2017.





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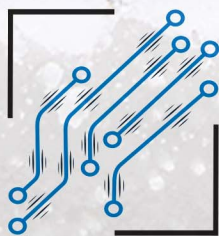
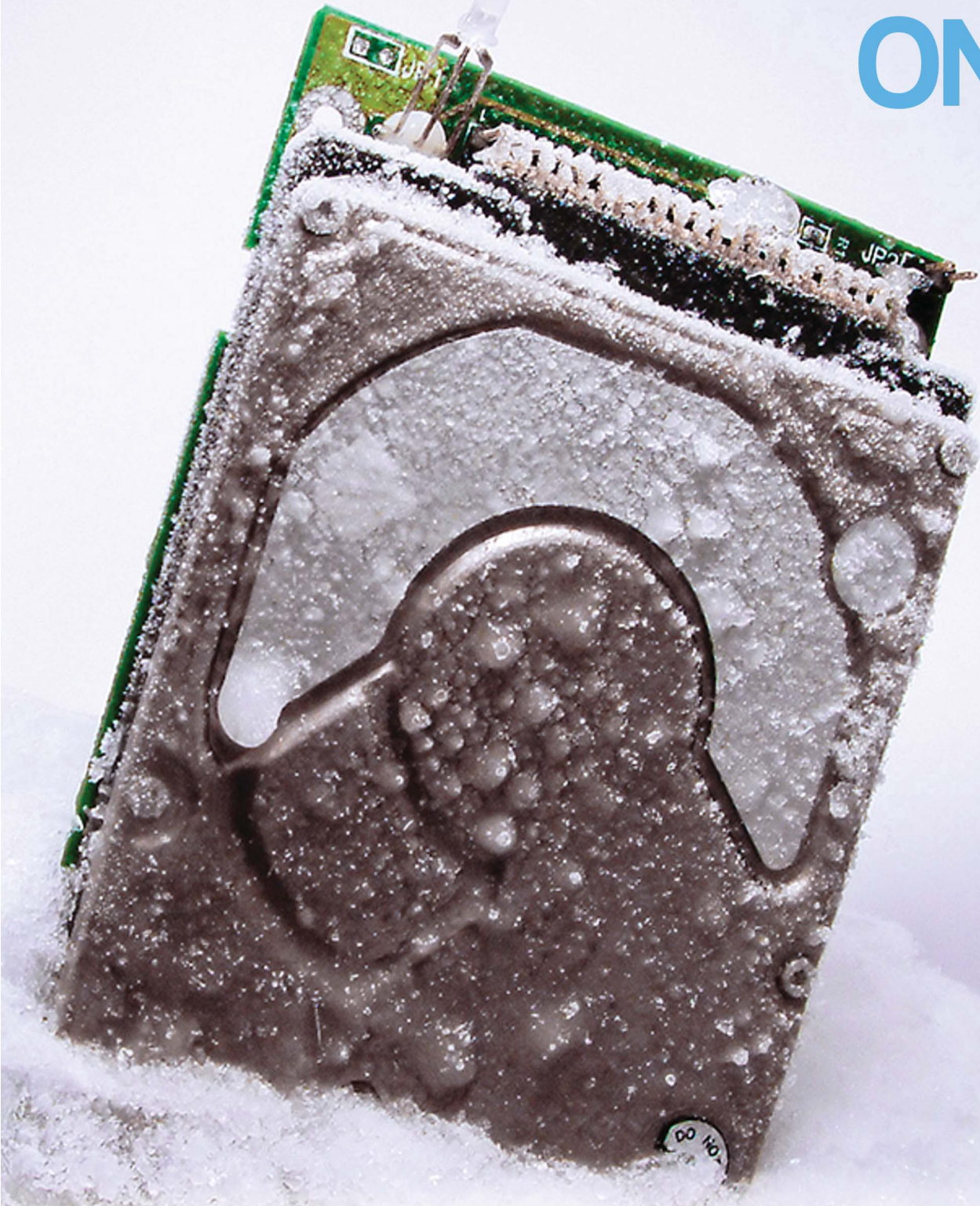
William L. Vasconcellos, CIMA®, CRPC®  
Senior Vice President–Wealth Management  
1161 West River Street, Suite 340, Boise, ID 83702  
208-947-2006 888-844-7452 [william.vasconcellos@ubs.com](mailto:william.vasconcellos@ubs.com)  
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